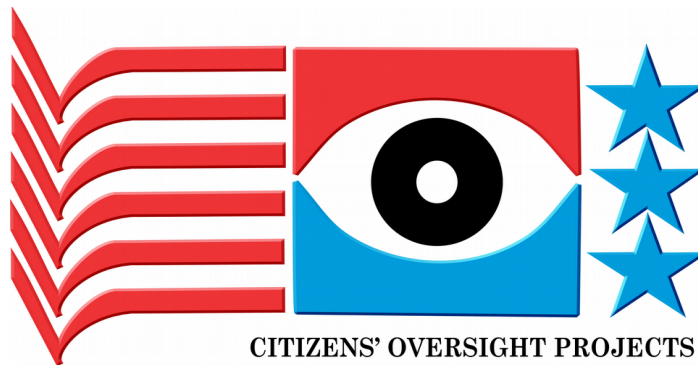**Citizens' Oversight Projects (COPs)**
771 Jamacha Rd #148
El Cajon, CA 92019
CitizensOversight.org
619-820-5321

June 19, 2018

California Secretary of State
Investigative Services
1500 11th Street, 2nd Floor
Sacramento, CA 95814
Fax: (916) 653-8728

Election Voter Complaint

Complainant Information

Name:	Raymond Lutz
Organization:	CitizensOversight.org
Address (org)	771 Jamacha Rd 148, El Cajon, CA 92019
Address (voter)	1010 Old Chase Ave, El Cajon, CA 92020
Email	raylutz@citizensoversight.org
Phone	619-820-5321

Person(s) or Organization(s) Against Whom Complaint Is Brought

Name	Michael Vu
Organization(s)	San Diego County Registrar of Voters
Position	Registrar of Voters

Statement of Facts

Attached, please find the "Second Amended Statement of Contest" (SASOC) as Attachment A. This contest was filed in a timely manner and should have been allowed. Unfortunately, the court ruled improperly to dismiss the contest based on matters of FORM. The County argued that the Secretary of State would be the correct entity to investigate these concerns. I can provide the other documents from this case if you think they will assist in your investigation.

1. Vu refused to answer questions of March 20, 2017 as required per Election Code 2300 regarding the 2016 Primary. See SASOC ¶23-26 and exhibits 1, 2 & 3 of that document. It should be noted that here, Vu says the questions are not appropriate because they are not during the election. However, we only were able to determine the facts of what happened after the hand tally sheets were available, and after our first lawsuit regarding the later VBM ballots which were omitted from the 1% manual tally. This is all explained in the SASOC, but I want to make the point that the contest likely would not have been pursued had Vu answered the questions posed in the March 20, 2017 letter.

2. See the balance of the SASOC for the detailed explanation of my concerns regarding the discrepancies and the rationale for reviewing the ballots. It was my goal to do a sampling inspection of the Early VBM ballots to ascertain if there was any extensive tampering by Vu and

his staff. The 1% manual tally audit ideally should review pristine boxes of ballots, not be prestacked for a week by 70 workers.

3. Vu refused to answer questions as required per Election Code 2300 regarding the 2018 Primary. See Attachment B. Although this letter was confirmed as received by Attorney Timothy Barry of the County Counsel's Office, he also confirmed verbally that they had no intention to answer any of my questions. Here, I provided my questions only one time during the election, and in the election season so Vu cannot say it is too far away from the election season. But they are just ignoring these questions in blatant violation of Section 2300.

4. I continue to be concerned about the use of white-out on ballots with no written procedure, no logging, or reporting, and with only one person watching. This practice is continuing today, and should be halted. At a minimum, Vu should keep track of what is done by logging and prepare a report of the extent of the whiting out of ballots.

5. Vu admitted under oath that he hired 70 people to work for a week to rifle through ballots and pre-stack precincts to be hand tallied in the 2016 manual tally. The results in the Early VBM ballots, were inconsistent with the other results.

6. We were unable to look at the ballots but I presume you can, and demand that you investigate. Please contact the San Diego Registrar and order them to retain the ballots for your review. I can provide precise instructions for reviewing these ballots so as to determine if the Early VBM ballots were improperly manipulated so as to cause Hillary Clinton to prevail by a landslide even though she did not win in the other ballot categories. If the inquiry does provide evidence of tampering, then Vu should be removed. If not, then the inquiry serves to improve voter confidence in an election that has been questioned by many across the country.

7. For your convenience, I am also providing documents related to the motion to dismiss the contest because that provides the basis for my assertion that the court improperly ruled to dismiss this case.

As this is the first complaint of this time to your office, I would appreciate it if you would keep me abreast in terms of the status of your inquiry, and if there is any other questions you might have or require additional clarification or other information, I would be glad to provide to you. Please confirm that you have received this complaint.

Verification
I acknowledge that all of the above information is true and accurately reflects the matter in question, to the best of my knowledge.

June 19, 2018

Sincerely,

Raymond Lutz
National Coordinator, Citizens' Oversight Projects

ATTACHMENT "A"

Raymond Lutz
1010 Old Chase Ave
El Cajon, CA 92020
Telephone: 619-820-5321
Email: raylutz@citizensoversight.org

RAYMOND LUTZ, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAYMOND LUTZ
 	
                    Contestant,
 	
    vs.
 	
HILLARY CLINTON, Democratic Presidential Party candidate, and DOES 1-10
 	
                    Defendant(s).
	Case No.: 37-2016-00023347-CU-PT-CTL
	
	CONTEST OF 2016 PRIMARY BY LUTZ
	
	SECOND AMENDED AFFIDAVIT
	
	(Elections Code Section 16000 et seq.)
	
	Judge: Hon. Laura H. Parsky
	Dept: C-27
	Action Filed: 07/11/2016
	Trial Date: Unassigned

    1. The focus of this action is the Democratic Presidential Party primary election of 2016 in San Diego County.

    2. The following is set forth per the provisions of California Elections Code Section 16400:

        (a) I, RAYMOND LUTZ, am an elector in San Diego County, where this contested election was held.

        (b) The name of the defendant is HILLARY RODHAM CLINTON.

        (c) The office is PRESIDENT (Primary of the Democratic Party).

        (d) The particular grounds of contest and the section of this code under which the statement is filed is provided in detail in Appendix 1.

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(e) The date of declaration of the result of the election by the body canvassing the returns thereof for San Diego County was July 6, 2016.

3. **VERIFIED:** Verification is provided per California Elections Code Section 16401 at the end of the first part of this document.

4. **TIMELY FILED:** The original Affidavit of Contest was filed with the Superior Court of Calfornia on July 11, 2016, within 5 days after the certification on July 6, 2016.

5. **San Diego County and San Diego County Registrar of Voters Michael Vu**, are not defendants have no standing in the contest although as the county of jurisdiction and the election official in charge of the election, they are required to perform ministerial duties to implement the CONTEST process. We accuse neither Defendant Hillary Clinton nor the County of San Diego of any wrongdoing at this point in the process.

6. California Elections Code Section 18002 provides that the County of San Diego and San Diego Registrar of Voters are obligated to perform their duties with regard to this contest or be punished, as follows:

> Every person charged with the performance of any duty under any law of this
> state relating to elections, who willfully neglects or refuses to perform it, or who, in
> his or her official capacity, knowingly and fraudulently acts in contravention or
> violation of any of those laws, is, unless a different punishment is prescribed by this
> code, punishable by fine not exceeding one thousand dollars ($1,000) or by
> imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16
> months or two or three years, or by both that fine and imprisonment.

7. This affidavit of contest is focused specifically on Section 16100 (a) and (g), specifically, "Any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes:

"(a) That the precinct board or any member thereof was guilty of malconduct," or...

"(g) That there was an error in the vote-counting programs or summation of ballot counts."

The exact claims are made specifically in Appendix 1.

