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5 RAYMOND LUTZ, IN PRO PER
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 RAYMOND LUTZ

12 Plaintiff(s),

13 vs.

14 MICHAEL VU, San Diego County Registrar of
Voters

15 HELEN N. ROBBINS-MEYER, San Diego
16 County Chief Administrative Officer

17 SAN DIEGO COUNTY, a municipality

18 Defendant(s).
19

) Case No.:

) **COMPLAINT FOR DECLARATORY
RELIEF**

) **DATE:**
) **TIME:**
) **DEPT:**

) Judge:
) Dept:
) Action Filed:
) Trial Date:

20 **PARTIES**

21 Plaintiff is a resident and registered voter in the County of San Diego unincorporated area. He is
22 also the National Coordinator of CitizensOversight.org, and has conducted extensive reports and
23 reviews of the election processes used in San Diego county since 2008, including a top-to-bottom
24 report regarding the 2010 election. Plaintiff is a trained engineer with MSEE degree and not an
25 attorney.

26 /

27 /

28 /

1 Defendant Michael Vu, San Diego County Registrar of Voters, is responsible for conducting
2 election procedures in compliance with California State Law, including the California State
3 Elections Code.

4
5 Defendant Helen N. Robbins-Meyer, Chief Administrative Officer, County of San Diego, has
6 ultimate responsibility for operation of the County of San Diego to ensure compliance with all laws,
7 including compliance with the California Elections Code, maintains an office at the County
8 Administration Building located in the City of San Diego at 1600 Pacific Highway, Rm 166, San
9 Diego, CA, 92101. Robbins-Meyers is the supervisor to Michael Vu.

10
11 Defendant County of San Diego is a municipality in the State of California and operates as an
12 election district under the California State Election Code, with principle offices in the County
13 Administration Building as described above.

14
15 Plaintiff complains and for causes of action alleges as follows:

16
17 SUMMARY:

18 The San Diego County Registrar of Voters is not in compliance with California Elections Code
19 regarding the number of Vote-by-Mail (VBM) ballots hand-counted in the 1% manual tally and
20 requests that the Registrar of Voters comply with the law and

21 a) include all VBM ballots in the calculation of the required number of batches to achieve
22 one-percent, and

23 b) thus the number of VBM batches will increase from 8 to approximately 15;

24 c) all VBM ballot batches be involved in the selection of batches involved in the 1% manual
25 tally;

26 d) all provisionals and ballots removed during QC inspection should be included in the 1%
27 manual tally; and

28

1 e) and data file(s) that reflect the tally of votes in each batch counted should be available to
2 the public so a direct comparison can be made between the results of scanning the batch and the
3 results achieved in the hand-tally process.

4
5 BACKGROUND:

6
7 Manual Tally

8 California Election Code Section 153601 describes the activities required in conduct of processing
9 the votes with regard to the "1% Manual Tally".

10
11 The applicable section of the law is as follows:

12 15360 a.(2) A two-part public manual tally, which includes
13 both of the following:

14 (A) A public manual tally of the ballots, not including
15 vote by mail ballots, cast in 1 percent of the precincts
16 chosen at random by the elections official and conducted
17 pursuant to paragraph (1).

18 (B) (i) A public manual tally of not less than 1 percent of
19 the vote by mail ballots cast in the election. Batches of vote
20 by mail ballots shall be chosen at random by the elections
21 official.

22 (ii) For the purposes of this section, a "batch" means a set
23 of ballots tabulated by the voting system devices, for which
24 the voting system can produce a report of the votes cast.

25
26 The 1% manual tally is conducted by teams of workers who carefully manually count and tally
27 votes of all the ballots in selected precincts. One use of the 1% Manual Tally is to detect
28 discrepancies and any possible computer programming errors. However, election integrity

1 advocates also see the 1% manual tally as a means to ensure larger integrity of the vote-counting
2 process. The 1% Manual Tally, with careful oversight, can also a check on the integrity of the
3 workers at the Registrar and can detect hackers from the outside who may alter the vote in the
4 central tabulator.

5
6 Regardless of the stated purpose, the 1% manual tally should be conducted according to the full
7 extent of the provisions of law.

8
9 There are two major classes of ballots processed by the 1% manual tally.

10 **POLLS BALLOTS:** Ballots cast in at a physical polling place to vote (generally) on election
11 day. Included in this set are all ballots that are not Vote-by-mail ballots, including provisional
12 ballots. Provisional Ballots are used at the polling place if there is some question about the validity
13 of the ballot, so these can be reviewed later.

