Citizens' Oversight Projects (COPs)
771 Jamacha Rd #148
El Cajon, CA 92019
CitizensOversight.org
619-820-5321

June 22, 2018

CITIZENS' OVERSIGHT PROJECTS
CitizensOversight.org

PRESS RELEASE -- FOR IMMEDIATE RELEASE

Formal Complaint Submitted to CA Secy of State to Investigate Malconduct by Michael Vu, San Diego County Registrar of Voters

Vu Refuses to Explain Discrepancies linked to Hiring 70 Workers to Pre-stack Early VBM ballots, the only group where Clinton won over Sanders in 2016 Primary

Vu Admits to using White-out on Ballots while having no written procedure, logging or reporting, and with only one person involved in the process

SAN DIEGO (2018-06-22) -- Citizens' Oversight Projects (COPs) submitted a formal complaint to the California Secretary of State's Investigations Department (SOS) regarding malconduct by San Diego Registrar of Voters Michael Vu. San Diego County Counsel asserted in their legal brief that the investigation was best handled by the SOS rather than by the contest of the 2016 primary election, which was filed by Raymond Lutz just after the 2016 Primary.

Lutz, National Coordinator for COPs, said, "We believe that the contest affidavit, filed within five days after certification of the 2016 primary, was inappropriately dismissed by Judge Laura Parksy due to matters of 'form' which are clearly and explicitly barred from use to dismiss such contests by the Election Code. But we appreciate the suggestion that the Secretary of State should still investigate the issues we attempted to investigate in the contest."

COPs and Lutz filed the "Election Audit Lawsuit" after the 2016 Primary Election in San Diego, as Vu was short-cutting the required audit process defined by Election Code Section 15360. That statute says that the audit will include 1% of the precincts and Vote-by-Mail (VBM) ballots. Vu was leaving out about 37% of the ballots -- the "Later VBM" ballots and accepted provisionals which were processed after election night. The danger of excluding those later ballots is like an IRS auditor sampling any transactions from the year but not any after August 15. Fraudsters would simply modify ballots that are in that are in the set they know will not be audited and not raise an eyebrow.

The court agreed and ruled that all VBM ballots should be included in scope of the audit process.

Since then, both parties have appealed. We believe that accepted provisionals should also be included in the audit process, while Vu and the County argued that they only need to include ballots as of election night.

Unfortunately, late in 2017, a bill in the legislature, AB-840, was modified from a simple bill about signatures on provisional ballots to also include changes to 15360, the code section that defines the 1% manual tally audit process, changing the wording to gut the audit process. It specified that the later VBM ballots and accepted provisional ballots are not required to be covered by the manual audit process. Unfortunately, the bill was largely misunderstood by the legislature as the title had no reference to the audit process, and as it was modified so late in the year, so it was easily passed by the legislature despite outcries by election integrity groups.

In the course of discovery for the Election Audit Lawsuit, we discovered that Vu used white-out to modify ballots without any written procedure, with no logging or reporting, and performed by only one person (with no oversight or checking by others). Also, that he had hired 70 workers to pre-stack ballots for a week prior to manually tallying them, similar to the mishandling in Cuyahoga County Ohio, where Vu worked in 2004, where two subordinates were convicted of pre-stacking the ballots.

In 2017, COPs compared the actual tallied results of those Early VBM ballots (the ones that were prestacked by the 70 workers for a week) and discovered that the results did not match the original computer results which were captured right after election night. But Vu reported differences with some other computer report which was generated later, showing fewer discrepancies.

The Early VBM ballots were the only group where Hillary Clinton won by a landslide, and it was those results that were first reported at 8pm on election night. Bernie Sanders won both the polling place ballots and provisionals by a landslide, while the Later VBM ballots were a toss-up. In the end, Clinton won by only 3.75% in San Diego, only about 16,000 votes.

The Contest affidavit claims that the malconduct of prestacking the audited precincts was an attempt to cover-up manipulation of those early returns by using white-out or directly changing the results in the central tabulator.

