

# Election Observer Panel Plan

## I. County and System Information

Name of County: Monterey  
Name of Contact: Linda Tulett, Registrar of Voters  
Contact's Phone: 831-796-1499  
Vendor: Sequoia Voting Systems, Inc.  
Voting Systems: AVC Edge II and Optech 400-C  
Date: April 20, 2009

## II. Purpose

The purpose of an Election Observer Panel is to:

1. Provide an opportunity for public observation and input
2. Assist in enhancing integrity in the election process
3. Increase voter confidence and encourage citizen participation

The Election Observer Panel is invited to observe all critical procedures of the election process, such as Logic and Accuracy testing of all vote tabulating machines planned for use during the election, vote by mail (absentee) ballot processing, election officer training classes, Election Day activities, Election Night ballot tabulation and reporting, and canvass procedures, such as the manual tally.

## III. Invite

By 40 days before the scheduled election, the Monterey County Elections Department mails letters of invitation to the following:

1. County Grand Jury
2. County Information Technology Department
3. Political Party Central Committee(s)
4. League of Women Voters
5. Groups or individuals who have expressed an interest in the election process

## IV. Appointment of Panelists

During the recruitment effort for each election in 2008, the Monterey County Elections Department mailed letters of invitation to the groups listed above. For the February 2008 Presidential Primary, the response was excellent resulting in the appointment of 12 members for the observation of the Presidential Primary. For the subsequent elections prior to the November 4, 2008 Presidential General Election, the response declined markedly and the Department had anywhere from one to three Observer Panel members. During the recruitment for the November 4, 2008 election, the Monterey County Elections again mailed

letters of invitation to those listed above, and asked for a longer commitment to the Panel if possible.

The above listed group or category of potential observers were sent a letter of invitation along with a description of the Panel's purpose and observable activities, and a form to return indicating the interested Panelist. If interested in participating, they were required to return the application form to the Monterey County Elections Department by the date specified on the application, providing contact and background information for one (1) interested member of their group. The Registrar of Voters contacted applicants and hosted a meeting to provide a chance for all Panelists to meet and ask questions about the upcoming observation process. At the meeting, Observer Panelists were provided with an Observer Guide including general rules of conduct, a tentative calendar of upcoming events, and a form that may be used to provide the Department with descriptive and meaningful feedback.

Panel members are also provided an Election Day memo, authored by the Registrar of Voters and directed to each Precinct Inspector letting the Inspector know who the Panel members are and their purpose for being present at the polling place. The memo is used to clarify observation and pave the way for Panel Members while observing at the polls.

Since the November 4, 2008 General Election, the Panel has remained constant and has met prior to and after the November 2008 Election, in January 2009, and will meet prior to as well as after the canvass is complete for the May 19, 2009 Statewide Special Election.

## **V. General Rules of Conduct**

### **OVERVIEW**

Observers are responsible for maintaining a professional manner and for ensuring they do not interfere with any process of the election while observing.

Observers who fail to adhere to the general rules provided by the Monterey County Elections Department will be relieved from their duties on the Panel.

Observers may view election processes and procedures at various locations during set schedules:

1. Monterey County Elections Department central location and warehouse (Central Office), 1370 B South Main Street, Salinas, CA, 93901
2. Election Officer training locations
3. Polling places
4. Supply pick-up and Receiving Centers where Election Officers may obtain Election Day supplies or drop-off Election Night materials

Operations will continue as scheduled, whether or not an Observer is present.

The Monterey County Elections Department will work with Observers and grant reasonable requests.

The number of Observers in any one observation area may be limited by available space. If the area is too small to accommodate all interested Observers, the Registrar of Voters will create a rotation schedule.

## **GENERAL RULES WHILE AT THE ELECTIONS DEPARTMENT:**

**Please be courteous to our staff members and remain quiet as to respect and not disturb workers as they concentrate on Election procedures.** Observation is allowed by law, however, there are rules of conduct for observing that **must** be followed.

The Registrar of Voters shall designate a staff member who shall remain with observers at each area during the observation processes. Due to limited space, the number of observers at one time may be limited so as not to disrupt the work in progress.

Observers may wait in the front lobby and enter the Department when specified observation activities are occurring. Observers may not congregate within the Department or any observation area to wait for procedures to commence.

Observers must avoid disrupting the Elections staff and operations, addressing all questions and concerns, including challenges to the handling of ballots, to the person assigned to assist them. Please do not speak directly with anyone working with election materials.

Observers must be no closer than 3 feet from staff at all times and not touch any materials or equipment, ballot containers, or handle any ballots.

