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December 16, 2021

Alameda County Board of Supervisors
c/o Anika Campbell-Belton, Clerk of the Board of Supervisors
1221 Oak Street, 5th Floor
Oakland, CA 94612
VIA U.S. MAIL; VIA FAX to (510) 271-5151; VIA E-MAIL to CBS@acgov.org;
Dist5@acgov.org; Anika.Campbell-Belton@acgov.org

Re: Demand Letter to Cure or Correct Brown Act Violation (Gov. Code § 54960.1) and to Cease and Desist from Brown Act Violations (Gov. Code § 54960.2)

To the Alameda County Board of Supervisors and Clerk Campbell-Belton:

This office represents the Alameda County Taxpayers' Association (ACTA). This letter is to call your attention to what ACTA believes were three substantial violations of the Ralph M. Brown Act, which may jeopardize the finality of the action taken by Alameda County Board of Supervisors. ACTA also alleges herein a Maddy Act violation.

Brown Act Violation No. 1: The Rushed, Illegal Appointment of Illegitimate District 3 County Supervisor at November 16, 2021 Meeting Was Inconsistent With the Item no. 58.A on the Meeting Agenda (Gov. Code § 54954.2)

The nature of the first violation is as follows: In its regular meeting of November 16, 2021, the Alameda County Board of Supervisors took action during Agenda Item No. 58.B to appoint David K. Brown of Walnut Creek to the vacant Board of Supervisors seat in District 3.

The entirety of Agenda Items No. 58.A and 58.B on the November 16, 2021 Board of Supervisors regular meeting agenda stated:

- 58. *President Carson* - County of Alameda Board of Supervisors,
District 3 Vacancy
 - A. Develop a process/schedule to select an appointee to fill the District 3 vacancy
 - B. Fill the District 3 vacancy by appointment
- Attachment 58

“Attachment 58” consisted of a single-page document that stated in its entirety, “AGENDA _____ ORAL PRESENTATION”.

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be taken at the November 16, 2021 regular meeting and there was no finding of fact made by the Board of Supervisors that urgent action was necessary on a matter unforeseen at the time the agenda was posted. (Gov. Code § 54954.2.) Your Board proceeded to Agenda Item no. 58.B without first taking action on Agenda Item no. 58.A, a necessary prerequisite. Your Board proceeded to “[f]ill the District 3 vacancy by appointment” (Item no. 58.B) without first taking action to “[d]evelop a process/schedule to select an appointee to fill the District 3 vacancy” (Item no 58.A).

As set forth in ACTA’s letters to Board President Carson and the Board of Supervisors of December 2, 2021 and December 5, 2021, the surprise, rushed, and sloppy November 16, 2021 appointment of David K. Brown to the Board of Supervisors District 3 seat was illegal. Mr. Brown is not legally qualified to serve as an Alameda County Supervisor for District 3. He does not satisfy the registered voter qualifications for that public office set forth in Alameda County Administrative Code § 2.04.020 (one year) and Government Code § 25041 (thirty days). Mr. Brown did not become a registered voter in Alameda County Board of Supervisors District 3 until November 12, 2021, just four calendar days (and two business days) before his surprise November 16, 2021 appointment. Please see attached Exhibit 1. **Exhibit 1 is conclusive proof that your Board’s appointment of Mr. Brown on November 16, 2021 was illegal.** Mr. Brown was a registered voter in Walnut Creek (Contra Costa County) until November 12, 2021. Mr. Brown voted in Contra Costa County in the statewide elections in March 2020, November 2020, and September 2021.

The vacancy in District 3 occurred tragically and unexpectedly on November 3, 2021. The November 16, 2021 meeting was the first regular meeting following the creation of the vacancy. As discussed during that meeting, the Board and the community were still in a state of shock and mourning as of November 16, 2021. Indeed, the immediately preceding item on the November 16, 2021 regular meeting agenda was “57. President Carson - Honoring the Life and Legacy of Supervisor Wilma Chan.” There is extraordinary social pressure for applicants not to campaign to replace a deceased incumbent until after the governmental body officially recognizes the deceased incumbent. In the American political system, it is considered a major breach of etiquette and a grave taboo for any applicant to start any campaign to replace a deceased incumbent during a period of mourning. For example, the loss of Walter Mondale in the 2002 U.S. Senate election in Minnesota was blamed on the politicization of the funeral of Senator Paul Wellstone, who died in an accident. Mourning for the loss

of an incumbent and public political jockeying for succession are distinct psychological, social, and political events. They overlap at the peril not only of all parties involved, but also of the integrity and best long-term interests of the commonweal.

