THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

Michael Denny, Contestant and Appellant, v. John Arntz, appointed Director of Elections and Dennis Herrera, elected City Attorney, Defendants and Respondents.	Court of Appeal No. A158029 (Super. Ct. No. CGC-19-575070)

Appeal From an Order
Of The Superior Court, County of San Francisco
Hon. Eric Schulman, Judge

APPELLANT'S REPLY BRIEF

Michael Denny
3329 Cabrillo St
San Francisco, CA
415-608-0269

Appellant
Pro-per

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Throughout this brief Appellant and Contestant Denny is referred to as Contestant. The Respondents and Defendants are referred to as Defendants or, individually, as Defendant Arntz or Defendant Herrera. References to sections of the Elections Code are preceded by ELEC. References to sections of the San Francisco Municipal Elections Code are preceded by SFMEC. Since the 1996 repeal and enactment of the Elections Code, the election contest procedure is found in Division 16 of the Elections Code with sections beginning at 16000. In the immediately prior repeal and enactment of the Elections Code in 1961, the election contest procedure is found in Division 20 with sections beginning at 20000. References to sections of the 1961 enactment are followed by the corresponding 1996 section number in brackets. The original election contest procedure was enacted as Article VI of Chapter 38 of the Statutes of 1850 with sections numbered 51 through 74. References to sections of the original election contest rules are preceded by ACT and followed by the corresponding 1996 section number in brackets to the extent possible.

The object of the underlying election contest special proceeding is to set aside the November 8, 2018 special election for Proposition A ("Election") of the City and County of San Francisco ("City"), a $425,000,000 bond measure ("Measure").

INTRODUCTION

When the opening line of Respondent's brief grossly and intentionally misstates the law of election contests, what follows can only be deemed self-

serving.

Counsel's fake concern for the will of the people and the integrity of elections belies the fact that Defendants have no compunction about doubling down of their criminal behavior in printing and circulating ballots that do not conform to ELEC 13119.

The Respondents brief is a bunch of balderdash.

All the pre-election and post-election blabbering is irrelevant and intentionally misleading.

Defendants each have duties prescribed by the Elections Code with respect to the contested election.

The basis for the election contest special proceeding is the acts of the Defendants in violation of their duties with respect to elections. They committed offenses against the elective franchise proscribed by ELEC 18401 and ELEC 18002. Those are not acts of any legislative body that can be validated.

Both Defendants had the duty to follow the law with respect to elections and to not commit offenses against the elective franchise. Both Defendants violated those duties and committed those offenses. Notwithstanding any other remedies, the Legislature has provided the election contest special proceeding as a remedy to vindicate offenses against the elective franchise.

Defendant Arntz printed and circulated ballots that did not conform to ELEC 13119. Defendant Arntz further used public moneys to prepare, organize, and

distribute voter information guides containing express advocacy in the form of paid arguments and advocacy in the form of a digest, turning the voter information guides into campaign literature.

Defendant Arntz and Defendant Herrera had a duty to ensure that only qualified measures are placed on the ballot. Defendants failed to qualify a measure for the ballot that was unconstitutional on its face.

Defendant Herrera had a duty to prepare and Defendant Arntz had a duty to distribute an impartial legal analysis "showing the effect of the measure on the existing law and the operation of the measure." ELEC 9280. Both failed to carry out their duties.

ARGUMENT

1. SHORT HISTORY OF CALIFORNIA ELECTION LAW

1850 - First Election Law

The Legislature enacted its first election laws in 1850. Cal. Stat. 1850, Ch. 38. The first election contest special proceeding rules are found in Article VI of that chapter.

1872 - Code Commission: Civil Code, Code of Civil Procedure, Penal Code, Political Code

In 1872 (after *Dorsey v. Barry*), the Legislature adopted its first codes, including the antecedents of what is today in the Elections Code. The code commission codified prior statutes into the Civil Code, the Code of Civil

Procedure, the Penal Code, and the Political Code. The legislature made a mess of it and adopted all four codes without going through the process to chapter them. In addition, they did not explicitly repeal the earlier statutes that were being replaced by the code. 42 Cal.L.Rev. 766, 775 (1954) "Thus, the specter of pre-1872 legislation has haunted the California statute law for eighty years and has seriously impaired the effectiveness of several of the later attempts to revise our codes." *Supra*, at 777.

The main body of the previous, uncodified election law was codified as part of the Political Code.

The code commission moved the election contest special proceeding rules (Cal. Stat. 1850, Ch. 38, Article VI) into the Code of Civil Procedure as sections 1111 to 1127. It codified provisions of the election-related crimes in Penal Code at sections 40 to 64.5.

Today the election contest special proceeding rules are in Division 16 of Elections Code, the penal provisions are in Division 18.

1939 - Elections Code

In 1939, the Legislature reorganized the election-related 1872 codes into the Elections Code. Cal. Stat. 1939, Ch. 26. The reorganization became effective on September 19, 1939. As a result, court opinions prior to 1940 will reference the code numbers prior to the reorganization.

It specifically repealed sections 1111 to 1127 of the 1872 Code of Civil

Procedure and sections 40 to 64.5 of the Penal Code and many sections of the Political Code which it replaced. This removed the election contest special proceeding rules from the Code of Civil Procedure and placed them back in the main body of elections law once again as Division X sections 8500 to 8576. The penal provisions were moved into Division XIV sections 11500 to 11702. The ballot provisions were moved into Division VI sections 3700 to 3993. In general, the language of the sections remained unchanged, except for cross-references where the prior code referenced divisions, chapters, articles, and sections. In those cases, the section was changed to reflect the new organization.

In Section 2 of the code, the Legislature, specifically states that the reorganization was not intended to change any law. Therefore, court opinions referencing the older section numbers are as valid today, for the changed section number as they were for the prior section number.

1961 - Elections Code

In 1961, the Legislature reorganized the Elections Code again by repealing the entire code and enacting a new one in its place. Cal. Stat. 1961, Ch. 23. The reorganization became effective on September 15, 1961. As a result, court opinions prior to 1962 will reference the code numbers prior to the reorganization.

The rules for election contest special proceedings were moved from Division 10 in the 1939 code to Division 11 in the 1961 code as sections 20000 to 20533. The penal provisions were moved into Division 15 as sections 29000 to 29432.

The ballot provisions were moved into Division 7 as sections 10000 to 10343. In general, the language of the sections remained unchanged, except for cross-references where the prior code referenced divisions, chapters, articles, and sections. In those cases, the section was changed to reflect the new organization.

In Section 1 of the act, the Legislature, specifically states that the reorganization was not intended to change any law. Therefore, court opinions referencing the older section numbers are as valid today, for the changed section number as they were for the prior section number.

In 1976, the Legislature completed the work of the Joint Committee for Revision of the Elections Code and revised and renumbered various codes without repealing and reenacting the entire Elections Code.

1994 - Elections Code

In 1994, the Legislature reorganized the Elections Code by repealing the entire code and enacting a new one in its place. The reorganization became effective on January 1, 1995. Cal. Stats. 1994, Ch. 920. As a result, court opinions prior to 1995 will reference the code numbers prior to the reorganization.

The rules for election contest special proceedings were moved from Division 11 in the 1961 code to Division 16 in the 1994 code as sections 16000 to 16940. The penal provisions were moved into Division 18 as sections 18000 to 18700. The ballot provisions were moved into Division 13 as 13000 to 13502. In general, the language of the sections remained unchanged, except for cross-references

where the prior code referenced divisions, chapters, articles, and sections. In those cases, the section was changed to reflect the new organization.

In Section 3 of the act, the Legislature, specifically states that the reorganization was not intended to change any law. Therefore, court opinions referencing the older section numbers are as valid today, for the changed section number as they were for the prior section number.

2. SHORT HISTORY OF ELEC 13119

The derivation of ELEC 13119 demonstrates that the language of the current section goes back to the reservation of the initiative and referendum power of the People.

In 1911, section 4058 was added to the Political Code as a result of the seismic shift of power resulting from the amendment to the state constitution. It was further amended in extraordinary session that same year. Cal. Stat. 1911, Ch. 31. It's a lengthy statute that has, over the years been broken up into smaller sections and redistributed within the Elections Code. For the purposes of this history, we're specifically going to follow the language that has ended up in Division 9, Chapter 3 and in Division 13, Chapter 2.

Section 4058 of the Political Code applied to counties. It consisted of three very lengthy paragraphs. It treated the enactment of any ordinance that had to be submitted to the voters, whether by the board of supervisors or by initiative in exactly the same manner. The second paragraph contains the language that

ultimately resides in ELEC 13119(a).

> Political Code (1911) Section 4058
> The ballots used when voting upon said proposed ordinances shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite such proposition to be voted on, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance, and if he shall stamp a cross (X) in the voting square after the printed word "No," his vote shall be counted against the adoption of the same.

In 1939, the Legislature migrated the language to the newly created Elections Code, not only retaining it in the county chapter, but also adding to the municipal chapter. Mark ups below show version changes.

> Elections Code (1939) Section 1614, Division 4, Chapter 2.
> The ballots used when voting upon ~~said~~ the proposed ordinance~~s~~ shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite ~~such proposition~~ the statement of the ordinance to be voted on, and to ~~the~~ its right ~~thereof~~, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If ~~an elector shall~~ a voter stamp~~s~~ a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance~~, and if~~. If he ~~shall~~ stamp~~s~~ a cross (+) in the voting square after the printed word "No," his vote shall be counted against ~~the adoption of the same~~ its adoption.

