CONTACT: Raymond Lutz, COPS Coordinator
raylutz@citizensoversight.org/ 619-820-5321
Citizens' Oversight Projects Committee (COPS)
CitizensOversight.org – San Diego County, California

FOR IMMEDIATE RELEASE:

November 08, 2010

NEWS RELEASE

Oversight Group Requests that San Diego Registrar of Voters Resolve Election Irregularities

Registrar informed of unlawful procedures in January – corrections still pending

SAN DIEGO, CA (November 08, 2010) – Citizens' Oversight Projects (COPS – CitizensOversight.org), a San Diego-based nongovernmental oversight group, today submitted a request (C00027) to the San Diego County Registrar of Voters regarding procedures to be used in the one-percent manual tally for the 2010 November general election. In January, 2010, the group published a report on a multi-year research project, and the current request is a continuation of that effort. This extensive report is available at http://www.copswiki.org/Common/COPsRovReport

In document C00027:

1. COPS requests that the random draw of precincts be performed using a corrected procedure since the current selection of random precincts is not being done using a random selection process, as required by state law.

2. COPS requests that the Registrar prepare complete reports of the manual tally process. Reports in the past did not include actual vote totals but only the raw number of ballots processed. The last report was less than 10 pages while the Los Angeles County prepared complete reports of over 1,300 pages. A complete report will be between 540 and 1410 pages (the report is never to be printed out and each page represents a report on a single precinct and race, including descrepancies and corrections.)

3. COPS requests that the Registrar also compare and reconcile counts of ballots in the precincts inspected in the 1% manual tally (only 15 precincts plus individual races) with the sign-in rosters and Ballot Statements that are prepared by the precinct workers on election night. In previous elections there was no comparison despite the apparent loss of some 9,000 ballots from the mechanical scan and 87% of precincts with Ballot Statements that did not reconcile.

4. COPS requests that the Registrar avoid "rescanning" precincts as a way to "repair" the computerized scan results. Rescanning is NOT specified in the manual tally procedure and would indicate, if needed, that the entire canvass was defective. In the past, 29% of the tallied precincts did not match the computer scan but the result accepted as accurate.

5. COPS requests that the work with COPS volunteers to inform them each time the tally manager interacts with the tally teams, the IT staff or requests that precincts be

rescanned to correct errors.

"The One-Percent Manual Tally procedure can be a valuable tool for citizens to make sure that our county government workers are doing their job correctly," said Ray Lutz, coordinator of Citizens' Oversight Projects (COPS). "Although the procedures used by the Registrar are sometimes technically incorrect, unlawful or diverge from written procedures, with small improvements they can solve these issues and provide a manual-tally result that is not only in compliance with state law, but will be much more valuable to the public to insure that our elections are accurate and reliable."

Lutz suggests that the public contact the Registrar of Voters and ask them to cooperate with oversight of their procedures by COPS. "Far too often, the Registrar will block review of their operations and use the courts in long-winded and expensive lawsuits instead of making simple corrections to their operations. For example, we can prove mathematically that their random selection procedure is simply incorrect but they refuse to make a simple correction that will cost them nothing except the admission that their procedure was incorrect. The public is sick of this sort of stonewalling for months or years."

Starting in late 2007, COPS investigated procedures used by the Registrar, filmed the processing of several elections, and reviewed public documents representing the conduct of the 2008 election in five-percent or 85 randomly chosen San Diego precincts. Documents reviewed included sign-in rosters, ballot statements, collection center logs, tally center logs, scanner tapes, central tabulator audit logs, chain-of-custody procedures and post-election manual tally procedures. The report included startling discrepancies in literally all areas of their operation. The entire report can be downloaded from this URL: http://www.copswiki.org/Common/COPsRovReport

VOLUNTEER OPPORTUNITY
COPS invites the public to help monitor the 1% manual tally. It is a long process, taking days or weeks to complete, and the process starts Tuesday, November 9 at 9am at the San Diego County Registrar of Voters (5201 Ruffin Road, Suite I, San Diego, CA. 92123). Please contact COPS at info@citizensoversight.org if you would like to participate.

The Media is invited to document this oversight of our elections officials by COPS volunteers. Mr. Lutz and other COPs volunteers will be available for questions at that time.

###

Citizens' Oversight Projects (COPs) Committee
1265 Avocado Blvd, Suite 104-335
El Cajon, CA 92020
CitizensOversight.org
619-820-5321

CITIZENS' OVERSIGHT PROJECTS
CitizensOversight.org

November 8, 2010

Deborah Seiler
San Diego County Registrar of Voters
5201 Ruffin Road, Suite I
San Diego, CA. 92123

REF: This is Document C00027.

