



To: Honorable Bruce McPherson, California Secretary of State
Honorable Bill Lockyer, California Attorney General
Honorable Members of the Orange County Board Of Supervisors
Honorable Tony Rackauckas, Orange County District Attorney
The Orange County Grand Jury

From: The CUSD Recall Committee

Date: March 1, 2006

Re: Inspection of CUSD Recall Petitions Rejected By Orange County Registrar's Office

I. Introduction.

Subject to significant restrictions and limitations imposed by the Orange County Registrar's Office upon the CUSD Recall Committee, the CUSD Recall Committee has now completed its inspection of thousands of recall petition signatures rejected by the Registrar's Office. The purpose of the inspection was to ascertain which signatures were disqualified and the reasons therefore. As set forth below in detail, the results of our inspection are quite alarming. We have discovered compelling evidence that thousands of signatures were improperly rejected by the Orange County Registrar's Office, thereby disenfranchising thousands of registered voters. In order to protect the constitutional rights of these registered voters, and in order to preserve the public's confidence in our political process and electoral system, we believe the appropriate authorities must immediately commence a full and complete investigation into the CUSD Recall Petitions that were rejected in order to ascertain which signatures were disqualified, the reasons therefore (as stated by the Registrar), and whether those reasons were indeed valid.

II. Background.

On November 8, 2005 the CUSD Recall Committee was honored to submit to the Orange County Registrar's Office more than 177,000 recall petition signatures to recall all seven CUSD Trustees. In order to qualify for a special recall election, we needed to turn in 20,421 valid signatures for each of the seven trustees.

Under California law, specifically Election Code sections 11224 and 11225, the Registrar had thirty calendar days to review those petitions. Election Code section 11224 and 11225 both state very clearly the time period within which the Registrar was to complete the counting of petition signatures is simply "30 days." Government Code sections 6800 and 6805 make it clear that when a statute like Election Code sections 11224 and 11225 states something is to be done



within 30 days, that means calendar days, and nothing else. Notwithstanding this statutory requirement, shortly before the December 8, 2006 deadline, the Registrar informed us that the Registrar would not complete the review of the petitions within 30 calendar days, but instead would complete the review of the petitions within 30 “working days” (by December 23, 2006, instead of the December 8, 2006 statutory deadline).

Late in the evening on Thursday, December 22, 2005, 44 calendar days after the petitions were submitted, and two weeks after the statutory deadline of December 8, 2006, the Registrar’s Office confirmed they had decided not to certify the recall against any one of the seven trustees. Please take note of the timing of the Registrar’s announcement. In effect, the Registrar released the news on the Friday before the long Christmas weekend, thereby ensuring the announcement would receive minimal attention from the public and the press.

Immediately upon learning of the Registrar’s actions, the CUSD Recall Committee issued the official statement attached hereto as Exhibit A. That statement read in pertinent part as follows, “Recall Committee Members will be contacting the Registrar’s office to inspect the more than 175,000 signatures they submitted in order to ascertain which signatures were disqualified and the reasons therefore.”

III. The Inspection Process.

(a) Limitations and Restrictions Imposed By the Registrar’s Office. On January 3, 2006, Recall proponents commenced an inspection of the recall petitions and all memoranda prepared by the Registrar’s office in connection with the counting of the recall petitions to ascertain which petition signatures were disqualified and the reasons therefore. This inspection process is a statutory right provided under Government Code section 6253.5, which states simply that such an inspection shall commence not later than 21 days after certification of insufficiency.

(i) Registrar Failed to Provide Authority Permitting the Registrar to Take 30 “Working Days” to Review Petitions. A meeting was held at the Registrar’s Office on January 4, 2006, with Acting Registrar of Elections Neal Kelley and his assistant, Kay Cotton. At that meeting, Mr. Kelley unequivocally stated that the 21-day period set forth in Government Code section 6253.5 to commence the inspection of the recall petitions and counting memoranda was 21 “working days” -- just like the 30 “working days” the Registrar gave himself to count the petitions. When asked for the legal authority which governed the Registrar’s interpretation that these periods were both working days instead of calendar days, Mr. Kelley said he did not know, but that he was certain that these time periods were working days instead of calendar days. He said he would research the authority and provide it to us.

On January 13, 2006, the Michael Winsten, Chairman of the CUSD Recall Committee, sent a letter to Mr. Kelly and Ms. Cotton summarizing many of the issues and questions discussed at the January 4, 2006, and setting forth many items which the recall proponents wished to review in their inspection process. A copy of this letter is attached to this memo as Exhibit B. Among the requests discussed in our January 4, 2006, meeting and memorialized in Mr. Winsten’s January 13, 2006, letter to the Registrar, was a request for any legal authority setting a deadline



for the recall proponents to complete their inspection of the recall petitions. At our meeting, Mr. Kelly also said he did not know the answer to this question, but would have the question researched and an answer provided to us.

Mr. Kelley never responded to Mr. Winsten's letter directly. Instead, a response was provided on January 20, 2006, by the Office of the County Counsel, a copy of which is attached as Exhibit C. This response contradicted and mischaracterized much of the information provided to the recall proponents by Mr. Kelley on January 4, 2006.

(ii) Registrar Imposed An Arbitrary Deadline to Complete Inspection. The January 20, 2006 letter from County Counsel also set forth an arbitrary deadline that the inspection process had to be completed by February 6, 2006, a statement that was made without any citation to any legal authority, and which, in fact, has no basis in any statute or other provision of law. As a result of the imposition of this arbitrary deadline, the CUSD Recall Committee was prohibited from completing a full and complete inspection of all the petitions rejected by the Registrar.

(iii) Registrar Refused to Provide Access to Full Voter Registration Database Information. Among the requests made by the recall proponents in connection with the inspection process was access to the full voter registration electronic database maintained by the Registrar's office in the so-called "back office" – the same database the Registrar said his staff used to verify each of the petition signatures. Instead, the Registrar only permitted the proponents to utilize a database providing limited voter registration information. This limited information did not provide the recall proponents with enough information to verify the accuracy of all the categorical reasons used by the Registrar to disqualify thousands of recall petition signatures.

For example, the limited database did not allow the recall proponents to verify the Registrar's accuracy in rejecting and counting thousands of signatures disqualified for the following reasons: (1) signatures that did not match voter registration cards; (2) signatures from voters that "registered too late;" and (3) signatures that were disqualified for having a wrong address on the petition compared to the Registrar's database.

By denying the CUSD Recall Committee access to the same information that the Registrar used to make its final determinations, the Registrar was effectively telling the CUSD Recall Committee that "you cannot double check our work – you'll just have to trust us." This is not acceptable, especially given the findings of our inspection set forth below.

On January 4, 2006, Mr. Kelley advised the recall proponents that every effort was made to qualify every signature possible. The results of our inspection demonstrate this did not happen.

(b) Completion of the Inspection. Despite the limitations and restrictions imposed by the Registrar's Office, the CUSD Recall Committee sent teams of inspectors to the Registrar's Office to inspect the petitions signatures that had been rejected by the Registrar. The key focus of this inspection obviously was to ascertain which signatures the Registrar disqualified and to determine whether the Registrar had acted properly in rejecting those petitions. Our inspection



team members kept careful records of each individual signature reviewed, making note of the specific Petition Page number and Line number, the reason the Registrar rejected the particular signature, and the name or initials of the person(s) at the Registrar's office that purportedly reviewed and rejected the signature. We are prepared to make those detailed records available to the appropriate authorities upon request.

IV. The Official Results Provided by Registrar's Office.

The final official results certified by the Orange County Registrar are summarized in their "Petition Result Breakdown" for each of the CUSD Trustees. Copies of those Petition Result Breakdown forms are attached hereto as Exhibit D. The following information was taken from those forms:

| | Trustee | Total Signatures | Validated Signatures | Rejected Signatures | Total Shortfall (20,421 – # Validated) |
|----|----------------|-------------------------|-----------------------------|----------------------------|---|
| 1. | Casabianca | 25,493 | 17,870 | 7,623 | 2,551 |
| 2. | Benecke | 25,358 | 17,393 | 7,965 | 3,028 |
| 3. | Draper | 25,355 | 16,705 | 8,650 | 3,716 |
| 4. | Stiff | 25,312 | 16,327 | 8,985 | 4,094 |
| 5. | Darnold | 25,336 | 16,000 | 9,336 | 4,421 |
| 6. | Hennes | 25,349 | 15,955 | 9,394 | 4,466 |
| 7. | Kochendorfer* | 25,352 | * | * | * |

Certain important observations can be made from this information:

(a) Consistency of Total Signatures for Each Trustee. The total raw count turned in by the CUSD Recall Committee for each of the seven trustees was virtually identical. In fact, the difference between the Trustee with the highest number of total signatures (Casabianca with 25,493) and the Trustee with the lowest number of total signatures (Stiff with 25,312) is only 181. This is critically important because it evidences one of the key arguments made by the CUSD Recall Committee – ***virtually 99.9% of the time, a person would sign each of the seven petitions that were consistently presented in a single stapled "pack" of seven petitions.*** It was exceedingly rare that any individual was unwilling to sign the recall petition for any individual trustee.

(b) Inconsistency of the Registrar's Validated Signatures. Conversely, although the "same" approximately 25,365 people signed all seven recall petitions, the Registrar's final tally of validated signatures is completely inconsistent. In fact, the difference between the Trustee with the highest number of total validated signatures (Casabianca with 17,870) and the Trustee with the lowest number of total validated signatures (Hennes with 15,955) is 1,915. This

*The Registrar's Office did not count all of the petitions to recall Trustee Kochendorfer claiming that "Based on 5% random sampling, results did not justify a 100% signature review"



incredible discrepancy is made even worse by noting that the Registrar failed to even count 95% of the petitions to recall Trustee Kochendorfer thereby “invalidating” thousands more. The validity rates for each of the seven trustees should have been virtually identical – just like the total signatures submitted – because the same people signed each of the seven petitions.

This significant discrepancy raises a critically important question: if the same people were signing all seven petitions, then how and why did the Registrar’s final validation numbers vary to such a large degree?

V. Findings/Results of Our Investigation.

1. **Thousands of Signatures Were Improperly Rejected by the Registrar.** Since 20,421 valid signatures were required to certify the recall against any trustee, we believe it is necessary to inspect each of the signatures that were rejected to determine if they were rejected for proper reasons. For the reasons set forth below, we believe there is compelling evidence to demonstrate that the Registrar improperly rejected thousands of recall petition signatures, thereby “disfranchising” and ignoring the clear intent of thousands of registered voters. In fact, so many recall petition signatures were improperly rejected that we believe the Registrar erred when it failed to certify the CUSD recall petitions.

2. **Individual Voters Were Treated Differently on Each Petition Resulting in Unacceptable, Inconsistent and Unreliable Counts.** As set forth above, the Registrar required a separate petition to recall each of the seven CUSD Trustees. The Registrar refused to allow a voter to sign a single petition to evidence his/her desire to recall each of the seven trustees – even though the Registrar did permit a voter to “rescind” with just a single signature on a postcard all seven separate petitions. During our inspection process, our inspectors successfully went through the original petitions for each of the seven trustees in order to investigate whether a person’s signature was treated with consistency from the Registrar’s office. Unfortunately, the results were very disappointing. We have prepared a number of Tables set forth in Exhibit E which clearly demonstrate the inconsistent manner that identical signatures were treated by the Registrar’s Office.

Clearly, the Registrar disqualified thousands of signatures from registered voters based upon the Registrar’s attempt to apply a number of purely subjective tests. Careful examination of the petitions demonstrates beyond any doubt the Registrar treated many individual registered voters who signed seven different petitions in a completely inconsistent manner. This inconsistent treatment clearly demonstrates the Registrar’s staff was unable to apply these subjective tests in a fair and consistent manner. The CUSD Recall Committee believes it was arbitrary and capricious for the Registrar to reject thousands of signatures based on an inconsistent application of these purely subjective tests.