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

8. **FORM not important:** According to Election Code section 16403,

> "A statement of the grounds of contest shall not be rejected nor the proceedings dismissed by any court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the election is contested."

I request that the court not dismiss our affidavit of contest for want of form, per this section.

9. **SERVICE:** According to Election Code section 16462,

> "No service other than as provided in this section need be made upon the defendant. The affidavit shall be filed in the office of the clerk of the superior court within five days after the completion of the official canvass. Upon the filing of the affidavit the county elections official shall forthwith post, in a conspicuous place in his or her office, a copy of the affidavit. Upon the filing of the affidavit and its posting, the superior court of the county shall have jurisdiction of the subject matter and of the parties to the contest. The contestant on the date of filing the affidavit shall send by registered mail a copy thereof to the defendant in a sealed envelope, with postage prepaid, addressed to the defendant at the place of residence named in the affidavit of registration of the defendant, and shall make and file an affidavit of mailing with the county elections official, which shall become a part of the records of the contest."

Service was performed in this manner, and documented in the companion Proof of Service.

10. **TIME OF SERVICE** – According to California Rules of Court. Rule 3.110 (b) "The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint."

Regretfully, the original affidavit, filed by Attorney William Simpich, was not correctly served. This deviation from standard protocol should be disregarded for the following reasons:

a) When the First Amended Affidavit of Contest was finally processed, I became aware of the fact that service on the original affidavit was incorrectly performed. I simultaneously filed a

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Substitution of Attorney to *Pro Per* and correctly filed and served the First Amended Affidavit of Contest, by registered mail, as defined by California Election Code Section 16462.

b) The original Affidavit of Contest envisioned the County of San Diego and Micheal Vu as the real defendants in the case, and the County typically waives the requirement of service.

c) Election Code Section 16403 says the case should not be dismissed for want of form. The exact manner of service is a matter of form.

d) The defendant in this contest is not accused of any wrongdoing. Thus, in this case, the timeliness of service is not critical. As soon as this was recognized, service was performed according to the regulations and nothing has occurred yet which the defendant is not aware.

e) Although many days have passed since this election, we have been engaged in a series of inquiries and legal actions such that any notion that we have not been pursuing our interest in this case should be disregarded.

f) Election code sections make reference that contests may commence any time during the 22-month period which the ballots are required to be kept by the elections officials. For example, California Elections Code Section 17303, regarding "those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative." (d) says election documentation may only be destroyed "If a contest is not commenced within the 22-month period." Therefore, the notion that a contest can be commenced at any time during the 22-month period is accepted by the elections code.

11. Although I claim that San Diego County and the San Diego Registrar of Voters, Michael Vu, have no direct standing in this case, we are also serving them in the same manner as the defendant (and also will receive an electronic courtesy copy) to insure they are properly informed, and our contact at the California Secretary of State will also receive an electronic copy of this filing.

12. **APPROPRIATE VENUE:** According to Election Code Section 16461. "The superior court of that county in which is located the precinct in which the contestant demands a recount has jurisdiction." All of the precincts of interest in our CONTEST are in San Diego County, and therefore, it is the appropriate venue.
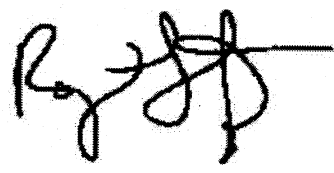
CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

13. Therefore, I DEMAND:

a) **SAN DIEGO COUNTY PERFORM THEIR MINISTERIAL DUTY** to implement the contest, including defining procedures and costs for such implementation. This implementation to include items (b) through (h) below.

b) **ACCESS TO VOTED BALLOTS** in the 2016 Primary Election, so that I (and other volunteers, i.e. "we") may conduct an independent audit, most specifically regarding the Early VBM ballots. The County claims that these ballots are SEALED, and if they refuse to grant access, then the court should order them unsealed.

c) **THE RIGHT TO CONCEAL** the exact identity of the batches of ballots to be reviewed until the time and date when access is granted, so that it will be a surprise to the registrar.

d) **TO WITNESS UNSEALING** the ballots, to ensure that no tampering occurs.

e) **TO SCAN OR PHOTOGRAPH** the ballots selected for our review, such as by using a high-speed scanner, or similar equipment (which I will provide and provide volunteers who will operate that equipment). By imaging the ballots, if we are to submit our evidence to the Secretary of State or other law enforcement agencies for criminal prosecution, we can easily produce clear and convincing evidence to that end and avoid further cost to the County.

f) **THAT THE COUNTY WILL NOT DESTROY BALLOT EVIDENCE** until we are granted access and have time to review and scan the ballots.

g) **TO INSPECT "WHITE OUT" USED ON ANY BALLOTS INSPECTED,** including "under" the tape so we can inspect the underlying ballot so as to confirm that the white-out was appropriately used.

h) **TO VIDEO RECORD AND PHOTOGRAPH** – Because of the interest of the public in this case, I request that video cameras be allowed during the inspection and scanning of the ballots, and also if there are any hearings in this matter, that video recordings of those proceedings be allowed, at my cost. I agree to employ best effort to avoid revealing any confidential information in such recordings. The Registrar of Voters is a public official and the topic of this case is regarding those official duties that is a great interest by the public.

Voted ballots have no identifying marks and such recordings will not reveal any private information.

Our elections are a very important foundation of our democracy in our country, and I request the full discretion of the court to assist me in obtaining relief, in a timely manner with priority as specified in Election Code Section 16003.
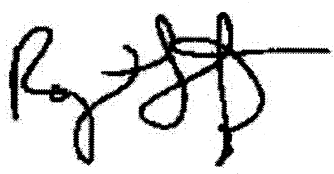
DATED: December 27, 2017

RAYMOND LUTZ
In Pro Per

VERIFICATION

I am a party to this action. I declare under penalty of perjury that the matters in this document are true of my own personal knowledge, except those matters alleged on information and belief, and as for those matters, I believe them to be true. Executed on December 27, 2017.

Raymond Lutz

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

APPENDIX 1 – BASIS FOR THE CONTEST

14. This appendix specifies "separately each precinct in which any irregularity or improper conduct took place, or in which a recount is demanded, and the nature of the mistake, error, misconduct, or other cause of contest," as required by California Elections Code Section 16404, and to create a complete record that can be reviewed and understood by members of the public.

15. I, Raymond Lutz, am the founder of Citizens Oversight, Inc., and I participated with other volunteers in providing oversight of the election conducted in June, 2016, as is defined as my right under Election Code 2300, the Voter's Bill of Rights. Any mention of "We" or "Our" relates to both my own observations and those of others who I worked with.

16. ELECTION AUDIT LAWSUIT: In the same election of June, 2016, I was co-plaintiff (with Citizens Oversight, Inc) in a Complaint for Declaratory Relief regarding the conduct of defendant Michael Vu, Case Number: **37-2016-00020273-CL-MC-CTL**, heard by Hon. Joel Wohlfiel in Dept 73 ("Election Audit Lawsuit"). This case was specifically regarding whether election code section 15360 on the 1% manual tally audit requires that the audit include a 1% sample from all vote-by-mail (VBM) ballots and accepted provisional ballots. The defendant, Michael Vu and the County of San Diego, asserted that only the ballots received and processed by election night need be included in the audit, omitting about 37% of the ballots, some 285,000 from the audit process.

The trial in this matter occurred October 4,5,6, and 10, 2016. On January 10, 2017, the court ruled substantially in our favor, that indeed it was proper that all VBM ballots should be included. The Court did not side with us on the question of whether provisional ballots must also be included. However, it is our position that this was mainly due to a false assertion by the defendant that we were contending that all provisional ballots, including even those that were invalidated, should be included in the audit, when in fact that was never one of our contentions, nor does it even make any sense because invalidated provisional ballots remain in their unopened provisional envelopes, and are impossible to audit.