> Elections Code (1939) Section 1714, Division 4, Chapter 3.
> The ballots used when voting upon ~~said~~ the proposed ordinance~~s~~ shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite ~~such proposition~~ the statement of the ordinance to be voted on, and to ~~the~~ its right ~~thereof~~, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If ~~an elector shall~~ a voter stamp~~s~~ a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance~~, and if~~. If he ~~shall~~ stamp~~s~~ a cross (+) in the voting square after the printed word "No," his vote

shall be counted against ~~the adoption of the same~~ its adoption.

In 1961, the Legislature migrated the language to the newly enacted Elections Code, not only retaining it in the county and municipal chapters, but also adding to the district chapter. All three sections have identical language, except that Section 5156 makes "ordinance" plural.

> Elections Code (1961) Section 3714, Division 4, Chapter 2.
> The ballots used when voting upon the proposed ordinance shall have printed ~~thereon~~ on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance. If he stamps a cross (+) in the voting square after the printed word "No," his vote shall be counted against its adoption.

> Elections Code (1961) Section 4014, Division 4, Chapter 3.
> The ballots used when voting upon the proposed ordinance shall have printed ~~thereon~~ on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance. If he stamps a cross (+) in the voting square after the printed word "No," his vote shall be counted against its adoption.

> Elections Code (1961) Section 5156, Division 4, Chapter 4.
> The ballots used when voting upon the proposed ordinances shall have printed ~~thereon~~ on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance. If he stamps a cross (+) in the voting square after the printed word "No," his vote shall be counted against its adoption.

In 1976, the Legislature repealed all three sections in Division 4 (Measures Submitted to Voters) and reenacted the merged language in Chapter 2, Division 7 (Ballots) as Section 10235.

> Elections Code (1976) Section 10235, Division 4, Chapter 2.
> The ballots used when voting upon ~~the~~ a proposed county, city, or district ordinance submitted to the voters of the respective local government as an initiative measure pursuant to Division 4 (commencing with Section 3500) shall have printed on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance. If he stamps a cross (+) in the voting square after the printed word "No," his vote shall be counted against its adoption.

In 1994, the Legislature migrated the language to the newly enacted Elections Code,

> Elections Code (1994) Section 13119, Division 9, Chapter 2.
> The ballots used when voting upon a proposed county, city, or district ordinance submitted to the voters of the respective local government as an initiative measure pursuant to Division 4 9 (commencing with Section ~~3500~~ 9000) shall have printed on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the ordinance. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption.

In 2015, it was amended to require additional disclosure provisions for measures that impose a tax.

AB-809 (2015) ELEC 13119

(a) The ballots used when voting upon a proposed county, city, or district ordinance submitted to the voters of the respective local government as an initiative measure pursuant to Division 9 (commencing with Section 9000) shall have printed on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the ordinance. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption.

(b) If the proposed ordinance imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the ordinance to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

The board of supervisors of Los Angeles County placed Measure M, the "pothole" measure, on the ballot for the November 8, 2016 election. Several cities filed a petition for a writ of mandate to order the registrar of voters to conform Measure M to the requirements of AB-809. *City of Carson, et al., v. Dean Logan, Registrar-Recorder/County Clerk of the County of Los Angeles* (2016) Case No. BS164554. It was a high-profile and controversial case that was brought during the 10-day mandatory public examination period.

The petitioners lost that case on the grounds that the section only applied to initiative measures. Neither the briefing nor the opinion addressed the history of the section.

In 2017, it was amended again to address the legislative intent with respect to the *City of Carson* case. The senate analysis for AB-195 also includes a short

description of the lawsuit in the "Background" section.

> AB-195 (2017) ELEC 13119
> (a) The ballots used when voting upon a measure proposed ~~county, city, or district ordinance~~ by a local governing body or submitted to the voters ~~of the respective local government~~ as an initiative or referendum measure pursuant to Division 9 (commencing with Section 9000), including a measure authorizing the issuance of bonds or the incurrence of debt, shall have printed on them the words "Shall the ~~ordinance~~ measure (stating the nature thereof) be adopted?" Opposite the statement of the ~~ordinance~~ measure to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the ~~ordinance~~ measure. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption.
> (b) If the proposed ~~ordinance~~ measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.
> (c) The statement of the measure shall 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.
> (d) For purposes of this section, "local governing body" means the governing body of a city, county, city and county, including a charter city or charter county, or district, including a school district.

The ballot language of ELEC 13119(a) has been substantively unchanged since 1911 through all its iterations.

Contestant suggests that, had the history of ELEC 13119 been briefed and argued, the court in *City of Carson* may have reached a different result. It is clear, by the quick action by the Legislature after the *City of Carson* decision, that it had intended the disclosure provision of AB-809 to apply to all tax measures regardless of their path to the ballot.

3. APPLICATION OF ELEC 13119 BALLOT LANGUAGE

The following analysis is complex. Please bear with the analysis. It may tricky to follow because of all the numbers and the years. The end result, however, is that today'sELEC 13119 has ALWAYS applied to ALL ballot statements for all local measures and it has been explicitly mandatory after an election at least since 1939.

So, who did the ballot statement language apply to originally? Section 4058 of the Political Code makes it apply to both initiative petition proponents and to the board of supervisors.

How can one tell? In the first paragraph, it set the rules for initiatives, "Any proposed ordinance may be submitted to the board of supervisors by a petition ..." The second paragraph contained the form for printing the ballot statement. The very last sentence of the second paragraph provides that "The board of supervisors may submit to the people, without a petition therefor, a proposition for the repeal of any adopted ordinance or for amendments thereto or for the enactment of any new ordinance to be voted upon at any succeeding general or special election ..."

It's easy to see the intent of the Legislature. Except for the petition requirement, both the board of supervisors and the People were treated the same in terms of their power and what could go on the ballot.

In *Huntington Beach v. Superior Court* (2002) 94 Cal.App.4th 1417, the ballot statement that was printed on the ballot was "Amendment of Gas Tax by Removing Electric Power Plant Exclusion. Shall the ordinance repealing the Gas

Tax exclusion for electric power plants be adopted?" It was in perfect compliance with both ELEC 13119 at that time and ELEC 9051(c).

Contestant's research has also been able to find a few early ballot statements in court opinions.

> *In Re East Bay Etc. Water Bonds of 1925* (1925) 196 Cal. 725
> Shall the East Bay Municipal Utility District incur a bonded debt in the amount of thirty-nine million dollars ($39,000,000) for the construction, completion and acquisition of a source of water supply from the Mokelumne River and other properties and facilities to be used by said district for acquiring and impounding water for said district and conveying the same thereto and for disposing of any surplus waters thereof?
>
> *City of Pacific Grove v. Irwin* (1946) 76 Cal.2d 46
> Proposition No. 1
> Shall the City incur a bonded indebtedness of $85,000 for the purchase of a site and for the erection thereon of a new fire house, for the purchase of new fire equipment, and for the installation of a fire alarm system?
> Proposition No. 2
> Shall the City incur a bonded indebtedness of $35,000 for the erection of a new bath house, salt water tub baths, and volley ball courts, at the municipal beach on the site of the present bath house?

It should not be surprising that these examples are not in perfect conformance. The language regarding measures in Chapter 2, Division 4, described below, was more vague than that in the ELEC 13119 lineage. These are a far cry, however, from the sales pitches that have evolved up to today when local governing bodies are trying to tax not only anything that moves, but also everything that it can dream up, like the Los Angeles County Flood Control District's $300,000,000 annual rain tax (the subject of an on-going election contest special proceeding).

The greed is fueled by an entire parasitic, private industry that has engorged itself, at taxpayer expense, in its pursuit to perfect the art of printing money through local ballot measures over the last few decades.

Now let's examine whether the ballot statement language was mandatory after the election, historically. In 1911, there was no mandatory language in the section 4058 of the Political Code.

In the 1939 Elections Code, the ballot statement language was moved into the new code without substantive change. Chapter 2, Division VI (Ballots) of the 1939 Elections Code (equivalent to Chapter 2, Division 13 today) shows that the Legislature made all the provisions of the that Chapter mandatory via section 3817 (below). At section 3827, it specified very similar language to that in section 1614 and section 1714 (derived from section 4058 of the Political Code). Significantly, section 3827 did not have the quoted ballot statement language "Shall the ordinance (stating the nature thereof) be adopted?" Instead, it used the broader language "the measure shall be designated by the title prepared therefor" in its rendering of what must be printed on the ballot.

> 3817. Provisions mandatory
> All of the provisions of this article relating to the form and size of ballot, including the size of the type thereon, are mandatory. Any officer whose duty it is to supply such ballots who fails to supply ballots in compliance with its provisions is guilty of a misdemeanor.
>
> 3827. Measures
> Whenever any measure is to be submitted to the voters, there shall be printed at the right of the last column of names of candidates another column or columns of sufficient width, with voting squares,

> in which the measure shall be designated by the title prepared therefor, and opposite the measure to be voted on, in separate lines, the words "Yes" and "No" shall be printed. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the measure; if he stamps a cross (+) after the printed word "No," his vote shall be counted against the adoption of the measure.

Now jump to the 1961 Elections Code. In Division 4, sections 1614 and 4014 from 1939 have been moved virtually intact as sections 3714 and 4014 and section 5156, a copy of 3714 or 4014, has been added. In Chapter 2, Division 7, sections 3817 and 3827 have been moved substantively identical from Chapter 2 of Division VI.

> 10217. Provisions mandatory
> The provisions of this article relating to the form and size of the ballot, including the size of the type on the ballot, are mandatory. Any officer whose duty it is to supply those ballots who fails to supply ballots in compliance with the provisions of this article is guilty of a misdemeanor.

> 10227. Measures
> Whenever any measure is to be submitted to the voters, there shall be printed at the right of the last column of names of candidates another column or columns of sufficient width, with voting squares, in which the measure shall be designated by the title prepared for it, and opposite the measure to be voted on shall be printed, in separate lines, the words "Yes" and "No." If a voter stamps a cross (+) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the measure; if he stamps a cross (+) after the printed word "No," his vote shall be counted against the adoption of the measure.

