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April 15, 2020

Via U.S. Mail & Email: raylutz@citizenoversight.org

Attn: Ray Lutz
771 Jamacha Road 148
El Cajon, CA 92019

Re: California Public Records Act Request dated March 22, 2020

Dear Mr. Lutz:

This correspondence hereby responds to your California Public Records Act request dated March 22, 2020. As your request seeks six (6) categories of records, our response is directed individually at each of those categories.

Request No. 1 – Complete Set of Ballot Images for March 3, 2020 Election

The records sought in this request are exempt from disclosure pursuant to law. (*See*, Cal. Const. art. 1, §1 and art. II, §7, Govt. Code § 6254(k), Elections Code §§ 2300(a)(4) and 3107(b), Evidence Code § 1050, and Elections Code §§ 15370 and 17301.)

The recent case of *Citizens Oversight, Inc. v Vu* (2019) 35 Cal.App.5th 612 is instructive and applicable to your request. As you know, Citizens Oversight sought to inspect and copy ballots cast by registered voters during the June 7, 2016 election. The trial court ruled that the ballots were exempt from disclosure because Elections Code §15370 prohibited disclosure. It granted the Registrar's demurrer to the complaint without leave to amend and issued a judgment of dismissal. The Court of Appeal affirmed the judgment.

Your request for electronic images of actual ballots is no different than requesting copies of the actual ballots. In addition to *Vu*, at least two other cases have determined that electronic ballot images are protected from disclosure. (*See*, *Kosmider v. Whitney* (2019) 34 N.Y 3d 48 and *White v. Skagit County* (2015) 188 Wash.App.886.)

As such, the aforementioned statutes, coupled with the Court of Appeal's ruling in *Vu*, require that the Registrar withhold production of ballot images. Please note that your representation that other jurisdictions have produced ballot images is only illustrative and is not binding or persuasive.

Request No. 2 – Case Vote Records

The records sought in this request are exempt from disclosure pursuant to law. *See*, Cal. Const. art. 1, §1 and art. II, §7, Govt. Code § 6254(k), Elections Code §§ 2300(a)(4) and 3107(b), Evidence Code § 1050, and Elections Code §§ 15370 and 17301.)

Elections Code §15366(d) defines a cast vote record to be “auditable document or electronic record that purports to reflect the selections a voter made on a ballot. It lists the contests on the ballot and the voter’s selections in each of those contests.” In addition to the statutes set forth above, California Code of Regulations Section 20119 notes that the cast vote record data shall not be posted to the elections official’s website, but shall be made available at the location where the audit is being conduct subject to the confidentiality requirements of Elections Code § 2194(a).

The legislative history of section 20119 notes that the purpose of the risk limiting audits to allow the public to observe the audit itself. This is further confirmed by Section 20124(a)(6) that allows the public to “observe the voters’ marks on every audited ballot card during the audit.” In short, the intent of the Legislature was to allow cast vote records to be observed, subject to the confidentiality requirements of the Elections Code, at the public audit process, not disclosed to the public at large.

Request No. 3

After a reasonable and diligent search, the County does not have any responsive records of an e-pollbook within its custody, control or possession. Please note that we are interpreting this request to seek e-pollbook or e polling-lists. In the event this Request seeks other information that may relate to a sign-in sheet or voted/non-voted file, the Registrar may be in possession of responsive records. Please further note that as the County of Riverside has not certified its most recent election, this information may be subject to the exemptions contained in Government Code § 6254 and the Elections Code.

Request No. 4

After a reasonable and diligent search, the County has not located responsive documents within its possession, custody or control as contest titles are the same on every ballot.

Request No. 5

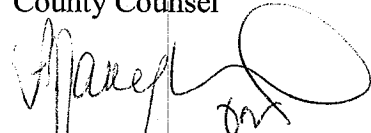
After a reasonable and diligent search, the County does not have any responsive records within its custody, control or possession. To the extent this request also seeks ballot images, in addition to the specific message digest, the County asserts that the records sought are from disclosure pursuant to law. *See*, Cal. Const. art. 1, §1 and art. II, §7, Govt. Code § 6254(k), Elections Code §§ 2300(a)(4) and 3107(b), Evidence Code § 1050, and Elections Code §§ 15370 and 17301.)

Request No. 6

After a reasonable and diligent search, the County does not have any responsive records within its custody, control or possession.

Sincerely,

GREGORY P. PRIAMOS
County Counsel

A handwritten signature in black ink, appearing to read 'Ronak N. Patel', with a large circular flourish at the end.

RONAK N. PATEL
Deputy County Counsel

RNP