

TO:

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Katherine Turner, County Counsel
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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 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 (Prop 39 bond) 66.74% (Passing)

To improve the quality of education; modernize outdated classrooms, restrooms and school facilities; upgrade classroom technology; and make health, safety and security improvements; shall the Heber Elementary School District issue \$4,000,000 of bonds at legal interest rates, generating on average \$300,000 annually as long as bonds are outstanding at a rate of approximately 3 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 B (Prop 46 bond) 54.05% (Uncertain)

To construct a new gymnasium, enhance student safety and security, construct and modernize classrooms and support facilities, and provide the local match for State grants, shall the measure of Westmorland Union Elementary School District be adopted authorizing \$9,000,000 in bonds at legal rates, raising an average of \$584,000 annually to repay issued bonds through final maturity from levies of approximately \$0.090 per \$100 of assessed valuation, 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]
- 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 C (Prop 39 bond) 61.73% (Passing)

To improve the quality of education, repair or replace leaky roofs; modernize/renovate classrooms, restrooms and school facilities; and construct a new science/STEM building; shall the Brawley Union High School District issue \$18,700,000 of bonds at legal interest rates, generating on average \$1,090,000 annually as long as bonds are outstanding at a rate of approximately 3 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 G (Prop 39 bond) 66.29% (Passing)

To improve the quality of education; modernize outdated classrooms, restrooms and school facilities; and construct a new gymnasium/multipurpose room for school and community use; shall Holtville Unified School District issue \$10 million of bonds at legal interest rates, generating on average \$617,000 annually as long as bonds are outstanding at a rate of approximately 4 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 I (cannabis business tax) (Uncertain)

To fund general municipal expenses such as police, fire, roads and recreation, shall the City tax cannabis (marijuana) businesses at annual rates not to exceed \$10.00 per canopy square foot for cultivation (adjustable for inflation), 6% of gross receipts for retail cannabis businesses, and 4% for all other cannabis businesses; which is expected to generate an estimated \$40,000 to \$60,000 annually and will be levied until repealed by the voters or the City Council?

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 J (transient occupancy tax) (Uncertain)

Calexico Transient Occupancy ("Hotel") Tax Measure. To maintain and improve general City services, such as police service levels, street operations and maintenance, as well as parks, community buildings and infrastructure; shall the City of Calexico adopt an ordinance to increase the Transient Occupancy ("Hotel") Tax from 10.00% to 12.00%, and to modernize its Transient Occupancy Tax regulations, generating approximately \$230,000.00 annually until ended 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)
- 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 K (cannabis business tax) (Uncertain)

Shall the City of Calexico adopt an ordinance enacting a tax on cannabis businesses of up to \$25 per square foot of space utilized, and up to 15% of gross receipts from the sale of cannabis and related products, generating approximately \$700,000 annually for general City services, such as police and emergency response, parks, youth/senior services, and street repair, until ended 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]

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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