In 1976, all three of the Division 4 sections 3714, 4014, and 5156 were merged into one section and placed in Chapter 2, Division 16 as section 10235. Section 10227, now superfluous, was repurposed. Section 10217 was renumbered as

29501 and moved to Division 20 and comes into the 1994 Elections Code as 18401 in Division 18.

Now jump to the 1994 Elections Code (the last enacted code). Both sections 10217 and 10227 have been repurposed prior to enacting the code. As previously repurposed, section 10217 remains in Chapter 2 of Division 13 (Ballots) as section 13112, but section 10227 is moved to Chapter 3 as section 13217.

The Legislature is presumed to understand what it is doing. It replaced the ballot statement provision of section 10227 of 1961 with section 10235 in 1976 at the same time that it removed the ballot language statements provisions from Division 4.

So here is the lineage of ELEC 13119: 10235 (1976), 3714 *et al.* (1961), 1614 *et al.* (1939), 4058 (1911).

The legislative prohibition against sales pitches on the ballot dates at least as far back as the 1939 Elections Code for statewide measures. "In providing the ballot title, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title shall not be an argument or likely to create prejudice either for or against the measure." 1939 Elections Code, section 1452. This language did not change substantively as it transitioned to where it is today in ELEC 9051. ("In providing the ballot title and summary, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall

neither be an argument, nor be likely to create prejudice, for or against the proposed measure.")

In the 1994 Elections Code, this language was applied to local measures through ELEC 10403(a)(2) in connection with consolidated elections. The consolidated elections code traces itself back to section 23302 in the 1961 Elections Code, and 10051.1 in the 1939 Elections Code. The referential language existed neither in the 1961 Elections Code, nor in its predecessors.

The historical perspective clearly shows that the ballot statement for measures was of concern to the Legislature from the beginning. The presentation of measures on the ballot have been on par with the presentation accorded to candidates for elective office. That presentation has been mandatory for a long time. Whatever conclusions we can draw from the historical perspective, as of January 1, 2018, the wild west for local ballot measures came to an end. The Legislature, however belatedly, read the riot act to local governing bodies. Instead of conformance, those local governing bodies reacted with a yawn. In practice, conformance has been the exception rather than the rule. It's clear that the children making up local governing bodies and their courtiers need some discipline. That's what this election contest special proceeding is about.

4. WHAT ABOUT THE CITY'S SFMEC?

Even though not necessary, SFMEC 400 explicitly incorporates ELEC 13119 as the governing law with respect to ballots. Following the law is not in accord

with winning the measure election, so Defendants ignore their duty and the law.

Contestant notes with amusement that SFMEC 500(a)(4) requires that the voter information guide contain "A summary of voters' rights, including a description of the right provided to every elector by California Elections Code sections 9295 and 13314 to seek a writ of mandate or an injunction prior to the publication of the Voter Information Pamphlet, requiring any or all of the materials submitted for publication in the Pamphlet to be amended or deleted." That must bring comfort to voters who learn of their rights after it is too late to do anything about it. Curiously, however, it mentions nothing of the "'rule' in California" that those rights must be asserted before the voter information guide is printed. It also misstates the law when it alludes to "any or all of the materials" as only those materials set out in ELEC 9295 can be amended or deleted. The point here, however, is that it doesn't matter. Counsel is building its position on a house of cards.

Nevertheless, the SFMEC provides no remedies other than those specified in ELEC 9295 and ELEC 13314. Those statutes only provide for challenges to the specific materials referenced in the Elections Code. Notwithstanding that those remedies are not mandatory and that there is no "'rule' in California," they are simply inapplicable here, contrary to Counsel's misleading assertions otherwise.

SFMEC 505 purports to permit "The Director of Elections shall determine the title ... of each measure." Once again, even if this ordinance were not preempted

by ELEC 13119, there is no authority for anyone else to determine a title. The purported title submitted by the Board of Supervisors is beyond its authority. ELEC 13119 was effective for elections after January 1, 2018. ELEC 13119(d)(1) specifically makes ELEC 13119, in its entirety, mandatory on the City, by definition. To the extent that SFMEC 500(c)(1) and SFMEC 515 purport to permit a title, that permission is overridden by ELEC 13119.

Even if there were a "'rule' in California," SFMEC provisions, by relying on ELEC 9295, provide no remedy for the public to challenge the ballot statement, the Digest, or the paid arguments.

5. DIGEST IS NOT AN IMPARTIAL ANALYSIS

The SFMEC creates a unique, in California, document it calls a Digest.

Counsel makes much ado about nothing in continually pointing to the challenge to the impartial analysis. Let's be clear. The Digest doesn't even purport to be the impartial analysis required by ELEC 9280. There is nothing in the SFMEC that states that the Digest is an impartial analysis or a substitute for the impartial analysis. It is its own separate creation.

In its 172 words, SFMEC 515 does not use either the word "impartial" or "analysis" once. It is a digest. A digest is a summation or condensation of a body of information, in this case, the measure. It patronizes and debases the voters of the City by presuming that, unlike the rest of the state, they can't read past the eighth grade level. It is just another sales pitch underwritten with public moneys.

All of Counsel's arguments comparing the Digest to an impartial analysis are flawed. The language of the SFMEC is clear and controlling. It is only through the inclusion of the deceptive language under the Digest that attempts to imbue it with qualities that it does not possess through its enabling ordinances.

Just as the City doesn't print a tax rate statement in the voter information guide as required by ELEC 9400, it doesn't print an impartial analysis in the voter information guide as required by ELEC 9280.

The "will of the voters" arguments that Counsel advances are specious and disingenuous. The Legislature has declared that the will of the voters is to have honest ballots, as if that were not already a fundamental presumption. Counsel fights this election contest special proceeding for the sole purpose of permanently frustrating the will of the voters, as expressed through the Legislature, to prevent local governing bodies from gaining an unfair advantage in ballot measure elections by completely ignoring the rules as to form and content of the precious 75 (not 75 plus 61) words allowed, but instead to use those 75 words to advance its partisan positions to influence the outcome of its elections in its favor, all paid for with public moneys.

There should be a consequence for the Defendants criminal behavior. The law of election contest special proceedings provides the only remedy.

This court should take note that Contestant has another election contest special proceeding that will likely be shortly making its way to this court based on almost

identical disregard for the law by the Defendants. In that case, this court will learn of Contestant's attempt to see what would happen with the "pre-election" challenge. Other concerned citizens in Contra Costa and San Mateo counties have in January 2020 experienced the same stonewalling to prevent pre-election challenges to ballot language. Counsel further fails to cite any law that requires a citizen to challenge ballot language before an election. In fact, some have argued that ballot language is not one of the materials that can be challenged during the 10-day mandatory public examination period.

6. NON-MANDATORY AND ILLUSORY PRE-ELECTION REMEDIES

There is no mention, much less requirement, in Division 16 to do anything before an election, the failure of which to do, bars an election contest special proceeding. Nevertheless, this is the petard on which Counsel wishes to hoist itself. On the chance that this court may actually consider this ridiculous contention, Contestant feels obliged to address it.

Counsel states on page 44, first full paragraph, that "Any claims that arise about the impartiality of the digest, the ballot language and the inclusion of paid arguments with respect to any particular measure can be brought -- and, in fact, must be brought -- during the 10-day review period under California Elections Code Section 9295." Guess what? That's not what ELEC 9295 says. Once again, Counsel misleads the court to obtain an advantage.

If that mandatory duty existed for Contestant, it would also exist for Defendant

Arntz. See ELEC 9295(b)(1). Since Defendant Arntz is part of the scheme to hoodwink and sandbag the voters, Contestant wouldn't expect him to perform that duty. Defendant Arntz's failure to perform that duty would be another offense against the elective franchise under ELEC 18002. Once again, Counsel wants to require the People to play a game of cat and mouse with its public servants. Counsel wants the People, not only to watch its public servants like a hawk, but also to come running to the courts every time the People find their public servants deficient in performing their mandatory duties. A review of opinions in cases of pre-election writs of mandate illustrates that the courts, especially the appellate courts, often express frustration with the shortness of time imposed on them by the exigencies of the circumstances shoehorned into a tiny period of time in advance of an election. Counsel's purported remedy would actually quickly become a burden on the courts if the People suddenly became wealthy enough to act as overseers of elections. The duty is on election officials, like Defendant Arntz. Defendant Arntz breached his duty. Defendant Arntz has no intention of ever fulfilling his duty to provide the People with fair elections and honest ballots with respect to local measures, at least when it benefits his department and his political bosses.

ELEC 9295, which specifies the 10-day mandatory public examination periods, provides that the Defendant Arntz make available only certain material for such examination. Those materials are the ordinance or measure (ELEC 9223), the

impartial analysis (ELEC 9280), the arguments by special method (ELEC 9281), the arguments by regular method (ELEC 9282), and the rebuttals (ELEC 9285). Clearly several things are missing, and, as Counsel argues when it suits its purposes, are not subject to public examination. Those are the order of election, which can be amended or withdrawn by resolution up to 5 days after the measure filing deadline (ELEC 9605), the ballot statement (language or label or question or whatever), and, for bonds, the tax rate statement, which must be filed no later than the measure filing deadline. (ELEC 9605).

While the tax rate statement is not part of this appeal, Contestant notes that Defendants did not print the tax rate statement, as prescribed "Notwithstanding any other provision of law ..." by ELEC 9400, in the voter information guide. Thereby Defendants denied the voters their right to know the total estimated cost (debt service) of the measure ELEC 9401(c). This further demonstrates the City's repeated failure to follow the law. This mandatory disclosure would give the voters an opportunity to make informed decisions. The City prefers sandbagging and hoodwinking voters, not informing them.

