



# The Voter

## The League of Women Voters of Mendocino County

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February/March 2007  
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### President's Message

by Becky Bowen

I know a man who hikes backwards. I used to see him every week on the trail and never asked the obvious question. I figured if he wanted to talk about it, he'd say something.

I came from a politically active L.A. area. The people were characters, the neighborhoods ferociously political, but the election turnouts were poor, sometimes around 15 per cent. All talk, no do.

How different from my beloved new home in Mendocino County where we are deeply serious about elections and where our votes count—critically.

For the last year, our League members have participated in many levels of the election process—from poll work to candidate forum work. This has not always been a bed of roses. With new absentee voting requirements and hotly-debated campaigns, we have been in deep waters. There were disagreements between campaign forum sponsors about participants in the district attorney candidate forum in Town Hall, Fort Bragg last fall. Some thought all potential candidates should participate in the forum. We took the position that the forum would be open only to qualified candidates after the death of incumbent/candidate Norm Vroman. When no one took out papers to qualify as a write-in candidate, only one candidate appeared at the forum for district attorney. Now, with the upcoming special election, we will revisit our candidate forums and perhaps study the possibility of one day seeing an instant runoff voting procedure available in the county to quickly and economically resolve local elections.

For the first time, our league members observed voting procedures in the County Clerk's office. Our notes are covered in this *VOTER* issue. We also sponsored or co-sponsored candidate forums for board of supervisor candidates, Fort Bragg City Council, district hospital board of trustees, sheriff-

coroner and district attorney.

I guarantee there will never be a district attorney race like the one we have witnessed in November, 2006. League Member Barbara Auerbach provided us with an objective study. We think this might be only the beginning of our research.

Our board continues on a mission to study and serve. Please jump in with us. The water's fine. In the next few weeks, we will be defining our goals and programs as well as sponsoring a **Meet and Greet Your Elected Officials** night in the early evening of March 23, 2007 at St. Michael's Church in Fort Bragg. This is the second year we will hold this program. It is an informal way to meet your elected officials face to face. No speeches. No agendas. No program. It is free and open to the public. It is a rare treat to have a conversation with our elected representatives. And we will need help from our members to greet the elected officials at the door and help them circulate around the meeting room.

In putting together the list of officials to invite to this event, we compiled a list of special districts in Mendocino County - 89 special districts and still counting. This is a vast and important part of our infrastructure. The districts deserve our appreciation and our attention.

If you have an interest in observing public meetings, please let me or a board member know. Let us know about your observations by writing a brief note to the *VOTER* editor. We will make it part of our area of study—and part of our history.

We have come a long way in the last year. Like the man who hikes backwards, I have seen where we've been and I like where we are going.

**Thank you for your help and your support.**

### The November 2006 Vote

By Jane Person

If there's one impression that stands out about the Registrar of Voters office in Ukiah a day or so before the November 7, 2006, election it could be the **efficiency** with which the incoming absentee votes are handled. Or it could be the respect and care given to each ballot and to voter privacy. The biggest difference after election votes pour in is only that the pace quickens considerably.

Several teams of League of Women Voters visited Marsha Wharff and her staff before and after the election to see the process that culminates in the names and numbers the media report after votes are cast. A staff member welcomed visitors and when possible provided a tour.

**The election procedures** include processing absentee ballots received before November 7, ballot counting, and certification procedures after the election. Wharff has 28 days in which to certify election results, and ballots are stored for five years. Wharff said that the whole set of procedures could be replicated if necessary during that time.

Before the election, incoming absentee ballots are sorted on trays by precinct, then stamped with the date received. A staff member scans the signature on the ballot into a hand held computer, one precinct at a time. This is checked against the signature in the master computer from the voter registration. Each matching signature is hand initialed "ok." Before the number of ballots became too great, Wharff's office telephoned those who forgot to sign to come in to sign so that their vote could count.

