Shannon Bushey, Registrar of Voters 1555 Berger Dr Bldg 2 San Jose CA 95112

James R. Williams, County Counsel 70 W Hedding St East Wing 9th FI San Jose CA 95110

Danielle L. Goldstein, 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 notices of March 19, 2018 and August 5, 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 A (transactions and use tax) (Uncertain)

Without increasing current taxes, to fund local priorities such as:

- law enforcement and public safety;
- trauma and emergency care;
- affordable housing;
- supportive services for the homeless;
- transit for seniors and the disabled;
- children and family services;
- agricultural preservation; and
- mental health services,

shall the County of Santa Clara continue its existing one-eighth cent sales tax on an ongoing basis, estimated to raise \$50,000,000 annually, with annual public reports for fiscal accountability?

Non-conforming offenses for this ballot statement include:

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

TO:

 not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

Measure D (transient occupancy tax) (Uncertain)

Shall an ordinance be adopted increasing the maximum Transient Occupancy (Hotel) Tax rate from 11% to 14% of rent paid by a hotel guest for transient occupancy of any hotel/lodging, generating approximately \$700,000 annually for unrestricted general revenue purposes, 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 E (transient occupancy tax) (Uncertain)

To provide funding for vital City services such as ensuring modern, stable 911 emergency communications, earthquake safe fire stations and emergency command center; improving pedestrian and bicyclist safety; ensuring safe routes to schools; maintaining City streets and sidewalks; and other city services, shall the City of Palo Alto adopt an ordinance increasing the transient occupancy tax paid by hotel, motel, short-term rental guests by 1.5%, providing approximately \$2.55 million annually until ended by voters, subject to annual audits?

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 G (transactions and use tax) (Uncertain)

Shall the measure to fund essential Town services such as maintaining neighborhood police patrols; improving traffic flow to reduce congestion; repairing potholes and fixing neighborhood streets; maintaining the Town's long-term financial stability and other unrestricted general revenue purposes by enacting a one-eighth cent (\$0.125%) sales tax for 20 years, providing about \$800,000 annually, requiring Independent Citizens Oversight with public review of spending, and all revenues controlled locally, be adopted?

Non-conforming offenses for this ballot statement include:

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

Measure H (transient occupancy tax) (Uncertain)

Shall the Morgan Hill ordinance, to fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, by taxing cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$340,000 to \$750,000 annually and will be levied until repealed by the voters, 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 I (cannabis business tax) (Uncertain)

Shall the Morgan Hill ordinance, to fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, by taxing cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$340,000 to \$750,000 annually and will be levied until repealed by the voters, 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 K (transient occupancy tax) (Uncertain)

To protect and maintain essential city services, including:

- Police/fire/911 emergency response;
- Pothole, streets, sidewalks, and neighborhood park maintenance/repairs;
- Senior/youth/library programs; and
- Other services,

Shall the City of Sunnyvale adopt an ordinance increasing the transient occupancy tax paid only by hotel guests from 10.5% to 12.5%, providing approximately \$2,900,000 additional revenue annually until ended by voters, with independent audits, and all funds used locally?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure ELC 13119(c)[4]
- use of bullet points 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 M (cannabis business tax) (Uncertain)

To maintain fiscal stability/essential city services, including rapid 911 emergency response times; preventing cuts to police officers/firefighters; repairing streets/potholes; maintaining library/youth/senior services, shall an ordinance be adopted establishing a tax on commercial cannabis up to 10% of gross receipts and up to \$25 per square foot for cultivation, generating approximately \$2,200,000 annually until ended by voters, with annual independent audits, and 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 O (Prop 46 bond) (Uncertain)

To provide a police emergency operations center that is fully operational during a disaster and an innovative library in seismically safe, accessible, and energy-efficient facilities meeting current safety codes, shall the City of Campbell's measure to issue \$50,000,000 in general obligation bonds with projected levies of \$0.019 per \$100 (\$19 per \$100,000) of assessed value, generating an estimated average of \$3,025,000 annually to repay bonds through maturity, with citizen oversight and all 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)
- objectively false or deceptive statement in synopsis ELC 13119(c)[1]

Measure P (business license tax) (Uncertain)

Shall the measure to fund critical City needs such as reducing traffic congestion, enhancing bicycle/pedestrian friendly routes, providing housing affordable for a range of incomes/homeless services, by imposing a business license tax of between \$8 and \$149 per employee on average, with larger companies paying more per employee, generating about \$6 million yearly for unrestricted general revenue purposes, until ended by voters, with independent yearly audits, be adopted?

