County Executive Office

Memorandum

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CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

S31C

July 27, 2006

To: Bill Campbell, Chairman

From: Thomas G. Mauk, County Executive Officer

Subject: Exception to the Rule 21

The County Executive Office is requesting a supplemental for the August 1, 2006 Board Hearing Meeting.

Agency: County Executive Office
Subject: Potential Investigation Review: Registrar of Voters – Capistrano Unified School District
District All

Reason for supplemental: Directed by the Board of Supervisors on July 18, 2006

Concur: Bill Campbell
Bill Campbell, Chairman
Orange County Board of Supervisors

cc: Rob Richardson
Assistant to the County Executive Officer

Agenda Item (Clerk's Use Only)

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

ASR Control S31C

MEETING DATE: 8/1/06

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All

SUBMITTING AGENCY/DEPARTMENT: County Executive Office

DEPARTMENT CONTACT PERSON(S): Thomas G. Mauk, County Executive Officer (714) 834-6200

SUBJECT: Potential Investigative Review: Registrar of Voters – Capistrano Unified School District

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD Discussion

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: N/A **# of Positions:** N/A **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: July 18, 2006

RECOMMENDED ACTION(S)

It is recommended that the Board consider the approach and issues outlined below should a further review be warranted of the Registrar of Voters (ROV) role in the Capistrano Unified School District (CUSD) recall petition drive.

SUMMARY:

On July 18, 2006, the Board instructed the CEO to develop an approach to further review the role of the ROV's office as it relates to the CUSD recall petition drive and to clarify those issues that might be appropriate for further investigation.

BACKGROUND INFORMATION:

As the Board is aware, a major component of the allegations from the Recall Committee has already been resolved at the first level of judicial review. This judicial review concerned the ROV's disqualification of signatures. The allegations have been thoroughly reviewed by County Counsel and this office, and the Judge at the Superior Court level has upheld the actions of the ROV's office.(Exhibit #1). Additionaly, The District Attorney has reviewed this matter and determined that "There is no crime that could be proven beyond a reasonable doubt" (Exhibit #2) It is not recommended, therefore, that this topic be considered for administrative review or investigation.

Beyond that, it appears that there are three basic added concerns that continue to be discussed and/or presented by the proponents of the recall that relate to the County role in the process. They are:

1. What sequence of events occurred leading up to the District review of the petitions? (i.e. did the staff knowingly violate the law by allowing access to the recall petitions?)

2. What did the District representatives do with the material reviewed, if anything, while in the County offices? (i.e. notes, conversation, photographs, etc.)

3. What were the proponents told by County staff before or during recall petition circulation that they could do (i.e. filling in addresses) or not do?

These matters have been reviewed internally. While it is clear that access by the District to the petitions should not have been allowed (and that was acknowledged) the CEO's office has confidence that the ROV and his staff acted properly in other related matters. An independent review would either affirm or dispute that conclusion.

Should the Board choose to pursue the matter further, an independent review is recommended as the best approach. Stakeholders should be interviewed, but should not be involved in the investigative side of such a review; that is the responsibility of the CEO under the direction of the Board of Supervisors.

The issues have been identified above. The possible approaches are to use:

1. A retired Registrar of Voters (with no former Orange County association).

2. A retired City or County Manager with election oversight and management experience.

3. An independent attorney in a law firm.

These possibilities are listed in order of recommended priority based on availability of individuals in each category.

What has not been a part of the County review or discussion has been the behavior and/or involvement of the CUSD Board and staff in the recall process and that continues to be outside the County's internal or external review. The proponents of the recall (i.e. the "committee") have recommended in a letter (Exhbit #3) dated July 17, 2006 that the Board:

(a) Conduct an independent investigation into exactly how CUSD officials sought and gained access to recall petitions.

(b) Condemn the unethical and illegal actions of the CUSD.

That letter goes on to discuss "corruption" and "gross fiscal mismanagement" at the CUSD. The latter issues should remain outside the scope of review by the County.

Recommendation: As requested by the Board of Supervisors, three potential issues to be reviewed have been identified above. Additionally, three possible approaches are suggested should further review be deemed appropriate.

