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December 31, 2008

Mr. Gregory Schmidt  
Secretary of the Senate  
State Capitol  
Sacramento, CA 95814

E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol  
Sacramento, CA 95814

Dear Gentlemen:

Attached please find the Secretary of State's report concerning facsimile transmissions of special absentee ballots, which is required by California Elections Code section 3103.5(b). I hope you will find the report informative and helpful for understanding the benefits and challenges of permitting facsimile transmitted ballots. If you have any questions about this report, please feel free to contact me at (916) 653-7244.

Sincerely,

  
Debra Bowen  
Secretary of State

**Secretary of State**  
**December 31, 2008**  
**Report to the Legislature**  
**On Military and Overseas Faxed Ballots**

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California Elections Code section 3103.5(b) requires the Secretary of State to submit a report to the Legislature regarding the facsimile transmission of special absentee ballots. The law requires the report to include recommendations concerning the benefits and problems associated with permitting qualified special absentee voters to return their voted ballots by facsimile transmission.

California Elections Code sections 3103.5(a)(1) and 3110 provide that a special absentee voter who is temporarily living outside of the United States may return a voted ballot by facsimile transmission and that a person called for military service can request and obtain a vote-by-mail ballot after the application deadline has expired, and can return the voted ballot by facsimile transmission. To be counted, the ballot must be received by the voter's county elections official before the polls close on Election Day and must be accompanied by the information detailed in section 3011 and a signed "oath of voter" declaration acknowledging the voter is waiving their right to a secret ballot.

The Secretary of State surveyed elections officials in each of California's 58 counties in December 2008 regarding the number of voted ballots returned by facsimile transmission in the categories of military voters (domestic and overseas) and non-military overseas voters for the November 4, 2008, General Election. This breakdown was patterned after the categories requested by the federal Election Assistance Commission in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) portion of its 2008 Election Day Survey for consistency and ease of completion. It should be noted that seven counties did not differentiate military from non-military overseas voters. Attachment A reflects the results reported on the number of ballots returned by facsimile. The Secretary of State survey also asked each county to provide the number of facsimile ballots counted and the number rejected or not counted. Finally, the survey solicited comments and recommendations regarding any benefits or problems counties experienced with the receipt of facsimile ballots. A sample of the county comments is shown in Attachment B.

None of the counties recommended discontinuing the practice of accepting facsimile special absentee ballots. County elections officials believe that military and overseas voters should continue to be allowed to send their completed ballots in by facsimile, especially because these votes may be disadvantaged by having to rely on traditional means to return ballots before the polls close on Election Day.

During the November 4, 2008, General Election, county officials were able to resolve most problems, such as the failure to return the signed oath of voter with the faxed ballot, by contacting the voter and obtaining all required forms.

According to the 58 counties that responded to the survey, 11,997 ballots were returned by fax for the November 4, 2008, General Election. Of those, 875 faxed ballots were rejected

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and were not counted. The most common reasons for rejection were the failure on the part of the voter to forward or sign the oath of voter and poor facsimile quality.

Sixteen counties reported having received incomplete or illegible ballot packages, i.e., the oath of voter was not faxed with the ballot, there were missing pages, or portions of the ballot did not come through clearly. In most cases, county elections officials were able to contact the voter to correct the deficiency by sending them additional documents.

Ten counties experienced a substantial increase in the number of special absentee voters and two of those counties reported that additional processing time was necessary for duplicating ballots due to the quality of the facsimile transmissions. However, only one of the 58 counties, Santa Clara County indicated the process actually delayed the counting of the ballots because every faxed ballot required duplication.

Notably, the three counties that experienced the highest volume of facsimile ballots (Los Angeles, Orange, and San Diego counties) each expressed support for continuing the program. Many military members were reportedly grateful that this method of voting was available and expressed their appreciation to county elections officials.

#### Benefits & Problems

Based on the responses from California county elections officials and observations by the Secretary of State's office, following are the benefits associated with allowing military and overseas voters to receive and cast their ballots by facsimile:

1. Many overseas voters would not be able to cast a ballot if this option were not available to them. Given the distance and the timing of when they request a ballot, how long it could take to be mailed to them and how long it could take to be mailed back, a ballot from an overseas or military voter may not be received prior to when the polls close on Election Day.
2. It allows overseas voters to wait until later in the electoral process to cast their ballots, knowing they can return it by facsimile on Election Day, instead of having to decide weeks in advance to ensure it could be returned via U.S. mail prior to the Election Day deadline.