First, we tried to access the ballots using the California Public Records Act, but the County argued that as the ballots are sealed, even though federal law requires that the ballots are kept for 22 months, it is not possible for the public to review them. This is unlike many other states, including Ohio and Florida, where ballots ARE accessible by a simple public records act. So after the Superior Court ruled that they are not accessible because they are sealed, we appealed that to see if the appeals court would reverse it. A constitutional amendment adopted in about 2004 says that old laws that do not embrace accessibility must be interpreted narrowly to

SITUATION IN SAN DIEGO 2016 PRIMARY
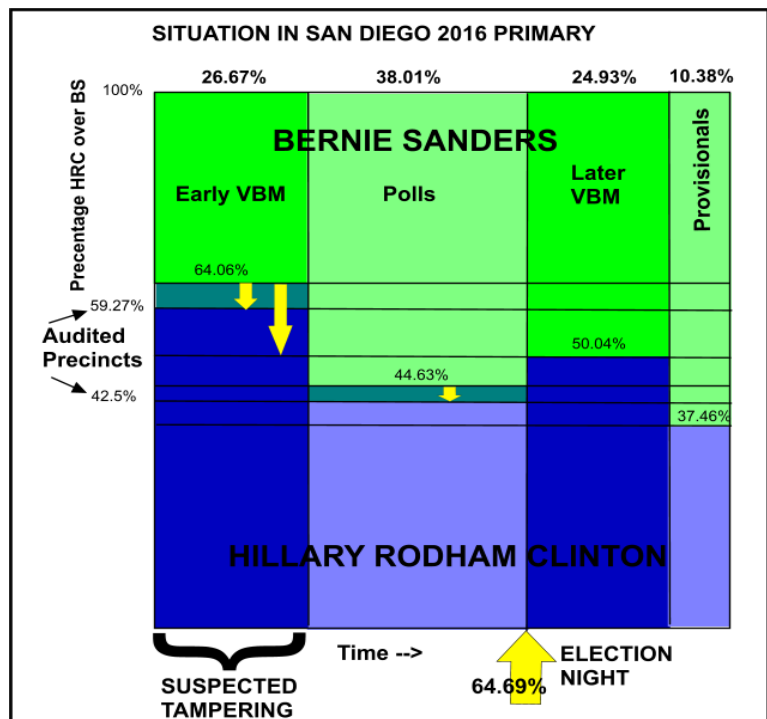
result in maximum accessibility. Ballots are not specifically exempted from disclosure and there is no personal information on them. We assert that sealing the ballots is to preserve their integrity rather than to thwart all review by the public. We anticipate that a ruling from the Appellate Court will be available sometime next year.

So after that attempt to review those questionable ballots in the Early VBM set using the CPRA act failed, we turned to working with the CONTEST of the 2016 election which was appropriately filed but needed to be renewed. In December 2017, we finally resubmitted the Second Amended Affidavit of Contest with all the details necessary to move forward. When we attempted to access the ballots using the discovery process, the County moved for dismissal with unlawful rationale, but the court ruled in their favor anyway.

During the execution of the Contest, the County Counsel handling the case suggested that it would be appropriate for our complaints to be submitted to the Secretary of State. We appreciate that idea and indeed, would have submitted this long ago had they made a similar suggestion. We also requested that the ruling be changed to preserve the ballots until their investigation is completed in our most recent filing, which included the Complaint to the SOS.

We also added to our complaint the fact that Vu has refused to answer our questions in our two most recent letters, contrary to Election Code Section 2300(a)9 which clearly states that election officials must answer questions.

The County of San Diego surprisingly worked to undermine the contest using any means at all, rather than allow a voter to review the ballots from the election. In our view, the ballots should not be considered sealed to the judicial process of a contest, and their struggles in court could have been avoided had they allowed us to review the ballots. It is really too bad that legal departments of our government work to cover up and enable malconduct rather than cooperate to root it out.

We will be submitting additional complaints regarding the activities of other counties in this most recent election and we hope the Secretary of State will fully investigate.

Citizens Oversight is a 501(c)3 Delaware corporation with primary offices in California and is a nonpartisan organization.

All documents and information related to this action will be available here:
http://copswiki.org/Common/SanDiegoPrimaryRecount2016

See http://copswiki.org/Common/ElectionAuditLawsuit for full information on the election audit lawsuit which is referenced in this press release.

Mr. Lutz will be available for interview by telephone or in-person, on request.

PRESS CONTACT:
Madge Torres -- 760-613-7035 or 760-753-1886 / madgicalcats@gmail.com
Ray Lutz   -- 619-820-5321 / raylutz@citizensoversight.org

###