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Lowell E. Grattan and Transportation
Solutions Defense and Education Fund

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LOWELL E. GRATTAN, an individual,
TRANSPORTATION SOLUTIONS
DEFENSE AND EDUCATION FUND, a
California nonprofit public benefit
corporation,

Plaintiffs/Petitioners,

vs.

DEBRA BOWEN, Secretary of State, State
of California, JESSE DURAZO, Registrar
of Voters, Santa Clara County and DOES
1 through 50, inclusive.

Defendants/Respondents,

_____ /

CASE NO.:

DECLARATION OF DAVID
SCHONBRUNN IN SUPPORT OF
PLAINTIFFS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE

Date: December 2, 2008

Time: 11:00 a.m.

Dept.: Presiding Judge

Unlimited Jurisdiction

Accompanying Documents: Ex Parte
Application for Temporary Restraining
Order and Order to Show Cause; Request
for Judicial Notice Proposed Order

1. I, DAVID SCHONBRUNN declare that I am the President of the
Transportation Solutions Defense and Education fund, TRANSDEF, which is a petitioner
and plaintiff in the above petition and complaint.

2. I state the following on the basis of my personal knowledge, and can testify to
the statements contained herein.

3. For the past 12 years, I have led TRANSDEF, a California non-profit corporation, in advocating for more cost-effective and better-planned transit in the San Francisco Bay Area.

4. Part of this activism has involved the opposing the extensions of BART. We commented on the environmental documents pertaining to the following extensions: San Francisco Airport, Warm Springs, e-BART, and San Jose/Santa Clara.

5. We have created a “BART Extensions” page on our website WWW.transdef.org that explains our rationale for opposing these projects.

6. I assisted the No on Measure B campaign committee in developing their campaign literature. I assisted in fundraising, and personally contributed to the campaign.

7. TRANSDEF paid for legal representation to defend the NO on B ballot arguments from challenge brought by Measure B proponents.

8. I have had several extended discussions with Registrar of Voters’ staff members Elaine Larson and Shannon Bushey about arranging for partial recounts and about receiving detailed results from the November 4, 2008 election. As of today, I still have not received the detailed reports I was seeking for Measure B.

9. I don’t believe I spoke with them about the automatic manual recount of 10% of the voters. I am informed and believe that thereon allege that the Santa Clara County Registrar of Voters will not conduct a manual recount of Measure B because of the way the emergency regulations concerning post election manual tallies, also known as PEMT, are written.

10. On Thursday, November 20, I went to the Secretary of State’s office in Sacramento. After inquiring at the Elections desk on the fifth floor, I was sent to the sixth floor, to the group that had composed the emergency regulations in 2 California Code of Regulations Sections 20120 through 20127. I don’t recall the exact name of the group, but they were tasked with getting accurate machine counts.

11. I learned from this that the purpose of the PEMT rules was to present any errors in machine counts affecting contests in which the margin of victory was narrow.

12. I was given the name of an attorney to contact, who was not present in the office at that time, Jennie Breitschneider, and her phone number. I got a call from her the next day.

13. The message I received from Ms. Breitschneider was that there was nothing the Secretary of State could do. She did not have the power to change the regulation, to interpret it, or to order the Santa Clara County Registrar to perform a manual recount.

14. I asked Ms. Breitschneider if the Secretary of State would agree to not oppose a motion in court (which subsequently became this action). She informed me that she was unable to speak for the Secretary.

15. As a result of this conversation, it was clear to me that TRANSDEF and its co-plaintiff Lowell Grattan have no means to protect the rights of Measure B voters to an automatic manual recount other than by filing this action.

16. Once the election results are certified, there will not be any remedy available to the Santa Clara county voters who did not support Measure B, who are denied an automatic Post Election manual tally due to the obviously defective drafting of 2 California Code Regulations Section 20121(3).

17. Because the statutory deadline for certifying the election results is December 2, an injunction must issue immediately to preserve the possibility of a remedy.

18. Because 2 California Code of Regulations Section 20121(3) was composed and reviewed by people who obviously never thought about how the margin of victory in supermajority contests is different from majority contests, the Court must exercise its powers to ensure that the protection from machine vote count error for Measure B voters is equal to that of voters in all other contests.

I declare under penalty of perjury under the State of California that the foregoing is true and correct, and if called as a witness could testify to the foregoing matters.

Executed on December 1, 2008, at Mountain View, California.

DAVID SCHRONBRUNN