

Recycle

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tial interpretation of the measure.

Supporters of the initiative had filed a petition in court alleging that the analysis and numerous arguments made by opponents, including labeling the fee a tax, were false and misleading.

They said the arguments for and against the measure and the analysis were important because the entire measure will not be printed in the sample ballot because of its length.

Attorney Michael Freund and Ruth Abbe of Alameda, who chairs a committee supporting the initiative, called the judge's ruling a major victory for proponents.

"We got rid of the word 'tax' which may cause some voters not to vote for the measure," Freund said. "It's a fee, not a tax."

Abbe said the measure leaves it up to the cities to decide how to collect the fee, but suggests that it could be added to garbage bills or the charge for disposals at dumps.

County recycling measure wins court ruling

Oakland Tribune

By Will Jones
The Tribune

Opponents of a recycling initiative on the November ballot cannot argue that it would impose a tax on residents, an Alameda County Superior Court judge ruled yesterday.

Acting Presiding Judge Ken Kawaichi ordered opponents of Measure D to substitute the word "surcharge," in place of "tax" in their argument, which will be submitted to voters along with sample ballots.

Kawaichi said calling the \$6-a-ton dumping fee a tax would be false and misleading.

The judge also told opponents that their rebuttal argument could not tell voters that the measure would result in them losing local control over management of recycling programs or that they will pay twice for such projects.

The rebuttal argument said the majority of cities in the county already have recycling programs that are paid for by residents.

The judge, however, left intact

'We got rid of the word 'tax' which may cause some voters not to vote for the measure'

— Attorney Michael Freund

most of the county counsel's analysis, including his conclusion that the measure could be subject to legal challenge because it appears to conflict with state laws on waste management or impinges on the powers of cities.

Kawaichi struck one paragraph from the analysis, which said the main purpose of the initiative was to reduce the amount of garbage being disposed of at landfills.

Assistant County Counsel Doug Hickling argued that County Counsel Kelvin H. Booty Jr.'s analysis was a fair and impar-

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Consumer Health
WELLNESS HEALTH SERVICES

Court may write recycling ballot argument

Initiative supporters' suit
says a fee is not a tax

Alameda Daily Review
By Sandy Kleffman 9/11/90 B-1
STAFF WRITER

OAKLAND — One side is talking about fairness and honesty. The other is invoking the Boston tea party.

The first skirmish in the battle over a recycling initiative on the Nov. 6 ballot indicates that a lively campaign is in store.

Supporters of the initiative, which will appear as Measure D on Alameda County ballots, have filed a lawsuit claiming the opposition's ballot arguments that will

appear in the county's official voter's pamphlet are false and misleading, and asking that they be changed.

But Arthur Geen, who signed the opposition argument on behalf of the Alameda County Taxpayers Association, dismissed the lawsuit as nitpicking and "garbage, which is appropriate for the subject matter."

A court hearing has been scheduled for 2 p.m. today.

At the heart of the controversy is whether opponents are accurate when they claim the initiative would "raise taxes," duplicate existing recycling efforts, and set up another layer of bureaucracy "over which voters have no control."

Supporters say the initiative would impose a \$6 surcharge on each ton of garbage placed in a dump in Alameda County to raise an estimated \$12 million annually for recycling programs.

They argue that this is a fee, not a tax, as the voter's pamphlet language seems to suggest.

"Voters can and do expect misleading half-truths and outright falsehoods in political advertisements, but they do expect — and have a right to expect — that they will be protected from false and misleading statements of fact in official election material," said Ruth Abbe, who chairs the pro-Measure D campaign.

Supporters also claim the Alameda County Waste Management Authority

has been dragging its feet on setting up recycling programs. And they argue that voters would have control over a new recycling board because its members would be appointed by elected officials.

"They're pulling at straws," countered San Leandro Mayor Dave Karp, who signed one of the opposition arguments.

Abbe said voter pamphlet information must be accurate because the pamphlets will not contain a complete text of the initiative or a financial analysis from the county auditor-controller.

County supervisors decided to omit the lengthy text to save \$78,000 in printing costs. Free copies of the measure are available upon request from the county registrar of voters office.

Recycling law backers challenge use of T-word

By Michelle Jeffers
Staff writer

VANCE TINGS
9/11/90 LR

OAKLAND — Sponsors of an Alameda County recycling initiative will go to court today to keep their foes from telling voters that a proposed waste surcharge is a tax.

Ruth Abbe, chairwoman of the steering committee that prepared the initiative, said her group takes issue with the opponents' assertion that fees collected under the initiative amount to a tax.

"Throughout the argument it refers to a tax," she said. "I think it's misleading to label it as such."

The initiative calls for a \$6 per ton surcharge on waste deposited in the county's landfills to raise \$12 million annually for recycling and waste reduction programs.

Monthly rates for one-can service would increase by about 60 cents per household or, as an incentive to conserve, result in higher rates for second can service.

The lawsuit will be heard in Alameda County Superior Court today. It was filed on Friday.

Alameda County Taxpayers Association Executive Vice President Arthur Geen, who signed the ballot arguments against the initiative — Measure D — and is named in the lawsuit, said no matter what the surcharge is called, voters will perceive it as a tax.

"It's up to the judge to decide the proper word," Geen said. "I think (the lawsuit) is nit-picking. They don't have any kind of case for their initiative so they are trying to stop people from saying what's wrong with it."