**At least two qualified workers remain with the ballots at all times at every step in the process.**

Ballots are then opened and visually scanned for irregularities that might make the computer reject the ballot entirely. Ballots with irregularities are taken to the remake table where one worker reads the ballot and another makes out a new one that the computer would accept. For example, some ballots were torn or dirty or incorrectly marked. One was even punched instead of inked. Another had an x next to names not wanted. Original ballots are retained and stamped as such. The names of qualified write in candidates are allowed various designated spellings in case the voter doesn't spell the name correctly.

The precinct bundles are then taken to the scanner

room where two workers operate two scanners. The individually fed ballots go through the machine, which scans both sides simultaneously. Totals are recorded on a memory card in the scanner to be read only after the polls close.

On Election Day, observers included an Associated Press reporter and a member of the Grand Jury, in addition to several League of Women Voters teams.

**Around 9 p.m. materials from polling places began to arrive.** Scanners, touchscreens, ballots, and other materials came in cars and trucks; a pair of workers deputized for this purpose, who were responsible for only 2 or 3 polling places, made each pickup/delivery. As each vehicle arrived, a pair of workers unloaded it, while another pair checked off the contents.

The memory cards from the scanners and the info from the touchscreen were fed into the computer used to tally results. Around 10:30 observers were given a printed update showing the number of ballots cast, precincts reporting, and vote totals for each race. This information was also posted on the county website. The AP reporter said that the colleagues she called in Sacramento had the results from the website before she could call them in.

The court-ordered sealing of the results of the District Attorney's race created yet another step in the election process. In the precincts the scanners did not record the votes cast for DA. In the election office the ballots had to be rescanned and a new memory card generated which did record the DA results.

This extra step, plus the great number of absentee ballots received on Election Day and a significant number of provisional ballots, created several problems. Final vote numbers were delayed, and early results indicated a much lower voter turnout than was actually the case because of this extra step.



## ① Lee Tepper

On Election Day, Dorine and I traveled to the Mendocino County Recorder's Office to validate the validation of the votes. We were there until 11 p.m. when I dragged Dorine away from the fascination of the electoral process.

Katrina, the assistant, showed us the process as it pertained to absentee ballots. The drill was as follows: the envelope is visually examined (Marsha Wharf was using a computer to confirm envelope signatures); the envelope is opened and the envelope ballot pairing is confirmed; the ballot is checked for invalidating ambiguities some of which could be and were resolved with a phone call. The qualifying ballots are stacked outside the tabulating room containing half a dozen Diebold tabulators (ballot readers) and some computers and computer terminals, one a secure link to Sacramento. The tallies of the tabulating machines reside on memory cards as do the results of the touch-screen voting booths. At 8PM when the polls close the booths are delivered to the Recorder's office where an established protocol delivers the booth's memory card to the tabulating room. The memory card's information is downloaded to the computer and periodically teleported to Sacramento. The memory cards and absentee ballots are saved.

## ② Dorine Real

Lee and I spent election day at the Mendocino Clerk/Recorder/Elections office. In the morning Katrina gave us a tour of the ballot handling process. The office seemed much as usual: staff were busy at their desks, members of the public came to the counter from time to time to get help with looking up a deed or obtaining a birth record. Additional tables had been brought in for the ballot handling, and some staff had been borrowed from other County departments. A few phone calls came in from polling places with questions or requests for supplies. A team of couriers was on hand to deliver the supplies and equipment.

After lunch, the day's counting began (some absentee ballots had been counted on previous days). We noticed that the counting machines rejected about half the ballots when they were first fed into the

reading slot. Some ballots were rejected several times. Apparently the usual problem was that the folds on the ballots were read by the machine as stray marks. The ballot handlers had to smooth each ballot and reinsert it until it was read, or as a last resort send it to the makeup table to be copied.

Meanwhile, business with the public was picking up. The staff were answering phone questions, in English and Spanish, the most common of which was, "Where is my polling place?" Many of the inquirers turned out to be absentee voters. Voters were also coming to the counter to find out how to vote or to get replacement ballots. If a voter was on the rolls but had lost or left their ballot at home, the staff checked to make sure that ballot envelope hadn't been received, then issued a replacement ballot; voters who weren't on the rolls got provisional ballots of the correct type for where they lived. The staff probably served about a hundred people this way, and each was treated with courtesy and patience through the sometimes rather complex process. Many people voted right in the office, at the desks designed for title research. People were also dropping off absentee ballots, and each one got an "I Voted" sticker. Special deliveries of last-minute ballots from each post office arrived around six o'clock. Everyone was very busy, and the finicky counting machines were driving the observers crazy, but the ballot handlers kept their cool.

