

TO:

Tralyn Davis, Elections Technician III

Gregory P. Priamos, County Counsel
3960 Orange St # 500 Riverside CA 92501

Ronak N. Patel, Deputy 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 E (Prop 39 bond) 58.40% (Passing)

To improve the quality of education; modernize outdated classrooms, restrooms and school facilities; make health, safety, and security improvements; and construct a new barn/agricultural rehabilitation center; shall the Palo Verde Unified School District issue \$24,800,000 of bonds at legal interest rates, generating on average \$1,300,000 annually as long as bonds are outstanding at a rate of approximately 4.9 cents per \$100 assessed value, with citizens' oversight committee, NO money for salaries and all money staying local?

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 G (cannabis business tax) (Uncertain)

Shall the measure known as the COMMERCIAL MARIJUANA DISTRIBUTION AND MANUFACTURING OPERATIONS TAX MEASURE, estimated to annually collect approximately \$2.3 million from commercial marijuana distribution and manufacturing operations (through a maximum tax rate of ten cents for each \$1 of proceeds), to be administered and implemented pursuant to Chapter 3.40 of Title 3 of the Perris Municipal Code, with no sunset clause, be adopted?

Non-conforming offenses for this ballot statement include:

- use of title to create prejudice for the measure - ELC 13119(c)[4]

Measure K (transient occupancy tax) (Uncertain)

To maintain general City services such as police and fire protection, street operations and maintenance, and community activities including Indian Wells Golf Resort, shall the Indian Wells Municipal Code be amended to increase the Transient Occupancy (Hotel) Tax rate from 11.25% to 12.25% of rent charged for transient occupancy of any hotel room or similar lodging, generating approximately \$700,000 annually for unrestricted general revenue purposes, until ended by voters?

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 L (cannabis business tax) (Uncertain)

Shall the ordinance which legalizes retail cannabis sales and commercial cannabis activity in certain zones, imposes operational requirements, and imposes an annual general tax of up to \$25 per square foot of space used for retail cannabis sales and up to \$3 per square foot for space used for other commercial cannabis activity (potentially generating \$196,875 annually from retail sales and an unknown amount from other commercial activity and continuing until repealed) 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]

Measure M (cannabis business tax) (Uncertain)

Shall an ordinance be adopted maintaining safe, clean public areas/improving local services including neighborhood police patrols, fire, 911 response; gang, youth violence prevention, after-school programs; combat robberies/burglaries; repair potholes; unrestricted general revenue purposes; by establishing a tax not exceeding 8% of gross receipts /\$15 per square foot for cultivation, generating approximately \$2,200,000 annually until ended by voters, with independent audits, public review, all funds used 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 N (cannabis business tax) (Uncertain)

To add between \$644,800 and \$1,289,600 annually for unrestricted general revenue purposes such as police, fire, paramedics, parks, roads, senior programs, and other municipal services, shall a measure imposing a commercial cannabis cultivation tax (set at \$15 per square foot of canopy space and potentially increasing to \$25 per square foot), and imposing up to 10% tax on gross receipts of cannabis manufacturing and testing laboratory facilities, with both taxes continuing until repealed, 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]

Measure O (cannabis business tax) (Uncertain)

To add between \$1,168,800 and \$1,558,400 in funding annually for unrestricted general revenue purposes such as police, fire, paramedics, parks and recreation, road improvements, capital maintenance, senior and youth programs, and other general municipal services, shall a measure imposing a 10% tax on the gross receipts of cannabis retail businesses in city (with the tax continuing until repealed, and the rate potentially increasing to 15%) 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]

Measure Q (cannabis business tax) (Uncertain)

To improve general City services, such as police/emergency response, parks, youth/senior services, and street repair, shall the City of Palm Desert enact a general tax on cannabis businesses of up to \$20 per square foot for cultivation; up to 3% of gross receipts for cannabis manufacturing; and up to 15% of gross receipts for cannabis retail sales and delivery; generating up to \$5,430,000 annually for unrestricted general revenue purposes, until ended by voters?

