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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/02/2015** at 02:38:37 PM  
Clerk of the Superior Court  
By Adriane Bennett, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 AURORA CLARK,

13 Contestant,

14 vs.

15 JOHN McCANN, and DOES 1 through 10

16 Defendant.

17 SAN DIEGO COUNTY REGISTRAR OF  
18 VOTERS, MICHAEL VU,

19 Nominal Defendant  
20 (CCP § 382)

) Case No. 37-2015-00000121-CU-PT-CTL

) **STATEMENT OF ELECTION CONTEST**

) **(Elec. Code, § 16400)**

) Date Filed: January 2, 2015

1 **TO THE CLERK OF THE SAN DIEGO COUNTY SUPERIOR COURT:**

2 Pursuant to California Elections Code section 16000 et seq., Contestant AURORA  
3 CLARK (“Contestant”), files this statement of election contest and alleges as follows:

4 1. Contestant AURORA CLARK is a qualified elector of the City of Chula Vista,  
5 County of San Diego, State of California in which a contested run-off election for the office  
6 of Chula Vista City Council, Seat 1 was held on November 4, 2014. Contestant is pursuing  
7 the election contest on behalf of herself, all registered voters in City of Chula Vista and the  
8 general public.

9 2. Defendant JOHN McCANN was declared elected to that office on  
10 December 2, 2014, by the San Diego County Registrar of Voters Michael Vu when the  
11 election results were certified.

12 3. Nominal Defendant San Diego County Registrar of Voters Michael Vu may be  
13 subject to an order of this court to count previously uncounted ballots for the City of Chula  
14 Vista run-off election for the office of Chula Vista City Council, Seat 1 and potentially certify  
15 new election results.

16 4. The true names and capacities of the parties identified as DOES 1 through 10  
17 are unknown to Contestant, who will seek the Court’s permission to amend this pleading in  
18 order to allege the true names and capacities as soon as they are ascertained. The Clerk of the  
19 City of Chula Vista and/or the City Council may be required to take action in the event the  
20 certified election results change as a result of this election contest and if necessary this  
21 election contest can be amended to expedite any order of the court.

22 5. On or about June 3, 2014, the city of Chula Vista held an election for city  
23 council Seat 1 for the purpose of filling a vacancy in this office. The names of the 6  
24 candidates – John McCann, Steve Padilla, Robert Corcilus, Jason Paguio, Heideh Rivera, and  
25 Scott Vinson – appeared on the ballot for election to the office of City Council, Seat 1.

26 6. A run-off election was held on November 4, 2014 between the top vote  
27 recipients in the June 3, 2014 election, Defendant JOHN McCANN and Steve Padilla. On or  
28 about December 2, 2014, the San Diego County Registrar of Voters Michael Vu certified the

1 results of the official canvass showing JOHN McCANN to be the winner of the election by  
2 two votes. The certified vote totals from the official canvass were: Defendant McCANN –  
3 18,448 votes, and Steve Padilla – 18,446 votes.

4 7. The Supreme Court of California has consistently stated that the paramount  
5 goal of the electoral process is to protect and ascertain the will of the people. This principle is  
6 applied not just on Election Day, but also in the context of a recount and during an election  
7 contest. “It is the primary purpose of the election contest provisions to ascertain the will of  
8 the people and to make certain that mistake or fraud has not frustrated the public volition.”  
9 *Enterprise Residents Legal Action Against Annexation Committee v. Brennan* (1978) 22  
10 Cal.3d 767, 774. “The right to vote on an equal basis with other citizens is a fundamental  
11 right in our democratic society and one of the basic civil rights of man which preserves all  
12 other rights.” *Collier v. Menzel* (1985) 176 Cal.App.3d 24, 31.

13 8. Contestant files this election contest because following the certification of the  
14 November 4, 2014 run-off election for the Chula Vista City Council, Seat 1, which the  
15 Registrar of Voters determined on December 2, 2014 resulted in Defendant JOHN McCANN  
16 being elected by a margin of two votes, it was discovered that at least 15 votes cast in the  
17 election were not counted as legal votes. Specifically, errors were made such that the  
18 Elections Code was not followed with respect to counting provisional and vote by mail  
19 ballots. Under California law, the lack of a residence address on a vote by mail identification  
20 envelope does not affect the validity of the vote by mail ballot as long as the signature  
21 compares with that of the signature on file. *Wilks v. Mouton* (1986) 42 Cal.3d 400, 413  
22 superseded by statute on other grounds as stated in *Gooch v. Hendrix* (1993) 5 Cal.4th 266,  
23 280 n. 8. Similarly, provisional votes should be counted as legal votes as long as the  
24 signature on the provisional ballot matches the signature on file with the Registrar of Voters.  
25 The address on the provisional ballot cannot be grounds for disallowing a vote and  
26 disenfranchising the voter.

