

***Stanson* Warning, Notice, and Demand To Registrars Expending Public Moneys Not Authorized by Law.**

To:

Matt Moreles, Santa Clara County Registrar of Voters

Sylvia Arenas, Santa Clara County District 1 Supervisor

Cindy Chavez, Santa Clara County District 2 Supervisor

Otto Lee, Santa Clara County District 3 Supervisor

Susan Ellenberg, Santa Clara County District 4 Supervisor

Joe Simitian, Santa Clara County District 5 Supervisor

From:

Richard Michael, Chief Cook & Bottle Washer, California School Bonds
Clearinghouse (bigbadbonds.com)

Date:

August 8, 2024

Subject:

Stanson Warning, Notice, and Demand To Registrars Expending Public Moneys
Not Authorized by Law.

Via:

E-mail

Deadline:

Noon on Wednesday, August 14, 2024

Notice to principal is notice to agent. Notice to agent is notice to principal.

We demand that you, the county registrar, perform your mandatory ministerial duty and reject (*Myers v. Patterson* (1987) [196 Cal.App.3d 130](#); *Beecham v. Burns* (1917) [34 Cal.App. 754](#); *Bricker v. Banks* (1929) [98 Cal.App. 87](#).) all local measures that do not conform with every mandatory provision of the Elections Code and the Education Code (relating to bond measures), especially Elections Code section 13119 (ballot label) and section 13116 (sequential letter measure designation). There is no definition of "regional measure" in the Elections Code. There is no statutory authority for a "regional measure"

designation composed of letters and numbers, such as RM4. This demand is for all local measures "requested" to be consolidated (Elections Code section 10403) with the county's general election ballot for the November 5, 2024 election and for all measures submitted to voters at all future elections.

There are other public officials who have duties in connection with elections. We note that county counsel and the county boards of supervisors have an equally mandatory ministerial duty to ensure that elections are conducted in a neutral manner.

It's been a rough two weeks for the supervisors. Just a few days ago, you received a notice to stop killing people. Now you're receiving a notice to stop stealing and coveting your neighbors goods. That's three out of the Ten. Don't make it worse by taking the Lord's name in vain.

Since nine county registrars are participating in a particularly egregious example of expending public moneys for purposes not authorized by law, we will refer to Santa Clara County as an exemplar of the statewide problem that you have allowed to fester for decades.

Just in case you forgot, this is your third notice. Here is the [second notice](#) to refresh your memory.

Notwithstanding Santa Clara Supervisor Lee's demagoguery:

"The registrar has transformed from a fairly routine office to the target of election denial extremists. Attacking the registrar with conspiracies and disproven fraud allegations undermines our most basic democratic process. Under Shannon's leadership, we have protected our democracy locally and stand ready to ensure a free and fair election in 2024." *San Jose Spotlight*, June 26, 2024.

Doesn't "our most basic democratic process" require fairness? In your mandatory ministerial duty to "ensure free and fair election[s]," the overseers of elections have failed miserably for decades. You should be ashamed of your participation in the scheme to defraud the people of the nine counties out of billions of hard-earned dollars.

Partisan Ballot Labels Are Expressly Prohibited, Unconstitutional, and Criminal

The purpose of a ballot is to record the voter's choice. The county voter information guide, as its name implies, is to provide the voter with official information. The campaign committees and the press may provide further information.

Elections Code section 13119 applies to all local measures submitted to the voters. It limits the language on the ballot label to "Shall the measure (stating the nature thereof) be adopted?" (Quotes in the statute.) For tax measures, three additional disclosures are required by subdivision (b) -- the amount to be raised annually and the rate and duration of the tax.

For election matters, "the nature thereof" has been considered very narrowly. *Boyd v. Jordan* (1934) [1 Cal.2d 468](#). The dictionary defines the "nature of" something as its essence, "the inherent character or basic constitution of a person or thing."

There is no statutory authority for any other language to appear on the ballot, except for the "letter" designation and, if the county has not opted out, the names of supporters and opponents.

We have selected the BAHFA \$48 billion ad valorem property tax on residential and business property owners as an example because it has been filed with nine county offices. Many more measures, perhaps up to 700, will be filed around the state in the weeks prior to the August 9, 2024 filing deadline. This notice applies to all measures until the statutes are repealed by the Legislature.

Partisan ballot label submitted by BAHFA board.