Based on the responses from California county elections officials and observations by the Secretary of State's office, following are the problems associated with allowing military and overseas voters to receive and cast their ballots by facsimile:

1. A voter is required to waive their right to cast a secret ballot in order to vote via facsimile.
2. Frequently a voter does not return all of the required documentation, which requires a county elections official to contact the voter to retrieve the information before the ballot can be counted.

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3. The facsimile ballots and documentation are often illegible, which requires a county elections official to contact the voter to retrieve the information before the ballot can be counted.
  4. As noted in the above instances, in cases where the voter cannot be contacted prior to 8:00 p.m. on Election Day, they will be under the mistaken impression that their vote was received and counted by their local elections official. In the November 4, 2008, General Election, 875 California voters did not have their facsimile ballots counted.
  5. Depending on how many facsimile machines a county elections office has, voters attempting to send their ballots and required documentation may experience a busy signal and may not be able to return their ballots by the 8:00 p.m. Election Day deadline.
  6. County elections officials are required to remake the facsimile ballots onto regular ballot cardstock to allow the ballots to be tabulated by their optical scan machines.

### Recommendations

The Secretary of State makes the following recommendations regarding the practice of allowing voters to receive and return ballots by facsimile:

1. The practice authorized by Elections Code sections 3103.5 should be permitted to continue. Despite the logistical challenges and problems presented by permitting military and overseas voters to receive and cast ballots by facsimile, it is clear that 11,122 people may not have been able to cast ballots and have them counted in the historic November 4, 2008, General Election had this provision of law not been in place. The Legislature and the Governor should consider removing the sunset date on this program entirely and continuing it in perpetuity.
2. The Legislature and the Governor may wish to consider ways to simplify the process to reduce the number of incomplete voting packages that are returned by military and overseas voters.
3. The Legislature and the Governor may wish to consider requiring county elections officials to more clearly differentiate between ballots sent to and received from military personnel stationed in the U.S., military personnel stationed overseas, and non-military overseas voters. While most county elections officials do this type of data collection, not all of them do and the reporting should be identical from county to county.
4. The Legislature and the Governor, in an effort to allow military and overseas voters the ability to retain their right to a secret ballot and bypass the problems associated with facsimile ballot transmissions, may wish to consider allowing overseas special absentee ballots that are postmarked on or one day before Election Day and received by a certain number of days after Election Day to be counted. This practice is permitted in 15 other states and the District of Columbia with "received by" dates ranging from 3 –21 days after Election Day. This option would allow an overseas voter the ability to wait until later in the electoral process to decide how they want to vote, retain their right to a secret ballot, then put that ballot in the mail on Election Day, knowing it will be counted when it arrives.

