



**NVRTF**  
NATIONAL VOTING RIGHTS TASK FORCE

November 29, 2022

VIA EMAIL

Hon. Shamann Walton, President of the Board of Supervisors  
Hon. Connie Chan, Supervisor, First District  
Hon. Catherine Stefani, Supervisor, Second District  
Hon. Aaron Peskin, Supervisor, Third District  
Hon. Gordon Mar, Supervisor, Fourth District  
Hon. Dean Preston, Supervisor, Fifth District  
Hon. Matt Dorsey, Supervisor, Sixth District  
Hon. Myrna Melgar, Supervisor, Seventh District  
Hon. Rafael Mandelman, Supervisor, Eighth District  
Hon. Hillary Ronen, Supervisor, Ninth District  
Hon. Ahsha Safai, Supervisor, Eleventh District

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

**Re: Support for Elections Commission Decision to Conduct Candidate Search for New Director**

Dear President Walton and Honorable Members of the Board of Supervisors,

As organizations that have long engaged with the San Francisco Elections Commission, we are writing to strongly support its decision to conduct a competitive selection process for the next five-year term of the position of Director of the Department of Elections for the reasons detailed below, to correct gross mischaracterizations about the process thus far, and to respectfully ask the Board to provide the Commission with the funds it needs to complete a fair and equitable candidate search that the Director has been invited to participate in.

**MISCHARACTERIZATIONS OF THE ELECTIONS COMMISSION'S ACTION**

Outlets including Fox News and the National Review have been running headlines like "*San Francisco to boot election director after 20-year career so city can 'take action' on 'racial equity plan'*"<sup>1</sup>, with other press saying the Director's contract "*wasn't renewed*", he was "*fired*", and even that he was "*sacked*". The Washington Times said the Director "*could lose out on job for being white*."<sup>2</sup> These are all misunderstandings of the Elections Commission's action.

**No Decision Has Been Made To Replace The Director Or Not Renew His Contract.** The motion the Commission passed was to "*to open up a competitive selection process and to invite Director Arntz to participate.*" The

<sup>1</sup> "[San Francisco to boot election director after 20-year career so city can 'take action' on 'racial equity plan'](#)", Fox News, November 23<sup>rd</sup>, 2022.

<sup>2</sup> "[San Francisco elections chief could lose out on job for being White](#)", Washington Times, November 24<sup>th</sup>, 2022.

Director's contract can still be renewed at any time before mid-April, or if he participates in the selection process and is deemed to be the best candidate.

This process permits a full and fair opportunity for the Director to respond to critics such as ourselves and to press controversies like those detailed below while the Commission weighs whether another candidate might better fill this uniquely sensitive role, which must of course be occupied by someone enjoying the highest degree of public faith; something especially true now.

**The Director of the Department of Elections Does Not Have a Lifetime Term Like a Federal Judge.** The Director position has a five-year term after which the Commission may in its discretion engage in a competitive selection process which the current Director may apply for.<sup>3</sup> This was the Commission's decision. For twenty years, San Francisco has not even looked to see what other qualified candidates might be out there. A competitive selection process is long overdue to allow the Director to demonstrate he is the best candidate, as registrars who perform the same job in most other counties do every four years by facing the voters in an election.

**The Commission Did Not Say They Would Hire Someone Other Than the Director Just Because He's White.**

One Commissioner said that *"it is about taking action on the city's racial equity plan, which means at least holding out the possibility of a role that is in leadership and giving people an opportunity to compete for that."*

Observing that qualified candidates from communities of color applying for a job during an open selection process would be a welcome event does not mean that a job held by one person for two decades — more than two two-term presidencies — is being opened to competition only because the job incumbent is white. It means what it says: giving people an opportunity to compete. Regardless of color.

And, as we detail below, there are substantive reasons to see if other equally or more qualified candidates exist that have utterly nothing to do with the Director's race.

