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8 Attorneys for Plaintiffs Citizens Oversight Inc. and Raymond Lutz

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware)
12 non-profit corporation; RAYMOND LUTZ,))
13 an individual,)

14 Plaintiffs,)

15 vs.)

16 MICHAEL VU, San Diego Registrar of)
17 Voters; COUNTY OF SAN DIEGO, a)
18 public entity; DOES 1-10,)

19 Defendants.)

CASE NO: 37-2017-00027595-CU-MC-CTL

**COMPLAINT FOR DECLARATORY
RELIEF AND MANDAMUS FOR
VIOLATION OF THE CALIFORNIA
PUBLIC RECORDS ACT**

) CCP Section 1060
) CCP Section 1085
) California Public Records Act
) California Constitution Article 1, Section 3(b)
) California Government Code Section 6250

20 COME NOW, Plaintiffs who allege as follows:

21 This is an action for declaratory relief and mandamus to establish rights, duties and
22 obligations pursuant to the California Constitution Article 1, Section 3(b) and the California
23 Public Records Act as adopted by California voters in 2004 and codified by the Legislature
24 in California Government Code Section 6250, *et seq.* and for judicial remedies requiring the
25 San Diego County Registrar of Voters to comply herewith.

26 **Parties:**

27 1. Plaintiff, Citizens Oversight, Inc., is a Delaware non-profit corporation which
28 conducts election oversight nationwide as a non partisan watchdog of election

1 procedures and processes, doing business in the County of San Diego.

2 2. Plaintiff, Raymond Lutz, is a resident and registered voter in the County of San Diego
3 unincorporated area. Mr. Lutz is a nationally recognized advocate for election
4 integrity and national coordinator of www.citizenoversight.org who has conducted
5 extensive reviews and produced reports regarding election processes employed in San
6 Diego County since 2008.

7 3. Defendant Michael Vu is the County of San Diego Registrar of Voters ("Registrar")
8 and has held that appointed office since 2007. In that capacity, he is responsible for
9 conducting elections in compliance with California state law, including the California
10 Elections Code.

11 4. Defendant County of San Diego is a public entity organized in the State of California
12 and operates as an election district under the California State Election Code, with
13 principal offices in the County Administration Building, 1600 Pacific Highway, San
14 Diego, California 92101.

15 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
16 Defendants Does 1 through 10, inclusive, are unknown to Plaintiffs and Plaintiffs
17 therefore sue said Defendants by such fictitious names. Plaintiff will seek leave of court
18 to amend this complaint to show their true names and/or capacities when the same have
19 been ascertained. Plaintiffs are informed, believe and thereupon alleges that each of the
20 Doe Defendants are, in some manner, legally responsible for the events and happenings
21 herein set forth in this Complaint.

22 6. Plaintiffs are informed and believes and thereon alleges that at all times mentioned
23 herein, Defendants, and each of them, were employees, agents and/or servants of the
24 other Defendants, and each of them, were employees, agents and/or servants of the other
25 Defendants, and in doing the acts alleged herein, were acting within the course and scope
26 of such agency, employment and/or service.

27 **Summary of Case:**

28 7. The Registrar has refused to allow Plaintiffs request to inspect and copy ballots cast

1 by registered voters during the June 7, 2016, the California Presidential Primary
2 Election (“Presidential Primary”). Plaintiffs assert that such denial violates the
3 California Public Records Act.

