

**TO:**

Mary Bedard, Registrar of Voters  
1115 Truxtun Ave # 100 Bakersfield CA 93301

Mark L. Nations, County Counsel  
1115 Truxtun Ave 4th Fl Bakersfield CA 93301

**DATE:** November 28, 2018

**RE:** Demand to Not Certify Elections Due to Offenses Against the Elective Franchise

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We are extremely disappointed that you did not respond to, much less heed, our notices of March 19, 2018 and August 3, 2018 regarding conforming school measure ballots to the mandatory requirements of the Elections Code and the Education Code.

**Non-Conforming Ballot Statements**

By not conforming the ballot statements to the law, you have permitted the school and college districts (and other taxing agencies) to deceive the voters about the nature of the underlying measure. When the law is ignored, the measure itself, as you well know, is never referenced in the ballot statement. That is by design. Elections Code 13119(a), if applied as written, vanquishes that deception. In addition, the printed full text of the measure is separated from the sample ballot in the voter information guide by pages and pages of material and advertisements resulting in barely one in twenty voters recognizing that they are voting, not on a marketing question, but on a contractual obligation specified in the text of the measure.

The purpose of the legislature's mandatory requirements are to improve disclosure and end deception. Both of these are substantive and not merely procedural or directory in nature.

The legislature has determined that your printing and circulation of non-conforming ballot statements is an offense against the elective franchise and subject to criminal sanctions.

The following measures appear to or are likely to exceed the constitutional threshold for passage. Each ballot statement contains one or more points of non-conformance.

**Measure E** (Prop 39 bond) 46.32% (Uncertain)

To improve Wasco Union High School by upgrading facilities, including new gymnasium and swimming pool; repairing, constructing, reconstructing and equipping educational facilities to better serve students and community; to qualify for potential State matching funds, shall Wasco Union High School District issue \$40,500,000 in bonds repaying an annual average of \$2,650,000, at approximately \$29.65 per \$100,000 of assessed value, while bonds are outstanding, at legal interest rates, with no funding for employee salaries or pensions, and required audits and citizens' oversight?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- no duration of the tax to be levied - ELC 13119(b)[3]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure G** (Prop 39 bond) 65.96% (Passing)

To repair or replace aging schools with safe, modernized facilities, improve student safety and security, rehabilitate deteriorated roofs, plumbing and

electrical systems, upgrade technology, acquire, construct, repair, and equip schools, and provide access to facilities needed for success, shall Arvin Union School District issue \$15,000,000 in bonds at legal rates, levying on average \$900,000 annually while bonds are outstanding at 3 cents per \$100 of assessed value, with independent citizens' oversight and all money dedicated to Arvin schools?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- no duration of the tax to be levied - ELC 13119(b)[3]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure H** (Prop 39 bond) 57.27% (Passing)

To improve school safety and security, construct/equip new school facilities to relieve severe overcrowding, and repair/upgrade older classrooms, labs, facilities and instructional technology supporting student achievement/college readiness in math, science, engineering, technology, arts, shall Panama-Buena Vista Union School District issue \$90 million in bonds, at legal rates, an estimated 3 cents per \$100 assessed value (averaging \$18 million annually) for approximately 20 years to improve neighborhood K-8 schools, with citizen oversight and all money locally controlled?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure I** (transactions and use tax) (Uncertain)

To improve county services in the unincorporated area of Kern County including public safety and protection, parks, code enforcement, roads and libraries, shall a 1% (1 cent) general purpose sales tax be adopted in the unincorporated area with the estimated \$35 million in annual revenue to be used for general purposes in the unincorporated area only with input from a citizen advisory committee comprised of residents of the unincorporated area?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure J** (cannabis business tax) (Uncertain)

Shall County adopt the ordinance proposed by initiative petition and known as Medicinal Cannabis Measure to retain the ban on commercial adult-use cannabis activity; allow and regulate commercial medicinal cannabis cultivation, manufacturing, testing, retailing, distribution, and microbusiness in the unincorporated area, subject to State licensing requirements; allow unlimited land use permits for such activity; and allow County to levy a perpetual 7.5% business tax on the adjusted gross income of such activity [fiscal impact unknown]?

Non-conforming offenses for this ballot statement include:

- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure K** (cannabis business tax) (Uncertain)

Shall County adopt the ordinance proposed by initiative petition and known as Kern Regulation and Taxation of Cannabis Act of 2018 to allow and regulate commercial medicinal and adult-use cannabis retailing, testing, cultivation, processing, packaging, and distribution in the unincorporated area, subject to State licensing requirements; impose permit fees on cannabis businesses; allow no more than 35 dispensary permits; and levy a perpetual 5% annual tax on the gross receipts of dispensaries [fiscal impact unknown]?

Non-conforming offenses for this ballot statement include:

- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure L** (utility users tax) (Uncertain)

Shall the measure establishing a utility users tax of up to a maximum of 7% on charges for telecommunications, video, electricity and gas services to raise approximately \$700,000 to be spent for city services, including police, fire, and other emergency services, and street, sidewalk, sewer, public works improvements and other unrestricted purposes, be adopted?

