

El Dorado County Board of Supervisors
Response to the
2023-24 El Dorado County Grand Jury Report
(Case 24-06 – Voter Initiative Petitions: The People Need To Be Heard)

Case 24-06: Voter Initiative Petitions: The People Need To Be Heard

The Grand Jury has requested responses from the Board of Supervisors and the County Elections Department on All Findings and Recommendations.

Consistent with previous practice and pursuant to Board Policy A-11, the Chief Administrative Office is responsible for coordinating the County's response to the Grand Jury. Responses to the Grand Jury Report are directed by Board Policy A-11 and Penal Code 933.05. Accordingly, the Chief Administrative Office has reviewed and compiled the responses from all non-elected department heads into this Initial Draft Response for the Board's consideration.

FINDINGS

- F1. After it was certified by the Registrar on May 14, 2020, an initiative petition signed by the required number of voters in LLAD #39 was unilaterally not acted on by the El Dorado Hills CSD. This non-action ignored the objections of the petitioners and violated Elections Code 9310 that required CSD to adopt the ballot measure or submit it to the voters.

The Board of Supervisors agrees with this finding except to the extent the finding purports to state a legal conclusion regarding alleged violations of Elections Code § 9310.

- F2. After it was certified by the Registrar on September 9, 2020, the text of a second initiative petition signed by LLAD #39 residents was altered, resulting in it being essentially nullified before it was placed on the 2020 ballot and submitted to the voters. This action ignored the objections of the petitioners and Elections Code 9310 which requires that the initiative petition be submitted to the voters without alteration.

The Board of Supervisors disagrees partially with this finding.

The Board of Supervisors acknowledges that the ballot question adopted by the El Dorado Hills CSD appeared to differ from the text of the circulated initiative petition, as described in the County Counsel's impartial analysis for the measure. However, the Board of Supervisors is not in a position to either agree or disagree with the finding to the extent it purports to state a legal conclusion regarding the petition being "essentially nullified" or not in compliance with Elections Code § 9310.

- F3. In the Impartial Analysis of Measure H on the 2022 Ballot, County Counsel noted the alteration of the LLAD #39 voter petition; however, both the County Elections Department

and County Counsel allowed the election process to proceed over the objections of the LLAD #39 petitioners and requirements of California Elections Code 9310.

The Board of Supervisors disagrees partially with this finding.

The Board of Supervisors acknowledges that the ballot question adopted by the El Dorado Hills CSD appeared to differ from the text of the circulated initiative petition, as described in the County Counsel's impartial analysis for the measure. However, the Board of Supervisors disagrees that the Elections Department and County Counsel "allowed" the measure to proceed to election over certain objections. The use of the term "allowed" (or the phrase "oversight" used elsewhere in the report) implies that the Elections Department and the County Counsel had discretion to act otherwise. To the contrary, the County Counsel's role was limited to preparation of the impartial analysis and the Elections Department's role was limited to performance of its ministerial duties as defined by the Elections Code. Additionally, the Board of Supervisors is not in a position to either agree or disagree with the finding to the extent it purports to state a legal conclusion regarding compliance with Elections Code § 9310.

- F4. El Dorado County has not published handbooks to provide voters with information to assist them in understanding the steps necessary to initiate, circulate, and file County initiative petitions.

The Board of Supervisors agrees with this finding, but notes that there is no statutory requirement to provide such handbooks.

- F5. Although CSD Legal Counsel advised CSD to not act on a ballot initiative to repeal assessments from LLAD #22, the CSD Board voted to pass the certified measure to the ballot in November 2023, while hoping to negotiate a mutually agreeable resolution that would avoid going to ballot or to court for relief.

The Board of Supervisors agrees with this finding based on information and belief only (because the County of El Dorado had no involvement in the actions described in this finding).

- F6. In situations where there are contested Proposition 218-related ballot initiatives, where the governing body disagrees with the legal foundations of the initiative and elects to not act on it, the only remediation path appears to be through the court system, which will cause delays and additional expense to the taxpayers.

The Board of Supervisors disagrees partially with this finding.

While the Board of Supervisors agrees that the path to resolution of such elections disputes must involve the judicial system, it disagrees that such a path will necessarily cause delays. The Elections Code makes clear that a writ of mandate to correct a violation of the Elections Code may only issue upon proof that issuance of the writ will not substantially interfere with the conduct of the election. Additionally, the Code of Civil Procedure provides that election contests are to be given precedence on the court's calendar.

RECOMMENDATIONS

- R1. By December 2024, the Elections Department should develop and publish online documentation for sponsors of initiative petitions that provides a summary of the County initiative petition procedure and the requirements for preparing and qualifying County initiative petitions.

The recommendation has not yet been implemented but will be implemented by December 2024.

- R2. By December 2024, the Elections Department should offer training to County Boards and Commissions that provides training on the requirements and their responsibilities in the County initiative petition process.

The recommendation will not be implemented because it is not warranted.

There is no justification for providing such training to the County of El Dorado's subsidiary commissions as they have no role to play in the elections process. To the extent the recommendation refers to boards and commissions associated with independent special districts located within the County of El Dorado, those independent special districts whose elections are consolidated with the County's elections have access to their own legal counsel or other advisors that can provide them with guidance and direction on the elections process.