This significant discrepancy raises a critically important question: *if an individual voter signed seven recall petitions, one after the other, shouldn’t that same person’s signature be treated with consistency by the Registrar (and either counted seven times or rejected seven times)?*

3. **Analysis of Rejected Petitions by Specific Categories.** As set forth on the



Petition Result Breakdown forms attached hereto as Exhibit D, the Registrar broke down the total number of rejected signatures by category and summarized 11 different reasons signatures were disqualified. For purposes of this report, we will focus primarily upon our investigation of the signatures to recall Trustee Benecke that were rejected by the Registrar.

- (a) **Not a Registered Voter.** The Registrar rejected thousands of signatures claiming that the person who signed was not a registered voter. This is a straightforward and objective analysis. A person either is a registered voter according to the Official Registered Voter Rolls or he/she isn't. The following table summarizes the Registrar's final tally:

| | Trustee | Total Signatures | Total Sigs Rejected as Unregistered Voters | Percentage of Total Signatures |
|----|----------------|-------------------------|---|---------------------------------------|
| 1. | Casabianca | 25,493 | 2,776 | 10.9% |
| 2. | Benecke | 25,358 | 3,117 | 12.3% |
| 3. | Draper | 25,355 | 2,858 | 11.3% |
| 4. | Stiff | 25,312 | 2,869 | 11.3% |
| 5. | Darnold | 25,336 | 2,602 | 10.3% |
| 6. | Heness | 25,349 | 3,016 | 11.9% |

We did not expect to find any significant discrepancy in the Registrar's final tally under this category. However, we were absolutely dismayed and disappointed to discover that approximately 24% of the signatures that were rejected as from unregistered voters actually were from valid registered voters.

(i) **The Benecke Example.**

(a) **Registrar Erred on Close to 700 Petitions.** Of the 3,117 signatures to recall Trustee Benecke that were rejected as being from unregistered voters, based upon a thorough examination of the limited database information provided to us by the Registrar, we found that 696 (23.45%) were actually valid registered voters within CUSD. Whether this incredible error rate was the result of negligence, incompetence or something worse, there simply is no logical or acceptable explanation for such an error rate when dealing with such a straightforward and objective determination.

(b) **Registrar Possibly Overstated Total Number of Petitions Rejected for "Unregistered Voter."** It should also be noted that of the 3,117 signatures to recall Trustee Benecke that were rejected as being from unregistered voters, after reviewing each and every petition, our inspectors were only able to locate 2,968 that had been rejected for that reason. This raises a critical question: Did the Registrar overstate the number of rejected signatures by 149?

(ii) **Inconsistency of the Registrar's Findings.** Once again, although the "same" approximately 25,300 people signed all seven recall petitions, the Registrar's final tally of signatures rejected for "not registered" is completely



inconsistent. In fact, the difference between the Trustee with the highest number of total signatures invalidated for “not registered” voters (Benecke with 3,117) and the Trustee with the lowest total signatures invalidated for “not registered” voters (Darnold with 2,602) is 515. This discrepancy suggests that hundreds of registered voters who were validated on certain petitions as a registered voter were mistakenly rejected on other petitions as “not registered.”

(iii) Suspicious Error Rates for Certain Pages. In reviewing all the signatures rejected by the Registrar, we discovered certain error rates that raise serious suspicion and which should be investigated. For example, with respect to Trustee Benecke:

(a) Petition Pages 1101 – 1200. On these pages (which were reviewed by “Brian W” on 12/09/05), the Registrar rejected 123 voters as unregistered. Our review confirms that 44 of those were indeed registered voters – a 35.7% error rate.

(b) Petition Pages 3301 - 3400. On these pages, the Registrar rejected 127 voters as unregistered. Our review confirms that 54 of those were indeed registered voters – a 42.5% error rate. For some reason, no one from the Registrar’s office signed or initialed these pages to evidence that they had reviewed those pages. Why?

(b) **“Declaration Incomplete.”** The Registrar rejected thousands of signatures claiming that while these persons were registered voters and did sign the petitions, they did not in each instance personally write down their addresses on the petitions. Put another way, the Registrar rejected hundreds of pages of signatures, containing thousands of petition signatures, claiming that all of the signatures must be rejected because someone other than the registered voter had filled in the address of the registered voter. The following table summarizes the Registrar’s final tally:

| | Trustee | Total Signatures | Total Sigs Rejected as “Declaration Incomplete” | Percentage of Total Signatures |
|----|----------------|-------------------------|--|---------------------------------------|
| 1. | Casabianca | 25,493 | 1,479 | 5.8% |
| 2. | Benecke | 25,358 | 1,553 | 6.1% |
| 3. | Draper | 25,355 | 2,640 | 10.4% |
| 4. | Stiff | 25,312 | 2,827 | 11.2% |
| 5. | Darnold | 25,336 | 3,650 | 14.4% |
| 6. | Henness | 25,349 | 3,392 | 13.4% |

(i) CUSD Recall Committee Relied Upon Assurances from Registrar. This category is one of the most disappointing of all. Not only because so many valid signatures were arbitrarily rejected, but because the CUSD Recall Committee received assurances from representatives of the Registrar’s offices



throughout the campaign that signatures would not be thrown out for this reason. CUSD Recall Representatives called the Registrar of Voters many times to clarify what information must be filled in by the voter and what can be filled in by those circulating the petition.

(ii) Statute Permits Address to be Filled In. There are two Election Code Sections that primarily cover the issue.

(a) The General Rule (Section 100) -- requires the voter to personally fill out all portions of the petition.

(b) The "Unable" Exception (Section 100.5) -- Notwithstanding the general provisions of Section 100, if the voter is "unable" (which is undefined) to personally write all the information on the petition, then another person may do so for them, provided that the voter must always sign their own signature.

When faced with completely filling out 7 entire petition forms, many voters said they were "unable" to fill all of them out (because they were physically disabled, had two screaming kids with them, were late for work, etc.). As a result, they sometimes completely filled out the top petition sheet and only signed and printed their names on the following pages, asking our people to fill in the address. The provisions of Section 100.5 should apply in these cases, especially given:

(i) the legislative/policy goal of liberally construing the validity of signatures so as not to "disenfranchise" any voters;

(ii) clearly, each such voter intended their names to be counted seven times;

(iii) it would be unconscionable for the Registrar to discount these types of signatures, especially when they allowed an individual who signed a single rescission postcard to rescind 7 signatures with a single postcard;

(iv) The Registrar's office repeatedly assured the CUSD Recall Team this type of assistance could be provided so long as the voters always signed their own names on the petitions, and our volunteers relied in good faith upon those assurances;

(v) there is no risk of fraud because the voters always completely filled in all of their information on at least one form, and they always personally affixed their signatures to all the other pages.

(iii) There is No Question of Voter's Intent. As set forth above, virtually 99.9% of the time, a person would sign each of the seven petitions that



were consistently presented in a single stapled “pack” of seven petitions. Therefore, when a voter expends this amount of effort to “let his/her voice be heard,” there is absolutely no question as to the voter’s intent.

(iv) Rejection Disenfranchised Thousands of Voters. The Registrar should have honored this clear intent – but instead the Registrar rejected thousands of signatures thereby frustrating the voter’s intent and disenfranchising thousands of registered voters.

(v) There is no Risk of Fraud or Mistake. For the same reasons set forth immediately above, there is no risk of fraud or mistake because in every instance, the registered voter did personally affix his/her signature to the petitions.

(vi) Many Signatories Were Physically Disabled. CUSD Recall volunteers helped fill in address data for registered voters with broken arms, elderly people and others who were clearly disabled (e.g. palsy, M.S., visual problems where they had great difficulty writing on the line), etc. The Registrar had no means of knowing whether any registered voter who signed the recall petitions was “unable” to fill in their own address on each of the seven petitions. How could an evaluator in the Registrar’s Office purport to know this with certainty?

(vii) Rejection is Hyper-Technical and Arbitrary. As stated by Kevin Murphy, former Chair of the CUSD Recall Committee*, even though the Registrar’s Office had confirmed on at least eight separate occasions that volunteers could assist registered voters by filling in their address information so long as the voter did personally sign each of the seven petitions:

“they reconsidered at the eleventh hour and decided to disallow these signatures. Rather than attempting to validate signatures, the Registrar appears to have been overzealous invalidating signatures. It is extremely frustrating that the intent of the voter was not respected.” Reflections on the Recall Effort, The Capistrano Dispatch, February 9, 2006

(viii) Petitions Demonstrate Last Minute Decision to Reject. Our investigation confirmed that dozens and dozens of entire pages full of signatures were rejected in their entirety on December 9, 2005 for “Declaration Incomplete” (i.e. because the Registrar asserted that recall volunteers had assisted the voters by helping to fill in the voter’s address). It should be noted that December 9, 2005 was the day after the Registrar was supposed to have finished its review of the petitions (but as set forth above, the Registrar unilaterally declared they had 30 “Working days” to complete the review). In addition, hundreds of petition pages originally had been validated by the Registrar with green checks, only to have those green checks erased and then marked as rejected “declaration incomplete”

* Kevin Murphy is no longer affiliated in any way with the CUSD Recall Committee



or simply “DEC.” See for example, Recall Petitions for Trustee Benecke pages 2087, 2202 and 2088.

This raises a critical question: Knowing all this, what could have caused the Registrar to change position at the last minute and thereby disenfranchise thousands of registered voters?

For all these reasons, we believe the Registrar chose to ignore both the letter and the spirit of the law when rejecting all of the “Declaration Incomplete” signatures.

- (c) **Registered Voter But At a Different Address.** The Registrar rejected thousands of signatures claiming that each such person who signed, while registered, was registered at a different address within the CUSD boundaries. In other words, the voter was a registered voter in the district but simply had not updated his/her voter registration information:

| | Trustee | Total Signatures | Total Sigs Rejected as “Registered Different Address” | Percentage of Total Signatures |
|----|----------------|-------------------------|--|---------------------------------------|
| 1. | Casabianca | 25,493 | 1,121 | 4.4% |
| 2. | Benecke | 25,358 | 971 | 3.8% |
| 3. | Draper | 25,355 | 1,023 | 4.0% |
| 4. | Stiff | 25,312 | 989 | 3.9% |
| 5. | Darnold | 25,336 | 981 | 3.9% |
| 6. | Heness | 25,349 | 817 | 3.2% |

- (i) **Registrar Failed To Provide Means to Verify This Information.** The Registrar refused to provide our inspectors with access to the same computers and database information the Registrar used to verify this information. Therefore, we have not been provided with any meaningful way to determine whether these signatures were properly rejected.

- (ii) **All Registered Voters Living In CUSD Should be Counted.** As long as a voter is a registered voter and lives within the CUSD borders, that person’s signature should be validated. Consider this, if a person recently moved from San Juan Capistrano to Dana Point and failed to update his registration information, that person would still be allowed to vote in a general election (either by going back to his “old precinct” or by using a provisional ballot in his new precinct). We believe that same rationale should apply in this instance. As a result, every person who is a registered voter and lives within the CUSD borders should have had his/her signature validated.



- (d) **Registered Voter But Outside CUSD Boundaries.** The Registrar rejected thousands of signatures claiming that the person who signed, while registered, lived outside the CUSD boundaries. The following table summarizes the Registrar’s final tally:

| | Trustee | Total Signatures | Total Sigs Rejected as “Registered But Out of District” | Percentage of Total Signatures |
|----|----------------|-------------------------|--|---------------------------------------|
| 1. | Casabianca | 25,493 | 1,179 | 4.6% |
| 2. | Benecke | 25,358 | 1,078 | 4.3% |
| 3. | Draper | 25,355 | 1,007 | 4.0% |
| 4. | Stiff | 25,312 | 1,041 | 4.1% |
| 5. | Darnold | 25,336 | 1,049 | 4.1% |
| 6. | Heness | 25,349 | 968 | 3.8% |

We did not expect to find any significant discrepancy in the Registrar’s final tally under this category. However, we were disappointed to discover that approximately 14% of the signatures that were rejected as from registered voters outside the district actually were from valid registered voters within the district.