The lawsuit also names the other signers of the ballot argument and rebuttal argument against Measure D: Waste Management Authority President and Livermore City Councilwoman Ayn Wieskamp; Albany Vice Mayor Thelma Rubin; retired Alameda County Planning Director William Fraley; Richard Ahern, a member of the American Association of Retired Persons; San Leandro Mayor Dave Karp, and David Marco, president of the Institute of Scrap Recycling Industries of Northern California.

Chris Taylor, an attorney with Shute, Mi-haley and Weinberger of San Francisco, which is representing Wieskamp and the Waste Management Authority, said the ballot arguments are not false and misleading.

"It's going to contain things people on the

other side disagree with. That is the nature of a ballot argument," she said.

"It does not present an unfair picture of what the initiative would do. ... There is no call for a judge to be editing ballot arguments to satisfy proponents."

The ballot arguments urge voters to reject Measure D because it raises garbage collection rates and creates an "unnecessary burden on government," that duplicates the efforts of the Waste Management Authority.

"The Waste Management Authority is required by law to accomplish the goals of the state (Assembly Bill 939)," Geen said. "We are doing it so there is no reason to set up a duplicative organization."

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But the lawsuit contends that argument is false because the authority will not be able to comply with the waste reduction and recycling goals of AB 939 with its current budget.

The lawsuit also challenges the opponents' statement, "Don't lose local control." That refers to an 11-member recycling board created by the initiative that would take over

some of the work of the authority.

"The recycling board would be as much under local control as the Waste Management Authority," the suit said.

Another challenge is the identification of Ahern as a member of the American Association of Retired Persons. The California legislative chairman of the association has taken exception with Ahern's identification because the group has not taken a position on the initiative, the lawsuit said.

Ahern said he will let the court decide whether his title may stand.

The lawsuit also challenges what sponsors say is a biased analysis of Measure D prepared by Alameda County Counsel Kelvin Booty Jr.

"The analysis refers to potential lawsuits," Abbe said. "We think it's inappropriate to include that in the analysis."

Abbe noted that one reason her group decided to sue is because the county decided it is too expensive to print the full text of the initiative in the sample ballots sent to voters.

"It's real important that the county counsel analysis be as accurate as possible," she said, "because

the voters can't read the full measure."

This is the second legal challenge the recycling initiative has been involved in.

The proponents of Measure D had to sue the county to get the initiative on the November ballot. The Registrar of Voters had rejected the initiative because it was turned in six days late.

A superior court judge ruled that the county was misinterpreting deadline requirements set by state law and allowed the measure on the ballot.

Recycling fee is a surcharge, not a tax, judge says

By Bernard Korotkin
Staff writer

OAKLAND — An Alameda County Superior Court judge has sided with organizers of a county recycling initiative, forcing foes to tell voters that the fee associated with the proposal is a surcharge and not a tax.

"The question is whether this is a tax or a fee," said Mike Freund, the attorney representing Ruth Abbe and the steering committee that prepared the initiative. "In reality, this is a fee for service."

But Christy H. Taylor, a lawyer representing Ayn Wieskamp and the Waste Management Authority, disagreed.

"This is a ballot argument. We are not talking about the legal definition of a tax," she told Judge Ken M. Kawaichi. "We see this as a tax to raise funds for a new (bureaucratic) structure."

However, Kawaichi didn't buy the argument and said the word surcharge should replace the word tax in all references to the ballot arguments against the initiative.

In reviewing the judge's decision, both parties expressed surprise over the way Kawaichi took such a personal interest in the case.

"I think the judge was very patient and was in agreement with our major point, that being that this is not a tax," said Abbe.

But Taylor had a different view. "I thought it was interesting that the judge took such an active role. We thought it wasn't for the court to rewrite the arguments. We didn't feel that our arguments were false or misleading," she said.

With the ruling final, she said the opposition will have to mount a public campaign to get its views across.

Most of the other points also involved the choice of wording used

by the opposition. In one instance, Kawaichi changed the phrase "Don't lose local control," to "Don't give control to appointed officials."

In another case, the phrase, "Don't tax yourself twice," was changed to "Don't charge yourself twice."

And in one section, where the opposition mentioned that Waste Management is "spending \$1 million this year," the judge ordered the phrase be changed to "has budgeted \$798,600."

The judge also amended what sponsors said was a biased analysis of Measure D prepared by Alameda County Counsel Kelvin Booty Jr.

The suit was brought by Ruth C. Abbe, chairwoman of the Alameda County Recycling Initiative. The initiative — Measure D — calls for a \$6 a ton surcharge on waste dumped in the county's landfills. Proponents expect about \$12 million to be raised annually for recycling and waste management programs.

In all, Abbe and her group had concerns with 14 points that were to be mentioned in an argument against the initiative. Arguments for and against the measure will be included in the sample ballot and mailed to all registered voters in the county.

Named in the suit were: Alameda County Taxpayers Association Vice President Arthur Geen; Waste Water Management Authority President and Livermore City Councilwoman Ayn Wieskamp; Albany Vice Mayor Thelma Rubin; retired Alameda County Planning Director William Fraley; Richard Ahern, a member of the American Association of Retired Persons; San Leandro Mayor Dave Karp; and David Marco, president of the Institute of Scrap Recycling Industries of Northern California.