



OFFICE OF THE COUNTY COUNSEL

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REVISED

DONNA R. ZIEGLER
COUNTY COUNSEL

Agenda # _____ November 14 , 2023

November 9, 2023

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: ADOPT AN ORDINANCE AND RESOLUTION TO AMEND SECTION 62 OF THE COUNTY OF ALAMEDA CHARTER AND CALL A SPECIAL ELECTION TO BE CONSOLIDATED WITH THE MARCH 5, 2024, PRIMARY ELECTION, FOR THE PURPOSES OF SUBMITTING THE PROPOSED AMENDMENT TO THE VOTERS FOR APPROVAL

Dear Board Members:

RECOMMENDATION:

- A. Adopt an Ordinance calling for a special election to be consolidated with the statewide election to be held on March 5, 2024, for the purpose of submitting a measure to the voters of the County of Alameda ("County") on the question of whether the Charter of the County should be amended by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."
- B. Adopt a resolution and order calling for and giving notice of a special election to be consolidated with the statewide election to be held on March 5, 2024, to amend County of Alameda Charter, Section 62, by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."

SUMMARY:

Section 23720 of the Government Code provides that the County Charter may be amended by a proposal submitted either by the governing body or by a petition signed by 10% of the qualified electorate within the County. The proposed ordinance and resolution would call for a special election to be held on March 5, 2024, consolidated with the

statewide Primary Election, for the purpose of submitting to the voters of the County the question of whether the County Charter should be amended.

DISCUSSION:

The County of Alameda is a charter county. Generally, a county's charter supersedes state law, and a county is bound to follow its charter where the two conflict. The voters of a charter county must authorize any amendment to a county charter. A Board of Supervisors lacks the authority to amend a charter absent voter approval. This action seeks to perfect amendments to Section 62 of the County of Alameda Charter by authorizing an election to obtain voter approval of proposed amendments, for the reasons explained in detail below.

Section 62 of the County's Charter prescribes the procedure to recall a County officer and applies to both "elective *and appointive*" officers. A thorough review of Section 62 of the Charter reveals that Section 62, for all intents and purposes, is out of date. It is out of alignment with the recall procedures found in state law and found in all other charter counties in the state. Additionally, the County of Alameda Charter allows for the removal of specified appointed County officers, unlike most other counties in California. And, significantly, due to the growth of the County over many decades, and the changes to election law, including changes to the manner in which elections are conducted, it is likely unfeasible to carry out a recall election in the manner outlined in the charter.

In order to provide the public and the Registrar of Voters with clear and achievable standards for conducting a recall, and to exclude specified appointed County officers from being subject to recall, it is recommended that your Board: 1) adopt an ordinance to amend the Charter by replacing the County's current recall procedures with the recall procedures prescribed in state law; 2) not include appointed County officers in the scope of officers who can be recalled using the State law procedures; and 3) call for the necessary special election to perfect the amendments. Amending Section 62 to adopt state law procedures for recalling county officers will bring clarity to all regarding the procedures, timing, and rules that will apply to recalls of County of Alameda officers. This change will codify a transparent recall process, and benefit the public generally, proponents of any recall, a target of a recall, and opponents of a recall, by substantially reducing the likelihood of costly litigation that could arise due to the current outdated standards.

PROBLEMS WITH SECTION 62 OF THE CHARTER:

Unconstitutional Provisions. Courts have held that *at least two* provisions of Section 62 are unconstitutional when applied to other types of elections. These rulings create uncertainty as to whether these provisions should, or can, be followed when conducting a recall election.

- Section 62 requires petition circulators to be registered voters of the County. The U.S. Supreme Court has held that a similar requirement for circulating initiative petitions was unconstitutional. State law requires only that a petition circulator be 18 years of age or older. The proposed amendment to follow state law would substantially lessen the risk that any recall election would be subject to legal challenge on the grounds that the procedures followed were unconstitutional.
- Section 62 requires that “no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled” This language was also held to be unconstitutional. In striking the language, the court allowed voters who skipped the recall question to vote on a candidate. Adopting state law eliminates the risk that the form of ballot prescribed by Section 62 would subject a recall election to legal challenge as unconstitutional. Under state law, the question of the recall is presented to the voters without any candidates appearing on the ballot. If a majority of voters vote for the recall, the official is recalled, and a vacancy is created. Candidates need not mount a campaign without knowing whether the official has been recalled.

Missing Procedures. Section 62 is silent on key procedures for a recall. A recall generally has three broad stages: (1) the time before circulating a petition; (2) the gathering and verification of the signatures; and (3) the recall election (if enough valid signatures are gathered). Section 62 is completely silent on the pre-circulation procedures.

- The pre-circulation procedures in state law provide important transparency measures as a practical matter. They provide notice to the public, identify the target of the recall, allow the target to answer the petition, give the elections official the opportunity to vet the form of the petition, and allow the public time to challenge the form and content of the petition. These steps and this level of transparency may serve to reduce the likelihood of post-election legal challenges. State law fills in these pieces that are missing from the Charter and provides consistent practices to follow.
- Section 62 has none of these pre-circulation procedures. It starts with a “petition demanding the election or appointment of a successor to the person sought to be recalled shall be filed with the County Clerk [the Registrar of Voters], which petition shall be signed by [the required number of electors].” In other words, Section 62 begins at the verification stage. There is no notice to the public or the target of the recall, no service of notice, no answer by the recall target, no vetting of the proposed petition by the elections official, no publication, and no prescribed opportunity or timeline to challenge the proposed petition. This means there are no

prescribed safeguards and checks and balances that may resolve defects in the process *before* an election has occurred.

- The proposed amendment to adopt state law ensures that the rules and procedures for all stages of the recall may be known to (1) the public, (2) proponents of any recall, (3) the target of any recall, and (4) opponents of a recall. State law increases transparency by ensuring all relevant stakeholders know that a recall effort is underway.

Unfeasibility. Section 62's recall procedures may not be feasible because election law has evolved over the many decades since Section 62 was adopted.

- Section 62 requires that nominees to replace a recalled official be placed on the same ballot as the recall and cites to "Section 1188 of the Political Code" to define the process for nominees to qualify for the ballot. But Section 1188 is a state law that no longer exists. This leaves a gap in the recall procedures and no direction for qualifying nominees. State law does not allow nominees for local offices to be placed on the same ballot as the recall election. Instead, if the recall passes, it creates a vacancy for that office. The vacancy may be filled by the rules governing the local jurisdiction. Adopting state law will provide procedural clarity, transparency for all, and close the gap.
- Section 62 specifies a turnaround time for the Registrar of Voters to verify petition signatures that is impractical and likely unattainable for a jurisdiction that, in the decades following Section 62's adoption, has grown to the size of Alameda County today—approximately 1.65 million people. Section 62 could lead to proponents of a recall gathering tens of thousands of signatures, possibly over 100,000, to qualify a recall for the ballot. But it only allows the elections official 10 days to verify sufficient signatures. The elections official is highly unlikely to verify the signatures needed within the 10-day deadline. The failure to verify signatures timely could lead to costly litigation. State law allows 30 days. Adopting state law's longer timeframe may avoid costly pre- or post-election litigation because it provides the Registrar of Voters more time to complete the verification process.
- Section 62 requires the election to take place within 35 to 40 days of the Board of Supervisors calling the election. As a practical matter, it is likely not possible to prepare, print, translate, and mail ballots to the over 900,000 registered voters of the County within 35-40 days, while at the same time hiring and training staff, and standing up vote centers for in person voting. The quick turnaround may also conflict with the timelines mandated by the Elections Code for such things as mailing and sending the voter information guide and overseas and military ballots, election requirements that the

Registrar of Voters currently follows. Adopting state law would provide the Registrar of Voters not less than 88 days and in certain instances as many as 180 days to conduct the election. Adopting the state law timelines provides a more reasonable and doable timeframe to ensure that any recall election could be executed within the timelines provided by law and substantially reduces the risk of litigation over unmet timelines.

- Adopting state law will automatically conform the recall procedures and timelines with those of the Elections Code (and of other counties, see below). Moreover, as the California Legislature updates and amends state law, those updates and amendments will automatically apply in Alameda County. In other words, by incorporating state law, any future changes will be applicable to County recalls, and reduce the potential for costly Charter amendment updates and reduce the risk of the Charter, again, falling out of date with the times and growth of the County.

Other Charter Counties. There are 14 charter counties in California. Three of these counties' charters do not include recall provisions, which means state law automatically governs recalls in those counties. The remainder refer to and incorporate state law to govern their recalls. The County of Alameda is the only charter county with recall provisions that completely deviate from (and are at odds with) the state law and current constitutional law. Adopting this amendment will align the County of Alameda with all other charter counties and non-charter counties in the state regarding the key steps for conducting a recall election.

Other Counties. State law does not include county appointive/appointed¹ officers in the scope of those who are subject to recall. They are eligible for recall in the County of Alameda solely because of Charter Section 62. Because the Board of Supervisors is able to remove County appointed officers without the need of a costly election, it is reasonable not to make those officers subject to recall. This would align with most if not all general law counties in California and most charter counties.

FINANCING:

The net County cost for placing the measure on the ballot is not known at this time, and will be determined, in part, upon any future jurisdictional consolidation. No additional appropriations are required, and we anticipate funds will be available in the FY 2023-24 Approved Budget to cover the costs resulting from the recommendation.

¹ We use the terms "appointive" and "appointed" interchangeably in reference to amending Charter Section 62, as we understand them to have the same meaning when using "appointed" in place of "appointive" in the proposed amendment to Section 62. The same applies to "elected" in place of "elective" in reference to any proposed amendment to Charter 62 in this Board letter and in the Board letters presented to the Board of Supervisors in October of 2023 regarding amending Section 62.)

Honorable Board of Supervisors
November 9, 2023
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VISION 2026 GOAL:

The proposed Charter amendment supports the goal of Accessible Infrastructure by updating applicable recall procedures to modern day standards. It eliminates decades old procedures that, 1) do not integrate well with the way elections are conducted today, and 2) that are a detriment to ensuring that lawful, competent, and timely recalls may be conducted.

CONCLUSION:

County of Alameda Charter Section 62 is out of date. Adopting the recommendations in *this letter* will allow a Charter amendment to be placed on the ballot that aligns the County's recall procedures with California state law procedures *and* no longer allow County of Alameda appointed officers to be recalled.

Very truly yours,



Donna R. Ziegler
County Counsel

cc: County Administrator
Registrar of Voters

ORDINANCE NO. 2023-58

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I – Call of the Election and Purpose

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda (“Registrar of Voters”) is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

SECTION II – Form of Measure

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?	YES
	NO

A copy of the full text of County of Alameda Measure ____ is attached hereto and incorporated herein.

SECTION III

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this 28th day of November 2023, by the following called vote:

AYES: Supervisors Carson, Marquez & Tam – 3

NOES: Supervisor Haubert & President Miley – 2

EXCUSED: None

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: 

Print Name RAY LARA

Full text of County of Alameda Measure __

MEASURE ____

This Measure ____ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

RESOLUTION NO. R-2023- 619

A RESOLUTION AND ORDER OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING AN ORDINANCE AND CALLING FOR AND GIVING NOTICE OF A SPECIAL ELECTION AND PLACING A MEASURE ON THE BALLOT TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF ALAMEDA COUNTY TO AMEND COUNTY CHARTER SECTION 62 GOVERNING RECALL OF COUNTY OFFICERS; AND CONSOLIDATING THE ELECTION WITH OTHER ELECTIONS ON MARCH 5, 2024; FIXING THE DATE AND MANNER OF THE ELECTION AND THE PROCEDURE FOR VOTING THEREIN

WHEREAS, the County of Alameda ("County") is a charter county;

WHEREAS, California State Constitution, Article XI, Section 4, paragraph (c) allows a county charter to provide for the election and removal of elected and appointed County officers;

WHEREAS, Section 62 of the County Charter governs the recall of County officers;

WHEREAS, certain provisions of Section 62 of the County Charter are outdated, reference state law provisions that are no longer in effect, have been declared unconstitutional in other contexts, are silent on several key procedures for recall as outlined in state law, and may not be feasible to execute;

WHEREAS, other charter counties throughout the state have adopted state law to apply to the recall of their county officers;

WHEREAS, the Board of Supervisors ("Board") cannot change or amend the County Charter without voter approval;

WHEREAS, the Board has determined that it is in the County's best interest to adopt state law to govern the recall of County elected officers and to no longer subject appointed officers to recall;

WHEREAS, adopting state law will provide greater transparency regarding applicable recall procedures for the public generally, proponents of any recall, opponents of any recall, and any target of a recall;

WHEREAS, adopting state law will align the County's recall procedures with the other counties in California and create achievable standards for conducting recalls;

NOW, THEREFORE, THIS BOARD OF SUPERVISORS HEREBY RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Call of the Election and Purpose. A special election shall be held and the same is hereby called and ordered to be held throughout the County on the 5th day of March 2024, for the purpose of submitting to the voters of the County by ordinance the question of whether Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers shall be amended to adopt state law for the recall of County elected officers as provided in the attached ordinance, Attachment A (hereinafter "Ordinance").

Section 3. Ordinance. The attached Ordinance calling for the election to amend Section 62 of the County Charter is incorporated herein by reference.

Section 4. Ballot Measure. The Board orders that the measure to amend the County Charter by ordinance shall appear on the ballot substantially as follows:

BALLOT QUESTION: CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?

Yes ___ No ___

Section 5. Consolidation. The Board hereby submits the ballot question and the measure to the qualified electors of the County at the Election in the form set forth above. The special election called by this resolution shall be consolidated with the other elections conducted by the Registrar of Voters to be held in the County on March 5, 2024, and the ordinance amending the County Charter shall be placed on the same ballot as that provided for the primary election. The Consolidated Election shall be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. The votes received and canvassed, and the results ascertained and determined all in the same manner as the statewide election to be held on that date and in conformity with the election laws of the State of California. Only qualified electors of the County may vote on the measure.

Section 6. Election Procedure. All qualified voters residing in the County shall be permitted to vote in the election and in all particulars not recited in this resolution, the elections shall be held as nearly as practicable in conformity with the Elections Code of the State of California. The votes cast for and against the measure shall be separately counted and if the measure receives a majority of the votes cast by the qualified electors voting on the measure, the measure amending the County Charter shall be effective pursuant to sections 23713, 23714 and 23724 of the Government Code. Should another proposed measure with conflicting provisions appear on the same ballot, and each proposed measure receives a majority of votes, the proposed measure with the highest number of affirmative votes shall prevail, in conformity with section 9123 of the Elections Code.

Section 7. Authority. This resolution is adopted pursuant to sections 10403 and 12001 of the Elections Code and section 25201 of the Government Code. The Clerk of the Board of Supervisors is ordered to file a copy of this resolution with the Registrar of Voters at least eighty-eight (88) days prior to the day of the election. The Registrar of Voters is authorized, instructed, and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.

Section 8. The Clerk of the Board is directed to file a certified copy of this Resolution with the Registrar of Voters and the Registrar of Voters is authorized and directed to take all steps necessary to place the Ordinance on the ballot and to cause the Ordinance to be printed in the sample ballot. A copy of the Ordinance shall be made available to any voter upon request.

Section 9. Proclamation. Pursuant to section 12001 of the Elections Code, the Board hereby PROCLAIMS that a special Countywide election shall be held on Tuesday, March 5, 2024, to vote upon the Charter Amendment described in the Ordinance.

Section 10. This Resolution and Order relating to an election shall take effect immediately.

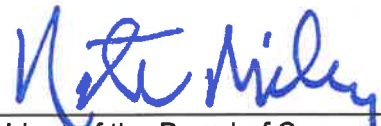
The foregoing Resolution and Order was passed and adopted by the Board of Supervisors of Alameda County, State of California on the 28th day of November, 2023 by the following vote:

AYES: Supervisors Carson, Marquez & Tam - 3

NOES: Supervisor Haubert & President Miley - 2

EXCUSED: None

ABSTAINED: None



President of the Board of Supervisors
County of Alameda, State of California

ATTEST:

ANIKA CAMPBELL-BELTON, Clerk
of the Board of Supervisors, County of Alameda

By: R. Bailey, Deputy

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: [Signature]
Raymond Lara
Senior Deputy County Counsel

Campbell-Belton, Anika, CBS

From: Jason Bezis <jason@bezislaw.com>
Sent: Monday, November 27, 2023 6:37 PM
To: Clerk of the Board; Campbell-Belton, Anika, CBS
Cc: Ziegler, Donna, County Counsel; Weddle, Andrea L., County Counsel; Lara, Raymond S., County Counsel; Haubert, David, Supv BOS Dist 1; Márquez, Elisa, BOS Dist2; Tam, Lena, Supv BOS Dist 3; BOS District 4; Carson, Keith, Supv BOS Dist 5
Subject: Alameda County Board of Supervisors Regular Meeting - November 28, 2023 - Item No. 26 - Opposition to Proposed County Charter Amendment
Attachments: ACTA-Third Letter to Alameda County BOS re Recall Charter Amendment-Nov 27 2023.pdf

Dear President Miley and Clerk of the Board Campbell-Belton:

Attached as a PDF document please find the Alameda County Taxpayers' Association's comment on Item No. 26 on the November 28, 2023 Board of Supervisors regular meeting agenda. The PDF has three pages.

Please distribute the attached document to the various supervisors in accordance with your practices.

Respectfully submitted,
Jason Bezis
Law Offices of Jason A. Bezis
Attorney for Alameda County Taxpayers' Association
(925) 962-9643 (landline)
(925) 708-7073 (cell/mobile)

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VIA E-MAIL ONLY

November 27, 2023

Alameda County Board of Supervisors
c/o President Nate Miley and Clerk of the Board Anika Campbell-Belton
anika.campbell-belton@acgov.org; cbs@acgov.org; nate.miley@acgov.org;

Re: November 28, 2023 Board Meeting Item No. 26: Opposition to Proposed
Amendment of County Charter Section 62 (Recall)

To President Miley and the Board of Supervisors:

This office represents the Alameda County Taxpayers' Association (ACTA). As stated in the letters dated October 31 and November 13, ACTA opposes the proposed Alameda County Charter amendment that would repeal and replace Section 62 (Recall), reducing it from 1,238 words to a mere 20 words.

ACTA requests that your Board provide public answers to the following questions during its discussion at the November 28 meeting on Item No. 26:

1. Would the Charter amendment take away voters' power to elect the replacement for a recalled county officer and shift the power to appoint the replacement to your Board?
2. If the Charter amendment were approved, would anything prevent your Board from appointing the recalled officer as the replacement (thereby overturning the recall election)? [Charter § 62 now states, in relevant part, "The name of the person sought to be recalled shall not appear on the ballot as a candidate for the office."]
3. Would an appointee to an elective office be exempt from recall, based on County Counsel's January 21, 2022 letter, which asserts that an appointee is not an "elected" official? [See the attached letter, in which County Counsel discusses the "ordinary meaning of the term election" and concludes that legal text "on its face applies to ... '[an] election' and ... does not apply to appointments." Moreover, the terms "elected officer" and "elective officer" are distinct and not interchangeable.]

Respectfully submitted,

/s/ *Jason A. Bezis*

JASON A. BEZIS, Attorney for Alameda County Taxpayers' Association



OFFICE OF THE COUNTY COUNSEL

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Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER
COUNTY COUNSEL

January 21, 2022

Via Electronic Mail and U.S. Mail

Jason A. Bezis, Esq.
Attorney for Alameda County Taxpayers' Association
Law Offices of Jason A. Bezis
3661 Mosswood Drive, Suite B
Lafayette, California 94549
jason@bezislaw.com

RE: Response to Correspondence Challenging Appointment of Supervisor Brown

Dear Mr. Bezis:

This responds to several letters and email communications from you and your client, Alameda County Taxpayers' Association ("ACTA"), alleging various legal defects in the November 16, 2021, appointment of Supervisor Dave Brown to the County of Alameda Board of Supervisors ("the Board") and requesting the Board take some remedial action. The County takes any such allegations seriously. The County has carefully considered each of the issues you and ACTA have raised and concluded that Supervisor Brown was eligible for appointment and that there was no legal defect in the appointment process. As a result, the County declines your requests to call a special meeting to reconsider the appointment to the Third District Supervisorial seat.

Supervisor Brown was eligible for appointment to the Board and properly holds the seat. Section 8 of the Alameda County Charter, which provides for the power of the Board to fill vacancies on the Board through appointment, does not prescribe any residency time requirement prior to appointment. You have not offered any Charter provision in support of your claim but instead, you have referred to Alameda County Administrative Code § 2.04.020, which on its face applies to a residency period "preceding [an] election" and does not apply to appointments. Likewise, Government Code § 25041 establishes a voting registration requirement "for at least 30 days immediately preceding the deadline for filing nomination documents for the office of supervisor" which clearly is addressing elections but does not establish a similar 30-day period for appointments.

Importantly, the California Supreme Court has recognized that "ordinarily 'elect' refers to a determination made by voters," as opposed to an appointment. (*Barrett v. Hite* (1964) 61 Cal.2d 103, 105–106.) Although courts have found that "elect" may include appointments in some limited circumstances, there is nothing in the County Charter, the County Administrative Code, or the Government Code that suggests these provisions were intended to use anything other than this ordinary meaning of the term election. Even if there were any ambiguity—which there is not—ambiguities over eligibility criteria "are to be resolved in favor of eligibility to office." (*Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.) Accordingly, Supervisor Brown met the applicable eligibility criteria by residing and registering as a voter in the Third District by the time he was sworn into office on November 16, 2021.

