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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

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Hon. Joel R. Woelfel, Judge

Complaint filed: June 16, 2016
No Trial Date Set

22 COMES NOW, Plaintiffs who allege as follows:

23 **Parties:**

- 24 1. Plaintiff, Citizens Oversight Inc., is a Delaware non-profit corporation which conducts
25 election oversight nationwide as a watchdog of election processes, doing business in the
26 County of San Diego.
- 27 2. Plaintiff, Raymond Lutz, is a resident and registered voter in the County of San Diego
28 unincorporated area. He is also the National Coordinator of CitizensOversight.org, and
has conducted extensive reports and reviews of the election processes used in San Diego
county since 2008, including a top-to-bottom report regarding the 2010 election.

- 1 3. Defendant Michael Vu, San Diego County Registrar of Voters (“Registrar”) has held
2 that office since 2007 and is responsible for conducting election procedures in
3 compliance with California State Law, including the California State Elections Code.
- 4 4. Defendant Helen N. Robbins-Meyer, Chief Administrative Officer, County of San Diego,
5 has ultimate responsibility for operation of the County of San Diego to ensure compliance
6 with all laws, including compliance with the California Elections Code, maintains an
7 office at the County Administration Building located in the City of San Diego at 1600
8 Pacific Highway, Rm 166, San Diego, CA, 92101. Robbins-Meyers is the supervisor to
9 Michael Vu.
- 10 5. Defendant County of San Diego is a public entity organized in the State of California and
11 operates as an election district under the California State Election Code, with principle
12 offices in the County Administration Building, 1600 Pacific Highway, San Diego,
13 California 92101.

14 **Summary of Case:**

- 15 6. The San Diego County Registrar of Voters is not in compliance with California Elections
16 Code regarding the number of Vote-by-Mail (VBM) ballots hand-counted in the 1%
17 manual tally and requests that the Registrar of Voters comply with the law by,
- 18 (a) including all VBM ballots in the calculation of the required number of
19 batches to achieve one-percent, and, thus the number of VBM batches will
20 increase from 8 to approximately 15;
 - 21 (b) including all VBM ballot batches in the selection of batches involved in
22 the 1% manual tally;
 - 23 (c) including all provisionals and ballots removed during QC inspection in the
24 1% manual tally; and
 - 25 (d) produce all data file(s) that reflect the tally of votes in each batch counted
26 to be available to the public so a direct comparison can be made between
27 the results of scanning the batch and the results achieved in the hand-tally
28 process.

1 **Background:**

2 7. California Election Code Section 15360 (full text attached as "Exhibit A") describes the
3 activities required in conduct of processing the votes with regard to the "1% Manual
4 Tally". The applicable section of the law is as follows:

5 15360 (a) (2) A two-part public manual tally, which
6 includes both of the following:

7 (A) A public manual tally of the ballots, not
8 including vote by mail ballots, cast in 1 percent
9 of the precincts chosen at random by the elections
10 official and conducted pursuant to paragraph (1).

11 (B) (i) A public manual tally of not less than 1
12 percent of the vote by mail ballots cast in the
13 election. Batches of vote by mail ballots shall be
14 chosen at random by the elections official. (ii)
15 For the purposes of this section, a "batch" means
16 a set of ballots tabulated by the voting system
17 devices, for which the voting system can produce
18 a report of the votes cast.

19 8. Defendants do not have, or have not produced on Plaintiffs' written request, a written
20 procedural manual describing how they, and each of them, will conduct a 1% manual
21 tally to comply with Election Code Section 15360(a)(2).

22 9. The 1% manual tally is conducted by teams of workers who carefully manually count and
23 tally votes of all the ballots in selected precincts. One use of the 1% manual tally
24 is to detect discrepancies and any possible computer programming errors. However,
25 election integrity advocates also see the 1% manual tally as a means to ensure larger
26 integrity of the vote-counting process. The 1% manual tally, with careful oversight, can
27 also a check on the integrity of the workers at the Registrar and can detect hackers from
28 the outside who may alter the vote in the central tabulator. Regardless of the stated

1 purpose, the 1% manual tally must be conducted according to the full extent of the
2 provisions of law.

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

4 POLLS BALLOTS: Ballots cast in at a physical polling place to vote (generally) on
5 election day. Included in this set are all ballots that are not vote-by-mail ballots, including
6 provisional ballots. Provisional ballots are used at the polling place if there is some
7 question about the validity of the ballot, so these can be reviewed later.