That case has been appealed by both sides, ours, to include the provisional ballots, and the defendants, to remove the requirement that the later-VBM and provisionals need be included.

17. During the processing of that case, we learned that the "early VBM" ballots, those that were received and processed prior to 8pm on election night, were processed with an irregular procedure. The Registrar of Voters (ROV) staff under direction of the defendant, Michael Vu, conducted the random selection per Election Code 15360 within the first several days after the election. I, and other volunteers, attended that meeting and video-recorded it. The ROV selected 16 random precincts for the audit of the polling place ballots, which is 1% of the 1522 precincts in the election (rounded up), and 8 "batches," which is 1% of the 723 (mixed precinct) batches of VBM ballots which had arrived and had been processed prior to 8pm on election night (AKA "Early VBM" Ballots).

It is the practice of the San Diego Registrar of Voters to group VBM ballots into mixed-precinct "batches", (sometimes called "decks") with nominally 400 ballots (or less) in each. Election Code section 15360 provides two methods for doing the audit, one purely by precinct, and the other allows the VBM portion to be done by batch. The second method was added by Assembly Bill 985 in 2011, specifically to help election districts complete the full extent of the audit during the 28-day canvass period, including the VBM ballots.

Thus, in this election, the San Diego ROV had elected to use the "batch" method .

Just after the random selection meeting, I questioned the fact that 1% of the remaining batches comprising 285,000 ballots (the "Later VBM" and accepted provisional ballots) were not also randomly selected by batch. Vu confirmed that it was his intention to not include those ballots in the audit, contrary to the clear language of Election code section 15360, and we requested that he follow the law and include the remaining ballots in the audit process. Vu refused to alter the manner in which he was conducting the audit, and that is when we filed the Election Audit Lawsuit.

18. Several days after the Election Audit Lawsuit was filed, Vu announced that it was now his intention to process the Early VBM ballots by precinct rather than by batch. We learned in testimony at the trial that Vu hired 40 workers who worked for a week to rifle through the batches

of early VBM ballots to collect the ballots from the precincts selected for the polling-place portion

of the audit and make up the precincts necessary for the audit.

19. Since about 2012, I and others have learned that it is impossible to follow the 1% manual

tally audit unless the election night results are obtained so as to compare with the subset of ballots

included in the audit process. This report is called the "semi-final canvass," and it includes the Early

VBM ballots and the polling-place ballots (polls ballots), but does not include the Later VBM nor

the provisional ballots. If they conduct the 1% manual tally only on this subset of the ballots, then

comparing with the final results is impossible, since that first set is only approximately 60% of the

ballots, while the Later VBM and provisionals comprise about 40% of the ballots. The final results

are so different that it is impossible to observe the election using that data.

20. In the 2016 election, we obtained this "snapshot" of the election results, the semifinal

canvass, at the same time that we attended the random selection meeting. As I have defined in the

"snapshot protocol," it is necessary to obtain the semi-final canvass snapshot PRIOR TO the

random selection meeting to ensure that any hacker or compromised employee could NOT correct

the computer counts once they know the precincts selected for audit. If we have the file ahead of

time, then the semi-final canvass "snapshot" cannot be modified.

21. **DISCREPANCIES:** On Feb 2, 2017, I (working under the umbrella of Citizens

Oversight), sent an email to Michael Vu with subject "Request for recount of certain ballots in 2016

Primary; access to manual tally sheets and other records" **(See Exhibit 1).** Vu complied with the

requests and on March 16, 2017, I and number of volunteers photographed those tally sheets to

reveal the total number of ballots in each of the precincts, and the actual vote count, which was the

result of the audit process. The actual vote count is unfortunately not revealed in the 1% manual

tally report produced by Vu.

22. After we collected the actual tallied results, it was possible to ascertain the actual number

of ballots included in the manual tally and the vote totals. In many cases, the number of ballots

included in the audited precincts did NOT match the snapshot computer file, both in the raw number

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

1 of ballots and in the actual vote totals. Therefore, a new computer file had to have been used by the

2 registrar, contrary to election audit law and common sense.

3   23. On March 20, 2017, I sent a letter to Vu describing the inconsistencies and asked Vu to

4 explain these discrepancies **(Exhibit 2, Item 3)** and on April 12, the county responded **(Exhibit 3)**

5 that they were unwilling to provide any answer, stating that also that the County no longer had any

6 duty to answer questions after election day, and that litigation was pending due to the appeal.

7   24. Although no further response was provided directly to the County regarding those

8 assertions, for the record, I contend here that Election Code section 2300 does not say the duty of

9 the election office to answer questions is confined only to election day, and such an assertion makes

10 no sense, because the entire canvass period is of concern, including days before and after the

11 election, and some of our inquiries was felt to be too disruptive during that period, so we

12 respectfully waited until the lull between elections to do our further work. Thus, their assertion that

13 no answers need be given except on election day is unsupportable.

14   25. The county also said that they need not answer our questions due to the appeal of the

15 Election Audit Lawsuit. However, after our filing of the "CPRA Ballot Access Lawsuit" (described

16 later in this document), and subsequent filing of a "Notice of Related case", the County objected

17 and said that the CPRA Ballot Access Lawsuit had nothing to do with the Election Audit Lawsuit.

18 Thus, by their own assertion, these cases are unrelated, and that they must therefore answer our

19 questions under section 2300, as those questions are related to the discrepancies in the Early VBM

20 set of ballots, for which there is no dispute that they must be included in the 1% manual tally, and

21 therefore the responsibility of the County to answer questions under section 2300 cannot be

22 withheld just because some other case exists about an unrelated aspect of the audit process.

23   26. Thus, this contest is partly due to the fact that the Registrar of Voters and the County of

24 San Diego refused to answer our questions as they are required to do by law. As a result, any notion

25 that we reject any notion that we must be responsible for any costs as this is an extension of our

26 need to get these questions answered.

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CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

27. **USE OF WHITE OUT ON BALLOTS.** We also learned during our observation of the San Diego ROV during the 2016 primary, of the habit of using "white out" tape to alter the voted ballots. Vu admits to this practice in testimony under oath, while also admitting that there is no written procedure, no reports are made, and no logs are kept, and the procedure includes only one person performing the whiting out process. Vu says the procedure is fine, and if there is any question, the white-out tape can be pulled up to inspect how the ballots was altered, however, no one does that on any routine basis, and our attempts to access the ballots using other means has failed.

28. Due to these inconsistencies and the fact that the judgment was against Vu for the most part, we asked that the court require that the 1% manual tally audit be redone anew, and in full. That request was denied by the court, and thus provides the basis for this contest.

29. **UNUSUAL RESULTS.** We also noted the unusual results in the election, which can be summarized as follows, (neglecting minor candidates):

Ballot Set	Fraction of all ballots	Clinton	Sanders
Early VBM	26.67%	64.06%	35.94%
Polls	38.01%	44.63%	55.37%
Later VBM	24.93%	50.04%	49.96%
Accepted Provisionals	10.38%	37.46%	62.54%

The Early VBM ballots are the only set where Clinton won by a landslide victory. In all other sets, Sanders won by a large margin or it was a tie. In other elections we have closely monitored, a small difference between the results of the various ballot sets will likely occur. Between the Early VBM and Polls ballots, it could be argued that those voters are perhaps more practiced in voting as they have signed up to be permanent VBM voters, and also perhaps that the VBM "get out the vote" effort in one campaign might be a lot better than in other campaigns. In other races, we noted a difference of perhaps three to five percent between the Early VBM and Polls ballots. In this case, Clinton went down by 20% and Sanders up by 20%. A full 40% change between early VBM and Polls ballots. This is very difficult to explain, and is another basis for this contest.

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30. In this election, we have also heard a great deal about impropriety by the Democratic National Committee (DNC) including biased support of the various candidates in the primary, most specifically against candidate Sen. Bernie Sanders and for Hillary Clinton, as was evident in emails made public on WikiLeaks, now known as the "Podesta Emails." Some have said that these emails were the result of Russian hacking.

