

**TO:**

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**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 4, 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 B** (cannabis business tax) (Uncertain)

To support early childhood education, drug prevention, literacy, and other programs for children and youth; public health; public safety and enforcement of cannabis laws; shall an ordinance imposing a special tax on commercial cannabis businesses in unincorporated San Joaquin County at a rate of 3.5% to 8% of gross receipts, with an additional cultivation Square Footage Payment of \$2.00 per square foot of cultivation space annually adjusted by Consumer Price Index (CPI) thereafter, 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 D** (cannabis business tax) (Uncertain)

Shall the City of Tracy adopt an ordinance establishing a special tax on cannabis businesses at annual rates, not to exceed \$12.00 per canopy square foot for cultivation (adjusted for inflation), 6% of gross receipts for retail cannabis businesses, and 4% for all other businesses; which is expected to generate an estimated \$35,000 to \$100,000 annually to fund police and code enforcement services and that shall be levied until repealed

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 E** (Prop 39 bond) (Uncertain)

To better prepare our students for college, careers and jobs by modernizing schools, improving access to technology and learning, and constructing a new stadium and all-weather track for year-round use, shall Escalon Unified School District be authorized to issue \$25,000,000 in bonds at legal rates, raising an average of approximately \$1,620,000 annually to repay issued bonds through maturity from levies of approximately \$0.30 per \$100 of assessed valuation, requiring oversight, audits, and no money for administrator 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)
- 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) (Uncertain)

To upgrade educational facilities, shall Linden Unified School District: modernize classrooms and science labs; improve safety and security; modernize, construct and equip school and support facilities; update athletic facilities; improve parking and energy usage; and payoff outstanding liabilities; by issuing \$31,200,000 in bonds repaying an annual average of \$2,114,000 for 34 years at approximately \$59.82 per \$100,000 of assessed value, at legal interest rates with independent oversight, no funding for employee salaries, and all funds staying in District?

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 I** (Prop 39 bond) (Uncertain)

To provide students with improved learning environments, build classrooms to maintain smaller classes, replace older portable classrooms with permanent buildings, construct science labs, and improve career technical facilities, shall Ripon Unified School District be authorized to issue

\$38,500,000 in bonds at legal rates, raising an average of approximately \$2,400,000 annually to repay issued bonds through maturity from levies of approximately \$0.036 per \$100 of assessed valuation, requiring a citizen's oversight committee, audits, and no money for administrator 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)
- omission of maximum rate of interest - EDC 15122[3]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

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

To make neighborhoods safer, maintain/improve essential City of Lodi services including: reducing crime; maintaining neighborhood police patrols/gang violence intervention/prevention; fixing potholes/city streets; maintaining neighborhood fire stations; enhancing rapid police/fire response times by restoring firefighter and adding police positions; maintaining recreation facilities/programs; and other general fund purposes; shall the City of Lodi measure enacting an ongoing half cent local sales tax, providing \$5,400,000 annually, with independent citizen oversight, and funds spent locally, 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)

**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  
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Linda Davis  
Advocate for Honest School Bonds

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Peter Loeb  
Former Mayor, Pacifica, CA

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Douglas Mills  
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Stephen C Petzold  
The Center for Truth in School Bond Measures ID 1408280

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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