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*From the Los Angeles Times*

## L.A. County ballot design went unnoticed for six years

Before troubles were spotted in the Feb. 5 primary, the double-bubble system left nonpartisan votes uncounted in '02, '04, and '06, election officials say.

By Richard C. Paddock  
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Six years ago, Los Angeles County began using a ballot for nonpartisan voters that had a little-noticed design flaw. Confusion over how to mark the ballot, critics say, caused tens of thousands of votes to go uncounted in three elections between 2002 and 2006.

At the time, election officials knew that some votes were not being counted but saw no need to make changes. After all, the missing votes went unnoticed in the three primary elections and no one complained.

That all changed with the Feb. 5 presidential primary.

Just before election day, a grass-roots advocacy group called the Courage Campaign realized that the ballot was defective because it required nonpartisans wanting to vote in a party primary to mark an extra bubble designating which party they were choosing.

On Feb. 4, the organization warned the Los Angeles County registrar-recorder's office that many voters could easily miss the party bubble and that many votes could go uncounted.

The group also charged that the ballot design violated state law by requiring some voters to take an extra step not required of others.

After the election, a vote survey conducted by acting Los Angeles County Registrar Dean Logan found that about 50,000 nonpartisan crossover votes were not counted, sparking outrage among voters across the county.

Some have likened it to the 2000 Florida debacle of butterfly ballots and hanging chads.

"Our contention is that the ballot design is illegal, and that it is illegal not to count the votes," said Rick Jacobs, chairman of the Courage Campaign and former chairman of Howard Dean's 2004 presidential campaign in California.

The ballot problem affected only those people who chose not to affiliate with a political party when they registered to vote. These voters, whom California places in a category called "decline to state," were allowed to vote in the Democratic Party or American Independent Party primaries Feb. 5, but not in the Republican Party primary.

In Los Angeles County, decline-to-state voters who wanted to vote for a Democratic or American Independent presidential candidate needed to vote in a polling booth designated for that party.

Once in the polling booth and given an ink stamp, they were required to fill in the circle indicating which of the two party primaries they were voting in.

But many people found the system confusing. Also, many poll workers didn't understand it, and so were unable to advise voters as to what they were supposed to do.

Logan, who took office Jan. 4, acknowledges that the ballot created confusion among voters and says the county will abandon the double-bubble design and have a new ballot design in time for the June primary. It is unclear what the additional cost would be.

Logan also is investigating whether any of the 50,000 votes can be counted.

"It's not a good ballot style," Logan said. "It is difficult to discuss this without sounding defensive, but I want this fixed more than anyone."

Some voters believe the uncounted votes might favor Sen. Barack Obama over Sen. Hillary Rodham Clinton in the Democratic primary.

But Logan and Democratic Party officials say the margins in the race are so large that the votes are not likely to affect the statewide outcome or the county allocation of delegates.

Los Angeles County, the only county in the state to use this ballot design, first adopted it for the March 2002 primary. Keeping costs down was a major factor in the decision, Logan said, as was a desire to minimize the number of different ballots and keep things simple for poll workers.

For election officials, running an election in Los Angeles County is a daunting logistical exercise.

With nearly 4 million registered voters in 4,379 precincts, the county is the largest single voting district in the nation.

The Feb. 5 election alone cost the county about \$30 million.

Election officials say that a primary is the most complex kind of election. The number of political parties -- six on Feb. 5 -- means a multiplicity of ballots. Crossover voting that allows nonpartisans to vote in certain party primaries can make organizing the vote even more complicated.

"Election officials will tell you they despise these elections," said former L.A. County Registrar Conny McCormack, who retired in January, a month before the vote. "Voters don't understand them, and poll workers don't understand them."

There are other peculiarities about L.A. County's election system that set it apart.

It is the only county in California to use the InkaVote Plus system, in which voters darken bubbles on their ballot with a special InkaVote pen.

The names of the candidates are listed in the "vote recorder" book in the polling booth but are not printed on the ballot itself. The ballot contains only numbers representing the candidates and the bubbles where voters mark their choices.

