

STATE OF TEXAS  
COUNTY OF HARRIS

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§ KNOW BY ALL MEN BY THESE PRESENTS  
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**AFFIDAVIT OF WAYNE DOLCEFINO**

Before me, the undersigned notary public in the State of Texas, on this day personally appeared Wayne Dolcefino, whose identity is known to me. After I administered an oath to affiant, affiant testified as follows:

1. "My name is Wayne Dolcefino, I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. Carrin Patman is the current Chair of the Metropolitan Transit Authority of Harris County, Texas ("METRO") Board of Directors. Thomas Lambert is the current President the Chief Executive Officer of METRO. (See *Exhibit A and Exhibit B*).
3. The last bond referendum METRO held was in 2003.
4. METRO currently has an upcoming bond referendum on the November 5, 2019 ballot. METRO is asking voters for permission to borrow up to \$3.5 billion to move forward on a \$7.5 billion host of projects – including extending the three light rail lines, expanding the use of bus rapid transit (large buses operating mostly in dedicated lanes), and a few other projects to be completed over the course of the next 20 years. (See *Exhibit C*).
5. The bond language is as follows:
  - a. METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS PROPOSITION A

IN ORDER TO ENHANCE MOBILITY AND EASE TRAFFIC CONGESTION WITHIN THE TERRITORY AND SERVICE AREA OF THE METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS ("METRO"), WITH NO RESULTING INCREASE IN THE CURRENT RATE OF METRO'S SALES AND USE TAX, SHALL METRO BE AUTHORIZED TO ISSUE BONDS, NOTES AND OTHER OBLIGATIONS PAYABLE, IN WHOLE OR IN PART, FROM SEVENTY-FIVE PERCENT (75%) OF METRO'S SALES AND USE TAX REVENUES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000,000, FOR THE ACQUISITION, CONSTRUCTION, REPAIR, EQUIPMENT, IMPROVEMENT AND/OR EXTENSION OF METRO'S TRANSIT AUTHORITY SYSTEM (AS DESCRIBED IN EXHIBIT A OF METRO RESOLUTION NO. 2019-71, "METRONEXT"), WHICH BONDS, NOTES OR OTHER OBLIGATIONS MAY BE ISSUED IN VARIOUS SERIES OR ISSUES, MAY BE SOLD AT ANY PRICE OR PRICES, SHALL MATURE SERIALLY OR OTHERWISE NOT MORE THAN FORTY (40) YEARS FROM THEIR DATE OR DATES AND BEAR INTEREST AT SUCH RATE OR RATES (FIXED, VARIABLE, FLOATING, ADJUSTABLE OR OTHERWISE) AS SHALL BE DETERMINED BY THE BOARD OF METRO WITHIN ITS DISCRETION AT THE TIME OF ISSUANCE, BUT NOT TO EXCEED

THE MAXIMUM RATE THEN AUTHORIZED BY LAW, ALL AS AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, INCLUDING PARTICULARLY (BUT NOT BY WAY OF LIMITATION) SECTIONS 451.352(c) AND 451.072 OF THE TEXAS TRANSPORTATION CODE, TOGETHER WITH ALL AMENDMENTS AND ADDITIONS THERETO, AND OF THE UNITED STATES OF AMERICA, AND SHALL METRONEXT AND THE CONSTRUCTION OF A PHASE III OF METRO'S RAIL SYSTEM KNOWN AS "METRORAIL" BE APPROVED FOR PURPOSES OF THE CITY CHARTER OF THE CITY OF HOUSTON, AND SHALL UP TO TWENTYFIVE PERCENT (25%) OF METRO'S SALES AND USE TAX REVENUES THROUGH SEPTEMBER 30, 2040, BE DEDICATED FOR STREET IMPROVEMENTS, MOBILITY PROJECTS AND OTHER FACILITIES AND SERVICES, AS AUTHORIZED BY LAW? (See Exhibit C).

6. In order to garner support for the coming bond referendum in November, METRO has been flooding Houston's radio stations and television channels with commercials – specifically commercials that advertise what METRO has already done for the city of Houston, that they're asking for more money, what they intend to spend that money on, and then end advising the viewer or listener when the election is. These ads are violative of the Texas Election Code.
7. Texas Election Code Sec. 255.003 – Unlawful Use of Public Funds for Political Advertising (See Exhibit D) – specifically states as follows:
  - (a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.
  - (b) Subsection (a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
  - (b-1) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:
    - (1) the officer or employee knows is false; and
    - (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.
  - (c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.
  - (d) It is an affirmative defense to prosecution for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of this section in a written opinion issued by:
    - (1) a court of record;
    - (2) the attorney general; or
    - (3) the commission.
  - (e) On written request of the governing body of a political subdivision that has ordered an election on a measure, the commission shall prepare an advance written advisory opinion as to whether a particular communication relating to the measure does or does not comply with this section.
  - (f) Subsections (d) and (e) do not apply to a port authority or navigation district.

