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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware)
12 non-profit corporation; RAYMOND LUTZ,)
13 an individual,)

14 Plaintiffs,)

15 vs.)

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

21 Defendants.)

CASE NO: 37-2016-00020273-CL-MC-CTL

**DECLARATION OF RAYMOND LUTZ IN
SUPPORT OF INJUNCTIVE RELIEF**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016
No Trial Date Set

Hearing Date: July 6, 2016
Hearing Time: 1:30 p.m.
Dept: C-73

Hon. Joel R. Wohlfeil

22 I, Raymond Lutz declare as follows:

- 23 1. I am a resident and registered voter in the County of San Diego unincorporated area. I am
24 over the age of 18.
- 25 2. I have personal knowledge of the matters stated herein unless stated under information
26 and belief for which I believe said matter to be true and correct.
- 27 3. I am also the National Coordinator of CitizensOversight.org,. I have conducted extensive
28 reports and reviews of the election processes used in San Diego County since 2008,
including a top-to-bottom report regarding the 2010 election.
4. I am the chief officer of Citizens Oversight Inc. (“Citizens Oversight”) located and doing

1 business in the County of San Diego. Citizens Oversight conducts election oversight
2 nationwide as a watchdog of election processes to preserve the integrity of elections in
3 our democracy.

4 5. The San Diego County Registrar of Voters has refused to comply with California
5 Elections Code Section 15360. Section 15360 requires the Registrar to canvass the
6 election process by conducting a manual tally of the ballots tabulated by voting devices
7 and ballots received from voters by mail. The purpose of Section 15360 is to provide an
8 objective and statistical basis to test the integrity of the voting method and process.
9 Discrepancies can isolate defective tabulation, employee error, or nefarious conduct such
10 as “hacking.” The modern age of voting with electronic and automated systems has been
11 heavily scrutinized in recent election cycles. Only strict compliance with the legislative
12 intent of Section 15360 can assure the electorate of fair elections.

13 6. The Registrar has unilaterally decided that his office does not need to fully comply with
14 Section 15360 by not including a manual tally of all ballots cast in 1% of the precincts
15 chosen at random. Specifically, the Registrar takes does not include provisional ballots
16 added to the tally nor does the Registrar include all Vote-by-Mail (VBM) ballots.

17 7. I have repeatedly made written requests that the Registrar produce a written procedural
18 manual describing how their office will conduct a 1% manual tally to fully comply with
19 Section 15360(a) including vote-by-mail ballots and provisional ballots. Nothing was
20 ever provided to me.

21 8. Recently, after the filing and service of this complaint, I have been informed that the
22 Registrar intends to comply with Section 15360(a)(1) instead of Section 15360(a)(2).
23 Public Notice (FAC “Exhibit C”) was posted on the Registrar’s website and the process
24 noticed for the manual tally was for Section 15360(a)(1). Attached as Exhibit 2 to this
25 declaration is a true and correct email of which I received copy between my counsel and
26 counsel for the Registrar stating the Registrar’s change of intent.

27 9. There are two major classes of ballots processed by the 1% manual tally:

28 9.1 PRECINCT POLLING PLACE (PPP)BALLOTS: Ballots cast at physical precinct

1 polling places (usually on election day). Included in this set are all ballots that are
2 not vote-by-mail ballots, but including provisional ballots. Provisional ballots are
3 intended to be used at the polling place if there is some question about the validity
4 of the ballot or the eligibility of the voter, so that these can be reviewed later.

5 9.2 VOTE-BY-MAIL (VBM) BALLOTS: Ballots deposited in the mail and
6 postmarked no later than election day. In contemporary elections, VBM ballots
7 may comprise as much as or more than 60% of the total votes cast.

8 10. Section 15360 of the Elections Code refers to "ballots cast." The word "cast" is not
9 explicitly defined by the elections code, but the common meaning is that a ballot is "cast"
10 when it leaves control of the voter and is turned over to the elections official for tally. In
11 the precinct polling place, a ballot is "cast" when it is inserted into the ballot box. VBM
12 ballots are "cast" when they are submitted to the U.S. Postal Service or hand-delivered to
13 a precinct polling place or to the Registrar of Voters.

14 11. After the filing of this Complaint and after Public Notice of the manual tally pursuant to
15 Section 15360(d), the Registrar informed my counsel that the Registrar will conduct their
16 1% manual tally according to the Section 15360(a)(1). According to Section 15360(a)(1),
17 the Registrar shall conduct "... (a) public manual tally of the ballots, including vote by
18 mail ballots, cast in 1 percent of the precincts chosen at random by the elections official. .
19 .. In addition to the 1 percent manual tally, the elections official shall, for each race not
20 included in the initial group of precincts, count one additional precinct. The manual tally
21 shall apply only to the race not previously counted."

