**SECOND NOTICE AND DEMAND**

**TO:**

Shannon Bushey, Registrar of Voters, Santa Clara County
Karin Accorinti
Virginia Bloom
Philip Chantri
Shui Ling Chu
Ravideep Dhillon
Michael Fong
Alfred Gonzales
Pamela Hamilton
Leslie Kimitsuka
Michael Lopez
Carrie Medlock
Matt Moreles
Robert Nguyen
Nancy Price
Julia Saenz
Leslie Smith
Shawn Whiteman
1555 Berger Dr Bldg 2, San Jose CA 95112

James R. Williams, County Counsel, Santa Clara County
70 W Hedding St East Wing 9th Fl, San Jose CA 95110

Board of Supervisors, Santa Clara County
Mike Wasserman, District 1
Cindy Chavez, District 2
Dave Cortese, District 3
Ken Yeager, District 4
Joe Simitian, District 5
70 W Hedding St 10th Fl, San Jose CA 95110

RE: School / Tax Measures for November 2018 General Election
Election Code Requirements and Proposition 39 Qualifications

August 5, 2018

All code section numbers refer to the Elections Code unless otherwise designated.

## Second Notice

This is your second notice.

You received your first notice on March 19, 2018 (E-78). That was past the statutory deadline (E-88) for modifying school measure materials without a writ of mandamus from a court. We note that you did not obtain such a writ. As a result, you, your employees, and your agents printed and circulated ballots for school measures that did not conform to the ballot requirements of Elections Code 13000 et seq. It was your choice to forego seeking court intervention. It was your choice to violate Elections Code 18401. The public can reasonably conclude that committing criminal acts against the elective franchise is of little concern to you.

## Executive Summary

# FOLLOW THE LAW!

That is the briefest possible summary of everything that follows.

In order to follow the law, you must read the law itself!

The law, the California Constitution and applicable codes enacted by the legislature, is what its words say. It's not the opinion of district staff. It's not the opinion of district consultants. It's what's written in the constitution and the codes.

The school measures that you are processing for the upcoming election do not meet the requirements of the Elections Code, the applicable requirements of the Education Code, or the qualification requirements of Proposition 39.

The filings you are receiving have the ballot statement and the full text of the measure incorporated into the resolutions. You are receiving this notice prior to the statutory filing deadline for local ballot measures (E-88).

School measures must qualify under the California Constitution and conform to the ballot requirements of Elections Code 13000 et seq. For school measures that propose authorization for the issuance of bonds, ballot statements (abbreviated text) must conform to the requirements of Education Code 15122 (both 2/3 and 55% voter approval) and 15272 (55% voter approval).

No governing board of any school or community college district may require you to perform any election services. A governing board may only make a request, subject to both your consent and that of the Board of Supervisors, to consolidate a school measure on the ballot for the upcoming election.

The public expects you to follow the law. You don't have authority to modify the ballot statement or the full text of the measure filed by a governing board. You can, however, reject non-qualifying measures and non-conforming ballot statements. The burden to provide a qualifying measure or a conforming ballot statement is on the governing board requesting your services.

This notice and demand is directing you to follow the law, a quaint concept, and reject ballot statements that do not conform to mandatory statutory provisions of the Elections Code (all local measures) and of the Education Code (school bond measures) cited herein.

Furthermore, for Proposition 39 (2000) bond measures, the full text of the measures DO NOT meet ALL of the four accountability mandates set out in the Article XIII A, Section 1(b)(3) of the California Constitution, and therefore do not qualify as 55% voter approval measures.

We remind you that the Elections Code proscribes violation of these requirements with criminal sanctions. As judges are fond of saying, ignorance of the law is not an excuse.

This letter is divided into four parts that group similar issues together.

1. Part I: School Bonds Cartel
2. Part II: Ballot Statement
3. Part III: Proposition 39
4. Part IV: Other Elections Codes

## Part I: School Bonds Cartel

### I.A. The Industry

We refer to the industry that has grown up around the electioneering, passing, and

spending of the proceeds of school bonds as the school bonds cartel. It's a public-private partnership among school and college district staff, governing board members, community college foundations, county elections officials, county counsel, county treasurers, county school superintendents, district attorneys, the Fair Political Practices Commission, the State Allocation Board, Center for Cities + Schools (UC Berkeley), bond counsel, financial advisors, underwriters, marketers, pollsters, and school facilities and equipment vendors. One of the many incarnations of the school bonds cartel is C.A.S.H. (Coalition for Adequate School Housing), but it does not stand alone. Every one of the alphabet organizations (ACSA, CSBA, CASBO, CCLC, CEOCCC, SSDA, CCSESA, et al) to which districts pay membership fees from public monies are interlocked and cross-seeded with the same people using their combined resources to protect and benefit the cartel. The revolving door of public employees (district, county, and state) to private firms and vice versa, provides a rich milieu of connections and institutional knowledge that make it formidable in its ability to marshal its vast resources to accomplish its agenda.

In November 2000, California electors amended the California Constitution when they passed the Smaller Classes, Safer Schools and Financial Accountability Act, "Proposition 39." The passage of Proposition 39 triggered the enactment of the companion legislative act, the Strict Accountability in Local School Construction Bonds Act of 2000 ("Strict Accountability Act"), codified at Education Code 15264 through 15288.

Why all this accountability? Why did voters pass Proposition 39? The entire history of independently governed school and college districts in California in relation to money is rife with a single theme -- they can't be trusted to follow the law. That's what Proposition 39 was designed to resolve. The proponents admitted that misuse of bond funds was widespread, because no one was watching those with the power to spend those funds.

Why has the legislature placed so many restrictions on the ballots for bonds on which voters mark their votes? Because the districts can't be trusted to follow the law.

The existence of the school bonds cartel is further evidence that the districts can't be trusted to follow the law. The cartel's power to use public resources to achieve a stupefying school measure win-loss record (95% in November 2016, 86% in June 2018) proves that the districts can't be trusted.

The school bonds cartel needs your cooperation to achieve its impressive results. School measures are explicitly engineered to avoid all the accountability requirements imposed by the California Constitution and the legislature. Every word of the ballot statements are engineered to achieve a favorable outcome. When you add elections officials who honor district requests to hold school measure elections, overlook qualifying requirements, and print favorable language on the ballot, in violation of all the accountability requirements, you have become, perhaps unwitting, accomplices.

## I.B. Bond Counsel

We refer to bond counsel often in this letter. They write the ballot statement, the school measure, the tax rate statement, and almost invariably, the ballot argument, and very often the rebuttal as well. Why do districts need expensive bond counsel, a very specialized field of practice, to write school measure documents?

The earliest Proposition 39 measures weren't even written by lawyers. Bond counsel have come to write these documents on contingency contracts under the caption of "pre-election services." In exchange, they lock in contracts for the specialized bond counsel and disclosure counsel work, contingent upon the school measure passing. Bond counsel's stake in the outcome of the election is a conflict of interest. Until State Treasurer John Chiang put an extremely limited crimp (effective January 1, 2017) in this scourge, bond counsel, financial advisors, and sometimes underwriters would contribute thousands of dollars to campaign committees primarily formed to support school measures. Chiang's sanctions are limited to those doing business with his office.

Bond counsel sell their services on the basis of how many elections they have won, not on the quality of their legal work. So writing persuasive documents serves their

own pecuniary interests and establishes relationships with district staff that go well beyond the pale. You might even say that bond counsel and financial advisors, under the guise of consulting for "pre-election services," violate Government Code 1090. While acting with the decision-making powers of school officials, they have an inappropriate financial interest in the contingency contracts that they create.

## Part II: Ballot Statement

The Education Code sections discussed below are applicable to school bonds.

### II.A. Education Code 5322.

The burden of writing the ballot statement of no more than 75 words is on the governing board of the district.

> Whenever an election is ordered, the governing board of the district or the board or officer authorized by this code to make such designations shall, concurrently with or after the order of election but not less than 123 days prior to the date of the election in the case of an election for governing board members, or at least 88 days prior to the date of the election in the case of an election on a measure, including a bond measure, by resolution delivered to the county superintendent of schools and the officer conducting the election, or, in the case of an election on a measure, only to the officer conducting the election, specify the following, or such of the following as he or she or it may have authority to designate:
> (a) The date of the election.
> (b) The purpose of the election.
> The resolution or resolutions shall be known as "specifications of the election order" and shall set forth the authority for ordering the election, the authority for the specification of the election order, the signature of the officer or the clerk of the board by law authorized to make the designations therein contained, and, in the case of an election on a measure, the exact wording of the measure as it is to appear on the ballot. Pursuant to Section 13247 of the Elections Code, the statement of the measure to appear on the ballot shall not exceed 75 words.

Therefore, if bond counsel chooses to ignore the requirements of the codes to stack the deck in favor of the district so that it reaps the benefits of its exorbitant, no-bid (in most cases) contingency contract, it should be of no concern to elections officials. Bond counsel certainly know the law AND how to manipulate it.

### II.B. Education Code 15122

Because the districts can't be trusted to be honest with the public, all ballot statements for school bond measures must provide certain disclosures. This code predates Proposition 39. It contains four requirements (underlined). Here's what the code says.

