

Innovations in Election Administration 10

**Ballot Security
and Accountability**



Ballot Security and Accountability

Author:

Marie Garber
Consultant in Election Administration
10201 Grosvenor Place #310
Rockville, Maryland 20852-4606

Managed and Edited by:

William C. Kimberling
National Clearinghouse on Election Administration

Published by:

National Clearinghouse on Election Administration
Federal Election Commission
Washington, D.C. 20463

September 1995

Introduction by the Clearinghouse

This report is another in the series on *Innovations in Election Administration* being published by the FEC's National Clearinghouse on Election Administration.

The purpose of this series is to acquaint State and local election officials with innovative election procedures and technologies that have been successfully implemented by their colleagues around the country.

Our reports on these innovations do not necessarily constitute an endorsement by the Federal Election Commission either of any specific procedures described or of any vendors or suppliers that might be listed within the report. Moreover, the views and opinions expressed in these reports are those of the authors and are not necessarily shared by the Federal Election Commission or any division thereof.

We welcome your comments on these reports as well as any suggestions you may have for additional topics. You may mail these to us at:

The National Clearinghouse on
Election Administration
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

or else contact us

Toll free 800/424-9530
Direct on 202/219-3670
By FAX on 202/219-8500.

Ballot Security and Accountability

Definitions

All-mail ballot election - One in which ballots are mailed to all eligible voters and returned, usually by mail, by voters to the election authority.

Ballot - A piece of paper stock upon which a voter may indicate a choice or preference amongst candidates or issues. Also called "document ballot".

- Challenged ballot** - Ballot that is set aside and not counted because the voter's eligibility to vote in the election has been challenged in accordance with State law. After the challenge is resolved, the ballot will either be counted or disallowed.
- Damaged ballot** - Ballot that has been damaged in mailing, handling or machine processing and rendered unacceptable for machine tabulation.
- Disallowed ballot** - Ballot which has been voted and cast but is excluded from the vote count, usually because the voter was found to be unqualified or because the ballot has been improperly marked. Also called "rejected ballot".
- Disputed ballot** - Voted ballot which has been questioned during the canvass process. After the question is resolved, the ballot will either be counted or disallowed.
- Duplicated ballot** - Exact copy of damaged ballot that can be substituted for it in the machine tabulation.
- Machine-read ballot** - Ballot that is marked by the voter and counted by computer. Includes punchcard and mark sense ballots.
- Paper ballot** - Ballot that is manually marked by the voter and manually counted by election officials.
- Provisional ballot** - Ballot used by a person whose qualification for voting is uncertain and must be confirmed in the central office before it can be included in the vote count. Also called "special ballot", "questioned ballot", "escrow ballot", or "affidavit ballot".
- Spoiled ballot** - Ballot on which the voter either makes a mistake, or decides he wants to make a change in the vote(s) he has marked.

Early voting - Unrestricted in-person voting, both at central election office and at satellite sites, during some designated period before election day. Does not include in-person voting before election by absentee voters.

Local election authority - Agency or other entity charged by law with responsibility for conduct of elections in a local jurisdiction. Also called "Board of Elections", "Electoral Board", "County Auditor", "County, City or Town Clerk", "Election Commissioners", "Supervisors of Elections", "Registrar of Voters", "Elections Administrator".

Pollworkers - Official staff who conduct the election in the polling places. Does not include campaign workers, watchers, challengers, etc., who represent entities other than the election authority. Also called "inspectors", "officers of election", "clerks", "election judges", "precinct board", "commissioners", "warden", "moderator", "poll manager".

Precinct tabulator - An electronic device used to read and tabulate ballots at the polling place. Includes Precinct Ballot Counter (PBC) and optical scanner.

Why Worry About Ballots?

The rationale for ballot security and accountability programs is simply stated: ballots are the critical element in determining and confirming the result of an election, and election officials need to protect them and keep track of them, secure them and account for them. A comprehensive and proved program of ballot security and accountability makes it possible to

- reconstruct and replay the election should the result be uncertain;
- establish responsibility should wrongdoing be indicated;
- deter fraud and other irregularities simply because such a program is in place;
- evaluate performance of election personnel and effectiveness of election procedures;
- reassure candidates, campaigns and the electorate that votes cast are counted, and even avoid election contests when losing candidates are shown that security and accountability are an integral part of the conduct of elections.

