

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 09/15/2020

TIME: 01:59:00 PM

DEPT: 42

JUDICIAL OFFICER PRESIDING: Henry Walsh

CLERK: H McIntyre

REPORTER/ERM:

CASE NO: **56-2020-00540781-CU-MC-VTA**

CASE TITLE: **Election Integrity Project California Inc vs. Lunn**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the September 14, 2020 petition for preliminary injunction under submission, now rules as follows:

This matter came before the court on plaintiffs' petition for a preliminary injunction to require defendants to implement certain procedures to augment their existing procedures allowing observers access to the counting of mail election ballots. Testimony was taken, exhibits received and the matter was argued by counsel. The court thereupon took the matter under submission and now rules on the issues presented to it.

Plaintiffs are a public interest group whose purpose is to insure the integrity of the process by which mailed election ballots are counted. They are afforded certain access to the counting process by the authority of the Elections Code, and contend in this litigation that Mark Lunn, the Ventura County Clerk and Registrar of Voters is not providing the statutorily required access. Defendant Lunn contends that he is providing sufficient access, and that plaintiffs are asking for concessions that plaintiffs, as observers, are not entitled to claim.

The Elections Code at section 15104 authorizes the presence of observers for the ballot counting process. The language of the statute states that the purpose of election observers is to watch over the process of vote counting, and challenge whether the election workers handling the vote by mail ballots are "...following established procedures..." To comply with this, Lunn has established certain protocols which include having observers stay in certain designated areas in the ballot counting area, prohibiting observers from communicating with election workers, and requiring that observers request permission to move from one designated area to another. Plaintiffs concede that these protocols allow them to observe, but not sufficiently so that they can lodge a challenge if they believe that an election worker has made an error in accepting a mail ballot.

The vote counting process begins with an election worker validating a ballot by comparing the voter signature on the envelope of the mailed in ballot with the signature of the voter on file with his her affidavit to register as a voter (which may have been on file for decades). If the signatures match, the envelope is opened, and the ballot is further processed for counting. If the election worker concludes that the signatures do not match, the envelope is put aside for further examination. Plaintiffs' witnesses,

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who were acting as observers, have testified that the computer screens on which the signatures appear to the election worker (and which they were monitoring) were visible and the signatures recognizable, but were not sufficiently clear because of glare and/or the angle of viewing such that the observer could not determine if there was a match. The observers further contend that their inability to move about more freely in the ballot counting area further restricted their ability to effectively compare signatures for purpose of lodging a challenge to the decision by the election worker.

This is perhaps the real issue of the case. That is, is the function of the observer limited to verifying that appropriate procedures for counting ballots are being observed, or does the observer function extend to one where they have standing to contest decisions by the election workers regarding the validity of individual ballots. Plaintiffs argue the latter, defendant contends the former.

A preliminary injunction shall issue when the party requesting it is likely to prevail on the merits, and that irreparable harm will result if the injunction is not granted (Code of Civil Procedure section 526).

Here the court concludes that the plaintiffs are not likely to prevail on the present state of the evidence. The court finds that the defendant's procedures in place are reasonable considering the need to effectively conduct the business of counting ballots and the restrictions imposed by the distancing requirements of the Covid pandemic. Mr. Lunn has installed Zoom technology to allow for off site monitoring, and is expanding that for the November election. More to the point, however, the court finds that the role of the observer is observation of the process, and does not extend to challenging the decisions of the election workers. Plaintiffs make no contention that the process they have observed is faulty. The court finds additionally that plaintiffs are not at risk for suffering irreparable harm. The existing procedures provide them with reasonable access to be able to accomplish their function. The additions to those procedures which will be in place by Election Day will add to their ability to access and observe the process.

The request for a Preliminary Injunction is denied

Dated: September 15, 2020

Henry J. Walsh
Judge of the Superior Court