Finally, two other major areas require ongoing attention. One is the timely and aggressive maintenance of the voter database in the ROV's office. It is that database against which signatures are checked and on an ongoing basis due diligence by the County is of the highest priority. The second additional area for improvement based upon this experience will be to ensure that future communications are clarified to avoid misunderstanding in the first place.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

County Executive Office

EXHIBIT(S):

ATTACHMENT(S):

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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Direct No.: (714) 834-3303
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BENJAMIN P. de MAYO
COUNTY COUNSEL

MEMORANDUM

July 27, 2006

TO: Thomas G. Mauk, County Executive Officer

FROM: Benjamin P. de Mayo, County Counsel

SUBJECT: *Capo for Better Representation v. Neal Kelley*, OCSC Case No. 06CC04889

In the Capistrano Unified School District recall litigation, Orange County Superior Court Judge Michael Brenner ruled in favor of Neal Kelley, Registrar of Voters on July 11, 2006.

The Registrar invalidated between 1,500 and 3,000 signatures on six of the seven recall petitions because the signers did not comply with the requirements of Elections Code section 100. That provision of the Elections Code requires a petition signer to "personally affix" his or her signature, printed name, and address to a signature petition. (A 100 percent actual count of the signatures on the Kochendorfer recall petition was not conducted because the random sampling showed that less than 90 percent of the needed 20,421 signatures had been submitted in support of that petition.)

The Court found that Elections Code section 100 was controlling, and relied on the case of *Mapstead v. Anchungo* to affirm the Registrar's duty to invalidate signatures that did not comply with Elections Code section 100. The Court found that the Registrar's action in rejecting the "declaration incomplete" signatures was reasonable. The Court also rejected the Petitioner's claim that the Registrar had told petition circulators that they could fill in the addresses of the signers.

LJP:nr

To: Honorable Members of the Orange County Board Of Supervisors
Honorable Bill Campbell
Honorable Chris Norby
Honorable Lou Correa
Honorable James W. Silva
Honorable Thomas W. Wilson

From: The CUSD Recall Committee

Date: July 17, 2006

Re: Staff Report from O.C. Registrar of Voters Regarding CUSD Government Abuses (Supplemental Agenda Item #S52C)

Introduction.

In response to the troubling revelations about CUSD government abuses last week, O.C. Board of Supervisors Chairman Bill Campbell took swift action to add a special supplemental item to the OC Board of Supervisors agenda for tomorrow's board meeting. The CUSD Recall Committee applauds Chairman Bill Campbell for taking this bold and immediate action.

A status update report was prepared by the Orange County Registrar of Voters and submitted to the Orange County Board of Supervisors for consideration during their board meeting tomorrow. Unfortunately, in the opinion of the CUSD Recall Committee, the report prepared by the O.C. Registrar is inaccurate, incomplete and misleading. It appears the Registrar is attempting to "whitewash" obvious violations of the law.

The Registrar admits that it was illegal for CUSD officials to have obtained access to the CUSD Recall Petitions. However, the Registrar suggests this was nothing more than an honest mistake. We strongly disagree (and possess evidence to support this position). Such a whitewash would have the effect of shielding CUSD (and the Registrar's office) from criticism and further independent investigation.

The CUSD Recall Committee urges the Orange County Board of Supervisors to:

(a) Conduct an independent investigation into exactly how senior CUSD officials sought and gained illegal access to the CUSD recall petitions; and

(b) Condemn the unethical and illegal actions of CUSD and the failure of the CUSD Trustees to take any meaningful corrective action.

Background.

For years, corruption and gross fiscal mismanagement at CUSD has hurt the residents of South Orange County. Now, as has been widely reported in the media last week, CUSD Superintendent Fleming (and possibly the CUSD Trustees themselves) targeted children and their parents in an effort to further their own political agendas. In addition, Superintendent Fleming admits he sent senior CUSD staff members to the Santa Ana offices of the O.C. Registrar of Voters for the purpose of reviewing the CUSD Recall petitions.

For a number of reasons, these actions by the CUSD leader(s) are unethical, unacceptable and illegal. For example:

(a) Election Law Violation. California law absolutely prohibited any CUSD employee from reviewing the CUSD recall petitions. The Registrar of Voters now admits this.

(b) Illegal Use of Taxpayer Funded Public Resources (Prohibited "Express Advocacy"). It is absolutely illegal for government officials to get involved in political matters. The law absolutely prohibits government officials from using any government facilities or expend any time, effort or tax dollars on purely political matters.

During the recall campaign, Superintendent Fleming received multiple letters from the recall committee's lawyer demanding that Fleming stop trying to illegally influence the political process. In this case, Superintendent Fleming illegally sent senior CUSD officials to the Registrar's office to view the confidential recall petitions. Those petitions are purely political -- they have absolutely nothing to do with the duties Superintendent Fleming and the rest of our school district officials are responsible for carrying out. The CUSD officials illegally gained access to the petitions and illegally copied down the names of those who gathered the petitions.

