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November 24, 2008

Secretary of State Debra Bowen
Secretary of State's Office
1500 11th Street, 5th Floor
Sacramento, CA 95814

RE: Investigation of Proposition 8 Election

Dear Secretary Bowen:

On behalf of the people of California, Velvet Revolution (www.velvetrevolution.us) respectfully calls on you to order and undertake an immediate investigation into the accuracy of the vote count on Proposition 8, "ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY. INITIATIVE CONSTITUTIONAL AMENDMENT."

This letter enumerates the reasons we believe an investigation is warranted, including witnessed failures in election auditing procedures, complaints from voters and election monitors, exit polling irregularities, and more. The letter also lists a number of items we believe must be included in a thorough investigation. This investigation should be transparent, auditable, and performed in a manner that can be independently overseen.

The purpose of such an investigation is transparency and assuring, rather than simply trusting, that the reported election results are correct. As you are well aware, the State's dependence on non-transparent voting technology absolutely requires rigorous scrutiny. We are calling upon your office to provide a basis for voter confidence by investigating to make sure that there is impeccable accuracy in the election results.

Your office's August 3, 2007 press release following your Top to Bottom Review of California's voting systems states:

"The systems we use to cast and tally votes in this state are the most fundamental tools of our democracy," said Secretary Bowen, the state's chief elections officer. "My decisions have a bias towards voting systems that score the highest with two very important measuring sticks: transparency and auditability. Applying proper auditing procedures to

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optical scan systems that are easier for voters to see and understand gives us the ability to begin rebuilding the voter confidence in the systems we use to conduct elections."

The press release also refers to DRE (direct record electronic) voting systems being "required to comply with increased security and post-election auditing procedures." The press release further states:

The independent University of California expert reports for the top-to-bottom review detailed a number of security vulnerabilities in all of the voting systems they tested. Some of those problems can be mitigated if appropriate security and auditing procedures are in place in all 58 counties.

Velvet Revolution continues to support your recognition that electronic voting systems -- both DRE and optical scan systems -- have been deployed in California without being "properly reviewed or tested to ensure that they protected the integrity of the vote," (again quoting from the press release) and your commitment to protecting the integrity of the vote. Since the November 4 election, our preliminary research has shown indications that the checks and balances that are designed to ensure the integrity of the elections may not be being carried out rigorously throughout the state.

We call on you to exercise your authority as Secretary of State to investigate the degree to which inadequacies of execution of auditing processes allow for the possibility of incorrect vote counts in general, and specific to Proposition 8.

Our concerns, enumerated below, are based on exit polling discrepancies, premature 'calling' of the election, reported failures of equipment and processes, and individual complaints made by voters and other stakeholders, including election monitors. Some of the specific concerns described apply only or primarily to Proposition 8, while others apply to other propositions and contests as well.

- 1) **Exit poll discrepancy.** The California exit poll conducted by the prestigious Edison/Mitofsky polling agency produced initial results indicating defeat of Proposition 8. As has become Edison/Mitofsky's practice in recent years, those exit polls were later adjusted to match the vote count, thus precipitously decreasing their usefulness in flagging possible election irregularities. However, the Election Defense Alliance made screen captures of the initial exit poll results, documenting a predicted defeat of Proposition 8 [see attached]. As you are no doubt aware, discrepancies between exit polls

- and election results are used worldwide as crucial evidence of the need for investigation of election results.
- 2) **Pre-election polling.** Pre-election polls also predicted defeat for Proposition 8¹. We believe this is significant when taken in combination with other evidence.
 - 3) **Premature 'calling' of the election.** Proposition 8 was announced to have passed on election night, at which time -- according to your office's official website -- an estimated three to four million votes remained uncounted and the margin of passage for Proposition 8 was reported to be approximately 435,000 votes. There are ample reasons to expect that the votes on Proposition 8 that had not been counted on election night -- many of which still have not been counted -- would come in as "no" votes in a significantly higher percentage than the votes reported to have been counted on election night. For example, provisional ballots comprised a large percentage of votes uncounted on election night; many of the same demographic groups that strongly opposed Proposition 8, such as young voters and urban voters, were much more likely than the norm to have had to vote on provisional ballots.
 - 4) **Reports of targeted disenfranchisement.** We have received or otherwise viewed anecdotal reports from voters and would-be voters and from election monitors indicating problems that raise the suspicion that likely "no on 8" voters may have been targeted for disenfranchisement. Where possible, we have asked that these reports be submitted to you directly by the witnesses/victims.
 - 5) **Extremely high stakes.** Because the passage of Proposition 8, should it be upheld by the courts, sets a dangerous precedent of using the State Constitution to deny individual rights to Californians, we believe that your office has an even greater responsibility than usual to ensure that the election results are accurate. Given that your usual level of responsibility is already very high, we believe that in this case your responsibility could be said to be

¹ The webpage http://www.pollster.com/blogs/dicamillo_polling_on_prop_8_ca.php states: First, a quick review of the pre-election polling done by the two leading public opinion polls in California, The Field Poll and the Public Policy Institute of California. They show the following trend:

- July Field: No = +9
- August PPIC: No = +14
- Early Sept Field: No = +14 or +17 (depending on wording)
- Mid-Sept PPIC: No = +14
- Mid October PPIC: No = +8
- Late October Field: No = +5
- Election outcome: Yes = +4

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- over 100%. We hope that this is the only number over 100% that is found in your investigation, in contrast to election investigations in other states where *voter turnout* in specific precincts has been certified at over 100%. (In fact, even though the votes are still being counted and the election has not yet been certified, Proposition 8 has already been put into effect. While this is of great concern to us, we are not aware of it being the purview of your office.)
- 6) **Failures of electronic voting systems and their use.** Known incidences include: a clogged read head in an optical scanner in Alameda county causing votes for president to fail to record; two-page ballots where votes for candidates were scanned but votes for propositions were stored for supposed later scanning; machine breakdowns; etc.
 - 7) **Failures to provide sufficient paper ballots.** These include reports of voters arriving at the start of voting on election day only to find that no ballots were available. Voters were directed to nearby polling places to vote provisionally.

These matters merge with concerns we have regarding the election in general, including but not limited to use in this state of electronic voting systems which fail to meet HAVA's requirement regarding failure rate² and inadequacy in carrying out required chain of custody procedures and auditing procedures.

As a result of Velvet Revolution's concerns about the election in general and Proposition 8 specifically that arose after the election, we quickly assembled volunteers in counties around the state to monitor post-election auditing procedures. Many of these volunteers stepped forward, some even taking time off work and other commitments to do their civic duty, primarily out of their concerns regarding the announced passage of Proposition 8. In county after county, they were denied their explicit rights to meaningful observation, in violation of your previous directives, often being kept at too great a distance from the auditing activities to be able to see tally sheets, ballot markings, etc. Several of these volunteers will be submitting complaints to your office based on their experiences as monitors. You should be receiving some of those today, while others opted to complete their observations before making any report. Though many of their findings apply not only to Proposition 8 but to other propositions and contests as well, we request that the problems pinpointed by these observations be included in your investigation into the Proposition 8 vote. Where meaningful observation was denied to members of the public who wanted to validate

² "Federal Vote-Counting Accuracy Mandate Is Ignored," by Ellen Theisen, VotersUnite.org, <http://www.votersunite.org/info/AccuracyIgnored.asp>

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the results, we ask that the auditing procedures to which they were denied meaningful access be repeated -- with public observation -- where possible.

We request that every complaint that has been received by your office or by local election offices in California indicating a problem that could affect the vote count for Proposition 8 be included in this investigation. Likewise, we ask that any findings of this investigation that have implications for other races or for the election system in general be pursued to the maximum extent necessary to ensure that this election and future elections are conducted with the highest possible degree of accuracy, transparency, and accountability.

Additionally and specifically, we call on your investigation to include but not be limited to:

- Review and pursuit of all relevant complaints made to election protection hotlines including 1-866-OUR-VOTE (available online at www.OurVoteLive.org) and 1-866-MYVOTE1.
- A statistical audit of election results with an eye toward anomalous data that could be indicative of discrepancies between the official vote count and the true result.
- Thorough auditing of election materials relevant to chain of custody, accuracy of vote count, and thoroughness of auditing processes.
- Analysis of the percentages of voters directed to vote on provisional ballots to determine correlation with particular voting blocks such as students, new voters, young voters, urban voters, or other populations in which opposition to Proposition 8 was higher than average. This analysis must include both provisional ballots that were (or will be) counted and provisional ballots that were disqualified.
- Analysis of the use of provisional ballots for reasons caused by failures of election officials and their staffs, such as failure to enter new registrations into the database in a timely manner, failure to supply enough "regular" ballots, etc., and correlation of this data with demographic data as above.
- Analysis of the use of so-called "emergency ballots" (yellow ballots) in Los Angeles County, as above.
- Scrutiny of any reports of electioneering and voter intimidation regarding Proposition 8, including reports of "Yes on 8" signs at churches serving as polling places.
- Analysis of the problem logs in all California counties and any complaints made by election workers including poll-workers.
- Interviews with members of the public and election integrity/election protection/voting rights organizations that took initiative to monitor the

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elections, including but not limited to those whose members submit official complaint forms.

- Exploration of any conflicts of interest between election officials, voting systems vendors and their employees, and the "Yes on 8" campaign.
- Looking into any reported violations of election finance law.
- Conduct and publicize field hearings where voters, poll-workers, election monitors and others can testify under oath about their experiences and observations, and investigation of allegations made and evidence presented at these hearings.
- Make complaints public with personal information redacted as required.

In conclusion, we at Velvet Revolution believe that there are enough indications of potential problems with the Proposition 8 vote count to warrant a thorough statewide investigation by your office, and we request that such an investigation begin at once and be allotted the necessary resources to be performed well. Should the investigation reveal that the election results on Proposition 8 *or any other contest or ballot initiative* were incorrect, swift and decisive action must be taken to officialize the true outcome.

The people of the state of California deserve no less.

Respectfully submitted,

Emily Levy
for Velvet Revolution
(confidential contact redacted)

Attachment: Screen shot of unadjusted exit poll.

Note: A notarized copy of this letter will follow via U.S. Mail.