14 **VOTE-BY-MAIL (VBM) BALLOTS:** Deposited in the mail and postmarked no later than
15 election day. These days, VBM ballots may comprise as much or more than 60% of the total votes
16 cast.

17
18 It is important to note the wording of the 1% manual tally provisions carefully, as they were crafted
19 with an intent to be succinct and meaningful. The first set of ballots, the polls ballots, are all ballots
20 that are not VBM ballots. This then would include all provisional ballots, for example, because it is
21 the intent of this provision, we argue, to include absolutely all ballots in the universe of ballots to be
22 checked by the 1% manual tally.

23
24 The other set are all VBM ballots “cast.” Not “received”, not “processed” and not “tallied.” The
25 wording is “cast.” The word “cast” is not explicitly defined by the elections code, but the common
26 meaning is that a ballot is “cast” when it leaves control of the voter and is turned over to the
27 elections official. In the precinct, the ballot is cast when it is inserted into the ballot box. VBM
28

1 ballots are cast when they are submitted to the U.S. Postal Service or hand-delivered to a precinct or
2 the Registrar of Voters.

3
4 1% Manual Tally Options

5 There are two options for conducting the 1% manual tally, as specified in CEC Sec. 15360. The first
6 is to tally 1% of all the precincts, poll ballots and VBM ballots. The second is to conduct the tally in
7 two parts, one being the polls ballots, and one being the VBM ballots which are grouped into
8 batches rather than being grouped by precinct.

9
10 San Diego County conducts their 1% manual tally according to the second option. VBM ballots are
11 grouped into “batches” with mixed precincts and mixed ballot types, with approximately 400 ballots
12 per batch.

13
14 Scope of Manual Tally

15 EXHIBIT C is the public notice of the manual tally procedure. It states that “Pursuant to State Law,
16 a manual tally of at least 1% of the precincts and 1% of the mail ballots, selected at random, is
17 required as part of the post-Election Day canvass of the election.”

18
19 We note there are no other categories or exclusions. The public notice does not say that “the manual
20 tally includes 1% of the precinct ballots minus the provisional ballots and minus those omitted in
21 the QC process.” The public notice does not say that it is “1% of the mail ballots already processed,
22 excluding about 285,000 ballots not yet processed.”

23
24 Elections law allows the Registrar to start counting VBM ballots early on Election Day prior to the
25 close of polls, while withholding the resulting tally from the public until polls close at 8pm. The
26 initial tally provided to the public and media at that time are VBM ballots that were received early
27 in the process or voters who cast their ballot at the registrar's office.

1 After the polls close, polls ballots are transported from each polling place to the Registrar of Voters'
2 office and they are scanned over the course of the night. The first step in this process is receiving
3 the boxes of ballots from the precinct.

4
5 QC Inspection Removal of Ballots

6 When received by the Registrar of Voters, The boxes are opened and the ballots are given an initial
7 inspection. At this point, we learned that a number of ballots may be removed from the precinct
8 box. In our review of the process in 2010, about 5% of the ballots were removed at this point for
9 any of a number of reasons, such as additional marking, mutilation, etc. These ballots may be
10 “remade” prior to scanning by a remaking group. These ballots are currently not included in the 1%
11 manual tally process. We don't know how many ballots were removed in this fashion in this election
12 because the ROV does not provide this information. We can, however, determine this number by
13 reviewing the number of signatures on sign-in rosters and then subtracting the number actually
14 scanned.

15
16 Unofficial Results

17 Sometime early in the morning, the set of early VBM ballots has been scanned and all the normal
18 (not provisional and not removed due to QC inspection) ballots from the precincts have been
19 scanned. This forms the initial unofficial results of the election.

20
21 At the end of election night, the website of the Registrar said that 285,000 ballots were yet to be
22 counted. See Exhibit B, which is a snapshot of the header of that page the day after the election.

23
24 Random selection of Precincts and Batches

25 The day after the election, the random selection is performed. The selection is done only on the set
26 of ballots already processed (not including the 285,000 ballots mentioned as “still to be counted.”)

1 We have asked the Registrar of Voters to delay this selection process so as to include all the VBM
2 ballots but he refused. (See Exhibit F, email correspondence with Michael Vu.)

3
4 Members of the public are requested to assist in the random selection of precincts and VBM
5 batches. There are 1522 precinct in San Diego County. The selection of precincts is performed
6 using three sets of ping pong balls marked 0-9 and one set of two ping pong balls marked with 0
7 and 1. A member of the public selects one precinct out of 1522 by choosing one ball from each of
8 the ones, tens, hundreds, and thousands containers. A total of 16 precincts are chosen in this
9 manner. See Exhibit D.