> The words to appear upon the ballots shall be "Bonds-Yes" and "Bonds-No," or words of similar import. A brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, and the purposes for which the proceeds of the sale of the bonds are to be used, shall be printed upon the ballot. No defect in the statement other than in the statement of the amount of the bonds to be authorized shall invalidate the bonds election.

#### Bonds-Yes / Bonds-No

Most, but not all school measure resolutions filed for previous elections contained this language, but some did not. For the cases with the missing wording, we don't have enough information to determine whether elections officials supplied the missing wording without authority or rejected the language and forced the districts to comply with this code.

#### Bond Amount

Not a single district leaves this out. It's in the district's self-interest. It's especially in

the district's self-interest to play down the bond amount. To illustrate this, consider why districts choose to state amounts in words or a combination of very short or decimal-point numbers and words when doing so incurs a greater word count. Minimizing the amount is in its self-interest.

**Maximum Rate of Interest**

This one should be easy, yet not a single district states the maximum rate of interest at which the authorized bonds can be sold. It's NOT in the district's self-interest.

The purpose of the requirement is disclosure. Can a lender avoid disclosure of the interest rate due on a loan?

Of the 1,243 school bond measures placed on ballots from 2001 through 2016, 1,239 did not state the interest rate. Of those, 45 did not even allude to the interest rate; 1,194 used lawyer double-speak to avoid the requirement. Below are the top ten avoidance techniques. None of them comply with the statutory requirement. Why haven't you been rejecting the ballot statements?

| # of Measures | Interest Rate Language |
|---|---|
| 384 | at legal interest rates |
| 352 | at legal rates |
| 75 | at interest rates within the legal limit |
| 69 | at interest rates within legal limits |
| 61 | within legal interest rates |
| 41 | interest rates below legal limits |
| 24 | interest rates below the legal limit |
| 14 | at lawful interest rates |
| 12 | within legal rates |
| 10 | at the lowest possible interest rates |

Article XVI of the California Constitution provides that the legislature may, from time to time, set the maximum interest rate for general obligation bonds. Government Code 53531 sets that rate at 12%.

> Government Code 53531. Any provision of law specifying the maximum interest rate on bonds to the contrary notwithstanding, bonds may bear interest at a coupon rate or rates as determined by the legislative body in its discretion but not to exceed 12 percent per year payable as permitted by law, unless some higher rate is permitted by law.

While Education Code 15140 sets the maximum interest to 8% and the maximum duration of the bonds issued to 25 years, that interest rate is superseded by Government Code 53531.

> Education Code 15140. (a) Bonds of a school district or community college district shall be offered for sale by the board of supervisors of the county, the county superintendent of which has jurisdiction over the district, or the community college district governing board, where appropriate, as soon as possible following receipt of a resolution duly adopted by the governing board of the school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

The governing board has discretion to set a lower rate in the measure. When it does not set a lower rate in the measure, the maximum interest rate is 12%.

> **DEMAND 1.**

That you exercise your statutory authority to reject any ballot statement that does not specify the maximum interest rate of 12% or a lower rate set in the full text of the measure.

**Purposes**

For all school bond measures, the purposes are set out in the Article XIII A, Section 1 of the California Constitution.

This code explicitly requires that the ballot statement set forth the "purposes for which the proceeds of the sale of the bonds are to be used." For Proposition 39, the purposes are in the nature of construction, furnishing and equipping in connection with construction, and acquisition or lease of real property. This code preempts the field with respect to school bond measures. Any language that is not related to the constitutional purposes is not permitted. There is no exception for including marketing hype, survey-tested selling points, or any other language that does not describe what will be purchased with the proceeds. This is further discussed in relation to Elections Code 13119(c) in Part II.D.3. below.

## II.C. Education Code 15272

This code only applies to bond measures qualifying under Proposition 39, which are the overwhelming majority of all measures filed.

In addition to the ballot requirements of Section 15122 and the ballot provisions of this code applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and [the board will]* conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.
** Inserted to clarify parsing and intent.*

When reading this code in its natural way, there are clearly two requirements separated by the conjunction "and." The "to assure" clause is a modifier. While one might read it as a modifier only to the "audits" requirement, taken in the larger context of the overriding purpose of both the citizens' oversight committee and the audits, it, more reasonably, modifies both. Whichever way you read it, it does not affect the substance of the following discussion.

**Citizens' Oversight Committee**

Bond counsel has many curious ways of writing this requirement. None of them mention the board appointment portion of it. The independent citizens' oversight committee was established by the legislature. Why lengthen the language that already conveys the requirement concisely?

**Annual Independent Audits**

This requirement actually refers to two of the four qualification requirements in the California Constitution which requires two different independent audits each year while bond proceeds remain unspent. What purpose would be served by using any other language than that set out in this code?

**No Administrator Salaries**

Oops! Where did this come from? There are only two requirements in this code. Some suggest that this, and its variants, is short-hand for the "to assure" clause in this code. Of the 1,311 Proposition 39 bond measures placed on ballots from 2001 through 2016, only 970 included this language -- 341 did not. The increased use of this language over time correlates to it being tested in push surveys of the public. It in no way conveys the full meaning required by this code. It's marketing hype. In fact, it's an outright lie with a manifest intent to deceive, as further discussed in relation to Elections Code 13119(c) in Part II.D.3. below.

**DEMAND 2.**

That you exercise your statutory authority to reject any ballot statement that does not conform to every requirement of Education Code 15272 or that includes variants of "no administrator salaries."

## II.D. Elections Code 13119

AB-195 amended 13119 effective January 1, 2018. Subsections (a) and (b) were modified and subsection (c) was added. Despite the school bond cartel's failed attempt in May 2018 to postpone subsection (b) via SB-863, an anti-transparency, dishonest, despicable budget trailer bill, the law has not changed.

### II.D.1. 13119(a)

This subsection now explicitly applies to "a measure authorizing the issuance of bonds or the incurrence of debt." The operative language requires the explicit form of the statement that is to appear on the ballot:

> "Shall the measure (stating the nature thereof) be adopted?"

If you permit ballot statements that don't conform to this code, you are aiding and abetting a violation of the law over which you have a specific duty to enforce. Failure to conform ballot statements to this code is also sanctioned with a criminal penalty.

The school bonds cartel whines that this code is impossible to comply with. It is expert at manipulating the law to promote its interests over the due process rights of the public. Perhaps, these whiners should find a new line of work.

Here is the only example (of 40) of a ballot statement for a school bond measure for the primary election ballot that has complied with subsection (a).

> Local Middle School Construction Measure. [Shall the measure, to design and build a middle school that provides necessary modern facilities for students including spaces for science, math, art, technology, music and sports, and no money for administrators' salaries, authorize Plumas Lake Elementary School District to issue $20,000,000 in bonds, at legal rates, levy/collect on average $0.12/$100 of assessed value ($1,050,000 annually) while bonds are outstanding, with all funds used locally to construct a middle school, be adopted?

Note that the Plumas Lake measure had to use the two-thirds Proposition 46 bond rules because its tax rate was four times that allowed for a Proposition 39 bond. The ballot statement did not have to conform to Education 15272. Nevertheless, "no money for administrators' salaries" appears, further establishing that its usage is marketing hype and not code requirement.

If you are interested, the California School Bonds Clearinghouse has a complete Measure List of every ballot statement filed for the June primary election. You or a designated employee must be a member of the site in order to access this page. In the alternative, you can collect the ballot statements yourself from your colleagues.

So, it's not impossible. Bond counsel knew of the changes to subsection (a) as evidenced by their attempts to conform the ballot statements to the changes imposed by subsection (b). It just wasn't in their self-interest. You are in an oversight position. You have the code. As Captain Picard was so fond of saying, "Make it so!"

Perhaps bond counsel will be forced to cut out some of the argumentative language prohibited by subsection (c).

> **DEMAND 3.**
>
> That you exercise your statutory authority to reject any ballot statement that does not conform to every requirement of 13119(a).

### II.D.2. 13119(b)

This subsection now explicitly applies when any "proposed measure imposes a tax or raises the rate of a tax." That includes every school measure that is asking for bonds or parcel taxes.

> (b) If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

Although kicking and screaming that this code now removes bond counsel's ability to include valuable argumentative language in the ballot statement, bond counsel have begrudgingly complied, for the most part.

**Annual Amount of Money Raised**

This new provision has a short history -- this year's primary election. Bond counsel conformed each of the ballot statements to include an estimate of the annual amount to be raised.

**Rate and Duration Tax**

On the requirement for the tax rate, bond counsel conformed each of the ballot statements. It even went through the extra trouble of applying a mathematical formula to convert the rate per $100,000 prepared for the tax rate statement to a rate per $100. Presenting a rate as $0.007 to $0.12 per $100 gives it an advantage over presenting a rate as $7 to $120 per $100,000. Bond counsel's contingency contract drives it to give every conceivable advantage to the district. AB-2848, if passed by the legislature, will end this tactic.

For 23 of the 40 ballot measure statements, bond counsel dreamed up a way to avoid stating the duration. That's how they ~~steal~~ earn the big bucks.