Any reasonable person reading the November 16, 2021 regular meeting agenda would have concluded that the Board would first “[d]evelop a process/schedule to select an appointee to fill the District 3 vacancy” under Item 58.A before proceeding to “[f]ill the District 3 vacancy by appointment” under Item 58.B. The Board did not do this during Item No. 58 at the November 16, 2021 meeting. The Board did not at any point during Item No. 58 take any action to “[d]evelop a process/schedule to select an appointee to fill the District 3 vacancy.” The Board simply proceeded to “[f]ill the District 3 vacancy by appointment.”

ACTA was prejudiced by the immediate appointment of David K. Brown of Walnut Creek at the November 16, 2021 regular Board meeting, in violation of the Ralph M. Brown Act. Mr. Brown was the political mastermind behind the Measure C and W sales tax increases that have caused Alameda County to have the highest sales tax rates in California – actually the highest anywhere at any time in California history. Mr. Brown ran the political campaigns supporting these sales tax increases while he simultaneously was a full-time County employee. The voting population of Alameda County, including the County Supervisors, knew that Mr. Brown was a Walnut Creek resident because one of the arguments against Measure W that appeared in the November 2020 County Voter Information Guide referred to the fact that Supervisor Chan’s Chief of Staff was running the political campaign from his “Walnut Creek” residence. If ACTA had known that Mr. Brown would have been appointed at the November 16, 2021 Board meeting, then ACTA would have alerted your body and the public that Mr. Brown was not legally qualified to be appointed. But your meeting agenda did not provide adequate notice.

Anyone reading the November 16, 2021 regular meeting agenda had no idea that the Board would not accept applications to fill the vacancy and that it would not conduct any public interview of candidates. Anyone reading the agenda had no idea that the Board would appoint David K. Brown of Walnut Creek, a legally unqualified candidate. The public was given no separate opportunity to comment on the “[f]ill the District 3 vacancy by appointment” Agenda Item no. 58.B because the public assumed that Agenda Item no. 58.A would be acted upon first.

ACTA, like many other in the public, expected the 2021 District 3 vacancy to be filled through an application and interview process extending over more than one Board meeting, consistent with the process conducted to fill past Board vacancies, especially the nearly 34-day process for the Nadia Lockyer vacancy filled by the appointment of Richard Valle in 2012.

At the May 1, 2012 Board meeting, Supervisor Wilma Chan opined on the process to fill the Nadia Lockyer Board vacancy in 2012. Supervisor Chan stated in the May 1, 2012 official meeting video recording:

- “I really welcome this opportunity to publicly vet a pool of candidates who will have the opportunity to run in November.” (at 2:09:15) ...
- “I do think with our experience we can bring to light with these public hearings probably shine a brighter light on the qualifications and needs of the County in a way that nobody else could do” (2:10:00) ...
- “I think through our questioning in public, we really can bring to light things that otherwise people might not know about these candidates.” ...
- “[T]o ask people questions ... in front of people in a non-electoral forum is a positive thing.” (2:11:10)
- “For us to appoint someone without an interview process is not fair”

The public had every reason to believe that in the November 2021 Board vacancy the Board of Supervisors would follow its 2012 precedent and abide by Supervisor Chan’s clearly-stated principles for filling a Board vacancy: that a “pool of candidates” would be subjected to “public hearings” (note the plural) that would consider the candidates’ “qualifications” with Board “questioning in public.” In its rushed, illegal actions at the November 16, 2021 meeting (and the days preceding), your Board disrespected the memory and legacy of Supervisor Chan by betraying not only Board precedent, but also Supervisor Chan’s own clearly-stated principles for filling a Board vacancy.

The rush to “[f]ill the District 3 vacancy by appointment” at the Alameda County Board of Supervisors regular meeting on November 16, 2021 also was inconsistent with practices for filling Board of Supervisors vacancies in other California charter counties. As the California Supreme Court described in *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 103, the San Bernardino County Board of Supervisors filled a vacant seat in December 2018 through an application and interview process that spanned several Board meetings:

The board received 48 applications from candidates meeting the eligibility requirements. Rather than interviewing all 48 applicants, the supervisors instead decided they each would submit nominees to the board's clerk by e-mail; only those candidates who had received at least two nominations would be interviewed. Through this e-mail nomination process, the board selected 13 candidates to be interviewed at a public meeting. At that meeting, the board then winnowed the field to five finalists, including real party in interest Dawn Rowe. The finalists were to be interviewed again at a special

meeting on December 13, at which time the board expected to make the appointment. (*Id.* at 1036.)

