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5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants

7  
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  
non-profit corporation; RAYMOND LUTZ,  
12 an individual,

13 Plaintiffs,

14 v.

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

18 Defendants.

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

) **DEFENDANTS' NOTICE OF LODGMENT  
OF EXHIBITS 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

19  
20 Defendants hereby lodge the following documents with the court in support of their  
21 opposition to plaintiffs' motion for preliminary injunction:

22 Exhibit 1 – Facebook posting by Mr. Lutz dated June 27, 2016.

23 Exhibit 2 – Redlined copy of Elections Code Section 15360 as amended by AB 1235 in  
24 2006.

25 Exhibit 3 – Press Release by Citizens' Oversight dated June 27, 2016

26 DATED: June 30, 2016,

THOMAS E. MONTGOMERY, County Counsel

27 By: /s/Timothy M. Barry  
TIMOTHY M. BARRY, Chief Deputy  
28 Attorneys for Defendants

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**DEFENDANTS' NOTICE OF LODGMENT IN SUPPORT OF DEFENDANTS' OPPOSITION  
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

# EXHIBIT 1



Ray Lutz

June 27 at 4:52pm · El Cajon · 🌐

**ALERT!**

We will have a press conference and rally at 11AM at the San Diego Registrar of Voters. Please come and help promote that EVERY VOTE SHOULD BE COUNTED! Press Release here: <http://www.copswiki.org/Common/M1663>  
NOTE: Please park in visitors spaces (2 hours) or parking structure.  
Professional "courthouse" attire requested by attorneys (and a good idea since we will be on camera -- this is a performance so please play your roles!)

## **Citizens' Oversight takes the Registrar of Voters, Secretary of State to Court**

**Count Every Vote!**

**Lawsuits Question Election Processing Practices, Statewide Outcome**

### **MEDIA ADVISORY**

#### **Press conference & Rally:**

**WHEN:** 11 AM, Tuesday, June 28

**WHERE:** Outside the San Diego Registrar of Voters,  
5600 Overland Ave, San Diego, CA 92123

**WHO:** Ray Lutz, National Coordinator, Citizens Oversight  
Alan L. Geraci, JD, Former Asst. City Attorney  
Wm. M. Simplich, Noted Bay Area Attorney

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# EXHIBIT 2



California  
LEGISLATIVE INFORMATION

SB-1235 Elections. (2005-2006)

Current Version: 09/30/06 - Chaptered Compared to Version: 02/06/06 - Introduced

Compare Versions

**SECTION 1.** Section 15360 of the Elections Code is amended to read:

**15360. (a)** During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including absent ~~voter's ballots, provisional ballots, and ballots cast at satellite locations,~~ ~~cast~~ voters' ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

In addition to the 1 percent count, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

*(b) If absentee ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.*

*(c) The elections official shall use either a random number generator or other method specified in regulations that shall be adopted by the Secretary of State to randomly choose the initial precincts or direct recording electronic voting machines subject to the public manual tally.*

*(d) The manual tally shall be a public process, with the official conducting the election providing at least a five-day public notice of the time and place of the manual tally and of the time and place of the selection of the precincts to be tallied prior to conducting the tally and selection.*

*(e) The official conducting the election shall include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved. In resolving any discrepancy involving a vote recorded by means of a punchcard voting system or by electronic or electromechanical vote tabulating devices, the voter verified paper audit trail shall govern if there is a discrepancy between it and the electronic record.*

**SEC. 2.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

# EXHIBIT 3

PRESS RELEASE / MEDIA ADVISORY -- FOR IMMEDIATE RELEASE

## **Citizens' Oversight takes the Registrar of Voters, Secretary of State to Court**

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Alan L. Geraci, JD, Former Asst. City Attorney  
Wm. M. Simpich, Noted Bay Area Attorney**

SAN DIEGO (June 27, 2016) -- Legal action filed in San Diego Superior Court questions elections processing procedures in election districts throughout California in one of the most interesting primary elections in years. Citizens' Oversight, Inc. a 501(c)3 Delaware corporation with primary offices in California is the leading plaintiff in these cases in an attempt to represent all voters in California, and most particularly, those who have submitted a provisional ballot in this election.

Ray Lutz of Citizens Oversight explains, "There were about 10 times the normal number of provisional ballots, particularly by 'No Party Preference' (NPP) voters who may have used a regular DEM ballot or cross-over DEM ballot, and improperly sidelined into the provisional ballot pile. Some voters were given regular DEM ballots but should have received DEM "cross-over" ballots. These votes should be counted even if they were given the wrong ballot at the polling place. If all these ballots are counted, the presidential primary may flip for Bernie rather than for Hillary in the Democratic primary race."

Lutz noted that this is not an issue in the Republican race because they have not opted to allow NPP voters to vote in their primary.

As of the end of last week in San Diego, 48,000 ballots still had to be included in the count. These last set of ballots should include "Provisional" ballots which will be tilted heavily toward Sanders. With a gap of only 24,000 votes, Sanders may win the election in this county, and perhaps even state wide if he has a 75% lead in that last batch. "If that happens, it will be quite interesting indeed," said Lutz.

Lutz filed his own case last week Pro Per, and has since hired former Asst. City Attorney Alan Geraci to fight for a clean 1% Manual Tally including all votes cast. The San Diego Registrar of Voters, Michael Vu, said he was not intending to include Vote-By-Mail (VBM) ballots processed after election night nor any provisional ballots in the state-mandated audit process, excluding more than one-third of

the ballots. "They have had a habit of short-cutting this audit procedure for years. It is time to follow the law and include all ballots cast in the universe of ballots to be sampled in the procedure," Lutz said.

San Francisco Bay Area civil rights attorney William M. Simpich will announce the filing of a new lawsuit designed to ensure that all California primary votes are counted despite the provisional ballot confusion. "This provisional ballot situation is a mess that could have been avoided. At this point we want to make sure every vote is correctly counted even if the voters happened to use the wrong ballot type," Simpich said.

The public is invited to attend the press conference to promote that every vote should be counted.

According to a schedule agreed to last week, the 1% Manual Tally case will be heard on July 6, 2016 at 1:30 pm in San Diego Superior Court, 220 West Broadway, Department C-73 (West Annex, 6<sup>th</sup> floor). The public is invited to attend.

Please note: There is a slight chance that this hearing may have to change due to the fact that the San Diego Registrar may try to jump the gun and certify the election prior to counting all the votes and prior to fully complying with the law regarding the 1% manual tally. It brings up an interesting question: Is the election certified even if the Registrar does not comply with election law? Because of this issue, there is a slight chance the hearing may occur earlier. The final deadline for certifying the election by the county is July 7.

**CONTACT:**

Ray Lutz, [CitizensOversight.org](http://CitizensOversight.org)  
619-820-5321  
[raylutz@citizenoversight.org](mailto:raylutz@citizenoversight.org)

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