COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

ALPINE UNION SCHOOL DISTRICT, et al. Plaintiffs and Respondents, v. GROSSMONT UNION HIGH SCHOOL DISTRICT, et al. Defendants and Appellants.	)	No. D 070583 San Diego Superior Court Case No. 37-2014-00034850

OPENING BRIEF OF APPELLANT

ALPINE TAXPAYERS FOR BOND ACCOUNTABILITY

An Appeal From the Final Judgment

The Honorable Joel M. Pressman, Presiding

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: D070583
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 171 224 NAME: Craig A. Sherman FIRM NAME: CRAIG A. SHERMAN, APC STREET ADDRESS: 1901 First Avenue, Suite 219 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: 619-702-7892 FAX NO.: 619-702-9291 E-MAIL ADDRESS: CriagShermanAPC@gmail.com ATTORNEY FOR (*name*): Appellant Alpine Taxpayers for Bond Accountability	SUPERIOR COURT CASE NUMBER: 37-2014-34850-CU-MC-CTL
APPELLANT/ PETITIONER: Alpine Union School District, et al. RESPONDENT/ REAL PARTY IN INTEREST: Grossmont Union High School District, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Appellant Alpine Taxpayers for Bond Accountability

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (*Explain*):
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 7, 2017

CRAIG A. SHERMAN
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS (continued)

Page

TABLE OF CONTENTS (continued)

Page

TABLE OF AUTHORITIES

California Case Law **Page**

TABLE OF AUTHORITIES (continued)

California Case Law (continued) **Page**

TABLE OF AUTHORITIES (continued)

California Case Law (continued) **Page**

TABLE OF AUTHORITIES (continued)

California Case Law (continued) **Page**

TABLE OF AUTHORITIES (continued)

California Statutes **Page**

California Constitution **Page**

Treatises and Other Authorities **Page**

I.

INTRODUCTION

The 2008 Proposition U bond measure contains wording for a duty to complete construction of a new high school for Alpine/Blossom Valley.[1] As prepared and presented to the voters by the trustees of the Grossmont Union High School District (Grossmont), that wording is as mandatory as a voter, school board member, or judicial officer will ever likely find. There is good reason for this explicit binding language. The language for the new high school in Proposition U was intended to complete the school that was promised in a prior bond measure, but was thwarted by poor funds management.

When the voters passed Proposition U in November of 2008, they intended for Grossmont to be bound by the promise it made to complete construction of the new high school on the express terms in the bond language.

Proposition U sought to ensure completion of the new high school as a specially-delineated and mandatory project to (1) have site preparation completed, and (2) commence and complete the listed school buildings sufficient for 800 students, with such commencement triggered when district enrollment per the bond measure reached 23,245. Even its detractors recognized that Proposition U was written as a promise to construct the new

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[1] The bond measure calls out a new high school for "Alpine/ Blossom Valley." Appellant ATBA refers herein to this subject bond measure project as the "new high school."

high school. But Grossmont failed in its promised duties and appellant Alpine Taxpayers for Bond Accountability (ATBA) seeks to hold Grossmont accountable to the voters and make certain the promised new high school is completed.

This appeal principally involves review and interpretation of Grossmont's legal duties, dictated by Proposition U, to complete the new high school once the enrollment of 23,245 was attained.

There is a long history of decisional law of California courts *enforcing* voter-approved bonds where an agency has drafted bond language to narrowly bind itself to complete a specific project, and *rejecting* agency attempts to partially build and not complete a promised project. (E.g., O'Farrell v. County of Sonoma, (1922) 189 Cal. 343, 347; Monette-Shaw v. San Francisco Bd. of Supervisors, (2006) 139 Cal.App.4th 1210, 1222, 1223; Hunter v. Cty. of Santa Barbara, (1930) 110 Cal.App. 698, 708-709; and San Diego v. Millan, (1932) 127 Cal.App. 521, 530.)

Once a proposition is approved, it is the intent of the voters that controls how an agency can raise and spend those taxpayer funds. Grossmont does not have *discretion* to thwart the will of the voters or alter the terms of Proposition U that Grossmont put before the voters and bound itself to. In preparing the Proposition U bond language for the new high school, both Grossmont and the voters knew (1) of the firm commitment being made to build the school, (2) that there would be increased operational costs for the school district to support

a new school, and (3) that there was a substantially declining economy. Knowing this, voters still approved the terms set forth in Proposition U and consented to raise $417 million in tax dollars for the new school and other purposes.

ATBA contends that the specially-enacted constitutionally and statutorily controlled new high school bond project has ripened into the legal duty that Grossmont complete construction. Grossmont has both misinterpreted its duty and impermissibly taken official action to prevent and excuse fulfillment of its duty. Grossmont's interpretation and actions cannot be reconciled with the binding terms of the bond measure, therefore judicial correction is necessary.

During a two-week trial, the trial court did not seek to discover the intent of the voters. Instead, the trial court extensively explored the opinions of individual board members as to what Proposition U's provisions for the new high school meant regarding (1) the extent of the bond promise, and (2) whether the promise had ripened and had been adequately performed. Based on the testimony of the trustees' personal and board announced interpretations, the trial court found for Grossmont on all grounds.

The questions involved in this appellate review revolve around what is the *legal effect* of the undisputed events that have occurred *during* and *after* the subject enrollment threshold was met. These undisputed occurrences are to be

applied to the law of the case established by this Court in the prior appeal. (Stock v. Meek (1952) 114 Cal.App.2d 584, 586.)

In considering Grossmont's duties for the new high school, along with the excuses given and accepted for Grossmont's nonperformance, the trial court inconsistently ruled that the language for the new high school contained in Proposition U was unambiguous, but at the same time admitted *improper* extrinsic evidence, and ignored *proper* extrinsic evidence to interpret what it means.

The law recognizes that the interpretation of a proposition is to effectuate the intent of the voters. Courts have recognized that they must uphold the voters' intent – even if the wisdom of the voters is questionable. By failing or refusing to complete the new high school within a reasonable time, Grossmont has breached its legal duties to the voters. Sympathy to Grossmont's financial woes is subservient to upholding the law and the will of the voters to decide how their tax dollars are spent, based on the bedrock principles of a democracy and popular sovereignty.

The trial court additionally committed error in rejecting ATBA's waste claim on legal grounds by ruling that ATBA could not bring a statutory "waste" claim. (Section VI.F, *post*) It did this despite a clearly legislated enactment that "[v]igorous efforts are undertaken to ensure that the expenditure of bond measures . . . are in strict conformity with the law" and that "unauthorized expenditures of school construction bond revenues are vigorously investigated,

prosecuted, and that the courts act swiftly to restrain any improper expenditures." (Education Code § 15264, subds. (a), (d))[2]

The principal legal claim brought by ATBA, to review and order compliance with the subject Proposition U language for the new high school, is based on the specially enacted statutory paradigm for enforcing Proposition 39 bond measures.[3] (Education Code §§ 15264-15286, entitled the "Strict Accountability in Local School Construction Bond Act of 2000.") ATBA concurrently litigated a statutory claim under Code of Civil Procedure § 526a due to historic recognition that it may be used to restrict or mandate actions regarding government tax and other expenditures.

The trial court rejected that ATBA could bring a waste claim to review Grossmont's breach and violation of its duties to follow the constitutionally required dictates of Proposition U in respect to the new high school. The trial court interpreted statutory waste claims in an incorrect and narrow manner whereby waste actions could only be brought to challenge expenditures of funds, but cannot be brought to enforcing any other Proposition 39 or other mandatory duty related to the abuse or misuse of such bond funds.

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2 All references are to California statutes unless otherwise stated.

3 Proposition 39 is entitled the "Smaller Classes, Safer Schools, and Financial Accountability Act." (Prop. 39, § 4, as approved by voters, Gen. Elec. (Nov. 8, 2000).)

ATBA also pleaded a claim for declaratory and injunctive relief under Code of Civil Procedure § 1060 to resolve the dispute about the bond language and Grossmont's duties. The legislature has determined ATBA's selection of claims to be non-exclusive for judicial review and remedy. (Ed. Code § 15284, subd. (c).) ATBA also alternatively pleaded a writ of mandate cause of action because Grossmont refused, and claimed inability to reconsider, completing the new high school based on a *post hoc* resolution that imposed a requirement to do so.

The trial court also barred ATBA's enforcement action based on delay and prejudice caused to Grossmont (laches) despite the fact that Grossmont could not be prejudiced because (1) nothing ATBA did compelled Grossmont to spend Proposition U bond funds on other projects, and (2) Grossmont misled ATBA by budgeting and continuing to plan for funding the new high school for 2017, but subsequently Grossmont put forth analysis budgeting the new high school for 2032.

With there being no dispute as to the actions which occurred, ATBA seeks review of the legal effect of those actions when applied to the binding terms of the subject bond measure. ATBA contends that the trial court's misreading of the bond measure and misapplication of facts resulted in a number of errors (set forth below) that need review and correction by this Court.

II.

STATEMENT OF FACTS

ATBA presents the following principal facts and procedural history of the lawsuit pertinent to the adjudication of this appeal.

Plaintiff and appellant Alpine Union School District ("AUSD") is a school district located in San Diego County that serves students in kindergarten through eighth grade ("K-8").

Plaintiff and appellant Alpine Taxpayers for Bond Accountability ("ATBA" and together with AUSD, "appellants") is a taxpayers association formed in 2014.

Defendant and respondent Grossmont Union High School District ("Grossmont") is a high school district located in San Diego County. AUSD is one of several K-8 school districts that feed into Grossmont, and defendant Ralf Swenson has been the Superintendent of Grossmont since July 2010 through the time of trial of appellants' lawsuit.

