

**TO:**

Claudio Valenzuela, Registrar of Voters  
1441 Schilling Pl - North Bldg Salinas CA 93901

Charles McKee, County Counsel

**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 K** (transactions and use tax) (Uncertain)

Shall the measure increasing the City of King's current one-half percent sales tax to one percent to generate an estimated increase of \$800,000 annually for general city expenses, such as public safety and other essential services, street repairs, economic development efforts, and improving the City's overall financial solvency subject to citizen oversight, an annual audit, and expiration of the tax in 10 years 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 sustain and improve city services such as fire, police, road repairs & maintenance, shall the ordinance increasing the rate of the City of Marina's existing transactions & use ("sales") tax from 1% to 1.5% estimated to generate approximately \$4,890,000 annually as compared with \$3,260,000 for the current tax and extending the expiration date for the tax to March 31, 2034 be adopted?

Non-conforming offenses for this ballot statement include:

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

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

Gonzales Quality of Life Temporary Tax Amendment Measure. Shall the City of Gonzales increase its Temporary Transaction and Use Tax from one-half percent (0.5%) to one percent (1%), and extend the life of the tax from ten to twenty years, subject to continued independent audit and citizens' oversight committee review, with all funds being used exclusively for Gonzales programs, initiatives and projects? The tax amendment would generate an estimated additional \$550,000 annually.

Non-conforming offenses for this ballot statement include:

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

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**Measure P** (transient occupancy tax) (Uncertain)

To sustain and improve city services such as fire, police, road repairs & maintenance, shall the ordinance increasing the rate of the City of Marina's existing transient occupancy tax ("hotel tax") from 12% to 14% estimated to generate approximately \$3,733,000 annually as compared with \$3,200,000 for the current tax and to continue until repealed by the voters be adopted?

Non-conforming offenses for this ballot statement include:

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

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**Measure Q** (Prop 39 bond) (Uncertain)

South Monterey County Joint Union High School District Student Safety/Repair Measure. To upgrade emergency communication systems, safety door locks, security cameras, lighting, repair deteriorating classrooms, restrooms, replace outdated/unsafe portables, electrical wiring, earthquake retrofit classrooms/buildings, construct, acquire, repair classrooms, facilities/equipment, shall this South Monterey County Joint Union High School District measure authorizing \$20,000,000 in bonds at legal rates, levying 2 cents/\$100 assessed valuation, raising approximately \$1,400,000 annually for local schools while bonds are outstanding, be adopted, requiring citizen oversight, audits, without increasing current tax rates?

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]
  - use of title to create prejudice for the measure - ELC 13119(c)[4]
  - objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
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**Measure R** (Prop 39 bond) (Uncertain)

South Monterey County Joint Union High School District Academic/Vocational Classroom Improvement Measure. To upgrade academic, vocational/agriculture education classrooms, replace outdated science, technology/computer labs, provide classrooms for technology careers, remove hazardous materials like asbestos/lead paint, construct, acquire, repair classrooms, facilities/equipment, shall this South Monterey County Joint Union High School District measure authorizing \$20,000,000 in bonds at legal rates, levying 2-cents/\$100 assessed valuation, approximately \$1,400,000 annually for local schools while bonds are outstanding, be adopted, requiring citizen oversight, audits, without increasing current tax rates?

Non-conforming offenses for this ballot statement include:

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

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

Continuation of Street Infrastructure Rehabilitation Tax. Without increasing the existing one cent per dollar transaction and use ("sales") tax, shall the measure be adopted to continue the tax for eight years to fix streets, sidewalks, and potholes; improve access and safety for senior citizens, disabled residents, and others; and repair the storm drain system to protect our beaches/Monterey Bay, with all revenue exclusively applied to these specific purposes, subject to citizen oversight and independent audits?

Non-conforming offenses for this ballot statement include:

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

**Measure T** (parcel tax) (Uncertain)

Shall the North County Fire Protection District of Monterey County impose an annual special tax to fund the District's response to fire, medical, rescue and hazardous condition emergencies; equipment replacement; training; and public fire prevention programs at the following rates: \$39 per residential unit, \$63.75 per unimproved lot/agricultural parcel, and \$0.10 per square foot per commercial/industrial building with a minimum of \$39; generating estimated revenues of approximately \$760,000 annually with no termination date?

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 U** (transient occupancy tax) (Uncertain)

Shall the measure amending the Pacific Grove Municipal Code be adopted to increase the City of Pacific Grove's Transient Occupancy Tax (TOT), effective July 1, 2019, imposed on occupants of short-term rentals such as hotel rooms, from 10% to 12%, and apply TOT to total rent paid by a guest for the short-term rental, including online travel companies, which is anticipated to raise \$1,135,000 annually and will continue until repealed by City Council or City voters?

Non-conforming offenses for this ballot statement include:

- 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 V** (cannabis business tax) (Uncertain)

Shall the ordinance permitting operation in the City of Marina of certain cannabis businesses and establishing a business license tax for such businesses at rates not to exceed 5% of gross receipts, to continue until repealed by the voters and, according to proponents, potentially generating \$40,000 to \$200,000 annually be adopted?

Non-conforming offenses for this ballot statement include:

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

Fred H. Crane  
Taxpayer

Linda Davis  
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Voting and Taxpayers Advocate

Alison Herson  
Taxpayer in Allan Hancock College Joint Community College District

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The Center for Truth in School Bond Measures ID 1408280

Miyo Prassas  
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Michael Robertson  
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Honor "Mimi" Robson  
Libertarian Party of California Chair

Sally Smith  
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