10
11 (In addition to these 16 precincts, precincts and races are chosen by the registrar to ensure that all
12 races in the election are checked by a manual tally procedure. These additional precincts and races
13 are added later.)

14
15 Immediately after choosing the 16 precincts, a member of the public selects 1% of the VBM batches
16 already scanned. This is done in a similar way to the selection of precincts, using ping pong balls.
17 See Exhibit E for the batches selected.

18
19 There were about 730 mail in "batches" included in the 1% manual tally selection process. If there
20 are are 400 ballots in each batch, this represents about $730 \times 400 = 292,000$ ballots included in the
21 VBM tally process.

22
23 Plaintiff attended the public selection process and video recorded the process. Plaintiff mentioned
24 the discrepancy between the 730 batches and the fact that the 285,000 unprocessed VBM and
25 provisionals was not included in the selection process. They said the 1% manual tally only includes
26 the VBM ballots already scanned.

1 In this election, there was also an unusually high number of provisional ballots primarily due to No
2 Party Preference (NPP) voters who have the option of choosing a partisan ballot only for the
3 presidential race for most parties (but not the Republican party). These “crossover” ballots included
4 the presidential race for that party, all the nonpartisan races, but not the strictly partisan races such
5 as central committee members. In this election, the vast majority of cases were NPP voters choosing
6 the DEM ballot so they could vote for Sen. Bernie Sanders.

7
8 Strictly speaking, these ballots could have then be placed with the other ballots for the precinct but
9 poll workers were taught to treat these as “provisional” ballots. The normal and most prevalent use
10 of provisional ballots is to deal with a voter who normally is a VBM voter and who does not have
11 his VBM ballot to turn in. If the voter accidentally also voted by mail, the VBM ballot would
12 already have been received. The VBM ballot will be used and the poll ballot will not. Otherwise,
13 the voter could unintentionally vote twice.

14
15 Also, there were so many people requesting NPP/DEM ballots that many precincts ran out. In those
16 cases, they opted to use a regular DEM ballot but omit the central committee race. These would also
17 be treated as provisionals.

18
19 According to answers by staff at the ROV, there were about 74,000 provisionals received.

20
21 THE CONTROVERSY

22 Plaintiff asserts that the election code states clearly and succinctly that the 1% manual tally be
23 performed in two parts, one part including 1% of all ballots cast at precincts (including provisional
24 ballots and ballots removed in the QC inspection) and one part including 1% of all VBM ballots
25 cast (including the VBM ballots already processed and those still in the queue to be processed).

1 Instead, the registrar included only about 290,000 VBM ballots in the set of batches that could be
2 selected for the 1% manual tally process, choosing 8 batches, with each batch being about 400
3 ballots.

4
5 He did not include provisional ballots in the set of ballots included in the 1% manual tally. He did
6 not include the ballots removed during QC inspection in the set audited by the manual tally. He did
7 not include the VBM ballots still in the queue waiting to be processed in the 1% manual tally.

8
9 Thus, with 290,000 VBM ballots available for audit in the 1% manual tally, but with about the same
10 number waiting to be processed, instead of a 1% manual tally, this should be called the “half-of-
11 one-percent manual tally.”

12
13 Without question, the Registrar is in violation of the clear intent of the law.

14
15 OUR DEMAND

16 Plaintiff demands that:

17 1. A larger sample of VBM ballots be included in the manual tally process. The percentage must be
18 at least 1% of the VBM ballots known to have been cast. In this case, it roughly double the number
19 of batches originally selected are required.

20
21 2. Essentially all VBM ballots and provisional ballots should be included in the set of ballots
22 included in the manual tally process. By including these ballots in the process, more of the process
23 is checked, including the ballots removed in the QC inspection.

24
25 3. The definition for “batch” according to the election code “means a set of ballots tabulated by the
26 voting system devices, for which the voting system can produce a report of the votes cast.” Plaintiff
27 asked for data files corresponding to the “report of the votes cast” for batches in the VBM manual
28 tally and the Registrar refused to provide these files. In addition, our oversight protocol is

1 substantially enhanced if we get all the data files corresponding to the batches PRIOR TO the 1%
2 manual tally selection process.

3
4 4. The official election results should not be certified unless the 1% manual tally is performed
5 according to the law.

6
7 A judicial declaration is necessary and appropriate at this time under the circumstances in order that
8 the process used by the Registrar of Voters in conduct of the election procedures will comply with
9 the law as outlined above.

10
11 Plaintiff requests a speedy hearing for declaratory judgment as time is of the essence to compel
12 defendant to be compliant with the law in the current election cycle.

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14 DATED: June 16, 2016

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16 RAYMOND LUTZ
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