

Reaction to investigation of Registrar of Voters

Following is a press release sent to the blog by Capo for Better Representation following the release of a report on the Registrar of Voters. The organization's Website is www.cusdwatchdog.com.

San Juan Capistrano, CA – September 13, 2006 – Capo for Better Representation (C4BR), the group that led the effort to recall the Capistrano Unified School District (CUSD) Board of Trustees, denounced the investigative report of Orange County Registrar of Voters Neal Kelley during the recall effort. C4BR claims the report, commissioned by the Orange County Board of Supervisors in response to voter complaints, minimizes or dismisses Kelley's actions.

C4BR claim the following actions by Registrar Kelley benefited the district while working against recall proponents:

- Kelley knew it was illegal when he allowed district officials to review the recall petitions after the recall failed to qualify. Recall proponents and a former CUSD employee said that district employees were dispatched to the Registrar's office to "collect names" from the petitions, names that were added to an "enemies list" of recall proponents compiled by then district Superintendent James Fleming. Recall proponents claim that Kelley put voters at risk for reprisal by the district Superintendent by allowing him access to the petitions.
- During the recall, Kelley gave running signature tallies to district officials but when asked, refused to give the same to recall proponents.
- Kelley told district officials the recall signature count would cost \$600,000, which district officials used to dissuade voters from supporting it. After the cost issue was used against recall proponents and after the recall failed to qualify, Kelley changed the information, stating that he "found" case law that supported the county picking up the tab for the signature count. Recall proponents claim that the damage was done by then and believe that Kelley intentionally benefited the district over the recall proponents.

C4BR questions the following with respect to the investigation:

- The investigators did not interview the key figure in the investigation, CUSD whistleblower David Smollar. While the investigators claim they left messages for him, Smollar, former CUSD communications chief, stated that the investigators did not call him nor did they leave any messages for him on his voice mail. The investigators instead interviewed Susan McGill, a former CUSD employee who donated money to the Trustees to fight the recall.
- Investigators did not contact two additional key witnesses whose information was provided to them by recall proponents. Investigators claimed they ran out of time

however, C4BR stated the investigators had nearly two weeks left in the investigation when given the information. C4BR made it clear during the interview that the investigators needed to contact the two additional witnesses to get the full story.

- During the interview with C4BR representatives, investigator Ingrid Gonzales attempted to defend and excuse Kelley's actions. C4BR claims that Gonzales' defense of Kelley was inappropriate, given that she was supposed to be on an unbiased fact-finding mission and had not yet interviewed any of the recall proponent witnesses.
- C4BR contacted each of the Supervisors to express concerns about the impartiality of the investigation. At issue was that the selection of the investigator(s) was left to Neal Kelley's boss, County CEO Thomas Mauk who had already demonstrated a propensity for protecting his employee. In a meeting on March 6, C4BR expressed concerns about thousands of voters being disenfranchised to Mauk's deputy Dave Rudat, who promised to look into it. Not only did he not do that claims C4BR, neither he nor Mauk returned follow up phone calls. Instead, about 2 weeks later, Mauk awarded Kelley with the permanent post of Registrar of Voters, publicly praising his "smoothly running office" that "produced excellent results". Only one supervisor responded to C4BR's recommendation of an independent investigator, and while he seemed willing to consider it, the next day he stated that the selection had already been made by Mauk.

C4BR maintained that through his actions, Registrar Kelley placed teachers and parents in CUSD at risk for reprisal. They stated to the Supervisors that CUSD officials' retaliatory tactics were well known and were the reason why many teachers were reluctant to sign the petitions. "These combined actions represent a disturbing pattern of behavior that clearly benefited the district while working against the recall proponents", said C4BR founder and recall leader Kevin Murphy. "This is serious. We are talking about a public elections official who violated voters' rights. The question is why he would act in a manner that would pit the voters who signed the recall petitions against the opponents; in this case, school district officials. Rather than answering these questions or putting to rest speculation as to why Kelley took those actions, the report has only raised more questions and cast further doubt on the integrity of the Registrar's office. We are looking to our Board of Supervisors for answers".

C4BR plans to address these issues at the Board of Supervisors meeting on September 19. For a full account, please see the following detailed summary. For more information about CUSD and the recall issues, see: www.cusdwatchdog.com .

Summary of events surrounding the recall, Registrar Kelley's actions and the resulting investigation:

During the interview with investigators Ernest Hawkins and Ingrid Gonzales, C4BR representatives expressed concerns about the investigation being a "whitewash". "I knew

this investigation was in trouble when Gonzales in particular was making excuses for Kelley's actions", said recall petitioner and CUSD parent Rebecca Bauer. "She defended his having let the district officials illegally review the petitions by saying 'the law is confusing' with respect to who can review the petitions. I told her that not only is the law clear enough for me, a layperson, to understand, Kelley *quoted* the law to me two days before he let the district officials see the petitions – he knew the law" said Bauer adding, "apparently, the word of voters means nothing next to Neal Kelley's". C4BR outlined in detail Kelley's other actions that clearly benefited the district over the recall proponents, actions that Bauer and recall leader Kevin Murphy said Gonzales seemed to go out of her way to defend or explain away. "I thought it odd at the time that [Gonzales] dismissed all of the questionable and illegal actions Kelley took. Her job was to learn the truth, not defend him before she even heard all the evidence or interviewed all the witnesses", said Bauer. Murphy agreed, stating "I walked out of the interview with the impression that the investigators went out of their way to excuse Kelley's actions".

