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RAYMOND LUTZ, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAYMOND LUTZ Contestant, vs. MICHAEL VU, Registrar of Voters for the County of San Diego; HILLARY CLINTON, Democratic Presidential Party candidate named as an indespensable party, and DOES 1-10 Defendant(s).	Case No.: 37-2016-00023347-CU-PT-CTL **FIRST AMENDED AFFIDAVIT OF CONTESTANT RAYMOND LUTZ RE DEMOCRATIC PARTY PRESIDENTIAL PRIMARY ELECTION** **(Elections Code Section 16000 et seq.)** Judge: Lisa Schall Dept: C-46 Action Filed: 07/11/2016 Trial Date: Unassigned

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

2. The names of the defendants in this action are MICHAEL VU, Registrar of Voters for the County of San Diego; HILLARY CLINTON, Democratic Presidential Primary candidate named as an indispensable party. Ms. Clinton will be presented with a stipulation to dismiss her from the action if that is her preference, as the focus of the improper acts is Defendant Michael Vu.

3. The focus of this action is the Democratic Presidential Party primary election of 2016.

4. I 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

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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.

5. This statement is filed pursuant to Sections 16100, 16440 and 16460 of the Elections Code. Contestant is named pursuant to Elections Code Section 16002 and 16100.

6. 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."

Please note that causes for such a Contest are NOT limited only to those causes that may result in the overturning of an election.

7. This is the First Amended Affidavit in this matter. Our contentions have been made more specific as to the exact reasons for our concern in this election in this version, which varies substantially from the original. The bulk of the description below is to comply with California Elections Code Section 16404 to state the "the nature of the mistake, error, misconduct, or other cause of contest," and to create a complete record that can be reviewed by members of the public. Our specific request is stated clearly in the last item of this affidavit.

8. FILED TIMELY: The original Affidavit of Contest was filed on 7/11/2017. The time period after certification as defined by Election Code Section 16401(c) "In cases involving presidential electors, 10 days."

The certified results of the election were posted by the San Diego County Registrar of Voters on July 6, 2017.[1]

Therefore, the original Affidavit was submitted in a timely fashion.

9. FORM: 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

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[1] Available at http://www.sdvote.com/content/dam/rov/en/archive/201606bull.pdf

certainty as will advise the defendant of the particular proceeding or cause for which the

election is contested."

We are attempting to comply with the requirements of the Election Code to the best of our

ability, but request that the court not dismiss our affidavit of contest for want of form, per this

section.

10. 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."

11. Please note that in Election Code Section 16462 quoted above, the deadline specified is

"within five days", and that differs from the requirements of Election Code 16401 (10 days). To

reasonably rectify this conflict, please note that five days is the time period for most (non-

presidential elections) and the time period for presidential elections is longer due to the fact that the

county must certify the presidential race one day earlier, i.e. on July 5 instead of July 6 (in this

case). Therefore, the time period referenced in Election Code Section 16462 as "five days" is

reasonably interpreted only as a method of referring to the required time period, not to redefine it to

five days for all contests. Therefore, the time period is still 10 days.

In either case, the original affidavit was filed with the court within the deadline.

1   12. The Defendant may suggest that the original Affidavit of Contest was improperly served.

2 With this First Amended Affidavit of Contest, a companion Affidavit of Mailing will be filed to

3 rectify any question of service. The timeliness of service is not essential for the purpose of this

4 Affidavit of Contest due to the nature of our inquiry.

5   13. Furthermore, there is no explicit mention in Election Code section 16462 that the

6 election office must be served. Most governmental institutions, including the County of San Diego,

7 graciously and by policy accepts legal action without requiring explicit (third party) service. The

8 code simply says that "Upon the filing of the affidavit the county elections official shall forthwith

9 post, in a conspicuous place in his or her office, a copy of the affidavit." If service was intended to

10 the elections officials, then it seems the words should have been "Upon filing *and after service of*

11 the affidavit the county elections official shall..."

12   14. I have looked for the posting of the affidavit and none was found at the elections office,

13 and similarly, it is found posted on their website.

14   15. In the email dated 2/2/2017 provided as Exhibit 1, the county was notified in writing

15 about the contest and it was attached to that email, and they acknowledged they had knowledge of

16 the affidavit of contest in their reply.

17   16. BASIS: Unlike probably the vast majority of such election contest filings (which are

18 quite rare), the instant action is not taken specifically to overturn an election, but rather under the

19 causes of 16100 (a) and (g), to determine malconduct of the election official, or to show that the

20 voting machines were not working correctly, and therefore to affect elections in the future.