## Secretary of State Report on Military and Overseas Faxed Ballots - November 4, 2008, General Election

County	Ballots Returned by Facsimile			TOTAL	Faxed Ballots Counted/Not Counted			TOTAL
	Military Voters (Domestic and Overseas)	Non-Military Overseas Voters			Faxed Ballots Counted	Faxed Ballots Rejected/Not Counted		
Alameda	8	173		181	181	0	0	181
Alpine	0	0		0	0	0	0	0
Amador	3	10		13	13	0	0	13
Butte	29	51		80	80	0	0	80
Calaveras	1	0		1	1	0	0	1
Colusa	0	0		0	0	0	0	0
Contra Costa	22	334		356	291	65	65	356
Del Norte	0	0		0	0	0	0	0
*El Dorado	49	n/a		49	47	2	2	49
Fresno	13	84		97	97	0	0	97
Glenn	2	2		4	4	0	0	4
Humboldt	50	18		68	58	10	10	68
Imperial	4	0		4	4	0	0	4
Inyo	0	3		3	3	0	0	3
Kern	6	29		35	35	0	0	35
Kings	15	4		19	19	0	0	19
Lake	0	0		0	0	0	0	0
Lassen	2	1		3	3	0	0	3
*Los Angeles	3,580	n/a		3,580	3,414	166	166	3,580
Madera	15	0		15	15	0	0	15
Marin	6	259		265	262	3	3	265
Mariposa	1	0		1	1	0	0	1
Mendocino	2	1		3	3	0	0	3
Merced	4	3		7	6	1	1	7
Modoc	0	0		0	0	0	0	0
Mono	0	2		2	2	0	0	2
*Monterey	181	n/a		181	148	33	33	181
Napa	15	25		40	40	0	0	40
*Nevada	69	n/a		69	49	20	20	69
Orange	968	703		1,671	1,338	333	333	1,671
*Placer	176	n/a		176	175	1	1	176
Plumas	2	3		5	5	0	0	5
Riverside	67	75		142	130	12	12	142
Sacramento	7	32		39	39	0	0	39
San Benito	2	10		12	12	0	0	12
San Bernardino	43	47		90	78	12	12	90
*San Diego	2,307	n/a		2,307	2,165	142	142	2,307
San Francisco	3	157		160	139	21	21	160
San Joaquin	9	23		32	32	0	0	32
San Luis Obispo	12	59		71	70	1	1	71
San Mateo	55	504		559	536	23	23	559
Santa Barbara	13	195		208	194	14	14	208
Santa Clara	58	493		551	549	2	2	551
Santa Cruz	4	77		81	75	6	6	81
Shasta	43	67		110	108	2	2	110

## Secretary of State Report on Military and Overseas Faxed Ballots - November 4, 2008, General Election

County	Ballots Returned by Facsimile		TOTAL	Faxed Ballots Counted/Not Counted		TOTAL
	Military Voters (Domestic and Overseas)	Non-Military Overseas Voters		Faxed Ballots Counted	Faxed Ballots Rejected/Not Counted	
Sierra	0	0	0	0	0	0
Siskiyou	14	3	17	17	0	17
Solano	59	66	125	125	0	125
Sonoma	7	12	19	18	1	19
Stanislaus	9	56	65	65	0	65
Sutter	11	1	12	12	0	12
Tehama	13	2	15	15	0	15
Trinity	1	3	4	4	0	4
Tulare	15	21	36	36	0	36
*Tuolumne	19	n/a	19	19	0	19
Ventura	24	81	105	103	2	105
Yolo	34	256	290	287	3	290
Yuba	0	0	0	0	0	0
TOTALS	8,052	3,945	11,997	11,122	875	11,997

\*These counties' systems do not distinguish between military and non-military overseas voters for tracking purposes. In these cases, the total combined number is reflected in the "Military Voters" column.

## Attachment B

### Comments Provided By Counties

**El Dorado County:** "This is a great option for overseas voters. We would like to see this continued. We have had a few problems with fax returns such as incomplete documents. There was a substantial increase this election and it does require special handling that slows the entire process but we feel that the overall benefit far outweighs the down side. Please support this as an ongoing option for overseas voters."

**Los Angeles County:** "Absolutely, the practice of allowing faxed ballots should continue. Obviously, faxing should never be a standard voting method. 1) It does compromise, however slightly, ballot secrecy. 2) The machines in use at this office could overload. 3) Some faxes arrive incomplete or illegible. However, it should be explicit in the Elections Code that the fax option exists for voters inside the U.S. at discretion of the election jurisdiction. It should be available to any applicant out of county near election day whose ballot hasn't arrived or, for that matter, for shut-ins in-county. It is commonly available technology, and, for both the voter and the elections office, it is cheaper than overnight mailing and sending out drivers."

**Madera County:** "Faxing ballots is an easy way for military/overseas voters to return their ballots. Most do not care that they lose the secrecy of their ballot, they just want to vote and have it count. I would recommend that faxing continue to be an option for voters."

**Marin County:** "Overseas voters expressed appreciation for the opportunity to vote via fax. There were only a handful of voters who did not have access to a fax because of their remote location. The 'Oath of Voter' or 'Voter's Declaration/Affirmation – Federal Write-In Absentee Ballot (FWAB)' form was consistently included with faxed ballots. It is recommended that the practice of allowing faxed ballots be continued."

