

**TO:**

Donna R. Ziegler, County Counsel  
1221 Oak St # 450, Oakland CA 94612

Tim Dupuis, Registrar of Voters  
1225 Fallon St # G-1 Oakland CA 94612

**DATE:** November 28, 2018

**RE:** Demand to Not Certify Elections Due to Offenses Against the Elective Franchise

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We are extremely disappointed that you did not respond to, much less heed, our notices of March 19, 2018 and August 6, 2018 regarding conforming school measure ballots to the mandatory requirements of the Elections Code and the Education Code.

**Non-Conforming Ballot Statements**

By not conforming the ballot statements to the law, you have permitted the school and college districts (and other taxing agencies) to deceive the voters about the nature of the underlying measure. When the law is ignored, the measure itself, as you well know, is never referenced in the ballot statement. That is by design. Elections Code 13119(a), if applied as written, vanquishes that deception. In addition, the printed full text of the measure is separated from the sample ballot in the voter information guide by pages and pages of material and advertisements resulting in barely one in twenty voters recognizing that they are voting, not on a marketing question, but on a contractual obligation specified in the text of the measure.

The purpose of the legislature's mandatory requirements are to improve disclosure and end deception. Both of these are substantive and not merely procedural or directory in nature.

The legislature has determined that your printing and circulation of non-conforming ballot statements is an offense against the elective franchise and subject to criminal sanctions.

The following measures appear to or are likely to exceed the constitutional threshold for passage. Each ballot statement contains one or more points of non-conformance.

**Measure E** (parcel tax) (Uncertain)

To continue providing the colleges of Alameda, Berkeley, Laney, and Merritt, funds that cannot be taken by the state to support affordable college education, including core academic programs to prepare students for university transfer and successful careers, by providing tutoring and teacher support; shall Peralta Community College District continue to levy \$48 per parcel annually for eight years, providing \$8,000,000 annually, with internal and citizens' oversight, no funds for administrator salaries, and all funds benefitting local colleges?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

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**Measure F** (transactions and use tax) (Uncertain)

City of Alameda Essential Services Protection Measure. Shall the measure maintaining the City of Alameda's financial stability and protecting services and infrastructure such as police response to violent crimes and burglaries; 9-1-1 emergency medical and fire response; maintaining neighborhood parks; repairing potholes, maintaining streets and protecting the Bay from pollution by enacting a 0.5% sales tax until repealed by voters, providing

approximately \$5,000,000 annually in locally controlled revenues, requiring independent audits and public spending review, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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**Measure G** (Prop 39 bond) (Uncertain)

To upgrade aging classrooms, technology, science labs; expand job training classrooms; and acquire, construct, repair sites/facilities/equipment, shall the Peralta Community College District issue \$800 million in bonds at legal interest rates, with approximately \$44.2 million in taxes raised annually for 40 years at projected tax rates of \$24.50 per \$100,000 of assessed valuation, with no funds for administrator salaries, audits and citizen oversight, and all funds used locally?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- uses argumentative language - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]

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**Measure H** (Prop 39 bond) (Uncertain)

To provide safe/modern schools; upgrade aging classrooms/school facilities; update classroom technology; provide art/music classrooms; improve accessibility for students with disabilities; upgrade fire safety/emergency communications/school security systems; install solar panels; repair leaky roofs; update plumbing/heating/ventilation systems, shall Hayward Unified School District issue \$381,700,000 in bonds at legal rates, levy approximately \$60 per \$100,000 of assessed value annually (generating approximately \$24,502,000), anticipated through 2049-50, with independent oversight and all funds staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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**Measure I** (parcel tax) (Uncertain)

To restore funding previously approved by voters to protect the quality of education in local schools, provide high quality programs in math, science, technology, arts, and skilled trades that prepare students for success in

college/careers, and attract/retain highly qualified teachers, on an ongoing basis shall the San Leandro Unified School District levy \$39 per parcel, raising \$745,000 annually, with annual cost of living adjustments, an exemption for seniors, independent citizen oversight, and no money for administrator salaries?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure J** (parcel tax) (Uncertain)

To support academic excellence, provide stable, local funding the State cannot take away, to improve classroom technology, maintain after school programs and provide competitive salaries to help attract and retain highly qualified teachers and staff, shall the San Lorenzo Unified School District be authorized to levy a \$99 per parcel tax providing \$2 million annually for eight years beginning July 1, 2019, with exemptions for senior citizens and no funds spent on administrators?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure L** (transactions and use tax) (Uncertain)

