

TO:

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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 notices of March 19, 2018 and August 2, 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 U (Prop 39 bond) 62.63% (Passing)

Jefferson Elementary School District Student Safety, Repair/Improvement Measure. To improve student safety/campus security systems/fencing, attract/retain qualified staff, repair/upgrade aging classrooms/facilities, shall Jefferson Elementary School District's measure authorizing \$30,000,000 in bonds at legal rates, levying 1.5 cents/\$100 assessed value, \$2,000,000 annually while bonds are outstanding, acquiring, constructing/repairing classrooms, facilities/equipment, affordable rental housing for teachers/staff, roofs, plumbing/ electrical systems, be adopted, with oversight, all funds benefiting local schools, not taken by the State?

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]

Measure V (parcel tax) 62.14% (Uncertain)

San Mateo-Foster City Elementary School District Excellence in Education Measure. To provide necessary funding that cannot be taken by the State, attract/retain excellent teachers, enhance math, science, technology, reading/writing programs, support art/drama/music, shall San Mateo-Foster City Elementary School District's measure levying a nine year \$298, as adjusted, per parcel education tax, raising \$10 million annually, exemptions for seniors, no funds for administrators' salaries/independent citizen oversight ensuring accountability and that funds are spent as promised in Foster City/San Mateo classrooms be adopted?

Non-conforming offenses for this ballot statement include:

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

Measure W (transactions and use tax) (Uncertain)

To reduce highway traffic congestion (including 101, 280, interchanges); repair potholes, maintain streets, reduce local traffic, improve pedestrian safety in every San Mateo County city; maintain affordable transit services for seniors/people with disabilities; increase Caltrain/SamTrans capacity; reduce travel times/car trips; implement the San Mateo County Congestion Relief Plan, shall San Mateo County Transit District's Ordinance levying a 30-year half-cent sales tax with independent citizen oversight, providing approximately \$80 million annual that the State cannot take away, 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)

Measure X (Prop 39 bond) 63.43% (Passing)

To upgrade classrooms, science labs, technology, and school facilities to support student achievement and college readiness, improve student and school safety/security and repair deteriorating roofs, plumbing and electrical systems, shall San Bruno Park Elementary School District issue \$79 million at legal interest rates, levying 3 cents per \$100 of assessed valuation while bonds are outstanding, raising an average \$4 million annually to improve/repair our aging schools, with citizen oversight with all money benefitting our local community?

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 Y (parcel tax) 61.97% (Uncertain)

To improve school safety, protect vital educational programs and attract and retain highly qualified teachers and staff, shall Jefferson Union High School District (including Jefferson, Oceana, Shasta, Terra Nova, Thornton, Westmoor, and Adult-Ed High Schools) levy \$58 per parcel for 10 years (raising \$2.0 million annually) with an exemption for senior citizens, independent taxpayer oversight, annual audits, and no funds used for administrative salaries or taken by the State and spent elsewhere?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]
- 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 Z (Prop 39 bond) 60.00% (Passing)

To replace leaking roofs, plumbing/electrical systems, repair/replace classrooms for math, science, reading, writing/technology instruction, upgrade outdated safety systems to meet current safety codes, qualify for State matching funds, and acquire equipment/construct facilities, shall this Portola Valley School District measure authorizing \$49,500,000 in bonds at legal rates, levying \$3.4 million annually at \$30/\$100,000 assessed value while bonds are outstanding, be adopted, with oversight, all funds benefiting Portola Valley schools, and not taken by the State?

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 AA (cannabis business tax) (Uncertain)

Shall an ordinance be adopted to tax any cannabis business operating within the City at annual rates not to exceed \$2.00 to \$10.00 per square foot for cultivation (inflation adjustable), and 6% of gross receipts for retail, 2.5% for testing, 3% for distribution, and 4% for manufacturing, levied until repealed, estimated to raise at least approximately \$64,000 annually from deliveries and potentially more if other businesses are allowed, to fund general City services and expenses?

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 BB (business license tax) (Uncertain)

To maintain police/fire protection, paramedics, 911 emergency response, address homelessness; clean/repair streets/and public areas; retain and attract jobs/businesses; maintain Daly City financial stability and other general services, shall an ordinance be adopted increasing the City's business license tax by up to 0.05%, with a minimum of \$110 per business, providing \$420,000 annually until ended by voters, requiring independent audits and oversight, with all funds only for Daly City?

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 DD (cannabis business tax) (Uncertain)

Shall the measure funding police patrols, after-school recreation programs and other general city services by imposing a cannabis business tax on all cannabis (marijuana) businesses at an annual rate which shall not exceed 10% of gross receipts of each business, which is expected to generate an estimated \$210,000 annually and will be levied until repealed by the voters, requiring annual audits and with all funds staying in Redwood City, 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 FF (transient occupancy tax) (Uncertain)

To maintain the quality of life in South San Francisco by providing services and improvements to accommodate visitors and residents, enhance public safety, community development, parks and recreation programs, street repair and traffic circulation, and for unrestricted general revenue purposes, shall an ordinance be adopted increasing the ongoing tax on hotel guests from 10% to 12% with a 1% increase each subsequent year up to a maximum rate of 14%, providing approximately an additional \$5,920,000 annually?