8. There three respective videos on METRO's YouTube channel (both listed in English and in Spanish so 6 videos total) that advertise some of the projects that METRO intends to use this \$3.5 billion on. The first video was released on August 28, 2019 and is called METRONext: Plan Highlights. In the video METRO claims to have a plan for traffic and then brags about a plan that would make 500 miles of traffic improvements which include "buses that act like railcars", more light-rail, commuter service for the elderly and disabled, and road improvements. The video then goes on to boast that METRO plans to accomplish all of these projects without any increase in taxes. The ad then ends with the statement, "Election day is November 5<sup>th</sup>. Learned more at METRONext.org." (See *Exhibit E-1 for English version; See Exhibit E-2 for Spanish version*).
9. The second video was released on August 30, 2019, and is called "What's Next with METRONext?" This video begins with METRO bragging that since the inception of the program, they have invested \$3.2 billion in new roads, bike lanes, sidewalks, and "more throughout the Houston area." The ad then goes on to say that METRO is an award-winning transit company and, on the screen,, there are a series of awards METRO appears to have won. The ad then claims that METRO is providing "innovative solutions to improve daily travel and to keep our region moving." The ad ends with a statement directing the rider to the METRONext.org website. (See *Exhibit F-1 for English version; See Exhibit F-2 for Spanish version*).
10. The third video was released on August 30, 2019, and I called "What is METRO Rapid?" This video discusses the "Bus Rapid Transit" system ("the BRT"). The video goes on to advertise top of the line platforms for riders to wait for the buses and designated bus lanes. The ad claims that these BRT vehicles will "zip through intersections while others wait for the traffic light." The ad then ends with a statement directing the rider to the METRONext.org website. (See *Exhibit G-1 for English version; See Exhibit G-2 for Spanish version*).
11. Each of these ads, when taken as a whole, clearly present information in a way that is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for the ballot measure in November 2019 in violation of Texas Election Code 255.003(b-1)(2). Each ad takes various services METRO provides and showcases them in a positive light. The August 28, 2019 video goes so far as to brag about all of the new projects METRO is undertaking, then clearly states they're asking for \$3.5 billion to work on those projects and then tells the listener when the election is where the voter will be voting for or against providing that funding.
12. The "What is METRO Rapid?" video violates Texas Election Code 255.003(b-1)(1) when it says that the BRT vehicles "zip through intersections while other wait for the traffic light." The first BRT is currently being constructed in the Uptown neighborhood. On August 5, 2019, Kathleen Osborne, the Chief of Staff for Council Member Greg Travis, received email containing this question: "Will Metro buses have traffic light priority of preemption on Post Oak Boulevard. If so, what kind?" [sic] from a concerned citizen. Kathleen Osborne responded to this email on August 12, 2019 saying, "City of Houston traffic signalization will be "bus friendly" which means there is no preemption in the current signal system." (See *Exhibit O*). This means that the BRT that is currently being built in Uptown doesn't have traffic signal prioritization so the assertion that the BRT vehicles will "zip through intersections while others wait for the traffic light" contained in METRO's "What is METRO Rapid?" video are a false statement and as a result, a violation of Texas Election Code 255.003(b-1)(1).
13. In addition to their television and radio advertisements and their YouTube videos, METRO also sent flyers to thousands of Houston homes, boasting about the METRONext plan. These

advertisements again describe buses that will zip through intersections while others have to wait for traffic lights and top of the line platforms. (See Exhibit H).