Jason A. Bezis, Esq.
January 21, 2022
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You have also alleged the appointment was in violation of the Ralph M. Brown Act ("the Brown Act") due to allegations of insufficient notice and your ambiguous claim of a seriatim meeting. Agenda Item 58.B for the November 16, 2021, regular meeting of the Board of Supervisors gave notice that the Board could take action to "Fill the District 3 vacancy by appointment". All that is required of an agenda item is that it provide a "brief general description" of each item to be considered, which generally "need not exceed twenty words." (Gov't Code, § 54954.2, subd. (a)(1); see also *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 645 [Brown Act notice provision satisfied where agenda item gives notice of essential nature of what will be considered].) The agenda item described exactly the action the Board ended up taking at the November 16, 2021 meeting—it filled the District 3 vacancy by appointing Supervisor Brown to the seat. Next, although you have alleged the Board conducted a seriatim meeting, you have provided no evidence that supports such. (See *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1514 [affirming summary judgment against plaintiff alleging seriatim meetings granted, in part, on basis that there was no evidence of improper deliberations].) The notice provided by the Board was proper and you have not provided evidence of any improper seriatim meeting, thus, the County declines to take any "curative" or "corrective" action.

Next, you have alleged a violation of the Maddy Act (Government Code §§ 54970 et seq.). However, the Maddy Act applies to "any board, commission, or committee for which the legislative body has the appointing power." (Gov't Code, § 54974.) By its own terms, the Maddy Act does not apply to a vacancy on the Board that may be specially filled by an appointment or election which is at play here. (See 68 Ops.Cal.Atty.Gen. 122 (1985) [Section 54974 not triggered when City Council fills an unscheduled vacancy on the City Council by appointment].)

Finally, you have requested that the Board call a special meeting pursuant to Government Code § 25022 because Supervisor Brown has "committed 'official misconduct'". However, challenges to a Supervisor's right or title to hold office are resolved exclusively through a quo warranto action, not through a special meeting pursuant to Section 25022. (See *Hallinan v. Mellon* (1963) 218 Cal.App.2d 342 [quo warranto was exclusive remedy for trying title of appointed police commissioner based on eligibility criteria]; *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1051 and fn. 11 [quo warranto is available remedy to challenge appointment based on alleged Brown Act violation]; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 632–633 [quo warranto is the exclusive remedy where it is available].) Accordingly, a special meeting would not be appropriate even if there were some valid basis for challenging Supervisor Brown's appointment.

The County is confident that this resolves all the allegations you have raised in your prior communications regarding Supervisor Brown's appointment.

Very truly yours,


DONNA R. ZIEGLER
County Counsel

1/20

**Complaint
Issued Against
Mr. Tim Dupuis
Alameda County Registrar of Voters**

**To Alameda County
Civil Service Commission**

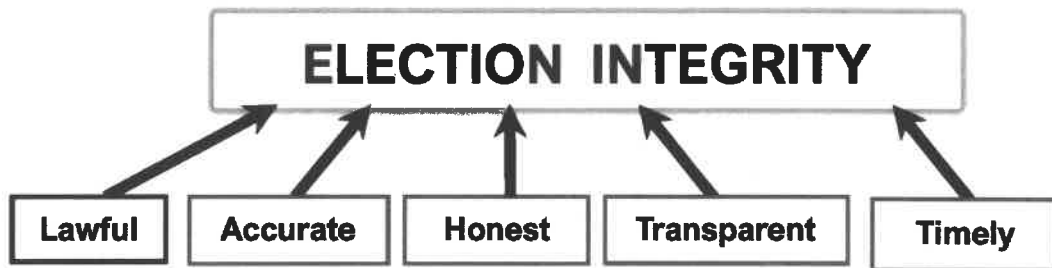
**From Election Integrity Team of
Alameda County, CA (EITACCA)**

November 28, 2023

Dear Civil Services Commission,

We write to you to file a formal complaint against Tim Dupuis, in his capacity as Alameda County Registrar of Voters (ROV), for gross maladministration.

It is of the utmost importance that our elections be conducted with the highest integrity necessary to maintain the public's trust and confidence.



LAWFUL: Our elections, at the very basic level, must follow the law. Especially California, Constitution Article II Section 2.5

*“A voter who casts a vote in an election in accordance with the laws of this State **shall have that vote counted.**” (Emphasis added)*

This *also* means that every opportunity for illegal votes to enter our elections be aggressively identified and nullified. This applies to any and all phases of the election cycle, including but not limited to the designing, printing, testing, mailing, transporting, processing, tabulating and the storing of the ballots. For

*“Each and Every **ILLEGAL** Vote **CANCELS** a Corresponding **LEGAL** Vote”*

The public's right to observe must be accommodated. Political Party and bona fide group representatives shall have their right to be present, review and/or challenge in accordance with Election Codes 15004 and 15104. Note that 15004 encompasses 'any and all phases of the election'.

“Representatives, under 15004/15104, are Ambassadors to the Public”

ACCURATE: It is imperative that any and all personnel, processes and machines receive the proper attention needed to ensure the accuracy of the counting of the votes.

All personnel should receive documentable training on relevant processes and security. Constant monitoring, auditing and reporting of compliance to the policies and procedures of their relevant processes and security for duration the election cycle. Rigorous 'Chain of Custody' policies and procedures must be adhered to by the personnel, constantly audited and recorded.

All processes must be documented, constantly reviewed for validity and completeness, communicated and made readily available to relevant personnel. Constant auditing for

compliance with these processes must be performed and recorded for the duration of the election cycle.

All machines used in any and all phases of the election cycle, including but not limited to:

- Tabulators/scanners
- Election Management System (EMS)
- Printers
- Ballot Marking Devices (BMD) aka 'Touchscreens'
- Sorters
- VBM Affidavit (Envelope) Signature Scanners

Each machine must be properly maintained, with maintenance records reviewed and audited, and tested before and after deployment. Public viewing of the testing, before deployment, shall be conducted during the 'Logic and Accuracy Test' (Election Code 15360).

HONEST: Many of the detailed aspects of the election cycle are left up to the discretion of the ROV, for each county is different in California. Therefore, it is imperative that the ROV Official be 'honest' in filling any and all 'gaps' in the laws and/or regulations governing federal, state and local elections for their respective county.

For example, in Alameda County, the ROV had 16 high speed tabulators that were to be deployed for the Nov 2022 election that needed to process nearly 500,000 ballots. The public testing of only one (1) tabulator with only four (4) test ballots is not being 'honest' to the electorate of Alameda County.

Similarly, the public testing only one (1) Ballot Marking Device (touchscreen) and its printer, while a dozen, or perhaps dozens, were to be deployed, is hardly being 'honest' to the electorate of Alameda County.

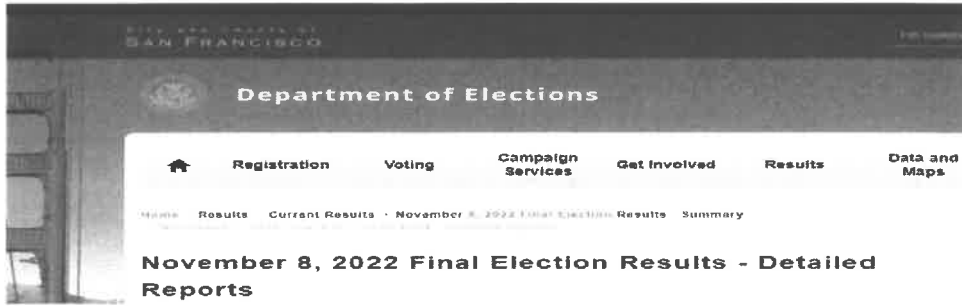
TRANSPARENT: It is extremely important that the ROV Officials demonstrate to the electorate of Alameda County that all the applicable laws are being followed. And that all of the personnel are being properly trained, monitored and who's work product is constantly reviewed for accuracy, completeness and compliance with proper election and security policies and procedures. And that all machines are maintained, tested and audited for functionality and accuracy. And that any and all 'gaps' in the laws and regulations have been 'honestly' filled with policies, processes and procedures in the best interest of the electorate of Alameda County. All these policies, processes and records should be made readily available to the electorate.

"TRUST Must EARNED, Not Expected, By our Election Officials"

Alameda County should look at San Francisco's Elections website as a model with regard to the reporting of election results.

<https://sfelections.sfgov.org/november-8-2022-election-results-detailed-reports>

San Francisco County's ROV posts, as part of their final results, the Cast Vote Records, ballot digital images (including auditmarks), ImageCast Central logs, ballot scanner log files, etc..



	Ranked-Choice Voting: Board of Supervisors, D10 Short Report		
	Ranked-Choice Voting: Board of Supervisors, D10 Detailed Report		
	Cast Vote Record (Raw data) - JSON		
	Ballot Images - Raw Images <i>Large file warning: ballot images are zipped by supervisorial district with each file between 16GB and 35GB</i>		Ballot Images hosted externally
	Ballot Images - Ballot Audit and Review		Ballot Audit and Review Tool hosted externally
	Vote-by-Mail Ballot Report		
	Provisional Ballot Report		
	Conditional Voter Registration Ballot Report		
	ImageCast Central Logs		
	Ballot Scanning Machine Logs		
	SHA-512		

San Francisco County’s ROV transparency should be a model for all the ROVs to follow when it comes to ‘transparency’. Currently, ‘Public Record Act’ (PRA) requests have to be made to Mr. Dupuis’s ROV to get the same information, sometimes taking weeks and/or months to obtain. (Ballot Images are not supplied at all).

TIMELY: Following election day, San Francisco County’s ROV posts daily preliminary reports, providing ‘timely reporting’. Their preliminary reports not only include preliminary totals for each of the races, but also the up to date election Cast Vote Records (CVRs). Again, San Francisco County’s ROV ‘Timely’ reporting should be a model for all of CA’s ROVs.

- › Final Report
- › Preliminary Report 15
- › Preliminary Report 14
- › Preliminary Report 13
- › Preliminary Report 12
- › Preliminary Report 11
- › Preliminary Report 10
- › Preliminary Report 9
- › Preliminary Report 8
- › Preliminary Report 7
- › Preliminary Report 6
- › Preliminary Report 5
- › Preliminary Report 4
- › Preliminary Report 3
- › Preliminary Report 2
- › Preliminary Report 1
- › Preliminary Report 0

“Unnecessary Delays in Reporting Erodes the Trust in the Election”

List of Complaints

1. **2022 Republican Candidate for California Assembly District 18, Mindy Pechenuk**, filed a civil lawsuit against Mr. Tim Dupuis, et al, alleging egregious maladministration that caused her to be denied two additional delegates to the California Republican Convention. Should Ms. Pechenuk have received her two delegates, one of the California Republican Party internal elections would have resulted in a different outcome. Other damages are also claimed.

Contained in Ms. Pechenuk’s civil lawsuit is a lengthy list of alleged maladministration acts by Mr. Dupuis and others. For brevity, those items will not be repeated in their entirety here, but that does not diminish its importance and relevance. **Please carefully review Ms. Pechenuk’s 20-page civil lawsuit provided here as Attachment A.**

Again, a long list of alleged maladministration items performed by Mr. Dupuis are detailed in Ms. Pechenuk’s civil lawsuit and are not repeated here. They are items 5 through 29, under the ‘GENERAL FACTUAL ALLEGATIONS’ heading.

2. **‘Help America Vote Act’ (HAVA) Violations.** Contained in Ms. Pechenuk’s civil lawsuit is a description of two (2) ballots out of a sample of 235 were found to be tabulated incorrectly, demonstrating an error rate 60 times greater than allowable by HAVA. Mr. Dupuis, and others, were informed of this apparent malfunction and to date we have not heard of a resolution, if any. **Additionally, it is important and extremely relevant to this complaint to review carefully the two HAVA complaints, filed with the California Secretary of State, provided here as Attachments B and C.**
3. **Misconfiguration of All the ‘Ranked Choice Voting’ (RCV) races in the Nov 2022 General Election.** Ms. Pechenuk’s civil lawsuit also touches on this maladministration item but is included here to point out how easy it should have been for the ROV to detect a programming error in the voting system. If the correct RCV algorithm were used, it would never have displayed ‘suspended’ votes in every RCV race of the Nov 2022 election.

DAVID KAKISHIBA	4992	33.45 %
CONTINUING BALLOTS TOTAL	14924	
BLANKS	2706	
EXHAUSTED	0	
OVERVOTES	86	
REMAINDER POINTS	0	
→ SUSPENDED	135	
NON TRANSFERRABLE TOTAL	2927	

MAX OROZCO is eliminated because the candidate had the least amount of votes.

Mr. Dupuis’s ROV was unaware of the ‘misconfiguration’ of the voting system. It was not until a month after his certification of the Nov 2022 election when an outside group contacted Mr. Dupuis and informed him of a possible misconfiguration . Since then, the Nov 2022 election’s website was scrubbed of all RCV results. The above snip was taken before the website was scrubbed. Today, to obtain any RCV results of the Nov 2022 election, one would have to email the ROV. See below.

School Director, Dist. 7 - Oakland (RCV)		
10 of 10 Precincts Reported(100.00%)		Vote for One (1) Only
Contest	Votes	Percentage
Clifford Thompson	5,397	29.70 %
Ben Coach Tapscott	4,609	25.36 %
Kristina Molina	3,645	20.06 %
Bronché Taylor	2,242	12.34 %
Victor Javier Valerio	2,133	11.74 %
Write-in	147	0.81 %

*Total number of Votes represents Ranked Choice Voting (RCV) First Choice Column only, please contact Registrar of Voters Office for complete RCV results.

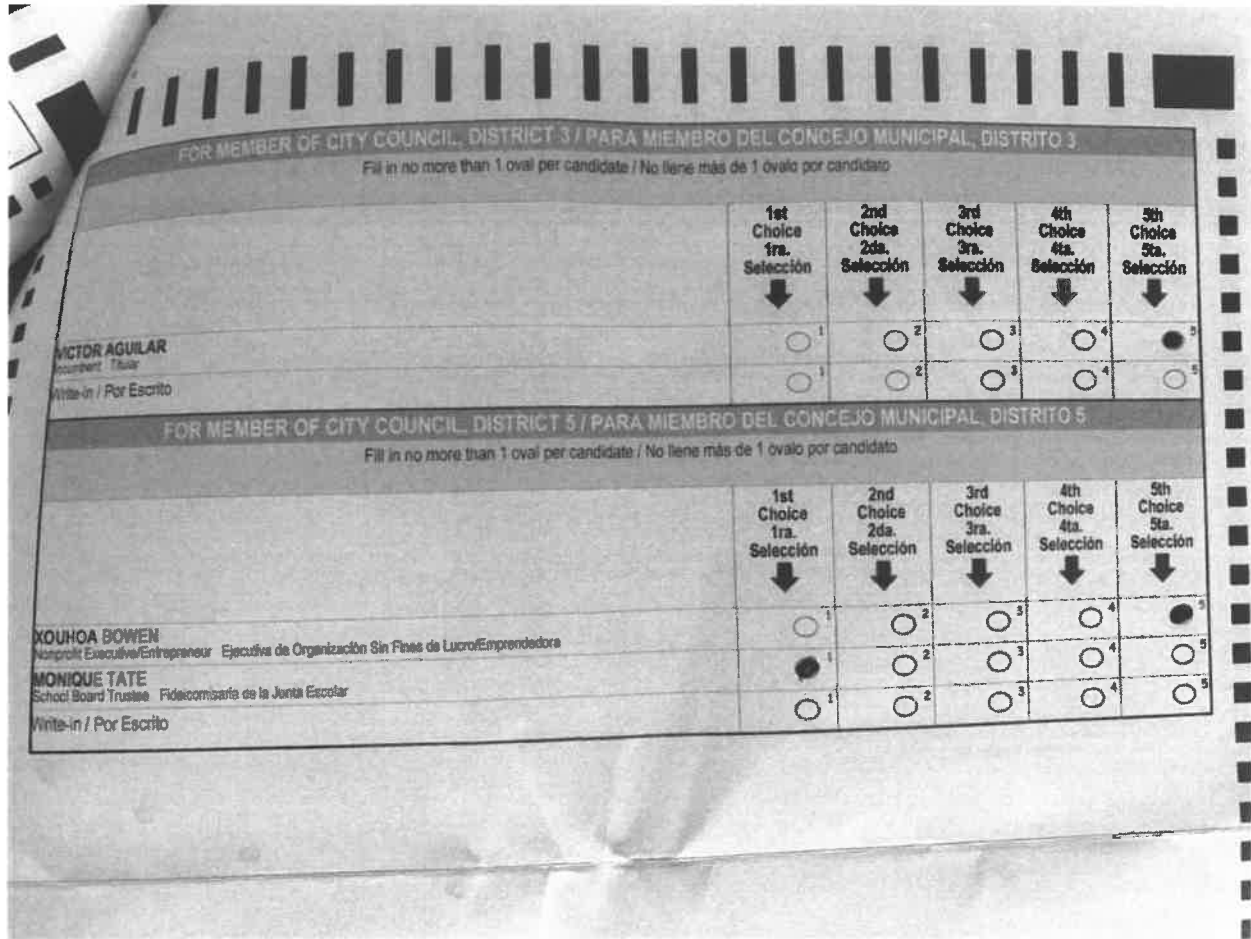
San Francisco County’s ROV posts their voting system’s configuration on their election website, see Attachment F.

4. Repeated Complaints of RCV Ballot Confusing Design – Under the Oakland Charter Article XI Section 1105(c)

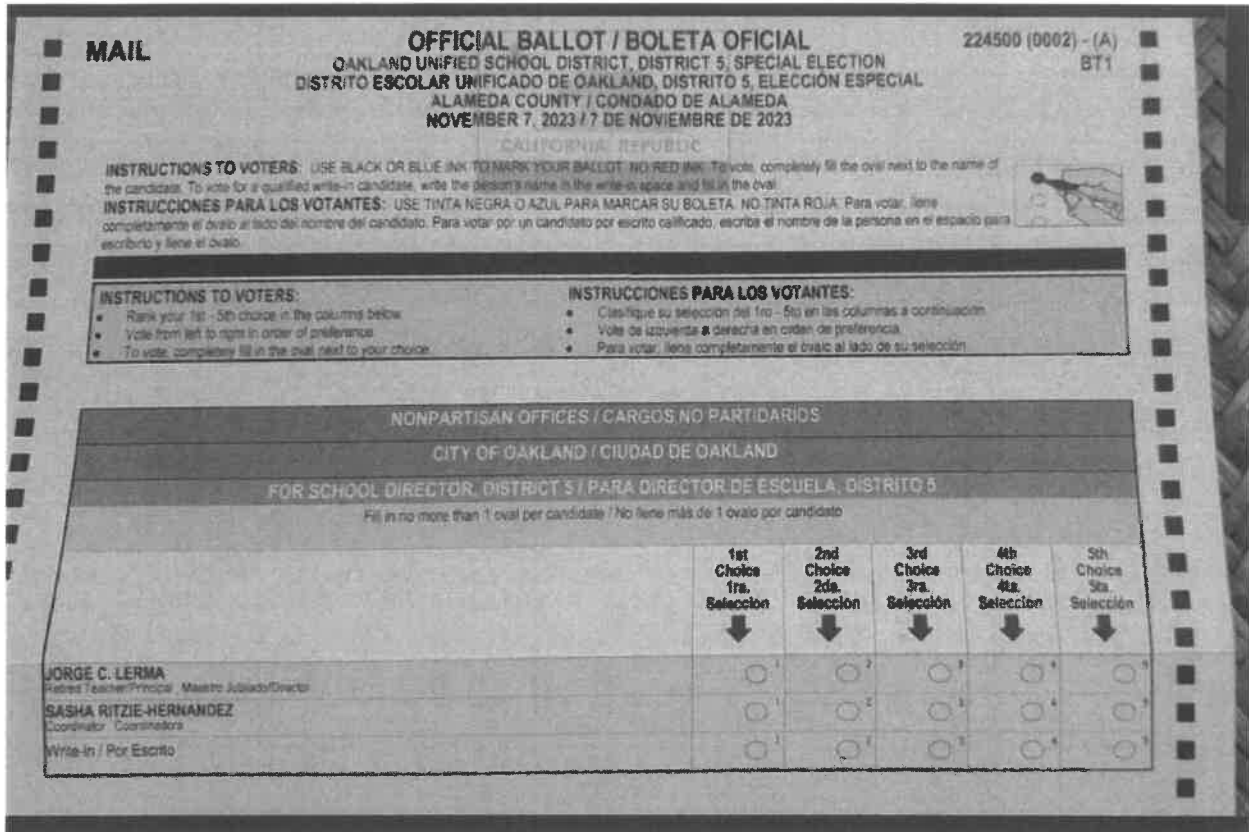
“Ballot: The ranked choice voting ballot shall allow voters to rank as many choices as there are candidates. The ballot shall not interfere with a voter’s ability to rank a write-in candidate.”

