

TO:

Michael Vu, Registrar of Voters
5600 Overland Ave San Diego CA 92123

Thomas Montgomery, County Counsel
1600 Pacific Hwy # 355 San Diego CA 92101

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 July 30, 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 (EFID bond) (Uncertain)

APPROVING BOND ISSUANCE FOR PUBLIC FACILITIES IN OTAY MESA. Without increasing the property tax rate, shall the Public Financing Authority for the Otay Mesa Enhanced Infrastructure Financing District (District) authorize the District to issue up to \$230 million in tax increment bonds to finance public facilities, including roads, parks, police and fire stations, libraries, water lines, and sewers, identified in the District's Infrastructure Financing Plan?

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 S (Prop 39 bond) 58.36% (Passing)

To construct, modernize, update and equip Santee elementary and junior high school classrooms and educational facilities, shall \$15,370,000 of Santee School District bonds, approved by voters in 2006, be reauthorized as new bonds, with legal rates, projected average annual levies of \$0.03 per \$100 of assessed valuation for approximately eight years (an estimated \$2.2

million raised annually), citizens' oversight, audits, no increase in total District debt, and all funds spent locally and not 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure V (cannabis business tax) (Uncertain)

To fund general municipal expenses including police and fire, roads, and recreation; shall the City tax cannabis businesses at annual rates not to exceed \$10.00 per canopy square foot for cultivation and 6% of gross receipts for all other businesses, generating an estimated \$1,500,000 to \$2,000,000 annually; authorize the City Council to implement this tax by resolution or ordinance; and levy this tax 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 X (transactions and use tax) (Uncertain)

To provide funding to maintain and improve general city services including: police patrols, crime, drug, and gang prevention, fire, paramedic and 9-1-1 response, pothole repair, street maintenance, improved infrastructure, maintain safe, clean parks and beaches, and address homelessness, shall the City of Oceanside establish a sales tax of one-half of one percent (0.5%) for 7 years, providing an estimated 11 million dollars annually for general city services, 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)
- word count of 76 exceeds statutory limit - EDC 5322/ELC 13247

Measure Z (cannabis business tax) (Uncertain)

CITIZEN'S MEDICAL CANNABIS BUSINESS INITIATIVE OF 2017. Shall the citizen measure authorizing the commercial storefront retail sales of medicinal cannabis by up to 11 retailers in the City of Vista to be located in any of Vista's commercial, industrial, business park, and mixed use zoning districts; and imposing a 7% special use tax on gross receipts potentially raising \$117,600 per dispensary annually until ended by voters; 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)
- 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 AA (cannabis business tax) (Uncertain)

CITY COUNCIL CANNABIS BUSINESS TAX. Shall the City Council measure imposing a general tax on potential future cannabis businesses to offset their community impacts by taxing marijuana cultivation at \$14/square foot; and gross receipts of marijuana businesses at rates not exceeding 8% on manufacturing and distribution; 10% on medicinal retail; 12% on adult-use retail; and 3.5% on testing; potentially raising \$84,000 annually per medicinal distributor until ended by voters; requiring audits and establishing penalties for non-compliance; 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)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- word count of 79 exceeds statutory limit - EDC 5322/ELC 13247

Measure DD (Prop 39 bond) 65.62% (Passing)

Sweetwater Union High School District School Repair, Career Education, Student Safety Measure: To repair/upgrade classrooms, libraries, science labs; prepare students for college/careers; expand science, technology, engineering, math instruction; remove hazardous asbestos/lead; fix deteriorating roofs; and improve school safety, shall Sweetwater Union High School District issue \$403 million in bonds at legal rates, raising \$26 million annually over 30 years at approximately 2 cents/\$100 assessed value, with citizen oversight, independent audits, 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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- word count of 76 exceeds statutory limit - EDC 5322/ELC 13247

Measure EE (Prop 39 bond) 40.97% (Uncertain)

To improve the quality of education; improve safety and security on all campuses; construct a new high school to reduce student overcrowding; renovate/replace track and field structures and facilities; shall Bonsall

Unified School District issue \$38,000,000 of bonds at legal rates, levy approximately 3.75 cents/\$100 assessed value, generating approximately \$2,300,000 annually while bonds are outstanding, 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 GG (Prop 39 bond) 66.22% (Passing)

To improve the quality of education with funding that cannot be taken by the state; modernize outdated classrooms, restrooms and school facilities; and make safety and security improvements; shall Borrego Springs Unified School District issue \$8,600,000 of bonds at legal interest rates, raising an average \$560,000 annually as long as bonds are outstanding, at a rate of 6 cents per \$100 assessed value, have an independent citizens' oversight committee with NO money for salaries?