Voters within the Alpine and Grossmont district approved Proposition H on March 2, 2004. (Exh. 10A) Proposition H mentions the new high school in the ballot measure and accounts for the costs for its acquisition and construction in the total of the $274 M put to the voters for approval of the projects. (Exh. 10A) Due to poor budgeting, inflation, and tiering of projects, Proposition H

funds were not made available to complete the new high school.[4] Nonetheless, in May of 2007 the Grossmont Board adopted a recommendation to segregate areserve of $ 65 million dollars dedicated solely to rennovations and the constuction of the new high school. (Exh. 79-4)

Seeking to complete the Proposition H projects, especially the new high school, on August 4, 2008 the Grossmont board approved a resolution ordering a school bond election and adopted a statutorily required bond measure statement specifically referencing that a portion of the $417 million obtained would be used for "constructing a new school in Alpine/Blossom Valley." The 75-word balot measure statement reads:

> To better prepare local high school students for college and high demand jobs, by upgrading educational technology, constructing science labs, replacing deteriorated portables, rehabilitating aging classrooms/equipment/sites/joint use facilities, Improving safety/energy-efficiency, **and constructing a new school in Alpine/Blossom Valley**; shall Grossmont Union High School District issue $417,000,000 in bonds at legal rates, qualifying for State matching funds, with independent oversight, annual audits, no funding for administrative salaries, and all money benefiting East County high schools?

(Exh. 16-1, emphasis added.)

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[4] Despite a *law of the case* finding by this Court that Proposition H contained a promise to build the new high school, ATBA's appeal is primarily from the rulings of the trial court related to the interpretation, rights, and duties associated with the promise in Proposition U for the construction of the new high school.

As approved by the Grossmont board, and placed on the 2008 general election ballot, Proposition U sets forth two provisions for commencing the construction of the new high school. (Exh. 16-11) These provisions are identified in two separate bullet points, the first of the two items – **site development work** – does not contain any conditions. (Id.) The second bullet point – **relating to the construction of the new high school** – contains an enrollment condition. (Id.) The threshold language in the second bullet has been referred to as the "enrollment trigger."

In the bond measure, the language for the new high school reads as:

NEW HIGH SCHOOL – ALPINE/BLOSSOM VALLEY AREA

- Complete site development including utilities and road extensions
- After district-wide enrollment at the existing comprehensive high school sites, including the two current charter schools, equals or exceeds 23,245 students (which is the official 2007-2008 CBEDS enrollment) at the time of release of request for construction bids, begin and complete construction—classrooms and general use school buildings and grounds to accommodate up to 800 students, adequate academic/vocational/job training equipment, library/multimedia facilities, computer and science labs, food service facilities, and space for student support services.

(Exh. 16-11)

The ballot text prepared, ciruclated, and considerd by the voters also included arguments and rebuttals in favor of and against Proposition U. The "Argument Against Proposition U" was co-authored by Grossmont Board Member Jim Kelly. (Exh. 16-5) He and the other opponents advised that "[a]ttached to Prop U is the promise of the construction of a new high school in

Alpine." (Id.) Their "[r]ebuttal to the Argument in Favor of Proposition U" informed voters "Prop. U is a **covert** attempt on the part of special interest groups to **construct a new high school in a time of declining enrollment AND state funding** cuts." (Exh. 16-4, emphasis in original.) The rebuttal argument presented to the voters further included the issue that the "costs for operating this new school would have to come from the rest of the district." (Id.)

Following the passage of Proposition U, Grossmont staff increased the pace of work toward constructing the new high school. In June 2009, the Grossmont Board authorized district staff to acquire the Lazy A Ranch as the project site. (Exh. 322) The drawing of architectural plans also began in late 2009. (Exh. 319)

In December 2009, Grossmont published a presentation declaring it would use a lease-leaseback delivery method for the new high school. (Exh. 325-378) In May 2010, the Grossmont Board authorized proceeding in eminent domain to acquire the remainder of the Lazy A Property, giving the district full access to the new high school site once the petition was filed. (Exh. 123) With district-wide enrollment on June 14, 2010 at 24,123 (Exh. 170), Grossmont invited "qualified and experienced contractors to submit sealed bids for the construction project described" as "Demolition & Abatement of Buildings at 12th High School Site." (Exh. 147-4)

With district-wide enrollment in August 2010 at 23,245 (Exh. 170), Grossmont issued a Request for Qualifications/Proposals "requesting

Statements of Qualifications (SOQ) from Lease-Lease Back (LLB) entities qualified to provide to the District constructability review, value engineering, scheduling and **construction services for the phase 1 construction of a new 800-student high school in the community of Alpine**…." (Exh. 124-2, emphasis added.)

In September 2010, the Grossmont Superintendent told the Alpine community the "enrollment trigger" would be determined in the coming weeks once the official district enrollment numbers were verified. (Exh. 339)

Erickson-Hall Construction Company responded to the August 2010 RFQ/P on October 13, 2010 with a full proposal demonstrating its qualifications to provide "construction services for the phase 1 construction" of the new high school. (Exh. 1013) Erickson-Hall's proposed providing "pre-construction services building" (Exh. 1013-5), "site construction" (Exh. 1013-6), "building construction" (Exh. 1013-7, 35) and "post-construction and closeout" services. (Exh. 1013-8, 36) Erickson-Hall stated it "is a school builder, it is our main source of business, and our primary specialty." (Exh. 1013-27.)

On October 18, 2010, with district-wide enrollment remaining at 23,245, , Grossmont invited "qualified and experienced contractors to submit sealed bids for the construction project described" as "Removal Action Workplan at 12th High School Site." (Exh. 130)

On November 9, 2010, Swenson again informed the Board at a duly

noticed public meeting that it was "a fine line" whereby in the upcoming weeks he would be announcing "…if we meet the number then the trigger will be met as described in the bond language." (Exh. 475-4)

On November 18, 2010, the Grossmont Governing Board provided "authorization to enter into contracts with Erickson-Hall Construction Company for Lease Lease-Back Services for the New High School." (Exh. 126-5) The selection of Erickson-Hall as the LLB contractor for the new high school was subsequently announced at multiple board and meetings of the statutorily required Citizens Bond Oversight Committee ("CBOC"). (Exh. 475-3; 476-2, and Ehx. 344-3; *see* Education Code § 15280.)

On February 10, 2011, the Grossmont Board affirmed Grossmont Superintendent's recommendations "to 'escrow' 12th high school funds" and "authorize the preparation and submittal of site and building packages for Phase I building plans" for the new high school. (Exh. 354) At that meeting, Superintendent Swenson also inaccurately reported district-wide enrollment was 21 students below the threshold. (Exh. 354) On July 14, 2011, Grossmont eventually corrected the wrong enrollment numbers reported at the February 10 meeting.

On July 14, 2011, Grossmont passed a resolution acknowledging "that the enrollment threshold set forth in Proposition U was **met** in 2010/11." (Exhs. 26-2, 92-1, emphasis added.) That resolution also directed Grossmont staff to "[c]ontinue the preparation and submittal of building design packages to DSA for review and approval." (Exhs. 26-3, 92-3) The official board finding that the

"District had met the enrollment threshold" was confirmed by the CBOC in its 2011 Annual Report. (Exh. 1030-3) Superintendent Swenson interpreted this resolution to "allowany [sic.] decision on moving forward with the [new high school] project to be separate from what will probably be a declining enrollment pattern for some time." (Exh. 162-2) At the time of the July 14, 2011 resolution, Grossmont knew the new high school, as designed, could not be completed for the $65 million budget. (Exhs. 600, 366) Prior to the submittal of the design plans to DSA it became clear that the project would cost at least $80 million in 2012 dollars. (Exhs. 381, 57-6, 141-89, 94-62, 44-6 and 95-3)

Grossmont has spent $23 million to acquire and start improving the site. (RT 2141:4-12) However, site improvements have barely commenced. Grossmont has secured an Army Corps of Engineers permit, a State Water Board permit, a California Fish and Game permit, and DSA permits, but has done no work under any of those permits. (Exhs. 417, 418, 122, 462) These permits begin expiring in 2017 and will take many years and cost many millions of dollars to reacquire if allowed to expire. (E.g., RT 2036:25-26, 2059:13-17) Grossmont confirmed that the work authorized under the permits needs to be completed before their expiration dates (RT 2036:25-26 [May of 2018 for the Army Corps and State Water Board permits]), thereby reasonably necessitating that work be commenced approximately one year before expiration. (RT 2042-2043) To date, no work has commenced under any of the site development permits, including grading. (RT 173)

III.

ALLEGATIONS AND PROCEDURAL HISTORY OF APPELLANTS' LAWSUIT

In this section, ATBA presents the general procedural history of the underlying subject lawsuit and a summary of the ATBA's essential allegations, claims, and the gravamen of its operative Second Amended Complaint.

Appellants' filed their initial joint lawsuit on October 14, 2014 after finding that Grossmont was expending Proposition U funds at a rapid pace such that it would run out of bond capacity and not be able to raise further funds to build the new high school. (JAA 30 [¶¶ 39-40].)[5]

After multiple challenges to the pleadings, appellants ultimately filed their operative Second Amended Complaint on April 27, 2015. (JAA 233) Reflecting the exigency to reserve bond fund capacity to preserve their rights, appellants filed and were granted a preliminary injunction order on January 22, 2015, to secure and reserved $42 million for the new high school during the pendency of trial. (JAA 230)

A writ (with request for immediate stay) and appeal of the preliminary injunction order followed, with the trial court denying both in decisions made respectively on March 2, 2015 and November 3, 2015. (JAA 232, 3696)

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[5] ATBA cites to the Joint Appellants' Appendix (JAA) that it prepared in collaboration with appellant AUSD, which is being filed separately with AUSD's opening brief subsequent to this initial brief of ATBA.