8 VOTE-BY-MAIL (VBM) BALLOTS: Deposited in the mail and postmarked no later
9 than election day. These days, VBM ballots may comprise as much as or more than 60%
10 of the total votes cast.

11 11. It is important to note the wording of the 1% manual tally provisions carefully, as they
12 were crafted with an intent to be succinct and meaningful. The first set of ballots, the
13 polls ballots, are all ballots that are not VBM ballots. This then would include all
14 provisional ballots, for example, because it is the intent of this provision, we argue, to
15 include absolutely all ballots in the universe of ballots to be checked by the 1% manual
16 tally.

17 12. The other set are all VBM ballots "cast." Not "received", not "processed" and not
18 "tallied." The wording is "cast." The word "cast" is not explicitly defined by the elections
19 code, but the common meaning is that a ballot is "cast" when it leaves control of the voter
20 and is turned over to the elections official. In the precinct, the ballot is cast when it is
21 inserted into the ballot box. VBM ballots are cast when they are submitted to the U.S.
22 Postal Service or hand-delivered to a precinct or the Registrar of Voters.

23 13. 1% Manual Tally Options: There are two options for conducting the 1% manual tally, as
24 specified in California Election Code Sec. 15360. The first is to tally 1% of all the
25 precincts, poll ballots and VBM ballots. The second is to conduct the tally in two parts,
26 one being the polls ballots, and one being the VBM ballots which are grouped into
27 batches rather than being grouped by precinct.

28 14. Plaintiffs are informed and believe that Defendants, and each of them, conduct their 1%

1 manual tally according to the second option. VBM ballots are grouped into "batches" with
2 mixed precincts and mixed ballot types, with approximately 400 ballots per batch.

3 15. Scope of Manual Tally: Attached as "Exhibit C", and incorporated by this reference as if
4 set forth in full, is the public notice of the manual tally procedure. It states that "Pursuant
5 to State Law, a manual tally of at least 1% of the precincts and 1% of the mail ballots,
6 selected at random, is required as part of the post-Election Day canvass of the election."
7 There are no other categories or exclusions. The public notice does not say that "the
8 manual tally includes 1% of the precinct ballots minus the provisional ballots and minus
9 those omitted in the QC process." The public notice does not say that it is "1% of the mail
10 ballots already processed, excluding about 285,000 ballots not yet processed."

11 16. California Elections Code §15101 allows Defendants to begin processing vote-by-mail
12 ballots 10 business days prior to the election. The initial tally provided to the public and
13 media at that time are VBM ballots that were received early in the process or voters who
14 cast their ballot at the Registrar's office. After the polls close, polls ballots are
15 transported from each polling place to the Registrar of Voters' office and they are scanned
16 over the course of the night. The first step in this process is receiving the boxes of ballots
17 from the precinct.

18 17. QC Inspection Removal of Ballots: When received by the Registrar of Voters, The boxes
19 are opened and the ballots are given an initial inspection. At this point, we learned that a
20 number of ballots may be removed from the precinct box. In our review of the process in
21 2010, about 5% of the ballots were removed at this point for any of a number of reasons,
22 such as additional marking, mutilation, etc. These ballots may be "remade" prior to
23 scanning by a remaking group. These ballots are currently not included in the 1% manual
24 tally process. We don't know how many ballots were removed in this fashion in this
25 election because the ROV does not provide this information. We can, however, determine
26 this number by reviewing the number of signatures on sign-in rosters and then subtracting
27 the number actually scanned.

28 18. Unofficial Results: Sometime early in the morning, the set of early VBM ballots has been

1 scanned and all the normal (not provisional and not removed due to QC inspection)
2 ballots from the precincts have been scanned. This forms the initial unofficial results of
3 the election. At the end of election night, the website of the Registrar said that 285,000
4 ballots were yet to be counted. Attached as Exhibit B, and hereby incorporated by this
5 reference as if set forth in full herein, is a snapshot of the header of that page the day after
6 the election.