Duration means the length of time something continues or exists. It's specific, not relative. Using phrases like "while bonds are outstanding" or "through maturity" are clever ways to avoid letting the public know how long the taxes will last. The phrases are completely meaningless and self-referential without the context of how long the bonds will be outstanding or when the last bonds will mature. These phrases and their variants do not comply with this code. This code requires a duration, either a quantity of years, or the year of last maturity for the bond issue. The duration is already known and printed in the tax rate statement.

This section has a much longer history as applied to parcel taxes. In that context, you will always see conformance to this section specifying the number of years, for example.

> To continue funding advanced programs in math, science, reading, engineering, technology, music, and the arts to meet today's higher academic standards; maintain manageable class sizes to enhance student achievement; and attract and retain highly qualified teachers; shall the South Pasadena Unified School District renew the expiring school parcel tax at the current rate of $386 per parcel **for a period of 7 years**, with annual inflation adjustments, senior exemptions, independent citizen oversight, and continuing $2.3 million in annual school funding that can't be taken away by the State?
> *Los Angeles County, Measure S, 2018*

Have you ever seen a ballot statement for a parcel tax with the duration expressed as "while the tax is in effect?"

The table below illustrates the creative manner in which bond counsel paid lip service to the duration requirement (designated by an asterisk in the Words column), regardless of the word count needed by this avoidance technique.

| County | Measure | Words | Tax Rate Info |
|---|---|---|---|
| Alameda | B | 21 * | raising an average of $8,000,000 annually for bonds while bonds remain outstanding from rates estimated at $0.06 per $100 assessed valuation |

| | | | |
|---|---|---|---|
| Fresno | B | 20 * | averaging $421,000 annually as long as bonds are outstanding at a rate of approximately 6 cents per $100 assessed value |
| Humboldt | C | 19 * | generating on average $149,000 annually for issued bonds through maturity from levies of approximately $0.03 per $100 assessed value |
| Humboldt | D | 19 * | generating on average $111,000 annually for issued bonds through maturity from levies of approximately $0.03 per $100 assessed value |
| Humboldt | E | 17 | raising approximately $319,000 annually through 2053 at a rate of 3 cents per $100 of assessed valuation |
| Humboldt | G | 20 * | averaging $645,000 annually as long as bonds are outstanding at a rate of approximately 3 cents per $100 assessed value |
| Imperial | Z | 23 * | raising an average of $656,000 annually to repay issued bonds through final maturity from levies of approximately $0.098 per $100 of assessed valuation |
| Inyo | K | 18 * | projected tax rates of 6¢ per $100 of taxable value while bonds are outstanding (averaging approximately $400,000 annually) |
| Inyo | L | 20 * | projected tax rates of 6.0¢ per $100 of taxable value while bonds are outstanding (generating on average approximately $325,000 annually) |
| Kern | C | 15 * | averaging $3,000,000 raised annually for bonds through maturity, rates of approximately 2.5¢/$100 assessed value |
| Kern | D | 20 * | averaging $900,000 annually as long as bonds are outstanding at a rate of approximately 5.7 cents per $100 assessed value |
| Los Angeles | BH | 17 * | levy on average 4.4 cents/$100 assessed value, $23,700,000 annually for school repairs while bonds are outstanding |
| Los Angeles | HSD | 14 * | levy on average 3 cents/$100 assessed value ($3,000,000 annually) while bonds are outstanding |
| Los Angeles | W | 19 | projected tax rates of 1.9¢ per $100 of assessed valuation, estimated levies averaging $2.1 million annually through approximately 2042 |
| Merced | X | 15 | raising on average 4.3 cents/$100 of assessed value ($3,800,000 annually) for approximately 35 years |
| Mono | A | 24 | estimated repayment amounts averaging $3,675,000 raised annually for approximately 33 years, projected tax rates of 4 to 6 cents per $100 of assessed valuation |
| Monterey | G | 25 | raising between $1.0 to $2.5 million annually for 27 years to repay bonds from tax levies estimated at 6 cents per $100 of assessed valuation |
| Monterey | I | 13 * | levy approximately 6 cents/$100 assessed value ($12,500,000 annually) while bonds are outstanding |
| Nevada | D | 20 | with projected tax rates of 2.4¢ per $100 of taxable value, estimated average levies of $1.05 million through approximately 2051 |
| Placer | E | 15 * | levy/collect on average 1.7 cents/$100 assessed value ($18,000,000 annually) while bonds are outstanding |
| San Joaquin | C | 21 * | an average tax levy of 4.9 cents per $100 of assessed valuation while bonds are outstanding (averaging $10.8 million per year) |
| San Mateo | J | 22 * | with an average tax levy of 0.7 cents per $100 of assessed valuation while the bonds are outstanding ($2.3 million per year) |
| San Mateo | M | 22 * | raising the amount needed each year to repay bonds while outstanding, at an estimated rate of $52 per $100,000 of assessed value |
| San Mateo | O | 20 | raising an estimated $3,450,000 annually for approximately 33 years at projected rates of three cents per $100 of assessed valuation |
| San Mateo | R | 14 * | levy on average 3 cents/$100 assessed value ($4,900,000 annually) while bonds are outstanding |
| San Mateo | S | 25 | averaging an estimated $3.95 million in taxes raised annually for approximately 32 years at projected tax rates of 3 cents per $100 of assessed valuation |
| Santa Barbara | Q2018 | 15 | levy/collect approximately $0.06 per $100 assessed value (estimated $7 million annually) through approximately 2054 |

| | | | |
|---|---|---|---|
| Santa Clara | E | 19 | averaging $18 million raised annually for bonds until approximately 2039, from rates estimated at $0.03 per $100 assessed valuation |
| Santa Cruz | P | 19 | generating on average $158,000 annually through 2048 for bonds from levies of approximately 3 cents per $100 assessed value |
| Santa Cruz | R | 14 * | levy on average 3 cents/$100 assessed value ($670,000 annually) while bonds are outstanding |
| Shasta | B | 19 | raising an estimated $420,000 - $2,700,000 annually through approximately 2052 at a projected rate of $0.03 per $100 assessed value |
| Sonoma | A | 21 * | averaging $4.9 million annually as long as bonds are outstanding at a rate of approximately 3 cents per $100 assessed value |
| Sonoma | C | 20 | with estimated repayment amounts averaging $590,000 raised annually through 2051, projected tax rates of 3¢ per $100 of assessed valuation |
| Stanislaus | V | 14 * | levy on average 6 cents/$100 assessed value ($2,600,000 annually) while bonds are outstanding |
| Sutter | Y | 15 * | levy approximately 3 cents/$100 assessed value, generating approximately $260,000 annually while bonds are outstanding |
| Ventura | A | 20 | estimated annual repayments averaging $20 million for 31 years, projected tax rates of 3 cents per $100 of assessed valuation |
| Ventura | B | 16 | raising between $1,300,000 and $3,300,000 annually at a rate of approximately $0.03 per $100 assessed value |
| Ventura | C | 17 | raising between $4,400,000 - $10,800,000 annually through 2048 at a rate of approximately $0.03 per $100 assessed value |
| Yuba | G | 15 * | levy/collect on average $0.12/$100 of assessed value ($1,050,000 annually) while bonds are outstanding |

**DEMAND 4.**

That you exercise your statutory authority to reject any ballot statement that does not conform to every requirement of 13119(b).

**II.D.3. 13119(c)**

Subsection (c) is new. It's clear intent is to prohibit deceptive, unfair, argumentative, and prejudicial language for the only statement that voters see on the ballot that they mark. This change was sparked by Los Angeles County's Measure M (the pot-hole measure) which, in 2016, embroiled the registrar in litigation surrounding the outright deception being propagated by the county government against the public.

Because the public has a misplaced trust in districts, believing them to have benevolent motivations, and because the school bonds cartel manipulates the elections process to suppress opposition to school measures, the lies and deception in district-initiated measures has rarely risen above the white noise of generally-acknowledged, governmental corruption.

The new subsection addresses this.

> (c) The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

As a bit of background, the issue of deception in the Proposition 39 bonds arena has been widely acknowledged. Kevin Dayton's comprehensive July 2015 "For the Kids: California Voters Must Become Wary of Borrowing Billions More from Wealthy Investors for Educational Construction" (http://californiapolicycenter.org/wp-content/uploads/sites/2/2015/07/CPC_School_Bond_Study_July_2015.pdf) report was followed by the September 2016 Little Hoover Commission hearings on bond oversight which led to its February 2017 findings and report, "Borrowed Money: Opportunities for Stronger Bond Oversight," Report #236. (http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/236/Report236.pdf)

To sum up, briefly, districts hire public opinion pollsters to test the language of the ballot statement that gets the best response. Districts use public resources for these so-called "voter surveys" to develop the campaign arguments best suited to obtain a favorable vote. (This despite Kamala Harris' opinion that use of public resources for voter surveys used in campaigns is a criminal act. 99 Ops.Cal.Atty.Gen. 18 http://oag.ca.gov/system/files/opinions/pdfs/13-304_1.pdf ) The statements are not designed to conform to the code requirements or to summarize the measure. To the contrary, they are designed to use psychological hot-buttons that elicit a favorable vote on the ballot by including emotionally charged words and phrases, like "leaky roofs," "lead", "asbestos," "safety," "jobs and careers," "no administrator salaries," "money that cannot be taken by the state," and, the hands-down favorite, "without increasing tax rates." The ballot statements are riddled with argumentative adjectives like "21st Century," "aging," "critical," "deteriorating," "essential," "inefficient," "modern," "necessary," "old," "outdated," and "veteran" (for college districts). ALL of this language is meant to persuade and intended to create a bias in favor of the measure.