31. Thus, our inquiry is of great public interest and concern.

32. The Early VBM results are those that are reported at 8pm on election night, and there is a misconception in the media that these early results will be representative of the rest of the election. Indeed, in this case, we see a 40% swing which is very difficult to explain. Thus, if a hacker or compromised employee wanted to manipulate the results with the maximum effect, the early VBM ballots are an important set. Also, these ballots are processed during the ten days prior to the election, and our team of oversight volunteers was not in place and performing their duties to provide oversight over those early ballots, and thus they may have received extensive "white out" manipulation.

33. A key concern is regarding "central tabulator" manipulation, where elections can be easily flipped by modifying results in perhaps 1,000 precincts, with only 10 votes "flipped" in each precinct. Such small differences in each precinct will be hard to detect unless they are very carefully audited. The modification of precincts can be done either by a hacker who may have access to the central tabulator, or by a compromised employee, who may have been blackmailed into performing the changes. Such changes in the central tabulator could be installed by a "virus" like program that would start with minus ten votes for Sanders and plus ten votes for Clinton, for example, with the total still being zero. If such were the case, then the result would show a 20 vote difference at the end and no one would be the wiser.

34. The ultimate difference between Clinton and Sanders was about 16,000 votes, or 3.75%. If the lead by Clinton in the Early VBM ballots were half as large as it was, then SANDERS would have been declared the winner in San Diego County. San Diego is the second largest county in

California. Had this been the outcome, then the calculus during the ensuing convention may have been much different.

35. Similar contests were filed by voters in other counties in California simultaneous with this one. Based on the results of this inquiry, we may wish to investigate further in those districts and contest the result on a statewide basis.

36. Thus, we have a number of factors that result in suspected tampering of the Early VBM ballots:

a) Very unusual huge (40%) difference in the actual results between the Early VBM and Polls ballots,

b) Change from Batches to Precincts, and the ROV hand selected and manipulated the ballots in the audit process, and Vu has a history of supervising such manipulations in the past,

c) The use of white-out to modify the ballots, with no written procedure, report, logs or a second set of eyes on the modifications,

d) Discrepancies between the snapshot file and the actual results of the manual tally audit, including the raw number of ballots in each precinct and the vote totals, which was not reported by the registrar and the registrar refused to explain the discrepancies.

37. **CPRA BALLOT ACCESS LAWSUIT:** Based on these concerns, on Feb 2, 2017, in conjunction with Citizens Oversight, I requested to access and review the ballots under the California Public Records Act, Cal Code 6250 et seq. (Exhibit 1, Items 1 & 2) The voted ballots do not have any voter-identifiable information and there is no dispute that they are public documents. However, Vu refused to provide access to the ballots so as to inspect them because he claims that although he is required by law to keep the ballots for 22 months, they are "sealed" pursuant to California Elections Code Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307. It is our contention that the "sealing" of the ballots is to keep them in pristine condition should anyone want to review them, rather than a restriction on anyone accessing them at all.

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

38. Recognizing the absurdity of the notion that the ballots must be kept for 22 months by federal and state election law, but that the registrar must not allow anyone to see them, a complaint for declaratory relief and mandamus was filed, Case number **37-2017-00027595-CU-MC-CTL** in Superior Court, Dept C-66, Heard by Hon. Kenneth J Medel. Demurrer was filed and judgment was for defendant without leave to amend, ("CPRA Ballot Access Lawsuit"). An appeal has been filed to allow interpretation of this law, because 1) it does appear to be inconsistent, 2) it is in variance with many other states that do allow access of voted ballots after the election is complete, during the 22 month period, and 3) California prides itself on "open government".

We believe this inconsistency is due to the fact that the Public Record Act is a relatively new law (1964) and the amendment to the State Constitution (Article 1, Section 2) regarding the same, was passed in 2004, whereas the election code goes back to even the 1800s and was based on a philosophy of a much more restrictive access to documents by the public.

We note that in other states, such as Ohio, citizens are allows access to voted ballots using the public records law of that state. This was documented in the book "Witness to a Crime" by Richard Hayes Phillips which documented how the election was tipped toward George W. Bush and away from John Kerry in 2004. Michael Vu, the current Registrar of Voters in San Diego was the top election official in Ohio at that time. Related to this case, two of his subordinates admitted prestacking the ballots prior to the audit, and were initially convicted of that form of election fraud. The situation in San Diego is quite similar, as Vu hired 40 workers for a week to prestack the Early VBM ballots prior to the audit and then they reported that the results were the same even though they were different from the initial computer reports.

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EXHIBITS ATTACHED (Pages unnumbered).

Exhibit 1 – Email from Lutz to Vu on 2017/02/02 – "Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records" (1 page)

Exhibit 2 – Letter from Lutz to Vu (by email) on 2017/03/20, describing the inconsistencies and asked Vu to explain these discrepancies. (4 pages total).

Exhibit 3 – Letter from Vu to Lutz on 2017-04-12, refusing to answer the questions. (1 page)

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

EXHIBIT 1

Subject: Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records
From: Ray Lutz <raylutz@citizensoversight.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.citizensoversight.org
619-820-5321

---- Attachments: --

ElectionContest-RaymondLutz-SanDiego.pdf   2.0 MB

EXHIBIT 2 (4 pages total)

Citizens' Oversight Projects (COPs)
771 Jamacha Rd #148
El Cajon, CA 92019
CitizensOversight.org
619-820-5321

March 20, 2017

CITIZENS' OVERSIGHT PROJECTS
CitizensOversight.org

Michael Vu
San Diego County Registrar of Voters
5600 Overland Ave
San Diego, CA 92123
Michael.Vu@sdcounty.ca.gov   REV2

Dear Mr. Vu:

The following questions are asked to you, as the Registrar of Voters, based on Election Code Section 2300 (9)A, B. Based on that section, you are obligated to answer our questions. This is not a Public Records Act request and we are not requesting existing records. In our sentences and description below, the pronoun "you" means either you personally, your staff, or anyone you direct as Registrar of Voters in San Diego County.

Our questions are (mostly) regarding the 2016 primary election, focusing on the Democratic contest for President.

BACKGROUND
We requested and you kindly provided the "snapshot data file" on a CD just prior to the random selection process for the 1% manual tally, designated as "2016-06-07_EN_unofficial Canvass.csv," (provided in related information to this request). This was the canvass result as of the end of election night, including the early VBM ballots and polls ballots, but excluding the later-VBM ballots and validated and accepted provisional ballots. We asked for this file so we would have the preliminary totals of all races that should correspond to the totals of the ballots scanned as of election night, and then used in the 1% manual tally process. For a while, this file was also on your website but it is no longer available. Since you are obligated by the election code to keep electronic records indefinitely, please repost the file to your website to document this election.

Regarding the early VBM ballots, your office chose 8 batches (AKA "decks") corresponding to 1% of the (about 723) batches processed as of election night. Then, instead of pulling sealed batches and manually tallying them (as indicated as one option of election code described in section 15360(a)(2)), you decided to switch to doing the early VBM ballots by precinct (AKA "consolidations") (the other option 15360(a)(1), but it envisions that the ballots are stored by precinct). We understand now after your testimony in our recent lawsuit, that you directed 40 workers to work for a week by rifling through the batch boxes to pull ballots out of batches and assemble the selected precincts based on a cross-referencing computer report. This is an exceptional amount of fiddling with the ballots which was never contemplated nor described by the 1% manual tally process in the election code, which should include no such fiddling, but instead should tally sealed boxes which undergo no processing at all. The election code does not describe the process of looking through the batch boxes to manually assemble

precincts, nor the use of a computer report to help you look for the ballots which comprise each precinct.

