



CITY OF BEVERLY HILLS

455 NORTH REXFORD DRIVE • BEVERLY HILLS, CALIFORNIA 90210

John Mirisch, Mayor

January 14, 2020

Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, CA 95814

RE: Concerns from the City of Beverly Hills on the New Los Angeles Voting Solutions for All People (VSAP) System for the March 3, 2020 General Municipal Election

Dear Secretary Padilla:

On behalf of the City of Beverly Hills, I am writing to express the City of Beverly Hills' concerns regarding the new Los Angeles Voting Solutions for All People (VSAP) System for the March 3, 2020 Presidential Primary Election. The City of Beverly Hills frequently has close elections. Two of our last three elections were decided by seven votes and eighteen votes respectively.

The City is respectfully requesting your assistance in making further modifications to the VSAP system developed by the Los Angeles County Registrar-Recorder/County Clerk's office, hereafter referred to as Los Angeles County. The current design for VSAP does not clearly communicate to voters the need to click on the "More" button to view additional candidates. It also allows for voters to simply SKIP pages without ever seeing the names of candidates on subsequent pages.

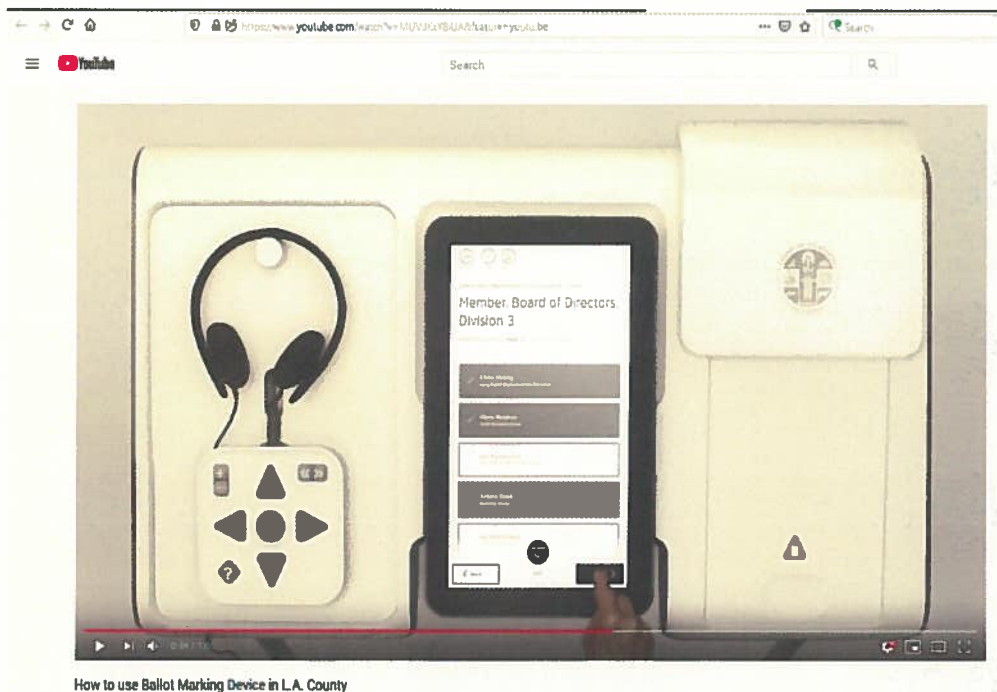
Two of our last three elections were decided by seven votes and eighteen votes respectively. Our City believes there is a completely unnecessary and unlawful ballot design feature of the electronic Ballot Marking Device (BMD) that threatens the accuracy, fairness, and integrity of the Beverly Hills municipal election and possibly other elections on the consolidated March 3, 2020 Presidential Primary Election, which will begin with the release of absentee ballots in early February followed by the opening of voting centers on February 22, 2020. Specifically:

- The BMD video screen proposed for the upcoming election allows only four (4) voting choices to be shown on each screen.
- For the Beverly Hills City Council election, there are five (5) candidates running for election for two (2) seats on the Council.

- This means the names of four candidates will appear on the first screen voters see, and the name of the fifth candidate will appear alone on a second separate screen. Voters will not see the second screen unless they affirmatively scroll down to that second screen by clicking on a “More” button.
- If the voters click instead on the “Next” or “Skip” button, they will never even see the second screen for the Beverly Hills City Council election and will move onto voting for the next contest on the ballot. Voters may be unaware there is another candidate on the ballot for whom they could have casted a vote for.
- This design is manifestly unfair to any candidates beyond the first four is quite likely to affect the integrity and outcome of the election.

We believe Los Angeles County’s new BMD design can easily be remedied, or at least mitigated. Los Angeles County could simply disable or remove the “Next”, “Skip”, and “Back” buttons on the first screen for the Beverly Hills contest, which would require all voters to use the “More” button to scroll through to the second screen before moving on to vote for the next contest.