Dear Ms. Seiler:

Citizens' Oversight Projects (COPS) has been providing oversight to the operations of elections processing, including those in San Diego County. Earlier this year, we published a comprehensive review of your operations, which is still available on our web site.
(See http://www.copswiki.org/Common/COPsRovReport)

This document describes issues regarding the one-percent manual tally. For the purposes of this document, this will be referred to as the Post-Election Manual Tally (PEMT).

Issue C00027-1: Manual Tally "Random" Draw not Random

On November 3, 2010, we participated as members of the public to observe the draw of precincts for the PEMT. We video-recorded the procedure used, and it is available for review on the COPS website.

As previously mentioned in our RoV Report of January 11, 2010, the method of selecting the precinct numbers is not statistically random. (http://www.copswiki.org/Common/COPsRovReport. – See section 12.1.4 Issue A035 - "PEMT Random Selection Not Technically Correct")

According to California Elections Code 2007 Article 5. "One Percent Manual Tally" Section 15360, Manual Tally when using a voting system (highlighting added):

> 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 voters' 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.
>
> 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.
>
> Additional precincts 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

Please note that the law states that the selection of the precincts must be "chosen at random." However, your procedure does not result in a statistically random selection. The reason it is not statistically random is because the procedure does not consistently draw a thousands digit. This error has increased since the number of precincts has changed from 1650 to 1466. (By coincidence, there is no error if the number of precincts is 1666).

The following is a summary of the current procedure you have documented in your procedure document, and per our observation on November 3, 2010.

1. The procedure uses three sets of ping-pong balls from 0-9 and one set of ping-pong balls numbered 0 and 1, representing the four digits, (ones, tens, hundreds, and thousands, respectively). These sets are placed in clear plastic containers.
2. Shake the containers and draw balls manually, without looking at what is drawn.
3. Draw ones, tens, hundreds digits.
4. If the three numbers in step six is 466 or less, the thousands digit is drawn, otherwise if the number is 467 or greater, the selection is complete. There is no precinct with number 0000.
5. Continue until 1% of the total number of precincts are drawn. (In this year, 15 precincts).

For the purposes of this discussion, we assume that the person drawing numbers is perfectly reliable and the balls are honest, so that the probability of drawing any digit is 10% for ones, tens, and hundreds, which can be 0 through 9, and 50% for the thousands digit, which can be 0 or 1.

We define three ranges of precinct sequence numbers:
Range A: 0001 to 0466
Range B: 0467 to 0999
Range C: 1000 to 1466

For a "random" draw, the likelihood of drawing any particular precinct should be 1/(number of precincts). For 2010, given that the number of precincts is 1466, the probability for selecting any particular precinct in a single draw should be 1/1466 = 0.0682%. For a single draw, the probability that we choose from any of the ranges (inclusive) should be:

      Range A: 0001 to 0466 (466*0.0682%) = 31.79%
      Range B: 0467 to 0999 (533*0.0682%) = 36.36%
      Range C: 1000 to 1466 (467*0.0682%) = 31.85%
      Total: 31.79 + 36.36 + 31.85 = 100%

However, this is not the case. Using the current procedure, the probability of selecting precincts in Range A and Range C is not the same as drawing precincts from Range B. In Range A or Range C, the thousands digit is also drawn, and the likelihood that any of these precincts is chosen is half that of Range B.

In the current procedure, in a single draw, the probability of choosing any precinct in Range A or Range C is:

      (1/1000)*(0.5) = 0.05% (One chance out of 500).

In the current procedure, the probability of choosing any precinct in Range B is:

      (1/1000) = 0.10% (one chance out of 1000).

Therefore, on a given draw, the chance of drawing a precinct from the ranges:

      Range A is 0.05% * 466 = 23.3%   (should be 31.79%)
      Range B is 0.10% * 533 = 53.3%   (should be 36.36%)
      Range C is 0.05% * 467 = 23.35% (should be 31.85%)

Therefore, <u>the San Diego County Registrar of Voters is not drawing precincts "randomly" and should correct their procedure, as the current procedure is unlawful.</u> This error is not a matter of opinion, it is a matter of statistical mathematics and there is no excuse to continue with the current procedure. The correction is easy to implement and costs nothing to do so. Simply draw all digits, including the thousands digit, each time and re-draw an entirely new number if it is over the maximum number of precincts (or if it is 0000, which does not exist). This would result in throwing out some draws. Note that you must throw out the complete draw, not just the last digit of the draw. With 1466 precincts, about 15*(534/2000) = 4.005 -- about 4 draws will be discarded and re-drawn. COPS believes this is a small price to pay to provide a truly random draw, assuming the reliability of each individual digit draw.

(Note that the Registrar can save a bit of time if the precinct number is drawn in the opposite order. If at any time the number is obviously out of range, such as if the first digits are 15xx, then stop and redraw.)

