

Transportation Solutions Defense and Education Fund

For Immediate Release
November 28, 2008

Contact: David Schonbrunn, 415-460-5260

Measure B Opponents Sue for Manual Recount

On Wednesday, November 26, the Transportation Solutions Defense and Education Fund, TRANSDEF, filed suit against Debra Bowen, the California Secretary of State, and Jesse Durazo, Santa Clara County Registrar of Voters, asking the Santa Clara County Superior Court to order the Registrar to perform a manual recount of 10% of the precincts in Measure B. In addition, TRANSDEF's suit seeks an injunction to prevent the Registrar from certifying the Measure B election results until that manual recount is completed. Plaintiffs will be heard in Superior Court (191 N. First Street, San Jose) at 8:30 Monday morning, December 1st.

The Registrar of Voters is currently reporting that Measure B has won 66.78% of the vote, a margin of victory of only 0.11%. Accurate machine counting is ensured by statewide election regulations that require a manual recount of 10% of the precincts when the margin of victory is less than 0.5%. Despite these regulations, the Registrar has refused to perform the mandatory manual recount of Measure B votes.

Both the Registrar and the Secretary of State point to the definition of margin of victory in the regulations as the reason they can't do a recount: "For ballot measure contests, including recall contests, the margin of victory is the difference between the percentages of votes for and against the ballot measure." (Elections Code Section 20121(3))

These regulations were adopted on an emergency basis on October 20, 2008. It is obvious that when these regulations were written, no one had thought about close contests for ballot measures requiring a supermajority of 55% or 66.667%. Under the definition of margin of victory adopted in the regulation, no recounts are required for such measures. TRANSDEF and co-plaintiff Lowell Grattan, a member of the No on B campaign, filed suit to protect the constitutionally guaranteed rights of equal protection and due process for everyone that voted against Measure B.

David Schonbrunn, President of TRANSDEF, stated " With the margin of victory being less than one vote per precinct, it is way too early for the proponents of Measure B to be popping champagne corks. The process that is being followed in all other close election contests needs to be applied here. Anything less would mean that voters that don't want their sales tax raised are being discriminated against by the government."

Lowell Grattan added, "It is most important we have a good transportation system. However, there are other alternatives like buses and trains that can be implemented quickly and at a fraction of the cost of building and operating BART."

TRANSDEF is a Bay Area environmental non-profit that advocates for the regional planning of cost-effective transportation, land use and air quality, with a focus on reducing greenhouse gas emissions. TRANSDEF has long sought rail service between San Jose and the East Bay that is compatible with High-Speed Rail. For much less money than would be spent on the proposed BART extension, Silicon Valley could have much more flexible and convenient rail service for its workers coming from the Tri-Valley, the Central Valley and BART. TRANSDEF's website is www.transdef.org