For a nonpartisan voter, the choice of polling booth determines which candidates are listed. Further complicating matters, the nonpartisan ballot uses the same set of bubbles for candidates running in different parties. In the Feb. 5 election, bubbles 8, 9 and 10 were used to represent candidates from both the Democratic Party and the American Independent Party. The overlapping bubbles now make it even harder to count the disqualified ballots, election officials say.

McCormack picked this ballot style for the 2002 primary after the state began allowing a modified form of crossover voting in which nonpartisans could vote in some primary contests but not in others, depending on what the parties themselves wanted.

To handle the new variations, McCormack decided to lump all the nonpartisan options together on one ballot and add the requirement that nonpartisans mark a bubble indicating which primary they were voting in. Not printing separate ballots for nonpartisans in each race cut the ballot variations by nearly half, saving money and making it easier on poll workers who hand them out.

McCormack said that for L.A. County to switch to a system that would allow the names of the candidates to be printed on each ballot would require a complete overhaul of the county's election system.

To accommodate all the candidates' names, the ballots would have to be much larger. Printing costs would soar. New warehouses would be needed for the millions of bigger ballots.

A changeover also would have also required purchasing new, slower machines to tabulate the vote, she said.

"To make that kind of change, I am not saying it's impossible, but the cost would skyrocket," she said. "You would need more staff and buildings. The counting would be slowed. It would be a whole new paradigm for everybody."

After the 2002 primary, Logan said, the county never examined the nonpartisan ballots to see how many crossover voters neglected to mark the extra bubble.

Similarly, no effort was made after the 2004 and 2006 primaries to determine how well the system had worked.

Logan declined to estimate how many votes were lost in the three earlier primaries.

But based on the registrar's finding that about 25% of nonpartisan voters missed the party bubble Feb. 5, Jacobs of the Courage Campaign estimated that 80,000 voters were disenfranchised in the earlier elections.

Jacobs and other critics say that election officials should have foreseen problems with the ballot for the Feb. 5 primary. McCormack disagrees.

"This is an unfortunate, unanticipated result," she said. "No one could have predicted this."

The problem with the ballot came to light on the Friday before election day when a Courage Campaign lawyer noticed the double-bubble requirement and began questioning whether it could cause votes to go uncounted.

The following Monday, the group delivered a letter to Logan urging him to publicize the existence of the bubble and educate poll workers.

On election day, word spread among nonpartisan voters that they were required to mark the extra bubble.

That afternoon, the Obama campaign began calling supporters and telling them of the requirement.

But by then, many voters had already cast their votes improperly.

At first, election officials blamed voters for not reading the instructions carefully.

Paul Drugan, Logan's executive assistant, said election officials had foreseen the problem months earlier and had been educating voters about the requirement. He dismissed the concerns of anxious voters who were worried that their ballots would not count.

"Is it a perfect system?" he asked. "No, it is not. Elections are an imperfect beast."

Since then, the registrar's office has become more contrite.

Logan said the ballot design makes it difficult to determine voters' intent but that his office is investigating ways to count the disqualified votes.

He acknowledged that many of the county's 28,000 poll workers, who are paid \$80 to \$120, were not adequately taught about the bubble during their 90-minute training sessions and did not know enough to inform voters properly.

"We can look back now and say it should have been emphasized more," he acknowledged.

Secretary of State Debra Bowen advised Logan last week to check the roster books of every precinct to see how many voters requested Democratic or American Independent ballots.

If all the requests in a precinct were for ballots in one party, it would be possible to count the votes there, she said.

On Friday, the Courage Campaign presented the registrar's office with nearly 32,000 signatures collected over the last week via an online petition, demanding that Logan "count every vote."

County Supervisor Zev Yaroslavsky said the Board of Supervisors was never told that the double-bubble design had disenfranchised voters in past primaries but has now directed Logan not to use it again.

"In a close election it could have influenced the outcome of the election, and it could have affected the nominee," Yaroslavsky said. "We have enough of a perception problem with our elections systems around the country without exacerbating them with this. People want their votes counted. They want all their votes counted."

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