After completing the manual tally process, you reported variances in three of the 16 (early) VBM precincts in the main set selected. This is documented in your 1% manual tally report. The actual vote totals were not provided in the 1% manual tally report you provided for the 1% manual tally.

On March 16, 2017, our team photographed the top sheet of the actual tally sheets produced during the 1% manual tally. We copied the totals from those sheets for the Democratic Presidential Primary for Bernie Sanders and Hillary Clinton into a spreadsheet. We also transcribed the vote totals provided in the snapshot file for those precincts and "Mail" (VBM) ballots. That spreadsheet is provided as Exhibit 1.

DISCREPANCIES IN YOUR REPORT

According to what we know about the 1% Manual Tally, the number of ballots and the vote totals should match between the Snapshot file (semi-final canvass) and the totals tallied from actual ballots.

We found vote total differences in eight of the 16 precincts, but your 1% manual tally report disclosed variances in only three precincts. In the other five precincts where a variance did exist, you did not report that there was a variance. In all cases, there was a net loss of ballots processed. In the cases where you report on variances, you re-scanned the ballots to get a new report. This re-scanning of the ballots does not actually make the variance disappear, it only proves that the variance with the initial report does exist.

In addition, we noticed that there were two sets of tally sheets for precinct Seq 1431, which we denoted as (a) and (b) in our photographs. There was no mention of the two tally attempts in any of your reporting.

50% = VERY HIGH ERROR RATE, UNRELIABLE METHODS

From the 1% manual tally you conducted, you reported on 3 precincts which had errors (18.75% error rate) but the actual error rate was much higher: 50%. This is an extremely high error rate. We assume that the error rate may actually be higher because we only checked one partisan race, so the actual error may be even worse due to the fact that only about half the voters can vote in this race.

Furthermore, we are concerned that the entire 1% manual tally process for the early VBM ballots was unreliable because you (1) preselected the ballots from the 723 batches to make up the precincts you tallied, and (2) used a whiting-out process, which you admit you conduct as an undocumented procedure with no records kept (such as a log) for the changes made, and without two sets of eyes on the ballots being modified, and (3) we are worried that there was extensive tampering of the early VBM ballots due to the tally method switcheroo. This was the only set of ballots where Clinton won by a wide margin. In all other sets (Polls, Later VBM and Provisionals) Sanders won (except for later VBM ballots where it was approximately a tie).

OUR QUESTIONS

1. Please explain why you did not report on variances in the other five precincts and under what legal basis you are allowed to suppress this information.

2. Why did you conduct two tallies of precinct Seq 1431, and why did you not report that fact?

3. In the variances you reported, you claimed that the reason you lost several ballots in each case was due to "operator error." What "operator error" would create several additional ballots in the snapshot file and yet leave those out of the manual tallied ballots, and how did you determine this was the root cause of the error? What evidence do you have that supports this root cause determination?

4. After you completed the 1% manual tally process, what did you do with the ballots you selected for those precincts that you assembled for the 1% manual tally process? Did you:
     a) merge them back into the batches which you have stored,
     b) keep the ballots separated into the precincts,
     c) duplicate the ballots so the batches would remain unaltered so you could have two sets
     d) Or what??

5. Election Code 17305(b) states that you must keep ballots for any election including federal races (such as president) for 22 months, and that "all ballot cards shall be arranged by precincts." Please confirm that you actually store VBM ballots by batch and not by precinct, in both the 2016 Primary and 2016 General election. Please supply the legal rationale for this violation.

6. Please repost the "Semi-final canvass" (AKA the snapshot file) on your website. This is a very important file because it is what you used for the manual tally audit process

ADDITIONAL INFORMATION
We have assembled a web page with the various reference material attached which will be useful to fully understand and document our questions, as follows:
     Web Page URL: http://www.copswiki.org/Common/M1735
     Attachments:
          1. This letter, including Exhibit 1.
          2. Your Manual Tally Report, both summary and detail.
          3. Snapshot data file, full version
          4. Snapshot data file, 1% precincts and presidential race (BS vs HRC) only.
          5. Images of the top sheet of the manual tally sheets.
          6. Link to the video of the random selection meeting when we obtained the snapshot data file on CD.
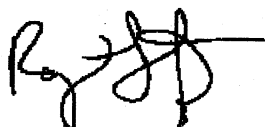
We would appreciate your prompt reply to our questions. We will note that our original CPRA request for the Manual Tally sheets took more than a month before we were provided access to that information, although state law requires that you provide access within ten days, even if you ask for clarification. We request that you do not destroy any information from these elections due to our ongoing inquiry and your delay.

Sincerely,

Raymond Lutz
National Coordinator, Citizens' Oversight Projects

EXHIBIT 1

Seq	Precinct	Manual Tally Total Ballots Cast	Manual Tally Sanders	Manual Tally Clinton	Manual Tally Sanders + Clinton	Snapshot Sanders	Snapshot Clinton	Snapshot Sanders + Clinton	Diff	Reported Variance	Reported Resolution
32	110150 - RHO PENASQUITOS	136	23	40	63	24	40	64	-1	(no report)	(no report)
363	237200 - OCEAN BEACH	182	40	58	98	40	60	100	-2	184 ballots scanned in unofficial canvass (as of Election Night); operator error.	Manual tally found 182 ballots, which matched system count of ballots after re-run.
										Variances in 18 contests were noted; requested re-run by Technical Services.	Re-run resulted in system count of votes matching manual count of votes in 17 of 18 contests. Remaining contest that showed variation was retallied by hand and found to match the re-run system count.
368	240000 - MIDWAY OLD TOWN	238	66	85	151	66	86	152	-1		
418	270510 - NORMAL HEIGHTS	193	68	76	144	70	76	146	-2	Variances in 16 contests were noted; operator error. Requested re-run by Technical Services.	Re-run report counts reconciled all variances with manual tally. One Dem ballot scanned twice, one Rep ballot not scanned.
597	376700 - PARADISE HILLS	137	25	46	71	28	46	74	-3	(no report)	
637	403500 - OCEANSIDE	133	23	33	56	23	33	56	0		
670	404230 - OCEANSIDE	126	16	35	51	16	35	51	0		
686	405400 - OCEANSIDE	173	51	45	96	51	45	96	0		
857	420520 - FALLBROOK	226	29	44	73	29	44	73	0		
887	423900 - VISTA	25	10	9	19	10	9	19	0		
991	442800 - IMPERIAL BEACH	200	39	44	83	39	46	85	-2	(no report)	(no report)
1229	487000 - LA MESA	204	51	71	122	52	72	124	-2	(no report)	(no report)
1332	528200 - CHULA VISTA	160	28	51	79	28	51	79	0		
1418	538500 - CHULA VISTA	227	44	110	154	44	110	154	0		
1431	546600 - RAMONA	162	19	23	42	20	23	43	-1	(no report)	(no report)
1454	549280 - LAKESIDE	143	16	33	49	16	33	49	0		
		2665	548	803	1351	556	809	1365	-14		

EXHIBIT 3

County of San Diego

MICHAEL VU
Registrar of Voters

REGISTRAR OF VOTERS
County Operations Center Campus
5600 Overland Avenue, Suite 100, San Diego, California 92123-1278

CYNTHIA L. PAES
Assistant Registrar of Voters

Telephone: (858) 565-5800   Toll-free: 1 (800) 696-0136   TDD: (858) 694-3441
Facsimile: (858) 694-2955   Web Address: www.sdvote.com

April 12, 2017

Mr. Raymond Lutz
Citizens' Oversight Projects
771 Jamacha Road, #148
El Cajon, CA 92019

Dear Mr. Lutz:

I am in receipt of your March 20, 2017 letter regarding the Registrar of Voters' June 2016 Presidential Primary Election 1% Manual Tally Report. As you know, your challenge to the manner in in which our office conducts the 1% Manual Tally (Elections Code 15360) is being litigated in the court of appeal and, as a result, the department will not be providing a response to your inquiry. This should not be construed as if no response can be offered.

