



COUNTY OF LOS ANGELES

**REGISTRAR-RECORDER/COUNTY CLERK**

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**DEAN C. LOGAN**

Acting Registrar-Recorder/County Clerk

February 25, 2008

Honorable Debra Bowen  
California Secretary of State  
1500 11<sup>th</sup> Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814

VIA FACSIMILE

Dear Secretary Bowen:

Thank you for your February 14, 2008 letter and for the continuous accessibility and assistance of your office regarding issues concerning ballots cast by Decline-to-State (DTS) voters in the February 5, 2008 Presidential Primary Election. I appreciate your review of the preliminary findings I reported to the Los Angeles County Board of Supervisors on this issue and your recommendations for further review and analysis in support of our shared goal of counting those votes where intent of the voter can be clearly determined.

After conducting and reporting on our preliminary review and analysis of non-partisan ballots cast by DTS voters who made a selection in a response position for a Presidential candidate, but did not fill in a corresponding response position indicating party selection, I asked for legal guidance from the Office of County Counsel. Specifically, I asked for clarification on the parameters under which determination of voter intent can be made and DTS cross-over votes counted on ballots where no party selection was indicated. I received that guidance on Friday, February 22, 2008.

In addition to seeking legal guidance, this office continues to carefully examine Election Day procedures and materials related to cross-over voting. Consistent with the recommendations set forth in your letter, activities include examining and collecting data from the Roster of Voters used in each of the precincts on Election Day. In recognition of the limited time remaining prior to the certification of the election, we have initiated an expedited review of the rosters, utilizing a similar process to the one recommended in your letter to aid us in ascertaining voter intent in a manner that meets the criteria outlined below for counting the maximum number of cross-over votes possible.

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As you know, making reasonable and legally defensible voter intent determinations regarding these votes is constrained because the names of candidates do not appear on the ballots themselves and by the use of overlapping ballot response positions for Presidential candidates of the two political parties that authorized DTS cross-over voting in this election. More specifically, ballot response positions 8 through 15 were used for Democratic Presidential candidates and positions 8 through 10 were also used for American Independent Party Presidential candidates.

Based on the legal analysis provided by County Counsel and on our further review of procedures and voting materials used in the election, there are two criteria under which I believe we can make a reasonable and defensible determination of voter intent on non-partisan ballots where the DTS voter failed to mark a response position indicating party selection, but where they did mark a response position for a Presidential candidate.

Under the first criteria, votes cast in ballot response positions 11 through 15 can be determined to be votes intended for Democratic Presidential candidates because those ballot response positions were not valid response positions for the American Independent Party, which is the only other political party to authorize DTS cross-over voting; nor were they valid response positions for any of the other political party ballot pages that appeared in voting booths labeled for non-partisan voters.

The second criteria recognizes that ballot response positions 8 through 10 were valid response positions for Presidential candidates of both the Democratic Party and the American Independent Party; therefore additional information is required to determine cross-over voter intent through the examination of the precinct rosters. As you note in your letter, poll workers were instructed to ask non-partisan voters if they wished to vote for candidates in either of these parties and to make a notation in the precinct Roster of Voters indicating the party selected by voters choosing to cross over. For any precinct roster where the notations exclusively indicated "Democratic" or exclusively indicated "American Independent", a reasonable and defensible determination can be made that any votes cast in response positions 8 through 10 correspond exclusively to that party's Presidential candidates. For precinct rosters with notations indicating both or neither party, determination of voter intent cannot be clearly or reasonably ascertained for votes cast in response positions 8 through 10.

I believe that the criteria described above both meet the objectives outlined in your letter and also allow this office to demonstrate to Los Angeles County voters that every effort is being made to count all votes where voter intent can be reasonably and legally determined. In that regard, I am making preparations to count all votes meeting these criteria and to include them in the certification of the election results. These processes will be conducted openly and with appropriate notice to allow for public observation.

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To provide further reassurance of the integrity of our elections process, I am providing notice to you as the state's Chief Election Officer and seeking your concurrence with the approach and intent of these actions. Given the short timeframe remaining for certification of the election results and the additional steps necessary to ensure these actions are administered timely and accurately, it's my intention to embark on this approach as soon as possible. I am available to respond to questions or provide additional information as necessary.

Again, I want to thank you for your guidance and assistance. I look forward to working with you and your staff as we move forward with modifying and improving our ballot layout for cross-over voting prior to the June 3, 2008 State Primary Election.

Sincerely,



DEAN C. LOGAN  
Acting Registrar-Recorder/County Clerk

c: Honorable Board of Supervisors  
William T Fujioka, Chief Executive Officer  
Raymond G. Fortner, Jr., County Counsel