The ballot statements also imbue school facilities with preternatural qualities, such as "improve the quality of education," "protect quality academic instruction," "affordably prepare, train/retrain students/veterans for quality jobs," "improve student safety/security," "better prepare students for college and careers," "prepare students/veterans for jobs/college transfers," "attract/retain quality teachers," "provide for college/career readiness," and on an on.

For school districts, which are required to report facility conditions in annual School Accountability Report Cards, there is, factually, no evidence of actual facilities with "leaky roofs." Nevertheless, "leaky roofs" appears in measure after measure from the same district and in every school district in California because it creates a picture in the public's mind, infused with emotional appeal, of children sitting in classrooms with water dripping down on them. That creates a prejudice in favor of the measure. There is, invariably, not a single specific facility project identified in the measure that actually has a leaky roof. Any school district that didn't repair leaky roofs when discovered would be grossly negligent if it were to allow such conditions to persist, ultimately resulting in the waste and destruction of public facilities.

**DEMAND 5.**

That you exercise your statutory authority to reject any ballot statement that does not conform to the requirements of 13119(c) by containing argumentative or prejudicial phrases or adjectives.

**No Salaries**

In every case where a variant of the phrase "no salaries" is used in a ballot statement, the language of the full-text incontrovertibly, and in multiple places, contradicts the "no salaries" language by stating that bond funds will be used to reimburse the district for the costs of its staff who have any tangential connection with anything conceivably related or anything "necessary" or "incidental" to a project on which bond money is to be spent.

**DEMAND 6.**

That you exercise your statutory authority to reject any ballot statement that does not conform to the requirements of 13119(c) by containing any variation of the phrase "no salaries" as a false statement.

**Without Increasing Tax Rates**

There is no language in any school measure that binds the district to a promise that it won't increase tax rates. In fact, such a promise would be contrary to law. Once bonds are sold, the tax rate is set to whatever amount is needed to pay the annual principal and interest obligation. The district has no control over setting that rate. The estimated tax rate provided in the tax rate statement is just an estimate. It disclaims any obligation to keep the tax rate at or near the estimate. In addition, as a promise that does not and cannot appear in the school measure, it cannot be part of a synopsis of the measure.

Financial advisors foster the idea that tax rates can be maintained on an even keel throughout the life span of a series of bond issuances in connection with a measure. This idea is based on assumptions and presumptions. Most importantly, the estimated future annual tax rates depends upon everything predicted actually coming to fruition, including the actions of future instances of the governing board in deciding when to issue bonds, whether to issue current interest bonds or the now stigmatized capital appreciation bonds, how much to issue, and the interest rates that will exist at the time of issuance. It's a house of cards, even when the estimates are made in good faith. More often than not, however, the estimates are manipulated to achieve some overriding concern of the adopting governing board, such as not causing a spike in tax rates that might upset some taxpayers or wishin' and hopin' that the predicted future assessed value of all district property is realized, natural disasters and economic downturns notwithstanding.

The entire purpose of school bonds measure is to get public approval to increase the tax rates. If the incurring of debt won't increase the tax rate, as is the case with certificates of participation, it can be incurred without the approval of the public.

> **DEMAND 7.**
>
> That you exercise your statutory authority to reject any ballot statement that does not conform to the requirements of 13119(c) by containing any variation of the phrase "without increasing tax rates" as a false statement.

**Measure Titles**

Have you ever known a legislative body to create a title for a legislative act that is not an oxymoron or, worse, an outright lie? It just doesn't happen. All measure titles, when they are used, are designed to highlight the poll-tested hot buttons. The title is, therefore, "language that is ... likely to create prejudice for ... measure."

An upcoming (no letter assigned yet) measure for November 2018 illustrates this violation of subsection (c).

> **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?"

If printed by the registrar in the manner designed by bond counsel, the ballot statement gives the district a huge advantage in favor of the measure. Let me count the ways.

We guarantee that you will never see that title used on the yard signs and other campaign materials and swag that the district (You don't really think the campaign committee can be trusted to spend hundreds of thousands of dollars of donor money when millions or billions are at stake, do you?) will have printed and planted at every street corner in the district. The yard signs will say "Vote Yes on SD for Better Schools" or some other innocuous language.

1. The title is a warm and fuzzy introduction. Using "Neighborhood" is the height of hypocrisy. What schools are NOT neighborhood schools?"
2. "Student Safety" plays upon the fears of violence by lone perpetrators that make the national news for weeks at a time.
3. Word counting rules treat a name as a single word. This instance provides the

district with 7 extra words (San Diego is a name anyway).

4. Bullet points visually focus the eye. The district only highlights items that create prejudice in favor of the measure.
5. "Repair" is not one of the purposes permitted by Proposition 39. It's an operating expense, not a capital expenditure, despite the sneaky language buried in the full text: "Any authorized repairs shall be capital expenditures. The Bond Project List does not authorize non-capital expenditures." Poof! Just like magic.

When considering titles for school measures, extrapolating from the San Diego Unified example, how many words could be crammed into a title before it would raise your eyebrows? 10 words? 20 words? 50?

Consider:

> San Diego Make Our Schools Fancier, Make Our Property Values Higher, Make Our Kids Ready for High Paying Government Jobs, Make Our Parents Prouder, Make Our Teachers Happier, Make Our Administrators Richer, Make Our Trustees More Popular, Make Our Unions Stronger, Make Our Donors (Contractors) More Gleeful, Make Our Neighboring School Districts More Jealous, Make Our Wealthy Investors Wealthier (and oh, by the way, Make Our Taxes Higher) Measure of 2018 *[70 words]*

What's to stop the school bonds cartel? Ethics? Shame? Public condemnation? Come on. We're talking about real money here. You?

This example ballot statement also violates Education Code 15122 and 15172 and Elections Code 13119(a) as well. The measure doesn't qualify under Proposition 39's permitted purposes, see Part III.B and Part III.C, below.

> **DEMAND 8.**
>
> That you exercise your statutory authority to reject any ballot statement that uses a title as language that creates prejudice and advantage in favor of the measure and as a ploy to skirt the 75-word limit.

## Part III: Proposition 39

### III.A. Proposition 39

Proposition 39 is an accountability law. It was named the Smaller Classes, Safer Schools and Financial Accountability Act for a reason. It's companion act, the Strict Accountability in Local School Construction Bonds Act of 2000 continues the theme -- accountability. The proponents of Proposition 39 argued that the misuse of bond funds by districts was rampant throughout California. Nothing much has changed, as Governor Brown, in his 2017 budget, cited the rampant misuse of state school bond funds to justify the delay in the sale of bonds under the just-passed Proposition 51 until stronger accountability measures could be implemented to protect state funds from misuse.

In a contractual sense, Proposition 39 is an offer to districts to fund school facilities projects under the terms of the offer. The terms are non-negotiable. When invoking Proposition 39 in a school measure, districts agree to and are bound by its terms -- only specified uses, whole categories of excluded uses, and two annual audits paid for out of operating funds, not bond funds. The reality is so far removed from the offer only because you honor requests to put school measures on the ballot that don't qualify under Proposition 39.

### III.B. Specific School Facilities Projects

The key qualification and key accountability requirement is the "list of the specific school facilities projects to be funded." It is the only qualification requirement that

can be examined prior to a school measure being passed, because the other three qualifications are future promises. Without the list of specifics, we're back to the pre-2001 situation of rampant misuse of bond funds. Trust us on this, we're way past that point, with hundreds of millions of dollars, annually, in Proposition 39 bond funds being misappropriated to district general funds, for special treatment for firms that either funded the bond election or have a favored relationship with district officials, and for marquee projects that the public never agreed to when they read that the district was going to replace the leaky roofs, remove the asbestos and lead, and fix the plumbing. Bond counsel cleverly omit any mention of even relative allocation of the bond authorization amount to the projects, leaving the district the ability to run out the funds on stadiums, performing arts centers, aquatic centers, and curb-appeal facades while the fundamental facilities remain untouched. This is plain and simple cheating.

The only language that Proposition 39 permits is a "list of the specific school facilities projects to be funded" and what amounts to a pro-forma certification without any evidence to support it.

Without a list of specific projects as the rubric, anything goes and there can be no accountability.

For your reference, the first measures that were written under Proposition 39 are nothing like the ones the school bonds cartel has since crafted in its efforts to avoid accountability.

> Santa Clarita Community College District, Los Angeles, Measure C (2001)
> http://www3.canyons.edu/host/bond//ballot_measure.asp
>
> State Center Community College District, Fresno, Measure E* (2002)
> http://measuree.scccd.edu/pdf/ballotlanguage.pdf
>
> ** You can already see the signs of bond counsel creeping in to remove accountability in the boilerplate.*

State Center's Measure E is particularly illustrative, by comparison, of the deception surrounding Proposition 39 bonds for many years. State Center not only listed the specific projects on which the funds were to be expended, but also its good faith estimate of what each project would cost. The public knew what they were buying -- before they voted.