### **MAJOR UNANSWERED QUESTIONS REGARDING THE DIRECTOR'S TRANSPARENCY, TRUTHFULNESS, AND PERFORMANCE**

**1. The Director Participated in Drafting a \$1.5 Million RFP That Included Development of Internet Voting That Would be in Violation of Election Commission Policy, in Violation of State Law, and Contrary to Federal Warnings Against Such Systems. When His Actions Came to Light, He Was Untruthful to His Superiors — The Commissioners and Thus the Taxpayers — About It.**

As the Director knows or should know (i) the Elections Commission has had a policy against Internet voting since the Commission adopted a resolution against it in 2017,<sup>4</sup> (ii) it is barred by state law,<sup>5</sup> and (iii) the Cybersecurity and Infrastructure Security Agency, the federal government's top election security agency, warned against Internet voting, saying that "electronic ballot return is high risk" and "faces significant security risks to voted ballot integrity, voter privacy, and system availability."<sup>6</sup>

Despite this Commission policy and state law, and federal warning, the Director assisted with a \$1.5 million RFP for a Bay Area-wide project that included development of technology to "electronically submit the ballot to a county Election Department," i.e., Internet voting — all apparently without informing his superiors on the Commission.

The origin of this unwise project that would have spent taxpayer dollars to create an apparently unlawful — certainly unwise — voting system is unclear to us at this time. Even though the Director never brought the RFP

<sup>3</sup> [San Francisco Civil Service Commission Rule 114.34.3.](#)

<sup>4</sup> ["Resolution opposing internet and email voting in local, state, and federal elections,"](#) adopted by the San Francisco Elections Commission (6-0) on April 19, 2017.

<sup>5</sup> California Government Code [Section 19205](#) and [Section 19295.](#)

<sup>6</sup> [Risk Management for Electronic Ballot Delivery, Marking, and Return](#), Cybersecurity and Infrastructure Agency, 2020.

to the attention of the Commission, fortunately the Commission found out about it nevertheless and was able to get the Internet voting portion of the project canceled with the help of members of the Board of Supervisors. In the process, the project caused needless public controversy, uproar, and confusion.

A series of articles in the *San Francisco Examiner* illustrates the controversy it caused:

["Who's behind blockchain voting at San Francisco's City Hall?"](#), October 15, 2021.

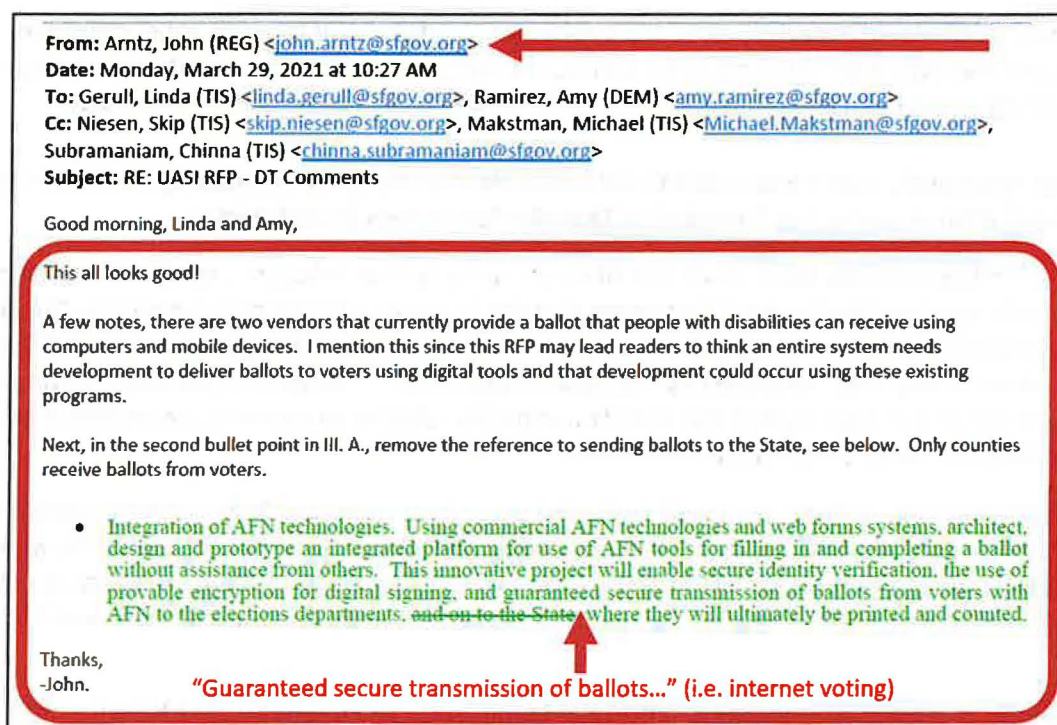
["SF received \\$1.5 million to explore online voting. Critics think it's a horrible idea."](#), November 17, 2021.

