1 2 3 4 5 6	THOMAS E. MONTGOMERY, County Counse County of San Diego By TIMOTHY M. BARRY, Chief Deputy (Stat STEPHANIE KARNAVAS, Senior Deputy (Stat 1600 Pacific Highway, Room 355 San Diego, CA 92101-2469 Telephone: (619) 531-6259 E-mail: timothy.barry@sdcounty.ca.gov Exempt From Filing Fees (Gov't Code § 6103) Attorneys for Defendant Michael Vu	e Bar No. 89019) ate Bar No. 255596)	
7 8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	IN AND FOR THE COUNTY OF SAN DIEGO		
10	CENTRAL DIVISION		
11	RAYMOND LUTZ,	No. 37-2016-00023347-CU-PT-CTL Action Filed: July 11, 2016	
12	Contestant,	REPLY MEMORANDUM OF POINTS	
13	v.	AND AUTHORITIES IN RESPONSE TO CONTESTANT'S OPPOSITION TO	
14	MICHAEL VU, Registrar of Voters for the County of San Diego; HILARY CLINTON,	MOTION FOR JUDGMENT ON THE PLEADINGS AND DISMISSAL OF	
15	Democratic Presidential Party candidate names as an indispensable party, and DOES	SECOND AMENDED AFFIDAVIT OF CONTESTANT	
16	1-10,)) IMAGED FILE	
17	Defendants.) Date: June 7, 2018	
18		Time: 1:30 p.m.) Dept.: 903	
19) ICJ: Hon. Laura H. Parsky	
20	Michael Vu, in his official capacity as the	he Registrar of Voters for the County of San	
21	Diego (the "Registrar"), respectfully submits the	he following reply memorandum of points and	
22	authorities in response to contestant's oppositi	on to his motion for judgment on the pleadings in	
.23	his favor and request for dismissal of the second amended affidavit of contestant Raymond Lutz		
24	ARG	UMENT	
25	A. This Court Lacks Jurisdiction to Decide this Election Contest.		
26	As set forth in the Registrar's opening points and authorities this court lacks jurisdiction		
27	over any contest arising from a Presidential Primary Election. Contests challenging elections for		
28	offices in which the candidates are certified by the Secretary of State must be brought in the		
	REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO CONTESTANT'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS AND DISMISSAL OF SECOND AMENDED AFFIDAVIT OF CONTESTANT		

Superior Court of the County of Sacramento. (Elec. Code § 16421.) Candidates for Presidential Primary elections are certified for the ballot by the Secretary of State. (Elec. Code § 6180.)

Contestant's attempt to distinguish *Alden v. Superior Court* (1963) 212 Cal.App.2d 764 is misplaced. The Registrar cited *Alden* in his opening brief for the proposition that "[a] proceeding to contest an election may be brought only when and as authorized by statute." (*Id.* at 768.) That is an accurate statement of the law. Section 16421 specifies where certain election contests must be brought. The general Election Code provisions relating to election contests cited by contestant (Oppo. Points and Authorities, p. 6, ll. 6-7) do not control. A specific statute "relating to a particular subject will govern in respect to that subject as against a general provision". (Civ. Code § 3534; *Sheets v. Cleveland* (1942) 51 Cal.App.2d 148, 150 [provision in Elections Code limiting the time within which to file an appeal of a judgment of the superior court annulling or setting aside an election controls over more general provision on the same subject.].)

Similarly, Section 16641 is not controlling. Section 16641 provides that "[t]he superior court of that county in which is located the precinct in which the contestant demands a recount has jurisdiction." Contestant is not requesting a recount and Section 16641 does not apply.

B. The Doctrine of Forum Non Conveniens does not Apply.

Contestant references the doctrine of forum non-conveniens for the proposition that this court should retain jurisdiction in this case. "The Legislature has broad discretion to prescribe the procedure under which the courts exercise their constitutional or statutory authority. (2 Witkin Cal. Proc. 5th, *Courts*, § 171.) Where, as here, the Legislature has mandated where an action must be filed, and the Registrar would be entitled to a writ of prohibition if this court proceeded with this action. (*California v. Superior Court of San Francisco* (1936) 14 Cal.App.2d 718, 722.)

C. The Affidavit of Contest of the June 2016 Presidential Primary is Moot.

Contestant argues that notwithstanding that this particular case may be moot, the court has discretion to hear the matter "if (1) the case poses a broad public-interest issue that will likely recur, (2) the same controversy between parties likely will recur, or (3) the court faces

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material questions for determination." (Oppo., p. 11. 2-22.) None of these factors are present in this case.

Certainly if the Sanders' campaign felt there was an issue of continuing public importance, it would have intervened. It did not. And, the fact that Mr. Lutz did not bother to serve the affidavit of contest for 15 months after it was filed is further evidence that even Mr. Lutz did not believe the contest to be of continuing public importance.