Then the votes started coming in from the precincts. It was a little like watching a "heist" movie or an emergency room drama to see a team of four or five people unpack and check the voting equipment and send the ballots to the counting room in a few minutes. At this point, there were about six observers outside the counting room with its special observation window, but of course there was nothing to see but ballot handlers calmly inserting and reinserting ballots. When the first results were handed out, there was a moment of excitement. The AP reporter rushed to the phone. AP told her, "We already have that. It's on the Internet."



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## Notes on the DA Race

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Responding to concerns that “we lost our vote” from community members, the League board asked the question “Should we support the Supervisors appeal process?”. Calls were made to the State League office and League member Barbara Auerbach presented the board with a summary of the legal position. She later followed this up with a brief. The State Supreme Court later concurred with her findings. We thank Barbara for her legal acumen in helping the board make the decision to not support the appeal process, but rather to wait for the courts ruling.

Barbara E. Auerbach is a retired children's rights attorney. Earlier in her career she worked as a law clerk for several judges in Los Angeles where she spent much of her time interpreting statutes and studying legislative intent.

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## The District Attorney November Election:

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By Barbara Auerbach

### **Brief: Re interpretation of election laws governing deceased candidates**

(Specifically: if an incumbent is a candidate for a nonpartisan statewide, countywide, or city wide office, or for a nonpartisan office that is elected by division, area, or district, which he or she currently holds at an election at which only one other candidate, excluding any write-in candidates, has qualified to have his or her name placed on the ballot for that office, and either the challenger or the incumbent dies after the hour of 12:01 a.m. of the 68th day before the election.) California Election Code Section 8026.

### **Facts:**

The matter involves a general election for the office of Mendocino County District Attorney. Two candidates, Meredith J. Lintott, and Norman L. Vroman, incumbent, were on the ballot for election on November 7, 2006. Vroman died on September 21, 2006, which was 47 days before the general election.

The surviving and only candidate, Meredith J. Lintott, and the County both agreed that the election should proceed on November 7, 2006, pursuant to California Election Code 15402 which requires that if Lintott prevailed then she would be elected as County District Attorney, but if the deceased incumbent prevailed then “the Board of Supervisors would select a candidate for the position to serve the term provided by law.”

However, prior to the election, Keith A. Faulder, a Deputy District Attorney for the County of Mendocino, petitioned the California Supreme Court,

by way of a writ of mandate seeking to stop the election of District Attorney for Mendocino County scheduled for November 7, 2006, and to require a special election, according to Section 8026 of the California Election Code, on another date in order to allow others to have their names placed on the ballot.

Both Lintott and the County contended that Section 8026 of the California Election Code was applicable only to primary elections.

The Court of Appeal concluded, and later the California Supreme Court concurred that Section 8026 applies to all elections, including general elections, when a candidate in a two-person, nonpartisan, non judicial contest involving an incumbent dies within 68 days of the date set for the election.

As a result of the Court’s ruling, the ballots for the Mendocino District Attorneys election on November 7, 2006 were ordered permanently sealed and the Mendocino County Board of Supervisors and Mendocino County Assessor-Clerk-Recorder, Marsha Wharff, were directed to hold a special election.

### **Argument:**

The major arguments put forth by Lintott and the County were: 1. Code Section 8026 was relevant to primaries only and, 2. Code Section 8026 was in conflict with Code Section

### **Response:**

Code section 8026 which was the result of Assembly Bill No. 2582 was amended in 1987 to clarify primary versus general by stating that the bill was to

be enacted for all elections. Code section 8027 deals with procedures in primary elections.

California Election Code Section 8026 was enacted as a result of a San Mateo County election for sheriff. In 1986 Sheriff Brandon Maguire was running for election as an incumbent. He died shortly before the election, with only one opponent running against him. This was an election and not a primary. Sheriff Maguire had been a very popular candidate which probably precluded others from wanting to run against him.

