

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 10, 2017

EVENT DATE: 10/13/2017

EVENT TIME: 10:30:00 AM

DEPT.: C-66

JUDICIAL OFFICER: Kenneth J Medel

CASE NO.: 37-2017-00027595-CU-MC-CTL

CASE TITLE: CITIZENS OVERSIGHT INC VS. MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/11/2017

Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for the County of San Diego and the County of San Diego's Demurrer is SUSTAINED without leave to amend.

This is an action for declaratory relief and mandamus to allow inspection of the ballots from the 2016 Presidential Primary which occurred in June, 2016. Plaintiff alleges that California Elections Code Section 15209 requires the Registrar to store all ballots following a federal election, such as the Presidential Primary, for 22 months. Plaintiffs requested, inter alia, view and review copies to the ballots and Registrar declined to do so. (Plaintiffs' Complaint, at paragraph 12.) Plaintiffs demanded access to inspect and copy the stored ballots of the Presidential Primary. (Plaintiffs' Complaint, at paragraph 13.) Registrar declined Plaintiff's request stating that the ballots are sealed pursuant to California Elections Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307.

The Court finds that defendants are correct on the law. The Public Records Act (Gov't Code §§ 6250 - 6286.48) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to...state law...." (Gov't Code §6254(k).) For elections involving federal offices, the Elections Code provides that the packages containing ballots and identification envelopes "shall be kept by the elections official, unopened and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition, Section 15370 provides that "[a]fter ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 153032 and 153043, or in the event of a recount." To require the ballots to be turned over pursuant to a records request would "permit the ballots to be opened" and thus violate the state's election law.

Given the law, there is no ministerial duty on the part of the Registrar of Voters to turn over the ballots upon request. Thus, there is no basis for a writ of mandate