7 19. The unofficial results are determined by tabulation software called "GEMS" which runs
8 on the "Central tabulator" computer. There is a possibility that a compromised worker or
9 external hacker who has gained access to this computer will have modified the results,
10 perhaps by shifting 10K or 20K votes from one candidate to another, by distributing
11 changes to perhaps 1,000 different precincts and shifting 10 to 20 votes in each one. As
12 long as the hacker does not modify a precinct included in the 1% manual tally, it will be
13 invisible to that audit procedure. So it is absolutely essential that the precincts and VBM
14 batches which are selected for the 1% manual tally are unknown until the results are fixed
15 as unofficial results. The element of surprise is essential to make sure that the hacker is
16 not able to simply avoid the precincts and batches which are involved in the manual tally.
17 Furthermore, it is essential that the unofficial results are fixed and provided to the public
18 prior the random selection process. Otherwise, the hacker may be able to reverse any
19 changes to those specific precincts to cover their tracks and again, the 1% manual tally
20 would again be worthless. These constraints on the effective implementation of a manual
21 tally procedure are well known and implied by the concept of random selection, and a
22 manual tally procedure.

23 20. Random selection of Precincts and Batches: The day after the election, the random
24 selection is performed. The selection is done only on the set of ballots already processed
25 (not including the 285,000 ballots mentioned as "still to be counted.")

26 21. Plaintiffs asked the Registrar of Voters to delay this selection process so as to include all
27 the VBM ballots but that demand was refused. (Attached as "Exhibit F," and hereby
28 incorporated by this reference as if set forth in full herein , is an email correspondence

1 with Defendant Michael Vu.)

2 22. Members of the public are requested to assist in the random selection of precincts and
3 VBM batches. There are 1522 precinct in San Diego County. The selection of precincts is
4 performed using three sets of ping pong balls marked 0-9 and one set of two ping pong
5 balls marked with 0 and 1. A member of the public selects one precinct out of 1522 by
6 choosing one ball from each of the ones, tens, hundreds, and thousands containers. A total
7 of 16 precincts are chosen in this manner. Attached as Exhibit D, and hereby incorporated
8 by this reference as if set forth in full, is a photocopy of the lists of precincts chosen.

9 23. In addition to these 16 precincts, precincts and races are chosen by the registrar to ensure
10 that all races in the election are checked by a manual tally procedure. These additional
11 precincts and races are added later.

12 24. Immediately after choosing the 16 precincts, a member of the public selects 1% of the
13 VBM batches already scanned. This is done in a similar way to the selection of precincts,
14 using ping pong balls. Attached as Exhibit E, and hereby incorporated by this reference as
15 if set forth in full herein, is the published list of batches selected.

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

19 26. Plaintiffs attended the public selection process and video recorded the process. Plaintiffs
20 mentioned the discrepancy between the 730 batches and the fact that the 285,000
21 unprocessed VBM and provisionals was not included in the selection process. They said
22 the 1% manual tally only includes the VBM ballots already scanned.

23 27. At the public meeting of the selection of the random precincts on June 9, 2016,
24 Registrar's staff provided "Policy Number [ES-08]" which provides the policy which
25 "establishes procedures for conducting the One Percent Manual Tally." A true and
26 correct copy of this policy memorandum is attached as "Exhibit G" and hereby
27 incorporated by this reference as if set forth in full herein

28 28. Policy ES-08 provides procedures for selecting 1% of the precincts for the 1% manual

1 tally, but does not describe any procedures for VBM ballots and the batches which are to
2 be manually tallied. Without a written procedure, there is no way for the public to
3 understand nor comment on the procedures for auditing the election for the VBM ballots,
4 which today comprise a majority of the ballots cast.

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

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

20 31. These ballots could have then be placed with the other ballots for the precinct but poll
21 workers were trained to treat these as "provisional" ballots. The normal and most
22 prevalent use of provisional ballots is to deal with a voter who normally is a VBM voter
23 and who does not have his VBM ballot to turn in. If the voter accidentally also voted by
24 mail, the VBM ballot would already have been received. The VBM ballot will be used
25 and the poll ballot will not. Otherwise, the voter could unintentionally vote twice.

26 32. There were so many people requesting NPP/DEM ballots that many precincts ran out. In
27 those cases, they opted to use a regular DEM ballot but omit the central committee race.
28 These would also be treated as provisionals. Based upon information and belief, there

1 were about 74,000 provisionals received.

2 **I.**

3 **FIRST CAUSE OF ACTION**

4 **(DECLARATORY RELIEF)**

5 **(All Defendants)**

6 33. Plaintiffs repeat, reallege and incorporate herein Paragraphs 1 through 32 inclusive, as
7 though set forth in full herein.