27 9. The City of Chula Vista City Council races have a history of being decided by  
28 very few votes and the election of Defendant JOHN McCANN should be set aside if after

1 counting all of the eligible voters' ballots who were denied the right to vote this change the  
2 election result. Further, the eligible votes should have been counted in accordance with the  
3 provisional voter guidelines scenarios prepared by the California Association of Clerks and  
4 Election Officials. Contestant is informed and believes and on that basis alleges that the  
5 California Association of Clerks and Election Officials guidelines regarding counting  
6 provisional ballots provides that even when the address written on the envelope of a  
7 provisional ballot is different from the one listed on the voter registration file that the vote  
8 should be counted. The guidelines further provide that if the voter provides a mailing address  
9 rather than a residence address on the provisional ballot envelope that the vote should also be  
10 counted.

11 10. This Statement of Election Contest is filed pursuant to California Elections  
12 Code section 16100 on the grounds that, inter alia, (i) eligible voters who attempted to vote in  
13 accordance with the laws of the state were denied their right to vote (Elec. Code, § 16100(e);  
14 (ii) the precinct board in conducting the election or in canvassing the returns made errors  
15 sufficient to change the result of the election as to Defendant (§ 16100 (f)); and (iii) there was  
16 an error in the vote-counting programs or summation of ballot counts (§ 16100 (g)).

17 11. More specifically, Contestant alleges that there are at least an additional 15  
18 legal votes cast that were not included in the certified vote total for the Chula Vista City  
19 Council seat, a sufficient number to change the outcome of the election. Contestant, through  
20 its legal counsel, has met with County Council and in order to preserve the privacy and  
21 identities of the voters whose ballots are at issue, have assigned a number for each ballot  
22 being contested. Not all ballots being contested identify precinct numbers and County  
23 Council and Contestant have agreed that should the Court require a precinct number, this  
24 issue will be researched and each voter will be assigned a corresponding precinct.

25 12. Contestant is informed and believes and on that basis alleges that the  
26 provisional ballot cast by Voter 1 was improperly not counted because the address on the  
27 provisional ballot. Voter 1's ballot should be included in the final election tally because  
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1 Voter 1 is a registered voter in Chula Vista and the signature matched the voter registration  
2 signature.

3 13. Contestant is informed and believes and on that basis alleges that the  
4 provisional ballot cast by Voter 2 was improperly not counted because the address on the  
5 provisional ballot. Voter 2's ballot should be included in the final election tally because  
6 Voter 2 is a registered voter in Chula Vista and the signature matched the voter registration  
7 signature.

8 14. Contestant is informed and believes and on that basis alleges that the  
9 provisional ballot cast by Voter 3 was improperly not counted because the address on the  
10 provisional ballot. Voter 3's ballot should be included in the final election tally because  
11 Voter 3 is a registered voter in Chula Vista and the signature matched the voter registration  
12 signature.

13 15. Contestant is informed and believes and on that basis alleges that the  
14 provisional ballot cast by Voter 4 was improperly not counted because the address on the  
15 provisional ballot. Voter 4's ballot should be included in the final election tally because  
16 Voter 4 is a registered voter in Chula Vista and the signature matched the voter registration  
17 signature.

18 16. Contestant is informed and believes and on that basis alleges that the  
19 provisional ballot cast by Voter 5 was improperly not counted because the address on the  
20 provisional ballot. Voter 5's ballot should be included in the final election tally because  
21 Voter 5 is a registered voter in Chula Vista and the signature matched the voter registration  
22 signature.

23 17. Contestant is informed and believes and on that basis alleges that the  
24 provisional ballot cast by Voter 6 was improperly not counted because the address on the  
25 provisional ballot. Voter 6's ballot should be included in the final election tally because  
26 Voter 6 is a registered voter in Chula Vista and the signature matched the voter registration  
27 signature.

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1           18.     Contestant is informed and believes and on that basis alleges that the  
2 provisional ballot cast by Voter 7 was improperly not counted because the address on the  
3 provisional ballot. Voter 7's ballot should be included in the final election tally because  
4 Voter 7 is a registered voter in Chula Vista and the signature matched the voter registration  
5 signature.

6           19.     Contestant is informed and believes and on that basis alleges that the  
7 provisional ballot cast by Voter 8 was improperly not counted because the address on the  
8 provisional ballot. Voter 8's ballot should be included in the final election tally because  
9 Voter 8 is a registered voter in Chula Vista and the signature matched the voter registration  
10 signature.

11           20.     Contestant is informed and believes and on that basis alleges that the  
12 provisional ballot cast by Voter 9 was improperly not counted because the address on the  
13 provisional ballot. Voter 9's ballot should be included in the final election tally because  
14 Voter 9 is a registered voter in Chula Vista and the signature matched the voter registration  
15 signature.

16           21.     Contestant is informed and believes and on that basis alleges that the  
17 provisional ballot cast by Voter 10 was improperly not counted because the address on the  
18 provisional ballot. Voter 10's ballot should be included in the final election tally because  
19 Voter 10 is a registered voter in Chula Vista and the signature matched the voter registration  
20 signature.