However, during the appeal of the preliminary injunction order the lawsuit charged forward with all parties filing cross-motions for summary judgment. (JAA 397-3688) On October 30, 2015, the trial court granted summary judgment in favor of Grossmont against both appellants. (JAA 3692-3695)

The legal reasoning of the trial court was contrary to a November 3, 2015 appellate opinion issued by this Court (Case No. D067500, JAA 3696), causing the trial court to reconsider its motion for summary judgment rulings in light of the opinion. (Hereafter, "Opinion") Appellants' filed separate motions for reconsideration and after all the parties' respective pleadings (JAA 3715-4064), the trial court denied all parties' summary judgment motions and ordered the matter be set for trial. (JAA 4065-4071)

The November 3, 2015 Opinion contains statutory interpretation of the intent and meaning of language for the new high school set forth in Proposition U (as a "promise"). While all parties and the trial court agree that the Opinion's statutory interpretation of Proposition U is *law of the case*, the parties disagree as to its contents and scope.

Substantial proceedings were held regarding not only what the *law of the case* was, but how it should be applied. (JAA 3715-4071 [reconsidered summary judgment; JAA 4098, 4294, 4324, 4340 [motion in limine].) Ultimately, with regards to ATBA's motion for summary judgment, the trial court ruled:

> On this point, the Court of Appeal has expressly ruled that under both Propositions H and U, Grossmont promised to construct a new high school. (Decision at pp.13-14) However, it is conceded that Court of Appeal recognized that Proposition U described an enrollment level required to be met before construction would proceed. (p.11) The Court of Appeal did not resolve the issue of whether the enrollment trigger had been met.
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> * * *
>
> The Court finds that Alpine Taxpayers have not met the burden on summary adjudication to show that the enrollment trigger has indeed been met. The resolution of July 14, 2011 is not necessarily dispositive of the issue. Factual questions remain as to the proper interpretation of the Proposition U language, including whether the trigger is intended to be once and for all time, or is an on-going requirement as well as the proper understanding of the language "release of request for construction bids", particularly in light of the lease-lease back structure.

(JAA 4070)

The case was tried as a bench trial over 9 days on April 11-14, 18-21 and 28, as reflected in the minute orders (JAA 4454-4607) and reporter's transcript (RT vols. 1-15). The parties submitted separate proposed statements of decision (JAA 4492, 4514), with the court adopting a proposed statement of decision in favor of Grossmont by substantially accepting its proposed decision and findings. (JAA 4934-4958) Appellants objected to the trial court's decision and findings (JAA 4959-5117), with Grossmont responding to appellants' objections (JAA 5119-5344).

On May 27, 2016, the trial court rendered a final decision ("Decision") in favor of Grossmont with appellants' filed objections substantially unaddressed (JAA 5345-5369).

A judgment was entered on June 16, 2016 (JAA 5375-5376), with notice of entry of judgment given on June 23, 2016. (JAA 5370) Appellant ATBA timely filed this appeal on July 13, 2016. (JAA 5410-5412)

IV.

ISSUES FOR REVIEW

ATBA submits the following issues relating to whether Grossmont has misinterpreted and/or breached its duty – in carrying out the promise contained in Proposition U to construct an 800 student new high school within a reasonable time – after the specified student enrollment in the district met or exceeded 23,245 students.

1. Whether Proposition U contains a promise and duty by Grossmont to "begin and complete" construction of *school buildings* for an 800 student new high school after enrollment met or exceeded 23,245 students?

2. Whether enrollment meeting or exceeded 23,245 students triggered a duty by Grossmont to begin and complete construction of *school buildings* for the new high school?

3. Whether Proposition U contains a promise and duty by Grossmont to *complete site development including utilities and road extensions*

for the new high school site regardless of whether enrollment met or exceeded 23,245 students?

4. To the extent a promise and duty exists, whether Grossmont has properly performed its duty and promise with respect to site development and completion of the school buildings for the new high school?

5. Assuming a duty exists, may ATBA properly bring an enforcement action under Education Code § 15284 and Code of Civil Procedure § 526a, based on Grossmont's failure or refusal to perform its Proposition U bond measure duty to complete construction of the new high school?

6. Did the trial court err in refusing to grant appellants' requested declaratory relief based upon the parties' disputed interpretations of the Proposition U bond measure, and whether Grossmont have a duty to complete construction of the new high school?

7. Whether the trial court erred in finding ATBA was barred from pursuing any of its claims based on Grossmont's affirmative defense of laches?

8. Whether the trial court erred in refusing to grant ATBA any remedy for declaratory and injunctive relief under the Third and Fifth Causes of Action, so that sufficient funds are reserved and retained for the construction of the new high school?

V.

STANDARD OF REVIEW

A. A *DE NOVO* STANDARD APPLIES TO THE INTERPRETATION OF PROPOSITION U

It is well-settled that questions of law are reviewed *de novo*. (Committee for Green Foothills v. Santa Clara County Bd. of Supervisors, (2010) 48 Cal.4th 32, 42.) "The trial court's determination of questions of law is reviewed under an independent review standard." (Scott v. Common Council, (1996) 44 Cal.App.4th 684, 689; *see also* Ghirardo v. Antonioli, (1994) 8 Cal.4th 791, 800-801; Donaldson v. Department of Real Estate, (2005) 134 Cal.App.4th 948, 954.)

Questions of the proper interpretation of a statute are questions of law. (Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist., (2013) 215 Cal.App.4th 1013, 1057.) The same principles that govern construction of a statute enacted by the Legislature apply to construing a voter initiative. (Id. at p. 1056.) However, in voter-approved tax measures, it is the legislative intent of the voters who vote on the measure that is considered, not the agency that creates the measure and puts it to a vote. (Legislature v. Eu, (1991) 54 Cal.3d 492, 505.)

As to actions taken by Grossmont, courts exercise independent judgment as a standard of review in cases involving constitutionally enacted tax

measures. (Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority, (2008) 44 Cal.4th 431, 449.)

Whether a proposition creates an enforceable obligation is also a question of law, particularly when, as here, the facts giving rise to the court's interpretation of Propositions U are not in dispute. (Monette-Shaw v. San Francisco Bd. of Supervisors, (2006) 139 Cal.App.4th 1210, 1215 ["application of settled principles of statutory interpretation as applied to [a proposition] bond measure, and not on disputed issues of fact . . . is de novo."]; *see also* Committee for Responsible School Expansion v. Hermosa Beach City School Dist., (2006) 142 Cal.App.4th 1178, 1184.)

The *de novo* standard does not change when a court uses extrinsic evidence to aid in the interpretation of a proposition. (Sacks v. City of Oakland, (2010) 190 Cal.App.4th 1070, 1082 [when extrinsic evidence is used to assist in interpreting a bond measure, the standard of review remains *de novo*].) As such, this Court is not bound by the lower court's interpretations of law, or the law applied to the determinative undisputed facts in this case.

Mixed questions of law and fact are also subject to *de novo* review (Haworth v. Los Angeles County Superior Court, (2010) 50 Cal.4th 372, 383), as are questions of law which are applied to undisputed facts. (Hensley v. San Diego Gas & Elec. Co., (2017) 7 Cal.App.5th 1337, 1346.) Because most of Grossmont's conduct and actions that occurred since the adoption of

Proposition U involve *undisputed facts*, de novo appellate review is proper for the determinations in this appeal.

B. *LAW OF THE CASE DOCTRINE* IS BINDING ON THE TRIAL COURT AND SUBSEQUENT APPEALS WHERE QUESTIONS PRESENTED WERE NECESSARILY DECIDED IN THE PREVIOUS APPEAL

"It is the general rule that all the issues and questions adjudicated on a prior appeal are the law of the case on all subsequent appeals and will not be reconsidered." (Davies v. Krasna, (1970) 12 Cal.App.3d 1049, 1053; *citing* Allen v. California Mutual B. & L. Assn., (1943) 22 Cal.2d 474, 481) "The rule is applicable where the facts are substantially identical and appear under the same circumstances." (People v. Harvey, (1958)156 Cal.App.2d 516, 518) As stated in People v. Harvey:

> "Where questions presented on a subsequent appeal were necessarily involved in a former appeal, and the conclusion arrived at on the former appeal could not have been reached without expressly or impliedly deciding the question subsequently presented, the decision on the former appeal is the law of the case and rules throughout all subsequent stages of the action."

(Id.; *quoting* Stock v. Meek (1952) 114 Cal.App.2d 584, 586.)

The law of the case is binding on both the lower court and subsequent appeal, even if in subsequent consideration a court of appeal is "clearly of the opinion that the former decision is erroneous in that particular." (Kowis v. Howard, (1992) 3 Cal.4th 888, 892-893.) The law of the case doctrine is

subject to one exception – where it is founded on an *unjust decision*, but the exception must rest on a manifest misapplication of existing principles resulting in substantial injustice and not on mere disagreement with the prior appellate determination. (Searle v. Allstate Life Ins. Co., (1985) 38 Cal.3d 425, 435.) The exception does not apply in this appeal.

VI.