Non-conforming offenses for this ballot statement include:

- uses argumentative language ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis ELC 13119(c)[1]

Measure Q (cannabis business tax) (Uncertain)

Shall the measure to maintain and protect essential public safety services, including 9-1-1, police and fire protection, emergency medical response; reduce traffic congestion and repair roads; and provide other critical City services, including library, park maintenance, senior services, by levying a tax of up to 9 percent on gross receipts of cannabis businesses, providing about 1 million dollars per year, for unrestricted general revenue purposes, until ended by voters, with independent yearly audits, be adopted?

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

Measure R (transient occupancy tax) (Uncertain)

To provide funding to maintain general city services, including police/fire protection, 9-1-1 emergency response, senior/library services, park maintenance, pothole repair/street paving and attracting/retaining local businesses, shall an ordinance be adopted increasing the maximum transient occupancy tax paid by hotel guests from 10% up to as much as 14%, providing approximately \$5,200,000 annually until ended by voters, subject to independent, public audits, with 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 T (Prop 46 bond) (Uncertain)

To:

- Upgrade 911 communications, police, fire, and paramedics facilities to improve emergency and disaster response;
- Repair deteriorating bridges vulnerable to earthquakes;
- · Repave streets and potholes in the worst condition;
- Prevent flooding and water quality contamination;
- Repair critical infrastructure;

Shall San Jose issue \$650,000,000 in general obligation bonds with an average levy of 11¢ per \$1,000 of assessed value, averaging \$34,208,000 annually until repaid, requiring community oversight and annual audits?

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]
- use of bullet points 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 V (Prop 46 bond) (Uncertain)

To provide housing affordable for:

- working families;
- veterans;
- seniors;

- teachers, nurses, paramedics, and other workers; and
- helping homeless residents get off of local streets and out of neighborhood parks and creeks;

Shall San Jose issue \$450,000,000 in general obligation bonds with an average levy of 8 cents per \$1,000 of assessed value, averaging \$26,217,000 annually until repaid, requiring community oversight and annual audits?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure ELC 13119(c)[4]
- use of bullet points 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) 57.69% (Passing)

WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT LOCAL, AFFORDABLE, CAREER/JOB TRAINING, REPAIR, VETERAN SUPPORT MEASURE. To upgrade educational facilities/technology to prepare students/veterans for 21st-century jobs, university transfer; update science, engineering, math classrooms, labs for nursing/healthcare careers; acquire, construct, repair, classrooms, facilities, sites, equipment; shall West Valley-Mission Community College District's measure authorizing \$698,000,000 in bonds at legal rates, levying \$13/\$100,000 assessed value averaging \$39,000,000 annually while bonds are outstanding, be approved, with oversight, audits, no money for administrators' salaries/ pensions?

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

Measure X (Prop 39 bond) 55.77% (Passing)

GAVILAN COLLEGE AFFORDABLE EDUCATION/ JOB TRAINING/ COLLEGE TRANSFER/ VETERANS SUPPORT MEASURE. To upgrade classrooms, science, healthcare, technology, engineering/career training labs, repair aging facilities, shall Gavilan Joint Community College District's measure authorizing \$248,000,000 in bonds at legal rates, levying 2 cents/\$100 assessed value, \$14,000,000 annually while bonds are outstanding, constructing, acquiring, repairing classrooms, facilities, sites/equipment, Veterans Center, adding a campus in San Benito County, improving local access to affordable education, with citizen oversight, all money locally controlled, be approved?

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]
- 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 Z (Prop 39 bond) 67.98% (Passing)

To provide safe/modern schools; upgrade aging classrooms, libraries, science labs, school facilities; improve accessibility for students with disabilities; enhance student safety/security by upgrading seismic safety, fire alarms, door locks, emergency communication; provide classrooms/labs supporting science, technology, engineering, arts programs, shall Palo Alto Unified School District issue \$460,000,000 in bonds at legal rates, levy approximately \$39.40 per \$100,000 of assessed value, generating approximately \$29,500,000 annually for 28 years, with independent oversight and all funds benefitting local schools?