Observers may not enter restricted areas and must stay with designated staff member within the designated observation area.

Observers shall not use vulgar language, yell, or verbally intimidate staff.

Eating and drinking are prohibited inside the Department, including any observation area.

If you fail to observe the *Rules of Conduct*, you will be asked to leave the premises.

## **OBSERVABLE ACTIVITIES AT THE ELECTIONS DEPARTMENT:**

### **PRE-ELECTION ACTIVITIES – Please call for a schedule**

-  Logic & Accuracy (L&A) testing of the following voting machines:
  - AVC Edge II touch screen voting machines (a machine designed primarily to assist people with specific needs to vote independently and privately at the precinct or early voting counter)
  - 400-C machines (central count vote by mail and precinct ballot optical scan tabulator)
-  Assembly and distribution of Precinct Supplies
-  Signature/eligibility verification of vote by mail ballots
-  Preparation and tabulation of vote by mail ballots

### **ELECTION NIGHT ACTIVITIES – Commencing After 8:00 pm**

-  Return and processing of precinct materials in the warehouse
-  Ballot tabulation and results reporting

## POST-ELECTION ACTIVITIES – Please call for a schedule

-  Random selection of precincts and conduct of the manual tally
-  Processing provisional and vote by mail ballots
-  Ballot Duplication
-  Tally of qualified write-in votes
-  Ballot tabulation and final results reporting

### General and Check In Procedures

1. Observers may not bring personal bags, backpacks, and/or briefcases inside the Elections Department.
2. All cell phones/pagers/PDAs must be turned off. All phone calls must take place outside of the Elections Department.
3. All observers must sign-in upon arrival and sign-out upon leaving. This rule also applies if the observer is stepping outside to place a phone call.
4. A visitor badge will be issued, must be worn at all times, and must be returned to the front counter upon leaving.
5. Observers shall maintain a professional manner while observing the elections processes.
6. Observers shall ensure they do not interfere with the election process.

### Observers may:

1. Observe the pre-election proceedings, including:
  - a. Logic and Accuracy Testing of Optech 400-C scanners and Edge touch-screens
  - b. Programming of Result Cartridges
  - c. Sealing, staging, and security of voting units
  - d. Scanning and tracking chain of custody of equipment and materials
  - e. Ballot quality control and packaging
  - f. Preparation of polling place supplies
  - g. Preparation and security of voting supplies for pick-up by the Inspectors
2. Observe the Early Voting and Election Day voting proceedings
3. Observe the processing of vote by mail ballots
4. Observe the Election Night procedures, including:
  - a. Precinct supply check-in
  - b. Ballot tabulation and results reporting as viewed through the central count room window
5. Observe the canvass procedures, including:
  - a. Selection of precincts for the 1% manual tally

- b. Tally of valid write-in votes
  - c. Ballot Duplication
  - d. Ballot and precinct supply reconciliation
  - e. Verification of provisional ballots
  - f. Manual tally of votes
6. Observe and make notes about the proceedings
  7. Be permitted access to a designated observation area to observe established procedures
  8. Be permitted to observe and inspect, without physical contact, and in the presence of an Election Official, the integrity of all visible security seals used to secure voting equipment in a time and manner that does not interfere with the conduct of the election as determined by the Registrar of Voters.
  9. Ask questions of the designated staff member regarding election procedures in a manner that ensures there is no interference with procedures. The staff member may either answer the questions or direct them to the appropriate person. Depending on the complexity or nature of a question, staff may request that the observer submit the question, in writing, to be answered at a later time. However, if persistent questioning disrupts the execution of their duties or the election, staff may stop responding and direct the observers to place questions in writing to the Registrar of Voters.

**Observers may not:**

1. Interfere in any way, in the judgment of a Monterey County Elections Official, with the procedures or the conduct of any election. Interfering with the preparation and holding an election, or with voters lawfully exercising their rights of voting at an election, is punishable by imprisonment for up to 3 years in state prison (California Elections Code §18502).
2. Handle or touch any voting materials or equipment or sit at the official worktables.
3. Stand, carry on discussions, or pause for lengths of time in the official work areas.
4. Roam or wander away from the dedicated observation area(s).
5. Intimidate or impede, or attempt to intimidate or impede, in the judgment of a Monterey County Elections Official, staff or voters in any way.
6. Make physical contact with staff. Observers must at all times be no closer than 3 feet from any staff member.
7. Talk to voters relating to the casting of a vote or about their qualifications to vote, display any election material, wear candidate badges or apparel, or electioneer within 100 feet of the entrance to the Department and Early Voting area.
8. Have pagers and cellular telephones turned on. These items must be off. Observers must sign-out and exit the Department to use their phone.
9. Use cameras, including cellular telephone cameras, or video recording devices of any kind; or, while inside the Department or Early Voting area, photograph, videotape or

otherwise record a voter entering or exiting with intent of dissuading them from voting.