(i) **The Benecke Example.** For example, of the 1,078 signatures to recall Trustee Benecke that were rejected as being from registered voters outside the district, we found that 148 (13.7%) were actually valid registered voters within CUSD. Once again, there simply is no acceptable explanation for such an error rate when dealing with such a straightforward and objective determination.

(ii) **Newly Developed Areas May Have Been Omitted – the Ladera Ranch Example.** All of Ladera Ranch is located within the CUSD Boundaries. However, this is a newly developed area and it is not clear whether the Registrar’s Office had properly updated the current registered voter rolls to include all of the newly developed streets. Some Ladera Ranch voters were marked "X-Dist" when clearly they aren't. An example of this is a Ladera Ranch resident who signed the petition to recall Trustee Benecke on Page 0193, line 4. All of Ladera Ranch is in the district. The same concern relates to the newer developments in the Talega area of San Clemente.

- (e) **Withdrawn (the Rescission Postcards).** The Registrar permitted voters to “rescind” with just a single signature on a postcard all seven separate petitions (despite the fact the Registrar required a fully-executed, separate petition to recall each of the seven CUSD Trustees). The following table summarizes the Registrar’s final tally:



| | Trustee | Total Signatures | Total Sigs Rejected as “Withdrawn” | Percentage of Total Signatures |
|----|----------------|-------------------------|---|---------------------------------------|
| 1. | Casabianca | 25,493 | 38 | 0.1% |
| 2. | Benecke | 25,358 | 36 | 0.1% |
| 3. | Draper | 25,355 | 33 | 0.1% |
| 4. | Stiff | 25,312 | 34 | 0.1% |
| 5. | Darnold | 25,336 | 36 | 0.1% |
| 6. | Henness | 25,349 | 37 | 0.1% |

We do not believe it was appropriate for the Registrar to rescind these petition signatures for the following reasons:

(i) Inconsistency By Registrar. As demonstrated throughout this memo, the Registrar appears to have applied a very strict, multi-point checklist approach before they were willing to validate a single signature on a recall petition. The Registrar required a separate petition to recall each of the seven CUSD Trustees. The Registrar refused to allow a voter to sign a single petition to evidence their desire to recall each of the seven trustees.

(ii) Double Standard to Benefit CUSD Trustees. However, in the one instance where a signature could help the CUSD Trustees (e.g. on a rescission postcard), the Registrar allowed the single signature to “erase” seven entire petitions. This is an obvious inconsistency that suggests a bias in favor of the incumbent CUSD trustees that should be investigated.

(f) Voters Who “Registered Late.” The Registrar rejected hundreds of signatures claiming that while those persons are now registered voters, they weren’t on the day they signed the petitions. The following table summarizes the Registrar’s final tally:

| | Trustee | Total Signatures | Total Sigs Rejected as “Registered Late” | Percentage of Total Signatures |
|----|----------------|-------------------------|---|---------------------------------------|
| 1. | Casabianca | 25,493 | 368 | 1.4% |
| 2. | Benecke | 25,358 | 469 | 1.8% |
| 3. | Draper | 25,355 | 399 | 1.6% |
| 4. | Stiff | 25,312 | 447 | 1.8% |
| 5. | Darnold | 25,336 | 341 | 1.3% |
| 6. | Henness | 25,349 | 455 | 1.8% |

We do not believe it was appropriate for the Registrar to arbitrarily reject these hundreds of petition signatures for the following reasons:

(i) We Registered Hundreds of Voters. Before voters were allowed to sign the CUSD Recall petitions, our volunteers asked if they were registered. If they were not, we had the materials available to register them on the spot. We



registered hundreds of new voters during this campaign – and those voters registered because they wanted their voices to be heard in support of the CUSD Recall.

(ii) Voters Allowed to Sign After Completing Registration Forms.

Once persons had completed the voter registration forms, they were permitted to sign the CUSD Recall Petitions. Our volunteers generally wrote down the voter registration form numbers into the margin of the CUSD Recall Petitions in order to evidence to the Registrar that the persons who signed were newly registered voters that had registered to vote on those days.

(iii) Rejection Disenfranchised Hundreds of Voters. The Registrar should have honored the new registered voters’ clear intent – but instead they rejected hundreds of signatures thereby frustrating the new voters’ clear intent.

(iv) Rejection is Hyper-Technical and Arbitrary. It is unreasonable, hyper technical and arbitrary for the Registrar to have rejected hundreds of signatures as late registrations – especially when it is obvious these persons registered to vote in order that they could sign the CUSD Recall petitions.

(g) Signature Didn’t Match. The Registrar rejected hundreds of signatures claiming that while the person was a registered voter, the Registrar had concluded the signature on the petition did not match the signature the Registrar had on file for that registered voter. The following table summarizes the Registrar’s final tally:

| | Trustee | Total Signatures | Total Sigs Rejected as “Signatures Don’t Match” | Percentage of Total Signatures |
|----|----------------|-------------------------|--|---------------------------------------|
| 1. | Casabianca | 25,493 | 141 | 0.6% |
| 2. | Benecke | 25,358 | 235 | 0.9% |
| 3. | Draper | 25,355 | 218 | 0.9% |
| 4. | Stiff | 25,312 | 295 | 1.2% |
| 5. | Darnold | 25,336 | 218 | 0.9% |
| 6. | Henness | 25,349 | 220 | 0.9% |

We do not believe it was appropriate for the Registrar to arbitrarily reject these hundreds of petition signatures for the following reasons:

(i) There is No Question of the Voter’s Intent. As set forth above, virtually 99.9% of the time, a person would sign each of the seven petitions that were consistently presented in a single stapled “pack” of seven petitions. Therefore, when a voter expended this amount of effort to “let his/her voice be heard,” there is absolutely no question as to the voter’s intent.

(ii) People’s Signature Changes Over Time. Over the course of many years, a person’s signature will often change. Sometimes people routinely sign with their



first initials, sometimes with their name spelled out completely, sometimes using nicknames or shortened versions of their names, etc. The Registrar is comparing each voter's current signature (from the petition) against the official signature the Registrar has on file, a signature that may be decades old.

(iii) People Grow Weary When Asked to Sign Seven Petitions. It took a great deal of time and effort to gather 177,000 signatures. Whenever an individual signed a "pack of CUSD Recall petitions" (e.g. the seven petition forms stapled together), he/she was forced to fill out his/her name, signature and address seven separate times. Most of the signatures were gathered outside retail/grocery stores and people were often rushed for time. People usually stood and were forced to use various means of support (e.g., clipboards, grocery carts, knees, etc.) when signing the petitions. Their penmanship got worse as fatigue set in and they began to feel rushed for time. Nonetheless, these voters made the effort and their signatures should have been counted.

(iv) Registrar Made No Effort to Contact Voters To Verify. If the Registrar had any concerns about whether a voter truly had signed the CUSD Recall petitions, the Registrar could have easily contacted the voter to verify (the Registrar has full contact information for all voters). To our knowledge, the Registrar made no effort to contact any of these hundreds of voters – they simply rejected the signatures.

(v) Rejection Disenfranchised Hundreds of Voters. The Registrar should have honored this clear intent – but instead they rejected hundreds of signatures thereby frustrating the voter's clear intent. For example, Patrick Giralдин is one of the registered voters whose signature was rejected. Kelly Villatoro, one of our inspection team members, personally knows this person. In fact, Kelly Villatoro personally witnessed Mr. Giralдин sign all seven CUSD Recall petitions. (See Trustee Benecke petition number 0162, line 4). The Registrar's arbitrary rejection of hundreds of signatures, without any effort to contact the voters, has frustrated the clear intent of Mr. Giralдин, along with hundreds of other registered voters.

(vi) Rejection is Hyper-Technical and Arbitrary. It is unreasonable, hyper-technical and arbitrary for the Registrar to have rejected hundreds of signatures based upon the signature not matching – especially when the Registrar had the means readily available to immediately contact any voter whose signature was questioned.



VI. Other Observations.

(a) **Registrar Refused To Provide Official Tally Sheets.** Our inspection process was hampered by the Registrar's refusal to allow us to inspect the Official Tally Sheets for each Trustee (either the originals or copies). Without these tally sheets, there was no practical way for our inspection teams to confirm that the official counts released by the Registrar's Office were consistent with the detailed tally sheets. In reality, all the Registrar gave to us was their final conclusion with no detailed information (other than thousands of petitions pages with numerous abbreviations, initials and erasures on them to validate the work of the Registrar).

(b) **Some Petition Pages Contained No Marks Whatsoever.** Our inspection team found several petition pages where all the markings by the Registrar had been erased. As a result, there was no way to ascertain which of the signatures on those pages had been counted or rejected. We demand to know how the signatures on those pages were counted. See for example, Trustee Benecke's Petition Pages 0090 and 1072.

(c) **Some Petition Pages Contained Inconsistent Markings.** Some petition pages had two conflicting sets of markings for the same signatures, both green checks and red x's. As a result, there was no way to ascertain which of the signatures on those pages had been counted or rejected. We demand to know how the signatures on those pages were counted. See for example, Trustee Benecke's pages 0182 and 0183 and #6 on page 0167. Also see page 0185, line 6. It was marked with a green check, then a red X and then marked Registered late. The Registrar has not provided us with any information to ascertain whether this signature was actually counted, or if it was rejected, the basis therefore.

(d) **Registrar's Office Has Altered the Petitions AFTER Completing The Certification Process.** Our Inspection Team Leader personally witnessed an employee of the Registrar's Office alter the CUSD Recall Petitions on January 10, 2006 – weeks after the Registrar's office completed its review and analysis of the petitions. Please see the Declaration of Constance Lee, Ph.D. attached hereto as Exhibit F for a first hand description of this extremely disturbing incident. The CUSD Recall Committee is deeply concerned that the integrity of the CUSD Recall petitions has already been compromised -- especially since those petitions are the only evidence as to which signatures were rejected by the Registrar and the specific reasons for such rejection. Unless immediate action is taken by the appropriate authorities to protect the CUSD Recall petitions, the CUSD Recall petitions will remain subject to additional improper alterations.

(e) **Why Weren't Trustee Kochendorfer's Petitions All Counted?** On December 8, 2005, the Registrar's office confirmed they had completed the random sampling process for each of the seven trustees. The Registrar also confirmed they were forced to count each of the petition signatures for each of the trustees because the random sampling process had neither caused the recall to be certified or rejected. Please see the Capistrano Dispatch article *Recall Watchers Still Waiting ...* attached hereto as Exhibit G. If the random sampling process neither caused the recall to be certified or rejected, then the Registrar was required by law to count all the petitions for Trustee Kochendorfer – but they didn't.



(i) Registrar Made Inconsistent Public Statements. On December 22, 2005, when the Registrar finally announced their official results, the Registrar now surprisingly stated they did not count all of the petitions to recall Trustee Kochendorfer claiming, “Based on 5% random sampling, results did not justify a 100% signature review.” This final statement conflicts with the prior official statements of the Registrar’s office (which were widely reported in the press) and raises serious questions about the manner in which the petitions to recall Trustee Kochendorfer were processed by the Registrar.

(ii) Did the Registrar Really Conduct a 5% Random Sampling for Trustee Kochendorfer? Our inspectors reviewed thousands of petition signatures to recall Trustee Kochendorfer. Unlike the other six trustees, the Registrar did not make a single mark on any of the petition pages to indicate which signatures had been reviewed and whether they had been validated or rejected. The Registrar also refused to show us their official tally sheets. For these reasons, we have been left with no way to verify the conclusions of the Registrar as they relate to Trustee Kochendorfer – and with no evidence to prove the Registrar even counted a single signature.

(f) Did the Registrar Have Adequate Staffing To Properly Review the CUSD Recall Petitions? According to the press article attached as Exhibit G, in describing the surprise announcement that the Registrar’s Office was not planning to release their final results until 30 “working days” after the CUSD Recall petitions were submitted, “*Acting Orange County Registrar of Voters Neal Kelley told The Dispatch his staff will need every moment of it [the extra review time]. The office, juggling two special elections, has taken on extra staff to check the signatures.*” Just who were these extra staff members that were hired to review the CUSD Recall petitions? Were they properly trained? What kinds of background checks were made to ensure they had no connection to the CUSD Trustees?