In the event it appears to you that the conduct of the Board of Supervisors did not amount to the taking of action, ACTA calls your attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, i.e. as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision, Government Code Section 54960.1, ACTA demands that the Alameda County Board of Supervisors cure and correct the illegally taken action as follows: rescission of the November 16, 2021 Board action taken during Item No. 58 to appoint David K. Brown of Walnut Creek (who is not legally qualified to occupy that public office due to his voter registration in the district commencing just four days earlier) to the vacant seat in Board of Supervisors, District 3.

Furthermore, the Board of Supervisors must provide the public the awareness and opportunity to comment of which it was deprived, e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform ACTA of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave ACTA no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case ACTA would also ask the court to order you to pay its court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Brown Act Violation No. 2: *Seriatim* Meeting Between November 3 and 16, 2021 (§ 54952.2(b)(1))

In addition, ACTA hereby accuses the Board of Supervisors of conducting an illegal *seriatim* meeting between November 3, 2021 and its action taken to appoint David K. Brown of Walnut Creek to the District 3 Board vacancy on November 16, 2021. Board President Keith Carson openly admitted during the November 16, 2021 meeting that he worked with David K. Brown and Darren Chan between November 3, 2021 and November 16, 2021 to develop a collective Board consensus to appoint David K. Brown to the vacant Board seat.

A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Government Code § 54952.2(b)(1).)

California Attorney General Rob Bonta and his wife Assemblymember Mia Bonta, through their joint November 15, 2021 letter to the Board of Supervisors, were the leaders of the effort to appoint Mr. Brown. Their joint letter called for the appointment of Mr. Brown and attested to its legality: “[O]ur understanding upon legal review is that this is allowable for this caretaker capacity and that Mr. Brown is also ineligible to run for the open seat next year.”

The case of *Stockton Newspapers Inc. v. Members of Redevelopment Agency* (1985) 171 Cal.App.3d 95 is instructive. In *Stockton Newspapers*, the Court of Appeal examined the question of whether a redevelopment agency violated the Brown Act when its counsel conducted a “one-on-one telephone poll for the purpose of obtaining a collective commitment or promise” from the members on an issue before the Board. (171 Cal.App.3d at p. 99.) The Court held: “[T]he alleged participation by defendants a majority of the legislative body of the redevelopment agency in a series of one to one nonpublic and unnoticed telephone conversations with the agency’s attorney for the commonly agreed purpose of collectively deciding to approve the transfer of ownership in redevelopment project property constitutes a meeting at which action was taken in violation of the Brown Act.” (*Id.* at p 105.)

A 2001 California Attorney General Opinion provided that since the Brown Act was enacted to allow the public to observe and participate in the decision making process of local government, then “[n]ot only are the actions taken by the legislative body to be monitored by the public but also the deliberations leading to the actions taken.” (84 Ops.Cal.Atty.Gen. 30, *30, 2001 Cal AG LEXIS 6, *2 see also *Stockton Newspapers*, 171

Cal.App.3d at p. 100, *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373-375.) "The term 'deliberation' has been broadly construed to connote 'not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.' [Citation.]" (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale, supra*, 5 Cal.4th at p. 376.)

Board President Keith Carson admitted at the November 16, 2021 meeting that he placed this agenda item on the November 16, 2021 regular meeting agenda at the instigation of the late Supervisor Wilma Chan's family. President Carson admitted during the meeting that he was motivated to support the appointment of David K. Brown over any female candidate because he did not hear from "women's organizations" before the meeting.

Board President Carson took the extraordinary act of inviting a Chan family member to be a public speaker immediately after President Carson's introductory remarks on Item No. 58. President Carson then permitted Darren Chan to speak for more than six minutes (from 2:01:00 to 2:07:20 of the official meeting video), far longer than the two-minute limit given to public speakers. During that six-minute speech, Mr. Chan called upon the Board to appoint David K. Brown immediately to the vacant seat.