4 **Factual Background.**

- 5 8. California Election Code Section 2300 is known as the Voter Bill of Rights, which
6 includes a provision that the public has both the right to observe the election process
7 and to report any suspected illegal or fraudulent activity to a local elections official or
8 to the Secretary of State. Although governmental agencies may be subjected to public
9 review using only the public records act, the elections departments are understood to
10 allow a higher level of scrutiny by the public and an expectation that the public will
11 be observing and reporting fraudulent activity.
- 12 9. In the Presidential Primary, there were 1.52 million registered voters in San Diego
13 County. There were 775,930 ballots cast in 184 contests involving 468 candidates
14 and 52 state and local propositions.
- 15 10. California Elections Code Section 15209 requires the Registrar to store all ballots
16 following a federal election, such as the Presidential Primary, for 22 months.
- 17 11. California ballots do not contain any personally identifiable voter information on the
18 ballot itself. Therefore, there are no privacy rights that could be compromised by
19 inspection of the ballots.
- 20 12. Between February 2, 2017, and February 17, 2017, Plaintiffs and Registrar engaged in
21 an email exchange wherein Plaintiffs requested, *inter alia*, view and review copies to
22 the ballots for review and Registrar declined to do so. A true and correct copy of this
23 email exchange is attached as Exhibit 1 hereto and hereby incorporated by this
24 reference as if set forth in full herein.
- 25 13. On or about April 4, 2017, Plaintiffs, through legal counsel, demanded access to
26 inspect and copy the stored ballots of the Presidential Primary. A true and correct of
27 this letter is attached as Exhibit 2 hereto and hereby incorporated by this reference as
28 if set forth in full herein.

1 14. On or about April 11, 2017, Registrar, through legal counsel, declined Plaintiffs
2 request stating that the ballots are sealed pursuant to California Elections Code
3 Sections 15370 and 17301(b) and that the Registrar is not permitted to open any
4 ballots or permit any ballots to be opened pursuant to California Elections Code
5 Section 15307. A true and correct copy of this letter is attached as Exhibit 3 hereto
6 and hereby incorporated by this reference as if set forth in full herein.

7 15. Plaintiffs have, therefore, exhausted any administrative remedy and the Registrar is
8 unwilling to reach a private compromise of this dispute.

9 **I.**

10 **FIRST CAUSE OF ACTION**

11 **(DECLARATORY RELIEF)**

12 (All Defendants)

13 16. Plaintiffs repeat, re-allege and incorporate herein paragraphs 1 through 15 inclusive,
14 as though set forth in full herein.

15 17. Plaintiffs are unable to complete their analysis on behalf of the public interest of the
16 Presidential Primary without the ability to inspect, copy and review the ballots.

17 18. Defendants dispute the Plaintiffs' request under the California Public Records Act
18 because the ballots from the Presidential Primary have been sealed pursuant to
19 California Elections Code Sections 15370 and 17301(b) and once sealed "the
20 elections official may not open any ballots or permit any ballots to be opened. . .".

21 19. An actual controversy has arisen and now exists between Plaintiffs and Defendants,
22 and each of them. Plaintiffs alleges that the California Constitution, Article 3(b) and
23 the California Public Records Act require the Registrar to allow Plaintiffs to inspect
24 and/or copy the ballots as public records subject to the California Public Records Act.
25 Defendants state that California Elections Code Sections 15370 and 17301(b)
26 requiring the election official to seal the ballots following the official canvass of the
27 election, prohibit the election official from allowing view and review copies to the
28 ballots.

1
2 WHEREFORE, Plaintiffs pray this court for:

- 3 1. A declaration of the rights, duties and obligations of the parties concerning
4 their dispute including, but not limited to Plaintiffs right to inspect and copy
5 the ballots as public records;
6 2. Attorney fees and costs of suit, pursuant to California Code of Civil Procedure
7 Section 1021.5;
8 3. Such other and further relief as may be appropriate and just.

9 **II.**

10 **SECOND CAUSE OF ACTION**

11 **(MANDAMUS CCP SECTION 1085)**

12 **(All Defendants)**

- 13 20. Plaintiffs repeat, re-allege and incorporate herein Paragraphs 1 through 19 inclusive,
14 as though set forth in full herein.
15 21. Plaintiffs allege that Defendants, and each of them, may not deny Plaintiffs the right
16 to inspect, copy and review the ballots from the Presidential Primary as a matter of
17 law.
18 22. Despite Plaintiffs' attempt to obtain from Defendants, and each of them, voluntary
19 compliance with California Government Code Section 6250, *et seq*, such voluntary
20 compliance was and is not forthcoming.
21 23. The general policy of the California Public Records Act favors disclosure. "Public
22 records" include "any writing containing information relating to the conduct of the
23 public's business prepared, owned, used, or retained by any state or local agency
24 regardless of physical form or characteristics." California Government Code 6252(e)
25 "Writing" is defined as including every "means of recording upon any tangible thing
26 any form of communication or representation, . . . and any record thereby created,
27 regardless of the manner in which the record has been stored." (California
28 Government Code 6252(g))

1 24. Although certain exemptions from disclosure are provided by the California Public
2 Records Act, the exemptions adhere to protecting privacy and various privileges.
3 None of these exemptions apply to the production of ballots for inspection and
4 copying because no personally identifiable voter information is on the ballots.