This illegally obtained information was then illegally delivered to Superintendent Fleming. By placing the information in the "to discuss with Trustees box," it seems highly likely that the illegally obtained information was illegally given to each of the seven elected CUSD Trustees.

(c) Civil Rights Violation. The outrageous actions of the CUSD leader(s) violate the civil rights of the individuals who were targeted by CUSD.

So what have the CUSD Trustees done in response to this scandal? Did they fire Superintendent Fleming? Did they place him on administrative leave? Did they call for an independent investigation? No...they chose to do absolutely nothing.

As a result, the CUSD Recall Committee believes it is time for all elected leaders representing South Orange County (including the O.C. Board of Supervisors) to stand up, be counted and to protect the residents of Orange County from obvious government abuse at CUSD.

In response to these troubling revelations about CUSD, O.C. Board of Supervisors Chairman Bill Campbell immediately took action to add this special supplemental item to the OC Board of Supervisors agenda for tomorrow's board meeting.

The Registrar's Inaccurate, Incomplete and Misleading Staff Report.

The status update report prepared by the Orange County Registrar of Voters and submitted to the Orange County Board of Supervisors is inaccurate, incomplete and misleading for the following reasons:

1. Staff Report Misstates the Position of the O.C. District Attorney and the California Secretary of State. The Registrar's Staff report states the O.C. District Attorney and the California Secretary of State "...both reviewed the allegations and found no violation of the Elections Code and that the Registrar acted appropriately in regards to the certification." This simply isn't true.

   The District Attorney's office merely stated that, "...there is *no crime indicated that could be proven beyond a reasonable doubt* and that the appropriate office to review this matter is the Secretary of State."

   The Secretary of State's office merely stated that, "...I find no apparent violation of the election code *that would warrant criminal investigation*."

   Copies of the two no-action letters from the District Attorney and the Secretary of State are attached hereto. The CUSD Recall Committee did not base its objections upon allegations that crimes had been committed. However, we did allege (and provide clear and convincing evidence) that serious mistakes had been made by the Registrar's office when they invalidated thousands of recall petition signatures (e.g. signatures from hundreds of voters were mistakenly invalidated as being "unregistered" or "out of the district" when in reality, we demonstrated they were indeed registered and lived in the district).

   We asked a number of agencies to investigate how those mistakes were made in order to ensure those mistakes were never repeated in order that the public could have confidence in our electoral system. To the best of our knowledge, not a single government agency has investigated the specific problems that we highlighted in our 55-page report (e.g. does the Registrar have a corrupt database of registered voters which resulted in the Registrar improperly invalidating hundreds of signatures from voters whom the Registrar mistakenly categorized as "unregistered" or "out of the district" and what is the appropriate criteria to determine whether a voter's signature matches the signature on file with the Registrar, etc.).

2. Registrar Knew CUSD Could Not Legally Inspect the Petitions. The Registrar claims that (a) they simply made a mistake in their interpretation of the statutes that prohibit CUSD from inspecting the petitions; and (b) they didn't discover their mistake until after CUSD had been provided with the illegal access. Again, this simply isn't true.

   (i) Before the Registrar permitted CUSD officials illegal access to the CUSD Recall petitions, CUSD Recall Committee members discussed with the Registrar the California statute that permits only the proponents of a recall petition to inspect the petitions.

   (ii) Before the Registrar permitted CUSD officials illegal access to the CUSD Recall petitions, and in order to comply with the statutory restrictions that only permitted the proponents and their authorized agents to review the petitions, CUSD Recall Committee members and the Registrar agreed upon a formal procedure whereby only legally authorized agents of the proponents would be authorized to inspect the petitions. These agreements and authorizations were set forth in writings submitted to the Registrar.

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(iii) Before the Registrar permitted CUSD officials illegal access to the CUSD Recall petitions, we also specifically discussed and confirmed with the Registrar that our opponents at CUSD were absolutely prohibited by law from ever inspecting the CUSD Recall Petitions. We raised this point with the Registrar because our volunteers had given assurances to teachers and other CUSD employees who were concerned about signing the petitions out of fear of retribution that CUSD was prohibited by law from ever seeing the petitions.

3. CUSD Recall Committee Did Not File a Legal Action to Overturn the Registrar's Decision. The Registrar's staff report mistakenly refers to the CUSD Recall Committee as the "petitioners" in the recent legal action filed against the Registrar of Voters. The CUSD Recall Committee had absolutely no involvement in that lawsuit.