<u>PLEASE CORRECT YOUR PROCEDURE AND REDRAW PRECINCTS BEFORE YOU BEGIN THE MANUAL TALLY FOR 2010 AS YOU ARE IN VIOLATION OF THE LAW.</u>

Issue C00027-2: Prepare complete PEMT Reports

We raised this issue in the COPS 2010-01-11 "RoV Report" as section 12.1.9 "Issue A040 - PEMT Reports Incomplete." The Secretary of State suggests that for each precinct and each race that is voted

on in that precinct, a separate page of the report should be prepared, specifying not only the number of ballots counted, but the vote in the race and any discrepancies. (Please see the Appendix for a summary of races on typical ballots.)

If the Secretary of States recommended reporting format is followed, we expect a minimum of (15 precincts) * (36 races per precinct) = 540 pages. In reality, there are likely more races in any given precinct, and additional manual tallies of races in precincts that contain those races. A typical ballot contains about 47 races, and thus we would expect about 15 * 47 = 705 pages. If the vote-by-mail ballots are considered separately, those require additional pages, resulting in 2x the number of pages, or about 1,410 pages.

Instead, the Registrar of Voters prepared a measly five page report in the last general election, compared with 1,300 pages in Los Angeles County. This must be corrected.

These reports can be prepared without a great deal of additional data entry if they are prepared as the manual tally procedure is performed. Hand-entry of values is sufficient and then scan the report for distribution.

According to TEXT OF PROPOSED EMERGENCY REGULATIONS

(See http://www.sos.ca.gov/voting-systems/oversight/pemt/oal-approval-04-13-09.pdf)

> § 20126. Records to be Maintained During and After the Manual Tally Process.
>
> (a) The elections official shall keep a log to record the manual tally process, including the results of each round of manual tallying for each precinct included in the sample, how variances were resolved, and details of any actions taken that are contrary to this chapter. The elections official shall make the log available to the public.
>
> (b The elections official shall track, record in the log and report to the public by precinct the number of undervotes and overvotes discovered in the manual tally of a contest.

→ PLEASE FOLLOW THE RECOMMENDATION OF THE SECRETARY OF STATE AND PREPARE COMPLETE REPORTS, likely resulting in between 540 pages and probably less than 1,400 pages. (NOTE: the data should never be produced as a physical report, and by "page" we are referring to the report of a given race in a given precinct, with all the detail including votes for each option in that race.)

Issue C00027-3: PEMT Should Reconcile to Rosters

We raised this issue in the COPS 2010-01-11 "RoV Report" as section 12.1.10 "Issue A041 - PEMT Should Reconcile to Rosters"

The PEMT procedure in use by the Registrar of Voters does not reconcile the count with ballot statements and sign-in rosters, and are restricted to the ballots actually run through the scanners on election night or by vote-by-mail. Unfortunately, since there are many (9,000 in the 2010 election) write-ins or other ballots removed. The PEMT should include a complete look at the precincts under consideration and not limit the view to just the operation of the scanners.

→ Please modify the procedure used in the PEMT to include review of sign-in rosters and Ballot Statements, and include ALL ballots to match sign-in rosters and ballot statements, including those that are removed for one reason or another.

→ (CPRA) Please provide pdf files of Ballot Statements suitable for posting on the Internet for the precincts involved in the PEMT so we may conduct an independent review.

Issue C00027-4: PEMT Recanning Improperly Conceals Scanning Failures

We raised this issue in the COPS 2010-01-11 "RoV Report" as section 12.1.7 "Issue A038 - PEMT Rescanning," and as section 12.1.11 "Issue A042 - PEMT Errors Not Addressed"

There is no provision in the current PEMT procedure to rescan precinct ballots if the vote determined by the manual tally differs from the electronic scan. However, in the 2008 election, you rescanned multiple precincts. Those rescans confirmed errors (i.e. additional ballots were discovered in the rescan) but you nevertheless declared the precinct error free. The rescanning procedure to confirm an error must be included in the written procedure if it is to be performed, and then the consequences of finding the error must also be described, such as performing a complete election rescan.

Your method of handling discrepancies in the PEMT is not documented, and your current practice is absolutely incorrect. If there are offending precincts, a full explanation should be included, and if the precinct can be corrected by rescanning, that would imply that the entire canvass may be faulty, and may need to be completely rescanned after corrections are made to scanner operating procedure.

By way of analogy, assume you ran a production line, let's say you manufacture TVs. You decide to test 1% of the units on the production line to see if any are faulty. In our case, the units are precincts processed to determine the vote. After performing tests of 1% of the units, you find, as you did in the 2008 election, that 29% of the tested units are "defective" i.e. the manual tally concluded a different result from the automated scan, and a rescan of the ballots (i.e. repairing the units) proved that the automated assembly process was defective. You improperly conclude that there is no problem with the automated scanning process in spite of the fact that you located 29% of the precincts with errors. That is like fixing the faulty TV sets and setting them back on the production line, and then blessing all units, even the ones that were not tested, when in reality, there are likely 100x more units in the production lot that are defective.

