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Clerk-Recorder-Elections Department

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Joseph E. Canciamilla
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July 3, 2017

Jim Mellander, Foreperson
2016-17 Contra Costa County Grand Jury
P.O. Box 431
Martinez, CA 94553

Response sent via
US Mail and Email

Re: Department Response to Grand Jury Report No. 1704
"Selection of Ballot Measure Arguments"

Dear Mr. Mellander,

Pursuant to Penal Code Section 933 et. seq., we are submitting this response to the above referenced Grand Jury report, which was received by our office on June 5, 2017.

We have responded to each of the findings and recommendations, along with additional information, as appropriate.

A hard copy has been mailed to the post office box, as directed in the cover letter, and an electronic version has been emailed to the Grand Jury at ctadmin@contracosta.courts.ca.gov.

Sincerely,

Joe Canciamilla
Contra Costa County
Clerk-Recorder and Registrar of Voters

enc.

RESPONSE TO REPORT 1704
BY THE 2016-17 CONTRA COSTA COUNTY GRAND JURY

Prepared by:
Joe Canciamilla
Contra Costa County Clerk-Recorder and Registrar of Voters
Clerk-Recorder-Elections Department
555 Escobar Street
Martinez, CA 94553

July 3, 2017

Contact: Scott Konopasek
Assistant Registrar
925-335-7808

FINDINGS

F1. The procedures used by the Registrar and the Elections Division in ballot argument selection conform to the requirements of the Elections Code.

F1. Agree.

F2. The Elections Division does not have written procedures governing the selection of multiple ballot arguments of the same priority.

F2. Agree.

F3. The selection process between multiple ballot arguments of the same priority is based upon a subjective evaluation by Elections Officials.

F3. Agree.

F4. The section in the Argument Guide that addresses the filing of multiple arguments of the same priority does not clearly set out the process by which the Registrar and the Elections Division exercise their discretion to select the argument to include in the Voter Guide.

F4. Agree.

F5. Although the Argument Guide contains language encouraging parties to collaborate in the filing of arguments, it has no procedure indicating how parties filing arguments may collaborate.

F5. Partially Disagree.

Our instructions regarding collaboration on Page 4 of "2016 Guide to Filing Measure Arguments" read "Parties are encouraged to collaborate when multiple arguments are submitted."

Parties are immediately and simultaneously notified via email of the Registrar's argument selection and copies of competing submissions are provided to each party. All parties have available all the information, to include names and contact information, required to initiate a collaborative effort.

F6. The Argument Guide includes no procedure by which an association of citizens may establish its bona fide status.

F6. Disagree.

Our instructions regarding bona fide organizations on Page 4 of "2016 Guide to Filing Measure Arguments" read:

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"What is a Bona Fide Association of Citizens?
A bona fide association of citizens is a recognized group of citizens bound together by a common interest or cause such as:

1. A group or organization primarily formed as a ballot measure committee to support or oppose a measure.
2. An organization that meets on a regular basis.

The individuals signing an argument on behalf of a bona fide association do not have to be registered voters in the jurisdiction."

Parties claiming to represent a bona fide organization are asked to complete a form identifying the organization. The Election Code is silent on judging the merits or relative credibility of bona fide organizations.

In the current legislative session, SB 665 amends Election Codes 9166 and 9503 to identify the types of documentation that might be used to establish that an organization is bona fide but the bill expressly prohibits using this documentation in the selection of competing arguments. As of June 15, 2017, the bill is being considered in the Assembly but passage is doubtful.

RECOMMENDATIONS

R1. Prior to the next election, the Registrar should consider developing internal procedures to clarify the process for selecting between multiple ballot arguments of the same priority.

R1. Recommendation has been implemented.

As part of our ongoing review of Election Procedures and Publications we revised the pertinent section of the "2018 Guide to Filing Measure Arguments" as follows:

"If More Than One Argument in Favor or Argument Against Is Filed
Only one Argument in Favor and one Argument Against any measure will be printed in the Voter Information Guide. If more than one Argument in Favor or more than one Argument Against any measure is filed, a single argument will be selected by the Registrar of Voters.

