

OPEN LETTER TO PUBLIC ETHICS COMMMISSIONERS*

INTRODUCTION

Regarding the matter described in the proposed [Settlement Agreement re: The Oakland Fund for Measure AA and Libby Schaaf](#) ("Settlement Agreement") I believe the Agreement's Stipulated Factual Summary, Legal Analysis, and Recommended Penalty omits important aspects of the matters involved; several of these matters were actually included in a CONFIDENTIAL DRAFT[†] of the Settlement Agreement, but apparently redacted from the version eventually presented to the Public Ethics Commission (PEC) on September 16th. Overall, the proposed penalties in the Settlement rejected by the PEC on that date are grossly insufficient.

PERSONAL BACKGROUND:

I neither reside nor own real property in Oakland. In the 1970's I worked as an attorney for the State Senate in Sacramento and served in a voluntary capacity as a State Bar Probation Monitor. Since then my Bar Membership has been inactive; the remainder of my professional career has been as a physician, including six years as a U.S. State Department Foreign Service Officer. I am the individual who provided reporter Eli Wolfe with the CONFIDENTIAL DRAFT of the Settlement Agreement described in his June 12th [Oaklandside Article](#) about the PEC investigation in this matter.

MEASURE AA AND CALIFORNIA CONSTITUTIONAL TAX BACKGROUND:

California Constitutional Tax Law became more complicated following the passage of Proposition 13 in 1978, Proposition 4 in 1979, Proposition 218 in 1996, and Proposition 26 in 2010, all of which modified Article XIII of the California Constitution by imposing limits on government powers to tax real property. One of the limitations imposed by these Initiatives was the requirement that many but not all new property fees, assessments and taxes had to be placed on the ballot and passed by a 2/3 majority of the voters.

DISCUSSION

Exhibit #1 of the "Settlement Agreement" contains the following statements (text in *italics* is directly quoted from the source - quotation marks are therefore omitted):

a) *Over the course of 2017, Mayor Schaaf and her mayoral office staff planned a ballot measure campaign that they referred to as "The Children's Initiative."*

Commentary: Had this "Children's Initiative" been placed on the ballot by a vote of the City Council, according to Article XIII of the State Constitution, it would most likely have required a 2/3 majority vote to pass.

* The electronic version of this letter contains links to those quoted document sources available online.

† Not available online.

b) *The Children's initiative was intended to be placed on the Oakland ballot by the City of Oakland in November 2018. Ultimately, however, the city did not decide to place the measure on the ballot itself and a campaign was undertaken to place the measure on the ballot via citizen signature qualification.*

Commentary: Exhibit #1 does not elucidate the reason(s) why the City Council chose not to place the Measure on the ballot, but some Citizen Tax Initiative measures placed on the ballot can pass with a simple majority vote rather than a 2/3 majority vote.

c) *The Children's Initiative eventually qualified to be placed on the November 2018 Oakland ballot. It was given the official designation of "Measure AA" on the ballot.*

Commentary: Exhibit #1 does not provide any information about the signature campaign which resulted in the Initiative's qualification, other than that Mayor Schaaf and her staff *planned a ballot measure*. However, the CONFIDENTIAL DRAFT of the Settlement Agreement states (page 18, underlining added): *The Mayor was also responsible for raising a major portion of the campaign's funds, even before Measure AA reached the ballot and the Oakland Fund was brought on-board as the campaign vehicle.* This highly revealing text was NOT included in the Settlement Agreement presented to the PEC for approval on Monday, September 16th.

d) *Ultimately, Measure AA received 62% of the vote and was declared as passed following a protracted legal battle.*

Commentary: This statement in Exhibit #1 omits crucial aspects of Measure AA's legal battle, thereby ignoring the key role Libby Schaaf played in unethically (and perhaps illegally) concealing key factors potentially relevant to the Constitutional requirements of Article XIII regarding passage of Measure AA.

MEASURE AA LEGAL BATTLE SYNOPSIS

A. The Impartial Analysis of Measure AA, prepared by the Oakland City Attorney, stated (underlining added):
This measure was placed on the ballot by a petition signed by the requisite number of voters. This special tax measure requires a two-thirds vote for passage.

Commentary: The City Attorney apparently concluded that even though this apparently was a genuine Citizen's Initiative, it still required a 2/3 vote because it was a "special" tax measure.

B. Quoting [Ballotpedia](#): *Though the official summary and [impartial analysis](#) for Measure AA stated that a [two-thirds \(66.67%\) vote](#) was required for approval, the Oakland City Council voted to declare the measure certified with 62 percent approval on December 11, 2018.*

Commentary: The Oakland City Council decided to ignore the legal opinion of its own attorney, and to certify that Measure AA had passed even though it did NOT receive a 2/3 majority vote. This strongly suggests that Libby Schaaf had planned, perhaps from the inception of this campaign, to portray the measure as a genuine Citizen's Initiative which only required a majority vote.

