

**REPORT FROM THE SHASTA COUNTY ELECTIONS COMMISSION
ON
RECOMMENDATIONS REGARDING MANDATORY RECONCILIATION OF THE BALLOT COUNT**

To the Honorable Board of Supervisors (Board), County of Shasta, State of California:

The Shasta County Elections Commission (Commission) respectfully submits the following information for the Board's consideration at their next scheduled meeting.

Ronnean Lund, Commissioner
Patty Plumb, Commissioner
Margaret Hansen, Commissioner
Brad Garbutt, Commissioner
Mike Michalak, Commissioner

GENERAL INFORMATION

It is the belief of the Commission that, in order to increase transparency and public trust in the Shasta County election processes and to ensure the best checks and balances in the election process, there should be immediate action taken by the Shasta County Board of Supervisors to mandate that the number of ballots received at each precinct match the number of people who voted at each precinct, before the election can be certified by the Registrar of Voters (ROV).

BASIS FOR MANDATING BALLOT COUNT RECONCILIATION

- 1) According to the ballot return data from the March 5, 2024, the total number of ballots returned exceeded the total number of people who voted in Shasta County by over 500 votes. Given that many local races are decided by less than 300 votes, it is critical that this basic accounting of ballots and number of voters that voted be accurate. During the March 5, 2024, election, in District 2 alone, the number of precinct votes reported in the Statement of Votes exceeded the reporting of votes on the Ballot Statements from the precincts by 39.
- 2) The Georgia State Election Board just passed a recommendation that the number of ballots cast and the number of people who voted must match in each precinct before an election can be certified and that this must be uniformly followed in every county in Georgia.
- 3) Shasta County should establish a uniform process that will enable basic ballot reconciliation to occur no matter the current ROV's personal preferences.
- 4) If Shasta County citizens are to have confidence in their elections and the results, the Shasta County Elections Office needs more checks and balances during the election process. When citizens know that the number of ballots cast matches the number of voters that voted, they will have more confidence in the integrity of their elections.
- 5) The public has urgently asked for more oversight, and reconciling the number of ballots to the number of voters that voted would help alleviate the current mistrust in our election system.

ISSUES RELATED TO TIME

- 1) It is necessary to expedite this recommendation as an election of national importance happens tomorrow, and the election could be certified as soon as December 3, 2024. Given the proximity to the next election, it is reasonable to expedite efforts to ensure free and fair elections.

LEGAL REFERENCES

- 1) 2 CCR, Section 20110 states:

“(a) The purpose of this chapter is to establish guidelines and procedures for an elections official to conduct a risk-limiting audit in accordance with the requirements of Division 15, Chapter 4, Article 5.5 of the Elections Code.

(b) Pursuant to Elections Code section 15367(a)(1), commencing with the statewide general election held on November 3, 2020, the elections official conducting an election may conduct a risk-limiting audit during the official canvass of any election.

(c) A participating county may exclude any contest that has been subject to a risk-limiting audit from the one-percent manual tally required by Section 15360.”