In the Nov 2022 Oakland Mayoral election there were ten (10) candidates. Mr. Dupuis’s ballot had only 5 choices (ranks). Not only was it confusing, it did not comply with Oakland’s charter by not allowing for voters to rank all ten candidates. Because of the confusion, we estimate that over 1,800 voters were disenfranchised in an election that was won by less than 700 votes.

In many of the other RCV races in that same Nov 2022 election, the number of candidates running were less than 5, yet Mr. Dupuis’s ballot listed 5 choice (ranks) for them all. Again, confusing some voters and increasing the probability of unnecessary disenfranchisement.



We voiced our concerns over this several times over the past year to no avail. This was evident in the most recent Nov 2023 Oakland Unified School District Area 5 Special Election where Mr. Dupuis again provide 5 choices (ranks) for a race that had only 2 candidates. See the image below of a ballot in that election.



5. **“Sufficiently Close Access”** – When observers and/or political party representatives show up at the ROV to observe the election processes, they expect to be close enough to confidently determine the veracity of those processes like it was done in the past.



Voting was done out of garages and so was the tabulation of the votes. Observers could spend the whole day there watching their neighbors fill out their ballots, cast their ballots by running them through the on-site tabulator and observe their ballot being accepted and properly cast. At the end of election day, observer could witness the tallying of the votes and those totals being posted outside the polling place (garage) for all to see. Complaints of not having 'sufficiently close access' were rare. Vote By Mail processing should be the same, see Election Code 15104

15104. (a) The processing of vote by mail ballot return envelopes, and the processing and counting of vote by mail ballots, shall be open to the public, both prior to and after the election.

(b) A member of the county grand jury, and at least one member each of the Republican county central committee, the Democratic county central committee, and of any other party with a candidate on the ballot, and any other interested organization, shall be permitted to observe and challenge the manner in which the vote by mail ballots are handled, from the processing of vote by mail ballot return envelopes through the counting and disposition of the ballots.

(c) The elections official shall notify vote by mail voter observers and the public at least 48 hours in advance of the dates, times, and places where vote by mail ballots will be processed and counted.

(d) Notwithstanding paragraph (2) of subdivision (b) of Section 2194, vote by mail voter observers shall be allowed sufficiently close access to enable them to observe the vote by mail ballot return envelopes and the signatures thereon and challenge whether those individuals handling vote by mail ballots are following established procedures, including all of the following:

- (1) Verifying signatures on the vote by mail ballot return envelopes by comparing them to voter registration information.
- (2) Duplicating accurately damaged or defective ballots.
- (3) Securing vote by mail ballots to prevent tampering with them before they are counted on election day.

(e) A vote by mail voter observer shall not interfere with the orderly processing of vote by mail ballot return envelopes or the processing and counting of vote by mail ballots, including the touching or handling of the ballots.

(Amended by Stats. 2021, Ch. 319, Sec. 4. (SB 503) Effective January 1, 2022.)

Note that the law addresses both the Vote By Mail (VBM) 'return envelopes' and the 'ballots'.

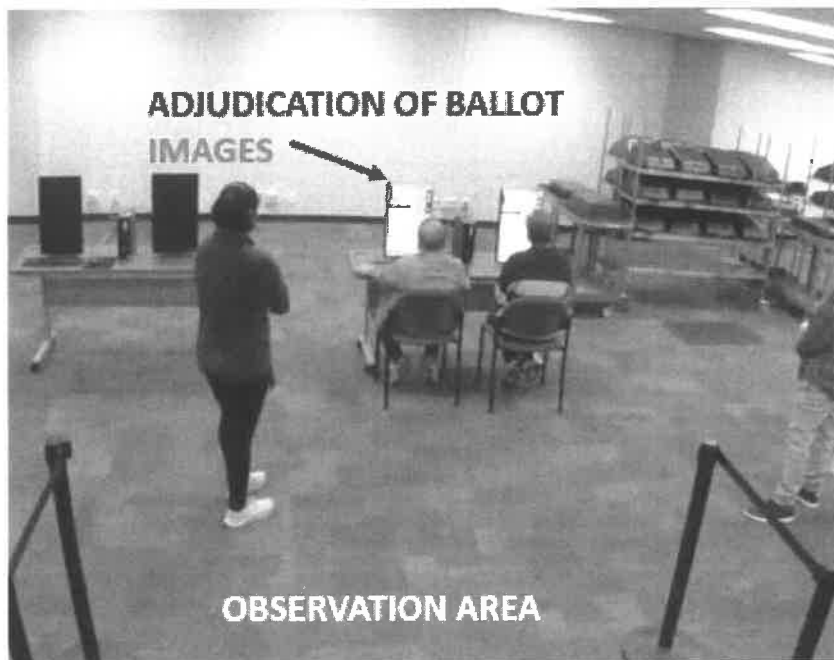
While we will acknowledge that Mr. Dupuis did modify his 'signature verification' area to provide 'sufficiently close access', he did not do so for the other VBM processes.



'Sufficiently close access' has not been provided for observers in the ASR room where the need for observers to verify that the date stamp on the VBM envelopes is valid. (Nov 2023 Special Election)



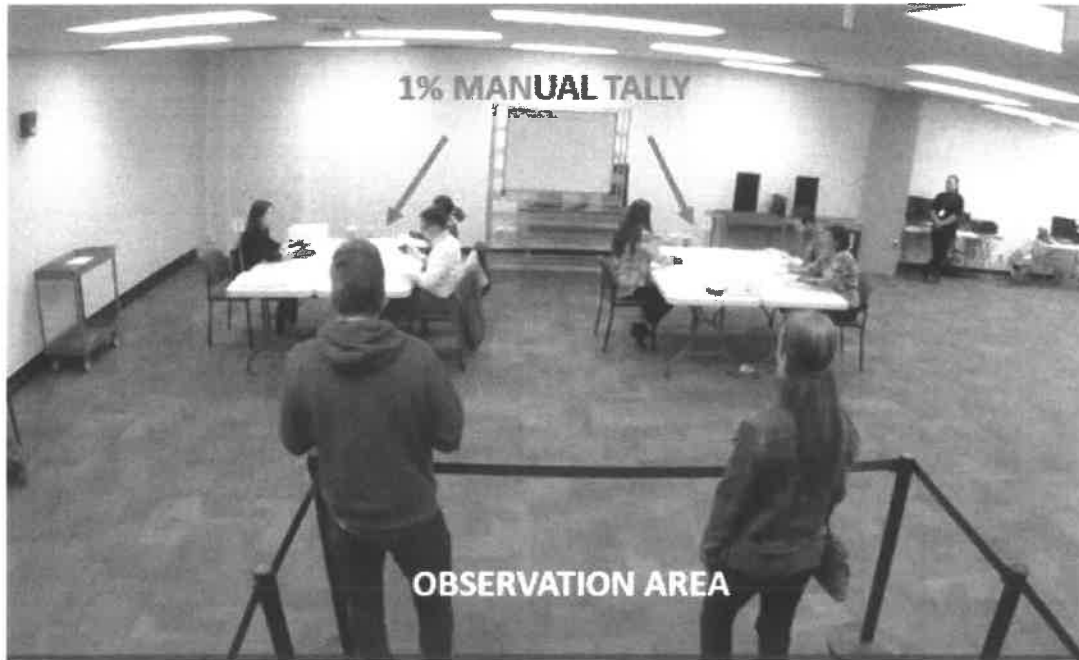
A very similar configuration is true for the Adjudication room where ballot 'ovals' are looked at to determine the voter's intent. (Nov 2023 Special Election)



The 'One Percent Manual Tally' is a very important phase of the election process where a 1% sample of the ballots are randomly selected and hand counted, then compared to the tabulator results for accuracy. Here is a sample of a tally sheet that must be made viewable to the observers in order to determine the veracity of the tabulator's accuracy against the hand count. The expected tabulator result should be made available to observers BEFORE the hand count begins.

Tally Person 1: <u>Monica DeGuzman</u>		November 8, 2022		Station: <u>42</u>
Tally Person 2: <u>Mosheh Guein</u>		General Election		Count: <u>108</u>
Cuba <u>gomez</u>				Batch: <u>74</u>
Office/Measure: <u>Governor</u>				112
Selection: <u>GAVIN NEVSONE</u>				
had <u>One Hundred Twelve</u> votes				
Office/Measure: <u>Governor</u>				43
Selection: <u>BRIAN DAHLE</u>				
had <u>Forty three</u> votes				
Office/Measure: <u>Governor</u>				0
Selection: <u>LINDENOTE</u>				
had _____ votes				
Office/Measure: <u>Governor</u>				0
Selection: <u>OVERVOTE</u>				
had _____ votes				

The image below shows 'sufficiently close access' was not provided for observers to be able to see the tally sheets that are being marked up on the tally tables. Nor is it sufficiently close enough to see the ovals on the ballot to verify that the correct vote is being tallied.



The above photos are from the most recent election, Oakland Unified School Board Area 5 (OUSD5) Special Election. Obviously, it was a very small election. But this demonstrates that even when there is more than enough room to accommodate observers to be 'sufficiently close', Mr. Dupuis does not comply with Election Codes 15004 and 15104. During the 2022 General Election, Mr. Dupuis did the same, if not worse.

Again, we complained continually about this for over a year, ever since the start of the Nov 2022 election cycle. Mr. Dupuis is not listening.

- 6. Tabulator Accuracy Issue:** As discussed here and in Ms. Pechenuk's civil lawsuit, the only ballots that our team was able to view with 'sufficiently close access' were the 235 ballots involved in the OUSD Area 4 race in the Nov 2022 General Election, in which two (2) of those ballots were observed to not match the CVRs.

The above formed the basis for HAVA complaints to the CA SoS. See Attachments B and C for an in-depth analysis.

- 7. 'Logic and Accuracy' (L&A) Test** – This is related to #6 in that the ballot error rate (lack of accuracy) generated two HAVA complaints. However, what we need to point out here again, Mr. Dupuis only tested four (4) ballots for the Nov 2022 Election L&A test. That election had a turnout of nearly 500,000 voters. Mr. Dupuis's testing of only one tabulator with only 4 ballots, in all probability, will not detect the error rate exhibited in #6.

In the recent Nov 2023 OUSD5 Special Election, Mr. Dupuis performed the L&A test with 40 ballots this time. While this is an improvement, it is still not good enough to confidently detect an error rate as exhibited in #6.

Mr. Dupuis's accuracy testing methodology is wholly inadequate.

Moreover, Mr. Dupuis tested only one Ballot Marking Device (touchscreen) in both elections. Certainly, there were more than one BMD deployed in both elections.

Additionally, each BMD prints out a 'QRVote ballot' which consists of a QR Code and a list of the voter's selected candidates. The tabulator 'reads' the QR Code to determine the voter's selected candidates. Mr. Dupuis verified the 'list' was accurate but never put the 'QRVote Ballot' into a tabulator to determine if the tabulator could read the QR Code accurately.

At the Nov 2023 L&A test, we had representatives present. They asked the ROV chaperone to ask Mr. Dupuis (who was conducting the L&A test) to put the 'QRVote Ballot' into the tabulator to see if it would read the ballot accurately. The chaperone said he would but did not do so during the test. Instead, it wasn't until after the L&A test had been completed did he promise to email our request to Mr. Dupuis. We never heard from Mr. Dupuis regarding this issue.

Consequently we had a California GOP council write an email to Mr. Dupuis urging him to test the BMD's 'QRVote Ballots', see Attachment D. Mr. Dupuis has never responded.

Mr. Dupuis's L&A testing is wholly inadequate and even when urged to fix it, he ignores any and all suggestions.

8. **One Percent Manual Tally (1%MT) Issues:** As discussed earlier in this complaint document, improper settings of the voting system caused the creation of 'suspended ballots' in RCV races. In one case, OUSD4, it resulted in an erroneous winner, which was later corrected after litigation, months after the certification of the election.

Alameda County Board of Supervisors Vice President Haubert arranged for a townhall meeting specifically so that Mr. Dupuis could address this and other issues concerning the running of our elections. Mr. Dupuis did not show up for that town hall and neither did any of his staff. Instead, VP Haubert took questions and relayed that to Mr. Dupuis. Months later Mr. Dupuis responded to those questions. See Attachment E.

Mr. Dupuis was informed of the town hall meeting months in advance and that he was the featured speaker. Not only did Mr. Dupuis not attend and not arrange for any of his senior staff to attend in his place, he gave no explanation for not attending.

Below is Mr. Dupuis response as to why the 1%MT failed to uncover the erroneous setting. Mr. Dupuis claims nothing went wrong.

The whole purpose of the 1%MT is to confirm the veracity of the voting machine results against the paper ballots. What Mr. Dupuis doesn't understand is that if his 1%MT test isn't adequate to do so, then he must design a 1%MT test that it will.

<p>The One Percent Manual Tally in Alameda County for the November 2022 election made the same mistakes with the ranked choice ballots that the machine tabulators made, which strongly suggests that the "ranked choice vote" tabulation problem were not merely a misset machine, but instead was a fundamental failure of the County Registrar of Voters to tabulate ranked choice ballots correctly, especially "suspended ballots." Yet Alameda County reported to the Secretary of State in its One Percent Manual Tally Report for November 2022: "No discrepancies found." (See: https://elections.cdn.sos.ca.gov/manual-tally/2022-general/alameda.pdf)</p>	<p>Why didn't "the dog bark" with each and every one of the "suspended ballots" during the One Percent Manual Tally (including the six "suspended ballots" for the 2022 Oakland mayoral race)?</p>	<p>The purpose of the 1 % manual tally is to verify that the machine tabulation is correct.</p> <p>The reports used to verify the tabulation in the 1% Manual Tally are based off of the settings chosen at the time the election is configured.</p> <p>The manual tally did not find any discrepancies in the tabulation because of the way the election was configured.</p>
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Currently, the California Secretary of State (SoS) does not provide detailed regulations governing the 1%MT. Here is an instance in which the Election Official's 1%MT methodology must be 'honest' in the best interest of their respective electorate.

The CA SoS has in final draft form, regulations to be implemented (hopefully) beginning with the March 2024 Primary election. In that document, there are regulations requiring that the ROV supply expected tabulator outcome before the commencement of the hand counting of the ballots and the timely posting of the results of that hand count. In our opinion, this is obviously an 'honest' methodology for any Election Official to implement in their 1%MT strategy. Mr. Dupuis has not done anything close to this in either the November 2022 election or November 2023 special election.

Mr. Dupuis's 'One Percent Manual Tally' test methodology is wholly inadequate.

9. Outstanding 'Public Records Act' Requests

Request for 'AuditMark' screenshot for two ballots was made on September 13, 2023. I spoke to Dwayna Gullant about it on October 26, 2023, in-person while we were attending the L&A test that day. Ms. Gullant knew it was outstanding and said she would look into it. John Guerrero reminded her of it a week later via email. We have not heard anything as of the time of this writing.

Request for Digital Copies of the Nov 2022 1%MT was made on Aug 14, 2023. Second and third requests were made on August 29, 2023, and September 18, 2023, respectively. A partial fill was received on October 10, 2023. The remaining portion is still outstanding.

Request for Chain-of-Custody documents was made on the morning of October 26, 2023. I reminded Ms. Gullant about it that same afternoon. I have not heard back.

In general, PRA request are always late if they come at all. Lack of response, positively or negatively, erodes trust in the election.

10. Conclusion

This complaint, including its attachments, has provided more than ample evidence that Mr. Dupuis has not provided an election with integrity for the November 2022 General Election and for the recent November 2023 Special Election.

Without Integrity, there can be no Trust.

The evidence presented in this complaint show that all five elements of integrity (lawful, accurate, honest, transparent, and timely) enumerated at the beginning of this complaint have been broken.

California Constitution Article II Section 1

“All political power is inherent in the people. Government is instituted for their protection, security and benefit, and they have the right to alter or reform it when the public good may require.”

Regrettably, for the good of the public, we demand the removal of Mr. Dupuis as head of the Alameda County Registrar of Voters.

Signed,

Name (Print) Jackie Cota	Signature 
Name (Print) John Guerrero	Signature 
Name (Print)	Signature
Name (Print)	Signature

Name (Print)	Signature
Name (Print)	Signature
Name (Print)	Signature
Name (Print)	Signature
Name (Print)	Signature

Attachment A

1 Mindy Pechenuk
3730 Randolph Avenue
2 Oakland, CA 94602
(323) 503-6198
3 Email: mindypech@gmail.com
4 In Pro Per

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO/OAKLAND DIVISION
8

9 MINDY PECHENUK,

10 Plaintiff,

11 v.

12 COUNTY OF ALAMEDA; TIM DUPUIS;
13 CYNTHIA CORNEJO; NATE MILEY; KEITH
14 CARSON; DAVID HAUBERT; SUSAN
15 MURANISHI; DONNA ZIEGLER; SHIRLEY N.
WEBER; and DOES 1 TO 50, inclusive,

16 Defendant

Case No: 23-cv-04028-SK

COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL

17
18 1. **Jurisdiction, Venue, and Intradistrict Assignment.** This court has jurisdiction over this
19 complaint because it arises under the Constitution and laws of the United States. Venue is appropriate in
20 this Court because a substantial part of the events, acts, and omissions giving rise to this lawsuit occurred
21 in this district. Because this lawsuit arose in Alameda County ("County"), it should be assigned to the
22 San Francisco/Oakland Division of this Court.
23

24 **PARTIES**

25 **1. Plaintiff**

26 2.1 Plaintiff Mindy Pechenuk, is an adult over the age of 70 and at all times relevant hereto, was
27 and is a resident of Alameda County, California. Plaintiff was the Republican candidate for state
28 Assembly District 18 ("AD18") during the June 2022 Primary and November 2022 Election cycles; a

COMPLAINT
PAGE 1 OF 20

1 volunteer election observer in the November 2022 Election; and a Republican candidate for AD18 in the
2 upcoming March 2024 Primary Election.

3 2.2 Plaintiff is a member of the Election Integrity Team of Alameda County, California
4 (“EITACCA”, www.eitacca.org), a not-for-profit organization comprised of volunteer election observers
5 from various organizations and of wide-ranging political affiliation – Republican, Democrat, and
6 Undeclared. The following individuals, who are witnesses to the events described herein, by virtue of
7 their also having served as volunteer election observers, also are members of EITACCA: Ms. Jacqueline
8 Carron-Cota, Mr. Hunter Cobb, Dr. Joseph Grcar, Mr. John Leon Guerrero, Ms. Alison Hayden, Mr. Ned
9 Nuerge, Mr. Gerald Pechernik, Mrs. Cindy Rocha, and Mr. Mark Zulim. An additional witness is
10 observer Mr. Jason Bezis, attorney for the Alameda County Taxpayers Association.

11 3. Defendants

12 3.1 Defendant COUNTY OF ALAMEDA (“the County”) is a political subdivision of the State of
13 California, which operates, oversees, and manages the Office of the Registrar of Voters (“ROV”) and the
14 Sheriff’s Office (“ACSO”). The address of County Counsel for Defendant COUNTY OF ALAMEDA is
15 1221 Oak Street, Room 450, Oakland, CA 94612.

16 3.2 Defendant Tim Dupuis is and was at the time of the events or omissions which give rise to
17 this lawsuit, the Registrar overseeing the office of the ROV as well as the County’s Director of
18 Information Technology. In doing the things herein alleged, Defendant DUPUIS was acting under color
19 of state law and in the course and scope of his employment with the County, Defendant DUPUIS is sued
20 in his individual capacity. His address is 1225 Fallon Street, Room G-1, Oakland, CA 94612.

21 3.3 Defendant Cynthia Cornejo is, and was at the time of the events or omissions which give
22 rise to this lawsuit, the Deputy Registrar in the office of the ROV. In doing the things herein alleged,
23 Defendant CORNEJO was acting under color of state law and in the course and scope of her employment
24 with the County, Defendant CORNEJO is sued in her individual capacity. Defendant CORNEJO’s
25 address is 1225 Fallon Street, Room G-1, Oakland, CA 94612.

26
27
28
COMPLAINT
PAGE 2 OF 20

1 3.4 Defendant Nate Miley is, and at all relevant times was, a member of the County Board of
2 Supervisors ("BoS"); during the time of the events, through December 31, 2022 serving as Vice-President
3 of the BoS, and from January 2023 to the present serving as President of the BoS. Defendant MILEY's
4 address is 1221 Oak Street, Room 536, Oakland, CA 94612.

5 3.5 Defendant Keith Carson is, and at all relevant times was, a member of the County BoS;
6 during the time of the events, through December 31, 2022 serving as President of the BoS. Defendant
7 CARSON's address is 1221 Oak Street, Room 536, Oakland, CA 94612.

8 3.6 Defendant David Haubert is, and at all relevant times was, a member of the County BoS;
9 during the time of the events, through December 31, 2022, serving as Supervisor, and from January 2023
10 to the present serving as Vice-President of the BoS. Defendant HAUBERT's address is 1221 Oak Street,
11 Room 536, Oakland, CA 94612.

12 3.7 Defendant Susan Muranishi is, and at all relevant times was, the County Administrator,
13 overseeing, among other County agencies, the Office of the ROV and the Office of Information
14 Technology. Her address is 1221 Oak Street, Room 555, Oakland, CA 94612.

15 3.8 Defendant Donna Ziegler is, and at all relevant times was, County Counsel, which represents
16 the BoS and the County's agencies the ROV and the ACSO. Defendant ZIEGLER's address is 1221 Oak
17 Street, Room 450, Oakland, CA 94612.