5 WHEREFORE, Plaintiffs pray that this court:

- 6 1. Require Defendants, and each of them, fully comply with the
7 requirements of the California Public Records Act;
- 8 2. Award attorney fees pursuant to California Code of Civil Procedure
9 Section 1021.5 and costs of suit against Defendants, and each of them;
- 10 3. Order such other and further relief as may be appropriate and just.

11
12 Dated: July 24, 2017

Alan L. Geraci

13 By: Alan L. Geraci, Esq. of CARE Law
14 Group PC, Attorneys for Plaintiffs Citizens
15 Oversight Inc. and Raymond Lutz
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Subject: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

From: Ray Lutz <raylutz@citizenoversight.org>

Date: 02/02/2017 6:16 PM

To: "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>

CC: timothy.barry@sdcounty.ca.gov, Bill Simpich <bsimpich@gmail.com>, Dwana Bain <dwana.bain@gmail.com>, "Alan L. Geraci" <alan@carelaw.net>

Dear Mr. Vu:

I have filed a CONTEST to the 2016 Primary Election, which is still pending. The contest document is attached. This CONTEST gives me additional rights in terms of review of the 2016 primary election.

1. I and my associates wish to conduct recount of the presidential race in the June 2016 primary in certain batches or precincts of ballots. Please provide details on cost for your office to conduct the recount or time and date when we can access the ballots to conduct the recount using our own personnel. We want to recount only a very few selected batches or precincts and only for that one race, and that may expand based on our results. We intend to do this in a manner which will avoid any undo or difficult processing of the batches or precincts and will want to process them directly as you have them stored. That is, if we choose to review VBM ballots, we will do it by batch.

2. As part of the above recount, we must be able to review any WHITE OUTS and other ENHANCEMENTS on the ballots.

3. We wish to inspect the manual tally sheets and other documents generated in the 1% manual tally audit in the June Primary.

Please let us know of the logistics and details so we may progress this oversight project. we have attempted to time this project so it would not conflict with your duties in processing the elections.

Sincerely,

Ray Lutz

--

Ray Lutz
Citizens' Oversight Projects (COPs)
<http://www.citizenoversight.org>
619-820-5321

2017 FEB -7 P 1:41
REC'D S. D. CO. ROV

—Attachments:—

ElectionContest-RaymondLutz-SanDiego.pdf

2.0 MB

Subject: RE: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

From: "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>

Date: 02/07/2017 5:29 PM

To: 'Ray Lutz' <raylutz@ciizenoversight.org>

CC: "Barry, Timothy M" <Timothy.Barry@sdcounty.ca.gov>, Bill Simpich <bsimpich@gmail.com>, Dwana Bain <dwana.bain@gmail.com>, "Alan L. Geraci" <alan@carelaw.net>

Mr. Lutz:

Please see responses below.

Sincerely,

Michael Vu

-----Original Message-----

From: Ray Lutz [<mailto:raylutz@ciizenoversight.org>]

Sent: Thursday, February 02, 2017 6:17 PM

To: Vu, Michael

Cc: Barry, Timothy M; Bill Simpich; Dwana Bain; Alan L. Geraci

Subject: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

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I have filed a CONTEST to the 2016 Primary Election, which is still pending. The contest document is attached. This CONTEST gives me additional rights in terms of review of the 2016 primary election.

1. I and my associates wish to conduct recount of the presidential race in the June 2016 primary in certain batches or precincts of ballots.

Please provide details on cost for your office to conduct the recount or time and date when we can access the ballots to conduct the recount using our own personnel. We want to recount only a very few selected batches or precincts and only for that one race, and that may expand based on our results. We intend to do this in a manner which will avoid any undo or difficult processing of the batches or precincts and will want to process them directly as you have them stored. That is, if we choose to review VBM ballots, we will do it by batch.