President Carson abused his authority as the presiding officer. President Carson placed Item no. 58 on the November 16, 2021 regular meeting agenda at the behest of an individual (Darren Chan) who wanted to "clear the field" for that individual's desired outcome. President Carson did this with full knowledge that societal norms would prevent any challengers to organize during the period of mourning. During the November 16, 2021 regular meeting, President Carson did not uniformly apply speaker time limits, but instead chose to give longer speaking times and preferred earlier speaking slots to discriminate in favor of speakers and viewpoints that he liked (especially to Darren Chan and David K. Brown) and against those with differing viewpoints (to delay filling the vacancy at the November 16, 2021 regular meeting, to more carefully consider David K. Brown's qualification, and/or to appoint a non-male or non-Caucasian candidate). Most dramatically, President Carson abused his office to undermine thoughtful, fair consideration of former Supervisor Alice Lai-Bitker as an alternative appointee. Even if President Carson's actions relating to Item nos. 58.A and 58.B between November 3, 2021 and November 16, 2021 were legal, they unquestionably unethical.

Following the conclusion of Mr. Chan's six-minute speech, President Carson opened the meeting to Board discussion. All Board members stated that they had received an extraordinarily high volume of public communications in recent days concerning the Board vacancy. ACTA believes that those public communications likely constituted *seriatim* meetings.

County Counsel Donna Ziegler made an extraordinary admission. In replying to a query from Supervisor Miley, Ms. Ziegler admitted that she did not have knowledge of Mr. Brown's qualifications for the public office. As County Counsel Ziegler openly admitted that she did not know the facts, it was unreasonable for Supervisors to rely on her legal advice about the appointment. County Supervisors therefore did not make the David K. Brown appointment reasonably. The County Supervisors did not exercise due care.

Supervisor David Haubert openly admitted that David K. Brown was not legally qualified for the office, yet Supervisor Haubert persisted in immediately appointing Mr. Brown. Supervisor Haubert asserted at 2:35:30 that Mr. Brown "would not be eligible to run in the next election."

Board President Carson then opened the agenda item to public comment. He permitted Sarah Oddie, a County employee who worked for Supervisor Chan and Dave Brown, to call for Mr. Brown's appointment. A staff member for Assemblymember Mia Bonta read the joint letter co-signed by California Attorney General Rob Bonta.

A public speaker interspersed among the other public speakers was David K. Brown. He gave himself more than three minutes to speak uninterrupted, longer than the two-minute limit imposed on other public speakers. Mr. Brown openly admitted that he was not legally qualified for the office, stating that his election was "certainly not allowed by the law." (2:50:29.) After Mr. Brown spoke, Supervisor Miley opined that Mr. Brown was "definitely qualified to occupy the seat." (2:56:40).

Janani Ramachandran, an attorney and failed challenger in 2021 to Mia Bonta for Rob Bonta's vacant Assembly seat, bizarrely announced that she was in favor of Mr. Brown's appointment, yet admitted that Mr. Brown "isn't eligible to run for this seat." (2:58:35).

Supervisor Haubert, in seconding the motion to appoint David K. Brown immediately, admitted that Mr. Brown was not legally qualified to hold the office, "What we need is someone who cannot run for the seat." (3:28:36). Supervisor Miley stated in his remarks that the appointment of Dave Brown should be posted on an agenda as an action item.

While speaking against the Miley-Valle motion to delay taking action for one week, Board President Carson admitted that he had spoken many times to Dave Brown and also shared with Darren Chan about the effort to appoint Mr. Brown at the November 16, 2021 meeting. President Carson added, "I had conversation with Dave Brown and Darren Brown on timing. I respect the time that they chose." President Carson stated, "We need grieving time. We need time to deflate." He spoke of a "state of shock" and "disbelief," but then admitted, "There was a rush to move on this for whatever apparent

reason. I'm not questioning that reason." President Carson stated that he did not want to put this on the agenda "when we're still grieving about Wilma," but that he placed this on the agenda "at request of family." Perhaps most bizarrely, President Carson baselessly opined, "People have had a lot of time to talk about the action that was proposed today." (3:41:00). President Carson spoke of a conversation that he had with Darren Chan on Wednesday, November 10, 2021 that motivated him to place Item no. 58 on the November 16th agenda. President Carson made an excuse for rushing the appointment process: "We need to get closure on this appointment process. We need to get back to our life."

Supervisor Valle outrageously claimed that the David K. Brown appointment should proceed immediately because "all of the players that were important were here," including the family of Wilma Chan. Supervisor Valle then pressed Supervisor Miley to withdraw his motion to delay final action on the appointment by one week. As stated above, Item nos. 58.A and 58.B on the November 16, 2021 regular meeting agenda did not provide adequate notice to the public that the final appointment would occur at that meeting, without first "[d]evelop[ing] a process/schedule to select an appointee to fill the District 3 vacancy" as Item no. 58.A promised.