In the November 2008 Election, a number of errors were detected by the Post Election Manual Tally (PEMT) procedure:

- Of the original 17 precincts sampled, 5 had errors, (29% error rate).

- The additional 33 precincts combined (50 total) had 10 failing precincts, (20% error rate).

- 5 ballots were lost in the 1% sample. By extension, 1134 ballots were lost in the election based on the number of ballots processed.

→ If you detect a discrepancy between the automated scan and the manual tally, it is IMPROPER to rescan them and conclude that there is no error. If a rescan corrects the problem, this is an error detection. It is likely that the entire canvass is suspect and should be rescanned.

Issue C00027-5: Request for Information during 1% Manual Tally

We wish to observe the 1% manual tally without impacting your workers or your schedule. With that in mind, we would like to request that our team be informed of the following so we may capture it on our video recording:
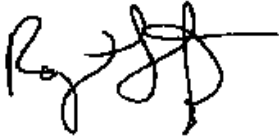
1. Each time the tally manager interacts with the tally teams to tell them they are "incorrect" or "your result does not match the computer records" and then instructs them to re-tally the race and/or precinct.

2. Each time the tally manager interacts with the IT staff, in terms of seeing the results of the computer tally.

3. Each time the tally manager requests that the IT staff re-scans the precinct, or any other activity that is outside the written procedure.

Please respond to our questions and requests on a timely basis. Not all of these requests are CPRA information requests, but a response is requested nevertheless.

Thank you very much for your kind assistance as we attempt to perform our duty to provide oversight of your operation. Effective oversight can not only help to improve your procedures and policies, but will improve voter confidence that our elections are accurate and reliable, and this will benefit our democracy.

Sincerely,

Raymond Lutz
Coordinator, Citizens' Oversight Projects Committee.

APPENDIX

The following list summarizes a typical list of races in a precinct. *'d races are not necessarily in every precinct but very likely. If a precinct is drawn from the City of San Diego, additional propositions exist.

1. GOVERNOR
2. LIEUTENANT GOVERNOR
3. SECRETARY OF STATE
4. CONTROLLER
5. TREASURER
6. ATTORNEY GENERAL
7. INSURANCE COMMISSIONER
8. STATE BOARD OF EQUALIZATION 3RD DISTRICT
9. UNITED STATES SENATOR
10. U.S. REP. XX DIST.
11. STATE SENATE-XX DIST.
12. STATE ASSEMBLY-XX DIST.
13. CA SUP CT CHIEF JUST. TANI G. CANTIL-SAKAUYE
14. CA SUP CT ASSOC JUST. MING W. CHIN
15. CA SUP CT ASSOC JUST. CARLOS R. MORENO
16. CA APP CT PERS. JUST. DIV.4 JUDITH D. MCCONNELL
17. CA APP CT PERS. JUST. DIV.4   MANUEL A. RAMIREZ
18. CA APP CT JUST. DIV.4 CAROL D. CODRINGTON
19. CA APP CT PERS. JUST. DIV.4   DAVID G. SILLS
20. CA APP CT JUST. DIV.4 WILLIAM W. BEDSWORTH
21. CA APP CT JUST. DIV.4 EILEEN C. MOORE
22. SUPERIOR COURT - OFFICE 20
23. STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
24. UNIFIED SCHOOL
25. HIGH SCHOOL
26. ASSESSOR/RECORDER/CO. CLERK
27. PROP 19-Legalize-Regulate-Tax Marijuana Under Calif. Law
28. PROP 20-No Elected Reps on Congressional Redistricting Commission
29. PROP 21-Vehicle Fee to Fund State Parks and Wildlife Programs
30. PROP 22-Prohibits State from Keeping Specific Funds
31. PROP 23-Unemployment Rate to Affect Air Pollution Control Laws
32. PROP 24-Repeal of Recent Law to Lower Business Tax Liability
33. PROP 25-Simple Majority Required for State Budget
34. PROP 26-Certain State and Local Fees Require Two-Thirds
35. PROP 27-Eliminates Redistricting Commission
36. PROP A-SAN DIEGO COUNTY Ch. Amdmt. Fair-Open Competition
37. *CTY COM COLLEGE SEAT NO. 1
38. *CTY COM COLLEGE SEAT NO. 2
39. *BOARD OF SUPERVISORS (2/5)
40. *CITY MAYOR
41. *CITY COUNCIL
42. *CITY CLERK
43. *CITY TREASURER
44. *FIRE PROTECTION
45. *WATER
46. *COMMUNITY PLANNING
47. *HEALTHCARE