Response: The time period to request a recount has passed and the ballots for the 2016 June Primary Election have been sealed per State law.

2. As part of the above recount, we must be able to review any WHITE OUTS and other ENHANCEMENTS on the ballots.

Response: Please see response above.

3. We wish to inspect the manual tally sheets and other documents generated in the 1% manual tally audit in the June Primary.

Response: Documents and files associated with the 1% Manual Tally for the June 2016 Primary Election were provided to you on June 8, 2016, July 19, 2016 and August 8, 2016.

Please let us know of the logistics and details so we may progress this oversight project. We have attempted to time

this project so it would not conflict with your duties in processing the elections.

Sincerely,

Ray Lutz

--

Ray Lutz

Citizens' Oversight Projects (COPs)

<http://www.citizenoversight.org>

619-820-5321

Subject: Re: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

From: Ray Lutz <raylutz@citizenoversight.org>

Date: 02/17/2017 9:56 AM

To: "Vu, Michael" <Michael.Vu@sdcountry.ca.gov>

CC: "Barry, Timothy M" <Timothy.Barry@sdcountry.ca.gov>, Bill Simpich <bsimpich@gmail.com>, Dwana Bain <dwana.bain@gmail.com>, "Alan L. Geraci" <alan@carelaw.net>

Dear Mr. Vu:

1. In #1 and #2 below, per California Public Records Act, please provide the legal basis for withholding ballots from our inspection. Please specifically state which exemption you are claiming and how the exemption applies. Gov't Code § 6253(c).

2. Regarding records of 1% manual tally, we were not provided with the actual TALLY SHEETS nor the TOTALS OF THE VOTE counts in each race. The early VBM total of ballots cast did NOT match the number cast in the snapshot data file. Therefore, we need to know if the vote totals used in the 1% manual tally were the same as the snapshot file. To discover this fact, we can look at the tally sheets of the VBM precincts tallied. Since these are PUBLIC RECORDS that you are required to keep for 22 months, please let us know when we can inspect these records.

3. Please DO NOT DESTROY ANY RECORDS from the 2016 elections.

--Ray Lutz

On 02/07/2017 5:29 PM, Vu, Michael wrote:

Mr. Lutz:

Please see responses below.

Sincerely,

Michael Vu

-----Original Message-----

From: Ray Lutz [<mailto:raylutz@citizenoversight.org>]

Sent: Thursday, February 02, 2017 6:17 PM

To: Vu, Michael

Cc: Barry, Timothy M; Bill Simpich; Dwana Bain; Alan L. Geraci

Subject: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

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Response: The time period to request a recount has passed and the ballots for the 2016 June Primary Election have been sealed per State law.

2. As part of the above recount, we must be able to review any WHITE OUTS and other ENHANCEMENTS on the ballots.

Response: Please see response above.

3. We wish to inspect the manual tally sheets and other documents generated in the 1% manual tally audit in the June Primary.

Response: Documents and files associated with the 1% Manual Tally for the June 2016 Primary Election were provided to you on June 8, 2016, July 19, 2016 and August 8, 2016.

Please let us know of the logistics and details so we may progress this oversight project. we have attempted to time this project so it would not conflict with your duties in processing the elections.

Sincerely,

Ray Lutz

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Ray Lutz

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<http://www.citizenoversight.org>

619-820-5321

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Ray Lutz

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<http://www.citizenoversight.org>

619-820-5321

ALAN L. GERACI, ESQ.
alan@carelaw.net

CARE LAW GROUP PC

File No.: Citizens2017

817 W. SAN MARCOS BLVD. SAN
MARCOS, CALIFORNIA 92078
TELEPHONE (619) 231-3131
FACSIMILE (760)650-3484

April 4, 2017

Timothy Barry, Chief Deputy County Counsel
San Diego County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101
Sent by email Timothy.Barry@sdcounty.ca.gov and first class mail.