8 34. An actual controversy has arisen and now exists between Plaintiffs and Defendants, and
9 each of them. Plaintiffs alleges that the election code states clearly and succinctly that the
10 1% manual tally be performed in two parts, one part including 1% of all ballots cast at
11 precincts (including provisional ballots and ballots removed in the QC inspection) and
12 one part including 1% of all VBM ballots cast (including the VBM ballots already
13 processed and those still in the queue to be processed).

14 35. Instead, the Defendants, and each of them, included only about 290,000 VBM ballots in
15 the set of batches that could be selected for the 1% manual tally process, choosing 8
16 batches, with each batch being about 400 ballots. Defendants, and each of them, did not
17 include provisional ballots in the set of ballots included in the 1% manual tally.
18 Defendants, and each of them, did not include the ballots removed during QC inspection
19 in the set audited by the manual tally. Defendants, and each of them, did not include the
20 VBM ballots still in the queue waiting to be processed in the 1% manual tally. Thus, with
21 290,000 VBM ballots available for audit in the 1% manual tally, but with about the same
22 number waiting to be processed, instead of a 1% manual tally, this should be called the
23 "half-of-one-percent manual tally."

24 36. The Registrar is in violation of the clear intent of the law.

25 WHEREFORE, Plaintiffs pray that:

26 1. A declaration of the rights, duties and obligations of the parties concerning their
27 dispute; Specifically, A larger sample of VBM ballots must be included in the manual tally
28 process. The percentage must be at least 1% of the VBM ballots known to have been cast. In this

1 case, it roughly double the number of batches originally selected are required. Essentially all
2 VBM ballots and provisional ballots should be included in the set of ballots included in the
3 manual tally process. By including these ballots in the process, more of the process is checked,
4 including the ballots removed in the QC inspection. The definition for "batch" according to the
5 election code "means a set of ballots tabulated by the voting system devices, for which the voting
6 system can produce a report of the votes cast." Plaintiffs asked for data files corresponding to the
7 "report of the votes cast" for batches in the VBM manual tally and the Registrar refused to
8 provide these files. In addition, our oversight protocol is substantially enhanced if we get all
9 the data files corresponding to the batches PRIOR TO the 1% manual tally selection process.

10 2. Court will require that the registrar document their procedures regarding VBM ballots
11 in the 1% manual tally. Court will require that the procedures will include the steps to take if a
12 variance exists that cannot be explained. If a rescan of those ballots results which results in a
13 correction of the variance shall result in the declaration that the election is tainted, and a
14 complete rescan of the ballots must be performed, followed by another 1% manual tally
15 procedure on newly chosen precincts.

16 3. Court will require that after procedures are documented, that unofficial results will be
17 published by being provided to the public, and the 1% manual tally will be restarted for all VBM
18 and provisional ballots, including a new random selection after the results have been fixed.

19 4 For attorney fees and costs of suit, pursuant to California Code of Civil Procedure
20 Section 1021.5;

21 5. For such other and further relief as may be appropriate and just.

22 **II.**
23 **SECOND CAUSE OF ACTION**
24 **(INJUNCTIVE RELIEF)**
25 **(All Defendants)**

26 37. Plaintiffs repeat, reallege and incorporate herein Paragraphs 1 through 36 inclusive, as
27 though set forth in full herein.

28 38. Plaintiffs alleges that Defendants, and each of them, may not certify the election of June

1 7, 2016, without complying with the clear intent of California Elections Code Section
2 15360.

3 39. Despite Plaintiffs' attempt to gain, Defendants, and each of them, to comply with the
4 California Elections Code Section 15360, such compliance is not forthcoming.

5 40. As a result Defendants would certify the election results without compliance of Election
6 Code Section 15360, and this would result in irreparable harm to Plaintiffs and all the
7 voters in the County of San Diego.

8 WHEREFORE, Plaintiffs, and each of them, pray that:

9 1. A temporary, preliminary and permanent injunction for the certification of the June 7
10 election until Defendants, and each of them comply with the California Elections Code and
11 specifically California Elections Code Section 15360.

12 2. Pending a hearing or trial on this matter, an order that Defendants, and each of them,
13 be stayed from certifying the election;

14 3. For attorney fees and costs of suit, pursuant to California Code of Civil Procedure
15 Section 1021.5;

16 4. For such other and further relief as may be appropriate and just.

