

TO:

Candace J Grubbs, Registrar of Voters
155 Nelson Ave Oroville CA 95965-3411

Bruce S. Alpert, County Counsel
25 County Center Dr Oroville CA 95965-3316

DATE: November 28, 2018

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

We are extremely disappointed that you did not respond to, much less heed, our notice of August 1, 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 J (Prop 39 bond) 46.35% (Uncertain)

To repair/improve aging local schools with funding that cannot be taken by the State, replace leaking roofs, outdated heating, air conditioning, electrical/plumbing; remove asbestos/dry rot; upgrade outdated classrooms, science labs/technology; improve safety/security systems; acquire, construct, equip facilities, shall Marysville Joint Unified School District measure be adopted to issue \$74,000,000 in bonds at legal rates, levy on average 5.634¢/\$100 assessed value (\$4,187,470 annually) while bonds are outstanding, requiring audits/oversight, no money for administrators?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure T (cannabis business tax) (Uncertain)

For unrestricted general revenue purposes such as police, fire, roads and recreation, shall the City of Oroville adopt an ordinance authorizing an

annual business tax on cannabis businesses upon gross receipts at a rate not to exceed 10%, with initial rates of 5% on retailers and manufacturers; 4% on cultivators; 3% on distributors; 2% on nurseries; 0% on testing laboratories; and 7% on microbusiness generating approximately \$300,000 to \$600,000 annually until repealed by voters?

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 U (transactions and use tax) (Uncertain)

To prevent cuts and restore essential public safety services, including 911 response, police officers, gang/youth violence prevention, fire protection / emergency medical response, and other essential services including street repairs, youth/senior services and park maintenance, shall the City enact a one cent sales tax providing approximately three million seven hundred thousand dollars annually will all revenue required to stay in the general fund, with local control and independent annual financial audits and citizen oversight?

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)

Measure V (transactions and use tax) (Uncertain)

To preserve Town of Paradise police protection, fire suppression, road improvements, animal control and other services, with required review by the citizen oversight committee; shall the Town's existing temporary half percent transactions and use tax be extended for ten years to March 31, 2031 pursuant to Ordinance No. 569? (Projected tax revenues are \$1.4 million per year.)

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)

Measure W (Prop 39 bond) 48.13% (Uncertain)

To improve the quality of education; modernize outdated classrooms, construct new gymnasium, restrooms and school facilities; upgrade classroom technology; and make health, safety and security improvements; shall the Biggs Unified School District issue \$9.5 million of bonds at legal interest rates, generating on average \$624,000 annually as long as bonds are outstanding at a rate of approximately 4.7 cents per \$100 assessed value, with annual audits, citizens' oversight committee, NO money for salaries and all money staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure X (Prop 39 bond) 61.41% (Passing)

To improve the quality of education; repair/replace deteriorating electrical, plumbing and sewer systems; upgrade agriculture and vocational teaching facilities; repair leaky roofs; and renovate classrooms, restrooms and school facilities; shall Durham Unified School District issue \$19,700,000 of bonds at legal rates, generating on average \$1,100,000 annually as long as bonds are outstanding from levies of approximately 6 cents per \$100 assessed value, with annual audits, independent citizens' oversight, NO money for salaries and all money staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure Y (Prop 39 bond) 59.85% (Passing)

To update classrooms and science labs in schools; perform essential safety/security upgrades; fix leaky roofs, deteriorating plumbing/septic systems; equip classrooms with 21st-century learning technology; replace aging heating/plumbing; and construct/equip classrooms, shall Paradise Unified School District issue \$61,000,000 in bonds, at legal interest rates, levy \$57.05 per \$100,000 of assessed value for as long as bonds are outstanding (\$3.5 million annually) with taxpayer oversight, audits, no employee salaries, all money staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - 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)
- omission of maximum rate of interest - EDC 15122[3]

Measure Z (Prop 39 bond) 58.28% (Passing)

To improve the quality of education, repair or replace leaky roofs, modernize/renovate classrooms and restrooms, upgrade inadequate

electrical systems, replace aging plumbing systems, and replace temporary portables with classrooms, shall Thermalito Union Elementary School District issue \$4.5 million of bonds at legal interest rates, generating an average of \$277,000 annually while bonds are outstanding at a rate of approximately \$.03 per \$100 assessed value, with annual audits, independent citizens' oversight, NO money for salaries and all money staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- word count of 76 exceeds statutory limit - EDC 5322/ELC 13247

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

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Honor "Mimi" Robson
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