10. Remove or view any materials in a way so that others are unable to use them.
11. Use Department telephones, electrical or Internet outlets, or computers.
12. Be in designated work areas when staff is not present.
13. Bring food or eat or drink within the Department.
14. Wear the uniform of a peace officer, private guard, or security personnel.
15. Use vulgar language, yell, or verbally intimidate staff, as determined by the staff and Registrar of Voters

### **OBSERVING VOTE BY MAIL BALLOT PROCESSING**

The Observer's function is to observe the ballot verification and processing procedures. Observers may not assist in operations or touch or handle any ballots or other election-related materials.

1. No Observer shall interfere with the orderly processing of vote by mail (absentee) ballot return envelopes or processing and counting of vote by mail (absentee) ballots, including touching or handling of the ballots or envelopes. (Elections Code §15104e)
2. Observers will be permitted access to a designated observation area, sufficiently close to enable them to observe and challenge whether individuals handling vote by mail (absentee) ballots are following established procedures, including verifying signatures and addresses by comparing them to voter registration information, duplicating accurately any damaged or defective ballots, securing vote by mail ballots to prevent any tampering with them before they are counted on election day (Elections Code §15104d). As indicated elsewhere in these guidelines, observers are allowed no closer than 3 feet from staff.
3. Challenges may be made for the same reasons as those made against a voter voting at a polling place (voter is not the same as listed in the voter database or voter is not qualified to be registered to vote). In addition, a challenge may be entered on the grounds that the ballot was not received within the time provided by law.

All challenges shall be made prior to the opening of the identification envelope of the challenged voter. Because the voter is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made. (Elections Code §15105)

### **BALLOT HANDLING CHALLENGES**

1. Any member of the Observer Panel who is also a member of the County Grand Jury, or a member of the political party Central Committees or County Councils who have a candidate on the ballot, or any other interested organizations, shall be permitted to observe and challenge the manner in which the vote by mail (absentee) ballots are handled, from the processing of vote by mail (absentee) ballot return envelopes

through the counting and disposition of the ballots (see item 2 above and Elections Code §15104b)

2. Observers may not challenge signatures on vote by mail (absentee) ballot return envelopes. Only the elections official shall perform signature comparison, in accordance with Division 3 of the California Elections Code.

### **Non-compliance With Rules:**

1. If an observer fails to adhere the code of conduct, the staff shall ask the observer to leave the Department.
2. If the observer fails to follow the directions, the Registrar of Voters shall contact law enforcement and shall make the law enforcement officer aware of the pertinent section of law that applies to the particular incident.

### **GENERAL RULES WHILE OBSERVING PROCEDURES AT THE POLLING PLACE:**

**Please be courteous to our Election Officers as they are working a very long day and doing their very best. Remain quiet and do not disturb Election Officers or Voters.**

While observation is allowed by law, there are rules and guidelines that **must** be followed.

### **Observable Activities:**

As stated above, there are specified election-related activities that observers may view at any polling place:

1. Opening procedures such as:
  - a. Set up of required signage, voting booths, and other “generic” supplies
  - b. Verification of security seals, set up and re-sealing of touch-screen voting machine
  - c. Set up of Voter Processing Table (Roster Index, pertinent Voter Information Supplies, demo ballots, magnifying glass, etc.)
  - d. Opening of supplies and positioning of official ballots in preparation for voters
2. Checking in of voters and issuing ballots and/or voter activation cards
3. Roster cross-referencing (each hour as time permits and up to 6 p.m.)
4. Provisional ballot procedures
5. Closing procedures, such as:
  - a. Removal of required signage, take down of voting booths, and other “generic” supplies
  - b. Touch-screen voting machine closing procedures, including posting of results (as required and if more than 4 voters)
  - c. Ballot reconciliation and completion of necessary forms, such as Certificate of Packaging and Sealing

- d. Sealing of all required materials for transport to assigned Receiving Station
6. Observers shall NOT be allowed to observe any voter while casting their ballot. According to the California Constitution and Election Law, voting shall be secret and no voter may disclose their ballot to any person.