17
18 Dated: June 22, 2016

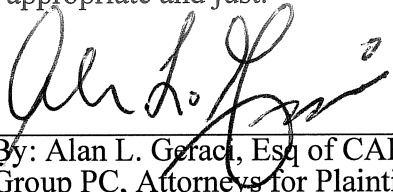

By: Alan L. Geraci, Esq of CARE Law
Group PC, Attorneys for Plaintiffs Citizens
Oversight Inc. and Raymond Lutz

EXHIBIT A

ELECTIONS CODE

SECTION 15360

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 vote by mail ballots, using either of the following methods:

(1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts is less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

(B) (i) In addition to the 1 percent manual tally, 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.

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

(2) A two-part public manual tally, which includes both of the following:

(A) A public manual tally of the ballots, not including vote by mail ballots, cast in 1 percent of the precincts chosen at random by the elections official and conducted pursuant to paragraph (1).

(B) (i) A public manual tally of not less than 1 percent of the vote by mail ballots cast in the election. Batches of vote by mail ballots shall be chosen at random by the elections official.

(ii) For the purposes of this section, a "batch" means a set of ballots tabulated by the voting system devices, for which the voting system can produce a report of the votes cast.

(iii) (I) In addition to the 1 percent manual tally of the vote by mail ballots, the elections official shall, for each race not included in the initial 1 percent manual tally of vote by mail ballots, count one additional batch of vote by mail ballots. The manual tally shall apply only to the race not previously counted.

(II) Additional batches for the manual tally may be selected at the discretion of the elections official.

(b) If vote by mail 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 paragraph (1) or (2) of 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, batches of vote by mail ballots, 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, batches, or direct recording electronic voting machines subject to the public manual tally prior to conducting the selection and tally.

(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.

EXHIBIT B

Heading on results page of San Diego ROV website the morning after the election

**PRIMARY
ELECTION**

COUNTY OF SAN DIEGO
PRESIDENTIAL PRIMARY ELECTION
Tuesday, June 7, 2016

THESE RESULTS ARE UNOFFICIAL
Last updated on: 06-08-16 at: 03:21:51

There are APPROXIMATELY 285000 Mail / Provisional ballots still to be counted

EXHIBIT C

PUBLIC NOTICE OF MANUAL TALLY FROM SAN DIEGO ROV WEBSITE



Public Notice

Pursuant to State Law, a manual tally of at least 1% of the precincts and 1% of the mail ballots, selected at random, is required as part of the post-Election Day canvass of the election.

This process, as are all components of the official canvass of results, is open to public observation. State Law provides 30 days to complete the canvass prior to certification of the election results.

The random selections of 1% of precincts and mail ballots to be manually tallied for the June 7th, 2016 Presidential Primary Election will commence on:

Wednesday, June 8th, at 3:00 p.m.

The actual manual tally of the votes cast on these selected precinct and mail ballots will commence on:

Monday, June 13th, at 9:00 a.m.

The manual tally will be conducted each day, until completed, during normal business hours, Monday through Friday, from 8:00 a.m. to 4:30 p.m. If needed, manual tally hours could be extended to evenings until 8:00 pm and/or weekends.

If interested in observing this process, please contact Diane Elsheikh at 858-505-7225.

EXHIBIT D

ROV list of precincts

Precincts

Sequence	Consolidation
32	210150
363	217200
168	240000
418	270310
597	376700
637	403500
670	404230
686	405400
857	420520
877	423900
991	442800
1229	487000
1332	528200
1418	538500
1431	546600
1454	549280

EXHIBIT E

List of VBM Batches selected

1% Random Draw: June 8, 2016

	Mail Batch
1	132
2	173
3	198
4	457
5	475
6	574
7	640
8	719

719 is not an existing Mail Batch. On 6/10, Batch 200 was randomly selected by a member of the public as a replacement.

EXHIBIT F

Email correspondence with Michael Vu. He refuses to follow the law to include 1% of all VBM ballots cast.

Subject: RE: 1% Manual Tally
From: "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
Date: 06/13/2016 7:43 PM
To: Ray Lutz <raylutz@citizenoversight.org>
CC: "electionintegrity@citizenoversight.org" <electionintegrity@citizenoversight.org>

Good Evening, Mr. Lutz.

To accommodate those that were in attendance for the initial pull, I will make arrangements to have a separate mail ballot batch pulled on Thursday, June 16 at 9 am.