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 II (Prop 46 bond) (Uncertain)

Shall a measure to provide a modern recreation center: Meeting current

earthquake, electrical, fire safety codes; Providing emergency shelter, disabled access; Restoring space for youth, senior, family fitness/arts/education programs/ classes; by issuing \$12 million in bonds, levying \$8.70 per \$100,000 assessed valuation, raising approximately \$750,000 annually while bonds are outstanding, requiring citizens oversight, independent audits, all funds spent for the purpose of restoring the recreating center, be adopted?

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

Measure KK (transient occupancy tax) (Uncertain)

Shall a City of Belmont ordinance providing funding, that cannot be taken by the State, for city services including: Fixing potholes, repairing streets and sidewalks; Maintaining neighborhood police patrols and crime prevention; Maintaining 9-1-1 emergency response times; Maintaining parks, open spaces, sports fields; Unrestricted general revenue purposes; by permanently raising the transient occupancy tax to 12% of the rent paid by guests, providing an additional \$560,000 annually, with independent audits, 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)

Measure LL (cannabis business tax) (Uncertain)

To maintain the quality of life in South San Francisco by providing public safety services to address the impact of commercial cannabis operations permitted within the City and for unrestricted general revenue purposes, shall an ordinance be adopted establishing an ongoing business license tax on all cannabis businesses of no more than 5% of gross receipts to vary by each type of permitted business, providing approximately \$100,000 to \$700,000 or more in revenues annually?

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 NN (cannabis business tax) (Uncertain)

To protect the quality of life in San Carlos by providing services and improvements needed to accommodate residents, enhance public safety, community development, parks and recreation programs, street repair and traffic circulation, and for unrestricted general revenue purposes, shall an ordinance be adopted establishing an ongoing excise tax on any cannabis business that opens, up to 10% of gross receipts of each business, estimated to provide approximately \$200,000 annually per cannabis

business?

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 PP (transient occupancy tax) (Uncertain)

To maintain and improve general Town services, such as police service levels, street operations and maintenance, as well as parks, community buildings and infrastructure; shall the Town of Colma adopt an ordinance establishing a 12% Transient Occupancy ("Hotel") Tax generating approximately \$319,000 annually until ended by voters, if a hotel is developed, requiring annual audits and no tax rate increase without voter approval?

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 QQ (transient occupancy tax) (Uncertain)

To maintain the quality of life in San Carlos by providing services and improvements to accommodate visitors and residents, enhance public safety, community development, parks and recreation programs, street repair and traffic circulation, and for unrestricted general revenue purposes, shall an ordinance be adopted increasing the ongoing tax on hotel guests from 10% to 12% with a 0.5% increase per year for subsequent years up to a maximum rate of 14% adding approximately \$1,650,000 annually?

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 RR (transactions and use tax) (Uncertain)

Shall the ordinance to fund essential city services such as protecting rapid 911 emergency response times; preventing the number of on-duty firefighters/paramedics/police officers; continuing after-school/recreation programs for children; and maintaining local library hours/programs by establishing a 0.5% sales tax, providing approximately \$8,000,000 annually until repealed by voters, with exemptions for essential purchases like food/medicine, annual audits and all funds staying in Redwood City, 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 TT (transient occupancy tax) (Uncertain)

To provide funding for vital city services such as police, fire, parks, and infrastructure maintenance, and for unrestricted general revenue purposes, shall the City of Foster City adopt an ordinance increasing the transient occupancy tax by hotel guests from the current 9.5% to 11% effective January 1, 2019 through June 30, 2019, increasing to 12% July 1, 2019, providing between approximately \$924,000 and \$981,000 annually, until repealed or amended 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 UU (cannabis business tax) (Uncertain)

Shall an ordinance be adopted by the City to establish up to a 10% tax on the gross receipts of all cannabis/marijuana businesses in Daly City if any cannabis/marijuana businesses are allowed in the city in the future, providing approximately \$450,000 annually for general public services until ended by voters, requiring audits and oversight, with all funds only for Daly City?

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 VV (transient occupancy tax) (Uncertain)

To maintain senior, youth/afterschool, parks/recreation, library, disaster preparedness programs, school safety officers, rapid response to burglaries; address homelessness; improve traffic safety; maintain Daly City financial stability and other general services, shall an ordinance be adopted increasing the City's transient occupancy (hotel) tax by up to 3% paid by hotel/motel guests, providing approximately \$300,000 annually until ended by votes, requiring audits, with all funds only for Daly City?

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]

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
Taxpayer in Allan Hancock College Joint Community College District

Sandra Kallander
Politics Reduction Activist and Voter

Michael R. Kupperberg
Sonoma County Resident of 30 plus years

David E. Kenney, Esq.

Peter Loeb
Former Mayor, Pacifica, CA

Savina Q. Low
Taxpayer

Douglas Mills
Taxpayer

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
California resident and citizen

Dawn Urbanek
CUSDWatch