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6 Attorneys for Defendants

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
Corporation; RAYMOND LUTZ, an
12 individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

**DECLARATION OF L. MICHAEL VU
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

IMAGED FILE

Date: July 6, 2016

Time: 1:30 p.m.

Dept.: 73

ICJ: Hon. Joel Wohlfell

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20 I, L. MICHAEL VU, declare as follows:

21 1. I make this declaration based on my own personal belief, except for matters set
22 forth on information and belief, and as to those matters I believe them to be true, and if called
23 upon to testify herein, I could and would competently testify to the following facts:

24 2. I am employed by the County of San Diego as the Registrar of Voters. I have held
25 the position of Registrar of Voters since December 28, 2012.

26 3. I was originally employed by the County of San Diego as the Assistant Registrar
27 of Voters in April 9, 2007.

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1 4. From August 2003 to March 2007, I was employed by the County of Cuyahoga in
2 Ohio as the Director of the Board of Elections.

3 5. From 1998 to 2003, I was employed as the Elections Manager by the County of
4 Salt Lake, in Salt Lake City, Utah.

5 6. As the Registrar of Voters for the County of San Diego my duties include
6 overseeing the conduct of all federal, state and local elections; verifying initiative, referendum
7 and recall petitions; maintaining the list of eligible registered voters and political district
8 boundaries; supervise subordinate staff; develop and monitor annual budget; administer and
9 negotiate contracts; direct the planning and implementation of policies and programs.

10 7. I am familiar with the voter records maintained by the Registrar's office in the
11 normal course of business.

12 8. I am also familiar with policies and practices of the Registrar's office regarding
13 the handling, processing, and tabulation of ballots both before and after an election.

14 9. For the June 2016 Presidential Primary Election the Registrar's office was
15 required to print 8,160 different ballot types to account for all of the variations in the ballot.
16 Each ballot type is coded so that the devices used to tabulate the ballots can recognize each
17 ballot type and properly count the ballots.

18 10. Prior to every election, the Registrar's office conducts a logic and accuracy test of
19 the voting systems used to tabulate the election returns. The logic and accuracy test includes the
20 following activities:

- 21 • Generating a pre-marked test deck which tests each contest and choices across each
22 voting precinct in the election and tests the hardware and software in which ballots are to
23 be tabulated.
- 24 • Scanning the pre-marked test deck through each method (i.e. central count and precinct
25 count optical scan) in which ballots are tabulated.
- 26 • Testing the Direct Record Electronic (i.e. touchscreen) by manually casting votes onto it.
- 27 • Verifying the results of each method by comparing the pre-determined results against the
28 results of tabulation system reports.

1 11. The logic and accuracy test for the June 7, 2016 election occurred over a 10-day
2 timeframe using approximately 20,000 cards for the test desk.

3 12. There were 1,522 polling locations in the County for the June 2016 Presidential
4 Primary.

5 13. In the June 2016 Presidential Primary Election there were approximately 770,000
6 ballots cast. As of the date of this declaration the Registrar's office has processed and counted
7 approximately 490,000 (approx. 63.64%) VBM ballots and approximately 41,000 (5.32%)
8 provisional ballots. We estimate that there are approximately 500 more VBM ballots to be
9 adjudicated. As of the date of this declaration, we estimate that there are approximately 18,500
10 to 21,500 provisional ballots to be processed and counted.

11 14. California has, by statute, provided for provisional voting since 1984.

12 21. Voters may be required to vote provisionally on the day of the election for a
13 number of reasons. One reason that a voter may be asked to vote provisionally is because the
14 voter is registered as a VBM voter, has been issued a mail ballot but wants to vote at the poll.
15 The purpose of having a voter registered as a VBM voter vote provisionally is to provide a
16 safeguard against the possibility that the VBM voter has already voted, returned his or her VBM
17 ballot and had his or her VBM ballot counted.