18 3.9 Defendant Shirley Weber is, and at all relevant times was, the California Secretary of State,
19 responsible-in-charge of the State's elections. Her address is 1500 11th Street, Sacramento, CA 95814.

20 3.10 The true names and capacities, whether individual, corporate, associate, or otherwise, of
21 Defendants sued herein as Does 1-50, inclusive, are unknown to Plaintiff, who therefore sues said
22 defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names and
23 capacities if and when the same are ascertained. Plaintiff is informed and believes, and thereon alleges,
24 that each of said Defendants is responsible in some manner for Plaintiff's damages as herein alleged.
25 Each reference in this Complaint to "defendant," "defendants," "Defendants," or a specifically named
26 defendant also refers to all "Doe" defendants.
27
28

COMPLAINT
PAGE 3 OF 20

1 3.11 Plaintiff is informed and believes and thereon alleges that each of the Defendants sued
2 herein was negligently, wrongfully, and otherwise responsible in some manner for the events and
3 happenings as hereinafter described, and proximately caused damages to Plaintiff. Furthermore, one or
4 more Doe Defendants was at all material times responsible for the hiring, training, supervision, and
5 discipline of other defendants, including the individually named and Doe Defendants.

6 3.12 Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each
7 of the Defendants, including all defendants sued under fictitious names, was an employee of the County,
8 and in doing the things hereinafter alleged, was acting within the course and scope of such employment,
9 and under colors of the law, statutes, ordinances, and regulations of the State of California.

10 3.13 Plaintiff is informed and believes and thereon alleges that Defendants were colleagues of
11 one another, and in doing the things herein alleged, was acting within the course and scope of that
12 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
13 herein gave consent, aid, and assistance to each of the remaining Defendants, coordinated their actions
14 amongst one another, and ratified and/or authorized the acts or omissions of each Defendant as alleged
15 herein. At all material times, each Defendant was an integral participant, jointly engaged in
16 constitutionally violative, unlawful, and/or tortious activity, resulting in the deprivation of Plaintiff's
17 constitutional rights and other actionable harm.

18 INTRODUCTION

19 4.1 As a bona fide candidate in the November 2022 Election, Plaintiff attempted to exercise her
20 civil rights to observe, at the County's central counting center, the processing of ballots for her race, State
21 AD18. Plaintiff was aware of the difficulty of winning the election, however there were multiple reasons
22 for running, including educating the voters of her district, laying the groundwork for a future race, and
23 earning delegates to the California Republican Party conventions. Plaintiff hoped to impact voting
24 outcomes within her party, to help shape her party's ideological platform. Therefore besides the general
25 right as a citizen to observe / challenge ballot processing, Plaintiff possessed additional, U.S.

1 Constitutional and State Constitutional specific rights to observe and challenge where appropriate the
2 tabulation and outcome of her race. Under the California Elections Code (“CEC”) §15104, the ROV
3 owes candidates the right to literally stand at the location of vote counting and have the votes in their
4 specific race counted, in their presence (within their sight and hearing). Moreover, Plaintiff’s overall
5 right to life, liberty, and the pursuit of happiness, where “liberty” and “the pursuit of happiness” includes
6 the right to better ensure, to the greatest extent possible, the success of her career in public service, is her
7 entitlement as much as any other candidate’s in any election. The ROV stripped Plaintiff of this right.

8
9 4.2 A “successful” career in public service is not limited merely to whether a candidate wins or
10 loses a particular race in a given election. It encompasses the merit afforded by receiving the number of
11 delegates allocated to a candidate in the state’s political party structure, based on the number of total party
12 votes obtained per total registered party members in a county; i.e. if a candidate acquires up to a certain
13 percentage in votes, she is awarded more delegates. “Successful” encompasses the candidate’s ability to
14 fundraise for future political campaigns. It impacts a candidate’s reputation, his or her standing in the
15 community, and his or her willingness and confidence in continuing in public service. No entity in the
16 County has the right to water down Plaintiff’s rights as a political candidate, but that is exactly what the
17 County did, via the behavior of its employees. As a result of Defendants’ behavior, continuously
18 infringing on Plaintiff’s ability to properly execute her campaign, and based upon credible analyses of the
19 Election’s Cast Vote Records (“CVRs”) by two of Plaintiff’s colleagues, Mr. Guerrero and Dr. Grcar,
20 Plaintiff asserts that the likelihood of votes in her state assembly race having been erroneously counted is
21 significant enough that a false vote count could have resulted in her having been deprived of two (2)
22 additional delegates. [As per the California GOP Bylaws: *Two persons appointed by each nominee for a*
23 *partisan elective office listed in subsection 2.01.01(A) subdivisions (1) and (2) if the nominee’s*
24 *percentage of the vote exceeds by 5% the percentage of Republican registration in the district.]*

25
26 4.3 As specified in the Secretary of State’s County Clerk/Registrar of Voters (CC/ROV)
27 Memorandum No. 22233 dated September 19, 2022 ([https://elections.cdm.sos.ca.gov/pdfs/observation-
rights-responsibilities.pdf](https://elections.cdm.sos.ca.gov/pdfs/observation-
28 rights-responsibilities.pdf)), election observers have the right to: (1) Observe pre-Election Day, Election

1 Day, and post-Election Day activities, as permitted by law, such as voting equipment preparation and
2 testing, vote-by-mail processing, including the opening and closing procedures; (2) Take notes and watch
3 election procedures being carried out by election workers; (3) View all parts of the voting process, but in
4 particular the vote-by-mail and provisional ballot processing; (4) Ask questions of election workers,
5 supervisors, and managers at the central counting site; and (5) Use electronic devices such as smart
6 phones, as long as they do not interfere with the conduct of the election procedures.

7
8 4.4 CEC §15004(a) states, "Each qualified political party may employ, and may have present at
9 the central counting place or places, not more than two representatives to check and review the
10 preparation and operation of the tabulating devices, their programming and testing, and have the
11 representatives in attendance at any or all phases of the election." The County ROV, however, asserted in
12 a public statement to the BoS in May 2023 that this section of the Code "is not making suggestions or
13 directing the ROV to take action." With this flippant assertion, the ROV appears to have absolved itself
14 of the duty to safeguard the civil rights of political candidates and all observers / challengers.

15 4.5 Sadly, Plaintiff was denied her civil rights, due to the acts and omissions of Defendant
16 COUNTY OF ALAMEDA, and its employees/agents within the ROV, which weaponized the ACSO.
17 Both agencies functioned under color of authority as they conspired with one another against Plaintiff and
18 others; treating Plaintiff dismissively and threateningly over a period of several months, ignoring well-
19 researched and thoroughly documented forensic analyses in several verifiable formats that were then
20 clearly presented to the BoS, which then failed to act upon such analyses, thereby disenfranchising
21 Plaintiff of her ability to effectively execute her state assembly race including her earning of delegates.

22
23 4.6 Plaintiff is informed and believes, and intends to prove after conducting relevant discovery,
24 including copies of meeting notes, internal emails, agency training documentation, etc., that Defendants
25 DUPUIS' and CORNEJO's actions were motivated largely or entirely by the following: (1) Plaintiff's
26 politically conservative ideology, with a strong and abiding respect for *the rule of law*, even in the face of
27 Defendants' continuous and flagrant disregard of *the rule of law*; (2) Plaintiff's numerous visits to the
28 ROV for purposes of observing election processes, which Defendants admitted they had never before

1 experienced; (3) Plaintiff's inquiries, verbal and written, which Defendants had never before experienced,
2 regarding ambiguous, hidden, and defective ballot processing activities that Plaintiff and her colleagues
3 were observing, since they had been furnished only "some" (nowhere near covering all) of the many
4 ballot processing procedures implemented by ROV staff; (4) Defendants' own ineptitude, inexperience,
5 and ignorance of election law; and (5) Defendants' inadequate development and training of staff.

6
7 4.7 Moreover, Plaintiff by her voluntary efforts day after day was attempting to help restore the
8 community's confidence in the outcome of the current and future elections, said future including her own
9 state assembly race in the March 2024 Primary, all while undergoing duress from Defendants DUPUIS'
10 and CORNEJO's demonstrating a pattern of targeted abuse. Based on Plaintiff's having witnessed the
11 threatened arrest of one observer/challenger, Mr. Jason Bezis, Plaintiff was bullied into ultimately
12 withholding her questions about and objections to what she was able to observe of ballot processing. In
13 addition, based on the treatment of another Republican candidate and observer, Ms. Alison Hayden, who
14 was so maliciously targeted that the ROV collaborated with the ACSO to arrest her and detain her in the
15 County jail overnight, Plaintiff was left discouraged from asserting her rights to effectively monitor her
16 AD18 race and helpless in the face of Defendants DUPUIS' and CORNEJO's behaviors.

17
18 4.8 Defendants DUPUIS and CORNEJO exhibited by their actions, inactions, and capricious
19 policies an obvious objective of intimidation to deter Plaintiff and the public from participating in their
20 civic duty and/or continuing their observations/challenges; and disregarded numerous and continuous
21 attempts by Plaintiff to compel Defendants to adhere to the most basic tenets of federal and state laws and
22 regulations for the common good of the voting community.

23
24 4.9 This civil rights action seeks to vindicate Plaintiff's constitutional and statutory rights and
25 hold the employees/agents and their departments/agencies accountable for enacting unlawful practices
26 and policies, as well as the omission of policies that resulted in damages to the viability of Plaintiff's
27 recent and current political campaigns.
28

1 **GENERAL FACTUAL ALLEGATIONS**

2 5. The events of this case happened at the County ROV, 1225 Fallon Street, Room G-1, Oakland,
3 and at the County BoS Meeting Chambers at 1221 Oak Street, Room 512, Oakland, CA 94612.

4 6. The events happened throughout the overall period of the November 2022 Midterm Election,
5 commencing with ROV activities related to early voting on October 10 (29 days prior to Election Day
6 that constitute the "early voting" period); on through December 20, when the BoS ratified the ROV's
7 December 8 statement of certification of the November 8 Election; and culminating approximately mid-
8 February 2023 by which time the ROV had completed a review of the suspended ballots related to the
9 Oakland Unified School District 4 ("OUSD4") election results, which review Plaintiff did observe and
10 afterwards, upon extensive in-depth analysis, discovered significant anomalies and defects that Plaintiff
11 and her EITACCA colleagues, on her behalf, brought to the attention of Defendants in the form of emails,
12 letters, and Help America Vote Act ("HAVA") notarized filings, and public comments delivered in
13 consecutive meetings of the BoS.
14

15 7. The persons directly involved were Defendant DUPUIS, Registrar, and Defendant CORNEJO,
16 Deputy Registrar; and DOES 1 to 50, including various ACSO deputies stationed at the courthouse.

17 8. The persons indirectly involved were Defendants COUNTY OF ALAMEDA, MILEY,
18 CARSON, HAUBERT, MURANISHI, ZIEGLER, and WEBER in her capacity as Secretary of State.

19 9. The detailed observation reports prepared by Plaintiff and her colleagues/co-members of
20 EITACCA are compiled in a comprehensive document entitled, *Reports of Observations at the Registrar*
21 *of Voters, October 2022 through February 2023, and Analyses of Cast Vote Records* ("Report") which
22 is available to Defendants upon request. Nevertheless, as previously noted, Plaintiff has already shared
23 the facts of the Report with Defendants in numerous public forums.
24

25 10. Specifically, Plaintiff herself was present at the ROV to observe pre-election day activities on
26 the following dates, on which she was denied "sufficiently close access": October 21, 25, and 26, 2022;
27 and November 1 and 7, 2022.
28

1 11. On November 1, 2022, Plaintiff attended a BoS meeting, during which she attested to having
2 experienced ROV staff preventing her from having "sufficiently close access" to Early Voting ballot
3 processing activities in the ROV, which disallowed her the ability to begin monitoring her state assembly
4 race. Plaintiff and other public speakers advised the BoS of ROV staff threatening observers with arrest.

5 12. Plaintiff was present at the ROV on November 8, 2022, Election Day, and was denied
6 "sufficiently close access" to all ballot processing activities. For several hours on Election night, while
7 ballots were continuously being brought in from the vote centers, observers were required to remain in a
8 cordoned-off area for over four (4) hours, not permitted to observe how and where the ballots were
9 delivered, redirected once delivered, stored, or otherwise handled despite ongoing activity. Ballot "chain
10 of custody" was not observable whatsoever by the individuals assembled in the cordoned-off area. ROV
11 staff weaponized the ACSO by threatening observers with possible arrest if they engaged in "disruptive"
12 behavior, which Plaintiff and her colleagues were given to understand would include asking questions and
13 challenging the information the ROV and ACSO were stating that clearly was in conflict with their rights
14 as described in the CEC. Most importantly, observers witnessed on Election night the targeted
15 intimidation of colleague Ms. Alison Hayden followed by her removal from the building without cause.

16 13. Plaintiff was present at the ROV on November 9, 2022, but was denied "sufficiently close
17 access" to ballot processing activities, and denied access entirely to most rooms where ballots were being
18 processed. Plaintiff directed questions to ROV escort Ms. Lolita Francisco, who responded that questions
19 must be in writing to Defendant CORNEJO. Members of EITACCA continuously submitted questions;
20 responses, however, were never issued by the ROV.

21 14. Plaintiff was present at the ROV on November 13, but was denied "sufficiently close access"
22 to ballot processing activities, and denied access entirely to most rooms where ballots were being
23 processed. Plaintiff again directed questions to Ms. Francisco, who again responded that questions must
24 be in writing to Defendant CORNEJO, despite Plaintiff noting that previous questions remained
25 unanswered. Again, responses to questions were never issued by the ROV.
26
27
28

1 15. On November 15, Plaintiff and Mr. Jason Bezis were at the ROV to observe the opening of
2 late/plus ballots, those arriving by U.S. mail, FedEx, DHL, or UPS in the seven days after Election Day,
3 which Mr. Bezis pointed out to Defendant CORNEJO were being processed entirely outside of public
4 view. Defendant CORNEJO accused Mr. Bezis of having harassed the FedEx delivery driver, who had
5 shared with Mr. Bezis that he was delivering lots of late/plus ballots daily. Defendant CORNEJO insisted
6 that the public cannot view the authentication and opening of packages containing late/plus ballots. Mr.
7 Bezis explained that potentially there could be hundreds of ballots arriving in those packages after
8 Election Day, smuck into the ballot stream entirely outside of public view, and that earlier that day, he and
9 Plaintiff had observed workers placing a handful of ballots without postmarks in the "blue tray," with
10 peculiar "NOV 8 2022" ink stamp markings on them that had no indication they were legitimate
11 postmarks. These ballots should have gone into the "red tray" for further analysis. Defendant CORNEJO
12 immediately terminated the discussion and proceeded to summon law enforcement. An ACSO sergeant
13 asked Defendant CORNEJO if Mr. Bezis was "disturbing" them, as he was determining if "probable
14 cause" existed for an arrest. The sergeant then addressed Mr. Bezis, first accusing him of "trespassing,"
15 to which Mr. Bezis responded that this would be a ridiculous charge since he was in the public corridor of
16 a courthouse, present for a lawful purpose. Then the sergeant resorted to "Penal Code 415" violation,
17 suggesting that Mr. Bezis' questioning of Defendant CORNEJO was "harassing" and "badgering" her,
18 was "loud" and therefore disrupting Defendant DUPUIS' employees from doing their work. Two
19 additional ACSO deputies joined the sergeant. Plaintiff witnessed Mr. Bezis' forced exit of the premises.
20
21

22 16. One of the deputies lectured Plaintiff that Defendant DUPUIS' staff were overburdened by
23 the written inquiries of election observers. (Note: This statement from the deputy tends to support
24 Plaintiff's assertion of back-room discussions among the ROV and ACSO staffs, suggesting that
25 "conspiratorial" behavior existed.) With a copy of the *Election Observer Rights and Responsibilities*
26 booklet in her hand, Defendant CORNEJO continued to argue that "sufficiently close access" was at the
27 discretion of Defendant DUPUIS.
28

1 17. Afterwards, Mr. Bezis informed Plaintiff of the following: Once outside, the sergeant
2 cautioned Mr. Bezis that he could not return to the courthouse building that day, and that if he ever
3 returned to the ROV that staff could effect a "citizen's arrest" at the first infraction, until law enforcement
4 arrives. Mr. Bezis found the sergeant to be extremely ignorant about the concept of election observers, in
5 arguing that the public had no right to see any voting processing activities because they were "behind
6 closed doors" such that even he as a deputy could not enter the ballot processing rooms. Mr. Bezis
7 quickly elucidated some of the pertinent CEC sections (2300, 15004, 15104, and 15204) and the Voters'
8 Bill of Rights to the sergeant, however the sergeant did not seem receptive to the information.
9

10 18. On Friday, November 18, Plaintiff learned that her colleague, Ms. Alison Hayden, had been
11 arrested and detained overnight in the County jail, while attempting to observe the random selection of
12 batches in preparation for the One Percent Manual Tally ("1%MT"), scheduled to begin November 21.
13 The 1%MT may be considered an audit of a random sampling of ballots, for purposes of validating the
14 overall election results; a limited "recount" of the vote. As Ms. Hayden, under escort by ROV staff and
15 an ACSO deputy, was the only in-person observer in the room, other observers, including Plaintiff, were
16 remotely watching the video feed online, while Ms. Hayden was in phone/text contact with them. When
17 staff began to draw random coupons that were meant to relate to batch numbers representing precincts,
18 Ms. Hayden received a text stating that in the video feed it was not possible to distinguish the numbers
19 being handwritten by ROV staff on the whiteboard in pale red. When staff finished with the first round of
20 34 numbers, Ms. Hayden took a photo of her notes listing the numbers, with the intent of texting the
21 photo to her colleagues. By this point in the 1%MT, it was after 3:30pm, at which point Ms. Hayden had
22 already been observing for over 90 minutes. Remote observers noted that the video feed went dead at
23 3:45pm. *[Ms. Hayden later informed Plaintiff that the moment she took out her phone to take the photo,*
24 *an ROV escort shouted that she was disturbing the process therefore the observation was to end*
25 *immediately, and that Ms. Hayden was being arrested.]* Given that her colleague had been subjected to
26 arrest and then had to endure overnight detention, Plaintiff realized that any attempt to monitor her own
27 state assembly race, to question anomalies, discrepancies, ambiguities, or errors, was likely to result in the
28

1 same outcome: Arrest, detention, damage to her reputation, possible irrevocable damage to her standing
2 in the voting community, a jeopardized candidacy in future, and potential loss of her career in public
3 service. An arrest becomes a part of a person's online record, effectively a permanent scar.

4 19. On Monday, November 21, Plaintiff attended the start of the 1%MT, escorted by ROV staff,
5 along with other observers including Ms. Hayden and a member of the Sheng Thao campaign for Oakland
6 mayor, who was allowed to pull out her phone and look at it many times, with no objection from the two
7 ROV escorts. When Ms. Hayden took out her phone, immediately one ROV escort sternly said, "Put that
8 phone away, I am warning you." Plaintiff noted the unfairness of ROV staff in enforcing their capricious
9 rules. Most significantly, due to the glass partition between the 21 tables where the election workers sat,
10 and the observation area, it was impossible for Plaintiff to hear the calling out of the tabulations for her
11 AD18, although indistinctly at tables 2 and 3, closest to Plaintiff but still roughly fifteen feet away, she
12 could hear the workers call out some of the names. In addition, although Plaintiff had requested in
13 writing, the day before, that the ROV furnish the Summary Report sheets by which, under the CEC,
14 observers could compare with what would be transpiring in the 1%MT room, the Summary Report sheets
15 were never provided. The ROV escorts would consistently advise that no such documents were available
16 to the public. An observer discovered a schematic for the table configurations in the room, showing 21
17 tables, three of which were entirely hidden in the rear, rightmost corner of the room, over fifty feet from
18 where the observers were permitted to stand. As such, Plaintiff was denied both physical observation of
19 the ballots, and the ability to hear the tally call-outs as performed by the election workers at all 21 tables.
20 Plaintiff believed that, at best, any inquiries of ROV staff would be to no avail, and at worst, would result
21 in her arrest if she registered a complaint.

22 20. Plaintiff, as a candidate, had the right under CEC § 15104 to stand at the central counting
23 center and have her race counted in her presence. Up to November 21, as described above, Plaintiff and
24 her colleagues who were attempting to corroborate the AD18 returns, had already been denied the right to
25 witness the counting of votes in her race; however, now during the 1%MT, Plaintiff was further deprived
26 of the right to witness this final opportunity for validating votes across all races, via random sampling, in
27
28

1 order to substantiate that the election as a whole had been carried out properly. For example, Plaintiff
2 was unable to ascertain whether any of the AD18 votes were "suspended ballots," which would need to
3 undergo further review and adjudication (with Plaintiff possessing the right to witness such adjudication).
4 Plaintiff was, therefore, egregiously damaged by the inability to verify that her vote count was true and
5 did match what was eventually "certified" by the ROV. As such, Plaintiff was at the mercy of the ROV
6 in their determination of her alleged vote count in relation to the number of registered Republican voters
7 in the County.