21           22.     Contestant is informed and believes and on that basis alleges that the vote by  
22 mail ballot cast by Voter 11 was improperly not counted because Voter 11 was not registered  
23 to vote by mail. Voter 11's ballot should be included in the final election tally because Voter  
24 11 is a registered voter in Chula Vista and the signature matched the voter registration  
25 signature. Contestant is informed and believes and on that basis alleges the Voter 11  
26 appeared at the polling location with the mail ballot but she was not provided with a  
27 provisional ballot or regular ballot to cast her vote. This vote should not be disregarded  
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1 because of an error made by the voting precinct worker for failing to identify that Voter 11  
2 was not registered to vote by mail.

3 23. Contestant is informed and believes and on that basis alleges that the vote by  
4 mail ballot cast by Voter 12 was improperly not counted because Voter 12 was not registered  
5 to vote by mail. Voter 12's ballot should be included in the final election tally because Voter  
6 12 is a registered voter in Chula Vista and the signature matched the voter registration  
7 signature. Contestant is informed and believes and on that basis alleges the Voter 12 appeared  
8 at the polling location with the mail ballot, but was not provided with a provisional ballot or  
9 regular ballot to cast her vote. This vote should not be disregarded because of an error made  
10 by the voting precinct worker for failing to identify that Voter 12 was not registered to vote by  
11 mail.

12 24. Contestant is informed and believes and on that basis alleges that the vote by  
13 mail ballot cast by Voter 13 was improperly not counted because the Registrar of Voters  
14 determined that the signature on the ballot did not match the signature on file. Voter 13's  
15 ballot should be included in the final election tally because Voter 13 is a registered voter in  
16 Chula Vista and the signature matched the voter registration signature.

17 25. Contestant is informed and believes and on that basis alleges that the ballot  
18 cast by Voter 15 was improperly not counted. Voter 15's ballot should be included in the  
19 final election tally because Voter 15 is a registered voter in Chula Vista and the signature  
20 matched the voter registration signature. If it is determined that Voter 15 voted twice, then  
21 Contestant will withdraw its challenge to Voter 15's ballot.

22 26. Contestant is informed and believes and on that basis alleges that the vote by  
23 mail ballot cast by Voter 16 was improperly not counted because the ballot was sent in late.  
24 Voter 16's ballot should be included in the final election tally because Voter 16 is a registered  
25 voter in Chula Vista and the signature matched the voter registration signature. If it is  
26 subsequently determined that the ballot was not mailed timely, Contestant will withdraw its  
27 challenge of Voter 16's ballot.  
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1           27.     The errors and conduct described above were sufficient in number and scope to  
2 change the result of the election if a sufficient number were cast in favor of candidate Steve  
3 Padilla to be declared elected to the City Council instead of Defendant. If after counting all of  
4 the 15 votes as required by law, there are a sufficient number of votes cast for candidate Steve  
5 Padilla and included in the certified vote total as required by law, and the number of legal  
6 votes cast for candidate Steve Padilla is greater than the number of legal votes cast for  
7 Defendant, then candidate Steve Padilla would be and is entitled to be declared elected to the  
8 Chula Vista City Council.

9           28.     The errors and conduct described above have unlawfully and  
10 unconstitutionally disenfranchised eligible voters in the City of Chula Vista, and have denied  
11 them their fundamental right to vote and their rights to due process and the equal protection of  
12 the laws. The failure and refusal to count the legal votes as votes for candidates in the Chula  
13 Vista City Council Election, as set forth above, violates the California Elections Code, and the  
14 United States and California Constitutions.

15           WHEREFORE, Contestant AURORA CLARK prays:

16           1.     That the ballots identified in paragraphs 12-26 be opened and included in the  
17 election of the Chula Vista City Council Seat 1;

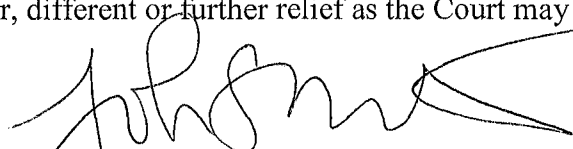
18           2.     That if after including the additional ballots there are sufficient votes to set  
19 aside the election of JOHN McCANN, that the election of John McCANN be set aside;

20           3.     That if after including the additional ballots there are sufficient votes for  
21 candidate Steve Padilla, that candidate Steve Padilla be elected to the Chula Vista City  
22 Council, Seat 1 and ordering that a certificate of election be issued to him forthwith;

23           4.     Awarding Contestant its costs of suit, including reasonable attorneys' fees;

24           5.     Granting Contestant such other, different or further relief as the Court may  
25 deem just and proper.

26 Dated: January 2, 2015

  
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John S. Moot, Esq.  
Schwartz Semerdjian Ballard & Cauley LLP  
Attorneys for Contestant Aurora Clark



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**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

I have read the foregoing STATEMENT OF ELECTION CONTEST (Elec. Code, § 16400) and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I am informed and believe that they are true.

Executed on January 02, 2015, at Chula Vista, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
AURORA CLARK