18 15. Another reason for requiring a voter to vote provisionally, that occurs most
19 frequently, is the voter does not appear on the roster of voters at the precinct where they appear
20 to vote. For example, if a non-VBM voter is registered to vote in a precinct in Poway but the
21 voter appears at a poll in Chula Vista, that voter would be given a provisional envelope in which
22 the voter would place his voted ballot, which is then returned to the Registrar's office unopened
23 for final determination. After voting, the voter is instructed to complete all of the information
24 required on the outside of the provisional ballot envelope, including, among other things, the
25 voter's current residence address. The voter is also required to sign and seal the envelope, and
26 return the envelope to the poll worker for deposit into the ballot box.

27 16. Another reason for requiring a voter to vote provisionally is unique to "open
28 primary" elections. The Republican primary is a "closed election" meaning that only registered

1 Republicans are allowed to vote for the Republican presidential candidates that appear on the
2 Republican ballot. The Democrat's primary is an "open primary" meaning that voters who have
3 registered "No Party Preference" are allowed to vote for the Democrat's presidential candidates.
4 But this was further complicated by the fact that while the Democrat's primary was an open
5 primary, voters registered as No Party Preference were not allowed to vote for the Democrat's
6 central committee contests that appeared on the Democrat's ballot. As a result, if a No Party
7 Preference voter wanted to vote for the Democrat's presidential candidates, they were given a
8 ballot that did not include the Democrats central committee contests. If the No Party Preference
9 voter insisted on voting the version of the Democratic ballot that contained the Democratic
10 central committee contest, those persons were asked to vote provisionally.

11 17. If a voter insisted on voting a ballot of a party with which he or she is not
12 registered, or if a person who is registered as "no party preference" insisted on voting a
13 Republican ballot, those persons were asked to vote provisionally.

14 18. By statute, the Registrar's office has thirty days to process all of the ballots cast
15 and to certify the state and local election results. Also, by statute the Registrar must certify the
16 presidential contests to the Secretary of State within 28 days after the election.

17 19. Each VBM ballot envelope and provisional ballot envelope is manually reviewed
18 by the Registrar's staff. This review is very labor intensive. Provisional and VBM ballots must
19 be scanned, sorted and signature checked against the records on file with our office before the
20 ballots are extracted from the envelopes and tabulated. In addition, a large percentage of
21 provisional ballots must be remade to eliminate votes for contests that the provisional voter was
22 not eligible to vote for.

23 20. New legislation has further complicated the processing and handling of VBM
24 ballots. As of this election, our office will accept and process all VBM ballots that are
25 postmarked and received within three days of the election. In addition, voters who failed to sign
26 their VBM ballot envelope now have up to eight days after the election to provide our office
27 with their signature.

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1 21. We have approximately 135 election workers working every day to process the
2 VBM and provisional ballots. The review and verification of the VBM and provisional ballots
3 requires tens of thousands of man hours to complete.

4 22. As of 8:00 p.m. June 8, 2016, our office had processed and included 256,685
5 VBM ballots in the semi-official canvass totals. These VBM ballots were received by our office
6 before election-day.

7 23. For the reasons stated above, provisional ballots cannot be reviewed, processed
8 and counted until all of the VBM ballots have been accounted for and processed.

9 24. During the certification period, Elections Code § 15360(a)(1) requires elections
10 officials to complete a manual tally of the ballots cast at 1 percent of the precincts chosen at
11 random and, for each race not included in the initial group of precincts, one additional precinct.

12 25. Pursuant to Elections Code § 15360(a)(2), elections officials may, instead of
13 conducting a manual tally of the ballots cast at 1 percent of the precincts, opt to conduct a two
14 part manual tally that includes the ballots cast in 1 percent of the precincts on election-day,
15 excluding VBM ballots, and 1 percent of the VBM ballots cast in the election in batches
16 randomly selected by the elections official.

