



2500 Grant Road Mountain View, CA 94040
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BOARD OF DIRECTORS: Peter C. Fung, MD | Julia E. Miller | Carol A. Somersille, MD | George O. Ting, MD | John L. Zoglin

May 16, 2023

Santa Clara County Civil Grand Jury and
The Honorable Beth McGowen, Presiding Judge

Superior Court of California, County of Santa Clara
191 North First Street
San Jose, CA 95113

Re: El Camino Healthcare District Response to Santa Clara County Civil Grand Jury
Report:

"If You Only Read the Ballot, You're Being Duped"

Dear Members of the Santa Clara Civil Grand Jury and Honorable Judge McGowen:

The Board of Directors of the El Camino Healthcare District ("District") has reviewed and considered the issues and concerns raised in the 2022 findings of the Santa Clara County Civil Grand Jury Final Report titled: *"If You Only Read the Ballot, You're Being Duped"* ("Report"). This letter constitutes the District Board's response to the Report, pursuant to California Penal Code sections 933 and 933.05, which it approved at its May 16, 2023 regular meeting.

Let us first say that the District agrees with the Report's emphasis on the need for voters to fully review and understand all matters on the ballot before voting. The District and its Board have always strived to provide clear information to voters about measures placed on the ballot and will continue to do so. While the District may not intend to implement the Report's recommendations, it will continue its efforts to prepare ballot labels/questions which are clear and comply with the law, while also providing voters with impartial information to give them the tools to make a fully informed decision when voting.

Report Finding 1:

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

Board Response to Finding 1:

Dedicated to improving the health and well-being of the people in our community.



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The District disagrees with this finding. As a preliminary matter, the District does not agree with the premise of this finding – i.e., that the preparation of ballot labels/questions¹ are “unregulated at the local level” and it is therefore “easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.”

This finding disregards Elections Code section 13119 which governs the wording of ballot questions for measures. It requires the ballot question to be “a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” The District, its consultants and attorneys take this requirement very seriously. Failure to comply with this requirement would be grounds for legal challenge to the ballot question. (See Elections Code section 13314)

Under the Elections Code, ballot questions are limited to 75 words and many of these words are needed to comply with mandatory disclosures under section 13119. For tax measures, the ballot question must include the tax rate, its duration and the amount of money to raise annually by the measure. Bond measures are subject to other requirements, including disclosure of the principal amount, maximum interest rate and the purpose for which the bond proceeds may be used.

Within this limited word count and given the foregoing requirements, it is difficult to provide all of the context and detail in a ballot question that the Civil Grand Jury might find useful to voters. This is why election materials include not only an impartial analysis prepared by the County Counsel, but the measure’s full text and arguments for and against the measure submitted by local voters to provide additional details to better inform their fellow voters.

Voters are encouraged to read the full text of the measure, the impartial legal analysis and the arguments submitted for and against the measure, all of which are included in the Voter Information Guide that goes to all voters before an election. Voters should not just rely on the ballot question, which is only a 75-word summary, to fully inform them about the measure.

Report Recommendation 1b:

Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

¹ The terms “ballot label” and “ballot question” are used synonymously in election parlance.



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Board Response to Recommendation 1b:

Recommendation 1b will not be implemented because it is not warranted and is not reasonable.

The District will not be implementing Recommendation 1b because the law and voters have entrusted the proposal of ballot questions to the elected Board of Directors. Proposed ballot measures and their ballot questions are already vetted by various parties who are knowledgeable about the District's needs and the various legal requirements specific to election and healthcare district law. This includes District legal counsel review of proposed ballot questions to ensure compliance with Elections Code section 13119, referenced above. Additionally, by law, the Board of Directors must place measures on the ballot at a public meeting. This gives the public an opportunity to provide input, comment and even criticism of a ballot question *before* the measure is placed on the ballot. Further, the law referenced above already provides interested parties with an opportunity to legally challenge ballot questions in court for being false, misleading or for otherwise violating the Elections Code.

This additional step proposed by the Grand Jury may create timing challenges for the District, as ballot measures already must be submitted at least 88 and sometimes as many as 90 days prior to the date of the election. Factoring in the time required for an already busy County Counsel to approve the ballot question may require the District to determine the language before all of the necessary data for drafting the measure is even available. For the reasons above, this additional step would be burdensome and unwarranted.

Report Recommendation 1c:

Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

Board Response to Recommendation 1c:

Recommendation 1c will not be implemented because it is not warranted and is not reasonable.

As discussed in our response to Recommendation 1b above, submitting ballot questions to County Counsel for review is not warranted and is not reasonable. Therefore, the District will not adopt a resolution or ordinance to require submission to County Counsel prior to submission to the Registrar of Voters.

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Report Recommendation le:

Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation Id.

Board Response to Recommendation le:

Recommendation le will not be implemented because it is not warranted and is not reasonable.

Recommendation le is problematic because the "Good Governance in Ballots Commission" does not currently exist, and the Report does not give any indication that a proposed "Good Governance in Ballots Commission" would be comprised of individuals knowledgeable about healthcare or election law.

The proposed Commission would have the power to review and to reject language that it finds to be "false", "misleading", "biased" or "partial". Under California law, that is a power reserved to the courts. In addition, individuals on such a Commission lacking expertise in these matters could easily disagree on proposed ballot measure language, and a consensus could be difficult to reach. This would further impact the election timeline and impede the District's ability to place a measure on the ballot. As noted above, the law entrusts the elected Board of Directors to prepare ballot questions which comply with the Elections Code and it intends to continue doing so.

Please feel free to contact us if you seek additional information or have any questions regarding this response.

Sincerely,

A handwritten signature in blue ink that reads "Carol A. Somersille".

Carol Somersille, MD
Secretary/Treasurer, El Camino Healthcare District