Pursuant to § 54960.2, ACTA hereby demands that the Alameda County Board of Supervisors cease, desist from, and not repeat the challenged past action as described above. Your Board should not conduct *seriatim* meetings through County employees (especially Board of Supervisors Chiefs of Staff and other supervisorial staff members) or blood relatives of County Supervisors, in violation of Government Code § 54952.2(b)(1). If ACTA were forced to file suit, ACTA would seek costs and attorney fees.

Brown Act Violation No. 3: Failure to Provide Board Materials Relating to November 16, 2021 Board Meeting Item no. 58 Upon Request Without Delay (§ 54957.5)

The Brown Act, Government Code sec. 54957.5, states in part, "[A]gendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay." (Emphasis added.)

California courts are robustly enforcing violation of Brown Act Government Code sec. 54957.5 rights. See e.g., *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1, 13-14 ("[W]e find the County violated section 54957.5 when, as a result of its own conduct, it failed to make the Schwab Memorandum available for public inspection at the time it distributed the memorandum to the Board.").

ACTA has made numerous requests to the County for all writings distributed to all, or a majority of all, of the members of the Board of Supervisors concerning the Board of Supervisors District 3 vacancy that arose on or about November 3, 2021 and the activities to fill that vacancy, including but not limited to Item no. 58 on the November 16, 2021 Board meeting regular agenda. The County's responses so far have been extremely incomplete and grossly inadequate.

These § 54957.5 requests have included the November 30, 2021 (6:17 a.m.) e-mail sent by ACTA's attorney to the Clerk of the Board. In response, the County produced an eight-page PDF document. That November 30, 2021 § 54957.5 request response did not include the joint Bonta letter that Supervisor Haubert read from during the November 16, 2021 regular meeting. That November 30, 2021 § 54957.5 request response also did not include any Asian Pacific American Democratic Caucus of Alameda County communication (discussed below).

ACTA was extremely alarmed that the November 15, 2021 joint letter co-signed by Assemblymember Mia Bonta and State Attorney General Rob Bonta was not produced to ACTA upon request without delay, in response to their § 54957.5 request on November 30, 2021 at 6:17 a.m. The County's failure to produce the Bonta joint letter upon request without delay on November 30, 2021 is a figurative "canary in the coal mine" "red alert warning" that the County of Alameda's Brown Act compliance is alarmingly deficient. The Clerk of the Board and County Counsel should have interrupted the Board meeting during Item no. 58A and B when Supervisor Haubert quoted from Attorney General Bonta's letter. They should have inquired immediately about whether or not a copy of that letter had been circulated to a Board majority and, if so, should have asked for a copy to be provided to the Board Clerk, especially for § 54957.5 compliance.

The County has not yet produced a single document in response to the December 1, 2021 (9:04 p.m.) § 54957.5 request. ACTA has good reason to believe that the County is concealing from disclosure additional documents. For example, ACTA has learned from reliable sources that on or about November 10, 2021, the Asian Pacific American Democratic Caucus of Alameda County addressed a letter to the Board of Supervisors that called for an Asian-American woman to be appointed to vacant District 3 seat. That letter clearly is a "writing" that concerns Item nos. 58A and 58B on your November 16, 2021 regular meeting agenda, yet the County has not yet produced this letter to ACTA.

Pursuant to § 54960.2, ACTA hereby demands that the Alameda County Board of Supervisors cease, desist from, and not repeat the challenged past action as described above. The County must immediately develop a Brown Act, Government Code § 54957.5 compliance and records management system, in accordance with the best

practices of hundreds of other public entities across California. ACTA demands that the Board President and his staff and Board Clerk henceforth immediately work collaboratively identify any and all writings that are addressed to the Board that are not yet in the possession of the Board Clerk, so the Board Clerk can perform her legal obligations to make such writings available to the public upon request without delay pursuant to § 54957.5. ACTA demands that the Board Clerk henceforth immediately require every County Supervisor and every County Supervisor staff member to forward copies of any and all writings addressed to a majority of Supervisors that they receive to the Board Clerk, so the Board Clerk can perform her legal obligations to make such writings available to the public upon request without delay pursuant to § 54957.5.

If the County of Alameda, acting through its Board of Supervisors, Clerk of the Board, and County Counsel, do not want to develop compliance systems voluntarily through this cease and desist demand process, then ACTA is prepared to use § 54957.5 and the new *Sierra Watch* precedent to force the County to develop such compliance systems, pursuant to § 54960 and/or § 54960.2. If ACTA were forced to file suit, ACTA would seek costs and attorney fees.