8
9 21. Plaintiff was informed by her colleague, Mrs. Cindy Rocha, that she had remained observing
10 at the ROV the entire day (November 21), from 9:30am until workers quit work at roughly 5pm, then she
11 stayed an additional ninety minutes, roughly, in the ROV lobby along with colleague Mr. Mark Zulim in
12 hopes of receiving the Summary Report that they had requested, to no avail. ROV staff did not furnish
13 the Summary Report. As Mrs. Rocha and Mr. Zulim were viewing the monitor in the ROV lobby, as the
14 current status of the various races flashed on the screen, they observed a woman emerging from the inner
15 office of the ROV, holding a cell phone. As the woman passed them on her way to the elevators, Mrs.
16 Rocha remarked that the vote count for the San Leandro mayoral race was exactly the same as it was on
17 the date of Mrs. Rocha's last visit to the ROV back on November 14. The woman turned around and
18 approached them, greeting them in a friendly fashion. Mrs. Rocha and Mr. Zulim identified themselves
19 as observers interested in the integrity of the elections, and the woman identified herself as a member of
20 the Democrat Central Committee. Having overheard Mrs. Rocha's remark about the San Leandro
21 mayoral race, the woman commented that the results on the monitor had not been updated for that
22 particular race, but that she could share the most updated results from the DNC website. On her cell
23 phone the woman scrolled to a section showing one candidate (who eventually would win) several
24 hundred votes ahead of the candidate that, in contrary to the ROV monitor, was currently shown as being
25 in the lead. After the woman departed, Mrs. Rocha and Mr. Zulim noted how a member of a Democrat
26 organization could have privileged information that the ROV had not yet shared with the general public.
27 Plaintiff alleges that this example of the ROV's questionable conduct in the election is not insignificant.
28

COMPLAINT
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1 22. On December 8, 2022, Defendant DUPUIS executed a statement of certification, however it
2 neglected to include the results of the 1%MT, nor did it identify “any discrepancies between the machine
3 count and the manual tally and a description of how each of these discrepancies was resolved,” which was
4 in violation of CEC §15360(f). Nevertheless, in the December 20 regular meeting of the BoS, the Board
5 proceeded to ratify the election certification, despite numerous objections given in public comments by
6 Plaintiff and others, describing the egregious deficiencies in Defendant DUPUIS’ processing of ballots
7 throughout the period from start of Early Voting (October 10) through the 1%MT (completed November
8 28), and cautioning the Supervisors that Defendant DUPUIS’ statement of certification had failed to
9 include the required results of the 1%MT and description of how discrepancies was resolved, had failed to
10 properly represent all election races in the 1%MT, and had failed to include all nine rounds of the
11 Oakland mayoral race. Moreover, Plaintiff and other public speakers reiterated the lack of “sufficiently
12 close access” to adjudication and remake workstations to verify the quality of ROV operators’ work
13 products. Plaintiff reminded Defendants that she had been denied access to properly monitor her race,
14 and had been damaged by such denial of her civil rights.

16 23. When on December 28 Plaintiff learned of the ROV’s error in the OUSD4 race, it became
17 clear to Plaintiff that the potential for errors and omissions at the ROV, as evidenced by its above-
18 described omissions and lack of transparency during the 1%MT, was even greater than originally
19 surmised. Between February 1 and February 8, 2023, a court-ordered review of “suspended ballots” in
20 the errored race resulted in discoveries of not only the error to which the ROV had admitted, but
21 additional errors which, when evaluated, reflected a significant error rate that if applied across all races
22 could result in the entire election being called into question, including Plaintiff’s AD18 race. There was a
23 good chance that the resultant vote totals in Plaintiff’s race were actually higher than reported and
24 subsequently certified, Plaintiff alleges, in error by the ROV and then ratified by the County BoS. Hence,
25 significant likelihood exists that Plaintiff’s award of state delegates in her party was compromised.

27 24. Following the court-ordered review of the “suspended ballots” in the errored race, Plaintiff’s
28 colleagues in EITACCA, Mr. Mark Zulim and Ms. Jacqueline Cannon-Cota, submitted notarized HAVA

1 election complaints to the Secretary of State's office, outlining the discrepancies in the ROV's execution
2 of the suspended ballot review, during which Mr. Zulim, Ms. Cota, and others, including Plaintiff, had
3 been in attendance as observing members of the public. Defendant WEBER never acknowledged or acted
4 upon the HAVA complaints, despite her personal responsibility as Secretary of State to investigate, which
5 would have disclosed the necessity for an in-depth review or audit of the AD18 race and the County's
6 entire election. As such, Defendant WEBER also bears responsibility for Plaintiff's damages.

7
8 25. Plaintiff alleges that the State's making available the remedy of preparing, having notarized,
9 and mailing a HAVA complaint via certified mail, with accompanying detailed affidavits, is reduced to a
10 mere bureaucratic contrivance by the State to appear to take election integrity seriously. Given that
11 Defendant WEBER by her inaction with respect to the HAVA complaints, as well as allowing to stand
12 Defendant DUPUIS' patently erroneous official report to the Secretary of State summarizing the results of
13 the November 2022 election, has demonstrated her refusal to exercise her authority under Government
14 Code §12172.5 to enforce California election law in the County, Defendant WEBER did embolden
15 Defendant DUPUIS to continue his systematic, intentional violation of Plaintiff's civil rights, and is
16 therefore complicit with the ROV and all Defendants in denying Plaintiff the delegates to which she may
17 have been entitled.

18
19 26. Plaintiff alleges that the ROV's forbidding of real-time challenges and resolutions to errors
20 made in processes is a deliberate ploy to disenfranchise candidates. Processes are established to ensure
21 the accuracy of the given task. Prior to the Voters Choice Act being implemented in the County, items
22 challenged were immediately pulled from the process and immediately resolved by a third party.
23 Currently, however, challenges allowed under CEC §15104 are met with diversionary and delaying
24 tactics and even threats and intimidation. There are no procedures for real-time resolutions.

25
26 27. Furthermore, Plaintiff made numerous public comments in BoS meetings, informing
27 Defendant COUNTY OF ALAMEDA and its employees, that Defendant DUPUIS and his staff have
28 continuously insisted that every "challenge" to ballot collection, storage, and processing be made in
writing, without pulling out the envelope or ballot in question, therefore making a resolution impossible.

COMPLAINT
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1 Plaintiff informed Defendants of the myriad ways in which the ROV's constructed system is deliberately
2 arranged to keep observers from being able to make challenges: Forcing challenges to be made in
3 writing, and preventing challenged ballots from being pulled out for immediate resolution, making it
4 impossible to identify a specific envelope that had an ambiguous or missing postmark. Emboldened by
5 the inaction of the BoS, County Counsel, and the County Administrator, the ROV's second-round review
6 of VBM ballots without postmarks took place 100% in secret, without observers, as did the processing of
7 USPS, FedEx, UPS, and DHL ballots that arrived after Election Day. Defendant DUPUIS and his staff
8 knew the drill: Hide activities from observers so that no one can raise a "challenge."
9

10 28. On June 30, 2023, in a good faith effort to resolve these matters amicably, Plaintiff submitted
11 a letter, with supporting documentation, via email and certified USPS mail, to the Clerk of the County
12 BoS, along with the required Claim form ("Claim"), in accordance with instructions posted on the
13 County's official website, and pursuant to California Government Code §910 et seq. The Claim package
14 was submitted as notification of Plaintiff's allegations of civil rights violations by the County, seeking
15 response to the Plaintiff's allegations within thirty (30) days or Plaintiff would proceed with further action
16 through this Court. However, the County, via its designated representative George Hills Company,
17 returned Plaintiff's Claim without having investigated any of the allegations.
18

19 29. On June 30, 2023, Plaintiff sent a letter, with supporting documentation, via email and
20 certified USPS mail, to Defendant WEBER, along with the required Claim form, in accordance with
21 instructions posted on the State's official website, and pursuant to CGC §910. The Claim package was
22 submitted as notification of Plaintiff's allegations of civil rights violations by Defendant WEBER,
23 seeking response to Plaintiff's allegations within thirty (30) days or Plaintiff would proceed with further
24 action through this Court. However, Plaintiff has not received response from Defendant WEBER, or the
25 Secretary of State's designated representative(s) to accept and address claims submitted to the State,
26 either acknowledging her Claim, denying her Claim, or otherwise informing her of the results of any
27 investigation into her Claim.
28

1 **FIRST CAUSE OF ACTION**

2 **42 U.S.C. § 1985 – Conspiracy to Interfere with Civil Rights**

3 30. 42 U.S.C. § 1985 states, *If two or more persons conspire for the purpose of impeding,*
4 *hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory,*
5 *with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for*
6 *lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal*
7 *protection of the laws.* Plaintiff intends to prove, via relevant discovery, that Defendants coordinated with
8 one another via phone, in-person discussions, and electronic communications, to deprive Plaintiff and
9 other election observers of equal privileges under the laws of the United States and the State of California.
10 Under Amendment 1 of the Bill of Rights, the people have the right to assemble peacefully, and to
11 petition the government for a redress of grievances.
12

13 31. The right “to petition the government” is not a one-sided undertaking; the government owes
14 the people some measure of response to the people’s petition. Defendants in this suit owed Plaintiff a
15 duty to hear her grievances, and to the extent that it was possible to address the grievances, Defendants
16 should have done so, in a manner that honors the spirit of federal and state laws. Defendants DUPUIS
17 and CORNEJO failed to fulfill this duty by requiring written questions from Plaintiff and other election
18 observers that Defendants then ignored. Defendants MILEY, CARSON, HAUBERT, MURANISHI,
19 ZIEGLER, and WEBER, failed to fulfill this duty by initially offering, requiring, inviting, or affording
20 Plaintiff the opportunities and methods for redress but then ignoring Plaintiff’s well-documented
21 complaints and petitions. Furthermore, this failure was discussed among the Defendants in internal
22 meetings and other methods of communicating protocol with respect to the ROV’s interaction with
23 election observers, including the potential engagement of law enforcement; therefore, Defendants did
24 conspire with one another against Plaintiff and other election observers.
25

26 32. The right “to assemble peacefully” without fear of injury, oppression, threat, or intimidation
27 was denied to Plaintiff and other election observers, given that Defendants DUPUIS and CORNEJO, in
28 conspiracy with Defendant COUNTY OF ALAMEDA the ACSO, persistently held the weaponization of

1 law enforcement over the heads of Plaintiff and other election observers as a form of oppression, threat,
2 and intimidation, even citing in the ROV handout *Election Observation Rights and Responsibilities*, Penal
3 Code §415 regarding disruptive behavior. Indeed, Penal Code §415 appeared to be the all-encompassing
4 Code section that law enforcement could and would use in concert with the ROV, since Defendants were
5 unable to cite any other laws or regulations that would prohibit or inhibit the observers' activities. For
6 example, apparently Defendants defined "disruptive" as to include asking questions of the ROV.

7
8 33. Plaintiff and her colleagues appeared to have been singled out from other public visitors to
9 the ROV, including other political candidates, and political groups more favorably aligned with the
10 ROV's overall political biases, who seemed to have access to ROV resources including election results,
11 reports, and other sources of information. Defendants DUPUIS and CORNEJO held Plaintiff and her
12 colleagues to a higher standard of requesting access to resources as a form of political discrimination.

13 34. In BoS meetings, Defendants MILEY, CARSON, HAUBERT, MURANISHI, and ZIEGLER
14 manipulated meetings such that ~~discussion~~ of the election preparations, processing, and results was often
15 removed from the meeting agendas at the last minute; and public comments were either allowed a fraction
16 of the time of other agenda items, or disallowed entirely. These actions by Defendants involved some
17 level of planning and decision-making, suggesting that Defendants conspired with one another to
18 minimize public involvement in discussing a problematic election. Furthermore, Defendants failed in
19 their duty to compel or counsel Defendants DUPUIS and CORNEJO to correct their behavior.

20
21 35. Defendant WEBER as Secretary of State failed to investigate properly, if at all, the HAVA
22 complaints filed by Plaintiff's colleagues advocating on her behalf, and in this manner demonstrated to
23 Plaintiff that Defendant WEBER was not averse to concealing the County's errors and quashing any
24 possibility of correcting the election results. More importantly, however, Defendant WEBER by her
25 inaction failed, in her duty as Secretary of State in charge of elections, to safeguard Plaintiff's right to
26 monitor the counting of votes in her AD18 race, and by this inaction did condone the conspiratorial
27 behavior of Defendants against Plaintiff, jeopardizing, among other things, her award of delegates.
28

COMPLAINT
PAGE 18 OF 20

1 36. All Defendants owed Plaintiff a duty to allow her to witness the counting of the votes in her
2 state assembly race; and to peacefully observe and challenge election processes, with "sufficiently close
3 access" to all election processes undertaken by the ROV so as to reasonably verify that Defendants were
4 in compliance with the CEC. Defendants had a duty to ensure that Plaintiff would have reasonable
5 unrestricted access to all election activities so as to exercise her rights.

6
7 37. In doing the things herein alleged, Defendants by their acts or omissions breached the
8 applicable duty of care by acting unreasonably, dismissively, carelessly, negligently, and/or recklessly,
9 and by acting capriciously, or with an intent to intimidate, discourage, or intentionally inconvenience
10 Plaintiff in her efforts to witness the counting of votes in her state assembly race. Plaintiff and her
11 colleague, Ms. Hayden, were attempting to monitor the status of their races, however Defendants forced
12 them to circumvent the reasonable exercise of their rights. These actions by Defendants demonstrating a
13 pattern of abuse, harassment, and contempt made light of the candidacies of Plaintiff and her colleague,
14 thereby jeopardizing the success of their races, and so adversely impacting their candidacy that their
15 prospects of future candidacy may be significantly compromised.

16
17 38. As a direct and proximate result of Defendants' conduct, Plaintiff suffered injuries and
18 damages as set forth above. Defendant COUNTY OF ALAMEDA is vicariously liable for the acts and
19 omissions of its employees acting in the course and scope of said employment, pursuant to California
20 Government Code §815.2. The conduct of the individual Defendants was malicious and oppressive in
21 that they intended to harm Plaintiff, in that they were carried out with a willful and conscious disregard
22 for Plaintiff's rights, entitling Plaintiff to punitive damages pursuant to California Civil Code §3294.

23
24 **PRAYER FOR RELIEF**

25 Plaintiff prays for damages as follows:

26 a. A declaratory judgment declaring Defendants' lack of uniform and secure vote counting, laws,
27 regulations, and procedures, and lack of uniform enforcement of laws, regulations, and procedures, a
28 violation of the Equal Protection Clause and Due Process Clause to the Fourteenth Amendment;

1 b. Injunctive relief preventing the Defendants from enforcing and/or applying a lack of uniform
2 and secure vote counting laws, regulations, and procedures, and from enforcing and/or applying a lack of
3 uniform enforcement of laws, regulations, and procedures;

4 c. For compensatory damages in an amount according to proof;

5 d. For punitive damages against Defendants DUPUIS, CORNEJO, and DOES 1-50 in an amount
6 sufficient to punish their conduct and deter similar conduct in the future;

7 e. For all applicable statutory penalties;

8 f. For attorneys' fees, costs of suit, and such other and further relief as the Court deems just.

9
10 Plaintiff hereby demands a trial by jury.

11 Date: September 11, 2023

/s/ Mindy Pecheruk

Mindy Pecheruk, In Pro Per

Attachment B



Secretary of State State of California Election Complaint Form

For Help America Vote Act (HAVA) complaints or other election-related complaints.

Important: Please Type or Print the information on this form.

Complainant Information

First Name: Jacqueline
Street Address: [REDACTED]
Zip Code: [REDACTED]
Fax Number:
Preferred method of correspondence: email

Last Name: Carron-Cota
Apt #: [REDACTED] City: [REDACTED] State: CA
Daytime Phone: [REDACTED] Evening: same
Email: jackiecota@proton.me

Person(s) or Organization(s) Against Whom Complaint Is Brought

Name(s): Tim Dupuis & Cynthia Cornejo
Organization(s): Alameda County Registrar of Voters
Position(s) of person(s) (if applicable): Registrar of Voters & Deputy Registrar of Voters

Statement of Facts

Date(s) and time(s) alleged event(s) occurred: February 6, 2023
Location(s) of alleged event(s): 1225 Fallon Street, Oakland CA 94612
Names and phone numbers of witnesses or other victims (if applicable): Mark Zulim 510-909-5497

Describe Your Complaint (If necessary, attach additional sheets.)

Please accept my Help America Vote Act (HAVA) complaint against the Alameda County Registrar of Voters (ACROV) for exceeding the maximum error rate requirement HAVA Title III Subtitle A Section 301 (a) (5). On Monday, February 6, 2023, I observed the court ordered effort of the "Suspended Ballot Review" of 235 ballots from the Alameda County, Oakland Unified School District Area 4 Election, Hutchinson vs. Resnick lawsuit. Of the 235 ballots, I identified two (2) ballots that exhibited errors where the CVR did not match the paper ballot. Each paper ballot had far less than 100 ballot positions.

The two errored ballots were referenced in the CVR as follows:

- Tabulator Id No. 1002 Batch ID No. 25 Record ID No. 464 (1002-25-464), two (2) errors.
- Tabulator Id No. 1002 Batch ID No. 72 Record No. 352 (1002-72-352), one (1) error.

I believe it must be pointed out that 2 out of 235 ballots represents 0.85%. The Hutchinson vs. Resnick lawsuit involves a vote margin of 41 out of 25,000 or 0.164%. The percentage of the errored ballots found during the "Suspended Ballot Review" is over five (5) times that of what is in question of the lawsuit. I believe that this, at the very least, justifies a further audit of the ballots with a much larger sample size to determine the actual

Signature I acknowledge that all of the above information is true and accurately reflects the matter in question, to the best of my knowledge.

Signature *Jacqueline Carron-Cota*

Date 3/10/23

If your complaint alleges a violation of Title III of HAVA, a notary public must complete the following certificate of acknowledgement.

March 10, 2023

Office of the California Secretary of State,

Please accept my *Help America Vote Act* (HAVA) complaint against the Alameda County Registrar of Voters (ACROV) for exceeding the maximum error rate requirement **HAVA Title III Subtitle A Section 301 (a) (5)**, which states the following:

ERROR RATES — *The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission (FEC) which are in effect on the date of the enactment of this Act.*

Additionally, the *FEC Voting System Standards*, Section 3.2.1 ACCURACY REQUIREMENTS states the following:

Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected.Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

a. For all paper-based systems:

1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;

2) Conversion of selections detected on paper ballots into digital data;

.....For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

Background and details for this complaint are as follows:

1. The court ordered a "Suspended Ballot Review" of 235 ballots from the Alameda County, Oakland Unified School District Area 4 Election, Hutchinson vs. Resnick lawsuit. This review was to be witnessed by the involved counsels and was opened for election observers. The review was to be accomplished via two processes: (1) the ballot "extraction" process; and (2) the ballot "review" process.

2. I was one of several members of the *Election Integrity Team of Alameda County California* (EITACCA) who went to the ACROV as election observers to witness the ballot review processes.

2.a. In preparation for the review, our group was able to identify the 235 ballots in our copy of the Cast Vote Record (CVR) supplied to us following the 2022 election certification by the ACROV.

2.b. We isolated the CVR data for the 235 ballots and provided copies to our team members.

2.c. Our goal was to match the CVR data to the votes on the 235 paper ballots.

3. On Monday, February 6, 2023, I observed the “review” process of the 235 ballots that were “extracted” the previous week. I and other observers were behind a wall with plexiglass ‘teller’ like windows, with a small opening (5 inches long by 1” inch wide) at the bottom of the plexiglass, separate from the room where the ACROV staff and candidate & city attorney’s associated with the pending Hutchinson vs. Resnick lawsuit were reviewing the 235 ballots. The ACROV provided a video monitor for observers to crowd around and view the paper ballots on a video monitor positioned in front of one of the plexiglass windows, as they were placed under a camera positioned over above each ballot that was laid out onto a table. Each ballot remained under the camera as they were reviewed by the ACROV staff.

- 3.a. The ACROV staff, reviewing the ballots, could **not** always be heard clearly by the observers.
- 3.b. The ACROV restricted the observers from conversing with each other while in the observation room.
- 3.c. The observers were not allowed to ask questions of the ACROV staff during the “review”.
- 3.d. The ACROV prohibited the observers from taking pictures of anything while in the observation room.
- 3.e. Observers were prohibited to challenge ballots
- 3.f. Observers were prohibited from using their cell phones for phone for any reason.
- 3.g. ACROV staff controlled the observation by providing an escort to the observers, who was not allowed to ask questions, to enforce 3.a. through 3.f.
- 3.h. ACROV did allow the observers to refer to their CVR spreadsheets and to take notes.

4. Of the 235 ballots, I identified two (2) ballots that exhibited errors where the CVR did not match the paper ballot. The two errored ballots were referenced in the CVR as follows:

- Tabulator Id No. 1002 Batch ID No. 25 Record ID No. 464 (1002-25-464), two (2) errors.
- Tabulator ID No. 1002 Batch ID No. 72 Record No. 352 (1002-72-352), one (1) error.
 - 4.a. Each paper ballot had far less than 100 ballot positions.
 - 4.b. For the errored ballot I observed [Record No. 352 (1002-72-352)] I did not see any stray marks.

5. I saw no indication that the involved counsels and the ACROV staff were comparing the paper ballot votes to the CVR. Additionally, on Monday, February 6, 2023, I never witnessed any of the ACROV staff and the involved counsels with a CVR spreadsheet.