Additionally, your reliance on Elections Code §2300(9)(A) and (B) is misplaced. It is clear from the language of Section 2300 that the voter bill of rights was intended to protect voters' rights to participate in an election and to ask questions and observe election day activities. It does not impose a continuing obligation on election officials to respond to inquiries after the conclusion of an election.

Sincerely,

L. MICHAEL VU
Registrar of Voters

APPENDIX 2:

FORMAL COMMUNICATION TO THE COUNTY OF SAN DIEGO

FROM: Raymond Lutz, Contestant

TO: San Diego Registrar of Voters Michael Vu & County of San Diego

Date: December 27, 2017

RE: FORMAL REQUEST TO ADDRESS DEMANDS RE CONTEST

Dear Michael Vu & Representatives for the County of San Diego:

As you are aware, I have filed, in a timely manner, paperwork to invoke contest procedures regarding the San Diego County 2016 Primary Election. Included with this letter is the Second Amended Affidavit of Contest. You have received the original Affidavit of Contest, and were formally served, as was Defendant Clinton, with the First Amended Affidavit of Contest. However, due to some delay in the acceptance of the Substitution of Attorney to *Pro Per*, there may have been some confusion of this service, so we are redoing it.

At this point, the substitution of attorney filing has been refiled and accepted. That has allowed the other documents to be accepted as well, including the First Amended Affidavit and Proof of Service. You have received all these documents. Since the County of San Diego has provided some helpful comments to correct deficiencies in the First Amended Affidavit, the Second Amended Affidavit has been filed with all those deficiencies corrected, and it has been properly served using the methodology specified in the election code.

Incorporated are the changes you proposed, including the fact that you were improperly specified as defendants or respondents of the contest action. Therefore, in the Second Amended Affidavit, only Hillary Clinton is named as the defendant and you are not included as a defendant or respondent. And as a result, you have no standing the legal aspects of the contest. However, you are still obligated to perform your ministerial duty regarding the contest action.

CONTEST OF 2016 PRIMARY BY LUTZ – SECOND AMENDED AFFIDAVIT

Included in the attached Second Affidavit of Contest are the requested actions to implement the contest. The limited sampling of the ballots need not be unduly painful or time consuming and is not an extensive recount.

Since the difference between the Early VBM ballot results and all other ballot sets is vast, it should not take a large sample to confirm your certification, if indeed it is valid. However, if mistakes were made or any fraud occurred, our inquiry may take longer.

I HEREBY REQUEST, within five business days after you receive this letter and the associated Second Amended Affidavit of Contest and related exhibits, **please provide a written response to address those demands, including an estimate of the actual costs expected to perform a sampling inspection on a batch basis, particularly of the Early VBM Ballots, and a proposal for time and date when our inspection can commence.** We hope we will not need to seek a court order to compel you to attend to your ministerial duties, but if such is required, **please specify exactly what will be required from the court to satisfy your requirements to proceed.**

Sincerely,

Raymond Lutz
619-820-5321
raylutz@citizensoversight.org

END OF APPENDIX 2

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Raymond Lutz FIRM NAME: STREET ADDRESS: 1010 Old Chase Ave CITY: El Cajon STATE: CA ZIP CODE: 92020 TELEPHONE NO.: 619-820-5321 FAX NO. : E-MAIL ADDRESS: raylutz@citizensoversight.org ATTORNEY FOR *(name)*: self	*FOR COURT USE ONLY*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: Hall of Justice MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	

Plaintiff/Petitioner: Raymond Lutz Defendant/Respondent: Michael Vu, San Diego County Registrar of Voters	CASE NUMBER: 37-2016-00023347-CU-PT-CTL
PROOF OF SERVICE—CIVIL **Check method of service** *(only one):* ☐ By Personal Service ☒ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	JUDICIAL OFFICER: Hon. Laura H. Parsky
	DEPARTMENT: C-27

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age **and not a party to this action**.

2. My residence or business address is:

   1010 Old Chase Ave, El Cajon, CA 92020

3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*

4. On *(date):* Dec 26. 2017   I served the following **documents** *(specify):*
   SECOND AMENDED AFFIDAVIT -- CONTEST OF 2016 PRIMARY BY LUTZ

   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served:

   b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
      Business or residential address where person was served:

   c. ☐ *(Complete if service was by fax.)*
      Fax number where person was served:

      ☒ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Page 1 of 3

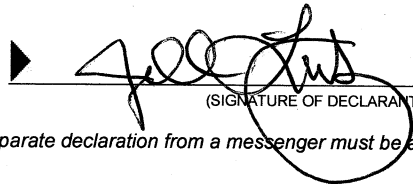| CASE NAME:	CASE NUMBER:
CONTEST OF 2016 PRIMARY BY LUTZ	37-2016-00023347-CU-PT-CTL

6. b. [x] **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

    (1) [x] deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

    (2) [   ] placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

    I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):* MAILED BY REGISTERED MAIL at EL CAJON, CA 92020

  c. [   ] **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

  d. [   ] **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

  e. [   ] **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/27/2017

Jill Lutz
_____
(TYPE OR PRINT NAME OF DECLARANT)

▶ _____
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

[   ] **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____
(NAME OF DECLARANT)

▶ _____
(SIGNATURE OF DECLARANT)

PROOF OF SERVICE—CIVIL
(Proof of Service)

SHORT TITLE:	CASE NUMBER:
CONTEST OF 2016 PRIMARY BY LUTZ	37-2016-00023347-CU-PT-CTL

ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)
(This attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

Name of Person Served	Where Served
(If the person served is an attorney, the party or parties represented should also be stated.)	*(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For service by fax, provide fax number.)*
Michael Vu San Diego County Registrar	5600 Overland Ave San Diego, CA 92123
Hillary Rodham Clinton	PO Box 5256 New York, NY 10185

Form Approved for Optional Use
Judicial Council of California
POS-040(P) [Rev. February 1, 2017]

ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)
(Proof of Service)

Page 3 of 5

CEB
www.ceb.com
www.courts.ca.gov

1 RECEIPTS OF SERVICE BY REGISTERED MAIL SENT ON DEC 27, 2017

2 FROM EL CAJON, CA 92020

3

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5

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                            EL CAJON
                    401 W LEXINGTON AVE
                            EL CAJON
                              CA
                          92020-9998
                          0523820020
12/27/2017     (800)275-8777     11:29 AM
=========================================

=========================================
Product                   Sale        Final
Description                Qty         Price
-----------------------------------------
First-Class                 1         $1.82
Mail
Large Envelope
    (Domestic)
    (NEW YORK, NY  10185)
    (Weight:0 Lb 5.00 Oz)
    (Estimated Delivery Date)
    (Tuesday 01/02/2018)
Registered                  1        $11.70
    (Amount:$0.00)
    (@@USPS Registered Mail #)
    (RE897941690US)
First-Class                 1         $1.82
Mail
Large Envelope
    (Domestic)
    (SAN DIEGO, CA  92123)
    (Weight:0 Lb 4.90 Oz)
    (Estimated Delivery Date)
    (Friday 12/29/2017)
Registered                  1        $11.70
    (Amount:$0.00)
    (@@USPS Registered Mail #)
    (RE897941709US)
-----------------------------------------
Total                                $27.04
-----------------------------------------
Debit Card Remit'd                   $27.04
    (Card Name:Debit Card)
    (Account #:XXXXXXXXXXXXX5037)
    (Approval #:        )
    (Transaction #:231)
    (Receipt #:007757)
    (Debit Card Purchase:$27.04)
    (Cash Back:$0.00)

In a hurry? Self-service kiosks offer
quick and easy check-out. Any Retail
Associate can show you how.