According to Counsel, the ballot statement is subject to challenge during a public examination during a 10-day period. Seriously? Which of the codes specified in ELEC 9295 does Counsel claim implements that purported requirement? None, because just like all of Counsel's arguments, they're just made up out of whole cloth.

None of the codes referenced by ELEC 9295 refer to the digest, the ballot language, or paid arguments. But even if those were included in the materials, Counsel further purports that ELEC 9295 is mandatory on Contestant even though it explicitly says that "any voter ..., or the elections official, ... *may* seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted." (Emphasis added.) Here Counsel offers no support for its nouveau legal theory that permissive before an election is mandatory before an election and directory after an election. Counsel further purports that failure to take an issue up before an election under ELEC 9295 in some way bars Contestant from raising an issue in an election contest special proceeding. When Counsel can make words mean anything it wishes, then we have no rule of law at all.

Lastly, the authority for a writ under ELEC 9295(b)(2) is extremely limited. Even if the ballot statement were subject to separate public examination, the writ would only lie if the material were "false, misleading, or inconsistent with the requirements of this chapter." That chapter would be Chapter 3 of Division 9, which completely eliminates an opportunity to conform the ballot to ELEC 13119 under Chapter of 2 of Division 13. So as not to dash Counsel's misplaced hopes, even under its wild scenario that there is a "'rule' in California," Counsel may yet to be able to dig up some obscure dicta, in some case, somewhere, and then throw a hail-Mary pass. But please don't use EC 13314, because when Contestant filed a writ under that code in CPF-19-516823, Counsel argued that ELEC 9295, being

more specific, precluded the application of ELEC 13314.

7. SETTING ASIDE AN ELECTION FOR CHEATING

The remedy of an election contest special proceeding was initially provided to deal with contests among candidates for elective office ("candidate contest"). Primarily, candidate contests involve the counting of ballots. When measures were introduced, it only made sense that measures would be subject to the same ballot counting issues ("measure contest"). However, measures are not a choice among candidates, they are a binary choice between yes and no for something, usually a law, that is based entirely upon language and the meaning of that language. The constitutions of the United States and of California were the first measures before, respectively, each ever existed.

In candidate contests, there is no significant language on the ballot that affects a voter's decision. Candidates can't change their name or ballot designation to "VOTE FOR ME!" As a result, candidate contests that don't involve ballot counting are often ones where technical or procedural errors are alleged. Note that those technical or procedural errors do not preclude the candidate from bringing a candidate contest. The candidate gets to have a trial and have a court make a decision. Isn't that a much better remedy than a duel?

There is an area, however, where candidate contests and measure contests share common ground. That's when there has been cheating, not cheating on a couple of votes or a couple of ballots, but cheating that affects the integrity of the

election. Division 16 encompasses these in ELEC 16100(c) with an entire class of grounds denominated offenses against the elective franchise. By its very nature, the class of persons that could be named as defendants, is automatically expanded to every "person" who has committed an offense against the elective franchise as defined in Division 18. Yes, those defendants sometimes are candidates, but that is not a limitation. Counsel's argument that Defendants are not candidates under ELEC 16002 and therefore cannot be the subject of an election contest special proceeding is so disingenuous as to be contemptible. It flies in the face of common sense and dozens of reported opinions involving ballot measures and the directive of ELEC 16000 that election contest special proceedings may be brought against ballot measures.

Contestant observes further that ELEC 16002 derives from section 20001 of the 1961 Elections Code, which in turn derives from section 8501 of the 1939 Elections Code which was new in 1939. The term "measure" did not exist in Division 20 of the 1961 Elections Code. It first appeared in the new section 20089 in about 1976 and thus was incorporated into Division 16 of the 1994 Elections Code as ELEC 16000. The only other occurrence of the term "measure" in Division 16 was through an amendment to ELEC 16421. Cal. Stats. 2010, Ch. 122. It's not surprising that the Legislature is not spending its time going through a 170-year-old law making sure to dot its i's and cross its t's.

Let's look at some election contest special proceedings that involve cheating

and that has resulted in elections being set aside.

Bradley v. Perrodin (2003) 106 Cal.App.4th 1153 involved two run-off elections on the same ballot in Compton resulting in two election contest special proceedings. One was the mayoral election between Bradley and Perrodin. The other was the city council election between Andrews and Irving. The trial court found Irving had committed at least one offense against the elective franchise under ELEC 16100(c), annulled her election, and gave the council seat to Andrews.

Contestant notes that, while the result in *Bradley* would have been the same had it applied the law as set out in *Rideout v. City of Los Angeles* (1921) 185 Cal. 426, it took a very lengthy and circuitous route to reach that result.

With respect to Irving, *Bradley* held that "under subdivision (c) of section 16100, Irving's election was properly annulled based on the finding, which was supported by substantial evidence, that she had committed offenses against the franchise. The trial court properly annulled Irving's election under section 16100, subdivision (c) *despite the lack of evidence that Irving's offenses changed the outcome of the election*." *Bradley, supra,* at 415. (*Emphasis* added.)

Hardeman v. Thomas (1989) 208 Cal.App.3d 153 was an election contest special proceeding involving ballot harvesting in Inglewood. One of the practices employed in ballot harvesting is to "assist" the voter in completing the ballot by telling or pressuring the voter for who or what to vote. Is there any intrinsic

difference between someone talking to a voter as they vote and telling the voter how to vote and the City telling the voter how to vote on the ballot itself? What better way to influence the vote than to do it in the official materials. It's so much easier than to have to campaign. No campaign finance forms to fill out. No people to pay to walk the precincts. No muss, no fuss. It's like electioneering on the ballot. On second thought, it's not *like* electioneering on the ballot, it *is* electioneering on the ballot. In the City's view, it's not only permitted to tell the voter how to vote on the ballot, but also permitted to use public moneys to do it. That's what they call a win, win.

That flies in the face of the purported rules: "In our governmental system, the voters' selection must remain untainted by extraneous artificial advantages imposed by weighted procedures of the election process." *Gould v. Grubb* (1975) 14 Cal.3d 661 (ballot position). Can there be any integrity in the election process when local governing bodies like the City can put its bloated, corpulent, fat thumb on the scales to favor itself?

The defendants in *Hardeman*, both Thomas AND the City of Inglewood (not a candidate), were so over the top that the court noted that their "briefs are liberally strewn with philosophical asides, editorializing about the sanctity of the finality of the electoral process and the dangers inherent in an after-the-fact judicial scrutiny of campaign practices." Yeah, we're all concerned about elections, but the court was "not willing, however, to sacrifice the integrity of the process on the altar of

electoral finality." As the bard once wrote, "The lady doth protest too much, methinks"

As if to state the obvious, the court also had something to say about influence with respect to voter manipulation. "We have learned in our modern, advertisement-oriented society that subtle manipulation and suggestion can be a forceful and effective form of influence on our actions." That subtle manipulation is exactly what is proscribed by the legislature on the ballot. Just as in-person voter manipulation affects votes, so to does manipulation of written language on the ballot to achieve a desired outcome. How much more pervasive can it get than to influence the vote on every ballot with the ballot statement itself? One must presume that 100% of the voters were subject to that influence.

Gooch v. Hendrix (1993) 5 Cal.4th 266 was a ballot harvesting case, too. A political organization solicited voter registrations with vote by mail ballots. It had the ballots delivered to its mailing addresses. It solicited the voters to vote the ballots and permit it to return them to the registrar. The court asked this question: "May an election be annulled on clear and convincing evidence of illegal voting when it appears the illegal votes affected the outcome of the election, but it cannot otherwise be determined precisely for whom the illegal votes were cast?" It concluded that it could.

The court also recognized that "preservation of the integrity of the election process is far more important in the long run than the resolution of any one

particular election." It cited *Canales v. City of Alviso* (1970) 3 Cal.3d 118 which in turn cited *Rideout* and *Canales* for the proposition that, while technical errors that the voters are unaware of are usually directory after an election, failure to comply with intrinsic, substantive rules that the voter can't avoid, like the ballot statement for measure contests, vitiate an election.

The *Gooch* court also favorably cited *Hardeman*'s observation not to "sacrifice the integrity of the [elective] process on the altar of electoral finality."

Gooch, supra, fn. 7, also reaffirmed that *Rideout* is good law, despite the lower court dismissing it as "old law." Note that the example of the statute noted in the footnote was to overrule a court decision. The Legislature does constantly review its statutes *sua sponte*. The case of a poor court decision, like the one in *City of Carson*, coming to its attention is the typical manner in which changes of that nature occur. It's Newton's first law in action, an object that is at rest will stay at rest unless a force acts upon it. Counsel avoids discussion of mandatory versus directory like the plague. It works against Counsel's interests in keeping the counterfeiting presses running.

8. CASES CITED THAT DO NOT STAND FOR THEIR PROPOSITIONS

Cases do not stand for what was not considered. "It is axiomatic that cases are not authority for propositions not considered." (*People v. Gilbert*, 1 Cal.3d 475, 482, fn. 7.) "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so

decided as to constitute precedents." (*Webster v. Fall* (1925) 266 U.S. 507, 511.)

An election contest special proceeding provides a remedy for election issues after the election has occurred. It would be absurd to consider that all election issues other than ballot counting must be determined before the election. There is no such rule, except in Counsel's perverted imagination.

Let's look at the cases Counsel cites that purport to make holdings regarding election contest special proceedings. These are ordered as they appear in Counsel's argument, beginning on page 19.

Owens v. County of Los Angeles (2013) 220 Cal.App.4th 107. This was a class action and constitutional challenge of a tax measure brought more than 10 months after the election. It was not an election contest special proceeding.