6. Since the HAVA requires a maximum error rate of less than 1 in 500,000 and since I witnessed one (3) errors, in order to meet that requirement, there had to have been $(3 \times 500,000) = 1,500,000$ ballot positions present, spread out over 235 ballots. That would require $(1,500,000/235) = 6,383$ ballot positions per ballot. Mrs. Cota and I witnessed less than 100 ballot positions per ballot. This means that the error rate that Mrs. Cota and I witnessed was $(6,383/100) = 63.8$ times the HAVA maximum requirement.

7. I believe it must be pointed out that 2 out of 235 ballots represents 0.85%. The Hutchinson vs. Resnick lawsuit involves a vote margin of 41 out of 25,000 or 0.164%. The percentage of the errored ballots found during the 'Suspended Ballot Review' is over five (5) times that of what is in question of the lawsuit. **I believe that this, at the very least, justifies a further audit of the ballots with a much larger sample size to determine the actual error rate of this election.**

8. In summary, regardless of the very limited number of ballots examined, nobody outside the team members of EITACCA, prepared to verify the veracity of the ballot votes, no one else challenged the ACROV's prohibited use of cameras or other recording devices, and no one else challenged the ACROV's practice of preventing observers conversing with each other. Even with all the restrictions I and my fellow observer were able to identify two errored ballots. Why the ACROV staff and the legal counsel were not able to catch these errors should be reviewed as part of a continuous improvement process to increase the rigor of ACROV election reviews.

Sincerely,



Jacqueline Carron-Cota
Resident of Alameda County, California
March 10, 2023

Attachment C



Secretary of State State of California Election Complaint Form

For Help America Vote Act (HAVA) complaints or other election-related complaints.
Important: Please Type or Print the information on this form.

Complainant Information

First Name: Mark Last Name: Zulim
Street Address: [REDACTED] Apt #: [REDACTED] City: [REDACTED] State: CA
Zip Code: [REDACTED] Daytime Phone: [REDACTED] Evening: [REDACTED]
Fax Number: None Email: [REDACTED]
Preferred method of correspondence: Phone

Person(s) or Organization(s) Against Whom Complaint is Brought

Name(s):
Organization(s): Alameda County Registrar of Voters (ACROV)
Position(s) of person(s) (if applicable):

Statement of Facts

Date(s) and time(s) alleged event(s) occurred: February 6, 2023
Location(s) of alleged event(s): Alameda County Registrar of Voters (ACROV)
Names and phone numbers of witnesses or other victims (if applicable): Jackie Cota (925) 699-9165

Describe Your Complaint (If necessary, attach additional sheets.)

See signed letter attached.
Summary of complaint is as follows:
I have a Help America Vote Act (HAVA) complaint against the Alameda County Registrar of Voters (ACROV) for exceeding the maximum error rate requirement HAVA Title III, Subtitle A Section 301 (a)(5), which states the following:
ERROR RATES The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3-2.1 of the voting systems standards issued by the Federal Election Commission (FEC) which are in effect on the date of the enactment of this Act.
During a court ordered "Suspended Ballot Review" of 235 ballots from the Alameda County, Oakland Unified School District Area 4 Election, I personally witnessed one error that was not caught or disclosed by the ACROV and in addition I found out that there was another error of similar nature observed by another individual, Mrs. Jackie Cota, for the very same review.

Signature I acknowledge that all of the above information is true and accurately reflects the matter in question, to the best of my knowledge.

Signature

Mark Zulim

Date 3/1/2023

If your complaint alleges a violation of Title III of HAVA, a notary public must complete the following certificate of acknowledgement.

Certificate of Acknowledgment
For HAVA Title III complaints

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of *Alameda*

On *March 1, 2023*
(date)

} before me, *Linda Luebker, Notary Public*
(insert name and title of the officer)

personally appeared *Mark Zulim*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Linda R. Luebker

(NOTARY PUBLIC SIGNATURE)

NOTARY PUBLIC SEAL

Return this form to: SECRETARY OF STATE'S OFFICE
ELECTIONS DIVISION
1500 11TH STREET, 5TH FLOOR, SACRAMENTO, CA 95814
For more information or assistance filling out this form:
English: 1-800-345-VOTE (8683)
Spanish: 1-800-232-VOTA (8682)
www.sos.ca.gov

February 27, 2023

Office of the California Secretary of State,

Please accept my *Help America Vote Act* (HAVA) complaint against the Alameda County Registrar of Voters (ACROV) for exceeding the maximum error rate requirement HAVA Title III Subtitle A Section 301 (a) (5), which states the following:

***ERROR RATES** — The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission (FEC) which are in effect on the date of the enactment of this Act.*

Additionally, the FEC Voting System Standards, Section 3.2.1 ACCURACY REQUIREMENTS states the following:

Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected.Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

a. For all paper-based systems:

- 1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;*
- 2) Conversion of selections detected on paper ballots into digital data;*

.....For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

Background and details for this complaint are as follows:

1. The court ordered a "Suspended Ballot Review" of 235 ballots from the Alameda County, Oakland Unified School District Area 4 Election, Hutchinson vs. Resnick lawsuit. This review was to be witnessed by the involved counsels and was opened for election observers. The review was to be accomplished via two processes: (1) the ballot "extraction" process; and (2) the ballot "review" process.
2. I was one of several members of the *Election Integrity Team of Alameda County California* (EITACCA) who went to the ACROV as election observers to witness the ballot review processes.
 - 2.a. In preparation for the review, our group was able to identify the 235 ballots in our copy of the Cast Vote Record (CVR) supplied to us following the 2022 election certification by the ACROV.
 - 2.b. We isolated the CVR data for the 235 ballots and provided copies to our team members.
 - 2.c. Our goal was to match the CVR data to the votes on the 235 paper ballots.

3. On Monday, February 6, 2023, I observed the "review" process of the 235 ballots that were "extracted" the previous week. Myself and other observers were contained in an observation room, separate from the room where the ACROV staff and the counsels associated with the pending Hutchinson vs. Resnick lawsuit were reviewing the 235 ballots. The observation room had glass windows for us to view the processes. The ACROV did provide a video monitor for the observers to view the paper ballots as they were placed under a camera positioned above each ballot. Each ballot remained under the camera as they were reviewed by the ACROV staff.

3.a. The ACROV staff reviewing the ballots could not always be heard clearly by the observers.

3.b. The ACROV restricted the observers from conversing with each other while in the observation room.

3.c. The observers were not allowed to ask questions of the ACROV staff during the "review".

3.d. The ACROV prohibited the observers from taking pictures of anything while in the observation room.

3.e. Observers were prohibited from using their cell phones for phone for any reason.

3.f. ACROV staff provided an escort to the observers to enforce 3.a. through 3.e.

3.g. ACROV did allow the observers to refer to their CVR spreadsheets and to take notes.

4. Of the 235 ballots, I identified one (1) ballot that exhibited one (1) error. The next day I was informed that another observer, Mrs. Jackie Cota had identified another ballot with two (2) errors. Between the two (2) ballots there were a total of three (3) errors discovered. The two errored ballots (mine and Mrs. Cota's) were referenced in the CVR as follows:

- Tabulator ID No. 1002 Batch ID No. 25 Record ID No. 464 (1002-35-464), two (2) errors identified by Mrs. Cota.

- Tabulator ID No. 1002 Batch ID No. 72 Record No. 352 (1002-72-352), one (1) error identified by me (Mr. Mark Zulim).

4.a. Each paper ballot had far less than 100 ballot positions.

4.b. For the errored ballot I observed [Record No. 352 (1002-72-352)] I did not see any stray marks.

5. I saw no indication that the involved counsels and the ACROV staff were comparing the paper ballot votes to the CVR. Additionally, on Monday, February 6, 2023, I never witnessed any of the ACROV staff and the involved counsels with a CVR spreadsheet.

6. Since the HAVA requires a maximum error rate of less than 1 in 500,000 and since I witnessed one (1) error and Mrs. Cota witnessed two (2) errors, in order to meet that requirement, there had to have been $(3 \times 500,000) = 1,500,000$ ballot positions present, spread out over 235 ballots. That would require $(1,500,000/235) = 6,383$ ballot positions per ballot. Mrs. Cota and I witnessed less than 100 ballot positions per ballot. This means that the error rate that Mrs. Cota and I witnessed was $(6,383/100) = 63.8$ times the HAVA maximum requirement.

7. I believe it must be pointed out that 2 out of 235 ballots represents 0.85%. The Hutchinson vs. Resnick lawsuit involves a vote margin of 41 out of 25,000 or 0.164%. The percentage of the errored ballots found during the "Suspended Ballot Review" is over five (5) times that of what is in question of the lawsuit. I believe that this, at the very least, justifies a further audit of the ballots with a much larger sample size to determine the actual error rate of this election.

8. In summary, regardless of the very limited number of ballots examined, nobody outside the team members of EITACCA prepared to verify the veracity of the ballot votes, no one else challenged the ACROV's prohibited use of cameras or other recording devices, and no one else challenged the ACROV's practice of preventing observers conversing with each other. Even with all of the restrictions Mrs. Cota were able to identify two errored ballots. Why the ACROV staff and the legal counsel were not able to catch these errors should be reviewed as part of a continuous improvement process to increase the rigor of ACROV election reviews.

Sincerely,



Mark Zulim
Resident of Alameda County, California
/Election File Record/

ATTACHMENT D

THEIR VERSION
BELL, McANDREWS & HILTACHK, LLP

Attorneys and Counselors at Law

455 CAPITOL Mall, SUITE 600
SACRAMENTO, CA 95814

(916) 441-7757
FAX (916) 441-7759

November 6, 2023

VIA EMAIL Tim.Dupuis@acovr.org

Tim Dupuis
Alameda County Registrar of Voters
1225 Fallon Street, Rm. G-1
Oakland, CA 94612

Subject: Urgent Compliance with California Election Code Section 15004

Mr. Dupuis,

I am the General Counsel of the California Republican Party and am contacting you concerning the election processes at the Alameda County Registrar of Voters (ROV) for the upcoming November 7, 2023 Special Election for Oakland Unified School District, District 5.

California Election Code Section 15004(a) expressly provides that each qualified political party is entitled to have up to two representatives present to check and review the preparation and operation of the tabulating devices, their programming and testing, and to have the representatives present at all phases of the election. Representatives from the Alameda County Republican Party attended a Logic and Accuracy (L&A) test held on October 26, 2023. The Alameda County Republican Party representatives take this role extremely seriously. While your office accommodated their physical presence in your office during the L&A testing, they were without the ability to ask any questions directly to ROV Director during the testing and left unsatisfied that the tabulator and touch screen ballot marking device being used for the November 7, 2023 special election were adequately tested. Moreover, the virtual stream for virtual viewing lacked sound, rendering virtual viewing insufficient and, as such, should not be considered as a valid form of virtual observation. I write to seek your immediate attention to these deficiencies, prior to tabulation of the votes in this special election.

The most urgent matter we seek to address relates to the testing of the tabulator responsible for reading the "QRVote Ballots" generated by the touchscreen ballot marking device. As I understand it, the ballot marking device allows voters to make selections via touchscreen interface, which then generates a printed QR Code form that purportedly reflects the voter's selections on the ballot. A printed list of the voter's selections is also included on this printed ballot; however, the tabulator exclusively interprets the QR Code portion of the "QRVote Ballot" and does not consider the printed list. My understanding from the observations of the Alameda County Republican Party representatives is that these "QRVote Ballots" were not included at all in the L&A testing of the tabulator on October

26th, contrary to the requirement in Section 15000 of the Elections Code that “the elections official shall conduct a test or series of tests to ensure that every device used to tabulate ballots accurately records each vote.”

Mandating that the Registrar of Voters (ROV) test the tabulator’s ability to accurately read the “QRVote Ballots” before deployment is imperative. Regrettably, this crucial step was apparently omitted during the recent L&A test. The ROV seemingly confined its testing only to the printed list of voters’ selections and failed to process the “QRVote Ballots” through the tabulators.

During the L&A test, the Alameda County Republican Party representatives followed the instructions of your office and made a formal request to the designated representative of the Registrar of Voters to relay the request to the ROV for the testing of “QRVote Ballots” through the tabulator. The observers expected the County representative would communicate this request directly to the ROV before the L&A test’s conclusion. However, that did not occur, and the County representative indicated that all questions must be submitted in writing, with the promise of responses via email. As of the date of my letter, the ROV has not responded to this request.

We are profoundly concerned by the lack of transparency and non-compliance with the Election Code, which is intended to safeguard the integrity of our democratic processes. The failure to adhere to Election Code Section 15000 raises significant questions about the accuracy and reliability of the forthcoming election results, and the lack of responsiveness by the ROV reinforces a lack of trust by voters. At a time when voter confidence in the administration of elections is at an all-time low, it is most important than ever that elections offices operate with maximum transparency and responsiveness to legitimate citizen concerns and welcome the participation of volunteers such as those from the Alameda County Republican Party. When observers and/or representatives are welcomed into an elections office, shown the procedures and activities, the numerous security protocols and layers of safeguards, and have their questions and concerns addressed, those observers and/or representatives can be ambassadors to the public that they have confidence in the administration of the election. The contrary is also true – when the minimal amount of participation is permitted by an elections office, when observers and/or representatives are treated as a nuisance or worse, when questions are not answered, when it appears that only some procedures are followed or only partially, distrust is sown.

In view of the aforementioned circumstances, I respectfully request that the Alameda County Registrar of Voters take immediate measures to rectify this situation, which requires two responses:

First, the Alameda County Republican Party volunteers are entitled to immediate responses to their questions regarding the L&A testing conducted on October 26. If the tabulators for the “QRVote Ballots” were not in fact tested, they must be immediately. Notify the representatives who attended the October 26 testing of the date, time, and place for this test, and they will attend.

Second, on a going forward basis, it is expected that the Alameda County Registrar of Voters will follow all the sections of the Elections Code, the Regulations of the Secretary of State, and the County’s own election administration procedures with respect to involvement of political party representatives and carrying out the mandated duties of the elections office. Specifically, for activities in which representatives have a statutory right to be present in person, they should be able to both SEE and HEAR the activities being conducted and should have someone on staff designated to respond to their questions during the activity, to the extent that answers are known on the spot. Of

course, if a question is asked for which the answer is not known, follow-up by phone or email within a reasonable period of time is welcome and acceptable.

We firmly believe that our collective efforts to ensure compliance with the law will safeguard the credibility of the election process and uphold the fundamental principles of our democracy – and will go a long way to restoring voter confidence in the administration of elections in Alameda County.

Your immediate attention to this matter is greatly appreciated, and we eagerly await your prompt response.

Sincerely,



Ashlee Titus

CC: Cynthia.Cornejo@acgov.org
Dyanra.Gullati@acgov.org

**ATTACHMENT F – MR. DUPUIS’S RESPONSE TO QUESTIONS
GATHERED AT VP HAUBERT’S TOWNHALL**

Comments	Question	RCV Response	Recall Line Item# from Original Spreadsheet
Regarding counterfeited ballots not being on correct paper – the SOB is making 100 ballots available to EVERYONE... It really puts out your ballots and envelopes on your own. This will be a nightmare.			6
The Signature Verification process was very deficient, with poll workers quickly passing signatures that did not match at all. Arizona has 2 levels of verification while RCV only had one and was overwhelmed by the number of ballots. This is a key piece of voter integrity and confidence and needs immediate attention.	What do you suggest will remedy this problem?	By law, signatures are not to be verified at voting locations.	10
	Was the Registrar invited to this Townhall?	Yes.	11
SOBFF - that it remains about ballots are available near state seats. Go online and print out your ballot. Was supposed to be for disabled voters - now available for everyone.			12
California Elections Code sec. 15006(a) states, "Each qualified political party may employ, and may have present at the central counting place or places, not more than two representatives to direct and oversee the preparation and operation of the counting devices, their programming and testing, and have the representatives in attendance in any or all phases of the election." Other counties have a system set up to comply. Alameda County fails to comply.	When and how will it comply?	The CA Elections Code Section 15006(a) addresses the options for "Each qualified political party." The section is not making suggestions or directing the Registrar of Voters to take action.	13
The VBall and Voter's Choice Act has apparently as noted by the speaker who created a list lawsuit, increased voter rates, and apparently much less transparent, than year's ago.	Why not go back to the 'old' precinct, same day election day, fast counting, publishing of results very quickly, after by the evening or E.D.	Some Counties provide voters 11-day no vote or person including Election Day, and provides more options for voters to vote. Under VCA, in-person votes are still primarily being cast by voters on the Friday before Election Day and on Election Day. With VCA, a voter is not limited to voting at their assigned voting location, they can go to any Vote Center in the County to cast their ballot. Under Election night results updates are still released throughout night until the final unofficial updates of the evening is released. Election results updates are provided throughout the canvass period of the Election Cycle.	14
	Is the RCV planning on doing anything differently in March 2024 primary?	Need more specifics to be able to answer the question.	16
Procedures that are word-of-mouth are no better than FOXLORE.	Specifically, what will they do differently?	Need more specifics to be able to answer the question.	16
	When will we see their updated Election Administration Plan?	RCV is following the Secretary of State's timeline for publishing the updated Election Administration Plan (EAP) under Voter's Choice Act (VCA). The updated EAP will be released in August 2023. Please visit the VCA page on the RCV website for information regarding the EAP and timelines. Our website address is www.rcvca.org	16
	When will we see their written Procedures?	Unclear of what this question pertains to.	16
	If the county wants to return to voting on election day or paper ballots, what would be involved, and what might the costs be?	Going to a Voter's Choice Act County requires approval from the Secretary of State and the Board of Supervisors. The cost is not clear at this time.	15

<p>In SAC, we had over 1,000 + voters age 1-22</p>	<p>What about saying the voter roles of ineligible voters.</p>	<p>Alameda County Registrar of voters' voter information is part of a statewide database that is controlled by the Secretary of State (SOS). Again, the maintenance is performed through the ICS.</p>	<p>36</p>
<p>All 60% is a violation of HAVA. no ballot coming for the voter as ballots are sent to adjudication and the voter's not notified. not all ballots mailed accompanied by their proof of citizenship are voided. There are more violations that need to be addressed.</p>			<p>37</p>
<p>The Dominion tabulators do not mark or log the ballots, so the same batch of ballots can be counted repeatedly. The ballots need to be physically tagged at least to that there is not a recount of the same ballots as reflected in Atlanta's</p>			<p>38</p>
<p>Also, when we as observers found questionable signatures, we need a uniform way to "challenge" and the right to have that challenge decided - we were not afforded that right which we are entitled to under election code 15106 of the State of California</p>			<p>39</p>
<p>Not all votes count. Only verifiable legal votes from American Citizens that are registered to vote in that State, County, or District count. Citizens lack confidence that that's what's happening. For example, no one verifies citizenship or ID, only under penalty of perjury that what's on file at the DMV is yours. There's to much more. Can election systems be not well designed, lack accountability, and integrity.</p>			<p>39</p>
<p>I would like more discussion with the Board of Supervisors to make the necessary change in person.</p>	<p>What would you suggest to get rid of voter choice act?</p>	<p>Question is directed at the meeting host.</p>	<p>39</p>
<p>Please answer my question on if the Registrar or a representative was voting is too confusing and there are too many hands on those</p>			<p>39</p>
<p></p>	<p>Did the Registrar give a reason why he would not attend?</p>	<p>Yes. The Registrar had a prior commitment scheduled and was unable to attend the Town Hall.</p>	<p>39</p>
<p></p>	<p>Has the SAC and/or BOV received notice of two HAVA complaints from the SAC Office for Citizens' School 04 where tabulation errors were noted?</p>	<p>Part of question requires SAC Member responses. BOV needs more specific information to answer the question.</p>	<p>39</p>
<p></p>	<p>Also, what is being done about these very high error rates which I personally found with table on Feb. 6th?</p>	<p>Unclear if what this question pertains to.</p>	<p>39</p>
<p>The One Percent Manual Tally in Alameda County for the November 2022 election made the same mistakes with the ranked choice ballots that the machine tabulators made, which strongly suggests that the "ranked choice vote" tabulation problem were not merely a machine mistake, but instead was a fundamental failure of the County Registrar of Voters to maintain ranked choice ballots correctly, especially "suspended ballots." Yet Alameda County reported to the Secretary of State in its One Percent Manual Tally Report for November 2022: "No discrepancies found." (See: http://elections.cdn.us.ca.gov/manual-tally/2022-general/alameda.pdf)</p>	<p>Why didn't "die dog bark" with each and every one of the "suspended ballots" during the One Percent Manual Tally (including the six "suspended ballots" for the 2022 Oakland municipal race)?</p>	<p>The purpose of the 1% manual tally is to verify that the machine tabulation is correct. The reports used to verify the tabulation in the 1% Manual Tally are based off of the settings chosen at the time the election is configured. The manual tally did not find any discrepancies in the tabulation because of the way the election was configured.</p>	<p>39</p>
<p></p>	<p>Why did Alameda County file an incorrect report with the Secretary of State?</p>	<p>The purpose of the 1% manual tally is to verify that the machine tabulation is correct. The reports used to verify the tabulation in the 1% Manual Tally are based off of the settings chosen at the time the election is configured. The manual tally did not find any discrepancies in the tabulation because of the way the election was configured.</p>	<p>39</p>