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 R (transactions and use tax) (Uncertain)

To keep Norco "Norco," continue protecting Norco's unique animal-keeping lifestyle, avoid further infrastructure deterioration, continue restoring and maintaining local streets, trails, facilities, equestrian amenities and parks, and prevent additional cuts to police, fire and emergency medical services; shall the City of Norco adopt a locally-controlled one-cent sales tax, generating approximately \$4.5 million annually, until ended by voters, requiring independent audits and a Citizens' Oversight Committee?

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)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure S (utility users tax) (Uncertain)

To continue life safety services/911 emergency response times; preserve local control; prevent cuts to sheriff's deputies, firefighters/paramedics; keep Canyon Lake Fire Station open; and other essential City services, shall Ordinance No. 177 be adopted continuing the existing, voter-approved 3.95% utility users' tax providing \$1,000,000 annually until ended by voters, continuing to require independent audits, all funds used for Canyon Lake, with no tax rate increase?

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 T (transactions and use tax) (Uncertain)

To maintain the City of Murrieta's long-term finances, provide funding for general services including faster response times to 911 emergencies, improved fire protection/paramedic services, increase police to strengthen crime prevention, reduce gang activity/ drug crimes, graffiti removal, and parks and recreation/street maintenance/pothole repair, shall the measure establishing a one-cent sales tax until ended by voters be adopted, providing approximately \$14,000,000 annually for city services, requiring citizen oversight and 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 (Prop 39 bond) 50.59% (Uncertain)

To construct a high school for Menifee, additional classrooms at high schools serving Perris, Romoland, and Nuevo, relieve severe overcrowding, improve our schools, student safety, college readiness, access to math, science, engineering, technology, skilled trades, repair, acquire, construct classrooms/labs/equipment/facilities, shall this Perris Union High School District measure authorizing \$148,000,000 in bonds at legal rates, levying approximately 3¢/\$100 assessed value (averaging \$10,000,000 annually) while bonds are outstanding, be approved, with citizen oversight/ all money locally controlled?

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 X (Prop 39 bond) 59.77% (Passing)

To improve neighborhood school safety/security; upgrade academic, science, technology, engineering, math, vocational classrooms/labs; repair deteriorating plumbing, roofs, electrical systems; remove asbestos/lead paint; shall Hemet Unified School District issue \$150 million in bonds at legal rates, an estimated 4.9 cents per \$100 assessed value (averaging \$10 million annually) while bonds are outstanding, under a no-tax-rate-increase financing plan, with citizen oversight, independent audits, and no money for Sacramento?

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 Y (cannabis business tax) (Uncertain)

Shall the privately proposed measure be adopted allowing an unlimited number of non-retail cannabis businesses in manufacturing zones without a city-issued discretionary approval, subject to limited separation requirements, giving certain cannabis business operators priority over others in establishing their businesses in the City, and taxing cannabis businesses at the rate of \$10 / square foot of space used in connection with commercial cannabis activity, estimated to yield \$1,000,000 in revenues annually and in perpetuity?

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 Z (cannabis business tax) (Uncertain)

Shall the City-sponsored measure be adopted establishing a tax on cannabis businesses at the maximum rates of 25% of gross revenues or \$30 / square foot of cultivation space, which will apply to illegally operating businesses and, if action is taken after December 31, 2020 to permit cannabis businesses, will apply to legally-established cannabis businesses, estimated to generate at least \$3,500,000 annually in perpetuity if cannabis businesses are permitted; and prohibiting cannabis businesses through December 31, 2020?

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 CC (Prop 39 bond) 60.67% (Passing)

SAN BERNADINO VALLEY/ CRAFTON HILLS COLLEGE JOB TRAINING, SAFETY, REPAIR MEASURE. To upgrade classrooms, labs, Veterans Center, career counseling/job training facilities for science, engineering, nursing, industrial careers; improve student safety, access to affordable, high quality education; repair, construct/acquire classrooms, facilities, sites, equipment, shall San Bernardino Community College District's measure authorizing \$470,000,000 in bonds at legal rates, levying 2.5 cents/\$100 assessed value, \$28,000,000 annually, while bonds are outstanding, be approved, with citizen oversight, all money staying local?

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]
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- 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

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

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Former Mayor, Pacifica, CA

Savina Q. Low
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Miyo Prassas
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Honor "Mimi" Robson
Libertarian Party of California Chair

Sally Smith
Taxpayer in San Diego Unified School District

Ludd A. Trozpek
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Dawn Urbanek
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