CRAIG A. SHERMAN
LAW OFFICE OF CRAIG A. SHERMAN

1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101-2382

SHERMANLAW@AOL.COM

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

April 15, 2013

California Court of Appeal
Fourth District, Division One
750 B Street, Third Floor
San Diego, CA 92101

Re: Request for Publication of Opinion (Partial)
Taxpayers for Accountable School Bond Spending v. San Diego Unified School District
Case No. D060999

To the Honorable Presiding and Associate Justices of the Court of Appeal:

Appellant Taxpayers For Accountable School Bond Spending hereby requests that Part I of the March 26, 2013 decision of this Court (the "Decision") be certified for partial publication pursuant to California Rules of Court, Rule 8.1105(c)(2), (c)(4), (c)(6) & (c)(7), Rule 1110(a), and Rule 1120(a)(1).

Part I of the Decision should be certified for publication based on the sparse reported case law on the subject and the widespread use of Proposition 39 school bond measures. Despite the name of Proposition 39's supporting statutory enactment – the "Strict Accountability in Local School Construction Bond Act of 2000" there is little reported case law regarding interpretation and enforcement of allowable projects under the requirements imposed by Proposition 39 according to Article 13 A, § 1, subd. (b)(3)(B) of the California Constitution.

In accordance with the above-referenced subsections of Rule 8.1105(c), the Decision *should* be published because it meets the following criteria: (1) it advances a new interpretation, clarification, criticism, or construction of a provision of a constitution and statute, (2) it involves a legal issue of continuing public interest, and (3) it makes a significant contribution to the development of the subject constitutional and statutory provisions.

As explained below, the Decision involves bond language and analysis about the Constitutional and statutorily required "project list" which is instructive and different as compared with the prior reported case law on the subject.

I. SINCE THE ENACTMENT OF PROPOSITION 39, THERE ARE LIMITED REPORTED CASES ON THE SUBJECT OF THE CONSTITUTIONALLY REQUIRED "PROJECT LIST"

Since the time Proposition 39 was enacted in November of 2000, appellant is aware of only two reported cases interpreting its statutory and Constitutional provisions.[1] The prior reported cases analyzed the Proposition 39 project list requirement under different facts and in a different manner.

In Hermosa Beach arguments for and against a *gymnasium* project appeared in the argument section of the ballot measure, but the school district and election officials did not include the *project list* itself in the ballot. Because mention of the gymnasium project was contained in the ballot, as well as being contained in the exhibit attached to the school board resolution, the court found compliance in that "list of projects was prepared and available to voters" such that the list did not otherwise have to be fully contained in the ballot. (142 Cal.App.4th at pp. 1182, 1189, 1190-1192.)

In Foothill-De Anza the court held specific project locations and building details need not be provided in the project list as long as the particular funded construction project was disclosed. (158 Cal.App.4th at p. 24 ["it is clear that among the projects to be funded are: repair or replacement of leaky roofs, wiring classrooms for computers and other technology, and installation of fire safety doors and sprinklers. This is sufficiently specific for meaningful approval and oversight."].)

In this case, the Decision materially adds to the interpretation and application of the Constitutional and statutory provisions whereby "catchall" or boilerplate language – as *possible incidental project features* – cannot be converted to a new project or construction activity not appearing and disclosed as an actual listed project. (Decision, at 12, 15 ["must be tethered to, and based on, a listed project expressly authorized elsewhere in the [bond measure]."] The publication of the Decision will provide the electorate and school officials with additional and different guidance as to how to interpret and implement the *project lists* which must accompany Proposition 39 school bond ballot measures.