**Monterey County:** "The program should continue, and we should accept returns via email as well (scanned pdf's). We did receive a couple without the oath but we were able to contact the voter and get all required forms. We experienced no delays in tabulation."

**Orange County:** "The County of Orange had an overwhelming amount of fax ballots received. We do believe that voters should be allowed to fax their ballots. It is convenient for them, particularly if they have a short timeframe to return it. Due to the number of voters wishing to fax their ballots, we did experience difficulty with the fax being busy, so we received calls stating they couldn't get through. This is an internal problem which we will resolve. Faxed ballots did increase the number of ballots which needed to be duplicated due to the quality of the faxed ballots."

**Placer County:** "Allowing Special Absentee Voters to continue to return their ballots via fax ensures that individuals who might otherwise be at a disadvantage when relying on traditional voting means retain their right to vote."

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**San Diego County:** "Experienced 68% increase in return of ballots by facsimile compared to November 2004. No problems or delay to tabulation caused by processing of facsimile ballots. 37 faxed ballots did not include signed oath of voter. Recommend continued practice of allowing UOCAVA voters to return ballots via fax. Significant number of voters' ballots would not have arrived on time if fax return was not an option."

**San Francisco County:** "The most common problem that San Francisco encountered during the November 4<sup>th</sup> election was the return of faxed ballots without the signed oath of voter. San Francisco did experience a significant increase in special absentee voting. I would recommend the practice of allowing faxed ballots to be continued because it allows military and overseas voters a fail-safe option to return their voted ballot. Most overseas voters who do not have reliable mail service or wish to forgo expensive courier service are thrilled to know that they can return their ballots by fax transmission. Waiving their right to a secret ballot was, for most overseas voters, not an issue."

**San Mateo County:** "Allowing faxed ballots is critical to the conduct of the election for UOCAVA voters. We did receive some faxed ballots without the oath but we did our best to contact the voter via phone, email, and fax to obtain an oath."

**Santa Barbara County:** "We experienced a high volume of returned ballots by fax this election. The difficulties we encountered were missing pages; portions of the ballot didn't come through clearly, or part of the ballot wasn't received in its entirety. We received numerous ballots without the signed oath of voter and oath of facsimile transmission. It is difficult and often impossible to reach the voter to ask them to resend the ballot."

**Santa Clara County:** "The voters loved it and were very grateful to be able to fax their ballots. It delayed the counting of the ballots because we had to duplicate every faxed ballot. I would recommend the allowing of faxed ballots."

**Santa Cruz County:** "Received a record number of faxed ballots in November – my two problems were that the voter did not return a signed oath and some faxed ballots were illegible. I did contact these voters when I was able to determine who sent the ballot. Faxed ballots do create more work in our office, since we are not provided with the original ballot ID envelope. I would also like to mention that faxed ballots create a bit of a challenge on days when I walk into the office and there are several waiting for me – I have to spend extra time making certain that I have matched the pages correctly. I am not happy with the practice of allowing faxed ballots, and I believe some voters fax when they could have mailed, but, in some cases, it is necessary. If some voters had to depend on the mail, the ballots would be late. I had several overseas voters that would prefer we also allow their ballots to be scanned and returned by e-mail."

**Shasta County:** "We would absolutely recommend continuing to accept faxed ballots. It would be better if more people took advantage of this practice."

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**Solano County:** "No problems. Yes, I do recommend that faxed ballots be allowed to continue. Many military members were grateful this method of voting was available."

**Sonoma County:** "We did not experience any delays in tabulating due to faxed ballots. All were returned with signed oaths. If people feel that they don't have enough time to return by mail if they are overseas, I don't feel that there is a problem faxing back their ballots. So, yes this practice should be able to continue for Military/Overseas and Overseas/Civilians."

**Sutter County:** "Yes, I would recommend faxed ballots should be continued, due to it does take some time for the ballots to get to the voters and this is the only way to get it back in time. It can sometimes take up to 3 weeks or more depending on the area. Plus we received some requests of new registrations in the last month of the election and there would not have been enough time going both ways (to and from the voter)."

**Ventura County:** "Our office experienced ballots returned without the oath of voter or any type of cover sheet. This made it difficult to notify the voter of any discrepancies."