Re: Registrar of Voters: California Public Records Act

Dear Mr. Barry:

This office is further engaged to assist Citizens Oversight, a public non-profit organization, with its further attempt to inspect the ballots from the June 6, 2016, Presidential Primary (“ballots”). As you know, pursuant to Elections Code Section 17305(b), the ballots for any election including federal races must be maintained for 22 months following the election. This request is made pursuant to the California Public Records Act. (California Government Code Section 6250, *et seq*) (“Act”)

Cal. Const., Art. I, § 3(b), adopted by the voters at the November 2004 general election, guarantees the public's right of access to public records and governmental meetings and permits inspection and copying of public records of state and local government agencies. (California Government Code 6252(a) and (f), *Cook v. Craig* (1976) 55 C.A.3d 773, 781) The general policy of Act favors disclosure. “Public records” include “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” California Government Code 6252(e) “Writing” is defined as including every “means of recording upon any tangible thing any form of communication or representation, . . . and any record thereby created, regardless of the manner in which the record has been stored.” (California Government Code 6252(g)) Certain exemptions from disclosure are provided by the Act. The exemptions carry the basic theme of privacy and privilege protections. None of the exemptions apply to the production of ballots by the Registrar of Voters because no voter-identifiable information is on the ballots.

Public records “are open to inspection at all times during the office hours of the state or local agency.” Govt.C. 6253(a) But every agency may adopt regulations stating the procedures to be followed. Govt.C. 6253.4(a) Any person may receive a copy of an identifiable public record and, on request, an “exact copy” must be provided unless it is “impracticable” to do so. Govt.C. 6253(b). Agencies may impose reasonable restrictions on general requests for voluminous classes of documents, e.g., by requiring “specific requests for copies of specific documents.” *Rosenthal v. Hansen* (1973) 34 C.A.3d 754, 761.

Timothy Barry, Chief Deputy County Counsel
California Public Records Act
Request for Production of Ballots
April 4, 2017
Page 2 of 2

My client would like to set aside a specific time frame, i.e. one week to conduct its inspection of the ballots. I am unaware of any specific procedures or policies the Registrar may have concerning production pursuant to the Act but my client understands that the any inspection would be done under their supervision.

I look forward to hearing from you concerning this matter. Thank you for your anticipated cooperation. Please feel free to call with any questions or comments you have.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Alan L. Geraci". The signature is written in a cursive style with a large, stylized initial "A".

By: Alan L. Geraci of
CARE Law Group PC

cc Citizens Oversight



County of San Diego

THOMAS E. MONTGOMERY
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL
1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101
(619) 531-4860 Fax (619) 531-6005

DENNIS I FLOYD
SENIOR DEPUTY
Direct Dial: (619) 531-6219
E-Mail: dennis.floyd@sdcounty.ca.gov

April 11, 2017

Alan L. Geraci
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078

RE: Public Records Act Request – Citizens Oversight

Dear Mr. Geraci:

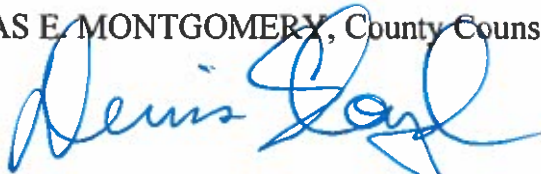
This Letter is in response to your client's April 4, 2017 request, made pursuant to the California Public Records Act, to unseal and inspect the voted ballots from the June 6, 2016 Presidential Primary. The ballots from the June election have been sealed pursuant to California Elections Code 15370 and 17301(b). Once sealed pursuant to these sections, "the elections official may not open any ballots or permit any ballots to be opened. . . ." (Elections Code §15307.) Elections Code §17301(b) also requires that voted ballots in Presidential Elections be kept sealed and "shall be kept by the elections official unopened and unaltered. . . ." Although there are exceptions to the sealing requirement, none apply to your client's Public Records Act request.

Documents whose disclosure is exempted or prohibited by state law are not subject to disclosure under the Public Records Act. (Government Code §6254(k). See also Evidence Code §1040(b)(1).) The ballots you have requested will not be unsealed or made available for your client's inspection.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By


DENNIS I FLOYD, Senior Deputy