

TO:

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777 E Rialto Ave San Bernardino CA 92415-0770

Michelle Blakemore, County Counsel
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Cynthia L. O'Neill, Supervising Deputy County Counsel

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 O (Prop 39 bond) 52.87% (Uncertain)

To repair or replace aging roofs, modernize/renovate classrooms, restrooms and school facilities, upgrade aging electrical systems, and replace outdated technology to improve the quality of education, shall the Morongo Unified School District issue \$62,000,000 of bonds at legal rates, with estimated repayment amounts averaging \$3,800,000 annually estimated through 2052, projected average tax rate of 5.5 cents per \$100 assessed value, with annual audits, independent citizens' oversight committee, NO money for administrator salaries and all money staying local?

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]
- 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]

Measure P (Prop 39 bond) 57.23% (Passing)

CHAFFEY COLLEGE AFFORDABLE LOCAL HIGHER EDUCATION, JOB

TRAINING, UNIVERSITY TRANSFER, CLASSROOM REPAIR MEASURE.
To upgrade vocational, science, computer, technology classrooms/labs; repair deteriorating classrooms, roofs, gas, electrical, sewer lines; remove asbestos, lead paint; improve Veterans' resources; qualify for State matching funds; shall Chaffey Community College District's measure authorizing \$700,000,000 in bonds at legal rates, levying \$15/\$100,000 assessed valuation, averaging \$38,000,000 annually while bonds are outstanding, acquiring, constructing, repairing sites, facilities, equipment, be adopted, requiring audits, citizen oversight?

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 Q (transactions and use tax) (Uncertain)

To provide funding for 911 emergency response times, fire protection/paramedic services, police services; neighborhood patrols; gang, drug, and crime prevention, maintaining streets, parks, senior/youth programs, shall the City of Barstow adopt an ordinance to increase the sales tax by one percent, providing \$7 million annually, paid by visitors and residents, requiring resident oversight, independent audits, expiring if local police or fire services are transferred to another agency?

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 S (cannabis business tax) (Uncertain)

Shall the City of Adelanto adopt an ordinance enacting a tax on cannabis businesses of up to \$5.00 per square foot of space utilized for cannabis cultivation and nurseries, and up to 5% of gross receipts from the retail sale, delivery, manufacturing, processing, testing and distribution of cannabis and related products, generating approximately \$2,500,000 annually for general City services, such as police and emergency response, parks and 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]

Measure T (cannabis business tax) (Uncertain)

Shall the measure establishing a permanent tax of 1% to 6% of revenues on all commercial cannabis businesses, excepting cultivation, and a tax of up to \$15 per square foot of space used for commercial cannabis cultivation per fiscal year as may be increased annually by increases in the consumer price index, to raise approximately \$154,000 annually to be spent for unrestricted general revenue purposes, including public safety services and public works improvements, be adopted?

Non-conforming offenses for this ballot statement include:

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

Measure U (cannabis business tax) (Uncertain)

Shall the City of Colton adopt an ordinance enacting a tax on cannabis businesses of up to \$25 per square foot of space utilized for cannabis cultivation/processing, and up to 10% of gross receipts from the sale of cannabis and related products, generating approximately \$2,100,000 annually for general City services, such as police and emergency response, parks and 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]

Measure W (cannabis business tax) (Uncertain)

Shall an ordinance imposing a Cannabis Business Tax of up to \$10.00 per square foot for cultivators and up to 6% of gross receipts on other businesses operating in the City of San Bernardino, estimated to initially raise between \$810,000 to \$2,475,000 annually, with funds staying local for unrestricted general revenue purposes, including but not limited to, police services, street repairs, parks and library services until ended by 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]

Measure CC (Prop 39 bond) 60.67% (Passing)

SAN BERNADINO VALLEY/ CRAFTON HILLS COLLEGE JOB TRAINING, SAFETY, REPAIR MEASURE. To upgrade classrooms, labs, Veterans Center, career counseling/job training facilities for science, engineering, nursing, industrial careers; improve student safety, access to affordable, high quality education; repair, construct/acquire classrooms, facilities, sites, equipment, shall San Bernardino Community College District's measure authorizing \$470,000,000 in bonds at legal rates, levying 2.5 cents/\$100 assessed value, \$28,000,000 annually, while bonds are outstanding, be approved, with citizen oversight, all money staying local?

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)
- 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]

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

Bruce Boyer
Candidate for Sheriff, Ventura County

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
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Sandra Kallander
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Michael R. Kupperberg
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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
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