22 12. Public Notice ("Exhibit C" to FAC) is the public notice of the manual tally procedure. It
23 states that "Pursuant to State Law, a manual tally of at least 1% of the precincts and 1% of
24 the mail ballots, selected at random, is required as part of the post-Election Day canvass
25 of the election." There are no other categories or exclusions. The public notice does not
26 say for instance that the manual tally includes 1% of the precinct ballots minus the
27 provisional ballots and minus those omitted in the Quality Control (QC) process. The
28 public notice does not say, nor does the statute intend that the manual tally includes 1% of

1 the mail ballots already processed, minus “. . . APPROXIMATELY 285,000
2 Mail/Provisional ballots still to be counted.” (See “Exhibit B” to the FAC)

3 13. California Elections Code §15101 allows Defendants to begin processing VBM ballots 10
4 business days prior to the election. The initial tally provided to the public and media on
5 Election Day after the polls have closed consist of VBM ballots that were received early
6 in the process or ballots cast by voters at the Registrar's office.

7 14. After the polls close, precinct polling place (PPP) ballots are to be transported from each
8 polling place directly to the Registrar of Voters' office and they are scanned over the
9 course of the night.

10 15. The first step in this process is for the Registrar to receive the boxes of ballots from the
11 precinct polling places. When received by the Registrar, the ballot boxes are opened and
12 the ballots are given an initial inspection. A number of ballots may be removed from the
13 precinct ballot box for reasons such as extraneous marking, mutilation, etc. (as part of the
14 QC inspection process). These ballots may be "remade" prior to scanning by a “remaking
15 group.” These ballots are currently not being included by the Registrar in the 1% manual
16 tally process. We do not know how many ballots were removed in this fashion in this
17 election because the Registrar refuses to provide this information. We can, however,
18 approximate this number with greater difficulty by first noting the number of signatures
19 on polling place sign-in rosters and then subtracting the number actually scanned.

20 16. Once the set of early VBM ballots has been scanned, and all the PPP ballots from the
21 precinct polling places have been scanned (excluding provisional ballots and those
22 removed due to QC inspection), an initial, unofficial result of the election is announced to
23 the public. When this announcement was made at the end of election night on June 7, the
24 Registrar announced: “There are APPROXIMATELY 285,000 Mail/Provisional ballots
25 still to be counted.” (“Exhibit B” to FAC)

26 17. The unofficial results are determined by tabulation software called "GEMS" which runs
27 on the "central tabulator" computer. There is a possibility that a compromised worker or
28 external “hacker” who has gained access to this computer will have modified the results.

1 For example, a malicious person might be able to shift 10,000 or 20,000 votes from one
2 candidate to another, and attempt to conceal this gross alteration by distributing smaller
3 alterations to perhaps 1,000 different precincts by shifting 10 to 20 votes in each precinct.

4 18. Because the Registrar is refusing to fully comply with Section 15360, so long as the
5 “hacker” does not modify a precinct included in the 1% manual tally, the alterations
6 would be invisible to this audit procedure. So it is absolutely essential that the precincts
7 and VBM batches which are selected for the 1% manual tally remain secret until the
8 results are fixed as unofficial results. The element of surprise is essential to make sure
9 that the “hacker” is not able to simply avoid altering votes in the precincts and VBM
10 batches which are involved in the manual tally, thus rendering the 1% manual tally
11 worthless.

12 19. Furthermore, it is essential that the unofficial results are fixed and provided to the public
13 prior the random selection process. Otherwise, the “hacker” may be able to reverse any
14 alterations made to those specific precincts to cover their tracks, in which case, the 1%
15 manual tally would again be worthless.

16 20. These constraints are designed to ensure the effective implementation of a manual tally
17 procedure under the law. They are well understood and implied by the concept of random
18 selection necessary to effectuate an accurate, meaningful manual tally procedure.

19 21. The day after the election, on June 8th, the random selection was performed. The
20 selection of precincts and VBM batches to be manually tallied was drawn from only the
21 set of ballots already processed (not including the aforementioned 285,000 VBM and
22 provisional ballots designated as "still to be counted.")

23 22. Plaintiffs asked the Registrar to delay this selection process so as to include all the VBM
24 ballots but that demand was refused. (Attached as “Exhibit F” to FAC) There is no
25 indication that sufficient public notice of the random draw was provided, as required by
26 section 1.5 of the Procedures set forth in Policy ES-08. (“Exhibit G to FAC)

27 23. Members of the public are requested to assist in the random selection of precincts and
28 VBM batches. There are 1522 precinct in San Diego County. The selection of precincts is

1 performed using three sets of ping pong balls marked 0-9 and one set of two ping pong
2 balls marked with 0 and 1. A member of the public selects one precinct out of 1522 by
3 choosing one ball from each of the ones, tens, hundreds, and thousands containers. A total
4 of 16 precincts (1 percent) are chosen in this manner. (Attached as Exhibit D to FAC).