To continue providing and maintaining essential City services, such as: fire and police protection, public safety and emergency response, facilities maintenance, and environmental preservation, shall the City of Albany measure making its existing one-half cent transactions and use (sales) tax permanent, providing \$1.4 million annually for unrestricted general revenue purposes, without increasing the rate, with annual independent audits, and all funds spent only in Albany, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure M** (parcel tax) (Uncertain)

To maintain and improve park and open space facilities, with funding that cannot be taken by Sacramento, including maintaining: City parks, ballfields, play structures, picnic areas and restrooms; vegetation management to prevent wildfires; creek habitat; and Albany Hill open space; shall the City of Albany measure levying an ongoing park and open space parcel tax with a typical rate of \$69 for a single-family residence, providing \$463,675 annually, exempting low-income residents, with annual independent audits, be adopted?

Non-conforming offenses for this ballot statement include:

- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

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**Measure O** (Prop 46 bond) (Uncertain)

Shall the measure to issue \$135 million in general obligation bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities; subject to citizen oversight and independent audits, be adopted? Financial Implications: Annual cost over projected 36-year period bonds are outstanding is approximately \$23 for every \$100,000 or \$97 for the average assessed home value of \$425,000; raising approximately \$7,500,000/year.

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- no duration of the tax to be levied - ELC 13119(b)[3]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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**Measure P** (documentary transfer tax) (Uncertain)

Shall the ordinance raising funds for general municipal purposes such as navigation centers, mental health support, rehousing and other services for the homeless, including homeless seniors and youth; increasing the real property transfer tax for ten years from 1.5% to 2.5% for property sales and transfers over \$1,500,000, adjusted annually to capture the top approximately 33% of transfers; generating an estimated \$6,000,000 - \$8,000,000 annually; and establishing the Homeless Services Panel of Experts to recommend homeless services, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- word count of 79 exceeds statutory limit - EDC 5322/ELC 13247

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**Measure S** (cannabis business tax) (Uncertain)

To protect essential municipal services, including repairing public facilities, reducing traffic congestion, and improving pedestrian and bicycle safety; and to support regulation of the cannabis industry, and preserve the City of Emeryville's long-term financial stability, shall the ordinance to impose a business tax of up to 6% of gross receipts on all cannabis businesses within Emeryville, thereby generating an estimated \$2,000,000 annually for unrestricted general revenue purposes, and which continues until repealed by the voters, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC

13119(a)

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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**Measure T** (documentary transfer tax) (Uncertain)

To support City of Hayward services, with revenue that cannot be taken by the State, including: repairing streets and sidewalks; 911 emergency and firefighter response times; neighborhood police patrols; disaster preparedness; extended library hours and after-school programs; and unrestricted general revenue purposes; shall Hayward increase the rate of its real property transfer tax, collected once upon purchase of real estate, from \$4.50 to \$8.50 per \$1,000, providing \$13,000,000 annually, until repealed by voters, all funds benefiting Hayward?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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**Measure W** (parcel tax) (Uncertain)

Shall the Measure, to fund homeless services and resources to address illegal dumping, and discourage vacant properties, by enacting a Vacant Property Tax on parcels used less than 50 days per year, at annual rates of \$6,000 per parcel, \$3,000 for condominium units, and other specified rates; raising about \$10,000,000 annually for 20 years; with community oversight and exemptions for very low income, low-income seniors and hardship, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]

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**Measure AA** (parcel tax) (Uncertain)

Shall the measure amending Oakland's Charter for the purposes of funding services to: expand access to early childhood and preschool education; improve high school and college graduation and career readiness; provide mentoring and college financial assistance; by establishing a \$198, 30-year parcel tax for single family parcels and specified rates for other parcel types, raising approximately \$25,000,000 – 30,000,000 annually, with citizen's oversight, and exemptions for low-income households and others, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]

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**Measure DD** (cannabis business tax) (Uncertain)

To maintain/enhance essential city services including 911 dispatch/neighborhood police patrols/emergency response times; after-school programs for children/teens; keeping fire stations open full time; and other essential services shall a measure be adopted establishing a Union City cannabis business tax at a maximum rate of \$12.00 per square foot for cultivation and 6% of gross receipts for others, until ended by voters,

providing \$1,400,000 annually, requiring oversight and no money for Sacramento?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure EE** (documentary transfer tax) (Uncertain)

