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Attorney for Plaintiff
Citizens Oversight, Inc.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CITIZENS OVERSIGHT, INC.,

Plaintiff,

v.

ALEX PADILLA, Secretary of State of the
State of California; MICHAEL VU, San
Diego County Registrar of Voters; HELEN N.
ROBBINS-MEYER, San Diego County Chief
Administrative Officer; SAN DIEGO
COUNTY, a municipality;

Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

PARTIES

1. Plaintiff, Citizens Oversight Inc., is a Delaware non-profit corporation which conducts election oversight nationwide as a watchdog of election processes, doing business in San Diego.
2. Defendant Alex Padilla is the Secretary of State for the state of California. Mr. Padilla is

PLAINTIFF'S COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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the elected official responsible for certifying the final results of the 2016 California primary election.

3. Defendant Michael Vu, San Diego County Registrar of Voters, is responsible for conducting election procedures in compliance with California State Law, including the California State Elections Code.
4. Defendant Helen N. Robbins-Meyer, Chief Administrative Officer, County of San Diego, has ultimate responsibility for operation of the County of San Diego to ensure compliance with all laws, including compliance with the California Elections Code, maintains an office at the County Administration Building located in the City of San Diego at 1600 Pacific Highway, Rm 166, San Diego, CA, 92101. Robbins-Meyer is the supervisor to Michael Vu.
5. Defendant County of San Diego is a municipality in the State of California and operates as an election district under the California State Election Code, with principal offices in the County Administration Building as described above.
6. As alleged in action 37-2016-00020273-CL-MC-CTL of this court, filed on or about June 16, 2016, which is incorporated by reference in this complaint, the San Diego County Registrar of Voters is not in compliance with California Elections Code 15360 regarding the number of Vote-by-Mail (VBM) ballots hand-counted in the 1% manual tally.
7. The Plaintiff alleges that many other counties in this state have made a similar error, and requests that the 2016 California primary election not be certified by the Secretary of State until all of the Registrars of Voters across the state comply with the law and
 - a) include all VBM ballots in the calculation of the required number of batches to achieve one-percent, and
 - b) thus the number of VBM batches will increase from 8 to approximately 15;

1 c) all VBM ballot batches be involved in the selection of batches involved in the 1% manual tally;
2 d) all provisionals and ballots removed during QC inspection should be included in the 1% manual
3 tally; and
4 e) data file(s) that reflect the tally of votes in each batch counted should be available to the public so
5 a direct comparison can be made between the results of scanning the batch and the results achieved in
6 the hand-tally process.

7
8 8. Other errors have been committed by other Registrars across the State.

9 9. Plaintiff is informed and believes and hereby alleges that the ballots cast for the
10 Democratic presidential candidates have not been fully counted by either Defendant Vu or the county
11 registrars. For example, the registrars are not writing reports on the that detail the breakdown of the
12 provisional ballots that were handled by their district, such as number of mail ballots that were not
13 surrendered, people who went to the wrong precinct, people who got a crossover ballot, people who
14 should have got a crossover ballot but got a Democratic ballot, people whose signature was rejected,
15 and any other problems. Nor do we know what happened to the provisional ballots when they were
16 processed. Nor the late-arriving votes by mail that reached the registrars after Election Day.
17 Reports to the secretary of state will go a long way towards solving these problems.

18
19 10. The same review should be done on the aforementioned manual tally. In many counties,
20 ballots have been excluded from the universe of ballots that are selected from the 1% manual tally:
21 In some instances, the registrars exclude the provisional ballots from the manual tally. In other
22 instances, the registrars exclude any VBMs that arrived after election day from the manual tally.
23 Any such exclusion constitutes a “pre-selection” that makes the manual tally non-random and no
24 longer a surprise. What is worse is that some counties such as Fresno and San Diego obtained the
25 sample tally before the election was over.

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27 11. Many of the problems detailed in this complaint were accentuated due to the failure of
28 the Registrars to adhere to the Voter Bill of Rights (Elections Code Section 2300) and allow citizen
PLAINTIFF’S COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1 observers to properly observe all aspects of the voting process, or to provide the training manuals and
2 other guides that explain what was being done in the processing and the counting of the ballots. In
3 the absence of transparency and adherence to the law, many of the problems detailed in this
4 complaint were bound to happen.