21 Therefore, the time constraints are not important in this case, and any claim that our case is moot

22 due to the argument that "the election is over" and there is no need to investigate should be

23 disregarded.

24   17. NOT MOOT: Election Code section 2300, referred to as the Voter Bill of Rights,

25 includes the following provisions:

26   (9)(A) You have the right to ask questions about election procedures and observe

27   the election process.

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FIRST AMENDED AFFIDAVIT OF CONTESTANT RAYMOND LUTZ RE 2016 DEMOCRATIC PARTY
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(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.

(10) You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's office.

18. We have found that effective observation of elections these days also requires observing computer files and election data that is sometimes onerous and distracting to obtain during the election. During the critical time period of the canvass period, the election official may claim not have time to process those requests for information. Later, the election officials may refuse to cooperate with such requests because the "election is over." Thus, although the "Voter's Bill of Rights" claims that voters have the right to observe the election, in practice that is difficult if not impossible to perform our duty within the election period so that the action is not declared as moot. Therefore, we ask that the court avoid declaring this action as moot.

19. Although many days have passed since this election, I 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, as will be detailed below.

20. 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 at all.

21. IRREGULAR PROCEDURE: 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. At that meeting, 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

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 one. 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 were not also randomly selected. 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.

22. 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.

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

24. 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.

25. DISCREPANCIES: On Feb 2, 2017, I (working under the umbrella of Citizens Oversight), requested access to the 1% manual tally sheets. (See Exhibit 1) Vu complied with the

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

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

3 result of the audit process, but which is unfortunately not revealed in the report produced by Vu.

4   26. After we collected the actual tallied results, it was possible to read the actual number of

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

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

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

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

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

10 explain these discrepancies (See Exhibit 2) and on March 12, the county responded (Exhibit 3).that

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

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

13   28. Although no further response was provided directly to the County regarding those

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

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

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

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

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

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

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

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

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

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

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

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

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

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therefore the responsibility of the County to answer questions under section 2300 cannot be withheld just because some other case exists about an unrelated aspect of the audit process.

30. USE OF WHITE OUT ON BALLOTS. We also learned during our observation of the San Diego ROV during the 2016 primary, that the ROV has 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.

31. 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.

32. 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. In other elections we have closely monitored, we might see a small difference between the results of the various ballot sets. However, it is usually a minor difference. 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 note a difference of perhaps three to five percent between the Early

1 VBM and Polls ballots. In this case, Clinton went down by 20% and Sanders up by 20%. A full

2 40% change between early VBM and Polls ballots. This is very difficult to explain.

3   33. In this election, we have also heard a great deal about impropriety by the Democratic

4 National Committee (DNC) including biased support of the various candidates in the primary, most

5 specifically against candidate Sen. Bernie Sanders and for Hillary Clinton, as was evident in emails

6 made public on WikiLeaks, now known as the "Podesta Emails." Some have said that these emails

7 were the result of Russian hacking, but to date, there is no proof of this even if Russia did take a

8 great interest in the election and may have put a finger on the scale in other ways.

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

10   35. The Early VBM results are those that are reported at 8pm on election night, and there is

11 a misconception in the media that these early results will be representative of the rest of the

12 election. Indeed, in this case, we see a 40% swing which is very difficult to explain. Thus, if a

13 hacker or compromised employee wanted to manipulate the results with the maximum effect, the

14 early VBM ballots are an important set. Also, these ballots are processed during the ten days prior

15 to the election, and our team of oversight volunteers was not in place and performing their duties to

16 provide oversight over those early ballots, and thus they may have received extensive "white out"

17 manipulation.

18   36. A key concern is regarding "central tabulator" manipulation, where elections can be

19 easily flipped by modifying results in perhaps 1,000 precincts, with only 10 votes "flipped" in each

20 precinct. Such small differences in each precinct will be hard to detect unless they are very carefully

21 audited. The modification of precincts can be done either by a hacker who may have access to the

22 central tabulator, or by a compromised employee, who may have been blackmailed into performing

23 the changes. Such changes in the central tabulator could be installed by a "virus" like program that

24 would start with minus ten votes for Sanders and plus ten votes for Clinton, for example, with the

25 total still being zero. If such were the case, then the result would show a 20 vote difference at the

26 end and no one would be the wiser.

27   37. The ultimate difference between Clinton and Sanders was about 16,000 votes, or 3.75%.

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38. 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.

39. 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. (See Exhibit 1) 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.

40. 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

1 with many other states that do allow access of voted ballots after the election is complete, during the

2 22 month period, and 3) California prides itself on "open government".

