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October 14, 2008

Office of Administrative Law
OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Re: Proposed Emergency Regulations
Secretary of State
Post Election Manual Tally Requirements

Dear Reference Attorney:

As the County Clerk-Registrar of Voters for Butte County, I am opposed to emergency regulation 2008-1009-02E currently under review by the Office of Administrative Law regarding Secretary of State's Post Election Manual Tally Requirements in Close Contests. There is no emergency to justify emergency regulations, and the Secretary has not shown any imminent threat to the election or to the public.

The Secretary claims that there is an emergency and that public peace, health and safety, or general welfare of the citizens is threatened, yet she has not indicated what that threat is. Just claiming there is an emergency without some evidence to support her assertion cannot be allowed. If the Secretary is worried about the accuracy of the voting machines then why did she certify them in their current form? The Secretary has approved our current voting system and has said it is secure and accurate. It is exactly the same system we have used for the past two elections pursuant to her orders. Butte County's election results were accurate and secure before the Secretary of State decertified our systems, and they have been accurate and secure since she recertified them.

Butte County voters can have complete confidence that their ballots will count, and that they will be counted accurately. We currently have the best, most accurate and secure voting systems in the history of California. We have never needed a 10% manual audit before and we do not need one now. The 1% manual tally that has been in Election Code section 15360 for years has provided the check necessary to guarantee accurate and secure results. There is no evidence anywhere in this state where ballots have been miscounted or counting machines have been compromised. There is academic research which shows that not only is a 1% manual audit sufficient to ensure the accuracy of election results, but it also says that anything more than 1% provides no additional safeguards. Due to the limited time period for public comment, I am not able to supply the academic information today, however, I would welcome public hearings and testimony into manual audit regulations if the Secretary would introduce

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them through the usual APA process so that real input based on real facts and research could be considered. The Secretary has not shown there is an emergency.

Secretary Bowen has had nearly two years to introduce regulations for manual vote tallies, yet waited until just three weeks before the Presidential election to seek to implement emergency regulations without following the normal Administrative Procedures Act processes. Because of her delay, my colleagues and I, who have years of election expertise, do not have the time or resources to adequately address the regulations.

The Secretary states that the costs of this emergency regulation will be in the hundreds of dollars. She bases this on the results from a few counties at the lowest turnout election in history. The number of ballots to be manually checked will be exponentially larger if there are close races at the November 4th election. Turnout in November is likely to be at least 300% of what it was in June which will result in thousands more ballots in my county alone, and could be in the millions of ballots in Los Angeles County. The Secretary has significantly understated the costs which this regulation will impose on counties. Additionally, Elections Code section 15624 provides for recounts which are paid for by the challenging candidate, and not by the taxpayers as this regulation would require. There will always be close elections and California has chosen not to pay for recounts no matter how close the contest and to require candidates to pay.

Costs of the additional tally requirements are just the tip of the iceberg. The Elections Code gives counties 28 days to tally all of the ballots in the election. This was easy to do in June when the turnout was low, but we will need all of that time just to fulfill our legal requirements to certify the election results within the 28 day limit. Adding a 100% hand count of the ballots as is possible under these proposed regulations is not possible within the 28 day window. Even just a 10% manual audit will require ten times the work required by the existing statutory manual tally requirement and will require hundreds of hours of overtime for my tired staff completing their fourth countywide election in 12 months. Using simple ratios, if the current 1% manual audit requires a 28 day certification timeline, shouldn't a 10% manual tally result in a certification of ten times longer? To compress the process into the required time period, in order for California's electors at the Electoral College to be seated, will require excessive amount of overtime and staff levels.

There is no emergency to justify escaping the normal regulatory process. The Secretary tried to impose these conditions on us as underground regulations and was told no by the courts. The Secretary of State's office has a long history of refusing to adopt regulations and instead relying on underground regulations. The Office of Administrative Law should not reward the Secretary for avoiding the normal regulatory process by first issuing underground regulations, and then trying to sneak through emergency regulations. Please reject emergency regulation 2008-1009-02E.

Respectfully submitted,
/s/ Candace J. Grubbs

Candace J. Grubbs

Cc: Pamela Giarrizzo, Esq.