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[1] Committee for Responsible School Expansion v. Hermosa Beach City School Dist., (2006) 142 Cal.App.4th 1178 and Foothill-De Anza Community College Dist. v. Emerich, (2007) 158 Cal.App.4th 11. Although San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist., (2006) 139 Cal.App.4th 1356, mentions Proposition 39 by way of example, the bond measure there predated and did not involve a Proposition 39 bond measure. (Id. at p. 1396)

II. THE PREVALENCE OF PROPOSITION 39 BOND MEASURES MAKE THE DECISION VITALLY IMPORTANT AND OF PUBLIC INTEREST

The widespread use of Proposition 39 bond measures to raise taxes in an era of extreme voter reticence is now the norm. In fact, reported statewide election statistics involving 2012 school bond measures indicate that every bond measure was promoted and attempted to be passed under the relaxed Proposition 39 fifty-five percent (55%) voter approval rate. (http://ballotpedia.org/wiki/index.php/School_bond_elections_in_California, last accessed April 14, 2013.) In the statewide November 6, 2012 election alone, there were 106 public school bond propositions in 33 counties ranging from a low of $830,000 (Pacific Elementary, Measure M in Santa Cruz County) to a high of $2.8 billion (San Diego Unified, Proposition Z in San Diego County). Each of these measures were brought under Proposition 39. (Id.)

With Proposition 39 bond measures now appearing as the norm, the varying degrees of specificity and wording of the specific "project lists" is of increasing importance. The issue of generalized and boilerplate project descriptions – whereby school districts seek to create an open-ended funding source for discretionary infrastructure spending by deferring identification of particular projects until after the bond measure passes – needs to be more frequently visited and addressed by the courts. The publication of Part I of the Decision in this case provides this Court an appropriate opportunity to do so.

A recent statement by Bernie Rhinerson, chief of staff for respondent District is informative as to how Proposition 39 bond measures have become a generalized infrastructure funding source, with the focus of specific projects taking the back seat: "the pamphlet was designed to inform voters and was "certainly not intended to mislead anyone. We will put together a detailed project list of what gets repaired after the election. We don't invest that kind of work and money until the bond passes." (http://www.utsandiego.com/news/2012/oct/17/retired-teacher-catches-glitch-sdusd-prop-z-voter-/, last accessed April 15, 2013)[2]

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[2] Although not addressed by the Decision, the statements of respondent in this case further ignores and refuses to recognize that the subject stadium field lights did not appear on any of the individual school assessment reports used by respondent District to support such development or need as additionally required by Art. 13 A, § 1, subd. (b)(3)(B).

Considering the Constitutionally required development of a Proposition 39 project list, and the need for it to be disclosed to the voters in advance of voting, school districts statewide need to be both instructed and reminded that it is the project list that matters.

III. CONCLUSION

For the above reasons, appellant submits that Part I of the Decision meets the qualifications for, and should be certified for, publication as it would materially add to the interpretation and application of laws which are now of prevalent use and importance throughout this state.

Sincerely,

Craig A. Sherman
For Appellant

cc: all counsel

DECLARATION OF SERVICE

Appeal No. D 060999
Court of Appeal, Fourth District, Division One
San Diego Superior Court - Case No. 37-2011-00085714
Taxpayers for Accountable School Bond Spending v.
San Diego Unified School District

I, the undersigned, declare under the penalty of perjury that I am over the age of eighteen years, my place of business is in the County of San Diego, located at 1901 First Avenue, San Diego, CA, and I am currently the attorney to this action; that I served the below-named person(s) the following document(s):

REQUEST FOR PUBLICATION

On April 15, 2013 on the following person(s) in a sealed envelope or package, addressed as follows:

Cameron Ward, Esq.
Jonathan A. Pearl, Esq.
Mark K. Kelley, Esq.
DANNIS WOLIVER KELLEY
71 Stevenson Street, 19th Floor
San Francisco, CA 94105
Tel.: (415) 543-4111
Fax: (415) 543-4384

Counsel for Respondent
SAN DIEGO UNIFIED SCHOOL DISTRICT

Lawrence M. Schoenke, Esq.
Sandra T.M. Chong, Esq.
SAN DIEGO UNIFIED SCHOOL DISTRICT
4100 Normal Street, Room 2148
San Diego, CA 92103
Tel.: (619) 725-5630
Fax: (619) 725-5639

Counsel for Respondent
SAN DIEGO UNIFIED SCHOOL DISTRICT

in the following manner:

1) ☐ By sending via overnight mail by the courier Fed Ex Express.

2) ☑ By placing a copy in a separate envelope, with postage fully pre-paid, for each person and address named above and depositing each in the U.S. Mails at San Diego, California.

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 15, 2013 at San Diego, California.

Craig A. Sherman