Non-conforming offenses for this ballot statement include:

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

**Measure M** (cannabis business tax) (Uncertain)

Shall the measure establishing a tax of up to 6% of gross revenues on commercial cannabis business operations, excepting cultivation, and a tax of up to \$6 per square foot of space used for commercial cannabis cultivation, as adjusted annually by CPI, all as described in the Ordinance enacting the tax, to raise approximately \$150,000 to \$300,000 annually for unrestricted purposes, including police, fire, and public improvements, be adopted?

Non-conforming offenses for this ballot statement include:

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

**Measure N** (transactions and use tax) (Uncertain)

To prevent cuts/improve 911 emergency response, police/fire protection, anti-gang/drug units, neighborhood police patrols; rapid response to

assaults, robberies, gang violence, home burglaries; crime prevention; address homelessness; retain, attract jobs/businesses; unrestricted general revenue purposes; shall the measure be adopted approving an ordinance establishing a one-cent sales tax providing \$50,000,000 annually until ended by voters, requiring independent audits, citizens oversight, all funds for Bakersfield?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure P** (utility users tax) (Uncertain)

To maintain vital services, improve McFarland's streets and roads, maintain local police and fire protection and 911-emergency response times; shall the city of McFarland enact a utility users tax at the rate of five percent for all utilities, for ten years, providing approximately four hundred ninety-four thousand dollars annually with exemptions for senior citizens and funds used only in McFarland, subject to independent financial audits and citizen oversight?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure Q** (parcel tax) (Uncertain)

To maintain access to life-saving emergency medical care for victims of accidents, heart attacks, strokes and other medical emergencies; keep equipment and hospital facilities up-to-date; expand the Emergency Department; and attract qualified doctors and medical specialists, should Kern Valley Healthcare District levy an annual special tax of \$82 per parcel for 40 years, raising approximately \$1,100,000 annually, with a citizen oversight committee, mandatory audits, and no money for employee salaries?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

**Measure R** (Prop 46 bond) (Uncertain)

To improve parks and recreation for children, families and senior citizens; upgrade and renovate outdated parks; build new restrooms; construct a community, aquatic, and senior center; shall Tehachapi Valley Recreation & Park District issue \$43,000,000 of bonds at legal rates, raising on average \$2,400,000 annually as long as bonds are outstanding at a yearly rate of approximately \$0.039 per \$100 of assessed value, with NO money for salaries and all money staying local and cannot be taken by the state?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- no duration of the tax to be levied - ELC 13119(b)[3]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

### **Failure of Measures to Qualify Under the Requirements of Proposition 39**

Beyond your willful failure to conform the ballot statements to the statutory requirements, you have failed to qualify the Proposition 39 measures themselves with respect to the constitutional requirements that the measures claim to avail themselves of, to wit:

1) prohibit the use of bond proceeds for any purpose, including salaries and operating costs, other than the construction, reconstruction, rehabilitation, and replacement of school facilities [Art. XIII A, Section 1(b)(3)(A)], and

2) present to the voters, before they vote, a list of the specific school facility projects to be funded by the proceeds. [Art. XIII A, Section 1(b)(3)(B)]

Each and every one of the measures contains language specifically intended to avoid the limitations as to the authorized uses of the bond proceeds.

Each and every one of the measures contains language specifically intended to expend bond proceeds on purposes other than construction of school facilities. Among the unauthorized purposes, the measures explicitly purport to authorize expenditures for administration and operating costs, notwithstanding the explicit prohibition of Proposition 39.

Each and every one of the measures contains language specifically intended to expand the project list to anything and everything under the sun, all to be determined at a later date.

Your failure to qualify Proposition 39 measures appearing on the ballot is, similarly, an offense against the elective franchise.

### **Impartial Analysis**

The allegedly impartial analysis of measures in which county counsel is required to present independent, impartial legal opinions, is merely a regurgitation, often using direct quotations, of language from the measure itself or from the tax rate statement.

A reading of the analysis provides the voting public with no insight that is not already in the other materials in the voter information guide. The highlight of the analysis appears to be that "Yes" means "Yes" and "No" means "No." Woe to those without a top-notch public education who might be confused.

Moreover, county counsel fails to address the requirements of the Elections Code and, for school bond measures, the Education Code with respect to the ballot statement. County counsel also fails to address the language that purports to override the qualification restrictions with respect to Proposition 39 measures.

The effect of a wholly uncritical opinion is that those voters who read the Impartial Analysis are misled by a putatively authoritative source.

### **Conclusion**

By allowing proponents to avoid mandatory disclosure requirements, no one can know, with any degree of certainty, what the will of the voters might have been had they been presented with an honest ballot containing all mandatory disclosures, containing no false or misleading statements, and containing no argumentative or prejudicial language.

As one state supreme court has held:

No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told "the chief purpose of the measure."

Those who object to forced taxation through the fraudulent and unlawful ballot statements and measures have been injured due to your foregoing willful failures to follow the law. The only adequate remedy for this total contempt and disregard of the laws enacted to guarantee a fair and impartial election process is that you not certify the elections identified above.

Sincerely,

Richard Michael  
California School Bonds Clearinghouse

Alex Aliferis  
Former Executive Director of Contra Costa Taxpayers Association

Bernadette Chenard-Hsing  
Activist

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Libertarian Party of California Chair

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