ARGUMENT

A. IT HAS BEEN DETERMINED AS LAW OF THE CASE THAT PROPOSITION U CONTAINS A PROMISE AND DUTY TO BUILD THE NEW HIGH SCHOOL; THE TRIAL COURT ERRED BY NOT ADHERING TO THE LAW OF THE CASE

1. The Statutory Analysis and Law of the Case that was Decided by this Court in the Prior Appeal is Binding on the Trial Court

In this lawsuit's prior appeal, this Court, "[i]ndependently construing the language of Prop. H and Prop. U," made the legal determination that said propositions "contain[ed] a promise by Grossmont to construct a new high school in the Alpine area." (JAA 3706)

This Court further found that "those propositions did not leave the decision as to which projects would be funded (e.g., a new high school in the Alpine area) solely to the discretion of Grossmont's board." (JAA 3706-3707 [Opinion at 11-12].) In making that finding, this Court rejected arguments by

Grossmont that non-specific language of Proposition U, "regarding a lack of a guarantee that a listed project will be funded or completed," gave Grossmont sole discretion not to build the new high school. (JAA 3707 [Opinion at 12, quoting Proposition U, Exh. 16 [this Court also rejected language that "inclusion of a project on the Bond Project List is not a guarantee that the project will be funded or completed" applied to the new high school].) This Court additionally rejected Grossmont's similar argument that it had discretion to prioritize the new high school, based on Proposition U language that listed projects "will be completed as needed at a particular school site according to Board-established priorities, and the order in which such projects appear on the Bond Project List is not an indication of priority for funding or completion." (JAA 3707 [Opinion at 12, quoting Proposition U, Exh. 16].) As stated by this Court, "[c]ontrary to Grossmont's argument, we do not believe that language gives its board unfettered discretion to ignore its promise to construct a new high school in the Alpine area." (JAA 3707 [Opinion at 12].)

This Court interpreted the very specific provisions of Proposition U that applied to the new high school, finding that "the language of Prop. U . . . is very **specific** regarding the location of, and the actions to be taken to construct, a new high school. Prop. U stated Grossmont would 'begin and complete construction' of the new high school in the Alpine area." (JAA 3707 [Opinion at 12, emphasis added].) If there is no ambiguity, a court presumes the lawmakers meant what they said, and the plain meaning of the language

governs. (Ctr. for Local Gov't Accountability v. City of San Diego, (2016) 247 Cal.App.4th 1146, 1153)

The above findings were made from a *de novo* statutory interpretation of the language of Proposition U without considering any extrinsic evidence, with this Court finding that there was a promise to build the new high school in the plain language of Proposition U, along with rejection of Grossmont's contrary arguments. (JAA 3706 [Opinion at 11].)

This above analysis and determination of the Proposition U statutory promise to build the new high school is the *law of the case* with the examination and interpretation of that part of the bond measure ending there. (Kowis v. Howard, (1992) 3 Cal. 4th 888, 892-893 [the law of the case is binding on subsequent appeal].)

2. The Trial Court Erred in Interpreting Proposition U and Applying the Law of the Case by Finding that the Promise Under Proposition U Was Nothing More Than a Grant of Discretionary Authority to Grossmont Whether to Build the New High School

The trial court incorrectly ruled that Grossmont has discretion *not* to build the new high school under the facts and law of this case. (JAA 5352 [Decision ¶ 29].) This determination cannot be reconciled with this Court's ruling that there is a promise (and therefore a legal duty) to complete the new high school within a reasonable time. (*Cf.* JAA 3709 [Opinion at 14].)

In paragraph 29 of the Decision, the trial court found that "the terms of the agreement reflected in Prop H was that funds *may* be spent to build a high school in Alpine, not that they *must* be spent on a high school. Prop U also included prerequisites that triggered the promise." (JAA 5352 italics in original; *see also* JAA 5359 [paragraph 56 of the Decision finding that approval of Proposition U was only an *authorization* not a requirement to build the new high school].) As set forth above, this finding is inconsistent with *law of the case*. (JAA 3706 [Opinion at 11])

The trial court compounded its error by finding that – because the promise to build the new high school under Propositions H and U was not "mandatory" – Grossmont had the discretion to re-prioritize the new high school in such a way that it was not guaranteed to be funded or completed. (JAA 5359-5360 [Decision ¶¶ 55-57]) This interpretation resulted in the trial court finding that post-election economic considerations were a justifiable use of discretion by Grossmont not to fund or complete the new high school. (JAA 5360-5361 [Decision ¶¶ 62, 64])

Consistent with the Opinion setting forth the *law of the case*, the California Supreme Court in O'Farrell v. County of Sonoma ("O'Farrell"), (1922) 189 Cal. 343, 348 decided the question of discretion in a similar bond enforcement action whereby it rejected a "discretionary powers" argument by the respondent board of county supervisors for Sonoma as a "false issue." (Id. at p. 347.)

Here, just as in O'Farrell, Grossmont had the statutory right to "make its order just as broad, and just as narrow, and just as specific as it was willing to be bound by, so long as the provisions of the statute were complied with." (Id. at p. 347.) Here, just as in O'Farrell, Grossmont specifically bound itself and cannot now alter the terms. (Id. ["[a]fter the contract had been made it could not be altered by one of the parties, only, but by all of the parties thereto."]; *see also* Monette-Shaw v. San Francisco Bd. of Supervisors, (2006) 139 Cal.App.4th 1210, 1222, 1223 [where agency had bound itself to replace a skilled nursing care facility with a similar facility, while it was not bound "to any particular size, floor plan, or configuration of services," it was nonetheless *bound to build* the facility].)

The O'Farrell court also rejected an agency building only half of a listed project by making clear that "[n]either could [the agency] directly expend the moneys on only a portion of the road" by analogy and affirmance of the case of Jenkins v. Williams, (1910) 14 Cal.App. 89. (O'Farrell, *supra* 189 Cal. at p. 349.)

Once Grossmont bound itself to the will of the voters, it does not have authority or discretion to undermine the voters' will or the strict requirements for Proposition 39 bond measures. (California Constitution, Article II, Section 1 & Article XIIIA, Section 1.) The trial court erred in finding that it did.

3. The Law of the Case Recognized Commencing and Completing the New High School in a Reasonable Time; the Trial Court Erred in Interpretation and Application of the Enrollment Trigger

This Court, as well as the trial court, recognized that there is an "enrollment condition" on Grossmont's obligation to build the new high school. (JAA 3705 [Opinion at 10].) However, the trial court did not address the critical issue of when the new high school would be built, or that it must be built within a reasonable time, as determined to be *law of the case*. The trial court avoided this primary issue via a footnote by referencing parroted statements by Grossmont board members and staff that a "representative stated the district remains committed to eventually constructing an new high school." (JAA 5364 [Decision ¶ 75, fn. 4])

Appellants contend that without judicial enforcement of Proposition U, the new high school will not be built by Grossmont. Notwithstanding the footnote in paragraph 75 of the Decision, Grossmont's own documents provide that the new high school will not be built until after 2032 as currently phased in the Grossmont bond program. (Exh. 158-010 [2015 Bond Program Review]) Appellants contend that, even assuming the unlikely event that Grossmont has the financial wherewithal to build the new high school in 2032, this cannot be a

reasonable time for beginning and completing construction under the dictate of the 2008 Proposition U bond measure.[6]

Second, Grossmont cannot now dispute and say that the enrollment trigger was not met because it adopted a resolution finding that it was met. (Exh. 26 [July 14, 2011 Resolution]; *see* further discussion in Section VI.B.2, *post*.) In light of the enrollment trigger compelling with the duty to "begin and complete," the trial court did not properly adjudicate the "reasonable time" requirement. (JAA 5360-5361 [Decision]) Instead, the trial court found Grossmont could impose inordinate delay, and could choose not to complete the project, based on incorrect interpretation.

Since the enrollment trigger was met, Grossmont had an obligation to build the new high school within a reasonable time but breached said obligation by failing to do so. (JAA 3710 [Opinion at 15]) Under *law of the case* doctrine, the trial court erred by making a conflicting interpretation and ruling that eliminates the reasonable time requirement along with an express finding that Grossmont had *discretion* to never build the new high school. (JAA 5352 [Decision at ¶ 29].)

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[6] A child born when Proposition U passed on November 4, 2008 would be 23-24 years old when Grossmont argues it could potentially begin building the new high school. Such a child might be a parent of their own child at that time and wondering if the new high school might ever be built.

B. THE PLAIN READING OF THE RELEVANT LANGUAGE OF PROPOSITION U DEMONSTRATES THAT THE QUALIFIED PROMISE (THE "TRIGGER") TO COMPLETE THE ALPINE HIGH SCHOOL WAS IRREVOCABLY MET WHEN DISTRICT-WIDE ENROLLMENT REACHED 23,245 STUDENTS

The trial court found the promise to build the new high school comes in two separate bulleted parts under the section of Proposition U pertaining to the new high school (respectively "First Bullet" and "Second Bullet") (JAA 5352-5353 [Decision ¶ 32]) This section of the brief addresses the Second Bullet and the requirement of Grossmont to begin and complete construction of the new high school.

1. The Trial Court Misinterpreted the Trigger Requirement Set Forth in Proposition U's Second Bullet for the Alpine High School

The promise to build the new high school was qualified with an enrollment condition. The principal dispute in this case is about the correct interpretation of that qualified promise and whether the enrollment trigger was met. (JAA 4074 at 2:5-11) ATBA contends that the so-called "enrollment trigger" is solely set forth in the below bolded text of the Second Bullet of Proposition U, as follows:

> **After district-wide enrollment at the existing comprehensive high school sites, including the two current charter schools, equals or exceeds 23,245 students (which is the official 2007-2008 CBEDS enrollment)** at the time of release of request for

> construction bids, begin and complete construction—classrooms and general use school buildings and grounds to accommodate up to 800 students, adequate academic/vocational/job training equipment, library/multimedia facilities, computer and science labs, food service facilities, and space for student support services.