Non-conforming offenses for this ballot statement include:

- uses argumentative language 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 AA (Prop 39 bond) 67.99% (Passing)

MILPITAS SCHOOL SAFETY AND CLASSROOM UPGRADE MEASURE. To improve safety, provide additional classrooms and science labs to relieve elementary, middle and high school overcrowding; repair leaky roofs; update technology; and repair, construct, acquire classrooms, sites, facilities/equipment, shall Milpitas Unified School District's measure authorizing \$284,000,000 of bonds at legal rates, levying \$60/\$100,000 assessed value, averaging \$21,000,000 annually while bonds are outstanding, be approved, with oversight, annual audits, no funds for administrators' salaries, and all funds 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]
- 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]

To construct classrooms, labs, and school libraries to support student achievement, college readiness, and career training in math, science, engineering, technology, and arts; acquire, renovate, construct and equip facilities to improve older schools; to fix deteriorating roofs, plumbing and electrical systems, shall Santa Clara Unified School District issue \$720 million in bonds, raising approximately 5 cents/\$100 of assessed value (\$45 million annually) for 32 years to improve local schools, with independent citizen oversight, 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]
- 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 CC (Prop 39 bond) 62.19% (Passing)

To upgrade school safety and security systems; repair leaky roofs and windows, support programs in science, technology, English, arts, and math with 21st century infrastructure; provide essential seismic upgrades, and acquire, construct, repair sites, facilities and equipment; shall Fremont Union High School District issue \$275 million in bonds at legal rates, raising an estimated \$17.5 million annually until approximately 2050 at projected rates of 1.6 cents per \$100 of assessed valuation, with citizens' oversight and all funds staying local?

Non-conforming offenses for this ballot statement include:

- uses argumentative language 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 EE (parcel tax) 67.63% (Passing)

To provide competitive and safe learning environments, and enhance student achievement by:

- Improving hands-on science, technology, and math instructions;
- Keeping class sizes low;
- Improving teacher quality and training;
- Maintaining arts, music programs, libraries;
- Ensuring adequate student supervision and safety;

shall the Evergreen Elementary School District renew an existing parcel tax at \$125 per parcel for 7 years generating \$3.1 million annually, with citizen oversight, annual reports, senior exemptions, and no money for administrators' salaries or the State?

- objectively false or deceptive statement in synopsis ELC 13119(c)[1]
- benefits language to create prejudice for the measure ELC 13119(c)[4]
- use of bullet points 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 GG (Prop 39 bond) 68.49% (Passing)

To continue critical renovation and modernization at District schools, improve energy efficiency, upgrade safety and technology to provide high quality classrooms and maintain facilities for students and the community, shall Sunnyvale School District issue \$100 million in bonds at legal interest rates, raising an average of \$6 million annually for 32 years, at a rate of one cent per \$100 of assessed value, with independent oversight, accountability and all funds benefitting local elementary and middle 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]
- 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 HH (Prop 46 bond) 62.54% (Uncertain)

To replace the Luther Burbank School District's main building with a modern, state-of-the-art facility to provide students with a safe, secure, 21st century learning environment, and provide the local match for State grants, shall the District's measure authorizing \$10,000,000 in bonds at legal rates, raising an average of \$685,000 annually to repay bonds through final maturity from levies of approximately 8.8 cents per \$100 of assessed valuation, and no money for administrator salaries, be adopted?

Non-conforming offenses for this ballot statement include:

- objectively false or deceptive statement in synopsis ELC 13119(c)[1]
- 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 JJ (Prop 39 bond) 63.51% (Passing)

To repair leaking roofs, dry rot, termite and structural damage, upgrade wiring, fire alarms and fencing to improve student safety, repair deteriorating restrooms, and acquire, renovate, construct classrooms, equipment, sits and facilities, shall this Mt. Pleasant Elementary School District measure authorizing \$27,500,000 in bonds at legal rates, levying \$0.3 cents/\$100 assessed value, \$1,600,000 annually while bonds are outstanding, with independent citizen oversight, no money for administrators' salaries/pensions/benefits, and all money benefiting local schools?

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

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. XIIIA, 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. XIIIA, 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