In selecting a single argument, the Registrar gives preference and priority to arguments submitted by:

1. Members of the governing board.
2. The bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

> If two or more parties representing the same type of body/association submit competing arguments for or against the same measure, the Registrar of Voters will make a subjective assessment of the arguments. The assessment may include consideration of grammar, spelling, coherence, tone and the comprehensiveness of the argument."

R2. In the next and subsequent revisions of the Argument Guide, the Registrar should consider including procedures that clarify the process for selecting between multiple ballot arguments of the same priority.

R2. Recommendation has been implemented.

As part of our ongoing review of Election Procedures and Publications we revised the pertinent section of the "2018 Guide to Filing Measure Arguments" as follows:

> **"If More Than One Argument in Favor or Argument Against Is Filed**
>
> Only one Argument in Favor and one Argument Against any measure will be printed in the Voter Information Guide. If more than one Argument in Favor or more than one Argument Against any measure is filed, a single argument will be selected by the Registrar of Voters.
>
> In selecting a single argument, the Registrar gives preference and priority to arguments submitted by:
>
> 1. Members of the governing board.
> 2. The bona fide sponsors or proponents of the measure.
> 3. Bona fide associations of citizens.
> 4. Individual voters who are eligible to vote on the measure.
>
> If two or more parties representing the same type of body/association submit competing arguments for or against the same measure, the Registrar of Voters will make a subjective assessment of the arguments. The assessment may include consideration of grammar, spelling, coherence, tone and the comprehensiveness of the argument."

R3. Prior to the next election, the Registrar should consider developing internal procedures to facilitate collaboration between parties that file competing ballot arguments.

R3. Recommendation will not be implemented.

Based upon our current practice and procedures described in the response to Finding 5 (F5), we believe that our instruction and practice exceeds the requirements of the Election Code. Collaboration is a choice of each affected party and not a requirement. Further effort on our part to facilitate collaboration may be considered directive or intended to unduly influence the parties.

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Assistant Registrar
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R4. In the next and subsequent revisions of the Argument Guide, the Registrar should consider including procedures to facilitate collaboration between parties that file competing ballot arguments.

R4. Recommendation will not be implemented.

Based upon our current practice and procedures described in the response to Finding 5 (F5), we believe that our instruction and practice exceeds the requirements of the Election Code. Collaboration is a choice of each affected party and not a requirement. Further effort on our part to facilitate collaboration may be considered directive or intended to unduly influence the parties.

R5. Prior to the next election, the Registrar should consider developing internal procedures by which an association of citizens can establish its bona fide status.

R5. Recommendation will not be implemented.

We believe that our current instruction and practice regarding bona fide organizations is sufficient and meets the requirements of the Election Code. As described in our response to Finding 6 (F6), the Election Code provides no authority or basis for rejecting a party's assertion that it represents a bona fide organization if the organization's identifying information is provided. Further, there is no basis provided in the Code for distinguishing the relative merits of bona fide organizations in the argument selection process. As noted, SB 665, while trying to clarify acceptable documentation to establish bona fide status, prohibits the use of the information in selecting arguments.

R6. In the next and subsequent revisions of the Argument Guide, the Registrar should consider including procedures by which an association of citizens can establish its bona fide status.

R6. Recommendation will not be implemented.

We believe that our current instruction and practice regarding bona fide organizations is sufficient and meets the requirements of the Election Code. As described in our response to Finding 6 (F6), the Election Code provides no authority or basis for rejecting a party's assertion that it represents a bona fide organization if the organization's identifying information is provided. Further, there is no basis provided in the Code for distinguishing the relative merits of bona fide organizations in the argument selection process. As noted, SB 665, while trying to clarify acceptable documentation to establish bona fide status, prohibits the use of the information in selecting arguments.