["Confusion swirls in San Francisco's mysterious, ill-advised Internet voting project."](#), December 31, 2021.

To reiterate, to our knowledge, the Director did not reveal this project that was of obvious interest to the Commission and to taxpayers and voters. Indeed, in the November 17th 2021 Elections Commission hearing, the Director claimed that the RFP was issued by the Bay Area Urban Areas Security Initiative *"without me doing anything, without our knowledge even"* and said that *"I haven't read the RFP, Commissioner Jerdonek, so I don't know what's in there."*<sup>8</sup>

However, a public records request by the National Voting Rights Task Force in December 2021 revealed that not only did the Director know about the RFP, not only did he *"read it,"* but that he sent emails providing edits to the text of the RFP involving Internet voting to the Department of Technology in March 2021.<sup>9</sup>

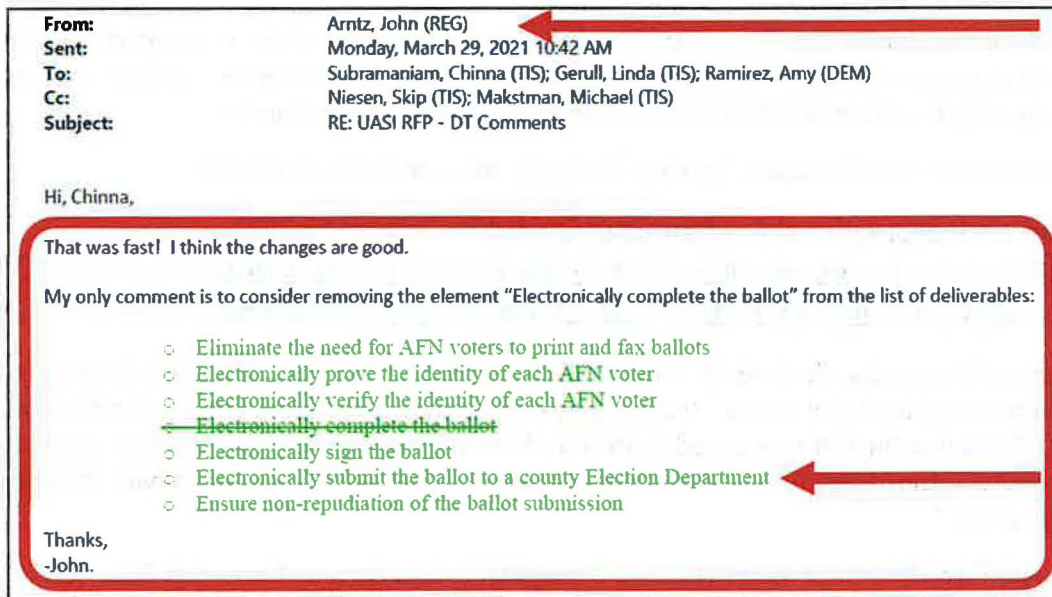
Here are screenshots of those public record emails (our highlights in red):



<sup>7</sup> At 1:52:45 of the Elections Commission's November 17, 2021 hearing: <https://youtu.be/zZhUOFX3LFo?t=6765>

<sup>8</sup> At 2:09:45 of the same November 17, 2021 hearing: <https://youtu.be/zZhUOFX3LFo?t=7785>

<sup>9</sup> [Emails from the Director to Department of Technology Staff on March 29, 2021](#) obtained by a public records request from the National Voting Rights Task Force.



To our knowledge, the Director has not yet fully or satisfactorily explained the apparent discrepancy between his public comment to his superiors on November 17 and these emails.

We believe that this all alone, especially given the apparent unlawfulness of Internet voting, the insecurity of such systems, and the significant news coverage and public confusion and controversy it caused, requires, at a minimum, opening up a candidate competition that really should have been re-visited years ago.

