

IN THE COURT

<b>COURT OF APPEAL, <u>Fourth</u> APPELLATE DISTRICT, DIVISION <u>One</u></b>		COURT OF APPEAL CASE NUMBER (if known): <b>D073522</b>
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 108324 NAME: Alan L. Geraci SBN108324 FIRM NAME: <b>CARE Law Group PC</b> STREET ADDRESS: 817 W. San Marcos Blvd CITY: San Marcos, CA 92078 TELEPHONE NO.: (619)231-3131 E-MAIL ADDRESS (if available): alan@carelaw.net ATTORNEY FOR (Name): Citizens Oversight, Ray Lutz		<i>FOR COURT USE ONLY</i>
APPELLANT: Citizens Oversight, Inc., Raymond Lutz  RESPONDENT: Michael Vu, County of San Diego		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: Hall of Justice MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
JUDGES (all who participated in case): Hon. Kenneth J. Medel		
<b>CIVIL CASE INFORMATION STATEMENT</b>		SUPERIOR COURT CASE NUMBER: <b>37-2017-27595-CU-MC-CTL</b>
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"); and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).		

PART I – APPEAL INFORMATION

A. APPEALABILITY

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes  No (If no, please explain why the judgment is appealable):

B. TIMELINESS OF APPEAL (Provide all applicable dates.)

- 1. Date of entry of judgment or order appealed from: October 13, 2017
- 2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104: October 20, 2017
- 3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?  
 Yes  No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed: \_\_\_\_\_  
 Date motion filed: \_\_\_\_\_ Date motion denied: \_\_\_\_\_ Date denial served: \_\_\_\_\_

4. Date notice of  appeal or  cross-appeal filed: December 18, 2017

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal?  Yes  No  
 (If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE: Citizens Oversight v. Vu

APPELLATE COURT CASE NUMBER:

D073522

D. APPELLATE CASE HISTORY (Provide additional information, if necessary, on attachment I.D.) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes  No (If yes, insert name of appellate court): Fourth Appellate District

Appellate court case no.: D071907

Title of case: Citizens Oversight, Inc., et al v. Vu, et al

Name of trial court: San Diego Superior

Trial court case no.: 37-2016-00020273

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes  No (If yes, please indicate the rule or statute that applies)

- |                                                                                                                                                                                                                      |                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party)                                                                                                                           | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat)                                                         |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust)                                                                                                                                                     | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act)                                                                                                                                         | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising)                                                                                                                                            | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act)                                                  |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)                     |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)                                                                                                      | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
|                                                                                                                                                                                                                      | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA)                                                     |
|                                                                                                                                                                                                                      | <input type="checkbox"/> Other (specify statute):                                                                  |

**NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.**

PART II – NATURE OF ACTION

A. Nature of action (check all that apply):

1.  Conservatorship
2.  Contract
3.  Eminent domain
4.  Equitable action    a.  Declaratory relief    b.  Other (describe):
5.  Family law
6.  Guardianship
7.  Probate
8.  Real property rights    a.  Title of real property    b.  Other (describe):
9.  Tort
  - a.  Medical malpractice
  - b.  Product liability
  - c.  Other personal injury
  - d.  Personal property
  - e.  Other tort (describe):
10.  Trust proceedings
11.  Writ proceedings in superior court
  - a.  Mandate (Code Civ. Proc., § 1085)
  - b.  Administrative mandate (Code Civ. Proc., § 1094.5)
  - c.  Prohibition (Code Civ. Proc., § 1102)
  - d.  Other (describe):
12.  Other action (describe): Declaratory Relief

B.  This appeal is entitled to calendar preference/priority on appeal (cite authority):

APPELLATE CASE TITLE: Citizens Oversight v. Vu	APPELLATE COURT CASE NUMBER: D073522
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**PART III – PARTY AND ATTORNEY INFORMATION**

In the spaces below or on a separate page or pages, list all the parties and all their attorneys of record who will participate in the appeal. For each party, provide all of the information requested on the left side of the page. On the right side of the page, if a party is self-represented please check the appropriate box and provide the party's mailing address, telephone number, fax number, and e-mail address. If a party is represented by an attorney, on the right side of the page, check the appropriate box and provide all of the requested information about that party's attorney.


Responses to Part III are attached instead of below

Name of Party: Citizens Oversight, Inc.  Appellate court designation: <input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Alan L. Geraci, Esq.  State Bar no: 108324 Firm name: CARE Law Group PC Mailing address: 817 W. San Marcos Blvd San Marcos, CA 92078 Telephone no.: 619-231-3131 Fax no: 760-650-3484 E-Mail address: alan@carelaw.net
Name of Party: Raymond Lutz  Appellate court designation: <input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Alan L. Geraci, Esq.  State Bar no: 108324 Firm name: CARE Law Group PC Mailing address: 817 W. San Marcos Blvd. San Marcos, CA 92078 Telephone no.: 619-231-3131 Fax no: 760-650-3484 E-Mail address: alan@carelaw.net
Name of Party: Michael Vu, Registrar of Voters; County of San Diego  Appellate court designation: <input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Timothy Barry, Chief Deputy County Counsel State Bar no: Firm name: San Diego County Counsel Mailing address: 1600 Pacific Coast Hgh, Room 355  Telephone no.: 619-531-6259 Fax no: 619-531-6005 E-Mail address: timothy.barry@sdcounty.ca.gov
Name of Party:  Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney:  State Bar no: Firm name: Mailing address:  Telephone no.: Fax no: E-Mail address:

Additional pages attached

Date: 3/9/2018

This statement is prepared and submitted by:

  
 (SIGNATURE OF ATTORNEY OR SELF-REPRESENTED PARTY)  
 Alan L. Geraci

1 THOMAS E. MONTGOMERY, County Counsel  
County of San Diego  
2 By STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)  
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)  
3 1600 Pacific Highway, Room 355  
San Diego, CA 92101-2469  
4 Telephone: (619) 531-5834  
E-mail: [stephanie.karnavas@sdcounty.ca.gov](mailto:stephanie.karnavas@sdcounty.ca.gov)  
5 ***Exempt From Filing Fees (Gov't Code § 6103)***

6 Attorneys for Respondents/Defendants

7  
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN DIEGO**  
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware )  
non-profit corporation; RAYMOND LUTZ, )  
12 an individual, )

13 Plaintiffs, )

14 v. )

15 MICHAEL VU, San Diego Registrar of )  
Voters; SAN DIEGO COUNTY, a public )  
16 entity; DOES 1-10, )

17 Defendants. )

No. 37-2017-00027595-CU-MC-CTL  
Action Filed: July 25, 2017

**NOTICE OF ENTRY OF ORDER ON  
DEMURRER**

**[IMAGED FILE]**

18 TO PETITIONERS/PLAINTIFFS AND THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on October 13, 2017, the Court issued a tentative ruling  
20 SUSTAINING the demurrer of Respondents/Defendants Michael Vu without leave to amend. A  
21 true and correct copy of the Court's tentative ruling is attached hereto as Exhibit A.

22 The hearing on the demurrer was held on October 14, 2017, in Department 66 of the above  
23 court, the Honorable Kenneth J. Medel presiding. Counsel for Petitioners/Plaintiffs, Alan Geraci,  
24 and counsel for Respondents/Defendants, Stephanie Karnavas, were both present. At the hearing,  
25 the Court made the tentative ruling its final order and dismissed the action with prejudice.

26 DATED: October 20, 2017

THOMAS E. MONTGOMERY, County Counsel

27 By: s/Stephanie Karnavas  
STEPHANIE KARNAVAS, Senior Deputy  
28 Attorneys for Respondents/Defendants

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**NOTICE OF ENTRY OF ORDER ON DEMURRER**

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 10, 2017

EVENT DATE: 10/13/2017      EVENT TIME: 10:30:00 AM      DEPT.: C-66

JUDICIAL OFFICER: Kenneth J Medel

CASE NO.: 37-2017-00027595-CU-MC-CTL

CASE TITLE: CITIZENS OVERSIGHT INC VS. MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/11/2017

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Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for the County of San Diego and the County of San Diego's Demurrer is SUSTAINED without leave to amend.

This is an action for declaratory relief and mandamus to allow inspection of the ballots from the 2016 Presidential Primary which occurred in June, 2016. Plaintiff alleges that California Elections Code Section 15209 requires the Registrar to store all ballots following a federal election, such as the Presidential Primary, for 22 months. Plaintiffs requested, inter alia, view and review copies to the ballots and Registrar declined to do so. (Plaintiffs' Complaint, at paragraph 12.) Plaintiffs demanded access to inspect and copy the stored ballots of the Presidential Primary. (Plaintiffs' Complaint, at paragraph 13.) Registrar declined Plaintiff's request stating that the ballots are sealed pursuant to California Elections Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307.

The Court finds that defendants are correct on the law. The Public Records Act (Gov't Code §§ 6250 - 6286.48) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to...state law...." (Gov't Code §6254(k).) For elections involving federal offices, the Elections Code provides that the packages containing ballots and identification envelopes "shall be kept by the elections official, unopened and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition, Section 15370 provides that "[a]fter ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 153032 and 153043, or in the event of a recount." To require the ballots to be turned over pursuant to a records request would "permit the ballots to be opened" and thus violate the state's election law.

Given the law, there is no ministerial duty on the part of the Registrar of Voters to turn over the ballots upon request. Thus, there is no basis for a writ of mandate

<b>PROOF OF SERVICE (Court of Appeal)</b> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	FOR COURT USE ONLY
<b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.</b>	
Case Name: Citizens Oversight v. County of San Diego, et al. Court of Appeal Case Number: D073522 Superior Court Case Number: 37-2017-27595-CU-MC-CTL	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My  residence  business address is (*specify*): 817 W. San Marcos Blvd., San Marcos, CA 92078
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*): Civil Case Information Statement
  - a.  **Mail.** I mailed a copy of the document identified above as follows:
    - (1) I enclosed a copy of the document identified above in an envelope or envelopes and
      - (a)  deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
      - (b)  placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
    - (2) Date mailed: 3/9/2018
    - (3) The envelope was or envelopes were addressed as follows:
      - (a) Person served:
        - (i) Name: Timothy Barry, Chief Deputy County Counsel
        - (ii) Address: 1600 Pacific Coast Hgh, Room 355  
San Diego, CA 92101
      - (b) Person served:
        - (i) Name:
        - (ii) Address:
      - (c) Person served:
        - (i) Name:
        - (ii) Address:
  - Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
  - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (*city and state*): San Marcos, CA 92078

CASE NAME: Citizens Oversight v. County of San Diego	CASE NUMBER: D073522
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3. b.  **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 3/9/2018

Alan L. Geraci

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶   
(SIGNATURE OF PERSON COMPLETING THIS FORM)