WILLIAM M. SIMPICH
(CA State Bar No. 106672)
Attorney at Law
1736 Franklin St. 10th Floor
Oakland, CA 94612
Telephone: (415) 542-6809

DWANA SIMONE BAIN
(CA State Bar No. 262692)
Attorney at Law
2443 Fillmore St, #380-8599
San Francisco, CA 94115-1814
Telephone: (415) 610-8155

Attorneys for Contestant Raymond Lutz

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RAYMOND LUTZ, Contestant, vs. MICHAEL VU, Registrar of Voters for the County of San Diego; HILLARY CLINTON, Democratic Presidential Party candidate named as an indispensable party, and DOES 1-10, Defendants.	Case No. **AFFIDAVIT OF CONTESTANT RAYMOND LUTZ RE DEMOCRATIC PARTY PRESIDENTIAL PRIMARY ELECTION** **(Elections Code Section 16000 et seq.)**

I, RAYMOND LUTZ, am an elector in San Diego County, where this contested

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

1

election was held.

The names of the defendants in this action are MICHAEL VU, Registrar of Voters for the County of San Diego; HILLARY CLINTON, Democratic Presidential Party candidate named as an indispensable party. Ms. Clinton will be presented with a stipulation to dismiss her from the action if that is her preference, as the focus of the improper acts is Defendant Vu.

The focus of this action is the Democratic Presidential Party primary election of 2016.

This statement is filed pursuant to Sections 16100, 16440 and 16460 of the Elections Code. Contestant is named pursuant to Elections Code Section 16002 and 16100.

The particular grounds of contest are as follows:

1. Defendant Michael Vu has committed misconduct as set forth in Elections Code Section 18000, et seq, and was supported by the seven registrars of voters (ROVs) of Los Angeles (Dean Logan), Orange (Neal Kelley), Contra Costa (Joseph Canciamella), Sacramento (Jill LaVine), Sonoma (William Rousseau), Kern (Mary Bedard) and Santa Cruz (Gail Pellerin) who admitted under penalty of perjury that they failed to include the provisional ballots and the late arriving vote-by-mail ballots within the 1% tally procedure mandated by Elections Code 15360.

2a. That eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote. Contestant alleges, on information and belief, that the errors detailed in this affidavit occurred in every precinct in the county. On information and belief, contestant declares that the date of completion of the official canvass of the Board of Supervisors of the county was no earlier than Tuesday, July 5.

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

2

2b.   Among other problems, provisional and vote-by mail ballots have not been counted due to various improper ploys such as "no proper address" or "failure to provide a signature".

2c.   No-party-preference (NPP) voters were given ambiguous and misleading notices in writing prior to the election. These voters were provided with a notice regarding their NPP voting rights that violated Elections Code Section 3006 for providing inadequate information. These notices contained a "soft deadline" to provide their NPP voting preferences,, and were sent by US mail rather than by e-mail.   When these voters failed to respond to the "soft deadline" provided by these notices, many of them were left with the impression that they could no longer vote for President of the United States.

2d.   Many NPP voters were not properly informed by poll workers of their right to receive a "Democratic crossover ballot" - a second primary ballot that would enable them to vote for President of the United States.   Thus, these voters did not receive a Presidential ballot at the polls.

2e. Many voters were forced to vote provisionally for a variety of reasons, and in many cases due to the fault of the Registrar and his/her employees.

2f.   As stated above, the 1% tally procedure mandated by Elections Code 15360 was not properly used by this Registrar and many others.

2g. Numerous irregularities occurred, including but not limited to the use of whiteout on the ballots; the lack of security in the warehouse where the ballots were stored; the presence of a shredder truck in front of the Registrar's office during the count on June 28; and the systemic excusal of observers from being able to observe the count in a meaningful fashion between June

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at
Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

3

7-July 5. A reasonable person would conclude that there has been no effective chain of custody of the ballots.

2h. Furthermore, the voters have a constitutional right to write-in their preference for the listed Democratic Party candidates for President, regardless of any obstacles created by statute, procedure, or other manner.

2i. Many voters may have been registered in parties, such as the American Independent Party (AIP), thinking this was the same as the NPP designation. These voters may have written in their selection from the Democratic Party and those should have been counted.

3a. That the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected. Contestant cites the problems listed from 2a-2i, above.