17 26. The purpose of the manual tally is to verify the accuracy of the voting systems that
18 are used to count the ballots. It is not a recount of election results.

19 27. I have personally witnessed Mr. Lutz observing our post-election canvass of
20 elections going back as far as 2008. During this time Mr. Lutz has, on many occasions,
21 requested and received materials, including procedures, related to how our office conducts the
22 1 percent manual tally.

23 28. On June 8, 2016, members of the public participated in the random selection of
24 precincts to be included in the 1 percent manual tally. In addition to the 16 precincts identified
25 through the random selection process, our office thereafter identified and included another 4
26 precincts in the manual tally so as to include ballots from precincts in which there are candidates
27 and measures that were not included in the original selection of precincts.

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1 29. The County of San Diego is currently conducting the 1 percent manual tally
2 pursuant to Elections Code § 15360(a)(1). Utilizing this method, the Registrar's office will
3 include 7,819 ballots (approx. 1.02%) in the manual tally.

4 30. The manual tally is also a very labor intensive process. We have multiple three-
5 person panels working every day to complete the tally. The labor cost for each panel of workers
6 for conducting the manual tally is approximately \$2,800 per week.

7 31. The County of San Diego does not include provisional ballots in the sample
8 selected for the manual tally. As stated above, provisional ballots cannot be reviewed and
9 processed until the VBM ballots have been reviewed, processed and included in the official
10 count.

11 32. In my experience, the Registrar's office is not done processing all of the
12 provisional ballots until the last day or two before the election needs to be certified. If
13 provisional ballots were included in the manual tally, the Registrar's office would be unable to
14 complete the canvass of the election results and certify the election within the certification
15 period.

16 33. When selecting VBM ballots to be included in the manual tally, the Registrar's
17 Office randomly selects 1 percent of the VBM ballots based on the semi-official canvass the day
18 after the election. The County of San Diego does not include VBM ballots that have yet to be
19 processed and added into the official canvass results.

20 34. The processing and tabulation of the provisional and VBM ballots not included in
21 the semi-official election results takes most of the canvass period to complete. If our office was
22 required to include these ballots in the manual tally, it would seriously jeopardize our ability to
23 complete the canvass and certify the election within the certification period.

24 35. In addition, waiting until the processing and tabulation of the provisional and
25 VBM ballots was complete before commencing the manual tally would potentially create other
26 problems. Under this scenario, if there was a systemic issue with the tabulation system, we

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1 would not discover such problem until very late in the certification period and we would be
2 unable to correct the problem and rerun all of the ballots before the end of the certification
3 period. This would be a disservice to the public and likely result in public outcry.

4 36. Requiring the Registrar's office to include provisional and the remaining VBM
5 ballots in the manual tally at this late date would delay our ability to certify the election results
6 for up to three weeks. In addition, we estimate that the cost to include the provisional and
7 additional VBM ballots in the manual tally would exceed \$100,000.

8 37. A delay in our certification of the election results would also delay the
9 certification of all federal and statewide matters on the ballot by the Secretary of State's office.

10 38. A delay in the certification of the election results would also create chaos with
11 respect to local contests. Candidates who won the election outright or who require a runoff
12 election would be placed in limbo. Implementation of measures approved by the voters, such as
13 Prop. I (the City of San Diego Minimum Wage Ordinance) which would otherwise become
14 effective upon the City council's approval of the certification of the election would be delayed.
15 Candidates that might be considering asking for a recount would not know the timeframe within
16 which to demand a recount.

17 39. In addition to conducting the official canvass, our office is in the process of
18 manually reviewing and verifying hundreds or thousands of signatures on various state and local
19 initiative petitions. The review and verification of the signatures on 10 proposed statewide
20 initiatives must be completed by June 30th. The review and verification of the signatures on the
21 three local initiatives must be completed by July 10th, 12th and 15th respectively. This includes a
22 review and verification of over 100,000 signatures on the Citizen's Plan initiative.

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