With regard to your second concern, we respectfully decline your request.

Kind Regards,

Michael

MICHAEL VU | REGISTRAR OF VOTERS | 858-505-7201 | SDVOTE.COM

-----Original Message-----

From: Ray Lutz [<mailto:raylutz@citizenoversight.org>]
Sent: Friday, June 10, 2016 2:34 PM
To: Vu, Michael
Cc: electionintegrity@citizenoversight.org
Subject: Re: 1% Manual Tally

Michael:

Thank you for the update.

Two Problems:

1) I don't think you gave sufficient public notice of that public draw, as we were unable to attend. Please provide the required public notice (72 hours I think) and redraw that additional batch (plus the issue below).

2) While we are talking about the 1% manual tally, we would like to complain that the 1% of the batches pulled in the random draw DOES NOT represent 1% of the mail ballot batches expected in the election, but is 1% of the number of batches completed so far. A larger number of batches is required to meet the 1% random draw legal requirement, because it is 1% of the total, not 1% of the number processed so far. We understand that about 290,000 VBM ballots were included in the initial batches and an additional 285,000 ballots were left to be counted according to your website the morning of the draw. Thus, with 400 ballots in each batch, the total number of batches is $290K+285K=575K$ ballots / 400 ballots per batch = 1438 batches; 1% (rounding up) would be 15 batches. You chose only 7 batches. Please make this correction and chose an additional 8 batches.

--Ray Lutz

On 06/10/2016 8:39 AM, Vu, Michael wrote:

The batch that doesn't exist is 719.

Sent from my iPhone

On Jun 10, 2016, at 8:24 AM, Vu, Michael <Michael.Vu@sdcountry.ca.gov> wrote:

Ray:

It has come to my attention that when we pulled the random draw of one of our mail ballot batches, the batch number doesn't exist. As a result, we will need to randomly select another batch. It is is my understanding that you were present when the draw was made and wanted to apprise you of this issue.

To resolve this situation, we will be publicly drawing another mail ballot batch to get to the needed 1% at 10 am this morning.

Should you have any questions, please let me know.

mv

Sent from my iPhone

--

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

Exhibit G



COUNTY OF SAN DIEGO
REGISTRAR OF VOTERS
DEPARTMENT POLICY MANUAL

Subject:

One Percent Manual Tally

Policy Number

[ES-08]

Page

1 of 5

November 9, 2012

Effective Date

Registrar of Voters

PURPOSE:

This policy establishes procedures for conducting the One Percent Manual Tally.

BACKGROUND:

California Election Code 336.5. "One Percent manual tally" definition.

"One Percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

STANDARDS/GUIDELINES:

California Elections Code (E.C.) 2012 Chapter 4, Article 5. One Percent Manual Tally. Section 15360. Manual tally when using a voting system.

PROCEDURES:

1. SELECT DATES FOR THE RANDOM DRAW OF PRECINCTS AND THE ONE PERCENT MANUAL TALLY (MANUAL TALLY); NOTIFY THE PUBLIC

- 1.1 Schedule the random draw of precincts (random draw) to begin two days after the election, or on a date the Registrar of Voters (Registrar) specifies.
- 1.2 The random draw is performed by a section or public observer(s) outside of the Election Services Division.
- 1.3 Schedule the manual tally to begin the Tuesday immediately following the election, or on a date the Registrar specifies.
- 1.4 Notify the Precinct Services and Technical Services Division Chiefs of the date for the random draw.
- 1.5 Place public notice of the random draw and manual tally at the front counter and on our website no later than five days prior to the date and time of the random draw and manual tally as per E.C. 15360.



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1.6 Select personnel to participate in the manual tally and submit a Personnel Requisition to Administration Division.

1.7 Reserve room to conduct the random draw and manual tally.

1.8 Request warehouse support to set up the room for the manual tally.

2. RANDOM DRAW OF PRECINCTS

2.1 Calculate one percent of the precincts (e.g. one percent of 1,634 precincts would be 17 precincts) needed for the manual tally.

2.2 Check with Administrative Secretary for Observers scheduled to attend the random draw.

2.3 The ROV will use a method similar to that used to randomly draw lottery numbers. The procedure uses three sets of balls numbered from 0 to 9 and one set of balls numbered 0 and 1. Each set represents one of the four digits (ones, tens, hundreds, and thousands) in the sequence number assigned to election precincts. Listed below is a detailed description of the random selection procedure.