Text your tracking number to 28777
(2USPS) to get the latest status.
Standard Message and Data rates may
apply. You may also visit USPS.com
USPS Tracking or call 1-800-222-1811.
```

Registered No. RE897941690US

Date Stamp

0020
22

Reg. Fee	$1.82	
Handling Charge	$11.70	Return Receipt
Postage	$0.00	Restricted Delivery
	$0.00	
Received by	$0.00	
	$13.52	

Customer Must Declare Full Value $1.00

☐ With Postal Insurance
☑ Without Postal Insurance

Domestic Insurance up to $25,000 is included in the fee. International Indemnity is limited. (See Reverse).

To Be Completed By Post Office

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed

FROM
RAYMOND LUTZ
1010 OLD CHASE AVE
EL CAJON, CA 92020

TO
HILLARY RODHAM CLINTON
P.O. BOX, NY 512156
NEW YORK, NY 10185

PS Form **3806,** **Receipt for Registered Mail** *Copy 1 - Customer*
May 2004 (7530-02-000-9051) *(See Information on Reverse)*
For domestic delivery information, visit our website at *www.usps.com* ®

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21

22

23

24

25

26 *(Required for verified pleading)* The items on this page stated on information numbers):

27

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 4 of 5

Form Approved by the
Judicial Council of California
MC-020 [New January 1, 1987]

ADDITIONAL PAGE
Attach to Judicial Council Form or Other Court Paper

CRC 201, 501

1 RECEIPTS OF SERVICE BY REGISTERED MAIL SENT ON DEC 27, 2017

2 FROM EL CAJON, CA 92020

3

4

5 — **Registered No.** RE897941709US   **Date Stamp** —

6 Reg. Fee $1.82

7 Handling Charge $11.7 Return Receipt

8 Postage $0.00 Restricted
  $0.00 Delivery

9 Received by $0.00
   $13.52 Domestic Insurance up to
$25,000 is included in the fee.

10 Customer Must Declare ☐ With Postal Insurance International Indemnity is limited.
Full Value $0.00 ☐ Without Postal Insurance (See Reverse).

11 **OFFICIAL USE**

12 FROM RAYMOND LUTZ

13   1010 OLD CHASE AVE

14   EL CAJON CA 92020

15 TO MICHAEL VU

16   S.D. COUNTY, Registrar of Voters

17   5600 OVERLAND AVE
 SAN DIEGO CA 92123

PS Form **3806**, **Receipt for Registered Mail** Copy 1 - Customer
May 2004 (7530-02-000-9051) (See Information on Reverse)
 For domestic delivery information, visit our website at www.usps.com ®

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25

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, **not** line numbers):

27 This page may be used with any Judicial Council form or any other paper filed with the court.
         Page 5 of 5

Form Approved by the
Judicial Council of California
MC-020 [New January 1, 1987]

ADDITIONAL PAGE
Attach to Judicial Council Form or Other Court Paper

CRC 201, 501

ATTACHMENT "B"

Subject: Letter to Michael Vu Regarding 2018 Election Season & Oversight
From: Ray Lutz <raylutz@citizensoversight.org>
Date: 5/7/2018 11:46 AM
To: "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
CC: "Barry, Timothy M" <timothy.barry@sdcounty.ca.gov>, "Alan L. Geraci" <alan@carelaw.net>,
"electionintegrity@citizensoversight.org" <electionintegrity@citizensoversight.org>,
dianne.jacob@sdcounty.ca.gov

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Dear Micheal Vu:

Please accept the attached letter dated May 7, 2018 via email.
Please confirm that you received this message by return email.
Also attached, is our March 20, 2017 letter which you previously refused to answer, for
your convenience.

--Ray Lutz

DIANNE JACOB: as my elected representative in the County of San Diego, I would appreciate
your attention on this item

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Ray Lutz
Citizens' Oversight Projects (COPs)
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http://www.citizensoversight.org
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619-820-5321
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─Attachments:───

2018-05-07-LetterToVu.pdf	460 KB
2017-03-20 LetterToVuOnVBMManualTallyDiscrepancies_Rev2.pdf	166 KB

Citizens' Oversight Projects (COPs)
771 Jamacha Rd #148
El Cajon, CA 92019
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May 7, 2018

Michael Vu
San Diego County Registrar of Voters
5600 Overland Ave
San Diego, CA 92123
Michael.Vu@sdcounty.ca.gov
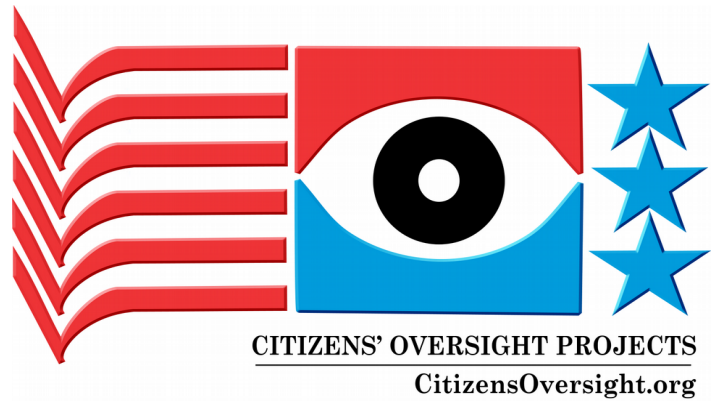
Dear Mr. Vu:

As we approach this year's primary election season, we at Citizens' Oversight are preparing to provide our independent oversight of your activities. Please provide answers to the following questions based on our right as voters under the "voter's bill of rights," Election Code Section 2300 (a) (9)

> (a)(9)(A) You have the right to ask questions about election procedures and observe the election process.

> (B) You have the right to ask questions of the precinct board and elections officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer.   However, if persistent questioning disrupts the execution of their duties, the precinct board or elections officials may discontinue responding to questions.

Since we are approximately one month before the election, our questions should not disrupt the execution of your duties, so please answer them in full. When answering these questions, please explain your answer as well as answering it. If you are tempted to say "please clarify," instead, please self-clarify your answer by providing all answers based on any possible interpretations of the questions.

BACKGROUND – Election Code Section 15360 describes the One-Percent Manual Tally audit procedure. There is no dispute that the Early Vote-by-mail Ballots (Early VBM Ballots), i.e. those received and processed prior to election day, are to be included in the scope of the one-percent manual tally.

On June 16, 2016, a lawsuit was filed (2016-06-16 37-2016-00020273-CL-MC-CTL "Election Audit Lawsuit") challenging your practice of excluding both the Later VBM Ballots (those not fully processed by 8pm on election day) and the accepted provisional ballots from the 1% Manual Tally. There was no dispute in this case that the Early VBM ballots were to be included in the 1% manual tally process. Subsequently, in 2017, AB-840 was passed and signed by the governor. It changed the wording in the Election Code section 15360 to limit the 1% Manual Tally to the "semi-final official canvass" which is completed at the end of election night, and thus includes the Early VBM ballots, the Polling place ballots, but not the Later VBM ballots nor the accepted provisional ballots.

In the 2016 primary election, and regarding the Early VBM Ballots, you initially selected eight batches out of the approximately 723 batches, to comprise 1% of the batches process. (The Early VBM ballots are stored by batch after scanning.)

During that season, we asked you for the "semi-final official canvass" (AKA "snapshot file") which you provided prior to the random selection process. The Snapshot file you provided breaks down the results by race, precinct, and type of ballot cast (polls vs. mail ballots). However, the file provided in 2016 did not break down those canvass data by batch, and we have been told that with the election management system you use, it is not feasible to produce a report providing the totals of each race in each of the batches, for all batches, which we desire because we can then add up the totals for the batches to confirm that it matches the grand total for that set of ballots. Also, you would need this to check the accuracy of the machine count, which is the purpose of the one-percent manual tally, if the ballots are manually tallied by batch, and as envisioned by AB-985 which provided the second option in 15360, which allows manually tallying by batch. It is noted that other counties, such as Los Angeles and Orange County always maintain the ballots sorted into precincts, and if you can't make a computer report by batch, it seems illogical to tally by batch to check the accuracy of the computer result, since there is no computer result to check.