McKinney v. Superior Court (2004) 124 Cal.App.4th 951. This was a writ of mandate and a candidate contest brought immediately after the election. McKinney "specifically disavowed any reliance on section 16100." All that remained for the court to consider was the writ. It was not an election contest special proceeding.

More has to be said about how Counsel is using *McKinney* to mislead the court. Even if the discussion in *McKinney* about election contest special proceedings were not dicta, Counsel knowingly mischaracterizes the case. *McKinney* involved a peculiarity in the San Diego charter regarding write-in candidates in run-off elections. McKinney knew he had no grounds for an election

contest special proceeding. That's why he dropped it. *McKinney* stated this right in the first paragraph, third sentence of the opinion. "Although election results can be challenged under section 16100 on the ground that the winner is ineligible, the statute does not contemplate challenges based on the fact that one of the runners-up is ineligible." He felt his favored candidate, Roberts (who came in third), lost because a write-in candidate drew votes (34%) away from him and felt aggrieved, so he fell back to relying on his interpretation of the city charter.

Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165. This was a writ of mandate and a land use measure contest brought about two months after the election. Articulating its concurrence, the court noted that "[The Court of Appeal], too, rejected the argument that a challenge to ballot materials may be made only before the election, noting that several courts have considered such challenges postelection." This, on its own, flies in the face of Counsel's attempt to mislead the court that there is some kind of "rule" that measure contests cannot consider ballot language and other official election materials after an election. The court set aside the election on the basis of a CEQA violation. In the first paragraph of the opinion, after discussing the CEQA basis of the decision, the court stated. "In so doing we reject defendants' argument that the trial court and, by implication, the appellate court, should not consider plaintiffs' claim that the results of the election at which the ordinance in dispute was adopted must be set aside because their challenge is not one permitted by Elections Code section 16100." "Moreover,

petitioners had neither sought a preelection injunction nor initiated a proper election contest under Elections Code section 16100 and, assuming the action was a proper challenge had not brought it within the 30 days permitted by Elections Code section 16401, subdivision (d)." The court missed another, more fundamental jurisdictional ground, only an elector can bring an election contest special proceeding ELEC 16400(a). That's what happens when the issue wasn't before the court. It was not an election contest special proceeding. Perhaps, Counsel didn't read the opinion. Perhaps, Counsel is just trying to mislead the court with cherry-picked quotes to its liking.

People ex rel. Kerr v. County of Orange (2003) 106 Cal.App.4th 914. This was a writ of mandate and constitutional challenge of a charter amendment measure brought more than 6 months after the election. The constitutional challenge failed. It was not an election contest special proceeding.

Horwath v. City of East Palo Alto (1989) 212 Cal.App.3d 766. This was a writ of mandate after an election on a rent control measure brought more than 13 months after the election. The court allowed it to proceed on a constitutional due process basis on which it failed. It was not an election contest special proceeding.

Soules v. Kauaians Nukolii Campaign Committee (9th Cir.1988) 849 F.2d 1176. This one really takes the cake. Counsel finds some language, some where that purports to support its frivolous argument and says it's the law. This was a federal equal protection claim under 42 U.S.C.§ 1983 of a land use measure

brought more than two months after the election. The background of the case is the classic political battle of property owners versus developers, including back-and-forth initiative measures to change zoning laws. Appealing to the county's concern about the costs of a special election, the developers put up the costs to assuage the county's trepidation. The property owners lost the election, they lost an election contest under Hawaii's statute, and they lost the federal equal protection challenge. The court recognized the obvious that "A federal court reaching into the state political process to invalidate an election necessarily implicates important concerns of federalism and state sovereignty." Nevertheless, Counsel quotes a few very provocative words "sandbagging on the part of wily plaintiffs" in the context of federal courts intervening in state election procedures. "Moreover, the [federal] courts have been wary lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs." The only sandbagging happening here is that of Counsel to protect the money-printing racket being run by the Defendants in the basement of city hall. This case was not an election contest special proceeding.

Kilbourne v. City of Carpinteria (1976) 56 Cal.App.3d 11. This was a writ of mandate brought immediately after a recall election. It involved the slight misspelling of Kilbourne's surname. It was not an election contest special proceeding.

Just looking at this set of citations, not one deals with a case that was decided

according to the procedure and the law of election contest special proceedings.

What do all these cases have in common? All of these cases were brought after the election. None of them were election contest special proceedings. None of them involved ballot counting. All of them are cobbled together to purportedly derive a spurious rule. Nevertheless Counsel speciously claims that "the 'rule' in California is that 'one cannot pass up a preelection remedy in favor of a post-election challenge.'" and that rule prohibits measure contests after an election. Are we on the same planet?

9. DIRECTORY VS. MANDATORY IN GARRISON AND BRIGGS

Contestant is relived to see that Counsel can grasp the judge-made distinction between directory and mandatory in the paragraph remnant at the top of page 42 of Respondent's brief.

Unfortunately, Counsel only cites this in connection with a claim that Contestant has never made. Nevertheless, a discussion with respect to that nonexistent claim, or straw man, will be elucidating.

The distinction occurs in many areas of the law and it is almost always judge-made. It arises when there is some act that a legislative or administrative act makes mandatory, usually with the word "shall," which if applied strictly would violate some other overriding policy or power. In the cases Counsel sights, the distinction is used to prevent the legislative department from overriding the power of the judicial department.

In the case of election contest special proceedings, the distinction is used to allow the judicial department to preserve the will of the people via an election in the face of minor technical or procedural errors which are found in virtually every election mandated by the legislative department. In the case of election contest special proceedings, the distinction is expressed as either a) mandatory before the election and directory after the election ("Case A") or b) mandatory before the election and mandatory after the election ("Case B").

Courts apply Case A to technical and procedural details that are mostly out of the ken of the voter. Nevertheless, courts are willing to void an election with a Case A defect, if a contestant can prove that the defect affected enough votes to change the outcome of the election. To be clear, Case A does not prohibit an election contest special proceeding, it merely sets a burden of proof.

On the other hand, courts apply Case B to issues that are substantive and material.

Rideout sets out the entire law of election contest special proceedings, incorporating both types of Case A along with Case B. For Case B, there is no requirement that the defect affected enough votes to change the outcome, the election is summarily vitiated.

So when a ballot statement misrepresents what the underlying measure does, courts find that the will of the voters cannot be determined because they could not have known that the measure was being misrepresented to them. It's common

sense that if a contestant had to prove what was in the mind of each voter with respect to the language on the ballot or whether they understood the purpose of the measure through sources other than the ballot, it would be an impossible burden not only for the contestant, but also for the court, which would have to subpoena every voter and establish their individual knowledge.

In Case B, therefore, the burden of proof is only that the mandatory act failed to occur, regardless of motivation. That's the only fair result when the integrity of the election has been compromised.

10. PRIDE AND PREJUDICE AND ARGUMENT AND PARTISAN ADVOCACY

The lawless advocacy in ballot statements for local measures is not universal across the United States. California appears to be the wild west.

Contestant chose the following ballot statements as recent examples of local bond measures in order to compare apples to apples. This court is welcome to take judicial notice of these examples or not. It is what it is. Obviously, the laws for ballot statements in other states vary. What is plainly obvious, however, is that none of these are sales pitches with argumentative, partial, and prejudicial language in them. Are these states' laws more strict than California's? Or do the local governing bodies and their election officials just have greater respect for the laws?

> Iowa, Polk County (Des Moines), December 11, 2018 (95 words)
> Shall the Board of Directors of the Ballard Community School District in the Counties of Story, Boone and Polk, State of Iowa, be

authorized to contract indebtedness and issue General Obligation Bonds in an amount not to exceed $19,850,000 to provide funds to construct, furnish and equip additions to and to remodel, repair, improve, furnish and equip the existing Middle School and improve the site; to remodel, repair, improve, furnish and equip the existing Stadium facility; and to improve security by reconstructing the entrances/exits at the existing West and East Elementary Schools?

Michigan, Wayne County (Detroit), November 5, 2019 (257 words)
Shall Van Buren Public Schools, Wayne and Washtenaw Counties, Michigan, borrow the sum of not to exceed Thirty-Five Million Four Hundred Ninety Thousand Dollars ($35,490,000) and issue its general obligation unlimited tax bonds therefor, in one or more series, for the purpose of: erecting, furnishing, and equipping a new early childhood center; remodeling, furnishing and refurnishing, and equipping and re-equipping existing school buildings; acquiring and installing instructional technology in school buildings; and preparing, developing, improving, and equipping playgrounds, athletic fields, and sites?
The following is for informational purposes only: The estimated millage that will be levied for the proposed bonds in 2020 is .78 mill ($0.78 on each $1,000 of taxable valuation) for a -0- mills net increase over the prior year's levy. The maximum number of years the bonds of any series may be outstanding, exclusive of any refunding, is thirty (30) years. The estimated simple average annual millage anticipated to be required to retire this bond debt is .87 mill ($0.87 on each $1,000 of taxable valuation). The school district does not expect to borrow from the State to pay debt service on the bonds. The total amount of qualified bonds currently outstanding is $54,495,000. The total amount of qualified loans currently outstanding is $0.00. The estimated computed millage rate may change based on changes in certain circumstances. (Pursuant to State law, expenditure of bond proceeds must be audited, and the proceeds cannot be used for repair or maintenance costs, teacher, administrator or employee salaries, or other operating expenses.)

Texas, Dallas County (Dallas), May 4, 2019 (45 words)
The issuance of $1,102,000,000 bonds and notes for the purpose of constructing, improving, renovating and equipping school buildings in the Dallas County Community College District and acquiring real property therefor, and the levying of an ad valorem debt tax in payment thereof.