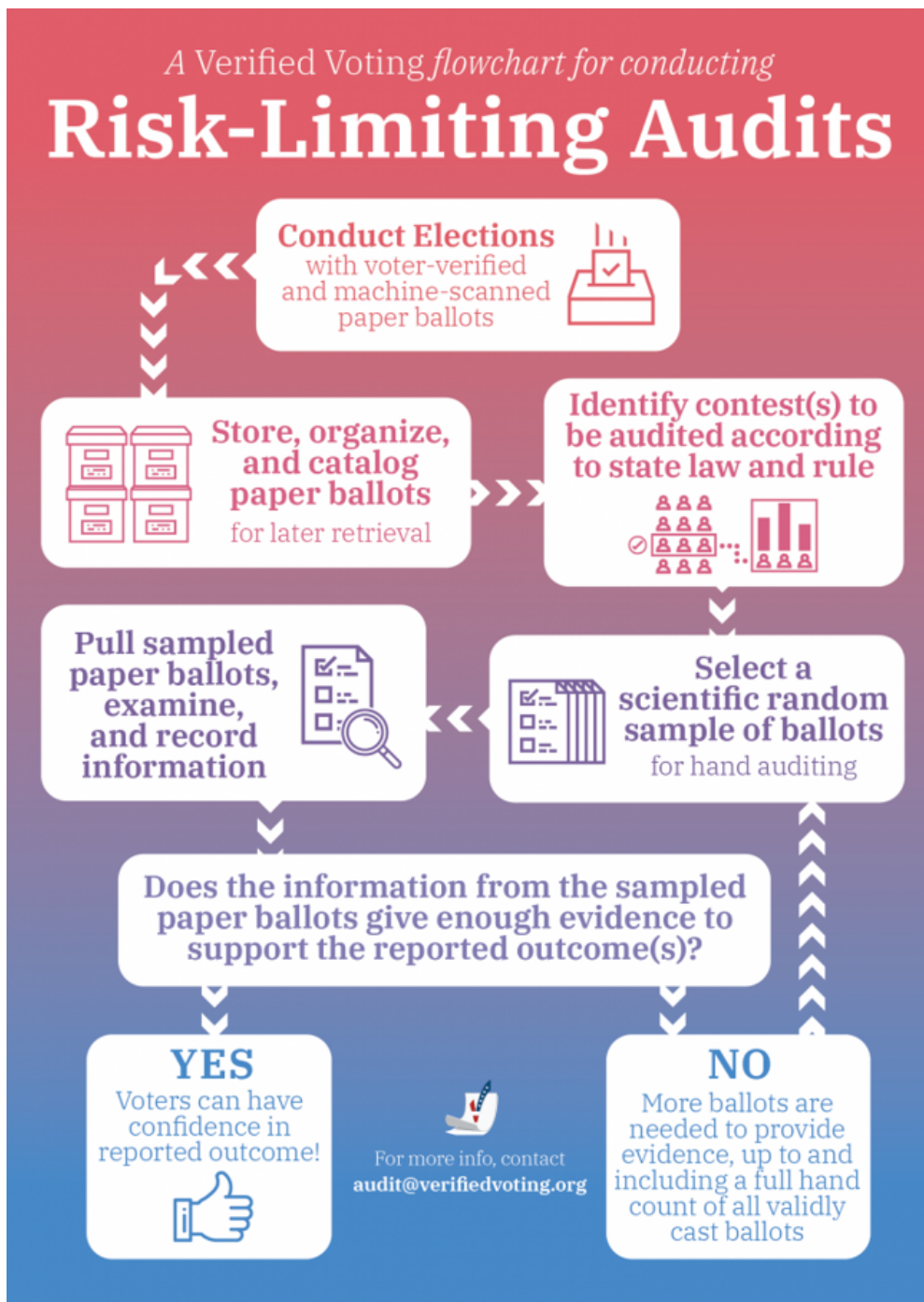
Note: Division 15, Chapter 4, Article 5 of the Elections Code is a “One Percent Manual Tally”. Article 5.5 appears to no longer exist, and the one percent manual tally is the only thing in Article 5.

- 2) The California Secretary of State’s website says this: “A risk-limiting audit is a method of ensuring that election results match voter selections reflected on paper ballots.

For California counties that choose to conduct a risk-limiting audit, using statistical sampling techniques, elections officials review a sample of ballots cast in an election to confirm that the reported results tabulated by the voting system are accurate. Additional ballots may be reviewed as necessary until the results of the election are confirmed to a certain degree of confidence.

In California, when a risk-limiting audit is used, it must confirm that the election results reported by the voting system are 95% likely to be accurate. Unlike the post-election 1% manual tally traditionally used to confirm election results in California, under a risk-limiting audit every ballot cast in the election—regardless of which precinct it was cast in—has an equal chance of being audited.

The following flowchart shows how risk-limiting audits are conducted:”



3) California Election Code, Section 336.5 (**Definitions**) states:

“(a) **“One percent manual tally”** is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count. (b) In an election conducted using vote centers, a 1 percent manual tally can be conducted using the batch process set forth in Section 15360.”

4) California Election Code, Section 15360 (**One Percent Manual Tally**) states:

“(a) During the official canvass of every election in which a voting system is used, the elections official shall conduct a public manual tally of the ballots tabulated by those devices, including vote by mail ballots, using either of the following methods:

(1) (A) A public manual tally of the ballots canvassed in the semifinal official canvass, including vote by mail ballots but not including provisional ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts is less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

(B) (i) In addition to the 1 percent manual tally, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted.

(ii) The elections official may, at the elections official's discretion, select additional precincts for the manual tally, which may include vote by mail and provisional ballots.

(2) A two-part public manual tally, which includes both of the following:

(A) A public manual tally of the ballots canvassed in the semifinal official canvass, not including vote by mail or provisional ballots, cast in 1 percent of the precincts chosen at random by the elections official and conducted pursuant to paragraph (1).

(B) (i) A public manual tally of not less than 1 percent of the vote by mail ballots canvassed in the semifinal official canvass. Batches of vote by mail ballots shall be chosen at random by the elections official.

(ii) For purposes of this section, a “batch” means a set of ballots tabulated by the voting system devices, for which the voting system can produce a report of the votes cast.

(iii) (I) In addition to the 1 percent manual tally of the vote by mail ballots, the elections official shall, for each race not included in the initial 1 percent manual tally of vote by mail ballots, count one additional batch of vote by mail ballots. The manual tally shall apply only to the race not previously counted.

