

LEX REX INSTITUTE

CONSTITUTIONAL ADVOCATES
444 WEST OCEAN BOULEVARD, SUITE 1403
LONG BEACH, CA 90802
HTTP://WWW.LEXREX.ORG

ALEXANDER H. HABERBUSH, ESQ.
DEBORAH L. PAULY, ESQ.

TELEPHONE (562) 435-9062
FACSIMILE (562) 600-7570
AHABERBUSH@LEXREX.ORG

September 20, 2023

VIA EMAIL

Honorable Kevin Crye
Honorable Tim Garman
Honorable Mary Rickert
Honorable Patrick Jones, Chair
Honorable Chris Kelstrom

Re: *The Mechanical Hand Count Voting System*

The Lex Rex Institute is pleased to present this Plan and Vote Counting Procedure (the “Plan”) for the mechanical hand counting of ballots, prepared especially for and at the direction of Shasta County, its elected Board of Supervisors (the “BOS”), its electorate, and concerned members of the Shasta County community.

The Plan implements Board policy, complies with state and federal law, and furthers the mission of the Registrar of Voters (the “ROV”).

A. Timeline and Next Steps for Implementation.

In order to be fully compliant with California Elections Code, the ROV must provide reasonable public notice, hold a public hearing, and accept public input on this proposed Plan for at least 30 days. Additionally, the ROV must present this Plan to the Secretary of State for approval more than 120 days before the date of the next regularly scheduled election. Please, refer to the Plan’s Overview, § I, on page 1.

The next regularly scheduled election is the March 5, 2024, primary election. Therefore, the timeline for meeting these deadlines requires the ROV to hold a public hearing on or before October 6, 2023, and accept input concerning this plan. As per the Brown Act, 72-hours (3-days) is generally accepted as providing reasonable public notice. Therefore, public notice of the hearing should be provided no later than October 3, 2023.

The Plan must then be presented to the Secretary of State for approval no later than November 6, 2023. It is the ROV's responsibility to execute this timeline, under the supervision of the Board.

B. Implementation in a Pilot Program

Shasta County is in a unique position to beta test this Plan under a statutorily permissible Pilot Program. The Board, without formally adopting this Plan or seeking the Secretary of State's approval, has the authority to provide for the experimental use of the hand count system in the case of a special election. A Special Election is slated for November 7, 2023. Therefore, the Lex Rex Institute recommends that, the day after submitting the Plan to the Secretary of State, the Registrar of Voters will execute the Plan on this limited basis. For more information on the Pilot Program implementation, please refer to § XI of the Plan.

C. Additional Notes Regarding the Plan


While reviewing this Plan, you will note several instances where the Elections Code provides for discretion and the Plan restricts that discretion. This is also noted in the body of the text, upon each occurrence.¹

Finally, we make several suggestions for the Board to consider executing as soon as is practicable. First, we recommend that the Board contract with a reputable paper shredding company to ensure all unused ballots are shredded after voting is closed and prior to the commencement of the count. Second, search out, either for lease or purchase, underused or unused warehouse space(s) that can easily be secured and configured to meet the space requirements for implementing the Central Location(s) counting and conducting the official canvas of votes.

We stand ready to answer any questions you may have or to assist with the successful implementation of this Plan.

Very truly yours,

LEX REX INSTITUTE

By: 

Alexander H. Haberbush, Esq.

¹ E.g., California Elections Code permits the processing and counting of vote-by-mail ballots to begin any time during the 29-days prior to an election and requires that the counting of vote-by-mail ballots begin no later than 5:00 p.m. on Election Day. The Plan restricts processing and counting to begin at 5:00 p.m. on Election Day. Please refer to Processing and Hand Counting of Vote-By-Mail Ballots on page 19 of the Plan.