(g) Registrar Had Numerous Contacts With CUSD Representatives, Including Superintendent Fleming. During the January 4, 2006 meeting at the Registrar’s Office with Neal Kelley and Kay Cotton, the Registrar confirmed their office had been in regular contact with CUSD throughout the recall qualification phase. On November 19, 2005, Superintendent James A. Fleming prepared a detailed Memorandum confirming that “The Superintendent has been in touch with the Registrar of Voters office...” A copy of this Memorandum is attached as Exhibit H.

(i) Memo Confirms Registrar Only Had 30 Days to Finish Review. Superintendent Fleming’s Memo states the Registrar’s Office had confirmed the Registrar’s review of the petitions had to be completed within “30 days” and “This would mean that the internal deadline for the Registrar of Voters to make a decision in this matter is December 8.” According to this memo, the Superintendent specifically discussed timing and dates with the Registrar’s Office – all of which were rendered meaningless after the Registrar unilaterally (and without any known legal authority) purported to grant itself an extension to 30 “working days.”

(ii) Memo Confirms Fleming & Registrar Discussed Recall Costs. Throughout the entire campaign, CUSD’s primary argument against the recall was that people should not support the recall campaign because (according to the Registrar’s Office) the recall



would end up costing the school district \$400,000 (and in later campaign literature, the Trustees increased that amount to \$600,000). Superintendent Fleming's Memo confirms he discussed with the Registrar what recall costs the district would be responsible to pay. Superintendent Fleming's Memorandum concluded, "The bottom line is that the total cost for the recall process will range from a minimum of \$24,300 and could cost up to a maximum of \$1,268,893."

(iii) Memo is Another Example of Unpermitted "Express Advocacy." By widely circulating a memo suggesting the recall might cost the school district more than a million dollars, we believe the CUSD Trustees and the Superintendent were, once again, trying to dissuade members of the public from supporting the recall by exaggerating what costs the school district would have to pay.

It should be noted California law prohibits a government employee (such as Superintendent Fleming) from engaging in "express advocacy" for or against a political issue while acting in their official capacity. We believe Superintendent Fleming's Memo, which was widely distributed both internally at CUSD and to members of the general public, is another example of inappropriate express advocacy by the Superintendent. It is illegal for a government employee to try to influence people's opinions on political issues when acting in their official capacity.

(h) Registrar Allowed Trustees To Modify Their Petition Statements AFTER Expiration of Statutory Deadline. The Registrar of Voters permitted the CUSD Trustees to change their official petition statements – despite the fact the statutory deadline had already expired on the Trustees.

(i) Trustees Filed on May 4, 2005. Before the official recall petitions could be approved for circulation, the recall proponents and the CUSD Trustees were each permitted to submit a 200-word statement that would be included in the petitions. The CUSD Trustees filed their official statements on May 4, 2005.

(ii) Registrar Permit. On May 4, 2005, the Registrar of Voters sent the Trustees' official 200 word answers to Kevin Murphy, former chair of the CUSD Recall Committee, and informed him that the recall proponents had "until 5:00 p.m. on Friday, May 13, 2005 to file with this office two blank copies" of the final recall petition for each trustee. However, after the statutory period for the Trustee's submission of their 200 word statements had expired, the CUSD Trustees asked to make a change their 200 word statements.

(iii) Recall Proponents Were Told Litigation Had Been Threatened. The Registrar of Voters permitted this change to be made – despite the fact the statutory deadline had already expired on the Trustees. The Registrar informed recall proponents that litigation from the CUSD Trustees was highly likely if the Registrar did not permit the Trustees to alter their 200 word statements.

(iv) Double Standard to Benefit CUSD Trustees. Once again, the decision of the Registrar to permit a change in the Trustees' 200-word statement after expiration of the statutory deadline demonstrates the Registrar's consistent willingness to assist the CUSD Trustees (to the detriment of recall proponents).



(i) **Registrar Did Not Require CUSD to Pay for Signature Verification Costs.**

On January 11, 2006, Superintendent Fleming posted an official statement confirming that the Registrar had just informed CUSD that the Registrar would no longer require CUSD to pay for any of the recall signature verification costs. A copy of this official statement is attached hereto as Exhibit I. This decision by the Registrar is noteworthy for the following reasons:

(i) **Conflicts With Registrar's Prior Statements.** The Registrar's decision in January 2006 not to charge CUSD for any signature verification costs contradicts the Registrar's prior position on this issue (as evidenced by Superintendent Fleming's November 19, 2005 Memo).

(ii) **CUSD Used Registrar's Prior Statements As Their Principal Argument Against the CUSD Recall.** Throughout the entire campaign, CUSD's primary argument against the recall was that people should not support the recall campaign because the recall would end up costing the school district hundreds of thousands of dollars. In effect, the Registrar provided the CUSD Trustees with their primary campaign argument because the argument was based upon representations made by the Registrar's office. When providing this type of important information to the public in the context of a controversial political campaign, we believe the Registrar's Office had an obligation to provide clear, correct and complete information – but in this case, they didn't.

(iii) **Registrar Should Have Known.** In making its decision to unilaterally reverse its prior position, the Registrar now claims they did so in reliance upon County of Fresno v. Clovis Unified School District, 204 Cal. App. 3d 417 (1988). This case is 18 years old. Clearly, it should not have come as a surprise to the Orange County Registrar of Voters.

As an aside, now that the Orange County Registrar of Voters has discovered the County of Fresno case, they may also want to carefully review the fourth paragraph of undisputed facts set forth in the beginning of that case, which confirms the Fresno County Clerk, Elections Division (acting as the ex officio Registrar of Voters), certified the recall petitions as insufficient within 30 days (not 30 working days) as required by law.

(iv) **Registrar's Decision Means the Entire County of Orange Would Have to Pay for the CUSD Costs.** The Registrar's decision forces the County of Orange (i.e. all the taxpayers in the entire county) to pay for the costs related to the CUSD recall. This raises an interesting question: Is it fair and equitable to require the residents of North, East and West Orange County to pay the costs associated with the unprecedented recall effort in South Orange County against the CUSD Trustees?

(v) **Was CUSD's Legal Counsel at Rutan & Tucker Involved?** It should be noted that "Dave Larsen, Esquire" is shown at the bottom of the Superintendent's November 19, 2005 memo as a recipient of a copy. (Mr. Larsen is CUSD's primary legal counsel and a partner at the large law firm of Rutan & Tucker). It should also be noted that during the campaign, Mr. Larsen purported to render a legal opinion on behalf of the CUSD Trustees in connection with the recall. (Please note this obvious conflict of interest – how could Mr. Larsen legally and/or



ethically represent the school district and the individual elected Trustees at the same time the public was seeking to recall the Trustees based upon allegations of gross misconduct that was causing damage to the school district?)

It remains unclear whether Mr. Larsen drafted the memo on behalf of Superintendent Fleming, or whether Mr. Larsen and other members of his law firm engaged in discussions with the Registrar about this and other issues relating to the CUSD recall.

For example, when referring to the 1988 County of Fresno case, Superintendent Fleming claims “The Registrar came across this information while researching payment options for us...” Given that the Registrar had already publicly announced that CUSD was responsible for paying these costs, it seems highly unlikely the Registrar would have on its own initiative located, researched and reversed its own decision in January 2006. This raises some very interesting questions:

(a) Did CUSD’s legal counsel provide the 1988 County of Fresno case to the Registrar with an argument that the Registrar erred when it previously declared that CUSD would be responsible to pay these fees?

(b) If so, when did CUSD and their legal counsel first learn about the 1988 County of Fresno case?

(c) When did the Registrar first learn about the 1988 County of Fresno case?

(d) Did Superintendent Fleming and the CUSD Trustees already know about the 1988 County of Fresno case before they published and discussed at their January 9, 2006 Trustees meeting, an inflammatory 74 page memo dealing with the costs to the district of the recall campaign, including more than half a million dollars for costs related to the signature verification process?

(e) Did the Registrar change its position to the detriment of the CUSD Recall volunteers with respect to any of the other matters referred to in this report (e.g. Registrar’s decision to permit the Trustees to modify their 200-word petition statements after expiration of the statutory deadline, last minute decision to reject the “declaration incomplete” signatures, decision to validate the use of rescission postcards that purported to rescind seven separate petition signatures with a single postcard, etc.) based upon information, pressure or threats of litigation made by or on behalf of CUSD by its high-powered and aggressive attorneys at Rutan & Tucker?



VII. Analysis and Recommendations.

(a) **Full Independent Investigation is Warranted.** Based upon the compelling evidence provided in this report, a full independent investigation into these matters should be initiated immediately. The investigation should focus upon each of the petition signatures rejected by the Registrar to determine if they were properly rejected for the reasons stated by the Registrar. This should not be an opportunity for the Registrar to get a “second bite at the apple” in order to strive to find any possible reason to reject a particular signature. Rather, this independent investigation should review each rejected signature and the official rationale given by the Registrar as of December 22, 2005, as to why that particular signature was rejected.

Throughout the entire CUSD Recall campaign, the Registrar’s Office assured us they always strive to give effect to the clear intent of the registered voter. Unfortunately, as demonstrated above, our research demonstrates that in reality, the opposite was true in thousands of cases.

If this investigation demonstrates that the Registrar improperly invalidated signatures in an amount at least equal to the “total shortfall” amount (as defined above), then the recall petition should be certified – and the people have a right to know this. For example, for Trustee Benecke, if it can be demonstrated that the Registrar improperly rejected just 3,028 of the 7,965 total number rejected, then grounds exist to reverse the decision of the Registrar to invalidate the entire recall. Hundreds of parents and taxpayers gave up much of their summer vacation away from their families circulating the CUSD Recall petitions. They deserve an honest answer about what went wrong.

For the reasons set forth herein, we believe there is compelling evidence to demonstrate that the Registrar erred and that the CUSD recall petitions should have been certified.

However, a full and complete investigation is necessary to ensure that the people can have faith in the Registrar’s Office on a going forward basis. Obviously, the people cannot tolerate error rates in excess of 20% when it comes to Federal, State or local elections. Unfortunately, we have now provided compelling evidence that serious mistakes were made and that thousands of registered voters were disenfranchised as a result.

(b) **Petitions Should Be Sealed and Moved to a Safe Location.** In order to protect the CUSD Recall petitions from any further tampering, all of these petitions (as well as the Registrar’s original/official Tally Sheets) should be immediately sealed and moved to a safe location pending the full investigation referred to above.



VIII. Conclusion.

The CUSD Recall Committee was honored to submit to the Orange County Registrar's Office more than 177,000 recall petition signatures to recall all seven CUSD Trustees. Each of these voters expected their voices would be heard – but they weren't. The voters of Orange County deserve better. As the November elections draw near, the public has to have faith their votes will be accurately counted. We all hope our public institutions work properly, but when they do not - for whatever reason – the people must find out why. In this case, many questions remain unanswered.

Was the Registrar's Office properly staffed to review more than 177,000 petitions in 30 days?

Were the employees at the Registrar's Office properly screened and trained?

Were the employees overworked or preoccupied with handling upcoming special elections?

Was there a bias in favor of the CUSD Trustees?

Was the Registrar unduly influenced by information, arguments, pressure or threats of litigation from CUSD and their high-powered legal counsel (to the detriment of the recall volunteers)?

The answers to these questions remain unknown. In order to protect the Constitutional rights of those who were disenfranchised, and to preserve the public's confidence in our political process and electoral system, the appropriate authorities need to investigate what went wrong at the Registrar's Office – and why.