The full text of Proposition 39 that appeared on the general election ballot in 2000 clearly lays out its purpose and intent in Section Three. While the purpose and intent do not become part of the California Constitution, most of the language in this section consists of close paraphrasing of the constitutional language. The critical accountability purpose is found in subsection (c) on which the other accountability purposes depend. We quote the entire section to demonstrate that this is not a case of cherry picking. Each and every purpose goes to accountability.

> **Proposition 39**
>
> SECTION THREE. PURPOSE AND INTENT
> In order to prepare our children for the 21st Century, to implement class size reduction, to ensure that our children learn in a secure and safe environment, and to ensure that school districts are accountable for prudent and responsible spending for school facilities, the people of the State of California do hereby enact the Smaller Classes, Safer Schools and Financial Accountability Act. This measure is intended to accomplish its purposes by amending the California Constitution and the California Education Code:
>
> a. To provide an exception to the limitation on ad valorem property taxes and the two-thirds vote requirement to allow school districts, community college districts, and county offices of education to equip our schools for the 21st Century, to provide our children with smaller classes, and to ensure our children's safety by repairing, building, furnishing and equipping school facilities;
> b. To require school district boards, community college boards, and county offices of education to evaluate safety, class size reduction, and information technology needs in developing a list of specific projects to present to the voters;

c. **To ensure that before they vote, voters will be given a list of specific projects their bond money will be used for;**

d. To require an annual, independent financial audit of the proceeds from the sale of the school facilities bonds until all of the proceeds have been expended for the specified school facilities projects; and

e. To ensure that the proceeds from the sale of school facilities bonds are used for specified school facilities projects only, and not for teacher and administrator salaries and other school operating expenses, by requiring an annual, independent performance audit to ensure that the funds have been expended on specific projects only.

It didn't take long, however, for the school bonds cartel to eliminate the cost estimates from the projects. As a result, every Proposition 39 measure for the last 15 years includes every possible facilities project imaginable. Without the good faith estimates, districts are, in effect, overpromising in the absolute knowledge that the bond authorization amount can only pay for a tiny fraction of the vast array of vague projects set forth in the measure. This is what districts did before Proposition 39. This is what the "list of specific school facility projects" was designed to stop.

The school bonds cartel knows the plain and ordinary meaning of the words "specific," "school," "facilities," and "project."

With access to your county's complete election records, you can easily go back to see the difference in accountability between the project lists of the early Proposition 39 school measures and those masquerading as "project lists" today. Neither the California Constitution, nor the purposes of Proposition 39 has changed.

**DEMAND 9.**

That you reject requests to place Proposition 39 bond measures on the ballot that do not qualify under the second qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the requirement of "a list of the specific school facilities projects" by describing every conceivable expenditure in a list of "types of projects", by describing projects using terms in the nature of "examples" or "without limitation," by providing discretion to implement projects on an "as needed" or "as required" basis, or by permitting alterations of listed projects.

Another tactic that has been gaining favor among bond counsel is the trick of purporting, in the measure, to incorporate another document by reference. Sometimes this document is described as the facilities master plan or some derivation of it. The document, if it can ever be specifically identified, is a cornucopia of caviar dreams, wishes, and wants that can be changed by the governing board at any time at its pleasure. As with any legislative body, it cannot bind a future instance of itself. The only thing that can bind a legislative body is something which it does not have the authority to amend or revise -- something like a constitution or a measure, in the nature of a contract, adopted by the public.

**DEMAND 10.**

That you reject requests to place Proposition 39 bond measures on the ballot that do not qualify under the second qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the requirement of "a list of the specific school facilities projects" by incorporation of another document by reference.

## III.C. Not For Any Other Purpose

The first qualifying requirement of Proposition 39 is "that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses." This combines two concepts: 1) the permitted uses (by reference) of bond proceeds and an all-inclusive prohibition on any other uses. It creates a closed system -- whatever is included is within scope and whatever isn't included is out of scope.

The permitted uses are "construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities."

No other uses are permitted, yet bond counsel intentionally includes long lists of boilerplate language to the contrary with the expectation that allegedly independent oversight committee members and auditors will be persuaded to overlook the misuse of bond proceeds because it was authorized by the public.

These lengthy lists are not even projects, but merely generic activities, in other words, operating costs, that may be vaguely deemed (by the district staff, of course) "necessary" or "incidental" to a project.

Note that just like the legislative, executive, and judicial departments cannot rewrite Proposition 39, neither can a measure, no matter how cleverly written. Yet bond counsel persist because it's in their self-interest to do so.

> **DEMAND 11.**
>
> That you reject requests to place Proposition 39 bond measures on the ballot that do not qualify under the first qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the prohibition on other purposes by describing reimbursement of a wide variety of costs to the district, especially ones described as necessary or incidental to projects, community or joint-use facilities, workforce housing, staff training, audits, and the election itself.

**Teacher and Administrator Salaries**

We're going to presume you've heard about an attorney general's opinion (87 Ops.Cal.Atty.Gen. 157) that was rushed through the office at lightning speed in less than four months in 2004 at the behest of the schools bonds cartel. This was the same attorney general who wrote the Official Title and Summary Prepared by the Attorney General for Proposition 39 in 2000. In that summary he declared that Proposition 39 "Prohibits use of bond proceeds for salaries or operating expenses." His statement was unqualified and consistent with the plain and ordinary meaning of the language setting forth that prohibition in the constitutional amendment.

Some bond counsel are so bold as to include a citation to the opinion in a "whereas" clause of the resolution where they mislead the reader into thinking that it's an accountability provision. Just more contemptuous conduct from the school bonds cartel.

> WHEREAS, the Board hereby determines that, in accordance with Opinion No. 04-110 of the Attorney General of the State of California, the restrictions in Proposition 39 which prohibit any bond money from being wasted or used for inappropriate administrative salaries or other operating expenses of the District shall be monitored strictly by the District's Citizens' Oversight Committee; and

An attorney general's opinion is not law. No court has considered reimbursement of salaries in the context of the prohibition. The opinion was acquired by the school bonds cartel to dissuade those who might have the temerity to bring a private lawsuit, such as the total-waste-of-time-and-money "School Bond Waste Prevention Action" authorized by Education Code 15286. Tellingly of the reach of the tentacles of the school bonds cartel, no district attorney has prosecuted this misuse of public monies -- yet.

District teachers and administrators are not engaged in "construction, reconstruction, rehabilitation, or replacement of school facilities." (They are actually prohibited by law from engaging in those activities in connection with school facilities.) Neither are they engaged in "furnishing and equipping of school facilities." Neither are they engaged in "the acquisition or lease of real property for school facilities." They hire experts for those purposes. Based on the dire straits of the public education system in California, many contend that they can't even perform their primary functions adequately, let alone take on tasks for which they are eminently unqualified.

All proper use of public monies must be explicitly authorized by law and not prohibited by law. There is no law authorizing a district to misappropriate public monies from a highly restricted bond proceeds fund and, by actual disbursement or by accounting entries, transfer those monies to any of the district's other operating funds.

If the legislature had the capacity to create such a law, it would likely have done so a long time ago. It doesn't have that capacity because the legislature can't change the prohibition in the California Constitution. Neither can the executive department change the prohibition by a politically motivated opinion. Neither can the judicial department.

Besides the constitutional prohibition, the school bonds cartel includes the prohibition in the bond measure resolution, in the measures itself, in the ballot statement, in the impartial analysis, and in the proponent arguments -- all of which you have first-hand access to when they are filed. In those materials, as well as all the electioneering materials (created by either the district or its campaign committee, which are in fact one and the same), the district touts the "no salaries" prohibition because it sells. Once again it's in its self-interest.

Yet despite the prohibition, bond counsel buries in the resolution or in the measure language intended to subvert the prohibition, either explicitly or by artifice.

**DEMAND 12.**

That you reject requests to place Proposition 39 bond measures on the ballot that do not qualify under the first qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the prohibition by purporting to permit reimbursement of staff salaries to the district.

**Repayment/Refinancing of Existing Debt**

In its bold attack on Proposition 39, cartel lawyers are now including, as a matter of course, boilerplate language that purports to authorize the repayment of pre-existing debt. This debt can come from a variety of sources, but, most commonly, is the result of pre-existing leases or certificates of participation.

Districts can take on debt, without voter approval or oversight, using certificates of participation (COPs). The repayment of COPs are operating expenses paid from the district's general revenue sources.

Repayment or refinancing of debt is not a school facilities project. It is an activity designed to extinguish school operating costs with someone else's money and thus free up general revenue for operating costs, like salaries, benefits, and pensions.

**DEMAND 13.**

That you reject Proposition 39 bond measures that do not qualify under the first qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the prohibition by describing the payment or refinancing of pre-existing debt instruments .

**Leases Other Than for Real Property**

Real property is a well-understood concept. It's what Article XIII taxes. It's land and permanent fixtures attached to land. Leases of real property for a school facility are permissible. Using bond proceeds for all other kinds of leases is prohibited.

