

TO:

Brandi L Orth, Registrar of Voters
2221 Kern St Fresno CA 93721

Daniel C. Cederborg, County Counsel
2220 Tulare St # 500 Fresno CA 93721-2128

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 notices of March 19, 2018 and August 3, 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 A (cannabis business tax) (Uncertain)

To fund unrestricted general revenue purposes, including combating gangs, drug abuse, human trafficking and homelessness, fund police, fire, roads, and parks (90%) and fund a Community Benefit Fund allocated as recommended by a citizens' commission (10%), shall the measure to tax cannabis cultivation up to \$12 per canopy square-foot and up to 10% of gross receipts for medical dispensaries and all other cannabis businesses, generating up to \$10 million annually until repealed, be adopted?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 B (Prop 39 bond) 61.75% (Passing)

To continue improving college/career preparation and reduce overcrowding by constructing the Sanger Unified School District Educational Complex including vocational/career education classrooms/labs; wiring/technology infrastructure, computer, engineering, science labs; emergency communication systems, security door locks, cameras; up-to-date classrooms; shall Sanger Unified School District issue \$70,000,000 in bonds at legal rates, levy on average 6 cents per \$100 of assessed valuation,

raising \$4,900,000 annually for issued bonds through maturity, requiring audits, oversight, all money used locally?

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]
- 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 C (transactions and use tax) (Uncertain)

To provide additional funding for city services, including, but not limited to, parks, roads, recreational opportunities, and public safety, shall the ordinance increasing the City's Sales and Use Tax from .980% to 1.980%, which will raise approximately \$500,000 annually, 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 D (Prop 39 bond) 75.90% (Passing)

To improve the quality of education with funding that cannot be taken by the State; repair or replace leaky roofs; and modernize/renovate outdated classrooms, restrooms and school facilities; shall Monroe Elementary School District issue \$1,000,000 of bonds at legal interest rates, generating on average \$69,000 annually for issued bonds through maturity from levies of approximately \$0.03 per \$100 assessed value, with annual audits, independent citizens' oversight committee, NO money for salaries and all money for local schools?

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]
- 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 E (Prop 39 bond) 54.76% (Uncertain)

To improve the quality of education; modernize media center to support 21st century learning; renovate outdated classrooms, restrooms and school facilities; and make health, safety and security improvements; shall Pine Ridge Elementary School District issue \$5,300,000 of bonds at legal rates, generating on average \$354,000 annually as long as bonds are outstanding at a rate of approximately 3 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 G (Prop 39 bond) 90.00% (Passing)

To improve the quality of education; repair or replace leaky roofs; modernize/renovate outdated classrooms, restrooms and school facilities; and make health, safety and handicapped accessibility improvements; shall Westside Elementary School District issue \$3,500,000 of bonds at legal interest rates, generating on average \$208,000 annually for issued bonds through maturity from levies of approximately \$0.03 per \$100 assessed value, with annual audits, independent citizens' oversight committee, NO money for salaries and all money for local schools?

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]
- 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 H (Prop 39 bond) 63.24% (Passing)

To improve the quality of education; repair or replace leaky roofs; make health and safety improvements; and modernize outdated classrooms, restrooms and school facilities; shall Parlier Unified School District issue \$9,000,000 of bonds at legal interest rates, generating on average \$535,000 annually as long as bonds are outstanding at a rate of approximately 6 cents per \$100 assessed value, with annual audits, independent 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 J (transactions and use tax) (Uncertain)

To help prevent the loss of vital public safety services, and to protect other general services, shall the City of Coalinga enact a general-purpose, one-percent sales tax, expected to generate \$850,000 annually, with annual independent audits with an expiration (sunset) in ten (10) 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)

Measure K (utility users tax) (Uncertain)

To ensure the availability of and to maintain and enhance essential City services, such as fire protection services among others, shall an ordinance be adopted to enact a four percent (4%) utility users tax indefinitely on electric, natural gas and telecommunications services to raise approximately \$398,000.00 annually, and which includes procedures for fair and broad-based application?

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 M (transactions and use tax) (Uncertain)

To provide funding for essential city services and projects in the City of Kerman such as: police patrols, crime prevention, and quick 9-1-1 emergency response; repairing pothole and infrastructure, maintaining streets, revitalizing downtown area, and improving community facilities, parks, senior services, and other general city services, shall the measure establishing a one percent sales tax providing approximately \$1,000,000 annually until ended by voters be adopted, requiring citizen oversight, independent audits, and all funds controlled locally?

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 N (transactions and use tax) (Uncertain)

To generate approximately \$953,000 annually to build a new police station and restore or replace out-of-date police equipment. Revenues will also be used to fix city streets needing repair and to pay escalating pension obligations and other general fund obligations, with the remainder going to a reserve account. Shall the City of Fowler enact a 1 cent sales tax, requiring an annual reporting of expenses, with all funds generating staying in the City of Fowler?

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 P (transactions and use tax) (Uncertain)

Shall the measure imposing a 3/8 percent sales and use tax, estimated to generate \$37.5 million annually for 30 years, funding City parks and cultural arts, with independent oversight, be adopted?

Non-conforming offenses for this ballot statement include:

- use of title to create prejudice for the measure - ELC 13119(c)[4]

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

Dan Hilker
Taxpayer in Allan Hancock College Joint Community College District

Sandra Kallander
Politics Reduction Activist and Voter

Michael R. Kupperberg
Sonoma County Resident of 30 plus years

David E. Kenney, Esq.

Peter Loeb
Former Mayor, Pacifica, CA

Savina Q. Low
Taxpayer

Douglas Mills
Taxpayer

Stephen C Petzold
The Center for Truth in School Bond Measures ID 1408280

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

Ludd A. Trozpek
California resident and citizen

Dawn Urbanek
CUSDWatch