BAY AREA AFFORDABILITY PLAN. To address housing affordability and reduce homelessness by:

- 1 providing an estimated 70,000 affordable apartments/ homes;
- 1 creating homes near transit, jobs, and stores;
- 1 converting vacant lots/ blighted properties into affordable housing; and
- 1 providing first-time homebuyer assistance;

shall the measure issuing \$20,000,000,000 in bonds at legal rates, levying an estimated \$19 per \$100,000 of assessed valuation generating \$670,000,000 annually while bonds are outstanding, and requiring public reporting, independent audits/ citizen oversight, be adopted?

Neutral ballot label conforming to Elections Code section 13119.

Shall the measure to authorize the issuance of up to \$20,000,000,000 in bonds and to impose a tax on real property in the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma at an

estimated rate of \$19.00 per \$100,000 assessed value, collecting an estimated \$670,000,000 annually, until 2078 be adopted?

BAHFA's ballot label is written like a title and summary. Section 13119 does not authorize or permit a title and summary. Titles and summaries are specified for statewide measures only and are written by the attorney general.

The act of writing a title and summary, by its very nature creates bias. The writer must choose elements from the language of the measure. That choice is viewpoint discrimination and compelled speech, violating the First Amendment rights of everyone who has a different viewpoint. When the government does it, it also violates the Fourteenth Amendment (equal protection). Section 13119 eliminates viewpoint discrimination and other chicanery by prohibiting anything other than the nature of the measure. It's been the law for over 110 years.

By the act of writing a description or summary or whatever, rather than stating the nature of the measure, the government is taking its point-of-view and forcing it down the people's throats.

Criminal Provisions

Failing to perform your mandatory ministerial duty has criminal consequences among which are penal provisions of the Elections Code: sections 18002, 18370, 18371, and 18401 (offenses against the elective franchise).

There are no existing statutes that authorize you to expend public moneys (printing and circulating ballots that are bald-faced government campaign arguments). Consequently, Penal Code 424 sanctions expenditures of public moneys "not authorized by law."

Court Decisions

The California Supreme Court has held repeatedly that the government is constitutionally prohibited from using public moneys to take sides in an election. *Mines v. Del Valle* (1927) [201 Cal. 273](#), *Stanson v. Mott* (1976) [17 Cal.3d 206](#), and *Vargas v. City of Salinas* (2009) [46 Cal. 4th 1](#). In *Stanson*, the court further held that government officials who use public moneys to take sides in an election are subject to criminal liability under Penal Code section 424.

The BAHFA example is far from rare. Every school district bond measure and every sales tax measure paints the government's viewpoint of why the measures are needed. The courts have repeatedly held that ballot labels must be neutral. You have intentionally refused to reject ballot labels that don't conform to the law.

That can't be true, can it? Here's the [list](#) of all 100 school bond measures from the November 8, 2024 election from around the state. Notice a pattern? They are all arguments favoring a yes vote. They also all meticulously avoid the three dirty words (all mandatory by statutes) - tax, maximum interest rate (12%), and duration (the estimated end year from the tax rate statement). Check out the San Diego Unified \$7.3 billion tax with the bullets

Appellate court decisions have treated ballot labels like that submitted by BAHFA and the school districts to be partisan and unconstitutional. *Citizens for Responsible Govt. v. City of Albany* (1997) [56 Cal.App.4th 1199](#) [city gaming measure], *Huntington Beach v. Superior Court* (2002) [94 Cal.App.4th 1417](#) [utility tax measure], and *McDonough v. Superior Court* (2012) [204 Cal.App.4th 1169](#) [city pension reform].

It doesn't require a judge to determine the partisan nature of a ballot label. The people of the nine counties pay you to perform your duty. It is not their duty to look over your shoulder and micro manage the performance of your duty. The burden of proof for statutory conformance is not on the people. It is on those submitting the measures. Can the local governments site any statutory authority for the partisan language they submit? Instead, they rely on you to NOT do your duty, as if by some secret agreement, such as a conspiracy to commit fraud.

The *McDonough* case was necessary only because the former Santa Clara county registrar, who was the respondent, failed to perform her mandatory ministerial duty to reject partisan ballot labels.

All the opinions that have addressed the government taking sides in an election using public moneys cite the First Amendment ("compelled speech") and the Fourteenth Amendment ("equal protection"), and the California Constitution counterparts, as the constitutional violations.

