

Mercury News Editorial

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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.

The Superior Court ruling should clear the way for Measure B, which will raise the sales tax in Santa Clara County an eighth-cent to operate the future BART line. For that, we're pleased. Without this operating money, the federal share of construction funding was unlikely.

But Secretary of State Debra Bowen should take the ruling as a call to action. She should require that all razor-thin elections undergo a partial recount at local and county governments' expense, whether they're contests requiring a simple-majority vote or bond and tax measures requiring 55 percent or two-thirds approval, like Measure B.

Given controversies over voting machines and methods, the public deserves reassurance that votes have been counted accurately in very close elections. Even optical-scan machines can occasionally misread tallies. Sometimes it takes a personal inspection of marks to determine voters' intentions.

To reconcile conflicting rules among counties, Bowen had issued emergency regulations calling for a partial audit where the margin of victory was less than 0.5 percent. Initially, 10 percent of votes would be recounted. If no big differences were found, the recount would end. If significant disparities surfaced, more votes would be examined, perhaps leading to a full recount. But Bowen applied this rule only to simple-majority contests, leaving out supermajority elections, apparently an oversight.

Measure B was behind on election night but ultimately won with 67.8 percent of the vote after all mail-in and provisional ballots were counted. Opponents might have persuaded the judge to impose the audit, but the county had rushed to certify the election first thing Tuesday, making the issue moot. The opponents can still demand a complete recount for \$400,000, but they would have to pay for it.

At least others will benefit in the future if Bowen fixes the rule to make all elections transparent.