SCHEDULE OF EXHIBITS.

| | |
|------------------|--|
| EXHIBIT A | OFFICIAL STATEMENT BY CUSD RECALL COMMITTEE |
| EXHIBIT B | JANUARY 13, 2006 LETTER FROM CUSD RECALL COMMITTEE |
| EXHIBIT C | JANUARY 20, 2006 LETTER FROM COUNTY COUNSEL |
| EXHIBIT D | PETITION RESULT BREAKDOWN FORMS |
| EXHIBIT E | TABLES DEMONSTRATING THE REGISTRAR'S INCONSISTENT TREATMENT OF THE SAME SIGNATURE |
| EXHIBIT F | DECLARATION OF CONNIE LEE |
| EXHIBIT G | DECEMBER 8, 2005 CAPISTRANO DISPATCH ARTICLE |
| EXHIBIT H | SUPERINTENDENT'S NOVEMBER 19, 2005 MEMORANDUM |
| EXHIBIT I | SUPERINTENDENT'S JANUARY 11, 2006 STATEMENT REGARDING RECALL COSTS |



EXHIBIT A
OFFICIAL STATEMENT OF CUSD RECALL COMMITTEE



December 22, 2005

CUSD Recall Leaders: "This Battle is Not Over"

*Group That Led Effort to Recall Entire School Board
Vows to Keep Fighting For the Children*

San Juan Capistrano, California: Today, leaders of the CUSD Recall Committee were informed by the Orange County Registrar's Office that the Registrar had not certified the recall petition against the seven trustees of the Capistrano Unified School District. The CUSD Recall Committee is the grass roots group of parents and concerned taxpayers that led the widespread effort throughout South Orange County to recall all seven CUSD trustees. They recently submitted more than 175,000 recall petition signatures to the Orange County Registrar of Voters.

Thomas Russell, Spokesperson for the CUSD Recall Committee stated, "This battle is not over – not by a long shot!"

Recall Committee Members will be contacting the Registrar's office to inspect the more than 175,000 signatures they submitted in order to ascertain which signatures were disqualified and the reasons therefore.

The CUSD Recall has already been a tremendous success. The peoples' eyes have been opened. The serious issues we have raised are real and will not disappear. Never more will the people of South Orange County tolerate the deception that has come to define the current CUSD administration.

The CUSD Recall team has also called upon law enforcement authorities to commence a full and complete investigation into the compelling allegations and evidence of serious improprieties at CUSD. One way or another, this campaign will continue until those CUSD officials that have misled our community and violated the law are removed from office, held accountable and brought to justice.



The massive CUSD Recall campaign is a truly momentous event -- there has never been such an uprising in the history of CUSD -- and the national news media has now taken note.

Full Disclosure, an Emmy Award winning, nationally recognized, independent news program has just released its first program on the CUSD Recall. The first program is a "Video Blog" entitled "School Corruption Sparks Citizen Revolt" and can be viewed on the Full Disclosure website at:

<http://www.fulldisclosure.net/>

This informative program is approximately nine minutes long and gives a general overview of the major problems within CUSD. Even though the CUSD Trustees may have narrowly escaped a special recall election, the producers of Full Disclosure have confirmed that they intend to aggressively pursue their investigative reporting of the government corruption at CUSD. Full Disclosure intends to produce several additional programs on these serious issues.



EXHIBIT B
JANUARY 13, 2006 LETTER FROM CUSD RECALL COMMITTEE



Michael S. Winsten
28 Calle Castillo
San Clemente, California 92673
Telephone: (949) 633-5458
Telecopier: (949) 429-3500
e-mail: mike@winsten.com

January 13, 2006

Neal Kelley
Acting Registrar of Voters
County of Orange
P.O. Box 11298
Santa Ana, CA 92711

Via Telecopier (714) 567-7627
and email: neal.kelley@ocgov.com

Kay Cotton
Candidate and Voter Services Manager
County of Orange
P.O. Box 11298
Santa Ana, CA 92711

Via Telecopier (714) 567-7556
and email: kay.cotton@ocgov.com

Re: ***Capistrano Unified School District Recall***

Dear Mr. Kelley and Ms. Cotton:

Thank you both for taking the time to meet with myself, Anthony Beall, Thomas Russell and David Bartholomew on January 4, 2006, to discuss the Capistrano Unified School District ("CUSD") recall certification process and results. We know you are extremely busy and we appreciate that you set aside your afternoon to meet with us, describe the recall petition signature counting process, and to answer our many questions.

As we discussed and agreed in our meeting, the recall proponents wish to inspect the petitions and a memoranda generated by your office in connection with counting the signatures, all as allowed by Election Code § 11301 and Government Code § 6253.5. In our meeting, you also graciously stated that you would make the resources of your office available to the recall proponents and or supporters who wish to inspect the petition signatures and tabulation results and processes. Lastly, you agreed in our meeting that our request at that time had started the formal inspection process and that this letter would confirm that the formal inspection process had commenced.

At this time, I would like to summarize and memorialize some of the key issues we discussed and agreed upon in our January 4, 2006, meeting. I would appreciate it if you would promptly bring it to my attention any disagreement you may have with my recitation of any of the following points, so we can clarify any difference in understanding.

1. You advised us that the 21-day period to commence the inspection described in Government Code § 6253.5 is 21 *working* days after the date(s) of the certification of insufficiency of the recall petitions. The certificates of insufficiency for each of the seven recall targets was December 23, 2005. You advised that the counting of *working* days excluded weekends and holidays, which is consistent with your taking of 30 *working* days to count and certify the petition results. Although you didn't have the specific statute or other authority supporting this interpretation at your disposal, you were certain this was the case and you asked Kay Cotton to provide us with the authority for this. By my calculation, the 21-*working* days after December 23, 2005, certification date is January 26, 2006, so the commencement of the examination of the recall petitions and the memoranda prepared by your office in connection with the examination of the recall petitions was commenced well within the statutory time frame.

2. You asked Ms. Cotton to provide us with the authority for accepting one rescission postcard to trigger the rescission of seven separate petition signatures, one for each of the recall targets, even though recall petition signatories had to separately sign the recall petitions seven times separately for each recall target, which seems inequitable. We would appreciate it if you would provide us with the authority for the conclusion that one rescission postcard was sufficient to rescind seven separate signatures.

3. We asked for, and you agreed to provide, a printout of the names and specific categories of approval and/or disapproval for all of the signatures for all of the petitions received and counted by your office. In this regard, I respectfully request that you take all appropriate steps to safeguard the content and integrity of the electronic database containing this information, and that you instruct your entire staff - in writing - that they are not to make any changes to the information contained in this database for any reason whatsoever. This is a common and prudent practice in our electronic age.

4. You asked Ms. Cotton to provide us with a copy of the policy and procedure memo that governed your office in the verification or disqualification of recall petition signatures, which you stated was a memo that had been prepared by former Registrar of Voters, Roz Lever.

5. You agreed to provide us with the Spring, 2005, and October, 2005, Secretary of State registration reports that certified the number of registered voters in CUSD, which served as the basis for the 10 percent threshold to certify the recall.

6. You also agreed to promptly advise us if there were any statutory or other deadlines for completing an examination of the recall petitions and any related memoranda prepared by your staff, since neither Election Code § 11301 or Government Code § 6253.5 provide any deadline for the completion of an examination; they only provide commencement dates.

7. You also agreed that Ms. Cotton would provide us with the specific Election Code citation(s) requiring recall petitions to be separately treated and counted individually by candidate, as opposed to counting signatures by "packet", in the manner in which they were originally signed by the voters who did sign the recall petitions, i.e. in packets of seven petitions, one for each recall target. In connection with this issue of separating and the packets for counting, you agreed that you would allow the recall proponents and/or supporters to reassemble the packets as part of our inspection process, if we chose to do so, although you stated there might be some cost associated with this request. Please advise us as to what that cost, if any, would be charged for this process.

8. In connection with the cost issue, as registered voters and taxpayers in CUSD, we are grateful that you were able to find the authority to spread the costs of this process through the county budget, as opposed to charging it solely to CUSD. I would appreciate it if you would provide me with the case law citation mentioned in the recent press releases regarding this issue, which guided your decision in this regard.

9. You also agreed to print and provide us with detailed reports showing the eighteen categories of signature disqualifications, broken down for each candidate, and then by signature and disqualification reason, in a format that ties to the eighteen categories on the petition checklist which your office provided to us.

10. You also agreed to provide us with what was described as the approval/disapproval color key code list, which ties to the color key codes placed by your staff next to each signature to signify approval or disapproval, and if disapproval was the result, the reason for the disapproval.

11. You also agreed to provide us with maps and a list of precincts within CUSD.

12. You also agree to research the question of the historical background by which CUSD reached its current status of having all seven members of the Board of Trustees elected "at-large", even though they are each drawn from one of the seven trustee areas. You graciously offered and agreed to have someone research the history regarding this mechanism, so that we could understand how it came to be this way from a historical perspective. Any information you can provide to us in this regard would be greatly appreciated, since there are numerous constituents within CUSD who are interested in looking at the option of seeking to revise the electoral process so that each trustee is elected solely by constituents in their trustee area, and not "at-large."

Lastly, I would like to thank you again for accommodating the inspection of the recall petitions and signature verifications on your in-house computers by recall supporter Connie Lee on Tuesday and Wednesday of this past week, which was facilitated by Ms. Cotton. I would like to request that we continue the inspection on Tuesday and Thursday of next week, with a team of eight inspectors, so that we can try to evaluate the inspection and verification questions that have been raised by recall proponents and supporters quickly and without undue delay. We also request that the bank of computers at the rear of the room where the petitions are being stored be made available to the inspectors. At this time, the specific persons, all of whom are registered voters within CUSD, are expected to be as follows:

Connie Lee
Jennifer Beall
Kelly Villatoro
Sue Palazzo

Mr. Neal Kelley
Ms. Kay Cooper
Capistrano Unified School District Recall
January 13, 2006
Page 5

Julie Pherson
Kathy Goff
Gila Jones
Kim Lefner

I look forward to promptly receiving all of the information described above. I would also greatly appreciate if you would immediately let me know if anything I have memorialized above is inaccurate, so that we may immediately clarify any difference of recollection and understanding.

Lastly, please note that these requests are separate and apart from the inspection being conducted by proponents Rebecca Bauer and Kevin Murphy, who are working on behalf of, and speak only for, themselves.

On behalf of the voters and taxpayers of CUSD and Orange County, we thank you and your staff for you important public service.

Very truly yours,



Michael S. Winsten



EXHIBIT C
JANUARY 20, 2006 LETTER FROM COUNTY COUNSEL



OFFICE OF
THE COUNTY COUNSEL
COUNTY OF ORANGE
 10 CIVIC CENTER PLAZA
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 SANTA ANA, CA 92702-1379
 (714) 834-3300
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BENJAMIN P. de MAYO
 COUNTY COUNSEL
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 CHIEF ASSISTANT
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NICHOLAS S. CHRISOS
 SENIOR ASSISTANTS

Writer's Direct Dial Number
 (714) 834-3313

January 20, 2006

File No. R-375

Michael S. Winsten
 28 Calle Castillo
 San Clemente, California 92673

| | |
|---------------------------|---------------------------|
| RICHARD D. OVIEDO | THOMAS A. MILLER |
| BARBARA LARKIN STOCKER | STEVEN C. MILLER |
| JAMES L. TURNER | ALEXANDRA G. MORGAN |
| THOMAS F. MORSE | CAROLYN S. FROST |
| WANDA S. FLORENCE | ROBERT N. ERVAIS |
| HOPE E. SNYDER | BETH L. LEWIS |
| SHERIE CHRISTENSEN KEOUGH | LAURA D. KNAPP |
| ADRIENNE SAURO HECKMAN | JEFFREY M. RICHARD |
| KAREN R. PRATHER | ROGER P. FREEMAN |
| JIM PERSINGER | NICOLE A. SINS |
| GEOFFREY K. HUNT | NIKHIL G. DAFTARY |
| JACK W. GOLDEN | JEANNIE SU |
| CHRISTOPHER J. MILLER | JAMES C. HARVEY |
| DANIEL P. TORRES | MARK R. HOWE |
| JOHN H. ABBOTT | WENDY J. PHILLIPS |
| MICHELLE L. PALMER | TERI L. MAKSOUDIAN |
| JANELLE B. PRICE | LEON J. PAGE |
| RACHEL M. BAVIS | ANGELICA CASTILLO DAFTARY |
| ANN E. FLETCHER | KAREN L. CHRISTENSEN |
| MARGARET E. EASTMAN | MICHAEL A. HAUBERT |
| DANA J. STITS | RYAN M. F. BARON |
| JAN T. MARTIN | BRAD R. POSIN |
| MARIANNE VAN RIFER | SAUL REYES |
| JAMES C. HARMAN | AURELIO TORRE |
| JULIE J. AGEN | MARK D. SERVINO |
| LAURIE A. SHADE | DEBBIE TORREZ |
| DANIEL H. SHEPHARD | JACQUELINE GUZMAN |
| JOYCE RILEY | ANDREA COLLIER |
| PAULA A. WHALEY | COURTNEY S. WUCETICH |

DEPUTIES

RE: Capistrano Unified School District (the "district") Recall

Dear Mr. Winsten:

We are writing on behalf of the Registrar of Voters in response to your January 13, 2006 letter (the "letter") and January 16, 2006 email (the "email") to Acting Registrar of Voters, Neal Kelley. As a preliminary point of clarification, at the January 4, 2006 meeting, Mr. Kelley agreed to look into whether the Registrar could provide the information you requested, with the understanding that the Registrar may be prohibited from providing the information.