**Observers Will be Asked to:**

1. Remain outside of the polling place until Election Officers have arrived and are ready to escort any observers who are present into the polling place to commence observation of opening procedures.
2. Complete a sign-in sheet, one for each precinct if multiple precincts within a polling place, indicating their name and the times they are present to observe. Please check in with the Election Officers and let them know who you are, who you represent, and your plans for observing.
3. Observers should leave all personal bags, backpacks, and/or briefcases in their cars. Observers who bring such items into the polling place will be asked to return the items to their car.
4. All cell phones/pagers/PDAs must be turned off as to not disturb the process. All telephone calls shall take place 100 feet outside of the room where voters are voting.
5. Observers shall maintain a professional manner while observing the elections processes and keep voices to a low whisper as to not disturb Election Officers and/or voters.
6. Observers shall remain in an area designated by an Election Officer for observing specific activity, such as voter check-in would be observed near the check-in table. Observers should not move about as to come into any restricted areas (Election Officer or voter designated areas, or near or in any AVC Edge voting booth without Election Officer escort).
7. Observers shall ensure they do not interfere with the election process.
8. Sign-out upon leaving the precinct and polling place, even if the observer plans to return.

**Observers May:**

1. Observe and make notes about the proceedings at the polls, including the opening and closing procedures.
2. Obtain information from the Yellow Reference Roster that is posted near the entrance and/or look at the copy of the Yellow Reference Roster being updated at the worktable, if the Election Officers are not using it and there are no voters waiting to vote.
3. Upon request, be permitted to observe and inspect, without physical contact and in the presence of an Election Officer, the integrity of all *externally visible* security seals used to secure voting equipment in a time and manner that does not interfere with the conduct of the election or the privacy of any voter.

## Exit Pollsters

1. Media and public opinion pollsters have different rules than poll watchers do. Clearly identified members of a news/media organization and exit pollsters may be no closer than 25 feet of a polling place, and may speak to voters who are leaving the polling place as long as they do not interrupt voting. (*California SOS Guidelines, 2006*)

## Observers May Not:

1. Interfere in any way, in the judgment of a Monterey County Elections Officer, with the procedures or the conduct of any election. Interfering with the preparation and holding of an election, or with voters lawfully exercising their rights of voting at an election, is punishable by imprisonment for up to 3 years in state prison (California Elections Code §18502).
2. Talk to Elections Officers or voters in such a manner as to interfere with or delay the voting process.
  - a. Observers have the right to ask Election Officers questions regarding election procedures and to receive an answer or be directed to the Registrar of Voters for an answer. However, if persistent questioning disrupts the execution of their duties or interferes in their ability to provide service to voters, the Election Officers may stop responding and direct the observers to the Registrar of Voters for all further answers.
3. Touch any voting materials or equipment or sit at the official worktables.
4. Use the area between the official worktables, voting booths and vote tabulating equipment as observation point/post.
5. Intimidate or impede, or attempt to intimidate or impede, in the judgment of an Elections Officer, staff or voters in any way.
6. Insist that the Election Officers stop processing voters so the observers may view either the Yellow Reference Roster being updated at the worktable or the second copy of the Yellow Reference Roster posted by the doorway.

**Note: The second copy of the Yellow Reference Roster posted by the doorway is updated at least once each hour until 6 p.m. as long as it does not interfere with the processing of voters.**
7. Interfere with the timely closing of the polls or transportation of the ballots to the Central Office or receiving centers.
8. Within 100 feet of the entrance to a poll, talk to voters relating to the casting of a vote, display any election material, wear candidate badges, or speak to a voter relating to their qualifications to vote.
9. Use cellular telephones, pagers or two-way radios inside the polling place, or within 100 feet of the entrance to the polling place.
10. Use cameras, including cellular telephone cameras, or video recording devices of any kind while inside the polling place or photograph, videotape, or otherwise record a voter entering or exiting a polling place with intent of dissuading them from voting.

- a. Photography of any sort in the polling place is a highly sensitive issue. Voters may and can object to being photographed or videotaped.
11. Remove or view any materials, including the posted Yellow Reference Rosters, in a way so that others are unable to use them.
12. Use telephone or other polling place facilities.
13. Talk in a loud voice or behave in a disruptive manner.
14. Congregate in excessive numbers inside the polling place.
15. Eat or drink within the polling place.
16. Wear the uniform of a peace officer, private guard, or security personnel.

