

ENDORSED  
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 CITY AND COUNTY OF SAN FRANCISCO

17 JOSEPH HOLDER, PETER CANTISANI,  
18 DOLORES HUERTA, JUDY BERTELSEN,  
CHARLES L. KRUGMAN, DAVID  
19 HAGUE GOGGIN, ALYCE E. FRET LAND,  
HELEN ACOSTA, MARY C. KENNEDY,  
20 CHARLES FOX, MARTY KRASNEY,  
MITCH CLOGG, BEN P. VAN METER,  
21 NANCY TILCOCK, CHARLES O.  
LOWERY, JR., LILLIAN RITT,  
22 HAROLD C. CASE, SUSAN J. CASE,  
KENNETH MARTIN STEVENSON,  
23 LARRY MARKS, HARRY JOHN RAPF,  
MERRILEE DAVIES, BERNICE M.  
24 KANDARIAN, VICTORIA POST, and  
VERONICA ELSEA, individuals,

25 Plaintiffs/Petitioners,

26 v.

27 *(see following page)*  
28

No. CPF 06-506171

Action Filed: March 21, 2006

Action Remanded to this Court:  
July 17, 2006

DECLARATION OF JUDY ALTER IN  
SUPPORT OF PETITIONERS' REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION FOR WRIT OF MANDATE  
AND PRELIMINARY INJUNCTION

Date: September 14, 2006  
Time: 9:30 a.m.  
Dep't: 302  
Judge: Hon. Ronald E. Quidachay

Trial Date: None Set

(Hon. Peter J. Busch recused)

1 BRUCE MCPHERSON, as California  
2 Secretary of State; ELAINE GINNOLD, as  
3 Elections Official of Alameda County;  
4 CANDACE J. GRUBBS, as Elections  
5 Official of Butte County; VICTOR E.  
6 SALAZAR, as Elections Official of Fresno  
7 County; ANN BARNETT, as Elections  
8 Official of Kern County; THERESA NAGEL,  
9 as Elections Official of Lassen County;  
10 CONNY McCORMACK, as Elections  
11 Official of Los Angeles County; MARSHA  
12 WHARFF, as Elections Official of  
13 Mendocino County; MAXINE MADISON, as  
14 Elections Official of Modoc County;  
15 KATHLEEN WILLIAMS, as Elections  
16 Official of Plumas County; MIKEL HASS, as  
17 Elections Official of San Diego County;  
18 DEBBIE HENCH, as Elections Official of  
19 San Joaquin County; COLLEEN BAKER, as  
20 Elections Official of Siskiyou County; and  
21 DOES 1 through 50,

22 Defendants/Respondents.

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

1 I, Judy Alter, declare as follows:

2 1. I am a Professor Emeritus at the University of California, Los Angeles. Except as  
3 otherwise indicated, this declaration is based on my personal knowledge, and if called as a  
4 witness, I could and would testify competently to the matters contained in it.

5 2. On June 21, 2006, I attended and observed an audit of a randomly selected  
6 Diebold Accuvote TSX ("AV-TSX") voting machine used in the June 6, 2006 primary  
7 election in Los Angeles County. The audit was conducted at the offices of the Registrar of  
8 Voters for Los Angeles County, Conny McCormack. I attended and observed the entire  
9 audit procedure, beginning at 1:30 p.m. and ending at approximately 5:30 p.m.

10 3. Attached to this declaration as Exhibit A is a true and correct copy of a two-page  
11 report entitled "Random Audit of Diebold TSX Voting Equipment June 2006 Primary  
12 Election" ("Audit Report"). This document shows in the lower left corner that it was  
13 produced by the Los Angeles County Registrar-Recorder/County Clerk. It was provided to  
14 me by the office of the Los Angeles County Registrar-Recorder/County Clerk in response to  
15 a California Public Records Act request that I had submitted to the office.


16 4. During the course of the audit procedure on June 21, 2006, I observed the attempt  
17 by County employees to hand count the paper record of the 63 electronic ballots cast on the  
18 AV-TSX machine that was supposed to be printed by the machine's Voter Verifiable Paper  
19 Audit Trail ("VVPAT") printer. The Audit Report states accurately, based on my own  
20 personal observation, that "there were several paper jams, i.e. over-prints on the TSX  
21 machine's paper roll." Ex. A p. 2. The Audit Report states that as a result of the paper jams,  
22 "portions of four of the 63 voted ballots were not legible on the VVPAT." This statement is  
23 accurate, except that I recall seeing that all or portions of five of the 63 voted ballots were  
24 not legible on the VVPAT.

25 5. Thus, based on my recollection, the VVPAT printer on this randomly-selected  
26 AV-TSX failed nearly eight percent of the time; by the Registrar's count, it failed more than  
27 six percent of the time. As a result of this failure, it was not possible to conduct a full hand-  
28 count comparison of a VVPAT paper record for every electronic ballots recorded on the AV-

1 TSX machine's memory card.

2 6. The VVPAT paper record is printed before the voter records his or her electronic  
 3 ballot choices. To be "voter verifiable," this printout must be legible. As the Registrar  
 4 observed, the illegibility of the ballots on the VVPAT was the result of paper jams that  
 5 resulted in over-printing. This necessarily means that the VVPAT printout of the ballots  
 6 affected by the printer jams was illegible not only by those conducting the audit but also by  
 7 the voters who cast the affected ballots. Thus, the VVPAT failed to function as intended,  
 8 and as required by law, in two respects. First, the VVPAT failed as a means for four or five  
 9 of the voters to verify the accuracy of the choices shown on the AV-TSX summary screen  
 10 prior to casting their electronic ballot. Second, the VVPAT failed between six and eight  
 11 percent of the time as a means to audit the accuracy of the electronic vote totals reported by  
 12 the machine.