C. Quoting [Ballotpedia](#): *On October 11, 2019, Alameda County Superior Court Judge Ronnie MacLaren ruled against the city of Oakland for certifying the approval of Measure AA with a simple majority, not a two-thirds (66.67%) vote. The ruling concluded that Measure AA cannot go into effect with 62 percent of the vote.*

Commentary: The Superior Court agreed with the City Attorney that Measure AA required a 2/3 vote; in court the Parties did not raise the issue of whether Measure AA was a genuine Citizen's Initiative, as there was no evidence or apparent reason to question its status in that regard. At this point, Libby Schaaf was aware of her role, as Mayor, in both the original signature campaign to put the matter on the ballot, as well as of her role, as Mayor, in the unethical and perhaps illegal utilization of The Oakland Fund for Measure AA as a candidate-controlled committee soliciting donations and disbursing funds in support of Measure AA. However, she did not inform the court of these facts, even though as an Officer-of-the-Court (California Bar Member, inactive status) she was under an ethical obligation to do so.

D. In December of 2021, the Superior Court decision was over-ruled in an [opinion](#) by the Appeals Court, which began by stating (underlining added):

*A group of Oakland citizens placed a proposed special parcel tax on the November 2018 ballot (Measure AA), and officials with appellant City of Oakland (City) prepared ballot materials, which included statements that the measure needed two-thirds of the vote to pass. After Measure AA received 62.47 percent of the vote, the Oakland City Council determined that only a majority of the vote was actually needed for passage, and it declared the measure enacted. The Appeals Court stated furthermore: *We reverse. In the nonpublished portion of our opinion, we join our colleagues in Divisions Four and Five of this court, and in the Court of Appeal for the Fifth Appellate District, in holding that a citizen initiative imposing a special parcel tax, such as Measure AA, is enacted when it receives a majority of the vote.**

Commentary: The Appeals Court based its decision on the concept that Measure AA was, indeed, a Citizen's Initiative. However, neither the Appeals Court nor the Superior Court had an opportunity to assess whether or not that was factually true, because Libby Schaaf, as Mayor, unethically and perhaps illegally concealed her involvement in the political process of signature-gathering as well as in the political campaign for Measure AA. Put simply, the judiciary was unaware the *group of Oakland citizens* was a fiction created by Mayor Libby Schaaf.

The extent to which this was the case is demonstrated by the following significant text (in *italics*, underlining added). This text, which was NOT included in the Settlement Agreement presented to the PEC for approval on Monday, September 16th, is from the CONFIDENTIAL DRAFT (pages 31,32) of the Settlement Agreement:

In this case, Mayor Schaaf was clearly aware of the fundraising power that came with her office. She personally solicited many of The Oakland Fund's contributions, and even made herself available for one-on-one meetings with high-value potential donors. Given her uniquely powerful ability to bring in money, Mayor Schaaf should have been acutely sensitive of the need to distance herself from any controlling role.

Instead, the Mayor did the opposite. Instead of using her pre-existing ballot measure committee for the Measure AA campaign, she used her influence to effectively commandeer and repurpose another committee to which she was not publicly attached. That committee was then used to implement a campaign plan and budget that been developed by the Mayor and her staff in consultation with her preferred collaborators (SCN Strategies, etc.). Those same collaborators, and even some of the Mayor's staff, then worked directly to implement that plan during the actual campaign. This was all in accordance with the strategy that had been laid out by internal planning documents drafted by the Mayor's staff a year before the public campaign started.

Finally, Exhibit #1 of the "Settlement Agreement" (page 12) contains the following statement (in *italics*) regarding the requirement for a controlling candidate to personally sign Form 460's:

The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official's committee, as well as allowing the public to check whether any of those donors are City contractors.

Commentary: In the case of Measure AA, it was not only the public which was deprived of the opportunity to know Mayor Libby Schaaf was the moving force behind the purported Citizen's Initiative and eventual Campaign for Measure AA. All parties in the eventual litigation (i.e. Plaintiffs, Defendants, and both the Trial and Appeal Courts) involving Measure AA were also deprived of essential background information, quite likely leading to a miscarriage of justice. To put it bluntly, if the Superior Court had held, at trial, that based on the facts Measure AA was NOT a genuine Citizen's Initiative, the Appeals Court would have had little choice but to uphold that decision and Measure AA would not have been deemed "passed" since it lacked a 2/3 majority vote.

CONCLUSION

It is clearly arguable that Mayor Libby Schaaf (perhaps joined by her fellow City Council Members) camouflaged participation in the Measure AA campaign; that it was actually a city government measure masquerading as a Citizen's Initiative; and thus the \$30 million dollars yearly Oakland citizens are paying for this tax was imposed upon them in violation of their rights under Article XIII of the California Constitution.

The penalty for violating the Constitutional Rights of Oakland's voters should be far more substantial than that proposed in the Settlement Agreement.

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