

# Transportation Solutions Defense and Education Fund

For Immediate Release  
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## Measure B Opponents Denied a Manual Recount

### NEWS RELEASE

After being denied a temporary restraining order by a San Francisco Superior Court judge, the Transportation Solutions Defense and Education Fund, TRANSDEF, announced today that it has no effective means to secure the manual recount it believes is required under State regulations and the California and U.S. Constitutions. Further legal proceedings are unlikely to result in a recount, if opposed as vigorously by government attorneys as the restraining order.

David Schonbrunn, President of TRANSDEF, stated "Flawed regulations issued by the Secretary of State resulted in Measure B not receiving the manual recount that other equally close races get. It's unfortunate that it appears that, instead of wanting to fix the obvious inequity, the Secretary of State and the Registrar of Voters have instead maneuvered to deny us any legal remedy. This is government, using public funds against its own public, to avoid having to admit that it screwed up.

"During the campaign, Measure B opponents documented how the Santa Clara Valley Transportation Authority was covertly providing support for the Silicon Valley Leadership Group and the Yes on B campaign. This activity is the subject of a complaint to the Fair Political Practices Commission.

"Perhaps it was the usual course of bureaucracy for the Registrar of Voters to certify the election results the morning of the court hearing. But for those who are already suspicious of government because of VTA's behavior, the Registrar's act certainly raises troubling questions. If it had been the SVLG instead of TRANSDEF seeking a recount, would the Registrar have similarly preempted the court? By not waiting for the court to act, there will always be lingering doubts about the Registrar's fairness.

"Paying the estimated \$400,000 cost of a 10% manual recount is completely out of the question for a small non-profit. This is a cost that government has committed itself to bear, to ensure the accuracy of election results in all but our own case. So now no one will ever know whether Measure B actually received over 66.67%."

One positive outcome of the case was the December 3 editorial by the San Jose Mercury News, which stated "BART opponents raised a legitimate issue when they challenged a flawed state regulation governing close elections, even though a judge

dismissed their suit Tuesday on a technicality.” We wish senior bureaucrats had seen things in the same evenhanded way.

## BACKGROUND

On Tuesday, December 2, a San Francisco Superior Court judge denied a request by the Transportation Solutions Defense and Education Fund, TRANSDEF, for a temporary restraining order to halt certification of the results of Santa Clara County’s Measure B, the BART sales tax. TRANSDEF had sued Debra Bowen, the California Secretary of State, and Jesse Durazo, Santa Clara County Registrar of Voters, seeking a manual recount of 10% of the precincts in Measure B. The Registrar of Voters was reporting then that Measure B had won 66.78% of the vote, a margin of victory of only 0.11%, less than one vote per precinct.

The manual recount of 10% of the precincts is required by emergency regulations issued by the Secretary of State in late October, in cases where the margin of victory in an election contest is less than 0.5%. These regulations had been recommended by an expert panel convened by the Secretary of State to determine how best to ensure the accuracy of machine-counted elections.

Unfortunately, those regulations were defective in regards to ballot measures. Because the definition of “margin of victory” covered only ballot measures that require a 50% majority vote, ballot measures such as sales taxes that require a 66.67% supermajority could not possibly trigger a manual recount.<sup>1</sup>

TRANSDEF filed suit, asking the Santa Clara County Superior Court to order the Registrar to perform a manual recount, to protect the constitutionally guaranteed rights of equal protection and due process for everyone that voted against Measure B. On Monday, December 1, the attorney for the Secretary of State objected to the matter being heard in that county, because the Attorney General does not have an office there. TRANSDEF then filed its case in San Francisco Superior Court the same day, with a hearing set for 11 am the following morning.

Before the hearing on December 2, the attorney for the Registrar of Voters announced that the election had been certified that morning. The Superior Court judge then decided that it wasn’t possible to issue a temporary restraining order, since the election had already been certified.

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

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<sup>1</sup> 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.” (2 California Code of Regulations Section 20121(3))

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](http://www.transdef.org)