(II) The elections official may, at the elections official's discretion, select additional batches for the manual tally, which may include vote by mail and provisional ballots.

(b) The elections official shall use either a random number generator or other method specified in regulations that shall be adopted by the Secretary of State to randomly choose the initial precincts, batches of vote by mail ballots, or direct recording electronic voting machines subject to the public manual tally.

(c) The elections official shall not randomly choose the initial precincts or select an additional precinct for the manual tally until after the close of the polls on election day.

(d) The manual tally shall be a public process, with the official conducting the election providing at least a five-day public notice of the time and place of the manual tally and of the time and place of the selection of the precincts, batches, or direct recording electronic voting machines subject to the public manual tally before conducting the selection and tally.

(e) The elections official shall include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved. In resolving a discrepancy involving a vote recorded by electronic or electromechanical vote tabulating devices, the voter verified paper audit trail shall govern if there is a discrepancy between it and the electronic record.”

5) California Election Code, Section 17600 (Preservation of Electronic Data) states:

“For purposes of this chapter, the following terms have the following meanings:

(a) “Ballot image” means an electronically captured or generated image of a ballot that is created on a voting device or machine, which contains a list of contests on the ballot, may contain the voter selections for those contests, and complies with the ballot layout requirements.

(b) “Certified voting technology” means any certified voting technologies certified by the Secretary of State, including voting systems, ballot on demand printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.

(c) “**Chain of custody**” means a process used to track the movement and control of certified voting technology, as defined in subdivision (b), through its lifecycle by documenting each person and organization who handles certified voting technology, the date and time it was collected or transferred, and the purpose of the transfer. A break in the **chain of custody** refers to a period during which control of the certified voting technology is uncertain and during which actions taken on the certified voting technology are unaccounted for or unconfirmed.

(d) “Electronic data” includes voting technology software, operating systems, databases, firmware, drivers, and logs.

(e) “End of lifecycle” means the secure clearing or wiping of the certified voting technology so that no software, firmware, or data remains on the equipment and the equipment becomes a nonfunctioning piece of hardware.

(f) “HASH” means a mathematical algorithm used to create a digital fingerprint of a software program, which is used to validate software as identical to the original.

(g) “Lifecycle” of certified voting technology means the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.”

- 6) California Election Code, Section 19204.5 (Procedures for Certification of Voting Systems) states:
“(a) The Secretary of State shall not certify or conditionally approve a voting system that cannot facilitate the conduct of a ballot level comparison **risk-limiting** audit.
(b) (1) For purposes of this subdivision, a voting system that is “noncompliant” is a voting system that cannot facilitate the conduct of a ballot level comparison **risk-limiting** audit.
(2) Notwithstanding subdivision (a), the Secretary of State may, until January 1, 2021, approve a proposed change or modification to a noncompliant voting system even if the voting system will remain noncompliant after the change or modification. This paragraph shall become inoperative on January 1, 2021.”
- 7) California Election Code, Section 19209 (Procedures for Certification of Voting Systems) states:
“(a) For purposes of this section, the following terms have the following meanings:
(1) “Commercial off-the-shelf” means mass-produced, readily available hardware devices, including card readers, printers, or personal computers, and their firmware or software products, including operating systems, programming language compilers, or database management systems.
(2) “Incorrect in part” means a full manual tally of the votes cast on the pilot system would reveal rates of error in the pilot system tally that, if extrapolated to the entire contest, would alter the electoral outcome.
(3) “Partial **risk-limiting** audit” means a procedure that guarantees a large minimum chance of a full manual tally of the votes cast on the pilot system if the electoral outcome is incorrect in part.

(4) “**Risk-limiting** audit” means a procedure that ensures a large, predetermined minimum chance of requiring a full manual tally whenever a full manual tally would show an electoral outcome that differs from the outcome reported by the voting system for the audited contest.

(b) The governing board, without formally adopting a voting system, may provide for the experimental use of the voting system in a pilot program held in one or more precincts at a single election or, in the case of a special election, the special primary election and the special general election, if the voting system complies with either of the following:

(1) The voting system is certified or conditionally approved prior to its experimental use.

(2) The voting system meets all of the following requirements:

(A) Uses only software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware.

(B) Meets the requirements of subdivision (b) of Section 19101.

(C) Meets the requirements of the regulations adopted by the Secretary of State pursuant to subdivision (g).

(D) Implements **risk-limiting** audits.

(c) A voting system that meets all of the requirements of paragraph (2) of subdivision (b) need not be certified or conditionally approved prior to its experimental use in a pilot program if the number of voting system units deployed in the pilot program is limited to the number necessary to test and demonstrate the capabilities of the voting system in a limited number of precincts or locations, including a prudent number of reserve units to ensure that sufficient working units will be available to conduct the pilot program. In no event shall the number of voting system units exceed 50 percent of the estimated number of units that would be required for full deployment of the voting system at every polling place and early voting site in a statewide election throughout the jurisdiction. Capabilities that may be taken into account in determining the number of voting system units reasonably necessary to test and demonstrate the capabilities of the voting system include, but are not limited to, all of the following:

(1) The capability of the voting system to accommodate voting in all languages in which the jurisdiction is required to provide ballots under applicable state and federal laws.

