

LAW OFFICES OF JASON A. BEZIS

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December 24, 2019

Deborah Cooper
Acting County Clerk-Recorder and Registrar of Voters
Contra Costa County Elections Division
P.O. Box 271
555 Escobar St.
Martinez, CA 94553

VIA U.S. MAIL and VIA E-MAIL to scott.konopasek@vote.cccounty.us;
rosa.mena@vote.cccounty.us; sara.brady@vote.cccounty.us;
candidate.services@vote.cccounty.us

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

Dear Acting Registrar Cooper, Assistant Registrar Konopasek and Elections Division staff:

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) additional sales tax in 2016 (Measure X) and the argument and rebuttal against the CCTA additional sales tax 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 our letter to the Acting County Clerk-Recorder and Registrar of Voters on December 16, 2019, 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 from “Measure J.”

We copied County Counsel and CCTA Executive Director on that letter. Yet eight days later, we have not heard from you, or any of the other parties to whom we addressed our December 16th letter. We repeat those demands herein by reference to that December 16th letter.

County March 2020 Ballot Measure Letter Designations Do Not Conform to E.C. § 13116.

We do not believe that your office’s ballot measure letter designations for the March 2020 election conform to the Elections Code or to your own office policies. Elections Code § 13116(a) says in part, “All county, city, or other local measures shall be designated by a letter, instead of a figure, printed on the left margin of the square containing the description of the measure, commencing with the letter “A” and continuing in alphabetical order, one letter for each of these measures appearing on the ballot.” Elections Code § 13116(b) says in full, “An elections official may commence designating local measures with any letter of the alphabet following the letter “A,” and continuing in alphabetical order, in order to avoid voter confusion that might result from different local measures carrying the same letter designation in successive elections.”

Your office has failed to conform with Elections Code § 13116 in its seven March 2020 ballot measure letter designations. After your office assigned Measure “A” to the Pleasant Hill Recreation and Park District ballot measure, the next measure should have been designated "B." Elections Code § 13116(b) says that the letter assignments should be “continuing in alphabetical order, one letter for each of these measures appearing on the ballot.” Instead of continuing in alphabetic order from “A,” your office jumped to “J,” then “L,” “M,” “R,” “T,” and “Y.” There would not have been “voter confusion” if your office had assigned “B,” “C,” “D,” “E,” “F,” or “G” to the CCTA ballot measure. No countywide election has used those ballot measure letter designations in recent elections. But as our December 16th letter explained, the 2020 CCTA Measure’s designation as “J” (enacting a new, additional, increased sales tax) creates “voter confusion” with the existing 2004 CCTA Measure J that CCTA prominently touts on road signs and other promotional materials across the county.

Your office’s 2020 “Guide to Filing Measure Arguments” says on page 6, “Assignment of Letters” Letters are assigned based upon a random draw. All letters are included in the random draw.” We note that the Contra Costa Transportation Authority tax increase was assigned Measure “J” (the same designation as CCTA’s 2004 Measure J that remains in effect until 2034), a Lafayette School District measure was assigned Measure “L” (“Lafayette” – “L”) and a Moraga School District measure was assigned Measure “M” (“Moraga” – “M”). The probability that all of these designations occurred through random chance is astronomically small.

Public Records Act Request Concerning “2001 Policy” Apparently Relating to Ballot Measure Letter Designations. Immediate Response, Without Delay, Requested.

We seek information about a policy referenced in a sign in the first-floor Elections Division room at 555 Escobar Street titled “MEASURE LETTER ASSIGNMENT FOR THE 03/03/20 PRIMARY ELECTION.” It says, “LETTER (EC 13109 & 2001 Policy).” Pursuant to the Public Records Act (Government Code §§ 6250, et seq.) and other legal authority that requires

disclosure, we hereby request any and all documents concerning the “2001 Policy” and any and all documents relating to requests from any party, including but not limited to measure sponsors, for specific ballot measure letter designations for the March 2020 election. **We request provision of a copy of the “2001 Policy” immediately, without delay.**

Conclusion

In a letter today (attached), we demand that 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. Consistent with that letter, we demand that the Acting Clerk-Recorder withhold printing of County Counsel’s “Impartial Analysis” of the 2020 CCTA ballot measure in the Voter Guide until it is revised along the lines discussed in that demand letter.

In another letter today (attached), we express our concern to the Board of Supervisors that your 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).

Official neglect of duty right now by County Counsel, Clerk-Recorder-Registrar of Voters and CCTA could mislead voters in the March 2020 CCTA additional sales tax election. Today, Christmas Eve, is one of the busiest days of the year for retail sales. Contra Costa County citizens and 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 Board of Supervisors

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