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## California: Is Los Angeles County Above the Law?

(November 06, 2005) - Contributed by Sherry Healy, California Election Protection Network

Officials in the nation's largest county appear to be laboring under an alarming misinterpretation of the state's venerable mandatory random audit provision. According to an email from Conny McCormack, Registrar/Recorder of Los Angeles County has asserted that "early voted ballots on DREs" are not required to be a part of the 1% manual tally. Subsequent correspondence with the Registrar's office revealed that neither absentee ballots nor early vote ballots are audited and that the county apparently intends to violate the state election code by reporting those votes by ballot type rather than by precinct.

The One Percent Recount is detailed in California Election Code 15360 which states that "during the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official." Nowhere are early votes, which are considered a subset of absentee votes, nor any particular type of voting system excluded from this 1% recount. If McCormack has been routinely excluding absentee, early votes, or votes on DREs from the recount in her county, the selection of precincts can hardly be considered to have been "random".

McCormack's email confirmed a statement in an earlier email from

Deborah Wright, her Executive Liaison Officer, who wrote that "Absentee ballots are not counted by precinct but by ballot group. They are not included in the 1% random hand tally. Neither are DRE results." So the Registrar's office is planning to exclude both absentees and early votes from the state's mandatory audit. And those will be reported by ballot type rather than by precinct.

However, California Election Code Section 15373 in reference to the required certified statement of the election results that "the result of the vote shall be shown by precinct." There is no exemption for absentee or early votes. Perhaps the absentee and early votes are not counted by precinct, in violation of the code, as a way of excluding them from the state's recount provision since through a strict reading of the provision it could be argued that it is a recount of "1 percent of the precincts".

All this to avoid that pesky recount?

Conversations with other county registrars reveal little confusion about the inclusion of absentee and early votes in the state's mandatory recount nor the need to report such votes by precinct. How is it then that Los Angeles County has decided to reinterpret the state's election code?

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