	How and when will Alameda County correct its One Person Manual Tally report to the Secretary of State?	The purpose of the 1% manual tally is to verify that the machine tabulation is correct. The reports used to verify the tabulation in the 1% Manual Tally are based off of the settings chosen in the time the election is configured. The manual tally did not find any discrepancies in the tabulation because of the way the election was configured.	17
Thank you. --Dabbie Lailoy, Sonoma County GOP Executive Integrity Chair	Are you aware of any Election Integrity Groups who have observed at their local Post Offices to watch how they handle ballots, especially undeliverable ballots?	The Registrar of Voters is not aware of Election Integrity Groups observing at Post Offices.	18
It seems that many of the solutions are going through the back door because of dealing with the issue directly.	To improve integrity, is having a valid ID off the table?	Per the CA Secretary of State's website, "In most cases, a California voter is not required to show identification to a polling place worker before casting a ballot." "However, if you are voting for the first time either registering to vote by mail and did not provide your driver license number, California identification number or the last four digits of your social security number on your registration form, you may be asked to show a form of identification when you go to the polls."	19
The AC BOV should issue a "full disclosure" statement to all voters, including a very sizable freestanding poster at the poll. This should explain many issues including that ALL POWBAs and UOCAWA ballots are adjudicated by being manually re-made by both the Touchscreen and BOV devices onto the respective ballot paper in these machines. Furthermore, all voters should be made aware that there is "No Signature" verification on the Poll Pad at the vote center at the check-in table. Furthermore, the tabulating scanner at the BOV processing center do not read the race on the Touchscreen "signed" ballots. Only the QR is read by the scanner, not the race. There is no way for the voter to verify that the race which reflects the voter selections "actually" is reflected in the QR code. The BOV ballot QR code is double coded so unlike a permanent memo for example, the voter cannot hover over the QR to see what the code actually reflects. I have served as a Vote Center/Poll Captain/inspector for 18 years for AC BOV.			21
The DMV auto voter registration of non-citizens is troubling and only invites errors in legality of the registrations.	How can this be stopped?	Stopping the DMV auto voter registration is not within the authority of the Alameda County Registrar of Voters.	23
In San Francisco they invite the public right into the 1% Tally			23

<p>Elections Code sec. 15200(a) states in part, "The manual tally shall be a public process..." Alameda County uses 23 tables to conduct the One Percent Manual Tally in November 2022. Observers were kept far away from all 23 tables - and three tables were COGNITIVE from public view. Observers had no means of knowing which batch was being counted at which table, let alone see individual ballots.</p>	<p>How will Mr. Dupuis reform observer access for future One Percent Manual Tallies to ensure that it is a 'public process'?</p>	<p>Per CA Elections Code Section 16 The manual tally shall be a public process with the official conducting the election providing at least a five-day public notice of the time and place of the manual tally and of the time and place of the selection of the precinct, batches, or direct recording electronic voting machines subject to the public manual tally before conducting the selection and tally.</p> <p>Each Election Cycle, the Registrar of Voters follows the provisions in the above-mentioned Elections Code Section pertaining to public observation of the One Percent Tally.</p> <p>During the November 2022 Election Cycle, the date activities scheduled for the One Percent Tally were posted on the OC's website more than 5-days in advance. The process was available for observers to observe as outlined in the Elections Code</p>	<p>39</p>
<p>The volunteers were part of the community where the votes were cast.</p>			<p>39</p>
<p>Alison's question is very important to address.</p>			<p>39</p>
<p>One matter of serious concern to me is that the Alameda County vote-by-mail rejection rate was extraordinarily low. The rejection rate for CA as a whole in the 2022 June primary was 1.6%. In most counties, it ranged from 1% to 16% or so. In Alameda County it was 0.3%. In Alameda, a total of 23 1/2 tables were rejected, in Contra Costa, for comparison, 2,141 were rejected. I can't imagine this is because Alameda voters are that much more adept at filling out the ballots correctly, than those in Contra Costa. I suspect it is because somehow the ballots in Alameda were not scrutinized in the way they were in other counties.</p>			<p>39</p>
<p>That is alarming.</p>	<p>Are we saying that members of the public were not present or able to view voters' ballots?</p>	<p>Observer Guidelines do not require members of the public to be present to observe election processes.</p> <p>Immediately before proceeding to the election processing areas, each observer must check in at the front desk of the Registrar of Voters Office.</p>	<p>39</p>
	<p>What County did this happen in?</p>	<p> unsure of what this question pertains to.</p>	<p>39</p>
<p>The software of this tabulation must be open source. There are too many ways to write in suspicious. For instance, the pre-scripted logic in Accuracy requires a very small and controlled creation of ballots. If it also done on a pre-election day date it is easy to write in logic that does one thing prior to a date and another on and after that date. The source code must be available. Ballot counting is not rocket science, it is COUNTING.</p>			<p>39</p>
<p>Note that election integrity efforts from a bunch of other counties are in attendance and very appreciative of Supervisor resident's efforts. They got problems too!</p>			<p>40</p>
<p>Predict voting is opportunity for citizens to be engaged in this beautiful right.</p>			<p>41</p>
<p>Has anything been done about cleaning up the voter rolls using Dr. Fried's approach?</p>		<p> unsure of what this question is pertaining to.</p>	<p>41</p>
<p>Predict voting is less expensive, more accurate, engaged the people in the process, and citizens are confident in the results.</p>			<p>41</p>
<p>Some really good questions here. Any way to get a list of them?</p>		<p>Question is directed at the meeting host.</p>	<p>44</p>

The Voters Choice Act choice not be reviewed. It's like a contract.			45
Other smaller counties with much much smaller budgets like Alameda County have ballot observation setups where there are "live" vote monitors showing each and every ballot being scanned with a "live" count update.	why does Alameda County RCV continue to keep observers 50+ feet away from the ballot processing?	The law provides election officials with some discretion in terms of how various observation laws are applied. Furthermore, vote a law is applied will vary from jurisdiction to jurisdiction for reasons including, but not limited to: - The size and configuration of the election's office. - The staffing levels that the county election official is able to afford. - The number of observers who are requesting access to a particular process. If the number of observers exceeds the capacity of the observer space, the Registrar of Voters will implement an observation schedule, allowing all observers an equal amount of observation time. We would like to give everyone an opportunity to observe.	46
voting privileges are opened in a closed room and not in all accessible to observers. Adjudication happens at a 10+ feet away from observers. You should be made aware of the USPS, DHS, and Fed's ballot shipments in the processing center. 38 Counties are under VCA			46
	Are we not able to vote in person?	Under VCA, Vote Centers provide access 15-days to vote in person including Election Day, and provides more options for access to vote. During an Election Cycle, voters can always vote in person, at the Registrar of Voters' Office, 15 days before the election and on Election Day.	47
	what is the resistance to eliminating the VCA?	Election is directed at the meeting point.	48
	what difference does it make how many counties have the VCA?	need more clarification.	48

ATTACHMENT F

SAN FRANCISCO COUNTY'S ROV VOTING SYSTEM CONFIGURATION

System Settings for Tallying Votes in Ranked-Choice Voting (RCV) Contests

RCV METHOD (IRV) – This setting determines the method applied for tabulating RCV votes. For this election, the setting is "Instant Runoff Voting," or IRV, which is a round-by-round elimination of candidates until one candidate vote obtains 50% +1 of the remaining votes.

EXCLUDE UNRESOLVED WRITE-INS (TRUE) – Write-in votes for unqualified write-in candidates are not included in the tallies and do not accumulate vote totals.

DECLARE WINNERS BY THRESHOLD (FALSE) – RCV calculations will continue until two candidates remain. The system is configured to not stop tallying when a candidate obtains a set number or percentage of votes (50%+1).

USES PRECINCTS (TRUE) – The system performs all calculations per precinct and allows for the reporting of results by each precinct separately.

PREVIOUS ROUNDS EVALUATION METHOD (NONE) – No automated resolution method is applied to resolve ties when candidates receive equal numbers of votes. Ties are resolved using a manual process that randomly selects one candidate.

ELIMINATION TYPE (SINGLE) – The system will eliminate one candidate per round during the tallying process.

FIXED PRECISION DECIMALS (0) – This method is not applicable to San Francisco's RCV tallies since fixed precision decimals are associated with fractional calculations used in different RCV methods.

PERFORM ELIMINATION TRANSFER IN LAST ROUND (FALSE) – This option is relevant in fractional calculations which are not applied to San Francisco's RCV method.

SKIP OVERVOTED RANKINGS (FALSE) – This option allows the algorithm to skip over-voted rankings and proceed to the next ranking. The San Francisco RCV method "exhausts" ballots for a contest for any votes occurring after the over-voted ranking.

VOTES TO INCLUDE IN THRESHOLD CALCULATION (CONTINUING BALLOTS PER ROUND) – The RCV method calculates the 50%+1 majority of votes needed to win a contest in each round. The system will re-calculate the number of votes that represent a 50%+1 majority in each round by summing all remaining vote totals specific to each round.

USES FIRST ROUND SUSPENSION (FALSE) – If TRUE, this option adds one more round at the start of results tabulation where only 1st rankings are evaluated in the algorithm.

Campbell-Belton, Anika, CBS

From: James Sutton <jsutton@campaignlawyers.com>
Sent: Tuesday, November 28, 2023 8:53 AM
To: BOS District 4; Carson, Keith, Supv BOS Dist 5; Haubert, David, Supv BOS Dist 1; Clerk of the Board; Miley, Nate, Supv District 4; Márquez, Elisa, BOS Dist2; Tam, Lena, Supv BOS Dist 3; Supervisor Keith Carson
Cc: Lara, Raymond S., County Counsel; Dupuis, Tim, ITD-ROV
Subject: For today's Board of Supervisor meeting
Attachments: Letter to BOS re Recall Circulators.pdf

Please distribute to all Supervisors in connection with the Board's consideration of amendments to Charter section 62 at its meeting later this morning. Thank you.

James R. Sutton, Esq. |The Sutton Law Firm
150 Post Street, Suite 405, San Francisco, CA 94108
dir 415/732-4501 | fax 415/732-7701 | cell 415/359-7701
www.campaignlawyers.com | jsutton@campaignlawyers.com

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150 Post Street, Suite 405 ■ San Francisco, CA 94108
Tel: 415/732-7700 ■ Fax: 415/732-7701 ■ www.campaignlawyers.com

November 28, 2023

Nate Miley, President
Alameda County Board of Supervisors

RE: Signatures on Recall Petitions Circulated by Non-County Voters

Dear Supervisor Miley:

We represent Alameda County District Attorney Pamela Price, who, as you know, is the subject of an effort to recall her from office. We are writing about the provision in County law which requires the individuals who are circulating this recall petition to be registered County voters. This provision is contained in Charter section 62; as you also know, the Board of Supervisors is considering placing a measure on the March 2024 ballot which would effectively eliminate all provisions of section 62, including the circulator registration requirement.

Importantly, even if the Board places the proposed Charter amendment on the March 2024 ballot, and even if the voters enact the amendment, it will not take effect until approximately one month after the election.¹ Because the last day for the recall petitions against District Attorney Price to be submitted is March 5, 2024, and because the election over the Charter amendment will not occur until March 5, 2024, the current version of Charter section 62 will govern the process for verifying the signatures regardless of the outcome of the election. I.e., the County will be required to look at the current version of section 62 – including the requirement that circulators be registered County voters – when verifying whether the proponents have gathered the requisite number of signatures.

The County does not have the authority to ignore this law unless instructed to do so by a court. The California Constitution is clear that local agencies, including the Alameda County Registrar of Voters' office, must follow all laws unless and until the law has been invalidated by an appellate court:

“An administrative agency . . . has no power . . . to declare a statute unenforceable, or to refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.”
(Article III, section 3.5.)

¹See California Government Code sections 23712 and 23713 regarding the effective date of Charter amendment ballot measures.

Supervisor Nate Miley
November 28, 2023
Page 2

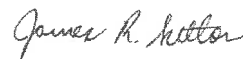
The Registrar's office, the Board of Supervisors and all other County officials therefore have a duty to enforce Charter section 62 and to invalidate any and all signatures on the recall petition against District Attorney Price which were gathered by individuals who are not registered to vote in Alameda County, regardless of whether the Board decides to place the Charter amendment on the ballot, and regardless of whether the proposal passes.

We also want to point out that the County may have valid policy justifications for requiring the individuals who gather signatures on recall petitions to be County voters. A recall is an extreme action about unseating a democratically elected representative from office. Charter section 62 recognizes that it is not appropriate to allow individuals who live outside of the County to attempt to overturn the will of Alameda County voters, or to allow special interests from outside the County to interfere with a purely local election. In enacting this Charter provision, the County has evidently decided that every stage of the recall – from signature gathering, to petition signing, to voting – must be done by Alameda County voters.

In sum, because the County must follow County law until instructed by an appellate court to do otherwise, the Registrar's office must reject any and all recall petitions which were circulated by anyone other than County voters, regardless of the proposed amendment to section 62. We therefore call on the Board of Supervisor to make certain that the Registrar follows current County law when and if it is called upon to verify the signatures on the recall petition. If the Registrar's office does otherwise, District Attorney Price may be compelled to pursue all legal options to enforce this County law.

Thank you for your consideration of this issue.

Sincerely,



James R. Sutton

cc: Supervisor Keith Carson
Supervisor David Haubert
Supervisor Elisa Marquez
Supervisor Lena Tam
District Attorney Pamela Price
Timothy Dupuis, Registrar of Voters
Raymond Lara, Esq., Deputy County Counsel

JRS/lc
#2277.01

Campbell-Belton, Anika, CBS

From: R Brandt <raquelbrandt@live.com>
Sent: Monday, November 27, 2023 1:32 PM
To: Clerk of the Board
Subject: Agenda item 26, for NOS Meeting 11/28/23

Dear Supervisors

I am writing today to ask the Board of Supervisors each to vote no on Agenda item 26 that will create the ordinance to change the Alameda County Charter in the way recalls are handled.

Should this pass, the actions the Board of Supervisors has taken will reflect they are working to eliminate our rights and confuse the public.

Additionally your very council who is advising you will benefit from changing the Alameda County Charter per the ordinance in the way that it is currently written.

The Board of Supervisors is rushing this through without the proper avenues of checks and balances. It is a clear and obvious attack on election integrity as these changes are occurring on the MIDDLE of the Recall DA Pamela Price Campaign and should be methodically reviewed by the very election integrity commission it created for checks and balances exactly like the item number 26 - the ordinance to change the way recall elections are handled.

I ask the Board of Supervisors to please carefully consider it's actions on this matter and please vote no on item 26.

Thank you,
Raquel Brandt

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Campbell-Belton, Anika, CBS

From: Zak Sam <zaksam96@yahoo.com>
Sent: Sunday, December 10, 2023 8:16 AM
To: Clerk of the Board
Subject: VOTE YES TO PROPOSED AMENDMENT TO COUNTY CHARTER PROVISIONS REGARDING RECALL OF COUNTY OFFICERS

Hello, my name is Zak Samani and I'm a registered voter in Alameda County in District 5. I am writing this to urge you to PLEASE VOTE YES TO PROPOSED AMENDMENT TO COUNTY CHARTER PROVISIONS REGARDING RECALL OF COUNTY OFFICERS. We need this on the ballot, it will help us have functional recall elections, and voters should have the right to approve this. Please re-affirm our democracy by allowing the voters to change Section 62 of the County Charter in the March 2024 primary. VOTE YES TO PROPOSED AMENDMENT TO COUNTY CHARTER PROVISIONS REGARDING RECALL OF COUNTY OFFICERS for March 2024 ballot. Thank you.

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Campbell-Belton, Anika, CBS

From: sue williams <s_williams1998@yahoo.com>
Sent: Sunday, December 10, 2023 11:43 AM
To: Clerk of the Board
Subject: Ordinance to change Section 62 of County Charter

Please vote NO on above ordinance!!!My name is Susan Williams, 5700 Balmoral Drove

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Campbell-Belton, Anika, CBS

From: Rubina Karnad <rubinakarnad.1@icloud.com>
Sent: Sunday, December 10, 2023 8:04 AM
To: Clerk of the Board
Subject: Vote No on changing section 62 on Alameda County Charter

Please Vote no on changing section 62 of the county charter . This is a very democratic tool for people to hold both elected and appointment officials accountable for the work. This is our right. We can not accept any less and have BOS to decide on this. We have had experience that have been detrimental to us the people of Oakland by BOS voted decisions. Most often those decisions have been based on personal favoritism which equals corruption. We need accountability. We need to have the ability to exercise our rights.

Rubina Karnad

Sent from my iPhone

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Campbell-Belton, Anika, CBS

From: marlese ramirez - carroll <yummynutrition@yahoo.com>
Sent: Sunday, December 10, 2023 9:19 PM
To: Clerk of the Board
Subject: Vote NO- proposed change on section 62 of the Charter

Dear Board of Supervisors:

- The BOS must keep people's right to hold both elected and appointed officials accountable via recall.
- Voters should choose the replacement when an official is recalled *not* the Supervisors making an appointment of their choice.
- It makes it harder and more expensive to initiate and complete a recall of elected officials.
- Don't default to the state's procedures; we need to keep local laws under local control
- Our county charter can be brought into compliance with the California Constitution through the judicial system.
- The county counsel and county administrator are two of the most powerful and highest paid appointed officials in the County. Their proposal is a direct conflict of interest given it would eliminate voters' ability to recall them.

Thank you sincerely
Marlese Carroll
2226 Fernwood Ct
Hayward CA 94541

I am out on PTO - Marlese

The great Voltaire wrote 'show me whom you cannot criticize, and I will show you who rules you.'

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BALLOT MEASURE SUBMITTAL FORM

Official Use Only: Date Stamp
RECEIVED
 Alameda County
 DEC 06 2023
 Reg. of Voters

All fields with an * are required.

BALLOT MEASURE QUESTION

Jurisdiction Name*: County of Alameda

Election Date*: March 5, 2024

Note: The information as it appears within the text box will be printed on the ballot and voter guide.

Insert ballot question text here*:

CHARTER AMENDMENT - ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers"?	YES	6 10 9 12 13 6 2
	NO	

TYPE OF MEASURE*

PERCENTAGE NEEDED TO PASS*

- Regular Measure Parcel Tax 50% + 1 66.6667% 2/3
 Bond Measure Charter Amendment Other: Click or tap here to enter text.

FULL-TEXT OPTION*

Full Text to be printed in the Voter Information Pamphlet:

- YES (note: must provide an MS Word file)
 NO - Do not print, but it's accessible at: Click or tap here to enter text.

AUTHORIZED REPRESENTATIVE/CONTACT PERSON*

(office use)

Print Name: Anika Campbell-Belton

Signature:

Phone #: 510-272-3898

Email: anika.campbell-belton@acgov.org

CONTACT INFORMATION

(public use)

Phone #: Click or tap here to enter text.

Email: Click or tap here to enter text.

Website: Click or tap here to enter text.

All fields with an * are required.

Rev. 8/2022

RECEIVED
Alameda County

DEC 06 2023

Reg. of Voters

Full text of County of Alameda Measure ____

MEASURE _____

This Measure ____ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

RECEIVED
Alameda County

DEC 06 2023

Reg. of Voters

ALAMEDA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 11/28/2023

Approved as Recommended Other

Item A read title, waived the reading of the Ordinance in its entirety and adopted Ordinance O-2023-58; Item B approved as recommended

Unanimous Tam: Haubert: Miley: Márquez: Carson: -

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

Ordinance: O-2023-58
Resolution: R-2023-619

Documents to be signed by Agency/Purchasing Agent:

File No. 31104
Item No. 26

Copies sent to:

Ellen Duenas, Qic 20104 and
ROV (hand delivered on 12/4/23)

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

ATTEST:
Clerk of the Board
Board of Supervisors

By: R. Bailey
Deputy



OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296

Telephone (510) 272-6700

Facsimile (510) 272-5020

DONNA R. ZIEGLER
COUNTY COUNSEL

Agenda # 26 November 14, 2023

November 9, 2023

RECEIVED
Alameda County

DEC 06 2023

Reg. of Voters

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: ADOPT AN ORDINANCE AND RESOLUTION TO AMEND SECTION 62 OF THE COUNTY OF ALAMEDA CHARTER AND CALL A SPECIAL ELECTION TO BE CONSOLIDATED WITH THE MARCH 5, 2024, PRIMARY ELECTION, FOR THE PURPOSES OF SUBMITTING THE PROPOSED AMENDMENT TO THE VOTERS FOR APPROVAL

Dear Board Members:

RECOMMENDATION:

- A. Adopt an Ordinance calling for a special election to be consolidated with the statewide election to be held on March 5, 2024, for the purpose of submitting a measure to the voters of the County of Alameda ("County") on the question of whether the Charter of the County should be amended by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."
- B. Adopt a resolution and order calling for and giving notice of a special election to be consolidated with the statewide election to be held on March 5, 2024, to amend County of Alameda Charter, Section 62, by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."

SUMMARY:

Section 23720 of the Government Code provides that the County Charter may be amended by a proposal submitted either by the governing body or by a petition signed by 10% of the qualified electorate within the County. The proposed ordinance and resolution would call for a special election to be held on March 5, 2024, consolidated with the

statewide Primary Election, for the purpose of submitting to the voters of the County the question of whether the County Charter should be amended.

