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9 Attorneys for Barbara Gail Jacobson,
Lillian Ritt

10 **SUPERIOR COURT OF CALIFORNIA,**
11 **COUNTY OF SAN DIEGO**

12 **BARBARA GAIL JACOBSON,**
13 **LILLIAN RITT, and DOES 1-50,**

14 **Contestants,**

15 **vs.**

16 **BRIAN P. BILBRAY, MIKEL HAAS,**
17 **DOES 1-50,**

18 **Defendants.**

CASE NO.:

**VERIFIED STATEMENT OF
BARBARA GAIL JACOBSON IN
SUPPORT OF ELECTION CONTEST**

(Elections Code, section 16400)

19 I, Barbara Gail Jacobson, declare the following:

- 20
- 21 1. I, Contestant, Barbara Gail Jacobson, reside at 12412 Carmel Pointe in the City of
22 San Diego, County of San Diego, State of California, and am a qualified elector of the
23 50th Congressional District in the State of California.
- 24 2. Michael Haas, Registrar of Voters of the County of San Diego, hereinafter referred
25 to as “Defendant,” does business at 5201 Ruffin Road, Suite I, in the City of San Diego,
26 County of San Diego, State of California.
- 27 3. The office contested is Member of the United States House of Representatives
28 from the 50th Congressional District of the State of California.

1 4. At the Special Election, held on June 6, 2006, in San Diego County, State of
2 California, Brian Bilbray, was elected to the aforementioned office.

3 5. The grounds for this contest are stated in the petition for Election Contest and
4 incorporated by reference herein.

5 6. The result of the election was declared on June 29, 2006, by the Canvassing Board
6 of the County of San Diego.

7 7. This statement by contestant is filed in accordance with the provisions of Section
8 16400 of the Elections Code of the State of California.

9 8. Defendant Brian P. Bilbray is the declared winner of the election contested.

10 9. Defendant Bilbray was sworn into office on June 13, 2006, before the election was
11 certified.

12 10. Defendant Mikel Haas is the registrar of voters for the County of San Diego and
13 responsible for the conduct of the election contested.

14 11. Diebold Election Systems, Inc., (Diebold) is a corporation in the business of
15 manufacturing electronic voting machines, and is the manufacturer of the voting
16 machines at issue in this case.

17 12. This contest relates to the special election conducted on June 6, 2006, and
18 Defendant Bilbray's right to hold and fill the office of United States Congressman to the
19 House of Representatives from the 50th Congressional District.

20 13. The date of the declaration of the result of the special election by the body
21 canvassing the returns thereof, namely the San Diego County Registrar of Voters, was
22 June 29, 2006.

23 14. On information and belief, Mikel Haas and other San Diego County elections
24 officials have conspired, and aided and abetted in the suppression, non-collection, and
25 the destruction of relevant evidence and election materials concerning the June 6, 2006
26 election, under a variety of pretenses. The pretenses include, but are not limited to, (a)
27 asserting claims of "confidential," "proprietary," and "trade secrecy" claims on behalf of
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1 Diebold to avoid producing electronic programs, electronic ballots and electronic audit
2 logs and system files and other computerized records necessary to a proper and complete
3 audit of the electronic voting systems (both optical scan and touchscreen) used in San
4 Diego County, (b) failure to fulfill timely, or at all, public records requests filed by
5 myself and/or others on April 14, 2006, and June 29, 2006 and June 30, 2006, for
6 inspection and copying of election records, seeking, *inter alia*, audit logs, system logs,
7 ballot definition files, security logs, seal logs, ballot envelopes, electronic ballots, paper
8 ballots, provisional ballots, pollbooks/signature logs, etc., and my filing of a recount
9 request on July 5, 2006 was frustrated and defeated by putting a high price on my
10 recount rights.

11 15. Based upon information and belief and the admissions of Mikel Haas in the media,
12 Haas has, as an official policy, directed that security procedures and chain of custody be
13 abandoned on voting machines, by directing that essentially all voting machines, both
14 optical scan and touchscreen, be released to the personal possession of pollworkers for
15 overnight “sleepover” stays ranging from several days to over a week. During these
16 sleepovers, the voting machines were unsecured, subject to access by innumerable
17 neighbors, strangers and family members, and stored without records or proof of actual
18 chain of custody, eliminating the ability of any person to detect whether or not fraud or
19 improper access to the voting machines occurred.