California actually does follow its own rules when the entire state is watching. Those rules are in virtually identical language to ELEC 13119(c) and found in ELEC 9051(c) where it mandates "a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure."

Let's examine a recent statewide bond measure for example. This is the language for statewide Proposition 1 at the same election as the Measure and, therefore, on the same ballot.

> California, statewide, November 8, 2018 (53 words)
> AUTHORIZES BONDS TO FUND SPECIFIED HOUSING ASSISTANCE PROGRAMS. LEGISLATIVE STATUTE.
> Authorizes $4 billion in general obligation bonds for existing affordable housing programs for low-income residents, veterans, farmworkers, manufactured and mobile homes, infill, and transit-oriented housing. Fiscal Impact: Increased state costs to repay bonds averaging about $170 million annually over the next 35 years.

Look at that, will ya? Even though ELEC 13119 does not govern statewide measures, Proposition 1 disclosed the annual debt service required to repay the bonds and the number of years. Proposition 1 is not an anomaly. The ballot statement for all the statewide measures are written by the Attorney General's office, no matter whether the Legislature or the People put them on the ballot. Local governing bodies recognized a long time ago (about 40 years) that no one was watching them. They didn't have to provide honest ballots and fair elections. It's been going on for so long that no current government servant has seen anything different.

Counsel will tell the court otherwise, because Counsel's goal is to mislead the court and attain a favorable result to keep the City's money-printing, counterfeiting presses going.

The mandatory law is ELEC 13119. On its face, it was mandatory before the election. One of the ways courts determine if a provision is mandatory is to look for explicit language to that effect or look to see whether the failure of the mandatory conduct is sanctioned. *Garrison v. Rourke* (1948) 2 Cal. 2d 430; *Briggs v. Brown* (2017) 3 Cal.5th 808. In the case of ELEC 13119, the Legislature has sanctioned printing or circulating ballots that do not conform as a misdemeanor in ELEC 18401. Therefore, ELEC 13119 is mandatory both before the election and after the election.

The only determination left, therefore, for the courts, is to apply ELEC 13119 (all three parts) to the ballot statement at hand. Does it conform? Or does it not conform? The ballot statement speaks for itself. It's a sales pitch designed to get a favorable vote.

It is not in the form "Shall the measure ... be adopted?" The form is not merely technical, as some may argue. It is intentional. It prevents the local governing body from front-loading the ballot statement will all the goodies. If it were merely technical, and didn't affect the vote, why wouldn't almost every local governing body in this state follow it. They don't because it is not technical. Front-loading the sales language has been poll-tested for decades. That's what wins elections. People

have short attention spans. Madison Avenue knows this. So do the vultures on Montgomery Street (San Francisco).

The assertion that the Measure will do all the things it promises is patently false. At most, it's a down-payment on a $5 billion, 30-year boondoggle. It deceives the voter at the point-of-sale.

It's not an impartial synopsis. Start off with the title. The Elections Code does not authorize Defendant Arntz or any local governing body to print a title for a local measure on the ballot. Chapter 2 of Division 13 lays out in excruciating detail what is to be printed on the ballot. ELEC 13109 specifies the exact headings for the offices and measures on the ballot. Under each local office heading ("SCHOOL," "COUNTY,", "CITY," and "DISTRICT") the only language allowable to separate local measures is "MEASURES SUBMITTED TO THE VOTERS" -- nothing else is allowed. The mandatory form for the ballot statement explicitly prohibits anything other than the language found in ELEC 13119(a). Legislative bodies are rich and famous for their use of highfalutin' titles that belie the nature of the underlying enactment -- think P.A.T.R.I.O.T. Act, Affordable Care Act, et al.

There are, however, still a few honest counties, cities, and districts out there.

> Tehama County, Measure G, March 3, 2020 (39 words)
> Tehama County Retail Transaction and Use Tax: Shall an ordinance be adopted authorizing the County of Tehama to collect one percent sales tax (Transactions and Use Tax) for a period of ten years, providing approximately $7,900,000 annually for unrestricted general revenue purposes?

Ok, the Tehama County ballot statement printed a title. The title was about as plain and inconsequential as you can get, and it used the word "tax" in it. In fact the word "tax" is used three times in the short 39-word ballot statement.

NOTE: Contestant notices the court that both of the prominent ballot statement aggregating web sites that cover California elections, ballotpedia.org and votersedge.org, DO NOT include the titles printed on the ballots as part of the ballot language displayed on those sites. This is also true of the California Election Data Archive. One can only determine what was actually printed on the ballot by obtaining a copy of a sample ballot. Because the ballot statement can be altered after the adoption of the resolution in which it is specified, and because the registrars of Mono and Orange counties, in direct contravention of the law, add partisan titles to all local measure ballot statements, even obtaining the adopted resolution is not a guarantee that it specifies the ballot statement actually printed on the ballot.

When the issue is not controversial, one can often find general compliance.

> Merced County Measure K March 3, 2020 (19 word)
> Shall the measure to amend the Merced City Charter to impose a four year term for Mayor be adopted?

However, tens of millions of California voters are likely to see something like this ballot statement, for a PERMANENT, GENERAL sales tax. To gain even further advantage, the city requested and got the registrar to assign the measure "AL" as the measure designation in direct violation of ELEC 13116, but that's

another story.

> Los Angeles County, Measure AL, March 3, 2020 (72 words)
> ALHAMBRA COMMUNITY SERVICES AND INFRASTRUCTURE PROTECTION MEASURE: To protect City of Alhambra's long-term financial stability; maintain fire, police, emergency response/school safety; preventing thefts/burglaries; repairing streets/potholes; recruit/retain well-trained police/firefighters; keep public areas safe/clean; maintain gang prevention, afterschool and senior programs/other general services; shall the measure be adopted approving an ordinance establishing a ¾¢ sales tax providing approximately $8,100,000 annually until ended by voters; requiring audits, all funds used locally?

"until ended by voters" is the new "forever."

Not to be outdone, nor to be cowed into following the law, the City is back at it again with this ballot statement.

> San Francisco County, Proposition B, March 3, 2020. (162 words)|
> SAN FRANCISCO EARTHQUAKE SAFETY AND EMERGENCY RESPONSE BOND, 2020. To improve fire, earthquake, and emergency response by improving, constructing, and/or replacing: deteriorating cisterns, pipes, and tunnels, and related facilities to ensure firefighters a reliable water supply for fires and disasters; neighborhood fire and police stations and supporting facilities; the City's 911 Call Center; and other disaster response and public safety facilities, and to pay related costs, shall the City and County of San Francisco issue $628,500,000 in general obligation bonds, with a duration up to 30 years from the time of issuance, an estimated average tax rate of $0.015/$100 of assessed property value, and projected average annual revenues of $40,000,000, subject to citizen oversight and regular audits?
> The City's current debt management policy is to keep the property tax rate for City general obligation bonds below the 2006 rate by issuing new bonds as older ones are retired and the tax base grows, though this property tax rate may vary based on other factors.

There are over 300 local measures on the ballot around California on March 3, 2020. Only a handful of ballot statements even make an attempt at conforming to

ELEC 13119. That's enough for examples. Back to the ballot statement for the Measure.

The focus of ELEC 13119(b) is disclosure. Isn't disclosure the primary purpose of the entire Political Reform Act (initiative Proposition 9 (1974)? Non-disclosure comes with penalties.

Even before that landmark law, California had campaign disclosure laws. "The chief harm is that suffered by all the people when, as a result of the public having been misinformed and misled, the election is not the expression of the true public will." *Canon v. Justice Court* (1964) 61 Cal.2d 446 (disclosure on campaign literature). Isn't the harm even more egregious when local governing bodies engage in verbal jujitsu to avoid disclosure of information prescribed by the Legislature to inform voters.

The purported duration "from the time of issuance" is meaningless to voters. It's relative to something else. Nothing in the ballot statement states what the time of issuances are planned to be. There is a plan. It's just not disclosed, even in the measure. The tax rate could not have been calculated without plugging in the dates and amounts of bond issuances. Somebody knows, but they're not telling, defeating the whole legislative purpose -- disclosure.

When one examines the ballot statement in relation to ELEC 13119(c), however, the City shows its true colors.

What is the "nature" of the Measure? Its chief purpose is to authorize debt, the

repayment of which is secured by the taxable property owners of the city, and the tax needed to service the debt. Under Proposition 46, the proceeds of the borrowing can be used strictly for "the improvement or acquisition of real property."

The ballot statement for the Measure uses argumentative language and argument.

Titles are, almost invariably, argument. The title, even if authorized, wasn't GENERAL OBLIGATION BOND. Tehama County might have done that, but not the City. That wouldn't sell, even if a voter understood what it meant. It's an "EARTHQUAKE SAFETY BOND." Living in California, but, perhaps even more so in San Francisco, home of the most famous earthquake in the United States, earthquake evokes fear, anxiety and other powerful human emotions. It's argumentative, partial, and prejudicial. Safety is relative. Nothing the people of San Francisco can do will make the city earthquake safe. They can only ameliorate the effects of an earthquake. As a point of fact, this is a gift to all the billion-dollar-view commercial real estate on the bay. That's why they funded the proponents' campaign to the tune of more than a million dollars to help get it passed. Let the people eat cake!

The fact that it uses 2018 in the title is a clue that there will be more of these bonds, perhaps forever, because nothing is ever earthquake safe.

What about the rest of the ballot statement language? Adjectives and adverbs,

as pointed out in Exhibit A of the election contest special proceeding filing are the easiest way to turn any noun or verb into argumentative language or an argument.

"100 year old" - It's old, so it's not any good anymore. It's not "historic" either, that means it can be replaced with a brand spankin' new, gleaming, shining, sea wall.