January 13 Letter

The paragraphs below correspond to the paragraph numbers in your letter. Where similar questions are asked in your email, the response is included below.

Paragraph no. 1. I understand from the Registrar of Voters that you were advised that the 21 day period to commence an inspection under Government Code section 6235.5 is 21 calendar days, not working days, after certification on December 23, 2005. One of the proponents commenced examination on January 13, 2006, so as far as the Registrar is concerned, timeliness of the commencement of the examination is not an issue.

Paragraph no. 2. The Registrar accepted one rescission postcard for rescission of 7 signatures because that was the clear and timely written direction from the signers. Elec. Code § 11303. (As you probably know, the Registrar received only approximately 63 postcards.) The Elections Code clearly requires separate petitions for the recall of each officer, and each petition must contain the signature of the signer. Elec. Code §§ 11043 and 11044.

Paragraph no. 3. In your letter, you refer to a printout of the names and categories of approval/disapproval for all signatures. It appears that you have narrowed your request in

Michael S. Winsten
January 20, 2006
Page 2

request no. 1 in your email to a printout of the disqualified signatures for Sheila Benecke, sorted by the disqualification reason.

Although it is unclear specifically what you are asking for, the Registrar is unable to provide reports containing this information. In general, recall petitions are not public records available for inspection. Clearly, this rule was designed to protect the confidentiality of information on the petitions, specifically, who signed the petitions and information about the signers. Under one of the limited exceptions to this rule, where a recall petition is found to be insufficient, petition proponents are permitted to inspect recall *petitions* "in order to determine which signatures were disqualified and the reasons therefor." Gov't Code § 6253.5. As a result, inspection of the actual petitions at the Registrar's office is the avenue that is available to the proponents. The petitions themselves indicate which signatures were disqualified and the reasons for disqualification. Information in the Registrar's database concerning disqualification of the signatures is not a public record and is exempt from disclosure under California Government Code section 6253.5.

In your letter, you also ask that the Registrar not make any changes to its electronic database containing the disqualified signatures and reasons for disqualification. The Registrar is unable to honor this request. The Registrar has all of its information on one electronic database. In order to comply with Elections Code and federal law mandates, the Registrar is required to make certain changes to its electronic database in an ongoing manner (for example, changes to voter registration, which must be kept current).

Paragraph no. 4. The Registrar can provide the Petition Processing Manual. It is believed that the manual was prepared sometime during Roz Lever's tenure. The manual is 57 pages.

Paragraph no. 5. The Registrar can provide Spring, 2005 and October, 2005 Secretary of State registration reports certifying the number of registered voters in the district.

Paragraph no. 6. Due to the substantial and ongoing elections work at the Registrar of Voters, including preparation for the April 11, 2006 35th Senate District special primary election, the Registrar requires that examination of the petitions be completed by Monday, February 6, 2006.

Paragraph no. 7. Under longstanding practices at the Registrar of Voters, packets of recall petitions are separated by candidate. See Petition Processing Manual, Petition Page section. This is required so that each page can be numbered sequentially, which facilitates signature verification and the random count. The Registrar has reluctantly (due to the interruption to Registrar ongoing elections work) agreed to allow reassembly of the packets, so long as advance payment is made for Registrar staff to separate the packets back into their existing format. These charges will amount to approximately \$23 per hour.

Paragraph no. 8. The case regarding election costs in unsuccessful recalls is *County of Fresno v. Clovis Unified School District*, 204 Cal. App. 3d 417 (1988).

Michael S. Winsten
January 20, 2006
Page 3

Paragraph no. 9. You ask for "detailed reports showing the eighteen categories of signature disqualification, broken down for each candidate, and then by signature and disqualification reason, in a format that ties to the eighteen categories on the petition checklist . . ." This request is similar to the request in Paragraph no. 3. For the same reasons set forth above, the Registrar is unable to provide this information.

Paragraph no. 10. There is no "approval/disapproval color key code list." As indicated on the Petition Codes page in the Petition Processing Manual, a green check indicates that the signature is allowed, and a red disapproval code indicates that the signature is disallowed. The disapproval codes are listed in the Petition Processing Manual on the Petition Codes page. This response also applies to paragraph no. 2 of your email.

Paragraph no. 11. Precinct maps are available upon payment of \$5.00 per map. You also ask for a report listing the precincts in the district. This is covered below in our response to paragraph no. 6 in the email.

Paragraph no. 12. Regarding your suggestion that the Registrar research the "at-large" election of district trustees, we suggest that you pursue this research via other avenues. Although the County conducts elections for the district at the request of the district, the district is a separate entity, distinct from the County.

In the last paragraph of your letter, and in paragraph 3 of your email, you request the use of the Registrar's back room computers. The Registrar is compelled to deny this request. Members of the public do not have any access to the Registrar's back office computers, which contain critical elections data and confidential voter information, and which for security reasons must have restricted access. Of course, during work hours, the recall proponents and authorized supporters may access the public computers in front of the Registrar's counter.

January 16 Email

Most of the requests in the email are answered above. To the extent you have raised new questions or issues, they are answered below.

Paragraph no. 4. You ask that Registrar staff monitor the inspectors during their examination of the petitions. A staff member will be present. Availability of a staff member who is knowledgeable and may answer questions will depend on Registrar work-load issues.

Paragraph no. 6. You ask for a list of precincts and the voters within each precinct in the district. The addresses of the voters are confidential under Elections Code section 2194, and the names of the voters and their addresses may be released only if used for the purposes specified under Elections Code section 2194 and a proper application is submitted pursuant to Elections Code section 2188. Application forms may be obtained from the Registrar of Voters office. Assuming submission of a properly completed application form, and advance payment of fees, the Registrar can provide a

Michael S. Winsten
January 20, 2006
Page 4


printed index of registered voters by precinct within the district. The Registrar's fee for an index is \$.50 per thousand names or portion thereof.

To make arrangements to inspect or obtain copies of the records referred to above, please contact Kay Cotton at (714) 567-7606. For all of the records except for the voter index, you may make arrangements with Ms. Cotton to inspect the documents at the Registrar of Voters during business hours at no charge. Alternatively, you may obtain copies of these records (except for the map and voter index) upon payment of \$.15 a page, which covers the direct costs of duplication. For the map and voter index, the charges are specified above. The records must be picked up from the Registrar's office. The Registrar is not able to mail you copies of these records.

We hope this addresses all of the issues raised in your letter and email.

Very truly yours,

BENJAMIN P. de MAYO
COUNTY COUNSEL

By 
Ann E. Fletcher, Senior Deputy

AEF

cc: Neal Kelley, Acting Registrar of Voters
Kay Cotton, Registrar of Voter's Office



EXHIBIT D

**PETITION RESULT BREAKDOWN FORMS
PREPARED BY ORANGE COUNTY REGISTRAR OF VOTERS**

Petition Result Breakdown

Petition to Recall CSUD Trustee- John Casabianca

Petition to Recall CSUD Trustee- John Casabianca

| Signatures Required | 20421 | | |
|------------------------|--------|------------------------|--------------------|
| Raw Count | 25,493 | | |
| Sample Size | 25,493 | <i>Percent of Sigs</i> | <i>Percent of</i> |
| Sigs Checked | 25,493 | <i>Checked</i> | <i>Sample Size</i> |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 17,870 | 70.1 % | 70.1 % |
| Sigs Invalid | 7,623 | 29.9 % | 29.9 % |
| Duplicated | 413 | 2.0 % | 1.6 % |
| Non-duplicate Invalids | 7,210 | 28.0 % | 28.3 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 17,870 | 70.1 % |
| NotReg | Not Registered | 2,776 | 10.9 % |
| OutOfDist | Out of District | 1,179 | 4.6 % |
| Duplicate | Signed more than once | 413 | 1.6 % |
| Withdrawn | Withdrawn | 38 | 0.1 % |
| RegLate | Registered Late | 368 | 1.4 % |
| RegDiffAdd | Registered at a Different Address | 1,121 | 4.4 % |
| Declncmp | Declaration Incomplete | 1,479 | 5.8 % |
| NoResAdd | No Residence Address Given | 88 | 0.3 % |
| NoSig | No Signature | 10 | 0.0 % |
| SigNoMatch | Signatures Don't Match | 141 | 0.6 % |
| WrongCnty | Page Filed in Wrong County | 6 | 0.0 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee-Sheila Benecke

Petition to Recall CSUD Trustee-Sheila Benecke

| Signatures Required | 20421 | | |
|------------------------|--------|------------------------|--------------------|
| Raw Count | 25,358 | | |
| Sample Size | 25,358 | <i>Percent of Sigs</i> | <i>Percent of</i> |
| Sigs Checked | 25,358 | <i>Checked</i> | <i>Sample Size</i> |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 17,393 | 68.6 % | 68.6 % |
| Sigs Invalid | 7,965 | 31.4 % | 31.4 % |
| Duplicated | 408 | 2.0 % | 1.6 % |
| Non-duplicate Invalids | 7,557 | 30.0 % | 29.8 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 17,393 | 68.6 % |
| NotReg | Not Registered | 3,117 | 12.3 % |
| OutOfDist | Out of District | 1,078 | 4.3 % |
| Duplicate | Signed more than once | 408 | 1.6 % |
| Withdrawn | Withdrawn | 36 | 0.1 % |
| RegLate | Registered Late | 469 | 1.8 % |
| RegDiffAdd | Registered at a Different Address | 971 | 3.8 % |
| Declncmp | Declaration Incomplete | 1,553 | 6.1 % |
| NoResAdd | No Residence Address Given | 74 | 0.3 % |
| NoSig | No Signature | 11 | 0.0 % |
| SigNoMatch | Signatures Don't Match | 235 | 0.9 % |
| WrongCnty | Page Filed in Wrong County | 9 | 0.0 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee- Marlene Draper