Leases for anything other than real property are operating expenses. The legislature has permitted a concept called lease-leaseback. This is touted as a delivery method to avoid competitive bidding. It is not a lease of real property. The district leases creative concepts like athletic field turf or a roof or an air conditioning system to a favored, no-bid contractor that improves the leased concept. The terms of the lease require periodic payments when the improved leased concept is leased

back to the district by the contractor. These payments are operating expenses. When the improvement is completed, the contractor, understandably (and likely with this unwritten understanding from the beginning), would rather get paid for the improvement all at once. The district obliges by paying off the lease with bond proceeds. It already had the bond proceeds. It went through the lease/lease-back maneuver simply to avoid putting it out to bid. It's a school operating expense on which no Proposition 39 bond proceeds may be expended.

Bond proceeds may be used for furnishings and equipment in connection with construction under Proposition 39. Leasing of those furnishings and equipment with bond proceeds is prohibited. None of these leasing methods are school facilities projects. Districts may not expend bond proceeds to pay off or refinance them. They are prohibited.

> **DEMAND 14.**
>
> That you reject Proposition 39 bond measures that do not qualify under the first qualifying requirement of Proposition 39 through the inclusion of legalese boilerplate language that eviscerates the prohibition by describing lease or lease-leaseback arrangements for anything other than real property.

## Part IV: Other Election Rules for School Measures

The ballot statement and Proposition 39, while the largest areas of concern in connection with fair and impartial elections, are not the whole picture.

### IV.A. Impartial Analysis

Elections Code 9500 requires county counsel to write an impartial analysis. As practiced by the secretive members of the County Counsels' Association of California, the impartial analysis provides nothing of any value to the public.

> (b) The county counsel or district attorney shall prepare an impartial analysis of the measure, showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating that the measure was placed on the ballot by the governing board of the district. The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed 500 words in length.

Every county counsel appears to use an identical formulaic template consisting of, primarily, generalized boilerplate. Some county counsel actually make inaccurate statements about provisions required by law, demonstrating lack of knowledge of what they are analyzing and no quality control.

Besides the banal recitation of things required by law, which, if truly required, provide no insight into the measure, county counsel plugs in a few numbers from the measure and the tax rate statement. Most go so far as to tell the public that voting "yes" means they are authorizing bonds.

The most disingenuous parts are those relating to the first and second requirements. County Counsel pays lip service to prohibitions of the first accountability requirement quoting it word-for-word from Proposition 39, never noting that the district includes language to subvert that requirement by paying administrator salaries from bond funds.

Some county counsel don't even distinguish between the different uses permitted by 55% measures and two-thirds measures. It's all just one big stew. With respect to Proposition 39's requirement of a list of specific projects, anything that looks like a list is good enough. Then, presumably, with a straight face, county counsel opines that the funds may only be expended for the specific purposes in the measure, often plugging in a few purposes for good measure.

**Reauthorization Bonds**

The most egregious analyses that county counsel prepares are when the measure is based on a product that Dale Scott & Co., Inc. sells to financially distressed districts. It's called "GO Reauthorization Bonds."

The analyses blindly parrot the language provided by Scott. That language never explains that there is no statutory basis for reauthorizing previously authorized bonds. All Proposition 39 bonds measures authorize new bonds along with a new, corresponding tax rate.

When a district has reached the tax rate cap for a previous bond measure election due to wildly optimistic projections, it may have unused bond issuance authority. The law prohibits the district from making use of that unused issuance authority. The district may have to wait years for the equalized assessed value of taxable property in the district to reach the point that it can again issue bonds using that issuance authority. Rather than wait, a district can turn to Dale Scott and purchase his product. It's not magic. It's just a marketing scheme to convince voters that they are not increasing their taxes. New bonds are authorized with a new, per-election tax rate cap. So the voters are actually doubling the tax rate allowed by the original authorization. It's sold on the deception that the total authorized debt is not being increased. The strategy is to simply avoid explaining the scheme anywhere in the full text of the measure.

The result of this total lack of knowledge is an analysis that does not explain the real consequences of the reauthorization scheme. Not one voter in a million, if that, will comprehend what's being done, until of course, they get their tax bill that includes the newly authorized bonds and tax rate. By then, of course, it's too late. The damage was done without full disclosure, aided and abetted by county counsel's allegedly impartial analysis.

## IV.B. Argument Deadlines

This section is not county specific. If you are setting argument deadlines on E-78 or later, you are among the tiny few who are following the law. This section is for your education. The demands are not being made on you if your county is rated good.

**The Big Picture**

County elections officials, despite being members of the California Association of Clerks and Election Officials, generally believe that all counties are dealing with this issue fairly for the public and in the same way. The following should disabuse you of that belief.

The table below summarizes county argument deadlines from the primary and general elections in 2016 and the primary election in 2018. Those counties that consistently set a deadline on or after E-78 AND set a 10-day mandatory review period for the arguments rate good. Those counties that consistently set a deadline on or after E-78 with less than a 10-day mandatory review period rate fair. All other counties rate poor. The poorest of the poor at the bottom of the heap is Plumas. Why is there such variance when you are all claiming to follow the same law?

Counties that have multiple rows are either not consistent from election to election or are setting argument dates on an *ad hoc* basis, perhaps measure by measure. Counties that do not appear in the table have no recent local measures. To correct errors in this table, contact the California School Bonds Clearinghouse.

| *Courtesy of California School Bonds Clearinghouse* | | | | |
|---|---|---|---|---|
| **Rating** | **County** | **Argument Due** | **Rebuttal Due** | **A/E*** |
| * A = appointed, E = elected registrar | | | | |
| | Alameda | E-81 | E-74 | A |
| | Alameda | E-83 | E-78 | A |
| | Butte | E-81 | E-74 | E |
| | Colusa | E-88 | E-78 | E |
| Fair | Contra Costa | E-76 | E-71 | E |
| | El Dorado | E-95 | E-90 | E |
| | El Dorado | E-109 | E-99 | E |
| | Fresno | E-76 | E-71 | E |

| | | | | |
|---|---|---|---|---|
| | Fresno | E-81 | | E |
| | Fresno | E-85 | | E |
| | Fresno | E-85 | E-75 | E |
| | Fresno | E-90 | E-78 | E |
| | Fresno | E-92 | | E |
| | Fresno | E-95 | | E |
| | Humboldt | E-78 | | E |
| | Humboldt | E-83 | | E |
| | Imperial | E-81 | E-71 | A |
| | Imperial | E-81 | E-74 | A |
| Good | Inyo | E-77 | E-64 | E |
| Fair | Kern | E-78 | E-71 | E |
| | Kern | E-83 | | E |
| | Kern | E-83 | E-78 | E |
| | Kings | E-81 | E-71 | E |
| | Kings | E-82 | E-75 | E |
| Fair | Lake | E-74 | E-67 | A |
| | Los Angeles | E-81 | E-70 | A |
| | Los Angeles | E-81 | E-71 | A |
| Good | Madera | E-78 | E-68 | A |
| Fair | Marin | E-78 | E-71 | E |
| | Merced | E-78 | E-71 | E |
| | Merced | E-83 | E-74 | E |
| | Mono | E-78 | E-68 | A |
| | Mono | E-81 | E-75 | A |
| | Monterey | E-81 | E-71 | A |
| | Monterey | E-82 | E-75 | A |
| | Napa | E-81 | E-74 | E |
| | Nevada | E-81 | E-74 | E |
| | Nevada | E-109 | E-102 | E |
| | Orange | E-85 | E-75 | A |
| | Placer | E-88 | E-78 | E |
| | Placer | E-89 | E-85 | E |
| | Plumas | E-116 | E-104 | E |
| Good | Riverside | E-78 | E-68 | A |
| | Sacramento | E-84 | E-82 | A |
| | Sacramento | E-89 | E-85 | A |
| | San Benito | E-84 | E-77 | E |
| Fair | San Bernardino | E-75 | E-70 | A |
| | San Diego | E-76 | E-68 | A |
| | San Diego | E-81 | E-76 | A |
| | San Francisco | E-82 | | A |
| | San Francisco | E-82 | E-78 | A |
| | San Joaquin | E-95 | E-85 | A |
| | San Luis Obispo | E-85 | E-78 | E |
| | San Luis Obispo | E-88 | E-81 | E |
| | San Luis Obispo | E-95 | E-88 | E |
| | San Luis Obispo | E-110 | E-103 | E |
| | San Mateo | E-81 | E-71 | E |
| | San Mateo | E-84 | E-74 | E |
| | Santa Barbara | E-96 | | E |
| | Santa Barbara | E-97 | E-85 | E |
| | Santa Barbara | E-103 | | E |
| | Santa Clara | E-81 | E-76 | A |

| | | | | |
|---|---|---|---|---|
| | Santa Clara | E-83 | E-77 | A |
| | Santa Clara | E-84 | E-77 | A |
| | Santa Cruz | E-81 | E-74 | E |
| | Santa Cruz | E-82 | E-75 | E |
| | Shasta | E-77 | E-70 | E |
| | Shasta | E-84 | E-78 | E |
| | Shasta | E-95 | E-88 | E |
| | Siskiyou | E-127 | E-117 | E |
| | Solano | E-81 | E-71 | A |
| | Solano | E-84 | E-81 | A |
| Good | Sonoma | E-78 | E-68 | E |
| | Stanislaus | E-99 | E-91 | E |
| | Sutter | E-74 | | E |
| Good | Sutter | E-76 | E-60 | E |
| | Tehama | E-76 | E-69 | E |
| | Tehama | E-95 | E-88 | E |
| | Tulare | E-78 | E-68 | A |
| | Tulare | E-110 | E-100 | A |
| | Ventura | E-96 | E-85 | E |
| | Ventura | E-97 | E-88 | E |
| | Yolo | E-88 | E-88 | E |
| | Yuba | E-81 | E-74 | E |

**Limited Elections Code Discretion**

There are three similar, but different codes that address the discretionary authority to set argument dates. Each code applies to a different type of election -- county (9163), district (9316), and school district (9502). The focus of this letter is school district elections, but the other two codes illustrate the subtle differences under which discretion is permitted. Each code limits discretion to its own discrete set of items.

