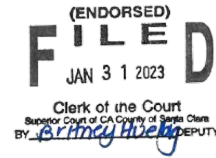




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January 27, 2023

Santa Clara County Civil Grand Jury
c/o Karen Enzensperger, Foreperson
Superior Court
191 North First Street
San José, CA 95113

Re: Response of East Side Union High School District to 2022 Santa Clara County Civil Grand Jury Report: *"If You Only Read The Ballot, You're Being Duped,"* dated October 7, 2022

Dear Members of the Santa Clara County Civil Grand Jury:

The Board of Trustees of the East Side Union High School District (the "Board") has reviewed and considered the issues and concerns raised in the report, *"If You Only Read The Ballot, You're Being Duped,"* dated October 7, 2022. This letter constitutes the Board's approved response, which was approved by the Board at its January 27, 2023, regular meeting.

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 by the Board. The District will continue its efforts to prepare ballot labels 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.

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.

Response to Finding 1

The District disagrees with this finding. Preliminarily, the District does not agree with the premise of the report's finding, that the preparation and content of a ballot measure are "unregulated at the local level" and it therefore is "easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters."

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East Side Union High School District Board of Trustees

Lorena Chavez, President | Pattie Cortese, Vice President | Bryan Do, Clerk | J. Manuel Herrera, Member | Van T. Le, Member
Glenn Vander Zee, Superintendent

This finding disregards the provisions of Section 13119 of the Elections Code, which requires the ballot measure 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." This is a clear legal requirement which the District and its consultants and attorneys take very seriously. Failure to comply with this requirement would be a grounds for challenge to the ballot measure, which could be disastrous to the District's financing programs.

By statute, the ballot measure cannot exceed 75 words, and many of these words are needed to comply with mandatory disclosures under Section 13119 of the Elections Code, including disclosure of the amount of money to be raised annually by the measure, and the rate and duration of the tax to be levied. Bond measures are also subject to various requirements under Section 15122 of the Education Code, including the amount of the bonds to be voted on, the maximum interest rate and the purpose for which the proceeds are to be used. In addition, it is customary for ballot measures to disclose the fact that the expenditure of proceeds is subject to citizens oversight and audits, and in the case of a parcel tax measure it is customary to disclose exemptions for senior citizens and other disadvantage groups.

Given the foregoing requirements, there are not enough words remaining for the ballot measure to permit more than a broad summary of the purposes for which the bond or tax proceeds are authorized to be spent. The problem is compounded because for school districts the list of authorized projects is frequently quite varied and extensive. The full text of the ballot measure includes a comprehensive list of authorized projects, which is made available to voters as part of the election materials which are provided prior to the election.

Recommendation 1 b

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.

Response to Recommendation 1 b

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

The law and the voters entrust the creation of ballot questions to the elected Board of Trustees. Proposed ballot measures are already vetted by various parties who are knowledgeable about the District's needs and the various legal requirements specific to election and education law. Furthermore, this additional step 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 measure may require the District to determine the language before all of the necessary data for drafting the measure is even available. Additionally, the law already provides interested parties with an opportunity to challenge ballot materials in court as a protection against false or misleading labels.

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Recommendation 1 c

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.

Response to Recommendation 1 c

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 to require submission to County Counsel prior to submission to the Registrar of Voters.

Recommendation 1 e

Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Response to Recommendation 1 e

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

Recommendation 1 e is problematic for several reasons. First, a "Good Governance in Ballots Commission" does not currently exist. Furthermore, the Report does not give any indication that a proposed "Good Governance in Ballots Commission" would be comprised of individuals knowledgeable about education and election law. The proposed Commission would have the power to review and to reject language that is "biased and partial." That is a power that is reserved for the courts. In addition, individuals 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 Trustees to prepare ballot labels which are not false or misleading, and it intends to continue to do so.

** ** *

Thank you for your work.

Sincerely,



Lorena Chavez
Board President

*On behalf of the Board of Trustees of
the East Side Union High School District*