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October 31, 2018

**SENT VIA U.S. MAIL**

Ray Lutz  
Citizens' Oversight Projects  
771 Jamacha Road, #148  
El Cajon, CA 92109

Re: Letter to San Luis Obispo County Registrar of Voters Dated October 27, 2018

Dear Mr. Lutz:

We are writing on behalf of the San Luis Obispo County Clerk-Recorder and Registrar of Voters ("the Registrar") in response to your letter, dated October 27, 2018, regarding video recording of the process of manual tallying of voter ballots required by California Elections Code section 15360.

In your letter you have asked that "the County of [San Luis Obispo] move the PUBLIC random selection meeting to a publicly accessible meeting room, and that [the Registrar] amend [his] rules to explicitly allow video cameras for this meeting." (Emphasis in original.) You cite to California Government Code section 54953.5, subdivision (a), which is part of the provisions of the Ralph M. Brown Act, codified in Government Code section 54950 et seq. (hereafter "the Act" or "the Brown Act"), for the proposition that you have a right to video record the manual tallying of ballots by the Registrar's Office.

California Elections Code section 15360 governs the process and requirements for the manual tallying of voter ballots. The section allows for public *observation* of the manual tallying process. (§ 15360, subd. (d).) The right of public observation of the manual tallying of voter ballots required by section 15360 does not require, give rise to, nor contemplate a "public meeting" as that term is referred to in the Brown Act. Indeed, nowhere in Elections Code section 15360 does it make reference to a "public meeting."

Ray Lutz / Citizens' Oversight Projects

Re: Letter to San Luis Obispo County Registrar of Voters Dated October 27, 2018  
October 31, 2018

The Brown Act provision, which you cite to as authority for your right to video record the manual tallying of voter ballots, is applicable only to meetings of local legislative bodies as defined in the Act. (See e.g., Gov. Code, § 54952.) The County Registrar, who is statutorily charged with conducting local elections, is not a "legislative body" within the meaning of the Act. For this reason, any right of video recording pursuant to the Brown Act is wholly inapplicable to the Registrar's Office and specifically to the manual tallying of ballots required by Elections Code section 15360. (It is our understanding that you were previously informed of this in June 2018, during the California primary election, when you visited the Registrar's Office for the purpose of participating in the observation of the manual tallying process being conducted at that time.)

Chapter 5 of Division 2 of the Elections Code, which codifies the Voter Bill of Rights, provides the following rights, among others, to all voters with respect to election matters: (1) the right to ask questions about election procedures and *observe the election process*; 2) the right to ask questions of the precinct board and elections officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. (See e.g., Elec. Code, § 2300, subd. (a)(9).) The Voter Bill of Rights also grants to county registrars and election boards the right to discontinue responding to questions if persistent questioning (or demands) disrupts the execution of their election duties. (*Ibid.*) In sum, the Voter Bill of Rights does not provide authority for the video recording of election processes; nor does it provide for the right of an individual to personally participate in the process by physically verifying or handling any of the voting material used in the process of the manual tallying.

In addition to the fact that the Elections Code (including the Voter Bill of Rights) does not compel the Registrar to permit video recording of the manual tallying process, prior to the June 2018 primary, the California Secretary of State issued a memorandum to county registrars regarding the June 2018 primary election. The purpose of the memorandum was to distribute the Secretary's 2016 publication "Election Observation Rights and Responsibilities." On page 2 of the memorandum, the Secretary of State indicates:

Elections officials are responsible for . . . . [e]stablishing security rules for public observation. Examples of such rules are the use of sign-in sheets

Ray Lutz / Citizens' Oversight Projects

Re: Letter to San Luis Obispo County Registrar of Voters Dated October 27, 2018  
October 31, 2018

and identification badges *and prohibiting the use of cell phones, pagers, cameras, **and other audio or video equipment or electronic devices.***

(Emphasis added.)

Ostensibly, the examples of the procedures suggested by the Secretary of State are intended to maintain the integrity of the election process and to ensure the confidentiality of voters' ballots in accordance with the state and federal constitutional right to secrecy of ballots. (The publication "Election Observation Rights and Responsibilities" is available on the Secretary of State's website at: <https://elections.cdn.sos.ca.gov//pdfs/observation-rights-responsibilites.pdf>.)

In sum, the County Registrar will continue to carry out his statutorily required duties with respect to the manual tallying of votes in accordance with the guidelines and advice issued by the Secretary of State and Elections Code section 15360. In this regard, the Registrar will provide "5 days [advance] public notice of the time and place of the manual tally, and the time and place of the selection of the precincts, batches, or direct recording electronic voting machines subject to the public manual tally prior to conducting the selection and tally." (Elec. Code, § 15360, subd. (d).)

Very truly yours,

RITA L. NEAL  
County Counsel



By: ANN DUGGAN  
Deputy County Counsel

AD:ck

cc: Tommy Gong, Clerk-Recorder and Registrar of Voters  
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