To enhance local control with funding that cannot be taken by the State for essential services including fire/police protection; youth violence/gang prevention programs; maintaining city parks/senior services; and other essential services; shall a measure be adopted establishing Union City as a Charter City and a real property transfer tax of \$10 per \$1,000, until ended by voters, paid only by property buyers/sellers, providing \$5,000,000 dollars annually, with funds benefiting Union City?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure FF** (parcel tax) (Uncertain)

Wildfire Protection, Safe Parks/Trails, Public Access, Natural Habitat. Without increasing tax rates, to protect against wildfires; enhance public safety; preserve water quality, shorelines, urban creeks; protect redwoods and parklands in a changing climate; and restore natural areas, shall East Bay Regional Park District be authorized to extend an existing parcel tax of \$1 monthly (\$12/year) per single-family parcel and 69¢ monthly (\$8.28/year) for multi-family units, raising approximately \$3.3 million annually, to expire in 20 years?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Failure of Measures to Qualify Under the Requirements of Proposition 39**

Beyond your willful failure to conform the ballot statements to the statutory requirements, you have failed to qualify the Proposition 39 measures themselves with respect to the constitutional requirements that the measures claim to avail themselves of, to wit:

- 1) prohibit the use of bond proceeds for any purpose, including salaries and operating costs, other than the construction, reconstruction, rehabilitation, and replacement of school facilities [Art. XIII A, Section 1(b)(3)(A)], and

2) present to the voters, before they vote, a list of the specific school facility projects to be funded by the proceeds. [Art. XIII A, Section 1(b)(3)(B)]

Each and every one of the measures contains language specifically intended to avoid the limitations as to the authorized uses of the bond proceeds.

Each and every one of the measures contains language specifically intended to expend bond proceeds on purposes other than construction of school facilities. Among the unauthorized purposes, the measures explicitly purport to authorize expenditures for administration and operating costs, notwithstanding the explicit prohibition of Proposition 39.

Each and every one of the measures contains language specifically intended to expand the project list to anything and everything under the sun, all to be determined at a later date.

Your failure to qualify Proposition 39 measures appearing on the ballot is, similarly, an offense against the elective franchise.

### **Impartial Analysis**

The allegedly impartial analysis of measures in which county counsel is required to present independent, impartial legal opinions, is merely a regurgitation, often using direct quotations, of language from the measure itself or from the tax rate statement.

A reading of the analysis provides the voting public with no insight that is not already in the other materials in the voter information guide. The highlight of the analysis appears to be that "Yes" means "Yes" and "No" means "No." Woe to those without a top-notch public education who might be confused.

Moreover, county counsel fails to address the requirements of the Elections Code and, for school bond measures, the Education Code with respect to the ballot statement. County counsel also fails to address the language that purports to override the qualification restrictions with respect to Proposition 39 measures.

The effect of a wholly uncritical opinion is that those voters who read the Impartial Analysis are misled by a putatively authoritative source.

### **Conclusion**

By allowing proponents to avoid mandatory disclosure requirements, no one can know, with any degree of certainty, what the will of the voters might have been had they been presented with an honest ballot containing all mandatory disclosures, containing no false or misleading statements, and containing no argumentative or prejudicial language.

As one state supreme court has held:

No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told "the chief purpose of the measure."

Those who object to forced taxation through the fraudulent and unlawful ballot statements and measures have been injured due to your foregoing willful failures to follow the law. The only adequate remedy for this total contempt and disregard of the laws enacted to guarantee a fair and impartial election process is that you not certify the elections identified above.

Sincerely,

Richard Michael  
California School Bonds Clearinghouse

Alex Aliferis  
Former Executive Director of Contra Costa Taxpayers Association

Bernadette Chenard-Hsing  
Activist

Fred H. Crane  
Taxpayer

Linda Davis  
Advocate for Honest School Bonds

John A. Davison  
Voting and Taxpayers Advocate

Alison Herson  
Taxpayer in Allan Hancock College Joint Community College District

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Miyo Prassas  
Hermosa Beach Community Advocate

Michael Robertson  
Concerned Taxpayer

Honor "Mimi" Robson  
Libertarian Party of California Chair

Sally Smith  
Taxpayer in San Diego Unified School District

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Dawn Urbanek  
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