Second, unless Mr. Lutz files another frivolous election contest, the matter is not likely to recur. Mr. Lutz's case is built entirely on theory and speculation. He theorizes that the ballots may have been tampered with by "election officials, outside hackers or some other mechanism" without any evidence to support such speculation. (Oppo., p. 10, Il. 14-15.)

Third, there are no material issues for determination by the court. Contestant is challenging the results of the June 2016 Presidential Primary between Hillary Clinton and Bernie Sanders. The court cannot grant contestant any remedy that would change the outcome of that contest.

D. Contestant is Attempting to Assume the Duties of the Secretary of State Not Conduct an Election Contest.

The Secretary of State is the chief elections officer in the state. (Section 10; Gov. Code §12172.5(a).) As the chief election officer, the Secretary of State is charged with the responsibility of ensuring "that elections are efficiently conducted and that state election laws are enforced." (Id.) If the Secretary of State concludes that state election laws are not being enforced, he or she can report the violation to the district attorney for the county or to the Attorney General. (Gov. Code § 12172.5(b).) If necessary to determine whether an elections law violation has occurred, the Secretary of State "may examine voted, unvoted, spoiled and canceled ballots, vote-counting computer programs, vote by mail ballot envelopes and applications, and supplies referred to in Section 14432 of the Elections Code." (Gov. Code § 12172.5(c).) Finally, the Secretary of State may also examine any other records of elections officials as he or she finds necessary in making his or her determination, subject to the restrictions set forth in [Gov't Code] Section 6253.5." (Id.)

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What is clear is that contestant is attempting through the guise of an election contest, assume the role and responsibilities of the Secretary of State as the chief election official in the state. That is not the purpose of an election contest. If contestant believes that the Registrar is not following the law, his remedy is to report such conduct to the Secretary of State who has the resources and authority to investigate such allegations.

CONCLUSION

Contestant is requesting that this court order the Registrar to unseal the ballots from the June 2016 Presidential Primary and to allow contestant to conduct a random audit of those ballots, not for the purpose of overturning the results of the election, but solely for the purpose of verifying the accuracy of the vote tabulating system used by the Registrar. As stated above, oversight of the election process and enforcement of state election laws is the province of the Secretary of State. (Section 10; Gov. Code § 12172.5.) If contestant believes that the Registrar has not properly followed the law in conducting the election, his remedy is to report his concerns to the Secretary of State for further investigation.

Contestant failed to bring his action in the proper court, unduly delayed in serving and attempting to prosecute his contest, the action is now moot, and the relief contestant seeks is not the proper subject of an election contest.

For the forgoing reasons, the Registrar requests that the court grant this motion for judgment on the pleadings and dismiss the affidavit of contestant with prejudice.

Dated: May 31, 2018 THOMAS E. MONTGOMERY, County Counsel, County of San Diego

By: s/Timothy M. Barry
TIMOTHY BARRY, Chief Deputy
Attorneys for the County of San Diego
and Michael Vu, Registrar of Voters

1	THOMAS E. MONTGOMERY, County Counsel County of San Diego By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019) STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)				
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6	Attorneys for Defendant Michael Vu				
7					
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11	RAYMOND LUTZ,	No. 37-2016-00023347-CU-PT-CTL Action Filed: July 11, 2016			
12	Contestant,	PROOF OF SERVICE			
13	v. (IMAGED FILE			
14	MICHAEL VU, Registrar of Voters for the County of San Diego; HILLARY CLINTON,	Date: June 7, 2018			
15	Democratic Presidential Party candidate	Time: 1:30 p.m.			
16	names as an indispensable party, and DOES 1-10,	Dept.: 903 ICJ: Hon. Laura H. Parsky			
17	Defendants.				
18					
19	I, Odette Ortega, declare:				
20	I am over the age of eighteen years and i	not a party to the case; I am employed in, or am a			
21	resident of, the County of San Diego California where the mailing occurs; and my business				
22	address is: 1600 Pacific Highway, Room 355, San Diego, California 92101.				
23	On May 31, 2018, I caused to be served the following document(s):				
24	1. REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE				
25	TO CONTESTANT'S OPPOSITION TO MOTION FOR JUDGMENT ON				
26	THE PLEADINGS AND DISMISSAL OF SECOND AMENDED AFFIDAVIT				
27	OF CONTESTANT				
28	On the interested parties below:				

PROOF OF SERVICE

1	Raymond Lutz			
2	1010 Old Chase Ave. El Cajon, CA 92020			
3	Ph: (619) 820-5321			
4	Email: raylutz@citizensoversight.org			
5	Via One Legal eService: By submitting an electronic version of the document(s) to			
6	One Legal, LLC, through the user interface at www.onelegalcom.			
7	I further declare, On May 31, 2018, I served the aforementioned documents in the			
8	following manner:			
9	(BY MAIL) By placing a copy in a separate envelope, with postage fully prepaid, for the			
10				
11	I declare under penalty of perjury under the laws of the State of California that the			
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13	Executed on May 31, 2018, at San Diego, California.			
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