For county elections:

> 9163. Based on the time reasonably necessary to prepare and print the arguments, analysis, and county voter information guides and to permit the 10-calendar-day public examination as provided in Article 5 (commencing with Section 9190) for the particular election, the county elections official shall fix and determine a reasonable date before the election after which no arguments for or against any county measure may be submitted for printing and distribution to the voters as provided in this article. Notice of the date fixed shall be published by the county elections official pursuant to Section 6061 of the Government Code. Arguments may be changed until and including the date fixed by the county elections official.

For district elections:

> 9316. Based on the time reasonably necessary to prepare and print the arguments and voter information guides, and to permit the 10-calendar-day public examination as provided in Article 4 (commencing with Section 9380) for the particular election, the district elections official charged with the duty of conducting the election shall fix and determine a reasonable date before the election for the submission to the district elections official of an argument in favor of and against the ordinance, and additional rebuttal arguments as provided in Section 9317. Arguments may be changed or withdrawn by their proponents until and including the date fixed by the district elections official.

For school district elections:

> 9502. Based on the time reasonably necessary to prepare and print the arguments, and to permit the 10-calendar-day public examination as provided in Section 9509, the person conducting the election shall fix and determine a reasonable date prior to the election after which no arguments for or against

> any school measure may be submitted to him or her for printing and distribution to the voters. Notice of the date fixed shall be published pursuant to Section 6061 of the Government Code. Arguments may be changed until and including the date fixed by the person conducting the election.

Keep in mind that much of the language in these sections are terms defined in other parts of the Elections Code. For example, "school measure," in section 9502, is one of those defined terms. That is the section that applies to the measures which are the focus of this letter.

Each of these three sections repeat the same general language. Repetition like this is common throughout the Elections Code, but it helps to illustrate consistent legislative intent.

The key repetitive language in each of these sections is the conditional clause, "Based on the time reasonably necessary to prepare and print the arguments ... [and] ... the 10-calendar-day public examination ..."

For the first two codes (above), that clause, and thereby your discretion, is extended to other items peculiar to the elections to which those codes apply, but not for 9502.

The plain meaning and intent of the conditional clause is that the only criteria that the elections official may consider in fixing the argument deadline are the listed criteria, slightly different in each section.

Unlike the county code and district code, the school district code limits discretion to the arguments only. All the other local deadlines are not connected to the arguments. Arguments are short documents, much like candidate statements.

In contravention of the code, the three primary~~excuses~~ reasons that elections officials use to justify the early setting of argument deadlines are (1) consolidation considerations due to the infrequency of board of supervisors meetings, (2) public notice considerations due to the infrequency of local newspaper publication dates, and (3) no reason at all -- we can create any rules we wish.

None of those excuses are permitted by the legislature in any of the three sections. None of those excuses have any relation to setting a deadline for arguments based on the time needed to "prepare and print" the arguments.

Each county that sets its argument due date earlier than E-88, permits the district tax rate statement and the county counsel impartial analysis to be filed as late as or later than E-88. Why? Because there is no authority in the codes to override the date set in the code. The only party to be disadvantaged in this scenario is the public.

Some counties, like Santa Barbara and Ventura, appear to have created local policies without any authority in the Elections Code. Santa Barbara will even accommodate districts who miss its early measure filing deadline. Some counties, like Fresno, will even accept arguments from proponents after the due date. No county will do the same for opponents.

You may be under the misconception that all counties set argument deadline dates in a similar manner. Our canvass of elections officials demonstrates that election officials are all over the map on how the argument deadlines are set. Inyo and Lake counties as examples of the most generous deadlines of any county in the state. They are small counties with limited resources. In Lake County, argument deadlines are set at E-74 and rebuttal deadlines are set at E-67. For comparison, in huge Los Angeles County argument and rebuttal deadlines are set at E-81 and E-71, respectively. If Kammi Foote and Diane Fridley can do this with a staff of 2 or 3, what justification do the elections officials in the cluster of counties that includes Plumas have for disregarding the law and effectively placing their thumb on the scale to favor passage of school measures over the due process and speech rights of the public for an opportunity to be heard?

The other major concern with respect to argument deadlines is that E-88 is always a Friday at close of business. The school bonds cartel recognizes that filing as close as possible to or on E-88 further disadvantages the public when counties forgo placing school measure filing information on county elections web sites promptly. Some elections officials, such as Los Angeles county, have a policy to

wait until E-83, the last day on which a measure can be withdrawn, to post measure information on its web site. With an argument filing deadline of E-81, the public, unless they won't take no for an answer, is denied its right to be heard. Who does that serve? We know of no instance where a filed school measure has ever been withdrawn between E-88 and E-83.

While diligent and persistent people can try to track down a district's resolution, question, full-text, and tax rate statements, district's don't make this information easily available and many do not make it available at all. Most importantly, however, ALL district resolutions delegate complete discretionary authority to the superintendent to change the adopted resolution and tax rate statement at any time. Thus, the only reliable source of the actual documents to appear on the ballot are those that are actually filed with election officials. When election officials withhold the filed documents from the public for arbitrary reasons, it serves only the school bonds cartel.

The school bonds cartel controls its filing decisions. It can prepare well in advance and spring it upon counties at the last minute. The public should have an opportunity to have one full weekend (after gaining access to all a district's filed documents) to prepare an argument and recruit signers. (The weekend after E-88 is useless because the elections officials, with one or two exceptions, do not promptly post all the filed documents on their web sites until days after the filing deadline, if ever.)

**DEMAND 15.**

That you limit discretion to set argument deadlines for school measures to that permitted by the code.

Because the Elections Code sets E-88 as the filing deadline for every election, districts can delay the tax rate statement to that day. The resolution, that includes the ballot statement and full text of the measure, and the tax rate statement comprises all the school measure documents. Any argument date set earlier than E-78 flies in the face of having the mandatory 10-day examination period. This first 10-day period that begins on E-89 is to examine the district's documents. Neither a district nor a registrar has ever asked a court for a writ of mandate, which is the only remedy available to the public after E-88. Since it is only the public that is disadvantaged by this, it places an expensive and undue burden on the public to potentially have to ask for two writs of mandate. This is an unconscionable prospect.

**DEMAND 16.**

That you set school measure argument deadlines no earlier than E-78.

Since the second of the three examination periods is set for the arguments, and possibly the impartial analysis, the deadline set for rebuttals must be no earlier than 10 days after that of the argument.

**DEMAND 17.**

That you set school measure rebuttal deadlines no earlier than E-68.

The main point that needs to be addressed are argument deadlines. The proponent (except in the case of Montebello Unified [Los Angeles] in 2016) always files an argument that can be prepared weeks in advance of the filing of the resolution. All arguments in favor are written by those selling districts on the idea of placing a bond measure on the ballot. Opponents are not given a fair opportunity to respond when the rules that are implemented vary from county to county and, oftentimes, from measure to measure within the same county for the same election day. This disadvantages regular, working people at every step in the process.

Election officials could help level the playing field further by posting on the web site

the simple fact that a school measure resolution was filed. Using the rationale that the filing may not be complete or may be altered just perpetuates and compounds the disadvantage to the public, who are, in fact, paying for the entire election process.

Among the counties that set very early argument deadline dates, arguments against are rarer than unicorns. In the sole known case where an argument was filed, the argument against was filed by a governing board member.

We contend that any argument deadline set prior to the E-88 is a violation of the public's right to due process.

**10-Day Public Examination Period**

The Elections Code requires that after the filing date deadline (E-88), there be a mandatory 10-day public examination period for the various filed documents. This is the first of three examination periods.

Elections Code 9500(a) refers to qualified school measures, which include the resolution, ballot statement, full-text, and tax rate statement. 9500(b) refers to the impartial analysis. 9509(a) applies to the "materials referred to in Sections 9500, 9501, and 9504."

Setting argument or rebuttal argument due dates prior to or within the examination period violates both the letter of the statute and due process.

Bond and parcel tax measures are a privilege afforded districts. It's a local government agency attempting to levy a tax on the public. Clearly, the district is not the party that the examination period is enacted to protect. Any shortening or diminution of the examination period works in favor of the district at the expense of the public. Any skirting of the mandate is a violation of due process of the public for an opportunity to be heard in a meaningful way.