Then, in that election, around the time you were served with the mentioned "Election Audit Lawsuit," you decided to change to auditing the Early VBM ballots from manually tallying the batches previously selected, to manually tallying by precinct. According to your sworn testimony in the "Election Audit Lawsuit" you stated that you hired 40 people to work for a week to pull ballots out of the appropriate batches – based on a computer report – to construct the precincts selected for the 1% manual tally. This is counter to the normal notion of the tallying process, where the ballots would remain sealed in their containers until they are pulled out for tallying rather than the extensive manipulation required to pull the ballots from potentially hundreds of batches to create each precinct based on a computer report.

After the election, volunteers associated with Citizens Oversight went back in and photographed the results of the manual tally sheets to get at the actual vote count and number of ballots in the one-percent manual tally. We documented that these tallied counts did NOT match the initial snapshot file but were compared to some other computer report, as you reported no variances or smaller variances than when compared with the initial snapshot file. We sent you a letter dated March 20, 2017, describing in detail the additional variances, moving the error rate from 18% to 50%. You refused to answer our questions, despite Election Code 2300 (a)(9) requiring that you answer our questions.

Since then, I and Citizens Oversight have attempted to ascertain the answer to our questions despite your uncooperative attitude. This has required a number of court cases, first the "Ballot Access Case" (37-2017-00027595-CU-MC-CTL) which attempted to access the ballots using the California Public Records Act, and then subsequently, we continued to exercise our rights for judicial remedy under the "2016 Primary Contest" (Case number: 37-2016-00023347-CU-PT-CTL) to access the Early VBM ballots under discovery in that case. The former case is under appeal and the latter case is still in process.

We invite you to respond to our letter of March 20, 2017 and answer our questions, despite your initial refusal which resulted in the several lawsuits described above. (This is included as a separate attachment to this email, for your convenience.)
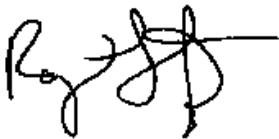
QUESTIONS

That bring us to this coming election season. Please answer the following questions, and feel free to explain further whenever possible, and please self-clarify the questions if need be.

1   Regarding Early VBM ballots, are you planning to sort these into mixed-precinct batches as was the case in 2016?

2   Are you planning to prepare the "Semi-Final Official Canvass" (AKA "Snapshot file") broken down by precinct and ballot type (polls vs mail) as you did in 2016?

3   Are you planning to conduct the 1% manual tally procedure (Election Code 15360) regarding Early VBM Ballots in BATCH mode or precinct mode?
    3.1   If the latter, and if the ballots are stored by batch, do you plan to re-sort the ballots into precincts to match the Snapshot file, possibly by hiring 40 people to work for a week to rifle thorough the ballots and pull out just the ballots for each selected precinct from the many batches in storage?
    3.2   Also for this case, do you then plan to create a new computer report which differs from the original Snapshot files, as you did in 2016, or are you planning to rely on the original Snapshot file?
    3.3   If these assumptions are not correct, please explain the procedure you plan to use.

4   In 2016, you admitted that WHITE-OUT tape is routinely applied to ballots. Please answer the following questions:
    4.1   Are you planning to continue this practice?
    4.2   We asked you if you have a written procedure for this process. You said you do not have any written procedure. Regardless of whether it exists, please provide a written description of your procedure, and answer the following:
        4.2.1   Do you log the total number of WHITE OUT corrections and what is the character of each (for example, repair timing marks, modify votes due to improper ballot used, etc.)? If not, why not?
        4.2.2   In your procedure, do you include any requirement for oversight by a second set of eyes?
        4.2.3   In your procedure, what safeguards are in place to prohibit a worker from changing the vote using white-out tape?
    4.3   Do you plan on making any written reports regarding how pervasive this practice is, and any steps to improve the quality of this process?

5   Although you are not require by law to perform any further manual tally checks on the accuracy of the computer result based on AB-840, do you nevertheless plan to do any manual tally checking that the result is valid on the Later VBM and/or accepted provisional ballots?
    5.1   If your answer is no, would you be willing to check at least one randomly selected precinct in those sets to insure that there is some risk to a fraudster who may be able to conduct central-tabulator election fraud, which would otherwise be impossible to detect?
    5.2   Since it is your responsibility to produce an accurate certified result, what steps are you taking to insure that the result is accurate?

Requests for cooperation with our oversight of your process

1. As has been our practice in the past, we request that you provide the Snapshot data file (i.e. the "semi-final official canvass") in digital form (such as CD or uploaded to your website and available for download) PRIOR TO the random selection of the precincts and/or batches involved in the 1% manual tally audit process.

2. We plan to be present and video-record the random selection process, as was done in prior years.

3. We request that you provide access for our volunteers to observe, in close proximity, any "white-out" processing you employ. Perhaps you can move this process up to the observation windows instead of having it located in the rear of the processing room. We wish to request that a chair be provided for our oversight volunteer for each station where white-out is applied so we can watch the white-out process for each of those processing steps.

4. We request that you notify us and invite us to witness the re-sorting process, if you are planning on hiring workers to rifle through the batches to find the ballots to comprise the Early VBM ballot sets.

5. We wish to have oversight volunteers present for observation of the Early VBM ballot processing steps. Please provide the date and time when this begins so we can schedule oversight volunteers to be present.

6. We also request that you provide opportunity for volunteers to witness signature verification of the VBM ballots received.

7. We request that you include, in the final report of your manual tally audit process, the actual totals of the precincts or batches tallied. This will save everyone time and effort it would otherwise take to go in and photograph the tally sheets, as we were forced to do in the 2016 election, since you neglected to include the actual totals in your official report.

8. Please, when you certify the result, provide the manual tally report to us.
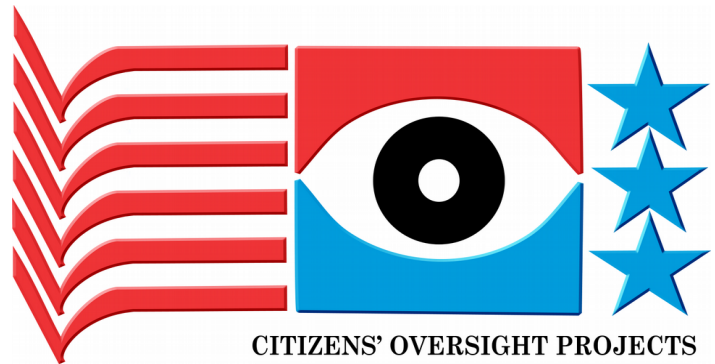
Sincerely,

Raymond Lutz
National Coordinator, Citizens' Oversight Projects

Citizens' Oversight Projects (COPs)
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June 1, 2018

Michael Vu
San Diego County Registrar of Voters
5600 Overland Ave
San Diego, CA 92123
Michael.Vu@sdcounty.ca.gov

Attached is a copy of the email and letter submitted on May 7, 2018.

Attorney Timothy Barry (of County Counsel's office) verbally confirmed reception of this letter on May 7, 2018, prior to the 1:30pm Ex Parte hearing on a different matter, the contest of the 2016 Primary Election (Case No.: 37-2016-00023347-CU-PT-CTL). He said "Yes, I received it but have not read it yet."

Election Code Section 2300(a)(9), of the "Voter's Bill of Rights," states that elections officials are required to answer questions or if they cannot answer them, to direct them to someone who can.

The questions in the May 7, 2018 letter refer to the current election cycle and not any previous election, and therefore, the claim that "we are litigation" is false.

Since you have had plenty of time to respond, please provide a reply to the letter of May 7, 2018.

Sincerely,

Raymond Lutz
National Coordinator, Citizens' Oversight Projects