One of Kelley's actions in handling the recall petitions was admittedly illegal. According to Kelley, he allowed CUSD officials, who were the recall opponents, access to the recall petitions, which is not allowed under election law. According to Bauer, "There was no legitimate purpose for allowing our opponents to look at the petitions after the Registrar announced the recall failed to qualify, especially when the recall supporters had alleged retaliatory tactics by school district officials". Kelley told the OC Board of Supervisors that he made "a mistake" by allowing the recall opponents access to the petitions, claiming he did not know the law, a claim Bauer says is not true. "Just two days before he gave the district access to the petitions, he assured me that by law, *only* the original petitioners were allowed to look at the petitions", she said. Bauer said the investigators ignored the fact that Kelley quoted the law to her, and did not speak with the key figure in the investigation, CUSD whistleblower David Smollar who was able to confirm that the Registrar's office knew it was illegal. Though the investigators claim to have "attempted to reach" him, Smollar told OC Register reporter and Rebecca Bauer that he was willing to "swear on a stack of bibles" that the investigators never called him, nor did they leave a message for him.

Smollar, whose allegations have led to Grand Jury subpoenas of CUSD employees and have contributed to an on-going District Attorney's investigation into Superintendent Fleming's and the Trustee's actions, was one of two CUSD employees given access to the petitions. According to Smollar, he and former CUSD employee Susan McGill were sent to the Registrar's office by Superintendent James Fleming to review the petitions and collect names of petition circulators. In a media report, Fleming first denied, then admitted that he dispatched them to the Registrar's office, saying that he "just wanted to see what [the petitions] looked like". In another media report, Smollar referred to his January 6 conversation with Kay Cotton, the registrar's Candidate and Voter Services manager, about reviewing the petitions. "Kay Cotton said it was highly unusual for us to be able to look at these," Smollar told the reporter. He said he asked Cotton if it was legal for him to see them. "She said, 'Probably not, but Neal (Kelley) is making an exception in this case because this case is unusual.'"

It was later revealed in news reports that Fleming had compiled and maintained an “enemies list” of recall supporters in CUSD. Recall proponents and petition circulators told the OC Supervisors at the Board meeting in August that they feared their names were added to the list as a result of the Registrar’s actions.

C4BR learned from media reports this summer that Kelley also gave running signature tallies to a district official throughout the signature count process. However, when Kevin Murphy, the founder of C4BR and an original recall petitioner, called Kelley to ask for a signature tally at the end of the signature count process, Kelley told him that they did not have that information and would not have it for another two weeks.

At the August Board meeting, parents also relayed to the Supervisors the fact that Kelley told Superintendent Fleming that the recall signature count would cost the school district nearly \$600,000. They recounted how Fleming then used this information to demonstrate how destructive the recall proponents were to schools. They stated that he used it as a basis for a power point presentation at a public CUSD Board meeting on January 9, released it to the media, emailed it in a memo to PTA presidents throughout CUSD and posted it on the CUSD website. Fleming listed education related items for which he said the money could have been used and blamed the recall proponents for taking the money out of the children's classrooms. A day or two later however, Fleming said that Registrar Kelley contacted him to say the County “found” case law allowing the County to pick up the tab for the recall signature count. Parents and recall proponents claim the damage was already done by then and told the Supervisors that they believe Kelley worked with Fleming to disparage them. When asked about it by the Supervisors, County Counsel Benjamin DeMayo said he had no knowledge of the incident.

C4BR questions the impartiality of report, especially when the selection of the investigator was left to Neal Kelley’s boss, County CEO Thomas Mauk. “That’s like putting the fox in charge of the henhouse” said Bauer. “Mauk has every reason to protect his employee and has done so in the past”, she said. According to Bauer and C4BR founder and recall leader Murphy, C4BR met with Supervisor Tom Wilson and Mauk’s deputy CEO Dave Rudat on March 6 to express concerns about thousands of voters being disenfranchised during the recall effort directly as a result of Kelley’s actions. Rudat told Bauer and Murphy he would “look into it” however, no one from C4BR received a response from the county and neither Rudat nor Mauk returned their follow up phone calls. Instead within 2 weeks, Thomas Mauk awarded Kelley with the permanent post of Registrar of Voters, publicly praising his “smoothly running office” that “produces excellent results”.

“We question how they can conduct a supposedly unbiased investigation when their source for information was Susan McGill, a CUSD employee who donated money to the Trustees to fight the recall. The logical process would be, at minimum, to interview the whistleblower, then the Registrar. Instead, they interviewed Registrar Kelley first and never even attempted to reach the whistleblower let alone the other two sources we provided who could offer valuable information about these issues. How can they pretend this is impartial?”, said Bauer.

C4BR maintained that through his actions, Registrar Kelley placed teachers and parents in CUSD at risk for reprisal. They stated to the Supervisors that CUSD officials' retaliatory tactics were well known and were the reason why many teachers were reluctant to sign the petitions. "These combined actions represent a disturbing pattern of behavior that clearly benefited the district while working against the recall proponents", said Murphy. "This is serious. We are talking about a public elections official who put voters at risk for reprisal. The question is why he would act in a manner that would pit the voters who signed the recall petitions, whose rights he is responsible for protecting, against the opponents; in this case, school district officials. Rather than answering these questions or putting to rest speculation as to why Kelley took those actions, the report has only raised more questions and cast further doubt on the integrity of the Registrar's office. We are looking to our Board of Supervisors for answers".