Petition to Recall CSUD Trustee- Marlene Draper

| | | | |
|------------------------|--------|------------------------|--------------------|
| Signatures Required | 20421 | | |
| Raw Count | 25,355 | | |
| Sample Size | 25,355 | <i>Percent of Sigs</i> | <i>Percent of</i> |
| Sigs Checked | 25,355 | <i>Checked</i> | <i>Sample Size</i> |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 16,705 | 65.9 % | 65.9 % |
| Sigs Invalid | 8,650 | 34.1 % | 34.1 % |
| Duplicated | 374 | 1.0 % | 1.5 % |
| Non-duplicate Invalids | 8,276 | 33.0 % | 32.6 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 16,705 | 65.9 % |
| NotReg | Not Registered | 2,858 | 11.3 % |
| OutOfDist | Out of District | 1,007 | 4.0 % |
| Duplicate | Signed more than once | 374 | 1.5 % |
| Withdrawn | Withdrawn | 33 | 0.1 % |
| RegLate | Registered Late | 399 | 1.6 % |
| RegDiffAdd | Registered at a Different Address | 1,023 | 4.0 % |
| Declncmp | Declaration Incomplete | 2,640 | 10.4 % |
| NoResAdd | No Residence Address Given | 78 | 0.3 % |
| NoSig | No Signature | 9 | 0.0 % |
| SigNoMatch | Signatures Don't Match | 218 | 0.9 % |
| WrongCnty | Page Filed in Wrong County | 11 | 0.0 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee- Duane Stiff
Petition to Recall CSUD Trustee- Duane Stiff

| | | | |
|------------------------|--------|------------------------|--------------------|
| Signatures Required | 20421 | | |
| Raw Count | 25,312 | | |
| Sample Size | 25,312 | <i>Percent of Sigs</i> | <i>Percent of</i> |
| Sigs Checked | 25,312 | <i>Checked</i> | <i>Sample Size</i> |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 16,327 | 64.5 % | 64.5 % |
| Sigs Invalid | 8,985 | 35.5 % | 35.5 % |
| Duplicated | 384 | 2.0 % | 1.5 % |
| Non-duplicate Invalids | 8,601 | 34.0 % | 34.0 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 16,327 | 64.5 % |
| NotReg | Not Registered | 2,869 | 11.3 % |
| OutOfDist | Out of District | 1,041 | 4.1 % |
| Duplicate | Signed more than once | 384 | 1.5 % |
| Withdrawn | Withdrawn | 34 | 0.1 % |
| RegLate | Registered Late | 447 | 1.8 % |
| RegDiffAdd | Registered at a Different Address | 989 | 3.9 % |
| Declncmp | Declaration Incomplete | 2,827 | 11.2 % |
| NoResAdd | No Residence Address Given | 75 | 0.3 % |
| NoSig | No Signature | 8 | 0.0 % |
| SigNoMatch | Signatures Don't Match | 295 | 1.2 % |
| WrongCnty | Page Filed in Wrong County | 14 | 0.1 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee Mike Darnold

Petition to Recall CSUD Trustee Mike Darnold

| | | | |
|------------------------|--------|------------------------------------|-----------------------------------|
| Signatures Required | 20421 | | |
| Raw Count | 25,336 | | |
| Sample Size | 25,336 | <i>Percent of Sigs Checked</i> | <i>Percent of Sample Size</i> |
| Sigs Checked | 25,336 | | |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 16,000 | 63.2 % | 63.2 % |
| Sigs Invalid | 9,336 | 36.8 % | 36.8 % |
| Duplicated | 370 | 1.0 % | 1.5 % |
| Non-duplicate Invalids | 8,966 | 35.0 % | 35.4 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 16,000 | 63.2 % |
| NotReg | Not Registered | 2,602 | 10.3 % |
| OutOfDist | Out of District | 1,049 | 4.1 % |
| Duplicate | Signed more than once | 370 | 1.5 % |
| Withdrawn | Withdrawn | 36 | 0.1 % |
| RegLate | Registered Late | 341 | 1.3 % |
| RegDiffAdd | Registered at a Different Address | 981 | 3.9 % |
| Declncmp | Declaration Incomplete | 3,650 | 14.4 % |
| NoResAdd | No Residence Address Given | 65 | 0.3 % |
| NoSig | No Signature | 16 | 0.1 % |
| SigNoMatch | Signatures Don't Match | 218 | 0.9 % |
| WrongCnty | Page Filed in Wrong County | 7 | 0.0 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee- S. Henness

Petition to Recall CSUD Trustee- S. Henness

| | | | |
|------------------------|--------|------------------------------------|-----------------------------------|
| Signatures Required | 20421 | | |
| Raw Count | 25,349 | | |
| Sample Size | 25,349 | <i>Percent of Sigs Checked</i> | <i>Percent of Sample Size</i> |
| Sigs Checked | 25,349 | | |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 15,955 | 62.9 % | 62.9 % |
| Sigs Invalid | 9,394 | 37.1 % | 37.1 % |
| Duplicated | 378 | 1.0 % | 1.5 % |
| Non-duplicate Invalids | 9,016 | 36.0 % | 35.6 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|--------|--------|
| Approved | Approved | 15,955 | 62.9 % |
| NotReg | Not Registered | 3,016 | 11.9 % |
| OutOfDist | Out of District | 968 | 3.8 % |
| Duplicate | Signed more than once | 378 | 1.5 % |
| Withdrawn | Withdrawn | 37 | 0.1 % |
| RegLate | Registered Late | 455 | 1.8 % |
| RegDiffAdd | Registered at a Different Address | 817 | 3.2 % |
| Declncmp | Declaration Incomplete | 3,392 | 13.4 % |
| NoResAdd | No Residence Address Given | 96 | 0.4 % |
| NoSig | No Signature | 7 | 0.0 % |
| SigNoMatch | Signatures Don't Match | 220 | 0.9 % |
| WrongCnty | Page Filed in Wrong County | 6 | 0.0 % |

Petition Result Breakdown

Petition to Recall CSUD Trustee- C. Kochendorfer
Petition to Recall CSUD Trustee- C. Kochendorfer

| | | | |
|------------------------|--------|------------------------|--------------------|
| Signatures Required | 20421 | | |
| Raw Count | 25,352 | | |
| Sample Size | 1,268 | <i>Percent of Sigs</i> | <i>Percent of</i> |
| Sigs Checked | 1,268 | <i>Checked</i> | <i>Sample Size</i> |
| Sigs Not Checked | 0 | | 0.0 % |
| Sigs Valid | 962 | 75.9 % | 75.9 % |
| Sigs Invalid | 306 | 24.1 % | 24.1 % |
| Duplicated | 3 | 0.0 % | 0.2 % |
| Non-duplicate Invalids | 303 | 24.0 % | 23.9 % |

| RESULT ABBR | RESULT DESCRIPTION | | |
|-------------|-----------------------------------|-----|--------|
| Approved | Approved | 962 | 75.9 % |
| NotReg | Not Registered | 145 | 11.4 % |
| OutOfDist | Out of District | 53 | 4.2 % |
| Duplicate | Signed more than once | 3 | 0.2 % |
| Withdrawn | Withdrawn | 4 | 0.3 % |
| RegLate | Registered Late | 11 | 0.9 % |
| RegDiffAdd | Registered at a Different Address | 71 | 5.6 % |
| NoResAdd | No Residence Address Given | 5 | 0.4 % |
| NoSig | No Signature | 1 | 0.1 % |
| SigNoMatch | Signatures Don't Match | 13 | 1.0 % |

EXHIBIT E
TABLES DEMONSTRATING THE REGISTRAR'S
INCONSISTENT TREATMENT OF THE SAME SIGNATURE

EXAMPLE #1:

| | Trustee (Petition Pg. #) | Voter #1 (E. Yee) | Voter #2 (T. Najaar) | Voter #3 (J. Mirdaga) | Voter #4 (R. Avery) |
|----|---|------------------------------|---------------------------------|----------------------------------|--------------------------------|
| 1. | Casabianca (Page 3744) | Rejected "x-reg add" | Valid | Valid | Valid |
| 2. | Benecke (Page 3763) | Rejected "x-reg add" | Valid | Valid | Valid |
| 3. | Draper (Page 3763) | Rejected "x-reg add" | Valid | Rejected "DEC" | Rejected "Dec" |
| 4. | Stiff Page 3723) | Rejected Red X" | Valid | Valid | Valid |
| 5. | Darnold (Page 3753) | Rejected ("DEC") | Rejected ("DEC") | Rejected ("DEC") | Rejected ("DEC") |
| 6. | Hennes (Page 3717) | Rejected Red X" | Valid | Valid | Valid |
| 7. | Kochendorfer | Not Available | Not Available | Not Available | Not Available |

EXAMPLE #2:

| | Trustee (Petition Pg. #) | Voter #1 (L. Rubaburg) | Voter #2 (S. Mellinger) | Voter #3 (B. Stanton) | Voter #4 (D. Riley) |
|----|---|---------------------------------------|------------------------------------|----------------------------------|--------------------------------|
| 1. | Casabianca (Page 3727) | Valid | Rejected "Reg Late" | Rejected "Reg Late" | Valid |
| 2. | Benecke (Page 3736) | Valid | Rejected "Reg Late" | Valid | Valid |
| 3. | Draper (Page 3733) | Valid | Rejected "Reg Late" | Valid | Valid |
| 4. | Stiff (Page) | Could not locate | Could not locate | Could not locate | Could not locate |
| 5. | Darnold (Page 3784) | Valid | Rejected "Reg Late" | Valid | Valid |
| 6. | Hennes (Page 3747) | Rejected red "X" | Rejected "Reg. Late" | Rejected "Reg. Late" | Valid |
| 7. | Kochendorfer | Not Available | Not Available | Not Available | Not Available |

EXAMPLE #3:

| | Trustee (Petition Pg. #) | Voter #1 (Kessler) | Voter #2 (Thomas) | Voter #3 (Krecu) | Voter #4 (Holiga) |
|----|---|-------------------------------|------------------------------|-----------------------------|------------------------------|
| 1. | Casabianca (Page 3790) | Valid | Valid | Valid | Rejected Red "X" |
| 2. | Benecke (Page 3778) | Valid | Valid | Valid | Rejected Red "X" |
| 3. | Draper (Page 3771) | Rejected "DEC" | Rejected "DEC" | Rejected "DEC" | Rejected "DEC" |
| 4. | Stiff (Page) | Could not locate | Could not locate | Could not locate | Could not locate |
| 5. | Darnold (Page 3742) | Rejected "DEC" | Rejected "DEC" | Rejected "DEC" | Rejected "DEC" |
| 6. | Henness (Page 3730) | Valid | Valid | Valid | Rejected Red "X" |
| 7. | Kochendorfer | Not Available | Not Available | Not Available | Not Available |

EXAMPLE #4:

| | Trustee (Petition Pg. #) | Voter #1 (Sue Jackson) | Voter #2 (Murial D.) | Voter #3 (Barbara Mott) |
|----|-------------------------------------|---|---|---|
| 1. | Casabianca (Page 3809) | Rejected "Dec" | Rejected "Dec" | Rejected "Dec" |
| 2. | Benecke (Page 3789) | Valid | Valid | Valid |
| 3. | Draper (Page 3804) | Initially rejected red "x", then changed to Valid green x | Initially rejected red "x", then changed to Valid green x | Initially rejected red "x", then changed to Valid green x |
| 4. | Stiff (Page 3772) | Valid | Valid | Valid |
| 5. | Darnold (Page 3794) | Rejected "Dec" | Rejected "Dec" | Rejected "Dec" |
| 6. | Henness (Page 3816) | Valid | Valid | Valid |
| 7. | Kochendorfer | Not Available | Not Available | Not Available |



EXHIBIT F
DECLARATION OF CONNIE LEE

Observations from Jan. 6 – Jan. 15: Following are notes from viewing the CUSD recall petitions and watching the Registrar of Voters personnel handle the petitions. In my first visit to the Reg. of Voters office on Jan. 6, I viewed approximately 5,000 signatures, mostly from the Duane Stiff petitions. I saw:

1. Many erasures, particularly changing a green checkmark to a red mark—indicating the voter had been found and qualified but then changed to disqualified. A few were changed from X – not registered – to green, but very seldom. All were done in colored pencils, but the erasures weren't clean. The first marks were still visible.
2. Entire pages -- all seven signatures -- were disqualified as "dec," filled in by declarer. Some of these obviously had not been filled in by the declarer.
3. A variety of other erasures and changes had been made changing the result from qualified to disqualified. Once a voter had been found (green checkmark), it would not have been easy to "un-find" them, but some green checks were ironically changed to red x-marks. More often, a green check was changed to red for signature not matching, registered late or registered at another address.
4. The petitions had a "handled" look. I had last seen petitions when I turned them in to the recall group. They were clean and did not have the oily appearance of papers that had been handled.

