

**TO:**

Joseph E Holland, Registrar of Voters  
105 E Anapamu St # 204 Santa Barbara CA 93101

Michael C Ghizzoni, County Counsel  
105 E Anapamu St # 201 Santa Barbara CA 93101

Rachel Van\_Mullem, Chief Assistant 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 A2018** (parcel tax) 61.55% (Uncertain)

To improve the quality of education; bring back the music program; enhance academic programs in science, technology, engineering, math and arts; increase student access to computers and technology; and maintain small class sizes; shall Buellton Union School District be authorized to levy \$99 per parcel annually for eight years raising approximately \$250,000/year, provide a senior citizens' exemption, have an independent citizens' oversight committee, with no funds for administrators' salaries, and require all funds to be spent locally?

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)

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**Measure D2018** (cannabis business tax) (Uncertain)

Shall a measure imposing a CANNABIS TAX of six cents per \$1.00 of non-medical retail sales proceeds, one cent per \$1.00 of cultivation proceeds, flat \$15,000 for net income less than \$2 Million and \$30,000 for net income of \$2 Million and more of manufacturing/distribution proceeds, a total

aggregate tax of six cents per \$1.00 of microbusinesses proceeds, no tax on testing, with no sunset clause, estimated to collect \$130,000 to \$470,000, 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)
- word count of 76 exceeds statutory limit - EDC 5322/ELC 13247

**Measure E2018** (Prop 39 bond) 47.59% (Uncertain)

To repair/replace leaky roofs; upgrade inadequate electrical systems; construct/modernize classrooms, restrooms/schools; replace outdated air-conditioning systems; upgrade P.E. fields/facilities for school and community use; shall Lompoc Unified School District issue \$79,000,000 of bonds at legal rates, generating on average \$5,000,000 annually as long as bonds are outstanding, at a rate of approximately \$.06 per \$100 assessed value, with annual audits, citizens' oversight, NO money for salaries, all money staying local, without increasing 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]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

**Measure F2018** (cannabis business tax) (Uncertain)

Shall an ordinance be adopted establishing a cannabis business tax on gross receipts of cannabis businesses from the sale of cannabis and cannabis products, at a rate not to exceed 10%, with initial rate of 5% and a maximum annual increase of 1% up to the maximum rate, to fund general municipal services such as street repair, parks, and law enforcement, until ended by 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 U2018** (transactions and use tax) (Uncertain)

**PUBLIC SAFETY/ESSENTIAL SERVICES:** To maintain/enhance essential services including neighborhood police patrols; firefighter staffing; gang suppression/enforcement; crime/graffiti/vandalism prevention; 911 medical response times; library, recreation, homelessness, at-risk youth programs; providing durable fiscal stability; shall the measure be approved adopting an ordinance extending Measure U at the one cent rate until ended by voters, providing \$18,000,000 annually, with no funds taken by Sacramento, requiring oversight, independent audits, 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)
- 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 X2018** (transactions and use tax) (Uncertain)

To maintain sheriff's deputies; improve disaster preparedness/response and communication during wildfires, floods, and other natural disasters; repair streets, potholes; protect local beaches/creeks from water pollution; prevent cuts to local library, senior, youth programs; address homelessness; and other general services; shall the measure be adopted to establish a 1¼% sales tax providing an estimated \$2,300,000 annually until ended by voters; requiring annual audits, all funds for Carpinteria?

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 Y2018** (Prop 39 bond) 43.78% (Uncertain)

To upgrade educational facilities/provide 21st Century technology to affordably prepare local students for jobs/university transfer, update classrooms/labs for career training in public safety, design, computer graphics, theatrical arts; acquire, construct, repair classrooms, facilities, sites/equipment, shall this Allan Hancock Joint Community College District measure to issue \$75,000,000 in bonds, at legal rates/replace bonds authorized in 2006, levy 1.1 cents/\$100 assessed value, \$2,900,000 annually while bonds are outstanding be approved, with oversight, audits, no administrators' salaries?

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]
- 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]

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**Measure Z2018** (cannabis business tax) (Uncertain)

Shall an ordinance be adopted establishing a Cannabis Business Tax on gross receipts of cannabis businesses from the sale of cannabis and related products, whether at wholesale or retail, at a rate not to exceed 10%, with initial rates of 5% (retailers), 2% (manufacturers), 4% (cultivators), and 1% (distributors and nurseries) estimated to raise \$334,000 to \$1,423,000 to fund unrestricted general revenue purposes, such as street repair, parks and police, until ended by voters?

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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