20 16. I know from information and belief and certain media sources that Defendant Haas
21 and/or Precinct Board officials permitted and authorized keys for touchscreen voting
22 machines to be released to and retained by pollworkers between elections, with said keys
23 remaining in “authorized” circulation to this date. This authorization is in violation of
24 state and federal law, voting machine industry standards, and constitutes an intentional
25 policy to undermine election security.

26 17. I believe that the actions of Defendant Haas, as Registrar of Voters, and Does 1-
27 50, admitting in the media over 100 cases where the paperwork regarding the security
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1 seals was misplaced or not returned and the other facts alleged herein constitute such
2 reckless indifference and intent to obscure the chain of custody, and frustrate
3 reconciliation of ballots and other accountability for election mistakes, as to constitute
4 aiding and abetting fraud or attempts at fraud and aiding and abetting, in violation of
5 California Election Code, section 18500.

6 18. It's my understanding based on research that Diebold prohibits the opening of the
7 "boxes" of its voting machines by contract and/or on pain of "voiding the warranty,"
8 evaluations of Diebold TS voting machines just in the last several weeks prior to the
9 filing of this contest has revealed a heretofore unknown switch in the circuitry of the
10 voting machine that allows the voting machine to boot from an external flash memory
11 source rather than an internal flash memory source, allowing all certified software and
12 other alleged safeguards to be totally circumvented and rendered ineffective.

13 19. Based upon my investigation, this renders nugatory all pre- and post-election
14 testing, certification, and so forth, by constituting an "end around" all such alleged
15 safeguards.

16 20. State law requires that election officials conduct a one per cent audit of the
17 canvass. The one per cent audit in this case revealed discrepancies in the canvass as
18 alleged herein that are serious in nature, but no follow-up or even an admission of the
19 existence of the discrepancies has occurred by elections officials.

20 21. It is my belief that the precinct board members and/or election officials
21 responsible for supervision of the election, including Mikel Haas, Registrar of Voters,
22 and Does 1-50, were guilty of malconduct in that the officials knew, or should have
23 known, that the voting machines they authorized for use in the election had serious
24 security flaws and failed to address the security issues by, among other things, releasing
25 the voting machines into the hands of persons not properly trained to protect the voting
26 machines from tampering; by allowing the voting machines to remain in unsecured
27 locations, such as pollworkers' car trunks and residential garages, for as long as seven
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1 days, or more, prior to the election; by failing to provide tamper-proof seals on ports in
2 the machines that subject the machines to hacking of the software that counts the vote;
3 by failing to maintain a chain of custody of the machines; by allowing keys to the
4 machines to be possessed by persons not authorized to possess them; and by violating
5 the conditions under which the voting machines were certified by the Secretary of State.
6 The malconduct resulted in an election subject to fraud, without credibility, and which,
7 therefore, cannot be relied on as an expression the will of the people. The malconduct
8 affected each precinct in the District. The malconduct occurred throughout the election
9 cycle.

10 22. Based on my experience with requesting a recount on July 5, 2006, it is my belief
11 that Defendants, Mikel Haas, and Does 1-50, deliberately concealed and frustrated the
12 ability of the public to determine whether or not fraud occurred such that, in addition to
13 the affirmative evidence of fraud pleaded herein and in verified statements filed herein,
14 there has been such a radical departure from the expected chain of custody and
15 compliance with recordkeeping requirements that the ability of the public to detect fraud
16 has been radically frustrated or eliminated.

17 23. It is my belief through speaking with a voter in the June 6, 2006 election that,
18 Defendants Haas and Does 1-50, failed to take all action necessary to make the votes
19 effective in the election by failing to ensure proper voter registration, and by failing to
20 comply with all prerequisites to voting, casting a ballot, and having the ballot counted
21 properly and included in the appropriate totals of votes cast with respect to the
22 candidates.

23 24. It is my belief that the actual conditions of the election, unknown to contestants
24 until the day of the election or thereafter, violated the conditional certification of the
25 Diebold Voting machines by the Secretary of State, attached hereto as an Exhibit, such
26 that the certification of the voting machines became void, resulting in the casting of
27 illegal votes. All votes on Diebold voting systems, both optical scan and touchscreen
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1 were rendered illegal as a result of the violations of the conditional certification.

2 25. It is my belief that a sufficient number of eligible voters who attempted to vote in
3 accordance with the laws of the state were denied their right to vote, and that had those
4 voters been permitted to vote, Defendant would not have received as many votes as other
5 candidates.

