

TO:

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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 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 C (utility users tax) (Uncertain)

Without raising current tax rates, and to maintain City services including Police and Fire protection, 9-1-1 emergency services, park maintenance and repair, youth and senior recreation services, other community services, and for unrestricted general revenue purposes, shall an ordinance be adopted to continue the existing Utility Users Tax at the current rate of 8%, until voters otherwise decide, providing approximately \$2,000,000 annually that cannot be taken by the State?

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 E (Prop 39 bond) 65.88% (Passing)

Orinda Union School District Academic Excellence/ STEAM Measure. To update science, technology, engineering, art and math classrooms/labs at all schools; maintain libraries; upgrade technology infrastructure; construct,

acquire, repair classrooms/facilities, sites/equipment, shall this Orinda Union School District measure authorizing \$50,000,000 in bonds at legal rates, levying 3 cents/\$100 assessed value, averaging \$2,900,000 annually while bonds are outstanding, be adopted, with citizen oversight, annual audits, no administrator salaries, all funds controlled locally, and all funds for Orinda schools only?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- 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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]

Measure H (documentary transfer tax) (Uncertain)

Shall the Ordinance amending the City of Richmond's Municipal Code, changing the Real Estate Documentary Transfer Tax so the tax rate for properties below \$1 million does not increase, the rate for properties between \$1 million to \$3 million increases from .7% to 1.25%; the rate for properties between \$3 million to \$10 million increases from .7% to 2.5%; and the rate for properties over \$10 million increases from .7% to 3.0%, 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)

Measure I (Prop 39 bond) 63.36% (Passing)

Orinda Union School District Student Safety and School Repair Measure. To upgrade classroom air conditioning, electrical, fire safety, security lighting, communications/camera systems, classroom locks; update science, technology, engineering, art, math classrooms; construct, acquire, repair classrooms, facilities, sites/equipment, shall Orinda Union School District's measure authorizing \$55,000,000 in bonds at legal rates, levying 3 cents/\$100 assessed value, averaging \$3,200,000 annually while bonds are outstanding, be adopted, with citizen oversight, annual audits, no administrator salaries, all funds for Orinda schools only?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- 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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]

Measure J (Prop 39 bond) 66.03% (Passing)

School Safety and Classroom Improvement Measure To improve and

upgrade science, engineering, technology and vocational education classrooms; replace outdated plumbing /electrical wiring, upgrade alarm /emergency communication systems; improve student safety /campus security; and qualify for State matching funds, shall Mount Diablo Unified School District issue \$150 million of bonds with an estimated levy of \$15 per \$100,000 of assessed valuation, averaging \$15 million per year while bonds are outstanding, with legal rates, annual audits, independent oversight and local control?

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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure P (Prop 39 bond) 57.24% (Passing)

To continue to provide safe, modern neighborhood schools with updated computer technology and improve student learning by upgrading, constructing and equipping classrooms, science labs, District office facilities and workforce housing, shall the Pittsburg Unified School District issue \$100,000,000 of bonds at legal interest rates, raising an average of \$6,350,000 annually for 36 years at average projected tax rates of \$55.25 per \$100,000 of assessed value and approved bonding limits with independent oversight and all funds benefitting local schools?

Non-conforming offenses for this ballot statement include:

- 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 Q (parcel tax) 72.04% (Passing)

To maintain quality education and provide over \$850,000 in annual local school funding that cannot be taken by the State, shall Martinez Unified School District attract and retain qualified teachers; maintain math, science, technology, engineering, reading/ writing programs; protect art/ music; keep school libraries open; and maintain school counselors by renewing for 5 years local school funding at the current \$50 rate plus \$25 per parcel with senior exemptions, independent citizens' oversight and all funds supporting Martinez students?

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 R (cannabis business tax) (Uncertain)

Shall the County tax cannabis (marijuana) businesses in the unincorporated area at annual rates up to \$7.00 per canopy square foot for cultivation (adjustable for inflation) and up to 4% of gross receipts for all other cannabis businesses including retailers, to generate an estimated \$1.7 to \$4.4 million annually to fund general County expenses such as public safety, health services, and environmental protection, and levied until repealed by the voters or Board of Supervisors?

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 T (parcel tax) (Uncertain)

Shall an Ordinance of the City of Richmond's Municipal Code to establish a Special Parcel Tax on Vacant Properties at the rate of \$3,000 annually per vacant developed parcel and \$6,000 annually per vacant undeveloped parcel, raising about \$5.4 million annually for 20 years to fund homelessness services and housing, blight and dumping elimination, and specified programs, 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)

Measure V (documentary transfer tax) (Uncertain)

To better maintain emergency 911 fire, medical and police services and response times; city parks, paths, playfields, and open space; programs for children, adults, and families; library programs; earthquake and disaster preparedness programs and reserves; other general services, shall a measure be adopted establishing El Cerrito as a Charter City and an ongoing real estate property transfer tax of \$12 per \$1,000, paid by buyers or sellers of property, providing \$2,700,000 annually, all benefiting El Cerrito?

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 (transactions and use tax) (Uncertain)

To maintain Antioch's fiscal stability, police patrols, 911 emergency response, youth violence prevention programs; ensuring water quality/safety; repairing streets; cleaning up parks/illegal dumping; restoring youth afterschool/summer programs; other essential services; shall the measure be adopted approving an ordinance to renew the sales tax at the one-cent rate, raising approximately \$14,000,000 annually, expiring in twenty years, with mandatory annual independent financial audits, and independent citizens 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 X (transactions and use tax) (Uncertain)

CITY OF MARTINEZ QUALITY OF LIFE/ESSENTIAL SERVICES MEASURE. To maintain 911 police emergency response times; violent crime prevention/property investigations; school safety; youth, recreation, senior programs; storm drains/pollution prevention; retain/recruit experienced police officers; protect and maintain open space/parks; address homelessness; other essential City services; shall an ordinance be adopted establishing a local, half-cent sales tax for 15 years, providing \$3,200,000 annually, with citizens' oversight, annual audits, all funds spent only in Martinez?

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]

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
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