Whether or not District Attorney Nancy O'Malley leads or joins (or tacitly opposes) such an effort will be an important final test of her office's lackadaisical attitude toward Brown Act enforcement specifically and public corruption generally. As evidenced by his November 15, 2021 joint letter calling for the illegal appointment of David K. Brown of Walnut Creek to the Alameda County Board of Supervisors, State Attorney General Rob Bonta is an active participant/ringleader in this scandal.

Maddy Act Violation: Failure to Post Notice of "Unscheduled Vacancy" (§ 54974)

As an aggravating factor, the rushed appointment of David K. Brown of Walnut Creek to the vacant Board seat at the November 16, 2021 Board regular meeting also was inconsistent with the Maddy Act (Gov. Code §§ 54970 et seq.). The Alameda County Board of Supervisors and its chairman (Board President) are subject to the Maddy Act. (Gov. Code § 54971(a).) The Maddy Act applies to charter counties. (Gov. Code § 54971(b).)

Your Board, including Board President Carson, failed to provide adequate notice of the "unscheduled vacancy" in the position of Board of Supervisors District 3, in accordance with Government Code § 54974 ("not earlier than 20 days before or not later than 20 days after the vacancy occurs"). Your Board made final appointment to the Board of Supervisors District 3 seat at your November 16, 2021 regular meeting without first posting the required Maddy Act notice. "Final appointment to the board, commission, or committee shall not be made by the legislative body for at least 10 working days after

the posting of the notice in the clerk's office." (Gov. Code § 54974(a).) Your Board failed to invoke the § 54974(b) emergency appointment provision.

This letter is to serve as a pre-litigation demand that your Board and your Board Clerk explain and justify to ACTA how your rushed appointment of David K. Brown of Walnut Creek at your November 16, 2021 regular meeting to the "unscheduled vacancy" without providing the requisite public notice or invoking emergency appointment authority complies with the Maddy Act. ACTA hereby demands that the Alameda County Board of Supervisors cease, desist from, and not repeat the challenged past action as described above.

Notice to Governor Gavin Newsom: Need to Fill Alameda County Board Vacancy

ACTA is including Governor Gavin Newsom on this letter because the County Board of Supervisors has thus far failed to appoint a legitimate, legally qualified candidate to fill the District 3 Board of Supervisors vacancy. Governor Newsom has a mandatory legal duty to appoint his own candidate to the Alameda County Board of Supervisors vacancy on or about January 3, 2022 (61st day of the vacancy), pursuant to Government Code § 25060 et seq. and Alameda County Charter § 8. As Mr. Brown is not legally qualified to serve as Alameda County Supervisor, the Board has a duty to seat any legally qualified appointee by Governor Newsom on or after January 3, 2022.

Board President Keith Carson Must Call a Special Meeting (Gov. Code § 25022)

Therefore, ACTA renews its request made in its December 5, 2021 letter to Board President Keith Carson to call a special meeting pursuant Government Code § 25022 immediately in order to rescind the Board's illegal appointment of David K. Brown of Walnut Creek on November 16, 2021. At that special meeting, the Board should immediately develop an application and interview process to fill the District 3 vacancy before January 3, 2022. Otherwise Governor Newsom has a mandatory duty to fill the District 3 Board vacancy on January 3, 2022.

Sincerely,

/s/ *Jason A. Bezis*

JASON A. BEZIS

Attorney for Alameda County Taxpayers' Association

Cc: Alameda County Counsel Donna Ziegler and co-counsel
Alameda County District Attorney Nancy O'Malley
Attorney General Robert Bonta
The Honorable Gavin Newsom, Governor of California

EXHIBIT 1

From: **Sara Brady** <Sara.Brady@vote.cccounty.us>

Date: Wed, Nov 24, 2021 at 5:18 PM

Subject: RE: Request for Registration Status and Voter History of David Brown (or Dave Brown) of Walnut Creek (94597)

To: bezis4law@gmail.com <bezis4law@gmail.com>

Mr. Bezis,

In response to your inquiry, please see below for Contra Costa County voter registration and voter participation information for David Brown.

Brown's voter registration with Contra Costa County was cancelled effective 11/12/21.

Brown has voter participation history in Contra Costa for the March 2020, November 2020, and September 2021 elections.

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Sara Brady

Acting Assistant Registrar
Contra Costa County
925-335-7807
<https://www.cocovote.us/>