## **2. The Director Apparently Didn't Inform the Commission He Was Personally Extending the Dominion Voting Systems Contract After Assuring the Commission That the Supervisors Would Decide.**

When the Commission reviewed the Department of Elections budget on February 14th 2022, the Director wrote in his budget memo and testified to the Commission that the decision of whether to extend the Department's contract with Dominion for its voting system for one versus two years would be up to the Board of Supervisors, saying in his budget memo that *"With the City's current voting system contract with Dominion Voting Systems (DVS) expiring at the end of March 2023, the Board must decide whether to approve one or both of the one-year options to extend the term of the contract."*<sup>10</sup>

Subsequently, the Elections Commission passed a resolution at their June 15th 2022 meeting stating *"the Commission requests that the Board extend the contract only one year."*<sup>11</sup> Members of the public who had made comments on the issue at the February 14th meeting were waiting for the opportunity to weigh in with the Board of Supervisors based on the Director's budget memo and testimony that this decision would be the Board's.

Nevertheless, after these public representations to the Commission and the public, the Director himself began the process of extending the Dominion contract without the Board of Supervisors oversight he had written and testified would occur — and to our knowledge without first alerting the Commission or the Board.

<sup>10</sup> [Department of Elections' Budget Proposals: Fiscal years 2022-23 and 2023-24](#), by John Arntz, Director, February 9, 2022.

<sup>11</sup> ["Resolution on Extending the City's Contract with Dominion Voting Systems"](#), adopted by the San Francisco Elections Commission (5-0) on June 15, 2022.

At the Elections Commission's October 19<sup>th</sup> 2022 hearing, the Director said that he learned about his ability to keep the Supervisors and the public out of the decision "*several months ago*," and he claimed he had told the Commission about that change at previous meetings.<sup>12</sup>

No record found affirms that the Director told the Commission about this significant and controversial change in contracting. The public record contradicts it. Even if the Director did, in his view, inform the Commission of his change in plans, the absence of any such indication in the public record demonstrates that he at a minimum failed to inform the public of this unilaterally imposed change in direction with the clarity proportional to its importance and public interest.

### **3. The Director Used a Term of 9 Years and 364 Days on a \$1.91 Million Sole-Source Elections Contract to Bypass Board of Supervisors Approval Required for 10-Year Contracts. This May Be Technically Legal. It is Certainly in Our View Poor Judgement and Unwise.**

San Francisco's Charter requires Board of Supervisors approval for any contract with a term of 10 years or more.<sup>13</sup> Yet, and to our knowledge without seeking approval from or even informing the Commission or the Board of Supervisors, the Director signed a \$1.91 million sole-source contract<sup>14</sup> (i.e., lacking a competitive bidding process) with DFM Associates<sup>15</sup> for their proprietary<sup>16</sup> election management system for a term of 9 years and 364 days (October 21<sup>st</sup> 2021 to September 30<sup>th</sup> 2031), one day under the threshold that triggers Board oversight.

Such an effort denying this Board the ability to weigh in on a topic as fundamental as whether election management systems should be proprietary instead of open-source (as is the expressed Department policy preference set by the Elections Commission<sup>17</sup>) and with nearly a decade of consequences may be legal, but it certainly in our view skirts good governance and public accountability on an important topic.

### **4. The Director Impeded Department of Elections and Board of Supervisors Policy of Moving Toward More Open and Transparent Open-Source Voting Systems**

The Elections Commission is responsible for setting policy for the Department of Elections, which the Director of the Department is in turn responsible for executing.<sup>18</sup> Executing Department policies, or at least seriously attempting to execute them, is a core part of the Director's job.

One of the Department's major policies, established by the Elections Commission in 2015, is the "*policy of the Department of Elections to support and work towards the adoption of a fully open voting system, including supporting the development, testing, and certification of such a system.*"<sup>19</sup> This Board has time and again passed resolutions establishing a similar policy during the last 15 years.<sup>20</sup> The value of open-source voting systems was described by a Civil Grand Jury convened by the City, citing the "*cost savings, increased election security, and*

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<sup>12</sup> At 3:31:15 of the Elections Commission's October 19, 2022 hearing: <https://youtu.be/lqEz18xTHxA?t=12675> the Director said "I think I said at previous meetings, the way that the resolution is drafted, the extension does not go to the board." Which is not true. When asked by Commissioner Jerdonek when he learned that, he said "Several months ago."