(Exh. 16-11 bold added)

The trial court accepted Grossmont's interpretation that enrollment numbers must be coupled with, and occur simultaneously with, "at the time of release of request for construction bids," such that "the enrollment language. . . contained in Prop U imposes two requirements: (1) enrollment must equal or exceed 23,245, and (2) enrollment must be 23,245 or higher at the time of release of request for construction bids." (JAA 5353 [Decision ¶ 33])

ATBA contends, based on the apparent and plain language examination of the Second Bullet, that the first phrase represents the main premise of the section, i.e., that an enrollment threshold of 23,245 students must be met, *then* when construction bids are let, the new high school is to be built ("begin and complete') according to the standards therein stated – a school for up to 800 students. (Exh. 16-11)

The trial court's interpretation fails to follow the plain meaning rule for statutory construction by misinterpreting the term "after," as set forth in the phrase "[a]fter district-wide enrollment at the existing comprehensive high school sites, including the two current charter schools, equals or exceeds 23,245 students. . ." (JAA 5354 [Decision ¶ 36, citing Proposition U, Exh. 16-11].)

"Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use." (Lungren v. Deukmejian, (1988) 45 Cal.3d 727, 735, citing In re Rojas (1979) 23 Cal.3d 152, 155.) The meaning and ordinary use of the term "after" is defined by Black's Law Dictionary as: "Later, succeeding, subsequent to, inferior in point of time or of priority or preference. Subsequent in time to." (Black's Law Dictionary, p. 61 (6th Edition 1990).)

According to the trial court, *the release of construction bids* does not occur "after" or "subsequent in time to" the time the enrollment trigger is met. Instead, the trial court renders the entire first provision of the Second Bullet nugatory and interprets the phrase in such a way that the enrollment trigger must be continually and simultaneously met in whatever point and time that Grossmont, in its discretion, chooses to release a construction bid to finish the construction of the new high school. (JAA 5354 [Decision ¶ 36]) Such interpretation by the trial court is confusing, was not the likely intent of the voters, and is contrary to rules of statutory construction. (Lungren v. Deukmejian, (1988) 45 Cal.3d 727, 735.)

The trial court's interpretation precludes the promise and obligation enacted by the voters. In the words of the trial court, the new high school would only be built when and if "Grossmont was ready to proceed with construction of the buildings identified in Prop U. . ." (Id.) Therefore, under the trial court's interpretation, it was wholly within the discretion of Grossmont to

decide when (and if) the new high school was to be built which, again, according to Grossmont will not be until at least 2032. (JAA 5360-5361 [Decision ¶¶ 57, 64]; Exh. 559-011 [new high school listed as "NHS" listed to be completed in 2032]) Under the trial court's interpretation, there is not a "promise" contained in Proposition U, and Grossmont has *unfettered* discretion to choose whether or not the new high school will be built. The trial court erred in its interpretation and contradicted the *law of the case*.

The trial court further failed to correctly interpret the qualifying words "begin and complete construction[.]" (Exh. 16-11) Pursuant to the last antecedent rule that was defined by this Court in Center for Local Government Accountability v. City of San Diego, (2016) 247 Cal.App.4th 1146: "A longstanding rule of statutory construction—the 'last antecedent rule'—provides that 'qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.'" (Id. at p. 1152, quoting White v. County of Sacramento, (1982) 31 Cal.3d 676, 680.)

Here, the words "begin and complete construction" apply to the immediately preceding phrase "at the time of the release of construction bids" and not to the phrase "After district-wide enrollment . . . equals or exceeds 23,245 students." (Exh. 16-11) The words "begin and complete construction" further specify *what* is to be constructed – "classrooms and general use school buildings and grounds to accommodate up to 800 students, adequate

academic/vocational/job training equipment, library/multimedia facilities, computer and science labs, food service facilities, and space for student support services." (Id.) The specification of *what is to be constructed* links "at the time of release of construction bids" as being those components to be constructed. In other words, "begin and complete" is a direction to Grossmont about what it must build (and complete) when construction bids are let – it is not a qualification or trigger. (Doe v. City of Los Angeles, (2007) 42 Cal.4th 531, 545 [a court may not read into the provision language that does not appear.].)

A single one-time enrollment trigger interpretation is buttressed by Proposition U being akin to a contract (*see* Section VI C, *post*) and basic contracting principles that "[w]hen reasonably practical, contracts are to be interpreted in a manner that makes them reasonable and capable of being carried into effect, and that is consistent with the parties' intent." (Safeco Ins. Co. v. Robert S., (2001) 26 Cal.4th 758, 765, citing Civil Code § 1643.)

It was not the trial court's role to include meaning that adds additional conditions additional to what the voters passed in Proposition U. (Code of Civil Procedure § 1858.)

Thus, based upon a correct interpretation of Proposition U, the only trigger for the new high school in Proposition U is the enrollment trigger. Once it was met, as a threshold, Grossmont was obligated to release construction bids within a reasonable time and, at that time of release, begin and complete the specific elements of a school as stated in the bond measure. A contrary reading

does not comport with basic rules of statutory construction and is certainly not consistent with what the ordinary voter would have understood the provision to mean. The trial court's finding that the Proposition U trigger was merely a grant of discretionary authority amounts to *no promise at all*. (*See,* JAA 5359 [Decision at ¶ 56].)

2. The Trial Court Erred by Interpreting the Second Bullet Contrary to the Intent of the Voters

As in the prior section, ATBA contends there is no ambiguity as to the plain meaning of Proposition U. However, if there is a question, and extrinsic evidence is necessary to determine the construction of the Proposition U, judicial inquiry to determine whether Grossmont is legally obligated to complete the new high school is based on what *the voters* understood and intended by their vote.

The trial court erred, as a matter of law, in failing to recognize that in interpreting the provisions of a proposition, it is the voter's intent that is paramount. (Legislature v. Eu, (1991) 54 Cal.3d 492, 505.) The trial court did *not* consider the evidence clearly indicating the voter's intent from the voter pamphlet and ballot arguments to what they saw and specifically voted on, as numerous California courts, including this Court, have done. (*See* Lesher Communications, Inc. v. City of Walnut Creek, (1990) 52 Cal.3d 531, 541-542; Legislature v. Eu, *supra*, 54 Cal.3d at pp. 504-505; Woo v. Superior

Court, (2000) 83 Cal.App.4th 967, 976; Donorovich-Odonnell v. Harris, (2015) 241 Cal.App.4th 1118, 1135.) Instead, the trial court relied on the subjective testimony of individual members of the Grossmont board – notably Robert Shield and Jim Kelly[7]. (JAA 5355 [Decision at ¶¶ 40-42].)

Relying on trial testimony of Kelly and Shield, and board meeting video replay, the trial court arrived at a faulty interpretation that Proposition U required a recurring and continual student population at or exceeding 23,245 at the same time Grossmont, with complete discretion, might decide to release construction bids.

Assuming extrinsic evidence was necessary, the trial court failed to consider the information set forth in the official ballot pamphlet as the best extrinsic indicator of voter intent. (Legislature v. Eu, (1991) 54 Cal.3d 492, 504; Committee for Responsible School Expansion v. Hermosa Beach City School Dist., (2006) 142 Cal.App.4th 1178, 1189.)

The ballot argument against Proposition U was signed by long-term Grossmont board member, Jim Kelly, who specifically explained to the voters

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[7] Although it allowed his trial testimony, the trial court did not consider Mr. Kelly's ballot argument that was *actually* before the voters. The trial court allowed speculation that voters could access the personal intent or opinion of board members on the meaning of the enrollment trigger from the Grossmont website sometime before the vote occurred. (RT 862-863 [counsel musing that people as far as Michigan could view the Grossmont website].)

that *a vote in favor of Proposition U is a promise to build the New High School*. (Ex 16, italics added)

Furthermore, the trial court discounted or ignored the clear and concise statement in the 75-word title and preamble that was prominently printed and principally read by the voters. (Elections Code § 13247; Exh. 16-1.) The question put to the voters in the Proposition U ballot measure prominently and specifically told voters the measure was for "**constructing a new school in Alpine/Blossom Valley**." (Ex 16-1, bold added)

The question of whether the voters *intended* to (1) vote to build the high school when enrollment met 23,245, or (2) vote to give authorization for (but not require) Grossmont to build the new high school most clearly and reasonably is answered in the former.

C. VOTER ASSENT TO BE TAXED UNDER PROPOSITION U IS A CONTRACT THAT SPECIFICALLY SET FORTH THE BUILDING OF THE NEW HIGH SCHOOL; THE TRIAL COURT ERRED IN INTERPRETING PROPOSITION U IN A MANNER THAT ALLOWED GROSSMONT TO VARY THE TERMS OF THE CONTRACT

In addition to the statutory duty of Grossmont to complete construction of the new high school on a statutory interpretation basis, the Proposition U bond measure obligation is akin to a bond promise contract that conditionally binds Grossmont to construct the new high school. The case Monette-Shaw v. San

Francisco Bd. of Supervisors ("Monette-Shaw"), (2006) 139 Cal.App.4th 1210, confirms this bond measure as being a voter contract. (Id. at p. 1215, citing Associated Students of North Peralta Community College v. Board of Trustees (1979) 92 Cal.App.3d 672, 677-678.) The Monette-Shaw court details the four primary elements from which the terms of a voter bond contract are derived: "(1) the statutes creating the bonding entity and authorizing bonded indebtedness; (2) [t]he resolution by which the bonding entity resolves to submit the issue to [its] electors; (3) the ballot proposition submitted to the voters; and (4) the voters' assent or ratification." (Id. at p. 1215, internal quotes removed.)

As explained by the Supreme Court in O'Farrell v. County of Sonoma, (1922) 189 Cal. 343, when an agency promises bond money will be spent on a certain action, it is thereafter bound to its promise and cannot act alone to alter the terms. (Id., at p. 348) The construction of the new high school is what Grossmont is specifically obligated to do for the voters in return for their assent to impose additional taxes on their homes, businesses, and real property throughout the school district.

