

Citizens' Oversight Projects (COPs)

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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