In short, ballot security and accountability maintain the integrity of the election process and those who administer it.

Although it is easy to define the reason for ballot security and accountability, it does not follow that *ensuring* these conditions is easy. The job is complicated and can be massive. In a large jurisdiction where the voting system used involves a separate ballot for each voter, it is a major responsibility in

effective election administration. The work is tedious, costly, and demanding in its requirement for detail. But considered in the framework of the purposes it serves, its essentiality is beyond doubt.

In jurisdictions using lever or direct electronic voting machines in their polling places, and the ballot posted on the machine serves all those who cast votes on that device, ballot accountability is not entirely obviated. Absentee voting is available to all who cannot (or sometimes choose not to) come to the polls and most absentees indicate their choices on document ballots. Moreover, individual ballots are used at the polls when the machine is out of service and by citizens whose qualification for voting is uncertain (provisional ballots).

In the early years of the Republic, ballot security and accountability were not the problem they now are. The franchise was limited; only five per cent of the adult population qualified for voting in the first Presidential election and not until 1965 did the universal franchise become a legal reality. The country was predominantly rural and the population not mobile; everyone in a community knew, and trusted, everyone else.

With industrialization and immigration in the second half of the 19th Century, cities grew rapidly and the franchise steadily enlarged. These demographic changes first occurred in the Northeastern United States, and they impacted politics and the administration of elections. Such schemes as ballot box stuffing and chain voting

were common. To cope with the growing electorate and the new political morality, American inventiveness responded with a new method of voting which would eliminate the separate document ballot for each voter and count the vote automatically — the mechanical lever machine. The large urban jurisdictions switched to the new device and no longer was the paper ballot a means by which elections could be corrupted. By 1920 - 1940, it came to be the method of choice, deemed the only feasible method for voting in most of urbanized America. In a number of States, legislators rewrote their laws to mandate use of the lever machine.

Immediately after World War II, with the introduction of the computer, another sea change occurred in American voting. Many large population centers switched to the new electronic voting systems because they counted votes quickly and accurately and were cheaper than lever machines. Most of the computer-based systems utilize a machine-readable document ballot for each voter. In the 1992 Presidential election, two-thirds of the electorate in the country were assigned to polling places which use a document ballot, almost all of them electronically read and counted.

Concurrent with the introduction of new computer systems came growth in absentee voting, impelled by changes in federal law which required the States to make absentee voting available to all citizens who could not come to the polls. The movement started with the Servicemen's Voting Act of 1942 and culminated with the Voting Rights Act Amendments of 1970.

Other federal laws enacted since then have further enlarged the absentee franchise and some States have gone beyond federal mandates to make absentee voting available for any and all who opt for it. In a few States voting in certain elections is entirely by mail. Only the individual voter document ballot serves these purposes.

Vote-counting by computer — a device few people understand and many mistrust — brought demands for auditing and verifying of election

results, and one element of validation would be demonstration of ballot security and accountability. Because there are tens of millions of document ballots cast nationwide each year, and tens of millions more printed but not cast and/or counted, the job of ensuring their safety and keeping track of them has become a vast undertaking.

Ballot Security

The means by which ballots are kept secure vary, as do most American election practices, by State and even within a single State. To identify and describe these methods, we follow the ballots chronologically from production to destruction. Note that throughout the life of the ballots a paper trail is created, including documentation of each transfer of custody and providing a receipt for the party that surrenders custody. It is thereby possible to ascertain at all times where ballots are and who is responsible for them.

Ballot Production

Ballot production starts with design, usually done by election officials. They specify the content of the ballot, the various configurations that result in ballot styles appropriate for all segments of the electorate, the sequence of listing of contests and candidates, any other copy to be printed, kind and color of stock to be used, typefaces, etc. In addition, they calculate the appropriate quantities for each party (in a primary election), each ballot style, and each precinct or precinct segment. After printing, the election office will receive the full order, verify it, take custody of the ballots and secure them.