A consequence of the trial court's error in determining that Grossmont has discretion not to build the school – principally based on expected operating

costs (JAA 5360 [Decision ¶ 61])[8] – is that the trial court adopted Grossmont's argument that it alone could decide what was a *better* use of Proposition U funds than the *promised* new high school that was decided and directed by the voters. The trial court explained its reason for accepting Grossmont's decision to not to build the new high school:

> Under these circumstances, the Court concludes that Defendants' decision to put construction of the school on hold was a valid exercise of their discretion. There is no evidence that voters, when voting in favor of Prop U, intended for the educational experiences of their children to suffer in pursuit of a new school in Alpine. Indeed, the testimony and evidence reflects that voters intended to better their children's educational experience by, among other things, modernizing outdated buildings and putting in air conditioning. But were a new school in Alpine built, the educational experiences of all students would suffer. Given current enrollment and the funding provided by the State, Grossmont would have to cut its budget in other areas to staff and operate the new school.

(JAA 5360-5361 [Decision ¶ 62]))

The above reflects how the trial court over-stepped its role, instead acting as a "super-legislature" that reevaluated voter intent contrary to what the voters actually voted on and approved. (Unzueta v. Ocean View Sch. Dist., (1992) 6 Cal.App.4th 1689, 1698 citing Daybrite Lighting, Inc. v. Missouri (1952) 342 U.S. 421, 423.)

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[8] The trial court considered these post-election considerations over the understanding and intent of the voters – even though voters already knew and approved and overrode the competing considerations of operating costs. (JAA 16-4 [Ballot Pamphlet].)

The California Supreme Court has recognized the need to uphold and enforce the popular voting mandate of decisions made by the voting public. (Rider v. County of San Diego, (1991) 1 Cal.4th 1, 16; *see also* Borikas v. Alameda Unified School Dist., (2013) 214 Cal. App. 4th 135, 140.)

It is not the role of the judiciary to question the wisdom of the voters, who specifically approved funding and terms for constructing the new high school. Neither Grossmont, nor the trial court, has the power to override the voters' legislative decision to tax themselves to build the new high school; nor can they vary the contract between Grossmont and the voters.

D. EVEN ASSUMING VOTERS INTENDED ENROLLMENT NEEDED TO MEET OR EXCEED 23,245 CONCURRENTLY WITH CONSTRUCTION BID, SUCH CONDITION OCCURRED WHEN GROSSMONT REQUESTED PROPOSALS AND FORMALLY APPROVED THE LEASE-LEASEBACK CONTRACTOR ERICKSON-HALL TO BUILD THE NEW HIGH SCHOOL

A duty to begin and complete the new high school exists even if this Court accepts Grossmont's and the trial court's incorrect interpretation of Proposition U. This is true based upon the undisputed fact that Grossmont performed the legal equivalent of releasing construction bids when it formally decided to proceed with construction via the lease-leaseback (LLB) process and selected the LLB contractor to build the school because there were no bids for

Grossmont to let. (Exhs. 126-5, 475-3, 476-2, and 344-3)

Once Grossmont formally considered and selected Erikson-Hall and the LLB contractor, Grossmont would not issue (or "release") bids for construction of the new high school. (RT 887:12-18, 1115:18-28, 1136:18-19 [the contractor releases and performs bidding].) By selecting the LLB construction delivery method, Grossmont legally eliminated and substituted its method of releasing bids under Education Code § 17406, and it was Erickson-Hall that was to conduct the release of bids to subcontractors for their possible use and selection to form a guaranteed maximum price and construct the new high school.[9] (Exh. 126-5; RT 1497:11-17) This is consistent with Grossmont's understanding and implementation of lease-leaseback construction delivery method. (Exh. 1227-14) This is also consistent with the legal interpretation of the LLB process that specifies that lease-leaseback arrangements are entered into "without advertising for bids." (Ed. Code § 17406 (a); *see also* Los Alamitos Unified Sch. Dist. v. Howard Contracting, Inc., (2014) 229 Cal.App.4th 1222, 1227-1229.)

The fact that site construction would start and be managed by Erickson-Hall, only after a *final* price was fixed and *final* contract was signed (JAA 5358 [Decision ¶ 50]), is not mutually exclusive of Grossmont's clear action to

[9] Education Code 17406 has been amended since the inception of this lawsuit, but has not changed as to the ability of a school district to avoid standard bidding requirements.

avoid releasing bids – and avoid officially selecting any other construction contractors, which it accomplished by selecting the LLB method and LLB contractor. (Exh. 127; *cf.* JAA 5357-5358 [Decision ¶ 49 [acknowledgment that Erickson-Hall was selected as a LLB contractor].)

Grossmont chose, and substantially completed, the process for the construction of the new high school that does not include Grossmont letting bids in a conventional or legal manner sense. Grossmont's contention that bids must *later* be released (by Erickson-Hall) is a red herring designed by Grossmont as an excuse to avoid the "trigger" and not have to proceed with its mandatory duty to build the new high school.

E. SEPARATE FROM THE DISPUTED TRIGGER REQUIREMENT TO COMPLETE THE SCHOOL BUILDINGS, THE PLAIN READING OF PROPOSITION U SETS FORTH AN UNCONDITIONAL REQUIREMENT TO COMPLETE SITE DEVELOPMENT

1. The Trial Court Correctly Found That Site Development of the New High School Did Not Have an Enrollment Trigger, but Erred in Finding Grossmont had Discretion to Not Complete This Unconditional Promise

The First Bullet regarding the new high school in Proposition U unambiguously requires and directs Grossmont to "Complete site development, including utilities and road extensions[.]" (Exh. 16-11) The trial court did

correctly find that "the first of the two items—site development work—does not contain wording relating to enrollment." (JAA 5352 [Decision ¶ 32])

However, the trial court rejected appellants' request for declaratory and injunctive relief because it erroneously found that the First Bullet was discretionary and was not a promise to "complete site development," thereby conflicting with the *law of the case* and the plain language of Proposition U. (Section VI.A., *ante*.) Whether or not ATBA's asserted interpretation of the trigger is correct, Grossmont is required to complete site development.

While Grossmont will likely argue the judiciary should give it deference on the meaning of the First Bullet, the judiciary has the final responsibility for the interpretation of the law. (Yamaha Corp. of America v. State Bd. of Equalization, (1998) 19 Cal.4th 1, 4, 11 fn.4; *see also* Amaral v. Cintas Corp. No. 2, (2008) 163 Cal.App.4th 1157, 1208.)

The trial court erred in failing to find that Grossmont is obligated to complete said new high school site development as stated in Proposition U. The trial court rejected ATBA's claim – that Grossmont is required to complete site development – in a footnote. (JAA 5364 [Decision ¶ 75, fn. 4 - "Any failure to complete site development was not clearly alleged or presented in this case, which dealt with the alleged failure to construct a high school."]) Appellants presented evidence that the on- and off-site development, as provided for in Proposition U, is incomplete (RT 1173) and that the permits obtained at great expense are set to expire (RT 2036-2037, 2059), and it would be a waste to

repeat the application process if the site work is not completed by May of 2018. (RT 2036-2038)

The trial court erred by assigning and allowing Grossmont discretion regarding the timing and delay of completing site development in contravention of the unqualified and mandatory directive of the voters.

F. THE TRIAL COURT ERRED IN RULING THAT ATBA CANNOT ENFORCE GROSSMONT'S FAILURE OR REFUSAL TO PERFORM A MANDATORY SCHOOL BOND DUTY AS A STATUTORY "WASTE" ACTION UNDER EDUCATION CODE § 15284 AND CODE OF CIVIL PROCEDURE § 526a

The trial court ruled that ATBA could not bring a statutory waste action under any of its allegations or the facts of this case. (JAA 5363 [Decision ¶ 73 "it is not waste to not spend money on a project."].) In support of its narrow and limiting interpretation for statutory waste actions, the trial court references that Code of Civil Procedure § 526a applies to "preventing any illegal ***expenditure***," and Education Code § 15284 applies to "restraining and preventing any ***expenditure***." (JAA 5363 [Decision ¶ 73, emphasis in original].) ATBA contends the trial court erred in narrowly construing these statutes. (*Cf.* Animal Legal Def. Fund v. Cal. Exposition & State Fairs, (2015) 239 Cal.App.4th 1286, 1297.) In addition to the authorities and argument presented below in Section 2, guidance for the propriety of ATBA's case and claims is

noted by the court's ruling in San Bernardino City v. Superior Court, (2015) 239 Cal.App.4th 679, that "Code of Civil Procedure section 526a gives citizens standing to challenge governmental action and is liberally construed to achieve that purpose." (Id. at p. 686.) Further, "[s]ection 526a somewhat broadens the scope of claims that were permissible to the taxpayer in comparison to the common law. . ." (Id. at p. 687.)

Consistent with California law, ATBA contends that Code of Civil Procedure § 526a and Education Code § 15284 provide for interested parties such as ATBA to bring a lawsuit to enjoin the use of Proposition U funds that may result in an illegal expenditure, waste of, or injury to bond funds, or otherwise violates California Constitutional requirements of Proposition 39 bond measures. The trial court erred as a matter of law in limiting the broad statutory reach of enforcement measures available to an aggrieved party regarding the abuse and misuse of bond funds.

1. ATBA Pleaded Proper Claims for Waste in its Third Cause of Action

ATBA set forth the substantial part of its waste claim in Paragraphs 76-78 of its Second Amended Complaint:

> 76. The actions and conduct of Defendants amount to a violation (or "breach") of the promise, agreement and/or commitment made in association with the creation and adoption of Proposition U to build the Alpine High School.
>
> 77. Based upon the primary purpose, intent and commitment within Proposition U to build a high school in Alpine, Defendants' failure, refusal, and conduct in contradiction to ever

> building the high school amounts to "waste" and a violation of the bond spending requirements of California Code of Civil Procedure § 526a and California Education Code § 15284 such that ATBA is entitled to an injunction against Defendants to prevent them from violating Proposition U as alleged herein.
>
> 78. Under said laws, ATBA seeks an injunction to enjoin and prevent Defendants from spending and exhausting Proposition U bond revenues in a manner that would substantially impair or preclude construction of the Alpine High School.