<sup>13</sup> [San Francisco Charter Section 9.118\(b\)](#).

<sup>14</sup> [Sole-source waiver request from the Director](#), August 4<sup>th</sup>, 2021. Note that the waiver request says \$1.191 million instead of the actual contract amount of \$1.911 million in the [contract signed between DFM Associates and the City and County of San Francisco](#) on September 27, 2021.

<sup>15</sup> [Contract signed between DFM Associates and the City and County of San Francisco](#) on September 27, 2021.

<sup>16</sup> [Letter from DFM Associates to the Director](#) on July 30, 2021.

<sup>17</sup> ["Open Source Voting Systems Resolution"](#), November 18, 2015.

<sup>18</sup> [Memorandum from the City Attorney, Re: Powers and Duties of the San Francisco Elections Commission](#), July 1, 2005. P. 5 "Charter § 4.102... The commission sets policy and communicates that policy to the department head, who in turn is responsible for its execution."

<sup>19</sup> ["Open Source Voting Systems Resolution"](#), November 18, 2015.

<sup>20</sup> ["Open Source Voting History in San Francisco 'At a Glance'"](#), Report by Commissioner Jerdonek, September 20, 2022.

*public ownership over the critical infrastructure of democracy. It is likely to free the city from the constraints of vendor lock-in, and the accompanying risk of financial exploitation.”*<sup>21</sup> (Note more on the issue of vendor lock-in and risk of financial exploitation when reading concern # 5 below.)

Nevertheless, the Director has not only made no progress on this major Department of Elections policy since 2015, but he to our knowledge has actually impeded efforts to effectuate this Board-adopted policy by the Board of Supervisors itself and the State Legislature.

The Director’s lack of progress was highlighted in the press last year:

**“Is San Francisco’s elections Director impeding voting machine progress?”**

*San Francisco Examiner*, September 24, 2021

- In 2018 and 2019, Senator Scott Wiener and then-Assemblymember David Chiu requested \$8 million in state matching funds that could be used by San Francisco to advance the Department of Elections policy of developing an open-source voting system. Assembly Budget Chair Phil Ting declined to support the request, publicly telling supporters on multiple occasions that the Director was not supportive. Being supportive of efforts to implement policies adopted by the Commission, not to mention this Board, is in our view a significant part of the Director’s job. After all, respectfully, the Director was not elected by the voters.
- In 2018, this Board, under the leadership of then-Board President London Breed and then-Budget Chair Malia Cohen, allocated \$1.3 million to the Department of Elections to start development of an open-source voting system. Unfortunately, to our knowledge no significant deliverables towards open-source voting were completed, with the money allocated by the Board either spent or taken away.
- In 2021, when the San Francisco-based nonprofit VotingWorks made a serious offer to assist San Francisco with a pilot project for an open-source voting system at no cost (like ones they have successfully conducted with jurisdictions in other states), the Director told the Commission at the September 22th 2021 meeting *“We’re not looking to do a pilot program”* and said that he didn’t know *“what the benefit from that is.”* His statement directly contradicts Department of Elections policy as set by the Elections Commission, not to mention resolutions of this Board, calling for open-source voting.

**5. The Director’s Relationship With Dominion Voting Systems Subject of San Francisco Examiner Investigation on “How One Company Came to Control San Francisco’s Elections”**

The press and others have raised important and so far to our knowledge unanswered questions about the Director’s relationship with Dominion Voting Systems, including an investigation by the *San Francisco Examiner* published last November:

**“How one company came to control San Francisco’s elections”**

*San Francisco Examiner*, Nov 14, 2021

*“For the past 13 years, San Francisco Elections Director John Arntz has cultivated a close relationship with a voting machine company that has become the sole bidder on The City’s business, while doubling its rates...”*

Dominion has for years held an effective monopoly on bidding for San Francisco’s election systems, allowing them to charge whatever they want – and therefore being something that the Director should in our view have tried to address. The *Examiner* investigation raised questions about the Director’s relationship with Dominion, saying:

*“Correspondence obtained by The Examiner through an open records request shows Arntz, over the course of his business relationship with Dominion, sent or forwarded more than 400 emails to a salesman at the*

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<sup>21</sup> [“Open Source Voting in San Francisco”](#), Civil Grand Jury Report, June 9, 2018, p. 19.

