

County of Santa Clara

Registrar of Voters

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DATE: December 16, 2019

TO: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: Shannon Bushey, Registrar of Voters

SUBJECT: Under advisement from December 10, 2019 (Agenda Item No. 16): Off-Agenda Report RE: Nominations Filing Period

At the December 10, 2019 meeting of the Board of Supervisors, the Board requested that Administration prepare an off-agenda report prior to the December 17, 2019 Board meeting regarding the nominations period for the upcoming March 3, 2020 Presidential Primary Election.

The opening of the Signatures in Lieu (SIL) filing period for those candidates attempting to qualify for the March 3, 2020 Presidential Primary Election began on September 12, 2019, and the official nominations filing period, including the extension period for some offices, closed on December 11, 2019 at 5pm. During that period, the following issues arose:

Signatures in Lieu Petition vs. Nomination Petition

On November 7, 2019, staff noticed that the wrong form (nomination petition) had been previously issued to one candidate as it was filed by that candidate during the Signatures in Lieu (SIL) filing period. ROV staff immediately contacted the Secretary of State's (SOS) office, since the candidate was running for a State office, and SILs are required to be reported to the State. The SOS office stated that the nomination petition would be accepted as a petition containing SILs on behalf of the candidate as long as a letter was submitted to the SOS by the ROV explaining the circumstances. The letter was issued on November 18, 2019, and the candidate received full credit of the SILs submitted without any impact upon the candidate's qualifications for the office. The candidate was notified and provided a copy of the letter sent to the SOS for the candidate's records.

Merge Field Error on Declaration of Candidacy Form

At the September 11, 2019 training offered by the SOS, staff was provided a CD of newly created forms by the SOS for use during this election's SIL and nominations filing periods. Staff needed to upload the new forms for use in the ROV's Elections Information Management System (EIMS), insert the merge fields on the form, and then associate each of the new forms with the appropriate offices. Staff completed one round of proofing but did not identify that one of the many merge fields was incorrect. The one merge field error inserted the candidate's name on the line where the office sought was to be identified. Staff issued the form to several

candidates and used the form for several weeks without staff or candidates noticing the error. Upon review of filed forms, the SOS contacted the ROV office on December 2, 2019 and instructed the ROV to reach out to the State candidates to have them correct the form in their own hand, and then for the ROV to resubmit the corrected forms. Staff then reviewed all candidate files to identify exactly how many candidates were impacted by the merge field error. On December 3, 2019, ROV staff contacted all effected candidates to advise of the error and to request that they return to correct their nomination papers. It was the original intent to correct these issues before the close of the initial nomination period at 5pm on December 6, 2019 (only a few contests were subject to the extension nomination period ending on December 11, 2019). It was later determined that it was not necessary for candidates to fix the error before the filing deadline, since each candidate had already properly filed their documents with the ROV office for processing. All candidates were contacted, and all corrections were made. This error did not affect any candidate's qualifications for the ballot. Staff will now work in pairs while creating and uploading new forms into the EIMS system, and all work will be proofed multiple times including once by the originating division and again by a separate division for verification. Any issues identified will be reported immediately to the manager - all pursuant to the procedures.

Other Issues

Ballot Designations: There were a few instances where ROV staff initially provided wrong information to the candidates, then sought clarification from management, and the ROV staff were able to then provide correct information to candidates. These transactions provided valuable training opportunities for staff, and the clarifications sought will be added to the ROV's procedures moving forward.

Candidate Statements: It is common to have candidates that file candidate statements in shared jurisdictional contests (i.e. more than one county) during the nomination period. As recommended by the State Legislative Audit, ROV staff research any and all questions that may come up and make efforts to communicate with each of the other counties in the shared jurisdictions. For the March 2020 Presidential Primary election, we had a candidate inform ROV staff that another county did not question statements made in the candidate's statement relating to endorsements. Elections Code § 13307(a)(1) states that the candidate statement shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations. In this case, the statement had political organization endorsements, and ROV staff questioned whether these were allowed pursuant to the code. The staff member asked the candidate to wait while these questions were being researched and brought the questions to management. ROV staff then told the candidate that the candidate's documents would be accepted, and that the ROV staff would get back to the candidate with the findings after clarification was sought. It was then researched and determined to be allowed, and the candidate was notified accordingly.

Nomination Signatures: San Jose City Council candidates can submit up to 75 nomination signatures, and one candidate submitted 61 for verification on November 27, 2019. Of these, fewer than the required 50 were deemed valid. The San Jose City Clerk was advised on the signature status of several candidates, including this candidate, on Friday, December 6, 2019, which was the close of the nominations period. Pursuant to Elections Code § 8504, *"[w]ithin 24 days after any nomination papers are left for examination, the county elections official shall examine them and prepare a certificate reciting that he or she has examined them, and stating*

the number of names which have not been marked "not sufficient." The ROV and the City Clerk urge candidates to take every opportunity to make sure that the candidate paperwork is correct and complete, including providing the maximum number of allowed signatures in the event that some signatures are found to be invalid.

No Party Preference Voters: There was one additional issue that, while not related directly to the nominations process nor an error by the ROV, did surface during the same time as the nominations period. The ROV sent a legally required notice to No Party Preference (commonly referred to as nonpartisan or NPP) voters. Because a voter's political party preference determines which party's ballot, and therefore which Presidential candidates, a voter may vote on in the Presidential primary, California law gives No Party Preference (NPP) voters an option to request a party's ballot for those parties that allow it. This process of an NPP voter voting a party's ballot is called crossover voting, and, in the current election, there are three parties that have chosen to allow it--the Democratic, American Independent, and Libertarian parties. Counties are required to mail a notice to voters registered as NPP prior to the primary to notify them of the crossover voting options and the process for requesting such a ballot.

The ROV sent the mailer as required by law, and soon after voters began receiving it, ROV staff noticed a high volume of calls from voters who believed that they had received the mailer in error, because they did not think that they were registered as NPP. However, as the ROV researched these cases, staff determined that the voters in question were in fact registered as NPP, and thus had correctly been sent the crossover voting notice. ROV staff determined that, in most of these cases, voters had been previously registered with a political party, but then subsequently became NPP as a result of being automatically re-registered to vote through the Department of Motor Vehicles (DMV). This occurs when a voter skips selecting a party preference when asked about voter registration through a DMV transaction, which causes the new registration to default to NPP and replaces the voter's previously selected party. This is not an issue that is unique to Santa Clara County, nor was it the result of an error on the part of ROV staff. However, due to the volume of voters contacting the ROV on this issue, the ROV decided to issue a press release to help inform voters that they might need to confirm their registration or re-register if they received the crossover mailer but did not think that they should be registered as NPP.

cc: Chief Board Aides
Miguel Marquez, Chief Operating Officer
James R. Williams, County Counsel
Megan Doyle, Clerk of the Board of Supervisors
John P. Mills, Deputy County Executive/Director, Employee Services Agency