2.3.1 The balls will be displayed for public inspection in four clear containers. Observers will receive a list of the sequence numbers and their correlating precinct numbers.

2.3.2 The Registrar or his designee will shake the containers and the section or observer(s) outside of the Election Services Division will make the random selection.

2.3.3 The ones container will be shaken. A ball will be drawn randomly from the container. This will be the low order or ones digit.

2.3.4 The tens container will be shaken. A ball will be drawn randomly from the container. This will be the second or tens digit.

2.3.5 The hundreds container will be shaken. A ball will be drawn randomly from the container. This will be the third or hundreds digit.

2.3.6 Depending on the results of the third digit drawing, one of two actions will be taken¹.

2.3.6.1 A ball will be drawn randomly from the thousands container only if drawing a "1" would generate a valid sequence number. This number will be either 0 or 1 completing the random selection.

2.3.6.2 No ball needs to be drawn from the thousands container if drawing a "1" from the thousands container would cause the resulting four-digit number to exceed the total number of precincts.

¹ The thousands digit is only relevant if it, combined with the first three digits, will constitute a number that does not exceed the total number of precincts.



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2.4 The Chief Deputy of Election Services and an Election Services supervisor will coordinate to read off the sequence numbers and correlate them to the precinct numbers.

3. RECORD PRECINCTS SELECTED BY RANDOM DRAW

3.1 Report the precincts randomly selected to the Registrar, Assistant Registrar and Chief Deputies of Election Services and Technical Services.

4. SELECT ADDITIONAL PRECINCTS FOR THE MANUAL TALLY TO COVER ALL REMAINING CONTESTS ON BALLOT

4.1 Request from Technical Services the list of contests, ballot types and corresponding precincts not covered in the initial random draw.

4.2 Use this report to help identify the ballot types and precincts that will cover most of the remaining contests not selected in the random draw.

4.3 Highlight the spreadsheet from TS with a different colors and symbols to represent add-on precincts.

4.4 Ask a member from the public to randomly select a precinct within the ballot types needed to cover all remaining contests in the election.

4.5 Record the precinct, ballot type and contest(s) covered by each additional precinct selected.

4.6 In the instance where only one precinct covers a contest, then that precinct will be selected as the add-on precinct. In some cases, this may be a declared precinct.

5. FINAL PREPARATION FOR MANUAL TALLY

5.1 Notify Technical Services of all the precincts selected for the manual tally in order for them to assemble:

5.1.1 summary reports from election night

5.1.2 precinct and mail ballots from the selected precincts

5.2 Create a consolidation log to record manual tally and summary report comparisons and variances.

5.3 Create a one percent manual tally sheet for workers to tally votes. Create two sets: one for precinct ballots (white paper), one for mail ballots (color paper).

5.4 Create memo to report results of one percent manual tally to the Registrar.

5.5 Create observer sign-in sheet and post observer rules.

5.6 Create log to record precinct sign-out, sign-in, date, time and team.

5.7 Gather supplies:

5.7.1 sign in sheet (election workers)

5.7.2 rubber fingers

5.7.3 tacky

5.7.4 scratch pads



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5.7.5 pencils

5.7.6 post its

5.7.7 rulers

(comes with the ballots)

5.7.9 stapler and staples

5.7.9.1 calculators

5.7.9.2 tally sheets

5.8 Inventory summary reports and ballots from TS.

5.9 Confirm manual tally schedule with election workers and assign teams.

6. CONDUCT MANUAL TALLY

The method used for tallying the ballots depends on the number of contests. If a ballot has several contests it is more efficient to read, call and tally each contest. If there are few contests it is more efficient to sort by contest, count, tally, repeat. (sort and stack method). In some cases a team may start with the Read and Tally method and switch to the Sort and Stack method if only a few contests need to be re-tallied.

Both methods begin by welcoming the boards, give an explanation of why the 1% is conducted, inform teams of work hours, lunch and break schedules, and explain tally instructions to tally boards and observers.

6.1 Read and Tally

6.1.1 Assign tally boards; each precinct will have one 3 person team. One will call out vote and 2 will tally.

6.1.2 Each team will receive two copies of tally sheets and all paper ballots for a particular precinct. Be sure to verify that the precinct number is the same on all ballots.

