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June 13, 2018

BY FACSIMILE AND HAND DELIVERY

Tommy Gong
Registrar of Voters
County of San Luis Obispo
1055 Monterey Street, Room D-120
San Luis Obispo, CA 93408
805-781-1111 - Fax

Re: Fourth Supervisorial District Canvass -- IMMEDIATE ATTENTION

Dear Mr. Gong:

The undersigned represent Lynn Compton, candidate for re-election for the 4th Supervisorial District.

On Thursday, June 7, 2018, you advised Lynn Compton's representative, Stewart Jenkins, Esq., that a certain number of vote by mail (VBM) ballots received by your office lacked any voter signatures and some contained non-matching signatures. With respect to those, you indicated that the Elections Code 3019 deadline applicable to VBMs without signatures would apply to the processing of such ballots.

Yesterday, your office advised Lynn Compton's campaign that it had an updated list of some 74 ballots still outstanding in those categories. You also advised me today by telephone that although the deadline for submitting signatures under section 3019(f) was 5 pm today, you would continue to accept signature "cleanup" for VBM ballots with non-matching signatures beyond 5 pm today, and that you would accept such "cleanup" VBM ballots until the close of processing – a much later date.

There is no legal authority to do this. When section 3019(f) is viewed in the statutory scheme of Elections Code, Division 3, Chapter 1, the time frame and procedures for counting VBM ballots, including the "cleanup" of missing or defective signatures, are mandatory. (See § 3017(a) and (d); and § 3009.) Moreover, your approach would extend the election voting period in a discriminatory and unlawful manner in order to favor one candidate.

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Nothing in Elections Code sections 3000 et seq. provides any authority for allowing more latitude for “cleanup” of non-matching signatures than Elections Code 3019(f), which provides that a limited class of VBM ballots without any signatures can be “cleaned up.” That statute provides that this can be accomplished by notice to the voter, and the voter may correct by submitting a signature on an Unvoted Ballot Statement until 5 pm on the eighth day following the election. That deadline is today, Wednesday, June 13, 2018.

The only specific authority to accept and “cleanup” VBM ballots with signature problems is Section 3019 subdivision (f), and that authority extends only to VBMs received without *any* signatures. Instead, section subdivision (c)(2) controls here. That subdivision provides: “If upon conducting the comparison of signatures pursuant to subdivision (a) the elections official determines that **the signatures do not compare, the identification envelope shall not be opened and the ballot shall not be counted.**”

The recent San Francisco Superior Court decision in *LaFollette, et al. v. Padilla* (SF Sup.Ct. # CPF-17-515931, filed March 5, 2018), which addresses the issue of notice and curing of VBM ballots with non-matching signatures, does not provide any authority to exercise your discretion to allow a longer period to persons whose signatures do not match to cure defective signatures than to persons who fail to sign their VBM envelopes. Moreover, trial court decisions are binding only upon the parties involved in the litigation. (*Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596 [“[T]he doctrine of stare decisis applies only to decisions of appellate courts and **trial courts make no binding precedents**”] (emphasis added); *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 282 [“[T]rial courts make no binding precedents”]; see also Cal. Const. art. III § 3.5. [“An administrative agency ... has no power ... to declare a statute unenforceable, or 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”]; and see *Lockyer v. City & Cty. of San Francisco* (2004) 33 Cal. 4th 1055, 1086, 95 P.3d 459, 475 [“[A] local executive official, charged with a ministerial duty, generally lacks authority to determine that a statute is unconstitutional and on that basis refuse to apply the statute”].)

Finally, as you know, section 3000, which provides that division 3 of the Elections Code “shall be liberally construed in favor of the absent voter” does not allow for a non-statutory extension of the VBM ballot processing rules as you propose to do. Your proposed extension past the bounds of time mandated by statute subjects persons who purportedly voted into being manipulated by a losing campaign into confirming ballots which were not legitimate at the time they were delivered to the post office or the polling station.

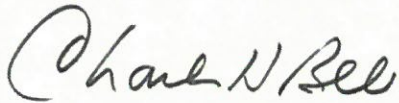
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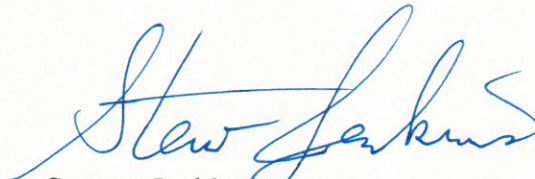
This is to demand that you (1) identify, segregate and do not process further any such VBMs with signatures that do not match the voter's signature on the voter's voter registration affidavit or vote-by-mail application that contain non-matching signatures in your possession **after** 5 pm close of business today; and (2) clarify whether you intend to process such ballots on or after 5 pm close of business today and your legal authority to do, so that we can litigate this matter without prejudice to those who properly voted in this election.

Please confirm immediately that you will comply with the demands set forth above.

Very truly yours,



Charles H. Bell, Jr.



Stewart Jenkins, Esq.

Cc: Rita Neal, County Counsel



**COUNTY OF SAN LUIS OBISPO
OFFICE OF THE CLERK-RECORDER**

Tommy Gong - County Clerk Recorder
Elaina Cano - Assistant County Clerk Recorder

June 13, 2018

Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Stewart Jenkins, Esq.
1336 Morro St.
San Luis Obispo, CA 93401

BY FACSIMILE AND MAIL

Dear Mr. Bell and Mr. Jenkins,

I am in receipt of your letter dated June 13, 2018.

Section 3019(f) specifically addresses the validation process and timing for *unsigned* ballots. Section 3019(a)-(e) addresses *signature comparison*; no time limitation is stated. Section 3000 mandates that the vote by mail provisions "shall be liberally construed in favor of the vote by mail voter".

The vote by mail counting procedures implemented by my office in no way favors one absentee voter group over another. I will continue to accept comparison signature verifications until all votes countywide are tallied.

Sincerely,

A handwritten signature in blue ink that reads "Tommy Gong".

Tommy Gong
County Clerk-Recorder

Cc: Rita Neal, County Counsel
Tave Holland, Esq.