*firm, conferring with him on technology projects that could threaten the firm's business and going as far as forwarding a competitor's query about The City's voting machines needs."*

Projects that "could threaten the firm's business" likely means projects or competitors that could break Dominion's exclusive hold on City elections. Although the primary reason Dominion Voting Systems is the only vendor available to the City is due to the City's ranked-choice voting system, the *Examiner* story highlighted that:

*"While sticking close to Dominion, Arntz's department has failed to make progress with open-source technology, which Bennett has called "a threat to our business."*

Of course, helping develop an open-source voting system isn't the only way to ensure San Francisco wouldn't be left with Dominion as its only provider. Encouraging bids from other competitors who might expand their system to be able to bid for San Francisco's elections would also help. However, the *Examiner* found:

*"On another occasion, in August 2020, Arntz forwarded to Dominion a competitor's query asking when Arntz might be in the market for a new voting system. 'Hope you did not answer,' replied Bennett, the Dominion salesman."*

The *Examiner's* investigation found no evidence of the Director answering the competitor's query. Thus to this day, without competitors or an open-source voting system, Dominion has exclusive bidding power on San Francisco's voting system — keeping San Francisco at the "risk of financial exploitation", as described by the Civil Grand Jury.<sup>22</sup> The *Examiner* piece said:

*"The correspondence shows Arntz, rather than working to find alternative election vendors, was comfortable with the ongoing arrangement with Dominion."*

The *Examiner* piece summed it up with a quote from the Dominion salesman: "Dominion and Arntz's department have become a 'well-oiled machine.'"

In our view, this controversy in and of itself underscores the wisdom of the Commission's decision.

**THE BOARD OF SUPERVISORS SHOULD NOT INTERFERE WITH THE CANDIDATE SEARCH, AND IN FACT ARE BARRED FROM DOING SO BY THE CITY CHARTER**

It is apparent to us that there is no basis to question and every basis to support the modest and proportional candidate search the Elections Commission voted for. Indeed, even if there had been no litany of public controversies, twenty years of no competition for the powerful position of Director of Elections is reason enough to conduct a fair and equitable candidate search for the next Director.

This is why it's extremely troubling to read reports about proposals to pass Board resolutions asking the Commission to rescind its decision and even to refuse to allocate the funds the Commission needs to carry out its Charter-mandated option to conduct a candidate search.

Besides the reasons above why it is apparent to us that the Commission's planned competitive search is needed, it appears as though it would be unlawful for the Board at this stage to interfere with the Commission's process. Charter Section 2.114 ("Non-Interference in Administration") says:

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<sup>22</sup> ["Open Source Voting in San Francisco"](#), Civil Grand Jury Report, June 9, 2018, p. 19.

*"... Neither the Board of Supervisors, its committees, nor any of its members, shall have any power or authority, nor shall they dictate, suggest or interfere with respect to any appointment, promotion, compensation, disciplinary action, contract or requisition for purchase or other administrative actions or recommendations of the City Administrator or of department heads under the City Administrator or under the respective boards and commissions...*

*Violation of this section shall constitute official misconduct."*<sup>23</sup>

### **CONCLUSION**

For all these reasons, we respectfully ask the Board not to pass any resolutions commenting on the Elections Commission's candidate search and instead to provide it with the funds it needs to complete the fair and equitable search that the charter allows it to do and that the Director has been invited to participate in.

Sincerely,

Trent Lange, PhD.  
President and Executive Director  
California Clean Money Campaign

Timothy B. Mayer  
President  
California Association of Voting Officials

Jim Soper  
Co-Chair  
National Voting Rights Task Force

Cc: Hon. London Breed, Mayor, Hon. David Chiu, City Attorney, and Members of the Elections Commission

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<sup>23</sup> [San Francisco Charter, SEC. 2.114. "NON-INTERFERENCE IN ADMINISTRATION."](#)