(2) The capability of the voting system to accommodate voting by persons with a broad range of physical and cognitive disabilities, as required by applicable state and federal laws.

(3) The current and projected number of voting-eligible individuals in the jurisdiction.

(4) The geography and distribution of the population in the jurisdiction.

(d) No later than nine months before the election at which the pilot program of a voting system is proposed to be conducted, the governing board shall submit to the Secretary of State a plan for the pilot program. The Secretary of State shall approve or reject the plan no later than three months after receipt of the plan.

(e) The votes cast on a voting system during a pilot program pursuant to subdivision (b) shall be subject to **risk-limiting** audits.

(1) For each contest conducted entirely on the pilot voting system, the jurisdiction conducting the pilot program shall conduct a **risk-limiting** audit with at least a 90-percent chance of requiring a full manual tally of the contest whenever a full manual tally would show an outcome that differs from the outcome reported by the pilot voting system.

(2) For each contest conducted partially on the pilot voting system, the jurisdiction conducting the pilot program shall conduct a partial **risk-limiting** audit of the portion of the contest in which the voters

cast their votes on the pilot voting system, with at least a 90-percent chance of requiring a full manual tally of all votes cast using the pilot voting system whenever the outcome is incorrect in part.

(3) (A) If a **risk-limiting** audit of a contest leads to a full manual tally of all of the ballots cast in the contest, then the contest outcome according to that manual tally shall become the official result.

(B) If a partial **risk-limiting** audit of a contest leads to a full manual tally of the ballots cast using the pilot voting system, the vote counts according to that manual tally shall replace the vote counts reported by the pilot voting system for the purpose of determining the official contest results.

(4) **Risk-limiting** audit procedures shall comply with all other requirements in regulations adopted by the Secretary of State pursuant to subdivision (g).

(f) Upon completion of the pilot program, the governing board shall notify the Secretary of State in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system.

(g) A voting system pilot program shall not be conducted in a legally binding election without the prior approval of the Secretary of State. The Secretary of State shall adopt and publish regulations governing voting system pilot programs.”

8) California Government Code 25201 states: "Subject to the provisions of the Elections Code, the board may establish, abolish, and change election precincts, appoint inspectors, clerks, and judges of election, canvass all election returns, declare the result, and order the county elections official to issue certificates of election."

9) California Government Code 25123 states: "All ordinances shall become effective 30 days from the date of final passage, except the following ordinances, which shall take effect immediately: (a) Those calling or otherwise relating to an election."

CONCLUSIONS

- 1) The methods currently used to provide reconciliation of the ballot count include:
 - a. Having chain of custody procedures.
 - b. Performing precinct balancing.
 - c. Performing a one percent manual tally.
- 2) It has been well documented in Shasta County that full chain of custody procedures have been non-existence, and the chain of custody procedures that have existed have not always been followed.
- 3) Although the Shasta County Elections Office does perform precinct balancing, the process has not been able to be overseen by observers, and it is not clear that precincts have been adequately balanced in the past.
- 4) The State of California has turned the risk limiting audit process into what they are calling a one percent manual tally by allowing Counties to choose a random sampling for their one percent tally and calling it a risk limiting audit.
- 5) Mandatory ballot count reconciliation would increase accuracy, security, and integrity of federal and local elections. This basic accounting would give the public more confidence in election outcomes. Shasta

County citizens have requested more public oversight, this would address the urgent wants of the citizens.

- 6) None of the methods currently in use provide a full reconciliation of the number of voters who voted to the number of ballots received.

RECOMMENDATIONS

- 1) It is recommended that in order to increase accuracy and help restore public trust in Shasta County elections, the Shasta County Board of Supervisors should create an emergency ordinance mandating ballot reconciliation take place for every precinct prior to an election being certified. It is recommended this be done immediately, so that it takes effect before the certification of the November 5, 2024, election and so it is established for all future elections.
- 2) It is recommended that the Board of Supervisors encourage the ROV to consider use of the attached document, entitled, "FATE2024 Election Official Reconciliation Guidebook v4", or similar information, to further expand on reconciling all the ballots for an election, not just those from the precincts.
- 3) It is recommended that Shasta County establish a uniform process that will enable basic ballot reconciliation to occur no matter the current ROV's personal preferences.
- 4) It is recommended that the Board of Supervisors encourage the ROV and the Elections Department to explore all options to reconcile ballots, as allowable under California Elections Code.