

TO:

Neal Kelley, Registrar of Voters
1300 S Grand Ave, Bldg C Santa Ana CA 92705

Leon Page, County Counsel

DATE: November 28, 2018

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

We are extremely disappointed that you did not respond to, much less heed, our notice of 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 G (Prop 39 bond) 57.59% (Passing)

To renovate, construct, acquire classrooms, science labs, instructional technology/equipment for student achievement in math, science, arts, engineering/careers; repair/upgrade 50 year old high school classrooms/school facilities, deteriorating roofs, plumbing, sewer/electrical systems; improve student safety, shall this Los Alamitos Unified School District measure authorizing \$97,000,000 in bonds at legal rates, levying approximately 3 cents/\$100 assessed value (\$6,200,000 annually) while bonds are outstanding be adopted, funds for local schools only, with taxpayer oversight, no administrator salaries?

Non-conforming offenses for this ballot statement include:

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

Measure I (Prop 39 bond) 64.23% (Passing)

To update classrooms, science labs and facilities that prepare students for

college and careers in math, science, technology, arts and skilled trades, improve student safety and security, repair/replace deteriorating roofs, plumbing and electrical systems and remove asbestos; shall Santa Ana Unified School District issue \$232 million in bonds at legal rates, levying 2 cents per \$100 of assessed value (\$14 million annually) while bonds are outstanding, with citizen oversight, annual audits, and all funds used for local schools?

Non-conforming offenses for this ballot statement include:

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

Measure O (transactions and use tax) (Uncertain)

If adopted, would establish a one-cent (1%) transactions and use (sales) tax on the sale of all tangible personal property sold at retail in the City, whose revenues may be used for general governmental purposes of the City, including provision of effective 9-1-1- emergency response, preventing cuts to police/firefighter/paramedic staffing levels, neighborhood police patrols, gang/drug prevention, protect local drinking water supplies, repair streets/potholes, address homelessness, support affordable housing options, and protect vital city services.

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- word count of 78 exceeds statutory limit - EDC 5322/ELC 13247

Measure P (transactions and use tax) (Uncertain)

Shall the measure to improve emergency evacuation and access routes, 9-1-1 emergency response in case of disaster, and help reduce wildfire risk by moving overhead wires underground on Laguna Canyon Road, key evacuation routes, and other areas, and providing other fire safety measures and improvements, by levying a one-percent (1%) dedicated sales tax for 25 years raising approximately \$5.6 million annually, requiring financial audits, with all funds for Laguna Beach only, be adopted?

Non-conforming offenses for this ballot statement include:

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

Measure U (transactions and use tax) (Uncertain)

To maintain Placentia's financial viability and provide funding for its local police department and essential city services, including street/pothole repair; quick responses to 911 emergencies; fire protection/emergency medical services; gang, drug, graffiti prevention; public cleanliness; general services,

shall the ordinance establishing a one cent transactions and use (sales) tax be adopted, providing approximately \$5,000,000 annually until ended by voters, with citizens' oversight, independent audits, all funds controlled locally?

Non-conforming offenses for this ballot statement include:

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

Measure W (transient occupancy tax) (Uncertain)

Shall Ordinance No. 1657 be adopted to increase the transient occupancy tax ("TOT") to 12½ percent in perpetuity, for an estimated annual increase of \$570,000, and to clarify the definition of "hotels" that are subject to the tax?

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 X (transactions and use tax) (Uncertain)

To maintain effective 9-1-1 response; retaining firefighters and police officers; addressing homelessness; fixing streets; maintaining parks, youth and senior services, and unrestricted general revenue purposes; shall the sales tax be increased one and one half (1.5) cents until 2029 providing approximately \$60 million dollars annually, then reduced to one (1) cent providing approximately \$40 million dollars annually, until 2039, requiring annual audits, citizens oversight and for Santa Ana use only?

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 Y (cannabis business tax) (Uncertain)

Shall Chapter 21 of the Santa Ana Municipal Code be amended to enact both a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing cannabis and related products to raise between \$8 to \$12 million to fund public safety, parks, youth and senior services, among other general City services?

Non-conforming offenses for this ballot statement include:

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

Measure BB (transactions and use tax) (Uncertain)

To offset significant budget cuts and state takeaways and maintain City

services, including community police patrols, paramedic services, fire protection, marine safety/lifeguards, school safety, 9-1-1 response times, and other essential general services, shall an ordinance be adopted for a one percent sales tax to raise approximately \$5,000,000 annually until ended by voters, with independent audits to ensure transparency and funds spent only in Seal Beach?

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 CC (transient occupancy tax) (Uncertain)

Shall the measure to provide police, fire, emergency medical and rescue protection, to prevent fires and power outages, to maintain parks and roads, and to provide other local services and improvements in the community by raising the transient occupancy tax (paid by short-term hotel and other guests) from 10% to 13% until ended by voters, providing approximately \$480,000 annually, with audits, all funds only for Tustin, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure LL (Prop 39 bond) 58.88% (Passing)

To repair and modernize aging classrooms/school facilities at local elementary/intermediate schools to meet current building/safety standards, repair termite damage, dry rot, deteriorating roofs, plumbing, and electrical, improve student safety/security systems, and upgrade classrooms, science labs, and facilities to support student achievement in math, science, technology, and arts, shall Lowell Joint School District issue \$48,000,000 in bonds at legal interest rates, with independent citizen oversight, no money for administrator salaries, and all money staying local?

Non-conforming offenses for this ballot statement include:

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

Failure of Measures to Qualify Under the Requirements of Proposition 39

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

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

1(b)(3)(A)], and

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

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

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

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

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

Impartial Analysis

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

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

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

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

Conclusion

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

As one state supreme court has held:

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

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

Sincerely,

Richard Michael
California School Bonds Clearinghouse

Alex Aliferis
Former Executive Director of Contra Costa Taxpayers Association

Bruce Boyer

Candidate for Sheriff, Ventura County

Bernadette Chenard-Hsing
Activist

Fred H. Crane
Taxpayer

Linda Davis
Advocate for Honest School Bonds

John A. Davison
Voting and Taxpayers Advocate

Alison Herson
Taxpayer in Allan Hancock College Joint Community College District

Dan Hilker
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Sandra Kallander
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Michael R. Kupperberg
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David E. Kenney, Esq.

Peter Loeb
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Savina Q. Low
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Douglas Mills
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Miyo Prassas
Hermosa Beach Community Advocate

Michael Robertson
Concerned Taxpayer

Honor "Mimi" Robson
Libertarian Party of California Chair

Sally Smith
Taxpayer in San Diego Unified School District

Ludd A. Trozpek
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