13 I declare under penalty of perjury under the laws of the United States of America that  
 14 the foregoing is true and correct and that this declaration was executed on September 7,  
 15 2006, at Culver City, CA 90230

16  
 17   
 18 JUDY ALTER

19 W03 090706-165840001/Y07/1302445/v1

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# EXHIBIT A

## **Random Audit of Diebold TSX Voting Equipment June 2006 Primary Election**

As a means of demonstrating the accuracy of votes cast on the Diebold Accuvote TSX voting units used in Los Angeles County in conjunction with early voting for the June 6, 2006 Primary Election, the Registrar-Recorder/County Clerk (RR/CC) conducted a random audit of the TSX voting equipment. Although a number of political observers/voter activists were invited to participate in this random audit, only one, Judy Alter, attended. The audit commenced on June 21, 2006 at 1:30 p.m. and concluded at approximately 5:30 p.m. It took place at RR/CC headquarters in the 6<sup>th</sup> floor conference room.

After brief introductory remarks by RR/CC Conny McCormack, Ms. Alter was asked to select one TSX machine at random from a list of the 142 TSX machines used at the 17 early voting sites. The TSX machine she randomly selected was serial number 206818 which was used at the Culver City early voting site. Following this selection, Ms. Alter accompanied RR/CC staff to the 3<sup>rd</sup> floor Micro Tally System (MTS) room. Once inside the MTS room, the memory card (which was labeled 216), zero report and Voter Verified Paper Audit Trail (VVPAT) canister for this TSX were retrieved from a locked storage cabinet located inside the secure MTS room. The zero report for this machine was examined by Ms. Alter and RR/CC staff to verify that no votes had been cast prior to the commencement of early voting. The VVPAT canister label was also examined by Ms. Alter and RR/CC staff to verify that the paper trail had not been tampered with or disturbed.

Returning to the 6<sup>th</sup> floor conference room, the memory card was inserted into an AccuVote-TSX machine which was then turned on using the power switch on the equipment. Once the memory card was loaded, the election summary report was printed from the TSX machine. The summary report represents the TSX voting results for every contest and measure for the ballots cast using that TSX machine (machine 206818 with memory card 216 used at the Culver City site).

The randomly selected TSX machine had 63 ballots cast on it. One of the ballots on this machine was cast using the provisional voting process. Therefore, by law, this provisional ballot did not appear on the machine's summary report (provisional ballots are handled separately after researching the eligibility of the voter).

From the printout of the memory card's summary report, each contest containing votes was separated by cutting the paper report and stapling that section of the report to a blank tally sheet. This process was accomplished by two RR/CC employees. There were 51 votes cast for contests (out of 494 contests countywide) on the randomly selected TSX machine.

Another two RR/CC employees performed a manual count of the voting results displayed on the paper VVPAT of four contests: Governor DEM, Governor REP, Ballot Measures 81 and 82. One staff member read the votes for these contests from the VVPAT while the other recorded the results onto a tally sheet. The results of this examination are shown on the following page. Observer Judy Alter was in close proximity during the entire process and was encouraged to ask questions.

In the examination of the ballots cast as depicted on the VVPAT printer, it was noted that there were several paper jams, i.e. over-prints on the TSX machine's paper roll. As a result of these paper jams, portions of four of the 63 voted ballots were not legible on the VVPAT. To continue with the audit, ballot images from the GEMS 1.18.24 server were printed for all 63 ballots cast on this TSX machine. The four over-printed/jammed VVPAT records were able to be identified by ballot identification number. Then these vote results were compared with the results of the ballot images for those ballot identification numbers from the GEMS server. By comparing the legible records on the VVPAT, together with the stored ballot images for the four ballots which experienced paper jams on the VVPAT printer, an exact match of the paper and machine voting results was able to be achieved.

The results of the manual tally for four selected contests is provided below:

<b>Governor Dem.</b>		<b>Measure 81</b>	
Phil Angelides	24	Yes	36
Barbara Becnel	0	No	25
Joe Brouillette	0		
Jerald R Gerst	0	<b>Measure 82</b>	
Vibert Greene	0	Yes	22
F A Macaluso Jr	1	No	39
Michael Strimling	1		
Steve Westly	16		
<b>Governor Rep</b>			
Jeffrey R Burns	1		
Bill Chambers	1		
Robert C Newman II	1		
A Schwarzenegger	11		

**SUMMARY:** At the start of this audit process, the expectation was that there would be time during the afternoon of June 21, 2006 for all 51 contests that had been voted on the one randomly selected TSX machine to be manually counted for all 62 voters (63 minus one provisional ballot). However, primarily because of the complications as a result of the paper jams on the VVPAT as noted above, a period of approximately four hours was required to conclude the audit of the four contests cited above. This random audit demonstrated the difficulty of attempting to rely upon a VVPAT printer to generate a paper record that exactly matches the record of the internal audit of an electronic voting machine due to the expectation that any mechanical printer will likely experience a paper jam(s) which is exactly what occurred in this instance. At the conclusion of the day, it was agreed by all in attendance, including Ms. Alter, that the manual count of the VVPAT records, together with the ballot images for those ballots where VVPAT paper jams occurred, exactly matched the vote totals from the TSX machine for the four contests that were examined.