3b. Among other problems, according to Kim Alexander, director of the California Voter Foundation, there are 2.2 million NPP voters who vote by mail and 85% of them did not return the postcards they were sent to request a crossover ballot. Therefore, Alexander estimates that 1,870,000 voters were given ballots without presidential candidates. "Some voters don't realize they are vote-by-mail voters in the first place and aren't aware they were sent a ballot. Or they waited until Election Day to open their ballot and only then realized that they have no presidential candidates on their ballot and don't fully understand what options they have to get a replacement ballot at their polling place."

4. Other reasons are stated below, while incorporating the facts above.

5. Elections Code should be liberally construed in favor of the challenged voter and that in

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

4

this case the Code be interpreted to count the challenged votes.

6. That the Registrar did not comply with Sections 14310 and 3019 of the Elections Code, which states that the Registrar is supposed to compare the signature on the provisional ballot with the voter's registration, and then count the vote if they match;

7. That the Registrar did not comply with Section 14310 of the Elections Code by not giving provisional voters sufficient notice of their provisional rights;

8. That the Registrar's us of Section 14311 of the Elections Code for "re-registering" provisional voters in the past is believed to have been used on this occasion as well, and is improper;

9. That the Supreme Court of California in Wilks v. Mouton (1986) 42 Cal.3d 400 held that a registrar of voters is not supposed to consider the address on a ballot when determining a voter's eligibility;

10. That the challenged ballots did not indicate that the voters intended to change their domicile and that, under *Walters v. Weed* (1988) 45 Cal.3d 1, the Registrar erred by interpreting the ballots in such a way as to disenfranchise the voters of their right to vote (also see Elec. Code §§ 14310, 3019.)

11. That the Secretary of State and the California Association of Clerks and Election Officials interpret the operative sections of the Elections Code to count the votes of provisional ballots like the challenged ballots, and that the Secretary of State has the right to create uniform regulations if he chooses;

12. That upholding the San Diego County Registrar's application of the Elections Code
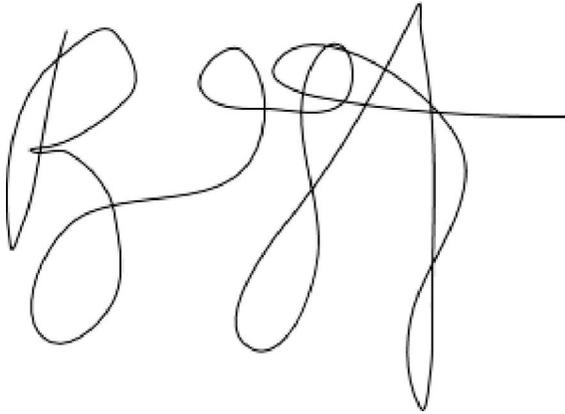
AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at
Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

5

results in registrars, in California, applying voting laws differently in each county,

violating the Equal Protection Clause of the United States Constitution as per the holding in Bush

v. Gore (2000) 531 U.S. 98, 103.

Dated: July 11, 2016

_____

RAYMOND LUTZ

Verification

I am a party to this action. I declare under penalty of perjury that the matters in this document are true of my own personal knowledge, except for those matters alleged on information and belief, and as for those matters I believe them to be true. Executed on July 11, 2016, in San Diego County, California.

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

6
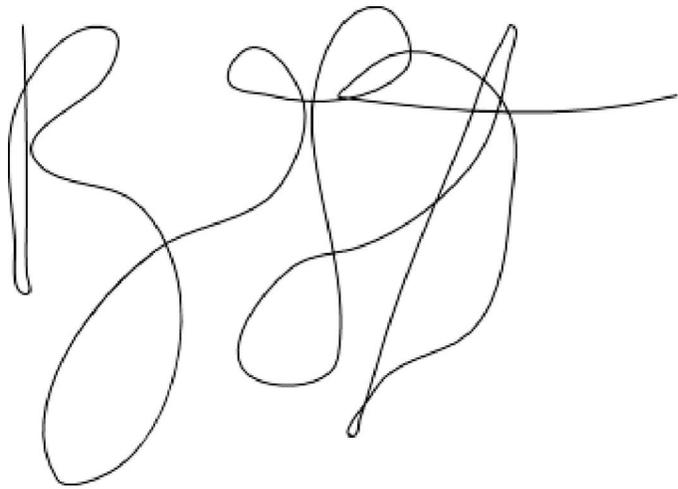
RAYMOND LUTZ

AFFIDAVIT OF CONTESTANT RAYMOND LUTZ
William M. Simpich, Attorney at
Law
1736 Franklin St. 10th Floor
Oakland CA 94612
(415) 542-6809

7