(JAA 250)

However, in its Decision, the trial court re-characterized ATBA's waste theories in a manner that skewed and substantially omitted the aforementioned gravamen of ATBA's bond measure enforcement action:

> (1) spending Prop U money <u>on any project but</u> the school in Alpine constitutes waste, (2) spending $23 million of Prop. U tax dollars for site acquisition, permitting, and site preparation without completing construction and development of the new high school constitutes "waste" and (3) Prop U monies were spent on <u>projects not authorized</u> by Prop U.

(JAA 5363 [Decision ¶ 72].)

Item number two *does* constitute one of ATBA's contentions. However, it is substantially collateral and subservient to the clear propose and request for judicial review to interpret, declare, and enter an appropriate order regarding the bond measure and voter mandate for Grossmont to begin and complete construction. (*See* Section VI.B, *ante*.) The first and third items, on the other hand, are not accurate recitations of ATBA's waste allegations.

In its first enumerated item, the trial court mischaracterizes what

it ascribes as part of ATBA's *Third Cause of Action*– that spending Prop U money on any project but the school in Alpine constitutes waste. (JAA 5363 [Decision ¶ 72]) ATBA did not argue that no other Proposition U bond funds could be spent on other projects. Instead, ATBA's argument is that – because of the voter-enacted promise and legal requirement to build the new high school – Grossmont cannot expend Proposition U funds in a manner and to a degree that exhausts these funds necessary to build the new high school. Doing so would be a violation and breach of Grossmont's express duty to complete the new high school. Doing so would also subject Grossmont to injunction and other forms of judicial relief under statutory provisions that were enacted for the review and enforcement to prevent bond measure violations and waste.

The trial court's third enumerated theory of ATBA's waste action is also mischaracterized. In its pleading and at trial, ATBA did not seek to suspend or enjoin spending on other existing projects. (JAA 4355-4357 [trial brief]) What ATBA requested was examination of other projects under the Proposition U bond program to compare Grossmont's manner of interpretation, implementation, and course of conduct relative to how it is treating the new high school - whereby strict standards for implementation of the new high school are not being equally applied to other Proposition U projects. (East Bay Mun. Utility District v. Cal Dept of Forestry and Fire Protection, (1996) 43 Cal.App.4th 1131, 1122 fn. 6,

1124 [appropriate for court to take evidence beyond that contained in the subject challenged projects to examine how the agency's practice and policies were applied].)

2. Applicable Statutes and Case Law Support and Allow Waste Actions to Enjoin Both Affirmative and Omitted Acts

Taxpayer waste actions under Code of Civil Procedure § 526a provide for injunctive relief to restrain and prevent illegal expenditures by local agencies. (*See* Blair v. Pitchess, (1971) 5 Cal.3d 258, 26 ["actions by a resident taxpayer against officers of a county, town, city, or city and county to obtain an injunction restraining and preventing the illegal expenditure of public funds"], superseded by statute on other grounds as stated in Simms v. NPCK Enterprises, Inc. (2003) 109 Cal.App.4th 233, 242-243.)

The trial court misinterpreted that Code of Civil Procedure § 526a and Education Code § 15284 are *only* available to enjoin expenditure of funds, as opposed to also enjoining mandatory duties and actions relating to a bond measure's mandates, restrictions, and uses of said funds. (JAA 5363)

The trial court erred by failing to interpret and apply Code of Civil Procedure section 526a under the normal rules of statutory interpretation to find its intent by giving effect to its "plain meaning." "The use of the word 'or' in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories." (Piet v. United States, (S.D. Cal. 1959) 176 F.Supp.

576, 583; *accord* Melamed v. City of Long Beach, (1993) 15 Cal.App.4th 70, 79.) Here, the use of the word "or" and the separation of terms by commas make it clear that ATBA may bring a claim to prevent not only the "expenditure of[,]" but also the "waste of" or "injury to" public funds as set forth in the relevant portion of Code of Civil Procedure § 526a.

Thus, a Code of Civil Procedure § 526a "waste" action is not limited to only being the expenditure of funds on a particular project, but also includes the *misuse* of funds – thereby illegally "expending" and causing "injury" to restrictions placed on such bond funds that must be used for a specific purpose. Certainly the dissipation and exhaustion of the funds necessary for the mandatory construction of the new high school is an injury to the bond funds and the voters who approved and pay those funds. Where the voters had enacted Proposition U with the promise and duty of Grossmont to begin and complete the new high school, and the conditional enrollment trigger has been met, Grossmont cannot legally expend and exhaust funds necessary to complete the new high school. ATBA has never questioned Grossmont's ability to spend *other* funds in excess of what is needed to complete the new high school so long as those actions do not dissipate and exhaust funds, or delay the construction of the new high school beyond a *reasonable time*.

ATBA's *Third Cause of Action* was additionally brought pursuant to Education Code § 15284 which expressly authorizes ATBA to "obtain an order restraining and preventing any expenditure of funds" that are in violation of the

Proposition 39 accountability requirements. (Ed. Code § 15284 subds. (a)(2) & (a)(3).) Embraced within the "strict accountability" requirements of Proposition 39 is the purpose and restriction that only projects that have been specifically identified and approved by the voters are the ones to be constructed. The Proposition 39 statutory and constitutional provisions do not exclude or depart from ordinary bond measure doctrine that allow taxpayers such as ATBA to enforce the limits, controls, and specific restrictions of voter-enacted bond measures. (Hunter v. Cty. of Santa Barbara, (1930) 110 Cal.App. 698, 708-709; O'Farrell v. County of Sonoma, (1922) 189 Cal. 343, 348; San Diego v. Millan, (1932) 127 Cal.App. 521, 530 ["omission of a substantial portion of the improvement contemplated at the time the bonds were voted is an unauthorized departure from the purpose for which the bonds were issued"].)

Under the provisions of both Education Code and Code of Civil Procedure, ATBA's *Third Cause of Action* amounts to a proper statutory waste action under the facts and circumstances of this case.

3. ATBA's Waste Action is also Proper to Enforce and Avoid the New High School From Being Partially Built, But Unfinished Until at Least 2032

ATBA seeks appellate review of the related, but nominally different, legal proposition that spending approximately $23M (Exh. 94-065) for the new high school, without the continuation and completion of the new high school, is the more traditional form of an *affirmative* waste action. This waste theory

pertains to Grossmont's breach of its duties to both complete the site acquisition, grading, and utilities infrastructure (after bond passage in 2008), as well as begin and complete the school buildings once the enrollment trigger was met. (*See* Section VI.A.2, *ante*, citing O'Farrell, *supra*, 189 Cal. at p. 349 [bond money could not be used for only part of a mandated project] and Hunter v. Cty. of Santa Barbara, (1930) 110 Cal.App.698, 708-709.)

If this Court determines that Grossmont failed in its obligation to complete the new high school, Grossmont has committed waste. (Education Code § 15284, subd. (a)(1)-(3).)

Voters voted for beginning and completing (when enrollment was met) a specific project. (Ex 16-1, 16-11 [Proposition U]; Ex 16-3 through 16-6 [ballot materials].) The voters did not vote to appropriate millions of dollars for the purchase of the Lazy A property and required permitting only to have that property remain unused – a *waste* of taxpayer funds.[10] (E.g., O'Farrell v. Cty. of Sonoma, (1922) 189 Cal. 343, 348.)

[10] Grossmont cannot provide or profess what alternative plans and uses for the Lazy A site may otherwise become. Pursuant to the strict bond accountability of Proposition 39, the Lazy A site may only be used for the listed construction of a new high school. (*See* Cal. Const., article 13A, § 1, subds. (b)(3)(A-C).)

4. ATBA's Pleading and Proof of Grossmont's Spending on *Other* Proposition U Bond Projects are Not Waste Claims or Project Challenges but Were Raised to Demonstrate That Excuses Given, and Impediments Created, to Delay the New High School, Were Unfairly Applied to the New High School

The trial court accepted Grossmont's cloaked refusal to adhere to its obligation to *complete* the new high school under the guise of severe economic concern and discretion. (JAA 5359-5362 [Decision].) In doing so, Grossmont employed unfair standards for implementation of *other* Proposition U projects when compared with the manner of implementation for the new high school.

The trial court determined that ATBA requested injunctive relief as to the exemplary already-built projects and therefore denied relief on that incorrect basis. (JAA 5365 [Decision ¶ 85 - "Injunctive relief cannot be granted as to these completed projects."].)

The testimony adduced at trial about the 2012 tennis courts 2013 Child Development Center and 2013 Helix Performing Arts Center was for the purpose of showing examples of inflated expenditures that were well over budget (Exh. 1224 [change order for tennis courts increase of $1,068,000.93]; Exh. 591-31; RT 1245 [Childcare Center]; Exh. 1222-02 [Helix PAC "significant difference between the project that was originally conceived and the project that was built"]), well over bond-stated amounts in the 2008 master plan and pre-bond project account list providing the basis for the total and

actual $417 million bond measure (Exh. 1022-10 [project-list accounting]; Exh. 1022-16 to 1022-18 [project list for Grossmont of continued Proposition H and U funded projects]; Exh. 1022-22 to 1022-25 [project list for Helix]), and the absence of considering operation costs when it was well known that such costs and deferred maintenance could be a long-term drain on the school district.

