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December 24, 2019

Supervisor John Gioia, Chair of the Board  
Contra Costa County Board of Supervisors  
651 Pine Street  
Martinez, CA 94553

VIA E-MAIL TO: clerkoftheboard@cob.cccounty.us; supervisorandersen@bos.cccounty.us;  
supervisor\_burgis@bos.cccounty.us; SupervisorMitchoff@bos.cccounty.us; district5@bos.cccounty.us

Re: Legally Defective Impartial Analysis for Contra Costa Transportation Authority Measure J

Dear Chair Gioia and Supervisors:

This office represents Contra Costa County electors and the Transportation Solutions Defense and Education Fund, known as TRANSDEF, a non-profit environmental organization created by transit activists to advocate for better solutions to transportation, land use and air quality problems in the San Francisco Bay Area. TRANSDEF prepared the argument and rebuttal against the Contra Costa Transportation Authority (CCTA) sales tax increase in 2016 (Measure X) and the argument and rebuttal against the CCTA sales tax increase on the March 2020 ballot (Measure J).

This letter is to serve as pre-litigation settlement demand. We believe that an error or omission has occurred, or is about to occur, in the printing of a ballot, county voter information guide or other official matter, or that neglect of duty by the Acting County Clerk-Recorder and Registrar of Voters, County Counsel, and/or CCTA has occurred, or is about to occur. See Elections Code §§ 9160, 13314, 13319, etc. See also *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169.

In a letter today (attached), we demand that the County Counsel fulfill her legal duty under Elections Code § 9160(b) to conduct a truly impartial analysis of the 2020 CCTA tax increase ballot measure and that the Acting Clerk-Recorder withhold printing of the County Counsel's "impartial analysis" of the 2020 CCTA ballot measure in the Voter Guide until it is revised along the lines discussed within that demand letter.

We write the Board to express our concern about the politicization of CCTA's March 2020 Measure J by County Government. All five members of your Board are enthusiastic supporters of the CCTA tax increase (September 24, 2019 meeting vote); you also voted to place the CCTA measure on the March 2020 ballot. Two county supervisors serve on the CCTA board, which approved the TEP and the ballot measure; the other three county supervisors signed ballot arguments endorsing CCTA's sales tax increase. We are very much concerned that the Board of Supervisors' unabashed desire to win voter approval of CCTA's sales tax increase, coupled with the leaderless state of the Elections Division and the jockeying for a Board of Supervisors' appointment to the vacant Clerk-Recorder-Registrar of Voters position, is causing "neglect of duty" by multiple parties that have legal duties to administer the CCTA tax increase election impartially.

This politicization is not happening in a vacuum. The previous District Attorney, who had a lax record of prosecuting public corruption, resigned midterm after he broke laws. The elected Clerk-Recorder and Registrar of Voters Joe Canciamilla resigned after revelation of his illegal conduct, leaving a temporary

“caretaker” running his office. Approximately twenty individuals currently are seeking appointment by the Board of Supervisors, including one county supervisor and at least two current senior election office employees. We seek to put a stop right now to this downwards slide, before this appointment is made.

Furthermore, we note that County Counsel is appointed by and serves at the pleasure of the Board of Supervisors. We are concerned that County Counsel is unduly deferring to the Board of Supervisors’ desire to win voter approval of the CCTA tax increase by eliminating from her "Impartial Analysis" facts that would arouse voters' concerns about approving Measure J. County Counsel’s sudden and inexplicable removal of the word “additional” from the CCTA measure “impartial analysis” last week deeply concerns us and is suggestive of Elections Code § 13314 “neglect of duty.” We also are concerned that the County Counsel may not be advising or monitoring the temporary “caretaker” Registrar of Voters effectively. It appears to us that the Contra Costa County Elections Division is rudderless, in a state of crisis, and in turmoil that apparently renders the office unable to conform with its Elections Code duties (e.g., Elections Code §13119).

In our December 16, 2019 letter to the Acting County Clerk-Recorder and Registrar of Voters, we asked the County Elections Division:

- (1) to require CCTA, the sponsoring agency, to amend and correct the rate of the tax to be levied in the ballot question,
- (2) to require CCTA, the sponsoring agency, to amend and correct untrue, not impartial, argumentative and prejudicial language in the ballot question, and
- (3) to change the ballot designation of “J” (to avoid voter confusion with 2004's Measure J).

We copied County Counsel and CCTA Executive Director on that letter. Yet eight days later, we have heard from none of the parties to whom we addressed our December 16<sup>th</sup> letter.

Official neglect of duty right now by County Counsel, Clerk-Recorder-Registrar of Voters and CCTA could mislead voters in the March 2020 CCTA tax increase election. Today, Christmas Eve, is one of the busiest days of the year for retail sales. Contra Costa County taxpayers should not be compelled to pay higher sales taxes (nearing or exceeding a 10.0% rate) for the next 35 Christmases as a consequence of official negligence and/or misconduct this month concerning the 2020 CCTA tax increase election.

In making these requests, Contra Costa County electors and TRANSDEF seek to ensure that voters are offered a fair and objective description of the tax increase placed before them, consistent with the text, intent and purpose of the Elections Code. We are available immediately to discuss a non-litigation settlement of our concerns.

Respectfully submitted,



JASON A. BEZIS  
Attorney for Contra Costa County Electors and TRANSDEF

Attachments: December 24, 2019 letter to County Counsel  
December 24, 2019 letter to Acting County Clerk-Recorder and Registrar of Voters

cc: Contra Costa Transportation Authority, Executive Director Randell Iwasaki  
Daniel Borenstein, *East Bay Times*