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 HH (Prop 39 bond) 60.60% (Passing)

To upgrade classrooms, science labs and technology that support student achievement, college preparation and career skills for math, science, engineering, healthcare and skilled trades; fix deteriorating roofs, plumbing/wiring; improve safety and security; renovate, construct, acquire classrooms, sites, equipment/facilities, shall this Carlsbad Unified School District measure authorizing \$265,000,000 in bonds at legal rates, levying 3 cents/\$100 assessed value (\$13,000,000 annually) while bonds are outstanding, be adopted, with taxpayer oversight, no administrator salaries, 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]

- 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 JJ (Prop 39 bond) 53.45% (Uncertain)

To construct, renovate and equip classrooms, science labs, and school facilities that support college and career readiness in math, science, engineering, technology and skilled trades; improve school safety/security; repair deteriorating roofs, plumbing, and electrical systems, shall Mountain Empire Unified School District issue \$15,000,000 of bonds at legal interest rates, with estimated repayment amounts averaging \$840,967 annually for approximately 36 years at projected tax rates averaging 3.7 cents per \$100 of assessed value, with annual audits and citizens' 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]
- 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 LL (Prop 39 bond) 60.73% (Passing)

To repair, upgrade, equip classrooms, science labs, local school facilities supporting college readiness, career preparation, math, science, engineering, technology, skilled trades; repair aging classrooms/schools including deteriorating roofs, plumbing, and electrical; improve student safety/school security; shall Vista Unified School District Issue \$247 million dollars in bonds at legal rates, raising approximately \$13 million annually while bonds are outstanding, at a rate of 3 cents per \$100 of assessed value, requiring citizen oversight, all funds 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]
- 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 MM (Prop 39 bond) 59.97% (Passing)

To improve Del Mar neighborhood elementary schools, repair/upgrade/reconstruct deteriorated school facilities, plumbing, roofs, electrical systems, renovate classrooms supporting science, engineering, math, arts instruction; improve safety/security and technology infrastructure; and construct/equip a new elementary school; shall Del Mar Union School District issue \$186 million in bonds at legal rates, raising \$10.4 million annually over 32 years at approximately 3 cents per \$100 of assessed

value, with independent citizens' oversight, mandatory audits, all money for Del Mar K-6 schools?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - 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 NN (Prop 39 bond) 64.77% (Passing)

To improve access to preschool education by rebuilding and increasing capacity at VIP Village Preschool, including constructing new classrooms and school facilities, and renovating existing restrooms, shall South Bay Union School District issue \$18 million in general obligation bond at legal rates, under a plan that will not increase exiting tax rates with an estimated levy of 2 cents per \$100 of assessed valuation (averaging \$1.5 million annually through 2042), independent taxpayer oversight and annual audits?

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

Measure PP (parcel tax) (Uncertain)

BORREGO SPRINGS FIRE PROTECTION DISTRICT SPECIAL PARCEL TAX TO FUND FIRE PROTECTION AND SUPPRESSION AND EMERGENCY MEDICAL SERVICES To protect lives and property, shall Ordinance No. 2018-01 approving increases in the maximum rates of the Borrego Springs Fire Protection District's special parcel tax to \$225.00 per year for single-family residences and in other amounts for other property as specified in the Ordinance, providing \$720,000 a year until ended by voters, and authorizing annual inflationary adjustments be adopted to fund and guard against reducing fire protection/ambulance services, and maintain a stable fire/paramedic force?

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]
- word count of 86 exceeds statutory limit - EDC 5322/ELC 13247

Measure QQ (parcel tax) (Uncertain)

Shall the annual Benefit Fee within the Julian-Cuyamaca Fire Protection District be repealed and replaced with a new annual Benefit Fee, subject to

an annual cost-of-living increase, to provide emergency medical response, fire suppression, and related services?

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 RR (parcel tax) (Uncertain)

Shall the Rincon Ranch Community Services District be authorized to establish and levy a special tax override, on all taxable real property within its boundaries for the purpose of providing funds for repair and resurface of the roads maintained by the District, with this special tax not to exceed six dollars and ninety-two cents (\$6.92) per acre, or portion thereof, plus one hundred ninety-nine dollars and fifty cents (\$199.50) per parcel of land per year?

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 SS (parcel tax) (Uncertain)

To improve and maintain Valley Center Fire Protection District's essential fire protection/emergency medical services; reduce fire/9-1-1 response times; recruit/retain qualified firefighters/paramedics and personnel, provide living wages; replace aging, lifesaving equipment; build a fire station, helping lower homeowner/business fire insurance rates, shall Valley Center Fire Protection District Ordinance #2018-01 approving an annual special parcel tax of \$180 per parcel, providing approximately \$1,228,000 a year until ended by voters; with low-income senior exemptions, and independent oversight/audits, be adopted?

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)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure VV (Prop 39 bond) 64.37% (Passing)

To make school safety, security, technology and energy efficiency improvements; repair, construct, acquire and equip classrooms and educational facilities and reduce overcrowding; and replace aging plumbing, sewer and electrical systems shall Chula Vista Elementary School District issue \$150 million in bonds at legal rates, levy \$0.02 per \$100 of assessed valuation (raising an average of \$10 million annually) while bonds are outstanding, with taxpayer oversight, annual audits and no projected increase in the District's current bond tax rate?

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]

Measure YY (Prop 39 bond) 61.92% (Passing)

San Diego Neighborhood School Repair and Student Safety Measure To improve Neighborhood and Charter schools by:

- Improving school security, emergency communications, controlled-entry points, door locks;
- Upgrading classrooms/labs for vocational/career, science, technology, math education;
- Repairing foundations, bathrooms/plumbing;
- Removing lead in drinking water and hazardous asbestos;

Shall San Diego Unified School District issue \$3.5 billion in bonds at legal rates, projecting levy of 6-cents per \$100 of assessed valuation for 39 years, estimating \$193 million average annual repayments, requiring independent annual audits and citizen oversight?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- use of bullet points 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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- word count of 81 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

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
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
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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