6.1.3 Record deck number onto the worksheet

6.1.4 Remove ballots from box, putting box onto the floor

6.1.5 Reader calls out votes and board records votes.

6.1.6 If there is a variance, the board will pull those ballots aside in case they need to be reviewed by a supervisor.

6.1.8 Combine all results and bring to supervisor for comparison against the summary report.

6.1.9 If the tally results do not match the election night report, the supervisor will ask the team to re-tally their results – crossing their previous slashes. If a third tally is needed, a vertical mark will be made through the cross slashes. The board will re-tally no more than two times.

6.1.9.1 Descriptions of Variances could be as follows:

If less than 30% of the bubble is filled it is recorded as blank

If there is an invalid mark and the ink is light, the bubble is read as blank



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If there is an invalid mark and the ink is dark, the bubble is recorded as a vote cast

6.1.10 The supervisor may opt to assign to another team.

6.1.11 The supervisor may request Technical Services to rerun the ballots to confirm the manual tally.

6.1.12 When finished tallying, the board signs the tally sheet and leaves with the supervisor.

6.1.13 Supervisor records results, variances, and causes (if known) on consolidation log.

6.2 Sort and Stack

6.2.1 Assign tally boards; each precinct will have one 2 - 4 person team.

6.2.2 Each team will receive one tally sheet and all paper ballots for a particular precinct. When the Sort and Stack method is used as a final tally in a precinct that started as a Read and Tally this form may be used as a worksheet with the information then transferred to the Read and Tally tally sheet. Be sure to verify that the precinct number is the same on all ballots.

6.2.3 Record precinct number onto the worksheet

6.2.4 Remove ballots from box, putting box onto the floor

6.2.5 Divide ballots amongst team members

6.2.6 Sort into one stack for each category i.e.: yes, no, blank, ambiguous, over vote

6.2.7 Count, and on a post it write the number counted and place on top of stack

6.2.8 Second team member repeats this process and places a check by the number on the post it if they come up with the same result

6.2.9 If the total in the stack does not match – recount

6.2.10 Once all stacks are counted and team count matches, record results on the worksheet in the "1st count" column

6.2.11 Call over a supervisor and read off the total ballots manually tallied (and to notify of any ambiguous markings) to be compared to the system count of total ballots

6.2.12 If the totals do not match, count the ballots a second time and record on the worksheet in the "2nd count" column.

6.2.13 Call over a supervisor and read off the total ballots manually tallied to be compared to the system count of total ballots

6.2.14 If the total ballots still do not match the system recorded count, then recount one final time and record results in "3rd count" column.

6.2.15 The supervisor may opt to assign to another team.

6.2.16 The supervisor may request Technical Services rerun the ballots to confirm the manual tally.



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6.2.17 Sign and date your worksheet

6.2.18 Supervisor will collect the ballots, box, worksheet, and record results onto the tracking log kept at the lead table.

6.2.19 Team will then repeat the process with the next deck assigned.

7. WHEN THE ONE PERCENT MANUAL TALLY IS COMPLETE

7.1 Return ballots to Technical Services for storage

7.2 File tally sheets with other election materials.

7.3 Compile a memo of the results for the Registrar of Voters

REVIEW DATE:

This policy will be reviewed for continuance by February 28, 2011.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing First Amended Complaint

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of Citizens Oversight Inc., a Delaware non-profit corporation, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 6/22/2016, at San Marcos, California.

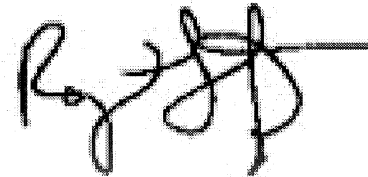
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Raymond Lutz

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 01/09



STATE OF CALIFORNIA, COUNTY OF San Diego

I am employed in the county of San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 817 W. San Marcos Blvd, San Marcos, CA 92078

On 6/22/2016 I served the foregoing document described as First Amended Complaint

on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Timothy Barry, Chief Deputy, Office of the San Diego County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Timothy.Barry@sdccounty.ca.gov

BY MAIL and electronic mail

I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at 817 W. San Marcos Blvd, San Marcos, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on 6/22/2016, at San Marcos, California.

****[BY PERSONAL SERVICE]** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Alan L. Geraci

Type or Print Name

Signature

***BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BIN**

***[FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER]

Legal Solutions & Plus

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****(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)**