"strengthening" - Sounds good, whatever that means. Wonder Bread "Helps build strong bodies 12 ways."

"fortifying" - Sounds good too. All our foods are "fortified" with vitamins and minerals. Forts are strong, too, like Ticonderoga.

"serving residents and businesses" That's good too, because voters might not know a good reason to vote for it otherwise. At least it won't be serving space aliens.

The ballot statement for the Measure is not impartial.

Nearly every word before "shall" and after "$40,000,000" has a subliminal "vote yes" attached to it.

"historic piers" - Raggedy old piers? No, just historic ones.

"flooding and rising seas" - Oh my goodness, we'll all drown.

The ballot statement for the Measure is likely to create prejudice for the Measure.

Nearly every word before "shall" and after "$40,000,000" is designed for that very purpose -- to create prejudice in favor of the Measure. Even the

"$0.013/$100" is designed to make the tax look small. Who talks about property value in increments of $100 these days. $13 per $100,000 is actually not bad, but it only makes it easier for voters to calculate the tax on their multi-million dollar properties. That might lead to a few less votes. That might cost the election. One point three cents it is. Makes one wonder whether those eighth-grade-level readers can understand what three decimal places means.

"citizen oversight" - Oversight sounds good too, especially citizen oversight. That's better than Martian oversight or Russian oversight or ET oversight. Certainly, it's much better than public servant oversight. Good reason to vote yes.

"regular audits" - Sounds really good, but it too has nothing to do with the "nature thereof." It's just another argument to vote yes. It's even argumentative, as are almost all the phrases in the ballot statement. How often is regular? Once? More than once?

The only reason for placing the non-binding debt management policy on the ballot is to sell the voters that this won't result in a tax increase. That's patently not true. Once general obligation bonds are sold, the repayment provisions require that the annual principal and interest payments will be extracted from the property owners no matter what tax rate is needed to do it. God forbid, property values go down or the City loses taxable property to "rising seas," a destructive earthquake, or a meteor strike. Wall Street investors will still get their pound of flesh.

11. FLORIDA ELECTION CONTESTS

After thorough research, Contestant can find no California opinions of election contest special proceedings that address the specific questions raised here - the language used on the ballot. Contestant suspects that may be because ELEC 13119, in its current incarnation, has only been effective since January 1, 2018.

The Florida Supreme Court has addressed the issues head-on in an entire line of cases. While not binding on this court, the Florida cases can be used for the purposes of analogy and may be found persuasive in the same way that the California Supreme Court used the New Jersey Supreme Court's decision in *Citizens to Protect Pub. Funds v. Board of Education* (1953) 13 N.J. 172 (a school bond measure) persuasive to formulate it's landmark decision in *Stanson v. Mott* (1976) 17 Cal.3d 206. (a state bond measure).

Contestant suspects that Counsel will have an apoplectic fit that Contestant should even raise the specter of a holding outside of this state. When it doesn't suit the desired outcome, Counsel demonstrates no respect for the holdings of the California Supreme Court either.

Florida is no newbie to the world of election contests, having been the epicenter of perhaps the most famous election contest in history, Gore v. Bush (2000).

While Contestant does not want to go too far afield, the Florida Supreme Court has not been bashful in protecting the will of the voters against sandbagging and

hoodwinking public servants.

The Florida legislature has enacted statutes governing elections. Surprise, surprise!

Florida has an election contest statute analogous to Division 16 in which the entire procedure is provided in a single statute. Notably, it specifies (1) standing, (2) statute of limitations, (3) grounds, (4) defendants, (5) presumption against dismissal (almost word-for-word to that of ELEC 16403), (6) service and required answer, (7) immediate hearing, and (8) a special rule about counting legal ballots. Fla. Stat. § 102.168

Florida also has a statute analogous to ELEC 13119 that prescribes that "a ballot summary of such ... public measure shall be printed in clear and unambiguous language on the ballot ..." and that "The ballot summary of the ... public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." Fla. Stat. § 101.161(1)

In *Wadhams v. Board of County Commissioners* (1990) 567 So.2d 414, the Florida Supreme Court considered a Sarasota County measure where the entire ordinance, rather than the required ballot summary, was printed on the ballot.

> Finally, we reject the Board's argument that the present case is distinguishable from *Askew* because *Askew* dealt with a preelection challenge to the ballot and that the petitioners should be foreclosed from relief because the present action was not instituted until after the special election. The Board in effect argues that hoodwinking the voting public is permissible unless the action is challenged prior to the election. We perceive no basis for the Board's conclusion that the holding of this Court in *Askew* applies only if the challenge is made

prior to the election. [Citation]. [Emphasis supplied.]

The court set aside the election because what appears on the ballot is integral to a ballot measure election. Chicanery used to advance a particular point of view was incompatible with fair and honest elections and ascertaining the true will of the voters.

Beckstrom v. Volusia County Canvassing Board (1998) 707 So. 2d 720 involved election officials nonchalantly defacing absentee ballots by over-marking them rather than making copies and marking the copies.

> We stress, however, that we are *not* holding that a court lacks authority to void an election if the court has found substantial unintentional failure to comply with statutory election procedures. To the contrary, if a court finds substantial noncompliance with statutory election procedures and also makes a factual determination that reasonable doubt exists as to whether a certified election expressed the will of the voters, then the court in an election contest brought pursuant to section 102.168, Florida Statutes (1997), is to void the contested election even in the absence of fraud or intentional wrongdoing.

This aligns with *Rideout* where it allows that even directory provisions can overturn an election in some cases.

> We hold that there is a necessary distinction between an election contest with a judicial determination of fraud and an election contest with a judicial determination of substantial noncompliance with statutory election procedures, even if the noncompliance is determined to be a result of gross negligence by election officials. Such a distinction is required in order to respect the fundamental principle upon which we based our decision in *Boardman.* ... the essence of our *Boardman* decision is that a trial court's factual determination that a contested certified election reliably reflects the will of the voters outweighs the court's determination of unintentional wrongdoing by election officials in order to allow the

> real parties in interest--the voters--to prevail. By unintentional wrongdoing, we mean noncompliance with statutorily mandated election procedures in situations in which the noncompliance results from incompetence, lack of care, or, as we find occurred in this election, the election officials' erroneous understanding of the statutory requirements.

This election contest special proceeding does not involve unintentional wrongdoing with directory provisions. It involves the intentional violation of mandatory provisions to mold the will of the voters to the desired outcome using public moneys to do it.

The Florida cases stress that the will of the voters is paramount. When the will of the voters can be determined, it reigns. When the will of the voters cannot be determined through hoodwinking or otherwise, an election fails. While expressed a little differently, these cases are in the same vein as *Rideout* and *Canales* that the courts will not turn a blind eye to conduct that frustrates the will of the voters. How can the true will of the voters ever be determined when the question put to them is stacked, in direct violation of the law, to achieve a pre-determined outcome?

12. THIRD VALIDATING ACT

The novel concept that an election could be validated by the legislature is absurd. California case law is rife with election challenges based on either Division 16, or constitutional challenges, or writs of mandate. If a validating act could bar an election contest special proceeding, it is likely that no local measure

election could ever be contested.

Let us examine what a validating act does. It validates the acts of a public body. An election is the act of the sovereign voters of this state. It is not an act of their public servants.

The purpose of a validating act is to cure any procedural defects in the acts of a public body in connection with the issuance of bonds. It is akin to a statute of limitations. Once bonds are issued many parties rely on them. A validating act merely sets out that those public acts may be relied on by all the world. Without that assurance, the modern financial markets would not be able to confidently trade debt securities. Without that assurance, corrupt public bodies could extinguish their bonded indebtedness and leave the investors holding the proverbial bag.

Counsel cites no act of the City issuing any bonds purportedly authorized under the Measure neither between the date of the election and January 1, 2019, nor any subsequent date. This election contest special proceeding is not challenging any issued bonds.

The *City of Pacific Grove* opinion, cited by Counsel, did not involve an election contest special proceeding. It was a writ of mandate to force a recalcitrant city clerk to sign bonds authorized by the voters based on perceived procedural inadequacies prior to the filing deadline for the election: "1. The adoption of a resolution of public interest or necessity; 2. The ordinance calling the election did

not state the estimated cost of the proposed improvements; 3. The ordinance calling the election did not provide the manner of holding the election and of voting for and against the indebtedness." *City of Pacific Grove*, *supra*.

Since the context in which the issues in *City of Pacific Grove* were raised was not an election contest special proceeding, it didn't address it as a challenge to an election. The petitioner in *City of Pacific Grove* had gone through all the steps to issue bonds.

This contest, like all election contest special proceedings, is about whether the will of the voters can be determined. Neither party in *City of Pacific Grove* raised that question.

This objection is another instance of Counsel misleading the court with a specious objection.

13. OFFENSES AGAINST THE ELECTIVE FRANCHISE

When the will of the voters is subverted by a ballot statement that does not conform to the law in substantive ways the law and the burden of proof is different. The different burdens are described in *Rideout*. When the flaws are of a directory nature, like technical errors, the burden is to prove, in most cases, that the outcome of the election would have been different due to the flaws. When the flaws are of a mandatory nature, the burden is only to prove that the flaws occurred.

There are many cases that revolve around elections that are not election contest

special proceedings. An election contest special proceeding is a specific special, summary proceeding regarding the validity of an election based on specific grounds.

Respondents argue that an election contest special proceeding may only concern itself with the counting of votes, yet cites no such restriction in Division 16. At the time of the antecedent to today's Division 16 in 1850, it did not include measures because they did not exist.

Section 1111 of the Political Code of 1872 is the antecedent of ELEC 16100. By 1872, it had already been amended to allow the six months filing period for "any other offense against the elective franchise."