5 24. In addition to these 16 precincts, precincts and races are chosen by the Registrar to ensure
6 that all races in the election are checked by a manual tally procedure. These additional
7 precincts and races are added later.

8 25. Immediately after choosing the 16 precincts, a member of the public selects 1% of the
9 VBM batches already scanned. This is done in a similar way to the selection of precincts,
10 using ping pong balls. Attached as Exhibit E to FAC.

11 26. There were about 730 mail in "batches" included in the 1% manual tally selection
12 process. If there are 400 ballots in each batch, this represents about $730 \times 400 = 292,000$
13 ballots included in the VBM tally process.

14 27. I attended the public selection process and video recorded the process. Plaintiffs
15 mentioned the discrepancy between the 730 batches and the fact that the 285,000
16 unprocessed VBM and provisional ballots was not being included in the selection
17 process. The Registrar's staff responded that the 1% manual tally would include only the
18 VBM ballots already scanned, but none of the "unprocessed" 285,000 VBM and
19 provisional ballots. Lodged as "Exhibit 3" with this declaration is a true and correct copy
20 of the recording of this selection process.

21 28. At the public meeting for the selection of the random precincts on June 9, 2016, the
22 Registrar's staff provided "Policy Number [ES-08]" which provides the policy which
23 "establishes procedures for conducting the One Percent Manual Tally." "Exhibit G" to
24 FAC.

25 29. Policy ES-08 provides procedures for selecting 1% of the precincts for the 1% manual
26 tally, but does not describe any procedures for VBM ballots and the batches which are to
27 be manually tallied nor does it describe that the Registrar will omit provisional ballots
28 which are cast. Without a written procedure, there is no way for the public to understand

1 nor comment on the procedures for auditing the election for the VBM ballots, which
2 today comprise a majority of the ballots cast.

3 30. Policy ES-08 describes in provision 6.1.11 and 6.2.16, that "The supervisor may request
4 Technical Services rerun the ballots to confirm the manual tally." This step is completed
5 if there is a variance between the hand-tallied result and the computer result from the
6 central tabulator. If a re-scan of the sampled ballots suddenly matches the manually tally
7 result, that would not "confirm the manual tally" but would imply that a compromised
8 worker or "hacker" has modified the election in the central Tabulator, and it has been
9 caught by the manual tally procedure. In such a case, steps should exist in the procedure
10 to declare that the election has been hacked and to require a complete re-scan of all
11 ballots.

12 31. In this election, there was also an unusually high number of provisional ballots primarily
13 due to No Party Preference (NPP) voters who have the option of choosing a partisan
14 ballot only for the presidential race for most parties (but not the Republican Party). These
15 "crossover" ballots included the presidential race for that party, all the nonpartisan races,
16 but not the strictly partisan races such as central committee members. In this election, the
17 vast majority of cases were NPP voters choosing the DEM ballot (Democratic Party
18 crossover ballot) so they could vote for Sen. Bernie Sanders.

19 32. These ballots could have then be placed with the other ballots for the precinct but poll
20 workers were trained to treat these as "provisional" ballots thereby elevating the count of
21 provisional ballots to process. The normal and most prevalent use of provisional ballots
22 is to deal with a voter who ordinarily is a VBM voter who reports to the polling place, but
23 does not have his VBM ballot to turn in. If the voter had also voted by mail, the VBM
24 ballot would already have been received, in which event, the VBM ballot would be used
25 and the polling place ballot would not. Otherwise, the voter would (presumably)
26 inadvertently vote twice.

27 33. In the June 7 primary election, there were so many voters requesting NPP/DEM ballots
28 that many precincts ran out of those ballots. In those cases, the poll workers opted to use a

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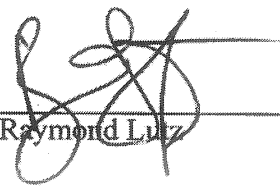
inadvertently vote twice.

33. In the June 7 primary election, there were so many voters requesting NPP/DEM ballots that many precincts ran out of those ballots. In those cases, the poll workers opted to use a regular DEM ballot but to omit the central committee race. These ballots were also treated as provisional ballots. Based upon information and belief, there were about 74,000 provisional ballots received in the June 7 primary election.

34. The integrity of the election process depends on the Registrar's full compliance with the 1 percent manual tally requirement of Section 15360. Cutting corners or shortening the process because it is inconvenient renders the process ineffectual at best and false at worse.

Pursuant to the laws of the State of California, I declare that the foregoing is true and correct.

Dated: 6/24/2016



Raymond Lutz