The school bonds cartel encourages districts to adopt school measures as near to the filing deadline as possible, and then file school measure documents as late as possible for the express purpose of suppressing opposition, but particularly to ensure that opponents have no time to file the pivotal argument against the measure.

Election officials' policies that serve internal purposes or desires for administrative convenience, except in the two criteria for which the legislature has made an exception, are violative of the due process rights of the public.

The only way for the three public examination periods to comprise less than 30 days is for election officials to merge them by setting early argument and rebuttal deadline dates. As demonstrated in the table at the beginning of this part, some counties with very limited resources are able to do that.

**DEMAND 18.**

That you implement full and separate 10-day public examination periods for each of the three sets of documents for which they are required.

## IV.C. Stealth Arguments

A relatively recent and growing school bonds cartel tactic is to place the argument supporting the measure, often labelled as "findings," at or near the beginning of the full text of the measure. These "findings" are not intended to be, nor can they legally be, a binding part of the contract the district asks the public to approve. They have no place in a contract of any sort. The district, unlike opponents, therefore get two bites at the apple -- once in the unlimited word-count of the full text, and then again in the argument and rebuttal provided for by the code. Opponents are given no such advantage. Nor are opponents given an opportunity to rebut a stealth argument.

Elections Code 9501 provides for the printing of arguments in connection with a school measure. Each side is allocated one, 300-word argument for printing in the sample ballot pamphlet. The only ballot materials authorized by Proposition 39 are

contained in Section 1(b)(3)(B).

> A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

A handful of additional codes mandate certain other statements to be printed in the ballot pamphlet under specific circumstances.

As time passed after the passage of Proposition 39, the school bonds cartel became emboldened. It continued to add materials that go further and further beyond the language authorized by Proposition 39 and the Elections, Education, and Government Codes. It's gotten to the point that the ballot measures are a rats' nest of argumentative, conflicting, exculpatory, repetitive, sloppily-written language that serves only to sell the measure and dissuade anyone from reading, much less understanding, the proposed contract.

Bond counsel are now boldly inserting argumentative (persuasive) language, in fact the district's entire argument, into the full text of the measure. Opponents are not given a similar opportunity, contrary to the legislative intent in the Elections Code. These tactics violate the due process rights of the public to a fair election process and to a clear statement of the proposal.

All post-election remedies are inadequate. Districts have unlimited taxpayer-funded resources and lawyers willing to bill whatever it takes to bury any civil action. On the criminal side, there is not a single district attorney's office that, even after receiving a verified complaint, has prosecuted district employees for using public resources for school measure election campaign activities under Education Code 7054 and 7058. Nor has a single district attorney's office prosecuted a single case of criminal misuse of bond funds under Education Code 15264 and 15288 or the underlying Penal Code 424.

Evidence of Education Code 7054 violations are right under your nose, literally. Just look at the contact information for the person who printed the materials, gathered the signatures, and then appeared at your office to file the arguments and rebuttals.

> **DEMAND 19.**
>
> That you reject Proposition 39 bond measures that include sections of arguments/findings, whether or not labelled such that describe the intent or the wishes of the district using argumentative language. The California Constitution mandates that the voters be presented with "a list of the specific school facilities projects to be funded."

There are several other common tactics to include arguments in the full text of the measure.

**IV.C.1 Repeating Ballot Statement**

The heading used with this tactic is often "Introduction." The ballot statement has become a voter-survey tested selling proposition. The Elections Code requires that it be a synopsis of the school measure. (See discussion of 13119(c) below.) If you were to reject ballot statements that don't conform to the codes described in Part II, this practice would end post haste.

**IV.C.2. Inserting Full Arguments**

Depending on the bond counsel firm writing the school measure, this can take many forms. One firm includes the argument under the heading "PROJECT LIST" using a series a bullet-point-like outline points all in bolded text. The outline is preceded by an argumentative, strident statement ending with "the Board of Education determines that the District MUST:."

Other firms have begun labelling these arguments as "Findings" or "Key Findings."

### IV.C.3. Inserting Accountability Requirements

Some bond counsel insert these in the full text of the measure multiple times. Often they are found at the beginning, always before the alleged project list. Sometimes they are found at the end, often in difficult-to-read all-upper-case letters. Sometimes they are inserted multiple times. How many places in a single school measure should "no salaries" language appear? None -- it's not a specific school facilities project. It's a poll-tested argument for getting a favorable vote.

While bond counsel may quote the actual requirement from the law, they often paraphrase it making the whole measure confusing and conflicting from a legal perspective. Can the language of the measure override the language of the Education Code? The most outrageous tactic used in these "accountability" requirements is when bond counsel intentionally alters phrases from the actual law in an insidious attempt to aid and abet districts in evading accountability. This tactic is most often used in connection with the Proposition 39 language of Section 1(b)(3)(A). The fashion-of-the-day is to modify the "administrator salaries" phrase by inserting an adjective or two in front of it, turning the phrase into "non-construction related administrator salaries." It is also often used to modify the statutory provisions for the independent citizens' oversight committee. In some cases, the full text of the measure actually rewrites the composition of the oversight committee to one of its own liking, creating categories and imposing qualifications.

Inserting these paraphrased or modified requirements is a subterfuge to give districts cover with the uninformed public and the oversight committee (ah, but we repeat ourselves) to get away with intentional misuse of bond funds.

The arguments are always found at the beginning of the school measure, where they are most likely to be read. No matter how the argument is labelled, it is completely misleading, biased, argumentative, and prejudicial in favor of passing the school measure. These arguments consist of hundreds of words. The same argument talking points are used again in the argument permitted under 9501.

Including arguments in the school measure violates the law and the due process rights of the public and adds to the confusion of mixing sales language and contractual language.

## IV.D. Equivocating (Weasel) Language / Accountability Avoidance

As intended by the school bonds cartel, the legalese boilerplate, added to school measures in violation of the strict accountability requirements of Proposition 39, is designed to evade accountability at every turn by granting complete and absolute discretion to the district, after the fact, to do or not do anything that the vague promises of the non-specific lists of types of projects at any and all sites don't already accomplish. In a newspaper report of a governing board meeting to adopt an election order in Solano County in 2016, when a member questioned the list as not being specific, he was told by the financial advisor, that the governing board can determine the details of the projects to be funded after the measure has been approved by the voters.

Any lawyer using the language found in a school measure in a commercial contract would be on the fast track to disbarment for malpractice or incompetence or both. It's obscene in the perniciousness of the evisceration of each and every accountability requirement established by Proposition 39 and the Strict Accountability Act.

While the theme of "accountability" is pervasive in both the California Constitution and the Education Code, the practices of districts and their advisors have made a sham of the word.

The goal of the districts, aided and abetted by bond counsel, is to avoid ALL the accountability requirements. (See Richard Michael's testimony to the Little Hoover Commission hearing on bond oversight in September 2016.) This is most boldly done by adding boilerplate language that makes the allegedly specific list into types or examples of projects and then adding a litany of vague, impossible-to-comprehend additions to each project, some of which are physical facilities-related and some of which are administration-related, often referred to as soft costs.

By including everything, including, literally, the kitchen sink, in the boilerplate,

districts achieve the goal of being able to spend the money on anything they may later wish to buy and then point to a word or phrase that justifies it. This is contrary to the Purpose and Intent of Proposition 39 "To ensure that BEFORE they vote, voters will be given a list of specific projects their bond money will be used for."

This trick carries over to, not only the public, but also to the oversight committee and to the allegedly independent auditors. The public has no effective remedy to stop this fraud. You should deny district requests to place school measures on the ballot that don't meet all four of the accountability requirements of Proposition 39. Measures that do not meet the clear and unambiguous language of Section 1(b)(3)(B) do not qualify. You took an oath to uphold the California Constitution. Honor it.

The newest wrinkle is that bond counsel are now including huge exculpatory paragraphs to counter the statutory requirement of 13119(b) in the full text of the measure. These same exculpatory provisions are already addressed in the tax rate statement, but the school bonds cartel doesn't want the public to read the tax rate statement.

The effect of this fraud is that districts propose the maximum allowable bond authorization for a single election without any relation to the costs of the featured (marketed) types of projects. The bond funds become a continuous source of funds for marquee projects, everyday facility maintenance, direct salary and operating cost reimbursements, and freeing up the general fund to increase salaries, benefits, and pensions.

## Conclusion

It's your duty to enforce the Elections Code to ensure the fairness and the impartiality of the elections process. Deferring to the public to make you do your duty is malfeasance, misfeasance, or nonfeasance in office -- take your pick. Failure to perform your duty brings disrepute on your office and jeopardizes the public's confidence in the entire election system of California.

Sincerely,

Stephen C Petzold
Principal Officer
The Center For Truth In Bond Measures CA ID # 1408280
661-609-1739

Mark Hinkle
Morgan Hill Unified, Gavilan CCD

Richard Michael, Government Accountability Advocate
California School Bonds Clearinghouse (www.bigbadbonds.com)

P.S. We deem the failure of public officials to respond in writing to legitimate public concerns a marker of a culture of public corruption.