5 **First Cause of Action**

6 **Violation of the right to vote pursuant to the State Constitution**

7
8 12. Paragraphs 1-11 are incorporated by reference in this complaint.

9 13. As a separate but important issue, Plaintiff also contends that Defendant Vu and the
10 other registrars have not been counting the votes of the NPP (“no party preference”) voters that were
11 forced to write-in to the ballot their choice for President, even though candidates such as Bernie
12 Sanders and Hillary Clinton were not write-in candidates. Plaintiff maintains that the intent of the
13 voter is paramount; that the state Constitution preserves the right to vote, and that all of these ballots
14 must be counted whether or not statutory interpretation of the Elections Code permits such a count.
15 Furthermore, the Secretary of State should not be allowed to certify the results of the 2016 California
16 presidential primary until such a vote is completed.

17 **Second Cause of Action**

18 **Injunctive Relief**

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20 14. Paragraphs 1-13 are incorporated by reference in this complaint.

21 15. Besides the importance of counting the write-in votes, it is necessary to segregate
22 these votes while the courts determine the propriety of such a count.

23 16. It is also necessary to segregate the provisional ballots, the VBM, and all other
24 factors that go into the 1% manual tally data sets. The election code states that the 1%
25 manual tally be performed in two parts, one part including 1% of all ballots cast at
26 precincts (including provisional ballots and ballots removed in the quality control

1 inspection) and one part including 1% of all VBM ballots cast (including the VBM
2 ballots already processed and those still in the queue to be processed).

3 17. Plaintiff asks the court to require that the secretary of state not certify the
4 California presidential primary until the registrars document their procedures to him
5 regarding VBM and provisional ballots in the 1% manual tally. Furthermore, the
6 court is requested to order that the procedures will include the steps to take if a variance
7 exists that cannot be explained. A rescan of those ballots results which results in a
8 correction of the variance should result in the declaration that the election is tainted,
9 and a complete rescan of the ballots must be performed, followed by another 1%
10 manual tally procedure on newly chosen precincts.

11 18. Similarly, Plaintiff asks the court to order that the presidential election will not be
12 certified until the Secretary of State has received and reviewed reports from registrars that
13 detail the different categories of the processing of the provisional ballots that were handled by
14 their district, such as number of mail ballots that were not surrendered, people who went to
15 the wrong precinct, people who got a crossover ballot, people who should have got a
16 crossover ballot but got a Democratic ballot, people whose signature was rejected, and any
17 other problems.

18 19. Due to widespread refusal of the registrars to permit observers to watch the processing
19 and handling of the ballots, there is no way for these observers to verify what happened to the
20 provisional ballots when they were processed, nor are there adequate reports from the
21 registrars on the fate of these ballots – nor the late-arriving votes by mail that reached the
22 registrars after Election Day.

23 20. Plaintiff seeks a court order halting the certification of the Presidential ballot until these
24 deficiencies are fully addressed; in the interim, all relevant ballots to be segregated and
25 reviewed by the Defendant Secretary of State.

26 **Third Cause of Action**

27 **Declaratory Relief**

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21. Paragraphs 1-20 are incorporated by reference in this complaint.

22. Plaintiff seeks a declaration by the court that pending a hearing or trial on this matter, an order that Defendants, and each of them, shall be stayed from certifying the election, based on all of the factors set forth above.

PRAYER

Wherefore, for good cause as stated, Plaintiff seeks:

1. A temporary, preliminary and permanent injunction for the certification of the June 7, 2016 election until Defendants, and each of them, can represent to this court that throughout this state the Registrars have complied with the California Elections Code and specifically California Elections Code Sections 2300 and 15360.

2. A declaration that this election will not be certified until such a showing has been Made;

3. Attorney's fees and costs pursuant to CCP Section 1021.5;

4. Such other relief that may be just.

DATED: June 28, 2016

By: _____/s/_____
William M. Simpich
Attorney for Plaintiff

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PLAINTIFF'S COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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