An election where the government takes sides using public moneys is "plainly illegal". *Rideout v. City of Los Angeles* (1921) 185 Cal. 426!--- [185 Cal. 426](#) ---. Plainly illegal elections are vitiated.

Grand Jury Reports

The recent whitewash by the 2023-2024 Sonoma County Grand Jury, is quite a contrast to the Alameda, Santa Clara, and Santa Cruz county grand jury reports about partisan ballot labels over the last three years.

The question that the Sonoma jury purported to answer was: "The essential question of this investigation is straightforward: are County elections free of bias, undue influence, corruption, or other irregularities that could or potentially have altered the outcomes of

our elections?"

The report falsely states that 1) "County elections are executed with a high degree of integrity."; and, expressly regarding measures, 2) "Ballot creation and distribution: ROV validates that all requirements for appearing on a ballot have been met by a candidate or a measure."

Here is just one example of the dozens of partisan measure ballot labels that the Sonoma jury allegedly reviewed.

To improve the quality of educational facilities; repair or replace deteriorating roofs, plumbing and sewer systems; modernize, renovate and construct classrooms, restrooms and school facilities; make health and safety improvements; and provide systems addressing power outages; shall Kenwood School District's measure to issue \$17,000,000 in bonds at legal interest rates be adopted, raising approximately \$995,000 annually while bonds are outstanding averaging 3 1/8% per \$100 of assessed value, with oversight, annual audits and all funds improving local schools? *Sonoma County, Measure F, November 8, 2022.*

No bias there. Nothing to see here. Just move along. Did the Sonoma jury have an agenda? Should the members of the Sonoma jury, county counsel, and the supervising judge be investigated for the criminal act of filing a false report?

Statutory Filing Deadline

The stockings may be hung by the chimney with care, in hopes that St. Nicholas soon would be there, but you have no duty to give your principals an early Christmas present. They deserve a lump of coal.

You have now arrived at the statutory filing deadline (E-88) for the November election. That deadline is for filing by local government agencies. There is no deadline for rejecting non-conforming ballot labels. In fact, the local agencies have up until Wednesday, August 14, 2024 to make changes to any filed materials. They are your principal. You are their agent for conducting elections. You had better give every one of them notice. They are likely personally civilly and criminally liable too.

We will accept your failure to reject every non-conforming ballot label as a tacit admission that you have decided to continue your criminal acts and print and circulate government campaign arguments on the ballot.

We will also accept your letter of resignation, effective immediately, in lieu of performing your mandatory ministerial duties.

The Kicker

These are crimes people! Did you know that you can be removed from office for what you are doing?

Criminal liability, personal civil liability, removal from office. Is that personal enough for you?

The removal from office also includes a permanent lifetime ban of employment by the government. It bypasses a corrupt district attorney who might be shielding you. It requires a jury, not a potentially biased judge. It just requires an accusation. Check out Government Code section 3060 et seq.

But ..., but ..., county counsel said it was ok. Do you think a jury is going to accept that? Has county counsel put it writing? Does county counsel cite any statutes or court opinions? Is county counsel going to defend you in a criminal trial?

Don't lose any sleep over this. You have until Wednesday, the 14th, to put your office on the lawful path.

Conclusion

This is your third notice. You have failed to respond to previous notices in 2018 in connection with AB195.

Violating the law has consequences. Use of public moneys for purposes not authorized by law has consequences.

In *Stanson*, the Supreme Court redefined the elements for a prosecution for misuse of public moneys in connection with elections. One of those elements is notice. This is your notice under *Stanson*.

Remember, however, that you are using the United States Postal Service and in some instances the Internet to perpetrate the fraud on the voters. So, you should not be shocked that you may also be liable for federal crimes like honest services fraud (18 U.S.C. 1341) and wire fraud (18 U.S.C. 1343). There are only two elements necessary to prove honest services fraud.

Your long-standing pattern of offenses against the elective franchise in connection with printing and circulating government campaign arguments on ballots using public moneys are all public record. The statute of limitations has not yet run on many of your prior offenses.

We demand that you act in accordance with and as required by the law. We demand that you honor the oath that you took when you accepted your office, and your conscience, should you find that you have one.

It only takes a few minutes to reject a ballot label. It takes the burden of proof off of your shoulders and puts it on your principals. It really is that easy. You could even send them a copy of this letter.

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