There is no reason why voters should not be provided with the opportunity to see all candidates or voting choices for a given contest before being allowed to move on to the next contest. The mere “inconvenience” of possibly having to scroll through screens with additional candidates should not outweigh concerns over the fairness and legitimacy of the election. Remarkably, Los Angeles County’s demonstration video (which may be found on here: <https://www.youtube.com/watch?v=MUVdKxY8lUA&feature=youtu.be>), shows the voter casting votes for three candidates in the contest for “Member of Board of Directors, Division 3” and then blithely disregarding the “More” button and moving on to vote for the next contest without ever seeing the candidates listed on the second screen for the Board of Directors contest. (See the sequence at the 38-second mark of the video and as shown below).



Another alternative would be to rotate the candidates' names whenever the names of one or more candidates would have to appear on a second (or third) screen. Elections Code section 13114 explicitly allows for the rotation of candidates' names on municipal election ballots, and while that section contemplates the decision being made prior to the Secretary of State's randomized alphabet drawing, in the present circumstances no one was made aware prior to the drawing that the Los Angeles County BMD system would be so prejudicial to a single candidate whose name would appear separately, and alone, on a second screen, justifying an exception to this timing requirement.

Finally, and at a minimum, the instructions for the Beverly Hills contest on the first screen should clearly notify the voters "Additional Candidates are Listed on the Next Screen. Use the 'More' Button to View That Screen before Making Your Voting Choice." As of now, there is no statement or instruction on the video screen itself that informs voters that there are additional candidates listed on additional screens for this contest.

It is very clear to the City of Beverly that the Los Angeles County BMD system violates several provisions of the Elections Code and the California Voting Systems Standards, including:

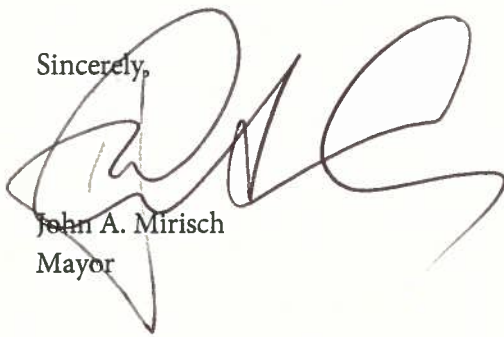
- CVSS § 3.2.5, subdivision (d), prohibits use of a voting system that biases for or against any candidate, providing: "No bias among choices — Consistent with the California Elections Code, the voting system shall support a process that does not introduce bias for or against any of the contest choices to be presented to the voters. In both visual and aural formats, the choices shall be presented in an equivalent manner."
- Subdivision (e) of CVSS § 3.2.5, entitled "Ballot Design," goes on to provide: "The voting system shall provide the capability to design a ballot with a high level of clarity and comprehensibility," specifically mandating that "The voting system shall visually present a single contest on a single page or column except where the number of choices in a contest makes it impossible."
- Elections Code section 13233 states that "[i]n a municipal election, if the number of candidates for an office is such that all of the names will not fit in one column of reasonable length, a double column may be used," but that "the names of the candidates . . . shall be apportioned as equally as possible between the two columns." By analogy, the names of all candidates should appear on a single video screen in the BMD system, and if that were not technically possible, then the names must be apportioned as equally as possible between the two video screens — not having four candidates' names appear on the first screen and a fifth candidate's name appear alone on the second screen

This design may also adversely affect the Democratic National Primary for a Presidential Candidate as there are more than four candidates currently pursuing the nomination for President of the United States. With Los Angeles County having over 5 million registered voters, any design flaw that places a candidate on a second, third, or fourth screen will disadvantage them for collecting the number of delegates needed to obtain the Presidential nomination from the Democratic National Committee.

Finally, in a letter dated January 6, 2020 to the City of Beverly Hills, Los Angeles County claims in an election in a November 2020 election held in the City of Long Beach the results showed the candidates receiving the fewest votes were consistent across three different ballot types, including the proposed new system. As mentioned earlier, the City of Beverly Hills, like other local entities, has a history of close elections. We take little comfort in knowing that those candidates receiving the *fewest* votes were “consistent” across different ballot types. Our City implores the Secretary of State to not certify the new Los Angeles County Voting Solutions for All People (VSAP) System for the March 3, 2020 Presidential Primary Election until this matter is resolved. Alternatively, the Secretary of State could provide direction to Los Angeles County to enhance the current system by implementing our suggested recommendations.

Thank you in advance for your assistance in this very critical manner.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John A. Mirisch', is written over the word 'Sincerely,'. The signature is stylized with large, sweeping loops.

John A. Mirisch
Mayor

cc:

Ben Allen, State Senator
Richard Bloom, State Assemblymember
Sheila Kuehl, Los Angeles County Supervisor
Janice Hahn, Los Angeles County Supervisor
Hilda Solis, Los Angeles County Supervisor
Mark Ridley-Thomas, Los Angeles County
Supervisor Kathryn Barger, Los Angeles County
Supervisor

Beverly Hills City Council
Dean Logan, Los Angeles County Registrar
George Chavez, Beverly Hills City Manager
Larry Wiener, Beverly Hills City Attorney
Huma Ahmed, Beverly Hills City Clerk
Andrew Antwih, Shaw Yoder Antwih Schmelzer &
Lange
Jamie Jones, David Turch & Associates