In my second visit, Jan. 10, I asked an employee, Esmerelda, if I could access the database to check names that had been disqualified as not registered. Initially, the answer was yes, as Kay Cotton seemed to be in charge. She directed me to fill out paperwork for the Secretary of State. After I filled out paperwork, I was denied access to a computer. Instead, Esmerelda said she would look up information for me while I sat next to her. For her to change the results on the petitions destroyed the integrity of the certification, but she did the following:

1. After finding four of the first 10 disqualified signatures (X -- not registered) were registered voters, Esmerelda erased the red X and put a green checkmark on the petitions, changing the signature to "qualified." She made note of her changes on a note pad on her desk.
2. Upon finding other registered voters after the first 10, she appeared uneasy about finding so many mistakes, and she started changing the category by disqualifying signatures for other reasons -- e.g., saying signatures didn't match the ones on record. From the signatures I could see on the computer, they matched.
3. Upon finding additional registered voters, she said they still couldn't be counted because the address wasn't an exact match as if disqualifying on a small technicality or if it were hard to read. Also, if a street name was difficult to read, although it could be made out, she would say it didn't match.

I made a third visit, working only on the outer office computers (public access). I checked a sampling of disqualified signatures that were marked X -- not registered -- by looking them up. I found a significant number of those disqualified appeared to be registered voters whose signatures should have been counted.

Jan. 15 – Feb. 6: Following are my observations when working with others in the back office, where we had access to the petitions.

1. Looking only at Benecke's petitions, they had more signs of being handled – a more oily, grimy look and feel – than the petitions for Duane Stiff I had viewed a couple weeks earlier.
2. The changes and erasures on Benecke's petitions were considerable. Most pages had at least some lines that were marked up, re-marked, erased and changed. The erasures and re-marks

generally indicated that signatures had first been qualified and then disqualified. If a second employee were "proofreading" or checking the work, one would expect to find an equal number of signatures being moved into the qualified category from the disqualified category. Why was this not the case? The trend was overwhelmingly toward disqualifying signatures.

3. During the last two visits, looking only at the Benecke petitions, they looked progressively more handled, oily, grimy and marked up. Page after page showed erasures and changes. They looked as if one or more of the employees had been working on them and going over the signatures repeatedly. On the final day I looked at petitions, Feb. 6, I learned that Benecke's petitions were out of sequential order when they had last been left in perfect order by the recall group representatives. Who was going through the petitions when we weren't there? The petitions appeared to have even more changes than what I had observed in earlier visits.

4. Inconsistencies emerged when comparing Benecke's signatures with those of other trustees. When pages from the same packet (e.g., where "John Smith," "Ann Brown," and "Bob Jones" were compared across all seven trustees, the verifications didn't match from trustee to trustee. This demonstrated a lack of standards or lack of uniform application of standards. E.g., "John Smith" would be qualified on one or two and disqualified on others when all data were identical across all seven petitions. More disturbing, "John Smith" would be disqualified on the petitions of other trustees for varying reasons.

5. After the recall group representatives copied names and addresses for signatures that were disqualified as not registered, I looked for the names on the Register of Voters CD and found errors at a rate of 20 percent to 25 percent. I was no longer looking the petitions and wasn't trying variations in spellings that may have been warranted if the writing was hard to read. I believe I would have found a higher rate of errors if I could have used the Reg. of Voters computers and the original petitions – we were still at a disadvantage, even with the benefit of the CD. I believe an employee doing the verification either had not looked or had not made much effort to find a registered voter who was in the system.

6. After using the CD purchased from the Registrar of Voters, I compared results with data from the public computers at the Registrar of Voters office. I found additional registered voters above and beyond those on the CD. As an example, one could not simultaneously look for a first and last name on the CD. Lacking that advantage, some of the more common names were almost impossible to find, particularly when the address was difficult to read. The recall group representatives have done everything possible within the constraints imposed by the Reg. of Voters. I don't believe the constraints have been reasonable – they're intended as road blocks.

I believe a legal authority should seize the petitions because someone is still handling them and tampering with evidence or, at least, destroying the integrity of results that were certified on Dec. 23. One of the reasons I believe employees are altering results is my observation on Jan. 10, when I watched Esmeralda change the codes right in front of me. I believe employees who verified signatures did it in a sloppy manner and without consistent standards, and an employee is now trying to improve accuracy after the fact.

A fairly simple way to determine if the codes have been changed since Dec. 23 is to do a tally of Benecke's petition signatures. The totals today for each of the categories for disqualified signatures should match the totals announced when the results were certified by the Register of Voters on Dec. 23, 2005.

If I can provide further information, please do not hesitate to contact me.



Connie Lee



EXHIBIT G
DECEMBER 8, 2005 CAPISTRANO DISPATCH ARTICLE

December 8, 2005
The Capistrano Dispatch

THE INSIDER: WHAT'S REALLY GOING ON AROUND HERE?
Recall Watchers Still Waiting...

Those waiting anxiously to find out if the move to recall the entire Board of Trustees of the Capistrano Unified School District are going to have to wait a little longer. Those watching and waiting thought the deadline for the Registrar of Voters to give thumbs up or thumbs down on the 175,000 signatures submitted to force a recall election was this week, but turns out it's not 30 days from the date the petitions are turned in, it's 30 working days.

That puts the deadline at December 23, and Acting Orange County Registrar of Voters Neal Kelley told The Dispatch his staff will need every moment of it. The office, juggling two special elections, has taken on extra staff to check the signatures.

Kelley said the random sampling of the signatures, which could have confirmed or dismissed the effort, was inconclusive, so workers have to verify each signature.
The recall group needs 20,000 per trustee.

Under the law, if a random sampling found 90 percent of the total required were not valid, the petitions would have been dismissed, or if the sampling found 110 percent were valid, they would have been approved. ***The number of valid signatures fell somewhere between the 90 percent and 110 percent marks, forcing a full count.*** One observer did the math this way: At a 5 percent sampling, 1,250 signatures were checked. With that sample, the number of verified signatures must have been between 918 and 1,213. Stay tuned.



EXHIBIT H

SUPERINTENDENT'S NOVEMBER 19, 2005 MEMORANDUM

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

November 19, 2005

TO: Marlene Draper, President
and Members
CUSD Board of Trustees

FROM: James A. Fleming, Superintendent

SUBJECT: TECHNICAL ISSUES RELATED TO THE RECALL PROCESS

The Superintendent has been in touch with the Registrar of Voters office and has received information concerning technical aspects of the recall process, including verification of voter signatures, leading to either a dismissal of the recall petitions, or a determination that a recall election must be held and would be scheduled. The purpose of this memorandum is to report relevant information regarding this matter.

The Process Up to Now

Based upon everything we know, signature gatherers had five months to collect the requisite number of signatures from the date the Registrar of Voters told them "go." We understand that the deadline to have submitted the signed petitions was November 8, the date the petitioners actually turned their signatures in. We further understand that recall leaders submitted petitions containing roughly 25,000 signatures per Trustee. If true, this would total approximately 175,000 signatures.

The Process from This Point On

The Registrar of Voters has 30 days following the petitioners' November 8 submission to validate the signatures as being registered voters who reside within the boundaries of the Capistrano Unified School District. This would mean that the internal deadline for the Registrar of Voters to make a decision in this matter is December 8. Once determined, the Registrar would officially notify this Superintendent of the outcome of the signature analysis and whether or not an election is required. It is not known exactly how notification will be conveyed to the Superintendent.

If the Superintendent is informed that a recall election is required for one or more Trustees, he is to place an item on the agenda of the next regular Board meeting certifying the sufficiency of the petition to the Board of Trustees. If the Superintendent receives official notification prior to December 12 that the Registrar is ordering an election, the "certification of sufficiency" agenda item would appear on the agenda of the Board's next regular meeting, in this case December 12. If the official notification of sufficiency is received after December 12, the next regular meeting of the School Board is January 9.

Assuming, for discussion purposes, that notification to the Superintendent occurs prior to December 12, the following timeframe would become operative.

At the Board meeting of December 12, Trustees would be asked to schedule a special meeting to identify the actual date for the election. Trustees have to schedule that meeting within fourteen days of December 12. This would mean, given notification requirements, that the special meeting would be scheduled sometime within the timeframe of December 14 through December 26. The election would then have to be scheduled within a mandated timeframe of 88 days to 125 days after the referenced special meeting. This would place the date of the election sometime between late March and late April.

Signature Verification

The Registrar of Voters will be making its determination relative to signature verification using a five percent (5%) random sample of all signatures gathered for each of the seven petitions. Assuming the recall petitioners have actually collected an average of 25,000 signatures per Trustee, as reported, we have been informed that the required minimum number of valid signatures per Trustee, out of the that collection of 25,000 signatures, is 20,421 which represents 10% of the June 8, 2005, registered voter count in the district of 204,210.

This would mean that the Voter Registrar will randomly select 1,250 signatures per Trustee (5% of 25,000). The protocol then to be followed is that if fewer than 90% (919) of the required minimum from the random sample of a given Trustee (1,021) are valid signatures, that Trustee will not be subject to recall. Conversely, if more than 110% (1,123) of the signatures selected for a given Trustee are determined to be valid, the signature verification process ends and a recall election is determined to be necessary. However, if more than 90% but less than 110% of the required number of signatures are determined to be valid for a given Trustee, then the Registrar of Voters will do a signature-by-signature analysis of each name on the petition of that Trustee.

The above scenario means that, depending upon the random sample for each Trustee, there could be, from among the seven Board members, some who will have no requirement for a recall election, some could have the requirement for a recall election, and some could experience the requirement that all (presumably 25,000) signatures be analyzed and verified before the election requirement determination is made or dismissed.

Costs

There are two costs associated with the recall process. If an election is required, a cost of \$3.30 per registered voter would result in a special election cost of \$673,893.

The other cost related to the recall process is the cost of signature verification. The Registrar's office charges \$3.40 per signature for this process. This means that if the 7,147 sampled signatures (1,021 per Trustee) are all determined to have less than a 90% validation level, the only cost to the district would be \$24,300. If, on the other hand, 90% to 110% of the signatures on the petitions of all seven Trustees are determined to be valid, then this

means that, rather than just 7,147 signatures being analyzed, a total of approximately 175,000 signatures (again, assuming an average of 25,000 signatures per Trustee) would have to be analyzed. At \$3.40 per signature, this means that the cost for signature verification alone could be as high as \$595,000.

In summary, costs related to the recall could be as low as \$24,300 if the analysis of the sample realizes none of the seven Trustees have over 90% signature validity level. The cost could rise to \$698,193, if the signatures to recall even one Trustee have over 110% validity. The highest cost for the recall process would occur if the signatures collected on all seven Trustees wound up in the 90-110% validity range resulting in the requirement for analysis of 175,000 signatures, and then, assuming at least 100% validity was determined for the petitions against all seven Trustees. In that case the district would have to assume the total cost of all signatures analyzed (\$595,000), plus the cost of the Special Election (\$673,893).

The bottom line is that the total cost for the recall process will range from a minimum of \$24,300 and could cost up to a maximum of \$1,268,893.

11/29/05
JAP:km
c: Dave Larsen, Esquire



EXHIBIT I

**SUPERINTENDENT'S JANUARY 11, 2006 STATEMENT REGARDING
RECALL COSTS**

Memo from Superintendent Fleming regarding Recall Costs

January 11, 2006

We received some terrific news from the Registrar of Voters this morning. Contrary to the information that the Registrar had given us earlier, CUSD will NOT have to pay the \$521,801 cost that his office incurred for counting signatures submitted by the failed recall advocates.

Due to a state Appellate Court ruling in an earlier, similar type of case in the Fresno area, a school district is responsible for such costs only when a sufficient number of signatures are verified and the recall certified for an election. The Registrar came across this information while researching payment options for us, and he has verified the case with the County's legal office and its application to CUSD.

The County (i.e. all the taxpayers in Orange County) will have to pay the costs associated with the unsuccessful recall effort.

How nice that we no longer need to consider potential budget cuts that would harm the education of our children.