Until that transfer, a vendor — usually a printer — (and possibly his subcontractors) provides whatever security of the ballots there is. If security is not maintained, ballots could, through misfeasance or malfeasance, pass into custody of unauthorized persons and the integrity of the election could be breached.

In many States this production stage in the life of the ballot is not part of the security plan. Their election administrators make no demands on, or issue no official directives to, ballot printers regarding ballot security. A question to them about ensuring ballot security during production will elicit a response that “We leave it to the printer,” “We trust the integrity of our printers.” or “Those who print ballots understand the need for security.”

Other States recognize that production is a sensitive time in the ballot life cycle. Ballot security measures start when the order for production is placed. Methods and approaches used reflect a keen awareness of the need to ensure ballot security starting with the creation of the ballot. The requirements and precautions are documented in State law, in regulations or rules adopted by the State election authority, in provisions incorporated into the contract for ballot printing, or in an official declaration (an oath, affidavit, or certificate) the vendor signs at the time of contracting. Statements signed and statutory provisions usually specify the penalty for violation of the law or agreement.

Requirements imposed on contractors in these States include one or more of the following:

- An obligation to maintain security of the ballots at all times;
- Examination and approval of a vendor by the State election authority before he can print ballots for any election in the State;

- Making it unlawful for a printer to permit ballots to be given to or taken by anyone other than the election authority for which they are printed, or even for a printer to divulge the content of ballot copy to anyone other than the election authority which placed the order;
- Making it unlawful to print a ballot with names, candidates, and arrangement other than what is authorized and directed by the election authority;
- Directing that ballots printed with errors be destroyed, and how ballots printed in excess of the quantity ordered are to be disposed of;
- Directing how type is to be distributed when the print job is finished;
- Permitting access to the production facilities by State and/or local election authorities at any time ballots are in production.

Texas law requires that companies which expect to print ballots for an election for State and county offices must register with the Secretary of State at least 60 days before each such election. The registration statement lists all the clients for which ballots are to be printed, and essential data about the company including names of its sales representatives who will be the contacts with the clients.

Companies which print ballots in Ohio are required to have a night time alarm which is connected to the Sheriff's office.

Hawaii law makes the vendor responsible for security of ballots until they are delivered to the election authority. The printing contract contains a clause that the vendor is required to "exercise proper security" and that "ballot information and materials" be provided only to the Lieutenant Governor, who is the chief election official for the State.

In Maine, the election law requires that the printing contract specify that the contractor take reasonable precautions to maintain the security of all ballots printed until they are delivered to the

municipalities; promptly destroy all ballots determined to be unusable due to error; and store any leftover, usable, undelivered ballots in a secure location. Immediately after the election — before any recount — the printer requests permission of the Secretary of State to destroy all ballots still held by the contractor, with the manner of destruction to be agreed upon. The contractor then attests, in writing, that destruction is complete.

Nebraska law makes it a felony for a printer to negligently lose, permit to be taken away, fail to deliver, or destroy a ballot or package of ballots. Moreover, a printer is forbidden to print anything on a ballot other than what is authorized by the election authority; to print false or fraudulent ballots; to appropriate any ballots or permit someone else to do so, or to deliver fewer ballots than the number purported to be in the job order.

California has the most comprehensive requirements for ballot security during production. They are given definition in regulations adopted by the Secretary of State and are binding on the county officials who contract for printing and on the vendors who manufacture ballot stock and print ballots for use in California elections. The State closely monitors and controls ballot security starting with the stock on which the ballots are printed; buys the stock and specifies the color and watermark to be used for each election; and stock is stored until allocated for printing in warehouses owned by the vendor but over which the State exercises controls. A vendor involved in ballot production — stock manufacture or printing — and his agents must be certified by the State. Materials used must be kept in locked storage at all times when they are not actually in use — stock, ink, plates. State or county election officials may (and do) inspect the printing operation at any time, unannounced; a vendor which does not maintain adequate security may be decertified by the Secretary of State. The regulations also include provisions governing the ordering and purchase of ballots by the local authorities; record keeping and inventory control by the