### **Non-compliance With Rules:**

1. If an observer declines to observe the rules, the Inspector/Election Officer shall ask the observer to leave the polling location.
  2. If the observer fails to follow the directions of the Inspector, the Inspector shall contact law enforcement and shall make the law enforcement officer aware of the pertinent section of law that applies to the particular incident.
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### **PERTINENT LAW:**

*Excerpts below from the California Elections Code and opinions of the Attorney General, where noted.*

#### **General:**

- ✓ Poll watchers may not sit at the official table. (*E.C. §14223(a)*)
- ✓ The area between the official table and the voting booths is accessible to voters only and may not be designated as an observer post. Only poll workers and voters engaged in voting may be within the voting booth area during the time the polls are open. (*E.C. §14221*)
- ✓ Indexes marked to indicate persons who have voted are posted for reference by the public. Signature rosters may be inspected at any time provided there is no interference with poll operations or delay or inconvenience to the voters. (*E.C. §§14202 & 14223(b)*)
- ✓ The American Flag must be prominently displayed (regardless of weather conditions) during all polling hours. (*E.C. §14105(f)*)
- ✓ At the opening of the polls the ballot box must be opened, exhibited to be empty, closed and then shall remain in the polling place until the ballots are counted. (*E.C. §14215*)
- ✓ If a polling place is inaccessible to a voter with a disability, the voter may vote a ballot outside the premises in an accessible area as near as possible to the polling place. (*E.C. §14282(c)*)
- ✓ Voters may request and receive assistance in voting if they declare under oath that they are unable to mark their ballots. (*E.C. §14282(a)*)

- ✓ A voting booth may not be occupied by more than one person at a time unless a person is assisting the voter as provided by law. Nothing prevents a voter from being accompanied by a child under the age of 18 years while within the voting booth area if the child is under the voter's care. (E.C. §§14281, 14222 and 14224)

#### **Interference with Election Officers or Voters:**

- ✓ Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment in the state prison for 18 months or two or three years. (E.C. §18502)
- ✓ Damaging or tampering with voting equipment or official election materials in a polling place is a felony, punishable by imprisonment for 2, 3, or 4 years. (E.C. §18564)

#### **Coercion:**

- ✓ The use of force, violence or tactic of coercion or intimidation to compel a person to refrain from voting at any election is a felony punishable by imprisonment in state prison. (E.C. §18540)
- ✓ Pollworkers are instructed to report the presence of any persons or signs which may be intimidating to voters or cause interference with the voting process to the Registrar of Voters. (E.C. §14240)

#### **Challenging a Voter:**

- ✓ Only Poll Workers have the right to challenge a person's eligibility to vote at the polls. A challenge may be made only upon sufficient probable cause.

#### **Electioneering:**

- ✓ Electioneering activity is not permitted within 100 feet of the polling place; that is, within 100 feet from the entrance or door to the room or rooms in which voters sign the roster and cast their ballots. Electioneering is any expression that is verbal or visual on a sign, button, flyer, etc. that clearly identifies a candidate or measure that is meant to influence the public one way or the other as it expresses an opinion, good or bad, about the candidate or measure at the election. Electioneering is also considered any of the following:
  - Circulate an initiative, referendum, recall, or nomination petition or any other petition.
  - Solicit a vote or speak to a voter on the subject of marking his ballot.
  - Place a sign relating to voters' qualifications or speak to a voter on the subject of his qualifications except as provided in Section 14240 (voter challenge by precinct board).
  - Place campaign signs or take or wear campaign materials within 100 feet of a polling place. Only Poll Workers can post signs within 100 feet of a polling place. For purposes of this section [of law], 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting a ballot. (E.C. §§18370 and 18541)

### **Photographing/Videotaping:**

- ✓ No person shall photograph, videotape, or otherwise record a voter entering or exiting a polling place. Established media organizations (television or print media) may come into a polling place to film a voter as long as the voter consents and there is no disruption to other voters or the voting process. All exit polling must take place 25-feet from the entrance to the polling place. (*E.C. §18541 and A.G. Opinion*)

***Smoking is not permitted in Monterey County Polling Places***

### **VI. Mechanism for Observer Panel Feedback**

Panelists are provided a form for providing detailed and meaningful feedback concerning their observations of the elections processes. However, panelists may also provide written feedback to the Registrar of Voters in any other appropriate manner, including letters, memorandum, or emails. "Detailed and meaningful feedback" shall include the time, date, location, and specific details about the activity observed.

After the completion of the canvass and certification of the election results, the Observers will also be invited to a post-election meeting with the Registrar and Assistant Registrar of Voters. The Registrar cannot be obligated to implement any idea or suggestion provided by the Panel members. However the Registrar will carefully consider each proposal in relation to the law, feasibility of successful implementation, and budgetary and staffing constraints.