DISCUSSION:

The County of Alameda is a charter county. Generally, a county's charter supersedes state law, and a county is bound to follow its charter where the two conflict. The voters of a charter county must authorize any amendment to a county charter. A Board of Supervisors lacks the authority to amend a charter absent voter approval. This action seeks to perfect amendments to Section 62 of the County of Alameda Charter by authorizing an election to obtain voter approval of proposed amendments, for the reasons explained in detail below.

Section 62 of the County's Charter prescribes the procedure to recall a County officer and applies to both "elective *and appointive*" officers. A thorough review of Section 62 of the Charter reveals that Section 62, for all intents and purposes, is out of date. It is out of alignment with the recall procedures found in state law and found in all other charter counties in the state. Additionally, the County of Alameda Charter allows for the removal of specified appointed County officers, unlike most other counties in California. And, significantly, due to the growth of the County over many decades, and the changes to election law, including changes to the manner in which elections are conducted, it is likely unfeasible to carry out a recall election in the manner outlined in the charter.

In order to provide the public and the Registrar of Voters with clear and achievable standards for conducting a recall, and to exclude specified appointed County officers from being subject to recall, it is recommended that your Board: 1) adopt an ordinance to amend the Charter by replacing the County's current recall procedures with the recall procedures prescribed in state law; 2) not include appointed County officers in the scope of officers who can be recalled using the State law procedures; and 3) call for the necessary special election to perfect the amendments. Amending Section 62 to adopt state law procedures for recalling county officers will bring clarity to all regarding the procedures, timing, and rules that will apply to recalls of County of Alameda officers. This change will codify a transparent recall process, and benefit the public generally, proponents of any recall, a target of a recall, and opponents of a recall, by substantially reducing the likelihood of costly litigation that could arise due to the current outdated standards.

PROBLEMS WITH SECTION 62 OF THE CHARTER:

Unconstitutional Provisions. Courts have held that *at least two* provisions of Section 62 are unconstitutional when applied to other types of elections. These rulings create uncertainty as to whether these provisions should, or can, be followed when conducting a recall election.

- Section 62 requires petition circulators to be registered voters of the County. The U.S. Supreme Court has held that a similar requirement for circulating initiative petitions was unconstitutional. State law requires only that a petition circulator be 18 years of age or older. The proposed amendment to follow state law would substantially lessen the risk that any recall election would be subject to legal challenge on the grounds that the procedures followed were unconstitutional.
- Section 62 requires that “no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled” This language was also held to be unconstitutional. In striking the language, the court allowed voters who skipped the recall question to vote on a candidate. Adopting state law eliminates the risk that the form of ballot prescribed by Section 62 would subject a recall election to legal challenge as unconstitutional. Under state law, the question of the recall is presented to the voters without any candidates appearing on the ballot. If a majority of voters vote for the recall, the official is recalled, and a vacancy is created. Candidates need not mount a campaign without knowing whether the official has been recalled.

Missing Procedures. Section 62 is silent on key procedures for a recall. A recall generally has three broad stages: (1) the time before circulating a petition; (2) the gathering and verification of the signatures; and (3) the recall election (if enough valid signatures are gathered). Section 62 is completely silent on the pre-circulation procedures.

- The pre-circulation procedures in state law provide important transparency measures as a practical matter. They provide notice to the public, identify the target of the recall, allow the target to answer the petition, give the elections official the opportunity to vet the form of the petition, and allow the public time to challenge the form and content of the petition. These steps and this level of transparency may serve to reduce the likelihood of post-election legal challenges. State law fills in these pieces that are missing from the Charter and provides consistent practices to follow.
- Section 62 has none of these pre-circulation procedures. It starts with a “petition demanding the election or appointment of a successor to the person sought to be recalled shall be filed with the County Clerk [the Registrar of Voters], which petition shall be signed by [the required number of electors].” In other words, Section 62 begins at the verification stage. There is no notice to the public or the target of the recall, no service of notice, no answer by the recall target, no vetting of the proposed petition by the elections official, no publication, and no prescribed opportunity or timeline to challenge the proposed petition. This means there are no

prescribed safeguards and checks and balances that may resolve defects in the process *before* an election has occurred.

- The proposed amendment to adopt state law ensures that the rules and procedures for all stages of the recall may be known to (1) the public, (2) proponents of any recall, (3) the target of any recall, and (4) opponents of a recall. State law increases transparency by ensuring all relevant stakeholders know that a recall effort is underway.

Unfeasibility. Section 62's recall procedures may not be feasible because election law has evolved over the many decades since Section 62 was adopted.

- Section 62 requires that nominees to replace a recalled official be placed on the same ballot as the recall and cites to "Section 1188 of the Political Code" to define the process for nominees to qualify for the ballot. But Section 1188 is a state law that no longer exists. This leaves a gap in the recall procedures and no direction for qualifying nominees. State law does not allow nominees for local offices to be placed on the same ballot as the recall election. Instead, if the recall passes, it creates a vacancy for that office. The vacancy may be filled by the rules governing the local jurisdiction. Adopting state law will provide procedural clarity, transparency for all, and close the gap.
- Section 62 specifies a turnaround time for the Registrar of Voters to verify petition signatures that is impractical and likely unattainable for a jurisdiction that, in the decades following Section 62's adoption, has grown to the size of Alameda County today—approximately 1.65 million people. Section 62 could lead to proponents of a recall gathering tens of thousands of signatures, possibly over 100,000, to qualify a recall for the ballot. But it only allows the elections official 10 days to verify sufficient signatures. The elections official is highly unlikely to verify the signatures needed within the 10-day deadline. The failure to verify signatures timely could lead to costly litigation. State law allows 30 days. Adopting state law's longer timeframe may avoid costly pre- or post-election litigation because it provides the Registrar of Voters more time to complete the verification process.
- Section 62 requires the election to take place within 35 to 40 days of the Board of Supervisors calling the election. As a practical matter, it is likely not possible to prepare, print, translate, and mail ballots to the over 900,000 registered voters of the County within 35-40 days, while at the same time hiring and training staff, and standing up vote centers for in person voting. The quick turnaround may also conflict with the timelines mandated by the Elections Code for such things as mailing and sending the voter information guide and overseas and military ballots, election requirements that the

Registrar of Voters currently follows. Adopting state law would provide the Registrar of Voters not less than 88 days and in certain instances as many as 180 days to conduct the election. Adopting the state law timelines provides a more reasonable and doable timeframe to ensure that any recall election could be executed within the timelines provided by law and substantially reduces the risk of litigation over unmet timelines.

- Adopting state law will automatically conform the recall procedures and timelines with those of the Elections Code (and of other counties, see below). Moreover, as the California Legislature updates and amends state law, those updates and amendments will automatically apply in Alameda County. In other words, by incorporating state law, any future changes will be applicable to County recalls, and reduce the potential for costly Charter amendment updates and reduce the risk of the Charter, again, falling out of date with the times and growth of the County.

Other Charter Counties. There are 14 charter counties in California. Three of these counties' charters do not include recall provisions, which means state law automatically governs recalls in those counties. The remainder refer to and incorporate state law to govern their recalls. The County of Alameda is the only charter county with recall provisions that completely deviate from (and are at odds with) the state law and current constitutional law. Adopting this amendment will align the County of Alameda with all other charter counties and non-charter counties in the state regarding the key steps for conducting a recall election.

Other Counties. State law does not include county appointive/appointed¹ officers in the scope of those who are subject to recall. They are eligible for recall in the County of Alameda solely because of Charter Section 62. Because the Board of Supervisors is able to remove County appointed officers without the need of a costly election, it is reasonable not to make those officers subject to recall. This would align with most if not all general law counties in California and most charter counties.

FINANCING:

The net County cost for placing the measure on the ballot is not known at this time, and will be determined, in part, upon any future jurisdictional consolidation. No additional appropriations are required, and we anticipate funds will be available in the FY 2023-24 Approved Budget to cover the costs resulting from the recommendation.

¹ We use the terms "appointive" and "appointed" interchangeably in reference to amending Charter Section 62, as we understand them to have the same meaning when using "appointed" in place of "appointive" in the proposed amendment to Section 62. The same applies to "elected" in place of "elective" in reference to any proposed amendment to Charter 62 in this Board letter and in the Board letters presented to the Board of Supervisors in October of 2023 regarding amending Section 62.)

VISION 2026 GOAL:

The proposed Charter amendment supports the goal of Accessible Infrastructure by updating applicable recall procedures to modern day standards. It eliminates decades old procedures that, 1) do not integrate well with the way elections are conducted today, and 2) that are a detriment to ensuring that lawful, competent, and timely recalls may be conducted.

CONCLUSION:

County of Alameda Charter Section 62 is out of date. Adopting the recommendations in *this letter* will allow a Charter amendment to be placed on the ballot that aligns the County's recall procedures with California state law procedures *and* no longer allow County of Alameda appointed officers to be recalled.

Very truly yours,

A handwritten signature in black ink that reads "Donna R. Ziegler". The signature is written in a cursive style with a large initial "D".

Donna R. Ziegler
County Counsel

cc: County Administrator
Registrar of Voters

RECEIVED
Alameda County

DEC 06 2023

Reg. of Voters

ORDINANCE NO. 2023-58

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I – Call of the Election and Purpose

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda ("Registrar of Voters") is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

SECTION II – Form of Measure

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT -- ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers"?	YES
	NO

A copy of the full text of County of Alameda Measure ____ is attached hereto and incorporated herein.

SECTION III

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this 28 day of November 2023, by the following called vote:

AYES: Supervisors Carson, Marquez & Tam - 3

NOES: Supervisor Haubert & President Miley - 2

EXCUSED: None

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name RAY LARA

Full text of County of Alameda Measure __

MEASURE _____

This Measure ___ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

DEC 06 2023

RESOLUTION NO. R-2023- 619

Reg. of Voters

A RESOLUTION AND ORDER OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING AN ORDINANCE AND CALLING FOR AND GIVING NOTICE OF A SPECIAL ELECTION AND PLACING A MEASURE ON THE BALLOT TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF ALAMEDA COUNTY TO AMEND COUNTY CHARTER SECTION 62 GOVERNING RECALL OF COUNTY OFFICERS; AND CONSOLIDATING THE ELECTION WITH OTHER ELECTIONS ON MARCH 5, 2024; FIXING THE DATE AND MANNER OF THE ELECTION AND THE PROCEDURE FOR VOTING THEREIN

WHEREAS, the County of Alameda ("County") is a charter county;

WHEREAS, California State Constitution, Article XI, Section 4, paragraph (c) allows a county charter to provide for the election and removal of elected and appointed County officers;

WHEREAS, Section 62 of the County Charter governs the recall of County officers;

WHEREAS, certain provisions of Section 62 of the County Charter are outdated, reference state law provisions that are no longer in effect, have been declared unconstitutional in other contexts, are silent on several key procedures for recall as outlined in state law, and may not be feasible to execute;

WHEREAS, other charter counties throughout the state have adopted state law to apply to the recall of their county officers;

WHEREAS, the Board of Supervisors ("Board") cannot change or amend the County Charter without voter approval;

WHEREAS, the Board has determined that it is in the County's best interest to adopt state law to govern the recall of County elected officers and to no longer subject appointed officers to recall;

WHEREAS, adopting state law will provide greater transparency regarding applicable recall procedures for the public generally, proponents of any recall, opponents of any recall, and any target of a recall;

WHEREAS, adopting state law will align the County's recall procedures with the other counties in California and create achievable standards for conducting recalls;

NOW, THEREFORE, THIS BOARD OF SUPERVISORS HEREBY RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Call of the Election and Purpose. A special election shall be held and the same is hereby called and ordered to be held throughout the County on the 5th day of March 2024, for the purpose of submitting to the voters of the County by ordinance the question of whether Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers shall be amended to adopt state law for the recall of County elected officers as provided in the attached ordinance, Attachment A (hereinafter "Ordinance").

Section 3. Ordinance. The attached Ordinance calling for the election to amend Section 62 of the County Charter is incorporated herein by reference.

Section 4. Ballot Measure. The Board orders that the measure to amend the County Charter by ordinance shall appear on the ballot substantially as follows:

BALLOT QUESTION: CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?

Yes ___ No ___

Section 5. Consolidation. The Board hereby submits the ballot question and the measure to the qualified electors of the County at the Election in the form set forth above. The special election called by this resolution shall be consolidated with the other elections conducted by the Registrar of Voters to be held in the County on March 5, 2024, and the ordinance amending the County Charter shall be placed on the same ballot as that provided for the primary election. The Consolidated Election shall be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. The votes received and canvassed, and the results ascertained and determined all in the same manner as the statewide election to be held on that date and in conformity with the election laws of the State of California. Only qualified electors of the County may vote on the measure.

Section 6. Election Procedure. All qualified voters residing in the County shall be permitted to vote in the election and in all particulars not recited in this resolution, the elections shall be held as nearly as practicable in conformity with the Elections Code of the State of California. The votes cast for and against the measure shall be separately counted and if the measure receives a majority of the votes cast by the qualified electors voting on the measure, the measure amending the County Charter shall be effective pursuant to sections 23713, 23714 and 23724 of the Government Code. Should another proposed measure with conflicting provisions appear on the same ballot, and each proposed measure receives a majority of votes, the proposed measure with the highest number of affirmative votes shall prevail, in conformity with section 9123 of the Elections Code.

Section 7. Authority. This resolution is adopted pursuant to sections 10403 and 12001 of the Elections Code and section 25201 of the Government Code. The Clerk of the Board of Supervisors is ordered to file a copy of this resolution with the Registrar of Voters at least eighty-eight (88) days prior to the day of the election. The Registrar of Voters is authorized, instructed, and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.

Section 8. The Clerk of the Board is directed to file a certified copy of this Resolution with the Registrar of Voters and the Registrar of Voters is authorized and directed to take all steps necessary to place the Ordinance on the ballot and to cause the Ordinance to be printed in the sample ballot. A copy of the Ordinance shall be made available to any voter upon request.

Section 9. Proclamation. Pursuant to section 12001 of the Elections Code, the Board hereby PROCLAIMS that a special Countywide election shall be held on Tuesday, March 5, 2024, to vote upon the Charter Amendment described in the Ordinance.

Section 10. This Resolution and Order relating to an election shall take effect immediately.

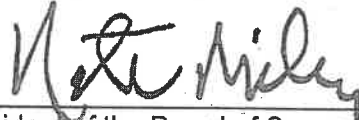
The foregoing Resolution and Order was passed and adopted by the Board of Supervisors of Alameda County, State of California on the 26th day of November, 2023 by the following vote:

AYES: Supervisors Carson, Marquez & Tam - 3

NOES: Supervisor Haubert & President Miley - 2

EXCUSED: None

ABSTAINED: None



President of the Board of Supervisors
County of Alameda, State of California


ATTEST:

ANIKA CAMPBELL-BELTON, Clerk
of the Board of Supervisors, County of Alameda

By: R. Bailey, Deputy

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 
Raymond Lara
Senior Deputy County Counsel

DEC 06 2023

Reg. of Voters

EXHIBIT A
ORDINANCE NO.

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I – Call of the Election and Purpose

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda ("Registrar of Voters") is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

SECTION II – Form of Measure

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?	YES
	NO

A copy of the full text of County of Alameda Measure ____ is attached hereto and incorporated herein.

SECTION III

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this ____ day of _____ 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

Full text of County of Alameda Measure __

MEASURE _____

This Measure ___ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

Perkins, Cheryl, CAO

From: Brandee Selck <brandeebee@gmail.com>
Sent: Friday, December 8, 2023 7:00 PM
To: Clerk of the Board
Cc: Brandee Selck
Subject: Public Comment Change to Section 62 of County Charter / Recall Procedures

This comment applies to the ordinance to change section 62 of the County Charter (recall procedures). This was agenda item #26 at the 11/28/23 Board of Supervisors meeting. I do not yet know the date or agenda item for it's third and final vote.

=====
Dear Board of Supervisors:

I'm writing to express my strong opposition to the ordinance to put changes to the section 62 of the County Charter to the voters on the March 2024 ballot.

When I initially read this ordinance, it sounded harmless enough. But as I did more research, I realized it strips the people of Alameda County of the ability to hold appointed officials accountable via recall *and* adds additional obstacles to recalling elected officials, including increasing the number of signatures required by 27%. And if an elected official is successfully recalled, the replacement would be chosen by the Board of Supervisors and not by the voters of Alameda County!

Yes, there are aspects of the Charter that are out of alignment with the state constitution. However, these can be remedied without removing citizens' rights. It is certainly interesting that the persons who proposed these changes, County Council Ziegler and County Admin Muranish, two of the most powerful and highly paid county officials, serve to benefit by protecting themselves from accountability to the citizens and ensure they will never face a recall. This is obviously a direct conflict of interest.

For almost 100 years, Alameda County citizens have had the right to recall both elected *and* appointed officials with a minimum of bureaucratic obstacles. Do your duty and protect the important democratic rights of the people by voting NO on this ordinance when it comes up for a third and final vote.

Sincerely,
Brandee Selck
Oakland, District 3 resident

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

CC: BOS, CAO, CBS

Perkins, Cheryl, CAO

From: Debbie Rush <debbierush@me.com>
Sent: Saturday, December 9, 2023 8:40 AM
To: Clerk of the Board
Subject: Ordinance to Change Section 62 of County Charter

Board of Supervisors,

I am requesting that you vote **NO** on the Ordinance to Change Section 62 of the County Charter.

You are doing this mid stream, during a recall campaign. This is disingenuous.

Debbie Rush
3924 Cerrito Avenue
Oakland, CA 94611

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

Perkins, Cheryl, CAO

From: Lula Flowers <lu.flow@yahoo.com>
Sent: Saturday, December 9, 2023 11:34 AM
To: Clerk of the Board
Subject: Please vote no

My name is Lula Flowers, a voter of Alameda County. I am addressing the Ordinance to Change Section 62 of the county's charter.

Please **VOTE NO** on changing Section 62 of the county charter.

Thank you.

LULA FLOWERS
2500 IVY DRIVE #204
OAKLAND CA 94606.

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

Perkins, Cheryl, CAO

From: karsten_hazelett <karsten_hazelett@comcast.net>
Sent: Saturday, December 9, 2023 11:41 AM
To: Clerk of the Board
Subject: Section 62 County Charter

My name is Karsten Hazelett, and I am a citizen of Oakland, CA.

I am against tampering with section 62 of Alameda County's Charter and view the two votes already cast very dimly. A yes vote to move the proposed changes to ballot has far reaching negative implications for our county governance and, more importantly, for the citizens of this county whose rights will be further curtailed if this measure gets approved. Accountability is a major feature of a healthy democracy. Do not think this will go unnoticed if a vote to place this on the ballot is approved. Don't let this be a stain on your political careers that will follow you wherever you go. I strongly recommend the board drop this attempt to suppress accountability to the citizens of Alameda county.

Sent from my Verizon, Samsung Galaxy smartphone

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

Perkins, Cheryl, CAO

From: MaryMack <mackrei@earthlink.net>
Sent: Saturday, December 9, 2023 2:50 PM
To: Clerk of the Board
Subject: Oppose Ordinance to Change Section 62 of the County Charter

It has come to my attention that there is a proposal to change Ordinance to Change Section 62 of the County Charter which will lessen the voters' rights to legally recall an elected official. I OPPOSE this change. Can you please stop focusing on reducing our rights and start prosecuting criminals and preventing crime? Too much time seems to be spent on unnecessary activities when we have a crime crisis in our county. The voters live here and pay enormous taxes. We have a right to recall whomever the majority of us collects signatures and votes to recall. Please do not pass the Ordinance to Change Section 62 of the County Charter. Mary Mack 1810 Casterline Road Oakland, CA

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

Perkins, Cheryl, CAO

From: Charles Klinedinst <charlieklinedinst@gmail.com>
Sent: Saturday, December 9, 2023 3:42 PM
To: Clerk of the Board
Subject: Oppose Recall Election Changes

Regarding Ordinance to Change Section 62 of the County Charter:

I am opposed to changing the recall procedures that would 1) increase the number of signatures required for recall and 2) that would allow the Alameda County Board of Supervisors to choose the replacement DA rather than the voters.

If you are intent on changing the rules, they should not affect the current Recall effort. That is gaming the system in the worst way possible. The changes can be made effective after the next election.

Respectfully,

Charles Klinedinst
14 Drake Lane
Oakland, CA 94611
510-612-5585

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Perkins, Cheryl, CAO

From: Mary Prisco <maryeprisco@mac.com>
Sent: Saturday, December 9, 2023 3:55 PM
To: Clerk of the Board
Subject: Oppose Ordinance to Change Section 62 of County Charter: Recall

Dear Board of Supervisors,

I appreciate all you do to govern Alameda County wisely. Thank you for your tireless work.

I feel strongly that changes to recall procedures should be NOT be made at this time - in the midst of a significant Alameda County District Attorney recall effort. A change at this time would give the appearance of interfering with that recall effort.

As to the changes proposed, I do not support requiring more signatures than are already required. Nor do I support allowing the Board of Supervisors to appoint a replacement. The voters should decide on the replacement at the ballot box.

Respectfully,

Mary E. Prisco
14 Drake Lane
Oakland CA 94611
510.703.1604

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