As explained in Section VI.F.1 *ante*, this evidence is relevant to demonstrate that Grossmont had strict standards for implementation in consideration of *operating costs* that are unequally applied to the new high school as opposed to *other projects*. (East Bay Mun. Utility District v. Cal Dept of Forestry and Fire Protection, (1996) 43 Cal.App.4th 1131)

The evidence shows that Grossmont does not consider operating costs in its decision hierarchy for other Proposition U project decisions such as the *performance arts centers* (aka "PACs").[11] (Exh. 1222)

In a perfect bond-program-world, these project variations might not cause alarm. However, the fact that Grossmont purports to have considerable concern about start-up and operation expenses for the new high school (as an excuse not to build) cannot be reconciled with its failure or refusal to conduct these same considerations for other significantly expanded projects.

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[11] The substantial expenditures for the PACs were not even part of the $417 M contemplated and approved for the Proposition U bond Measure. (Exh. 16-9 to 16-11 [list of projects for $417 M]; Exh. 1022-8 [parity projects not part of bond].)

Operational costs and considerations were not approved by the voters as qualifications to abandon building the new high school. Therefore, Grossmont may not lawfully use an operation cost excuse to avoid and refuse the new high school project. The fact that Grossmont selectively considers operation costs of only one project – the new high school – indicates even a greater level of impropriety and unlawful policy.

G. THE TRIAL COURT ERRED IN FINDING ATBA's WASTE CLAIM IS BARRED BY DOCTRINE OF LACHES

Grossmont did not prove a defense that the statute of limitations began to run before appellants filed suit in October of 2014 – at the time when Grossmont was approving major bond projects and bond spending that would likely deplete future bond capacity and prevent completion of the new high school.

Therefore, the trial court did not find the statute of limitations barred appellants' causes of action to interpret and enforce Proposition U's mandate for constructing the new high school. The trial court solely ruled that Plaintiffs' claims unrelated to the alpine school are barred by the statute of limitations." (JAA 5365 [Decision at 21])

1. The Trial Court Erred in Finding ATBA's Statutory Waste and Mandamus Claims, to Interpret and Enforce Construction of the New High School, Were Barred by Laches

The trial court erred in finding that laches barred ATBA's *Third Cause of Action* waste claims and *Fourth Cause of Action*[12] claim for writ of mandate. (JAA 5367 [Decision ¶ 91].) In finding laches, the trial court erred in determining that ATBA unreasonably delayed and that Grossmont was prejudiced by ATBA bringing suit in October of 2014. The trial court found that:

> Defendants have expended Prop U bond money on a variety of projects since November 8, 2012. Had Defendants been sued at some earlier point more Prop U bond monies would be available and any remedy would have done less violence to their bond program. Also, Grossmont expended Prop U monies to plan projects, to design them, and for plan oversight. This money would go to waste as projects would have to be re-worked, including those items in design, as Defendants would have insufficient Prop U funds to continue with the projects as planned and in the order planned.

(JAA 5368 [Decision ¶ 96].)

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[12] The trial court misstated ATBA's claim for a writ of mandamus in the *Fourth Cause of Action* as being a challenge to Grossmont's July 14, 2011 decision to impose a new ADA trigger and funding requirement. Although ATBA contends that Grossmont did not have authority to impose such a new and additional condition, this is not the gravamen of ATBA's *Fourth Cause of Action*. ATBA alternatively pleaded a writ of mandate action questioning whether the ADA trigger was met in September of 2014, and whether Grossmont was obligated, by its own resolution, to "review and consider resumption of the construction process[.]" (JAA 0251 [¶83])

ATBA contends that no prejudice resulted from any of its actions leading up to filing suit in this case where (1) Defendant proceeded with its bond projects without consideration or concern for appellants' objection, and (2) any delay by ATBA was due to initial actions by Grossmont to purchase the Lazy A Ranch and ATBA did not bring suit until Grossmont began taking actions to exhaust and dissipate funds and otherwise not complete the new high school. With no evidence of projects being impeded or stopped by ATBA, it is clear that no prejudice or bond program "violence" has occurred. (JAA 5368 [Decision ¶ 96, referring to "violence"].)

Laches is an affirmative defense and Grossmont has the burden to prove each element. (*See* Green v. Bd. of Dental Examiners, (1996) 47 Cal.App.4th 786, 792-793; *cf.* Ladd v. Warner Bros. Entertainment, Inc., (2010) 184 Cal.App.4th 1298, 1310.) Laches is also an equitable defense, and a defendant asserting laches against a plaintiff "must show that plaintiff has acquiesced in defendant's wrongful acts and has unduly delayed seeking equitable relief to the prejudice of defendant." (Gerhard v. Stephens, (1968) 68 Cal.2d 864, 904.) Appellants' filing of the original *Complaint* on October 14, 2014 did not prejudice Grossmont. According to Grossmont, there have always been sufficient funds to build the new high school *at some point*. (Exh. 158-010 [2015 Bond Program Review].) The trial court found that "Defendants have exercised, not unfettered, but appropriate and reasonable discretion, not to build a school in Alpine *at this time*." (JAA 5194 [Decision ¶ 64], emphasis added.)

Further, since Proposition U was passed, Grossmont has been spending Proposition U bond funds on projects other than the new high school, on its own accord and pace, irrespective of anything appellants have done, or could have done, or didn't do. Just as it was doing for other projects, Grossmont's advancement and spending of funds for the new high school (as a mandatory bond project) cannot possibly be viewed as prejudicial to Grossmont.

The trial court endorsed Grossmont's use of a laches defense *as a sword* to vindicate its own wrongdoing with respect to the new high school. Grossmont did not prove any prejudice caused by unreasonable delay of ATBA. Instead, the court presumed it.

The defense of laches has nothing to do with the merits of the cause against which it is asserted and therefore cannot be used to resolve a case where Grossmont was not prejudiced by any delay. (Johnson v. City of Loma Linda, (2000) 24 Cal.4th 61, 77.) Over one hundred years of precedent from the California Supreme Court has instructed California courts on the laches doctrine:

> That doctrine, as has been said, is neither technical nor arbitrary. It is not designed to punish a plaintiff. It can be invoked only where to allow the claim would be, because of the claimant's own acts, to permit an unwarranted injustice. It looks to the peace of society, and not to the punishment of the claimant, even if he has been negligent. Whether or not the doctrine applies depends and must depend, therefore, upon the circumstances of each case. It is usually applied where a plaintiff, with knowledge that his rights have been invaded, or his trust repudiated, has submitted to unconscionable delay, during which other rights have arisen, founded somewhat upon his silence and acquiescence. But it is never permitted to be invoked merely to aid a faithless trustee in consummating his wrong. Nor was it ever

> designed to be a check upon the right of a person to impose confidence and trust in another.

(Hovey v. Bradbury, (1896) 112 Cal. 620, 625-626.)

ATBA sued only when it discovered that Proposition U funds would soon be exhausted to the point that the new high school could not be built. (JAA 245) Grossmont claimed, and the trial court accepted, that Grossmont continues to plan to build the school "when the time is right" and that it has the funds to do so. This begs the question, how could Grossmont be prejudiced?

The trial court improperly relied heavily on extraneous emails by Sal Casamassima, who developed a "plan" to allow Grossmont continue spending on the new high school site. (JAA 5201 [Decision ¶¶ 94-96].) From the trial court's own analysis, Mr. Casamassima's plan was to allow Grossmont to continue to build the new high school and then try to get the Alpine School District unified and get the benefit of the school. It cannot be prejudice to have Grossmont continue with a mandatory bond project that itself created and bound itself to complete. There is no prejudice arising from allowing Grossmont to take steps in favor of development and construction of the new high school that the bond measure requires.

Based on the undisputed findings of the trial court and *law of the case*, Grossmont simply cannot meet or establish a laches defense as a matter of law. The trial court erred in finding prejudice because it misapplied one of the required elements.

VII.

CONCLUSION

For the above reasons, ATBA requests reversal and remand for the trial court to enter an appropriate declaration of law and permanent injunction responsive to the issues present by ATBA, and consistent with the determinations and opinions made by this Court.

Respectfully submitted,

Dated: April 7, 2017

CRAIG A. SHERMAN, A PROFESSIONAL LAW CORPORATION

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Attorney for Appellant
ALPINE TAXPAYERS FOR BOND ACCOUNTABILITY

VIII.

CERTIFICATION OF WORD COUNT COMPLIANCE

Counsel of record for Appellant, Craig A. Sherman, hereby certifies that pursuant to California Rules of Court, Rule 8.204, subd. (c), that the above *OPENING BRIEF OF APPELLANT ALPINE TAXPAYERS FOR BOND ACCOUNTABILITY* has been produced using 13-point Roman type, and contains 13,120 words (including footnotes, headings, and citations), which is less than the 14,000 words permitted by this rule, as counted by the word counter of the computer program used to prepare the brief.

Dated: April 7, 2017

LAW OFFICE OF CRAIG A. SHERMAN

Craig A. Sherman, Esq.
Attorney for Appellant

COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

PROOF OF SERVICE

Alpine Union School District, et al. v.
Grossmont Union High School District, et al.
Court of Appeal Case No. D070583

San Diego Superior Court Case No.: 37-2014-34850

I, PAUL BEST, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California. My business address is 1901 First Avenue, Suite 219, San Diego, California, 92101.

On April 7, 2016, I served true copies of the following document(s) described as:

OPENING BRIEF OF APPELLANT
ALPINE TAXPAYERS FOR BOND ACCOUNTABILITY

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

In the following manner:

☒ **BY ELECTRONIC SERVICE:** By complying with California Rule of Court 8.71and Fourth Appellate District Local Rules, Rule 5(i), I caused a true and correct copy of the document(s) to be served via TrueFiling at the email addresses listed above.

I declare under the penalty of perjury under the laws of the State of California that the above foregoing is true and correct.

Executed on April 7, 2016 at San Diego, California.

Paul Best

SERVICE LIST

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