6 26. It is my direct understanding from a poll watcher at Precinct such as Precinct
7 533120 that polling places in San Diego County were scheduled to open at 7 a.m., on
8 June 6, 2006, but some did not open until as late as noon on election day denying
9 hundreds of people the right to vote.

10 27. It is my understanding that over five hundred absentee voters ballots were mailed
11 late and/or not received timely, denying those voters the right to vote.

12 28. Is it my belief that in violation of California Election Code, section 18568,
13 officials added to or mixed other ballots with the ballots of given precincts, with the
14 intent to change the result of the election and obfuscate reconciliation attempts matching
15 registered voters and ballots, particularly with regard to all absentee voter precincts.

16 29. It is my direct understanding from viewing information on the Registrar of Voter's
17 own website that the precinct board members and/or election officials responsible for
18 conducting the election and canvassing the returns made errors sufficient to change the
19 result of the election in which Defendant Bilbray has been declared elected. The errors
20 included reported election results exceeding registered voters by several thousand
21 percent in numerous precincts, as further set forth in the declarations and exhibits
22 attached hereto. Contestants restate each of the allegations above and below as if set forth
23 fully herein.

24 30. It is my understanding that ballot definition involves the process by which signals
25 initiated by a voter are tracked or correlated to data files on the optical scan or
26 touchscreen computer. If any accidental or deliberate error in the ballot definition files
27 occurs, votes intended for one candidate will be assigned to the wrong candidate.

1 31. It is my belief that ballot definition errors are historically frequent with Diebold
2 voting programs.

3 32. On information and belief, ballot definition errors resulted in the flipping of votes
4 between candidates Bilbray and Busby, changing the result of the race.

5 33. It is my direct understanding that by setting the cost of a recount of the votes at
6 \$1.00 or more per vote recounted compared to other counties, such as \$0.14 per vote in
7 nearby Orange County, Defendants Haas and Doe Defendants effectively barred or
8 punitively burdened Contestants from seeking a recount without due process of law and
9 violating equal protection of the law, in violation of the Fourteenth Amendment to the
10 United States Constitution.

11 34. I believe that my rights were violated relative to both electors of other counties
12 who are assessed lower recount costs as well as relative to other requests for public
13 records, which are assessed costs at lower fees and rates pursuant to the Public Records
14 Act, when public policy and other considerations dictate that election records should be
15 available at lower than typical cost, or at no cost, notwithstanding California Election
16 Code, section 15630, et seq. The Fourteenth Amendment of the U.S. Constitution,
17 section 6254.5 of the Government Code, requires that Contestants be afforded equal
18 protection of the law.

19 35. I believe that my rights were also violated relative to the class of other public
20 records requesters in that Defendant Mikel Haas, and Does 1-50, restricted or attempted
21 to restrict the my right by limiting the scope of records produced. Defendant Haas
22 arbitrarily limited the production of records to those that, in his judgment, are “relevant”
23 when the law of public records and California public policy does not allow Haas to make
24 an arbitrary determination about what records are “relevant” or what I and others will be
25 allow to know about their election of government representatives.

26 36. I believe that ballots were not included in the appropriate totals of votes cast, in
27 that absentee ballots were lumped into large precincts and separated from their proper
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1 registered precincts, making reconciliation of the ballots impossible. Said reconciliation
2 is particularly important in that a public claim that 10,000 absentee ballots were
3 forwarded in the final days of the election on behalf of the allegedly prevailing candidate
4 Bilbray is, on information and belief, a pretextual claim for election fraud and
5 irregularity including absentee precincts reported as having turnouts of 4,750% and
6 higher, relative to registered voters reported for those same precincts.

7 37. I believe that the public has historically, traditionally and constitutionally had a
8 role in the governance and supervision of elections which is beyond the power of
9 government to eliminate short of a constitutional amendment approved by the people.
10 The people have a decisive role in all government ranging from determining liability in
11 civil cases and guilt or innocence criminal trials to directing the policies of government
12 to holding public officials accountable for their actions. In order to protect that role,
13 public officials have the duty of public recordation of debate and votes in the legislative
14 branch for the purpose of facilitating public review and control of those branches of
15 government.

16 38. I believe that with regard to elections, the sum total of the changes effected by the
17 use of electronic voting by San Diego county rise to the level of such fundamental
18 change in the system of elections so as to necessitate a Constitutional amendment rather
19 than a legislative change.

20 I declare under penalty of perjury, pursuant to the laws of the State of California
21 that the foregoing is true and correct.

22 Dated:

23 _____

Signed:

24 _____
Barbara Gail Jacobson