> Deering's California Codes for 1909.
> § 1111. Any elector of a county, city and county, city, or of any political subdivision of either, may contest the right of any person declared elected to an office to be exercised therein, for any of the following causes: 1. For malconduct on the part of the board of judges, or any member thereof. 2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office. 3. When the person whose right is contested has given to any elector or inspector, judge, or clerk of the election, any bribe or reward, or has offered any such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in title four, part one, of the Penal Code. 4. On account of illegal votes.

While "offense against the elective franchise" has no explicit definition, it is defined by the character of the acts that are deemed penal in nature. In general, one may broadly characterize these acts as cheating. That's what this election contest special proceeding is about. The Defendants cheated by printing and circulating

ballots with language that did not conform to the newly amended ELEC 13119. This was not an inadvertent "technical" or "procedural" error. The City knew exactly what it is was doing to prejudice the vote in favor of the Measure. Counties and cities and districts have been doing this for decades and are not about to stop. The ballot statement appearing on the ballot is substantive. It directly affects the decision to vote in favor of or against a measure. In the case of local measures, the only person standing between the unbridled cheating of a local governing body and an honest ballot is the elections official (ELEC 362). When Defendant Arntz ignores the law that was his duty to uphold, then he becomes the most direct person accountable for the cheating. Defendant Arntz had a duty to prevent it.

If one doesn't believe that the ballot statement makes a difference, all one has to do is look at the controversies surrounding initiative Proposition 6 in 2018. Even with a supposedly disinterested attorney general writing the ballot title and summary, only required for statewide propositions, it was clear that the voters were not told that the initiative would repeal the legislature's gasoline tax hike. The language on the ballot makes all the difference in the world.

14. JURISDICTION UNDER DIVISION 16

The *Briggs* opinion actually reinforces Contestant's challenge to lack of jurisdiction, as if it were needed. The lower court was not free to turn an election contest special proceeding into a civil action. All of the lower court's actions in

that respect were beyond its jurisdiction.

> "[T]he mere procedure by which jurisdiction is to be exercised may be prescribed by the Legislature, unless... such regulations should be found to substantially impair the constitutional powers of the courts, or practically defeat their exercise.' [Citations.]" ([Citations])

> "Chaos could ensue if courts were generally able to pick and choose which provisions of the Code of Civil Procedure to follow and which to disregard as infringing on their inherent powers. ... In most matters, the judicial branch must necessarily yield to the legislative power to enact statutes. ([Citation]) Only if a legislative regulation truly defeats or *materially impairs* the courts' core functions, including, as relevant here, their ability to resolve controversies, may a court declare it invalid." *Le Francois v. Goel* (2005) 35 Cal.4th 1094 (*Emphasis* in original.)

And chaos certainly did ensue when the lower court freely picked and chose Code of Civil Procedure rules to apply at the behest of Counsel, while at the same time it blithely ignored ALL the rules of an election contest special proceeding.

Briggs was not an election contest special proceeding. The Elections Code was not even at issue. *Briggs* merely referenced an election contest case for the proposition that the Legislature could not bind the courts, through procedure, in certain fundamental ways. Contestant has not even raised this issue. It's a straw man argument. Contestant asserts that because the lower court had not followed the Division 16 procedure from the get go, that it had no jurisdiction to pick and choose other procedures.

Applying *Briggs* to the entire Elections Code is ridiculous. Even applying it only to Division 16, would make the entire election contest special proceeding subject to the whim of any judge.

It's even more ridiculous when one considers that the courts have no "inherent" fundamental jurisdiction over an election contest special proceeding. It is a special proceeding purely of the Legislature's making.

Garrison was an election contest special proceeding. It is distinguishable because it involves the time period for the final judgment after all the rules had been followed.

It does not appear that the *Garrison* opinion considered earlier decisions in the same vein, as it relied on a deadline for an appeal. Contestant asserts that *Garrison* may not have been decided correctly. The *Dorsey* opinion expressed it better when it said that "The statute has not made provision for the re-examination of the issues of law or of fact in that Court [trial court], but has expressly provided for the taking of an appeal." ELEC 16900[8575] gives an aggrieved party an absolute right to appeal. *Dorsey* found that, while the lower court had no jurisdiction to order a new trial since it violated the rules of the election contest special proceeding, the appellate court could provide a remedy under its broad judicial powers. The Legislature had only specified its procedures for the trial court. Deciding *Garrison* in the same way as *Dorsey*, the court of appeal could have made its own ruling in the interests of justice and still preserve the fundamental judicial integrity of the courts.

None of the procedural time requirements of Division 16 prior to the trial impinge on any judicial prerogative, such as deliberation or judgment.

15. MORE (LAST) STRAWS

Contestant feels that, due to Counsel's propensity to devise wild, unsupportable legal theories based on remnants of words found in opinions, he must eliminate some of those as a peremptory defense to it being raised.

Since Defendants did not answer by affidavit with objections within the five days allowed, they have lost their opportunity to assert affirmative defenses.

Conviction As Prerequisite to Offense Against the Elective Franchise

Offenses against the elective franchise are all penal provisions of Division 18 of the Elections Code. Election contest special proceedings are not penal proceedings. Therefore, it might come into Counsel's head that the Defendants must have been convicted before an election contest special proceeding under ELEC 16100(c) would lie. This is not the case.

In *Pierce v. Harrold*, 138 Cal.App.3d 415, a case involving an offense against the elective franchise, the court used common sense in deciding that "to make conviction of an offense a condition precedent even to initiating an election contest would represent an absurd contradiction in legislative policy." *Supra*, at 426. *Pierce* also held that the proper burden of proof for an offense against the elective franchise is preponderance of the evidence. The defendant had made a false statement on her declaration of candidacy filed more than three months before the election. In contradiction to Counsel's ranting about a purported "'rule' in California" that a contestant must avail themselves of pre-election remedies, it

wasn't raised in *Pierce*. Despite all the wild and crazy defenses that the defendant did raise, she didn't come up with that one. Even though she got 62% of the vote to win the election at the primary, the defendant's election was set aside. There was no requirement that the offense affected the votes cast. There was a sanction for making a false statement. Though not stated in *Pierce*, the result of the holding could be characterized as following the rule of *Rideout* with respect to the directory / mandatory distinction. The declaration of candidacy was mandatory before the election and mandatory after the election. As a result, the offense could not be cured by the election results. The election was vitiated.

Substantial Compliance

Although Contestant hasn't heard the Defendants talk about "substantial compliance" yet, Contestant expects they will when they find themselves behind the eight-ball. When failure to comply is accidental or inadvertent, the concept of substantial compliance might have some merit. One can forgive an honest or inadvertent mistake. However, in the context of intentionally trying to avoid compliance, it should merit no hearing. If this court were to consider anything other than strict compliance, it will just start another game of local governing bodies pushing the envelope in an attempt to try and get away with as much as they can. Strict compliance should be the rule. The court should brook no attempt to hide behind substantial compliance when the intention is to not comply.

CONCLUSION

The ballot statement was designed to affect the result of the election. How much it affected it we will never know. The voter information guide materials likely had a lesser effect, but an effect nevertheless, as that was their design as well.

There is no dispute about the evidence. The ballot statement and the voter information materials speak for themselves.

The election should be thrown out. The Defendants violated the integrity of the entire election process. They did it exclusively using public moneys in an effort to convert the property (money) of private individuals to the City's own ends.

The People have an intangible right of *honest services* from their public servants. The People have a right to honest ballots. The People are only partially vindicated when the election is set aside. While the theft will have been thwarted, the public moneys used in the attempt will not have been recovered. The Defendants should also be prosecuted and the public moneys recovered. All the legalese aside, offenses against the elective franchise are crimes of moral turpitude.

It's clear by the religious fervor of Counsel's attack, also using public moneys, on the election contest special proceeding that the Defendants have no intention of following the law -- ever. Counsel has gone to extraordinary lengths to defend dishonest services and dishonest ballots. The Defendants have demonstrated a

pattern of criminal behavior for the ballot measures in 2018, in 2019, and again for the ballot measures on the March 3, 2020 ballot. Without meaningful sanctions, in accordance with the law, nothing will stop the same dishonest behavior in November 2020 and beyond.

Every ballot measure special election should not turn into a game of "catch me if you can" where public servants cheat, requiring that the People catch them at cheating at their great expense, before the public servants will follow the law, and then only in that one instance. Yet that's what Counsel's arguments ultimately lead to. That's insane.

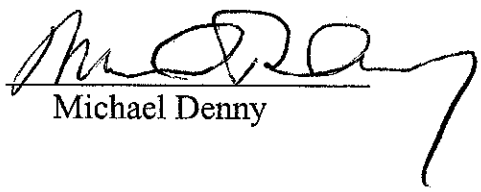
On January 28, 2020 following the corruption arrest of a public servant in charge of $5.6 billion in bond proceeds, San Francisco Mayor London Breed is reported to have made this statement. "Nothing matters more than the public trust, and each and every one of us who works for the City must hold ourselves to the highest standard. I accept nothing less for myself or for those who serve in this Administration, and I will do everything I can to ensure that those who fail to uphold that standard are held accountable." Is this just politically correct pablum? She should be held to her word, too. Supervisor Matt Haney chimed in "there has been too much power concentrated in the hands of its Director with very little oversight." So much for the claim of "citizen oversight" in the Measure.

While the Contestant does not believe he will ever receive honest services from the judges in San Francisco who are being gifted over $15,000 a year by the City,

Contestant hopes for a fair adjudication in this court.

When they engage in corruption at the ballot box, it is the duty of this court to enforce the rules on recalcitrant public servants.

Respectfully submitted,

DATED: February 4, 2020 By 
Michael Denny

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 16,576 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By