3   We believe this inconsistency is due to the fact that the Public Record Act is a relatively new

4 law (1964) and the amendment to the State Constitution (Article 1, Section 2) regarding the same,

5 was passed in 2004, whereas the election code goes back to even the 1800s and was based on a

6 philosophy of a much more restrictive access to documents by the public.

7   41. NOT SEALED: It is anticipated that the County will argue that we may not access the

8 ballots because they have been sealed, pursuant to California Elections Code Code Sections 15370

9 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be

10 opened pursuant to California Elections Code Section 15307. However, since the instant contest

11 was timely filed, we ask that the court unseal the ballots for the purposes of this inquiry.

12   42. **Therefore, I REQUEST THE FOLLOWING:**

13   1. Access to voted ballots in the 2016 Primary Election, so that I (and other volunteers, i.e.

14   "we") may conduct an independent audit, most specifically regarding the Early VBM

15   ballots.

16   2. The right to extend the audit to other categories of ballots, such as the Later VBM ballots if

17   we see a need.

18   3. To conceal the exact identity of the batches of ballots to be reviewed until the time and date

19   when access is granted, so that it will be a surprise to the registrar.

20   4. To witness the physical access of the ballots from their sealed condition, to ensure that no

21   tampering occurs.

22   5. Access to the ballots on the same basis that I would be able to inspect any other sealed

23   documents. I wish to avoid excessive costs that may be traditional in election contests, such

24   as to "hire" the election officials to recount them, etc. but I am willing to comply with

25   reasonable time and place access restrictions, and reasonable costs that are incurred.

26   6. That the ballots not be destroyed until we are granted access and have time to review and

27   scan the ballots, and we ask the court to order the Registrar to preserve the ballots until our

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1   inquiry is complete, and extend the time the records must be kept to at least three years, to

2   reflect the normal statute of limitations on any crimes that may have been committed.

3   7. To use a high-speed scanner, or similar equipment (which I will provide and provide

4   volunteers who will operate that equipment) to image the ballots so we may document the

5   audit results and minimize the time and expense our inquiry may have on the Registrar. By

6   imaging the ballots, if we are to submit our evidence to the Secretary of State or other law

7   enforcement agencies for criminal prosecution, we wish to produce clear and convincing

8   evidence to that end and avoid secondary access to the ballots, and further cost to the

9   County.

10   8. To be able to inspect any "white out" tape applied, most particularly to the Democratic

11   presidential race itself. Thus we may need to inspect under the tape so we can inspect the

12   underlying ballot, which was what the Registrar explained was possible in his testimony

13   during the Election Audit Lawsuit.

14   9. The right to inspect, under reasonable terms, any and all other election information and

15   documents even if they may be considered "sealed."

16   10. Because of the interest of the public in this case, I request that video cameras be allowed

17   during the inspection and scanning of the ballots, and also if there are any hearings in this

18   matter, that video recordings of those proceedings be allowed, at my cost. I agree to avoid

19   revealing any confidential information in such recordings. The defendant, the Registrar of

20   Voters, is a public official and the topic of this case is regarding those official duties that is a

21   great interest by the public. In the Election Audit Lawsuit, such video recordings were not

22   allowed and there was a great deal of explanation by the County about their election process

23   that would have been beneficial to the public to understand, and so we lost a great

24   opportunity to provide that transparency to the public.

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26 Because the defendant has not complied with our request based on our rights as a contestant to the

27 election, we ask the court to hold a hearing and compel the County to comply with our requests.

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1 Our elections are a very important foundation of our democracy in our country, and I request the

2 full discretion of the court to assist me in obtaining relief.

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   DATED: October 26, 2017

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                                                        Your signature
5   RAYMOND LUTZ
                                                        In Pro Per
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FIRST AMENDED AFFIDAVIT OF CONTESTANT RAYMOND LUTZ RE 2016 DEMOCRATIC PARTY
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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

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

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

—Attachments:—

ElectionContest-RaymondLutz-SanDiego.pdf   2.0 MB

EXHIBIT 2

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

March 20, 2017

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 <u>should match</u> 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:
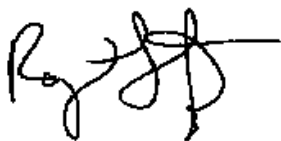   Web Page URL: http://www.copswiki.org/Common/M1735
      Attachments:
            1. This letter, including Exhibit 1.
            2. Your Manual Tally Report, both summary and detail.
            3. Snapshot data file, full version
            4. Snapshot data file, 1% precincts and presidential race (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.
368	240000 - MIDWAY OLD TOWN	238	66	85	151	66	86	152	-1	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.
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)	(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

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