Subsequently, the Legislature enacted section 8026, cited as the "Brendon Maguire Act." Presiding Justice Ignazio J. Ruvolo, writing for the Court of Appeal stated that: "The obvious purpose of this legislation was to provide the voters with a chance to have a real choice among qualified candidates when they may have been deprived of it by the death of a candidate shortly before the election and to allow qualified persons, who aspire to the position left vacant by the death of a candidate, but who were reluctant to run against an incumbent, a chance to place their candidacy before the voters."

Lintott and the County argue that the existing Election Code 15402 entitled "Death of candidate" provides for procedures for the case at hand and therefore should be applied.

**The code states:**

"Whenever a candidate whose name appears upon the ballot at any election dies after the 68th day before the election, the votes cast for the deceased candidate shall be counted in determining the results of the election for the office for which the decedent was a candidate. If the deceased candidate receives a majority of the votes cast for the office, he or she shall be considered elected and the office to which he or she was elected shall be vacant at the beginning of the term for which he or she was elected. The vacancy thus created shall be filled in the same manner as if the candidate had died subsequent to taking office for that term."

**The Court of Appeal found that section 8026 applied** because it was more specific to the facts of the case and was "an exception to, and a subset of, the broader statute, section 15402." The Court further stated that "section 8026 constitutes a special statute dealing with a particular subject, and controls and takes precedence over section 15402, a more general statute on the same subject."

Section 8026 refers to election races: those involving the death of a candidate in a two-candidate contest for a nonpartisan, no judicial office, where one of the candidates is an incumbent. Additionally, section 15402 occurs when a candidate dies after the 68th day before an election.

**The Court of Appeal issued a peremptory writ of mandate issue commanding respondents to call a special election for the office of district attorney in accordance with section 8026. Subsequently, the California Supreme Court concurred.**

*Editor's Note: The County has set April 3<sup>rd</sup> as the date of the Special Election for County District Attorney.*



**The League of Women Voters of Mendocino County will host its second annual "Meet and Greet Your Elected Officials" on Friday, March 23, 2007 from 5:00 to 7:00 p.m.** The reception will again take place in the Social Hall of the Episcopal Church in Fort Bragg, located on the corner of Fir and Franklin streets.

Our elected officials have been invited including the Fort Bragg City Council, local School Boards, Hospital Board, County Supervisors, Sheriff, County Clerk, County Superintendent of Schools, various coastal fire and Community Service District Boards. We have already received some positive responses from those invited. This function is an outstanding opportunity for League members and the community to meet and chat with their elected officials in a relaxed, non-partisan setting.

This year, the planning committee will be calling on League members to help facilitate the event by acting as hosts and hostesses to officials attending the event. Members may be assigned one or two officials to greet and introduce to others as the opportunity arises. A buffet of finger foods will be served along with beverages, including wine.

**Mark your calendar now and ask a friend to join you.**

The League of Women Voters  
of Mendocino County  
P. O. Box 1128  
Fort Bragg, CA 95437

## Calendar of Events

- Tuesday, February 13**    Membership Meeting  
Time 9:30 a.m.    Location: St. Michael's Church, Fort Bragg  
Program    Every two years members are invited to set the agenda for the LWVC for the upcoming biennium, keeping the work of the League a truly grassroots function. This is a must meeting for all members and an especially helpful meeting for our newer members as it gives an overview of the workings of the League of Women Voters.
- Tuesday, February 20**    Board of Director's Meeting  
Time 9:30 a.m.    Location: St. Michael's Church, Fort Bragg
- Tuesday, March 20**    Board of Director's Meeting  
Time 9:30 a.m.    Location: St. Michael's Church, Fort Bragg
- Friday, March 23**    Meet and Greet Your Elected Officials (*See inside for more information*)  
Time 5:00 p.m.    Location: St. Michael's Church, Fort Bragg
- Tuesday, April 17**    Board of Director's Meeting  
Time 9:30 a.m.    Location: St. Michael's Church, Fort Bragg
- Tuesday, May 15**    Annual Meeting and Election of Officers, Board Members