14. In addition to the three videos highlighted above, there are a number of other videos available on METRO’s YouTube page that pose similar statute violating issues as those listed above. For example, the video released on December 12, 2018 on METRO’s YouTube channel ends with METRO imagining future newspaper headlines that read “TRANSIT INVESTMENTS IMPROVE QUALITY OF LIFE.” (See Exhibit I-1) No person is going to vote against an improvement in quality of life and advertisements like this one influence voters to vote for METRO’s bond referendum. (See Exhibit I-1 through I-5).
15. METRO clearly has an issue obeying Texas election laws. Ms. Carrin Patman is the Chairman of the Board of Directors of METRO and is ultimately responsible for these advertisements created by the METRO administration and she is actively promoting and advocating for the bond. She has even sent out solicitation letters to contractors who will compete for contracts if the bond passes. (See Exhibit J). Ms. Patman and her husband, James Derrick, have already pledged \$100,000 in donations to the Moving To The Future Political Action Committee (a pro-METRO PAC). (See Exhibit K). These pledges come at the same time that METRO is spending \$8 million of taxpayer money to advertise for the bond. (See Exhibit L-1 and L-2).
16. METRO has spent an exorbitant amount of money advocating for the passage of this bond referendum and campaigning on their own behalf. METRO produced a document showing their advertising in expenditures in response to a Texas Public Information Act request sent by Dolcefino Consulting in late August 2019. From January 1, 2019 – August 30, 2019, according to METRO, they have spent the following amounts on advertising for this upcoming bond election:

<u>Company</u>	<u>Amount</u>	<u>Expenditure Count</u>
ENTERCOM COMMUNICATIONS CORPORATION	\$600,476.08	39
RADIO ONE OF TEXAS LLC	\$573,465.00	28
UNIVISION RADIO BROADCASTING TX LP	\$527,924.80	20
COMCAST HOLDINGS CORPORATION	\$493,689.79	8
KRIV-TV	\$432,497.96	15
KHOU TV INC	\$380,666.58	15
NBC UNIVERSAL LLC	\$368,005.77	6
KTRK-TV 13	\$359,400.00	6
NPRC	\$291,290.00	8
COX MEDIA GROUP HOUSTON	\$211,875.00	9
OUTFRONT MEDIA INC	\$173,620.00	4
GREENLADY CORP	\$165,580.00	6
LIBERMAN BROADCASTING INC	\$150,416.50	21
KIAH INC	\$135,585.00	7
KRBE FM	\$132,960.00	5
IHEARTMEDIA + ENTERTAINMENT INC	\$119,985.00	3

In just the last two months, Metro has spent 2.8 million dollars on Metro next advertisements, and the Fiscal Year 2020 budget just approved authorizes another 6.9 million in “education.”

(See Exhibit M).

17. METRO’s President and Chief Executive Officer Thomas C. Lambert controls \$29.2 million of the FY2020 Proposed Operating Budget of METRO, including the funding METRO spends on “education” and “public engagement” for METRONext. These funds are used to pay the above-

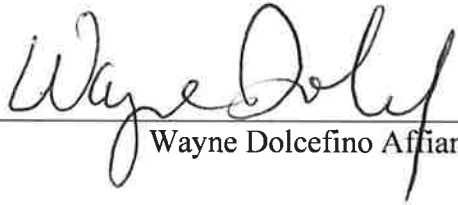
mentioned METRO advertisements and YouTube videos. The breakdown in that \$29.2 million is as follows:

- a. \$6.7 million for METRONext Education
- b. \$1.8 million for METRONext Public Engagement
- c. \$.08 million for METRO Next Legal Expenses
- d. \$10 million for Allowance Additional Community Connectors
- e. \$5.3 million for Allowance: New Service in METRONext Plan
- f. \$1.6 million for Allowance: METRO Police Compensation
- g. \$1.0 million for Allowance: Real Estate Fund Investments
- h. \$1.0 million for Allowance: Office of Accessibility
- i. \$1.0 million for Allowance: Innovation Projects/Strategic Plan

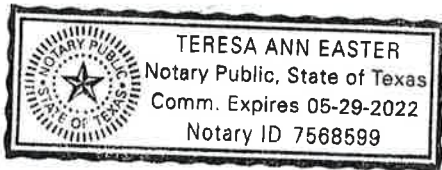
(See Exhibit N).

18. Dolcefino Consulting and company President Wayne Dolcefino, hereby request the Harris County District Attorney's Office open a criminal investigation into METRO Chair Carrin Patman and METRO President and Chief Executive Officer Thomas Lambert and criminal violations of Texas Election Code 255.033(b-1)(1-2) and the illegal use of taxpayer dollars for political advertising.

Further affiant sayeth not.

  
Wayne Dolcefino Affiant

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 30<sup>th</sup> day of September, 2019.



  
NOTARY PUBLIC

My commission expires: 5-29-2022