   On January 3, 2006, the CUSD Recall Committee commenced its official inspection of the recall petitions to ascertain which petition signatures were disqualified and the reasons therefore. On March 1, 2006 the CUSD Recall Committee released a 55-page report detailing its findings. The CUSD Recall Committee delivered the Inspection Report to the California Attorney General, the California Secretary of State, the Orange County District Attorney, the Orange County Grand Jury, and the Orange County Board of Supervisors. **However, for a number of strategic reasons, the CUSD Recall Committee chose not to pursue legal action to overturn the Registrar's decision.**

   On April 3, 2006, the CUSD Recall Committee sent a letter to Mark Rosen, the attorney who filed the legal action against the Registrar. That letter (which has been publicly available for months on our website at www.cusdrecall.com) clearly confirmed that the individuals who were attempting to overturn the Registrar's invalidation of the CUSD Recall petitions were not members of The CUSD Recall Committee.

4. CUSD Took Names to Add to The CUSD Enemies List. While they were illegally inspecting the CUSD Recall petitions, the senior CUSD staff members recorded the names of 24 individuals who had circulated the petitions for signature. Why did CUSD officials want the names of the people who circulated the recall petitions? As set forth above, and based on the front-page story in the O.C. Register, we believe CUSD sought and obtained illegal access to the CUSD Recall petitions at the Registrar's office because they wanted to update their enemies list. Why? To harass, intimidate and retaliate against them.

5. County Chief Elections Officer and the CUSD Leadership Must Be Held to a Higher Standard. Even if it were true, it is unacceptable to suggest that the chief elections officer and the CUSD Superintendent simply made an honest mistake. These are serious violations and these government officers must be held to a higher standard.

Recommendation.

In order to protect the residents of South Orange County from further illegal activities of the CUSD leadership, we urge you to take immediate, clear and convincing action. The CUSD Recall Committee urges the Orange County Board of Supervisors to:

(a) Investigate How CUSD Gained Illegal Access to Recall Petitions. Conduct an independent investigation into exactly how senior CUSD officials sought and gained illegal access to the CUSD recall petitions; and

(b) Condemn the CUSD Government Abuse. Condemn the unethical and illegal actions of CUSD and the failure of the CUSD Trustees to take any meaningful corrective action.

Last week, in response to the CUSD Trustees' failure to take any meaningful corrective action in response to the growing scandal, elected officials in Mission Viejo, Rancho Santa Margarita, Aliso Viejo and Dana Point condemned the actions of the CUSD leadership. "What Fleming and his board of trustees have perpetuated on innocent children and their families goes beyond any moral or ethical low point imaginable," said Rancho Santa Margarita Councilman Gary Thompson. Thompson, along with Councilman Neil Blais, Jerry Holloway and Mayor Pro Tem Tony Beall of Rancho Santa Margarita, Councilman Frank Ury and Councilwoman Patricia Kelley of the Mission Viejo City Council, and Aliso Viejo Mayor Carman Vali-Cave, publicly called for Superintendent Fleming to be fired as a result of the public disclosure of his involvement in the latest CUSD scandal involving the breach of public trust and abuse of power. This list is sure to grow as more and more elected officials speak out in an effort to protect the residents of their cities.

OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

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MARY ANNE MCGAULEY
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BRANCH COURT OPERATIONS

DONALD BLANKENSHIP
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

March 29, 2006

Mr. Michael S. Winsten
CUSD Recall Committee
28202 Cabot Road, Suite 630
Laguna Niguel, CA 92677

Re: CUSD Recall Petitions Rejected by O.C. Registrar's Office

Dear Mr. Winsten,

I have reviewed the material you sent me regarding the above subject. I have determined that there is no crime indicated that could be proven beyond a reasonable doubt and that the appropriate office to review this matter is with the Secretary of State.

Accordingly, I have forwarded this material to Mr. Mark Loren, Supervisor of the Election Fraud Investigation Unit, Secretary of State for his review and any appropriate action he may identify.

This file is being closed in light of my referral to that office.

Sincerely,

Thomas H. Crofoot
Senior Deputy District Attorney

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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April 6, 2006

Michael Winsten
CUSD Recall Committee
28202 Cabot Rd, Suite 360
Laguna Niguel, CA 92677

Dear Mr. Winsten:

Your request to the Orange County District Attorney for an investigation of the Registrar's handling of CUSD Recall petitions was forwarded to our office for review.

However, after careful examination of the material you submitted, I find no apparent violation of the election code that would warrant criminal investigation.

Thank you for bringing this matter to our attention.

Sincerely,

Mark Loren
Acting Chief Investigator
Election Fraud Investigation Unit

cc: Orange County Senior Deputy District Attorney Thomas Crofoot
Orange County Candidate and Voter Services Manager Kay Cotton

ELECTIONS DIVISION
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