IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

D070583

37-2014-00034850-CU-MC-CTL

ALPINE UNION SCHOOL DISTRICT, *et al.*

Plaintiffs and Appellants,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT

Defendant and Respondent.

Appeal from the Superior Court of San Diego County
The Hon. Joel Pressman

ALPINE UNION SCHOOL DISTRICT'S APPELLANT'S OPENING BRIEF

WILLIAMS IAGMIN LLP
Jon R. Williams, Esq./162818
666 State Street
San Diego, CA 92101
(619) 238-0370

Attorneys for Plaintiff and Appellant,
ALPINE UNION SCHOOL DISTRICT

Alpine Union School District, et al. v. Grossmont Union High School District
Court of Appeal of the State of California
Fourth Appellate District, Division One
Court of Appeal Case No.: D070583
San Diego County Superior Court Case No.: 37-2014-00034850-CU-MC-CTL

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: D070583

Case Name: *Alpine Union School District, et al. v. Grossmont Union High School District*

Please check the applicable box:

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/s/ Jon R. Williams
Signature of Attorney/Party Submitting Form

Printed Name: Jon R. Williams, Esq.
Address: WILLIAMS IAGMIN LLP
666 State Street
San Diego, CA 92101
State Bar No: 162818
Party Represented: Appellant, ALPINE UNION SCHOOL DISTRICT

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Plaintiff and Appellant, ALPINE UNION SCHOOL DISTRICT ("Alpine") hereby submits this Opening Brief in support of its challenge to the trial court's Judgment, dated June 16, 2016, entered in favor of GROSSMONT UNION HIGH SCHOOL DISTRICT ("Grossmont") following a bench trial.

I.

INTRODUCTION

This case returns to the Court for a *second* time.

In the first appeal, Grossmont challenged the lower court's issuance of a preliminary injunction meant to maintain the status quo while the parties' dispute concerning the meaning of two school bond initiatives, passed by the voters in East County San Diego, could be determined at trial. In its Opinion affirming that injunction, this Court not only found that interim injunctive relief to be reasonable under the circumstances, but also indulged Grossmont's invitation to construe the language of those bond measures as a matter of law.

In doing so, the Court made specific findings about the meaning and effect of the language of those propositions ("Prop. H," and "Prop. U," respectively), concluding that they collectively "contain a promise by Grossmont to construct a new high school in the Alpine area." Moreover, contrary to Grossmont's argument, this Court also opined, as a matter of law, 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," and that in particular, the language of Prop. U "is very specific regarding the location of, and the actions to be taken to construct, a new high school," mandating that Grossmont "begin and complete construction" of the new high school in the Alpine area upon certain enrollment conditions being met. The Court further explained how the plain language of Prop. U was inconsistent with voters affording Grossmont "unfettered discretion" regarding the construction of that new high school in Alpine, and imposed a "reasonable time frame" for its construction to be completed, such that Grossmont could not maintain that it never broke its promise to build that new school if it merely claimed it would do so "someday" in the undetermined future.

As the trial court and the parties later agreed when the underlying matter subsequently proceeded to trial, this Court's interpretation of the language of Prop. H and Prop. U became "law of the case" to which they were inextricably bound. Yet the trial court, contrary to those prior determinations, ultimately construed the "enrollment trigger" language of Prop. U to mean that Grossmont had *broad discretion* to decide *whether and when* to proceed with the construction of the new Alpine high school, even after objective enrollment requirements were already satisfied. In other words, while in theory it paid homage to this Court's prior interpretation of Prop. U, in practice the trial court construed that same language to

afford Grossmont the very discretion this Court previously determined it lacked. Moreover, to buttress that misconstruction of Prop. U's enrollment trigger language, the trial court considered evidence of what Grossmont's Board members testified they intended Prop. U to mean, while altogether excluding consideration of the intent of the voters who passed Prop. U, as evidenced by the language and arguments made in the ballot materials, including arguments "for" and "against" that measure. Based upon that erroneous interpretation of both Prop. H and Prop. U, the trial court incorrectly concluded that Grossmont was not obligated to build that new high school in Alpine until *both* adequate student enrollment criteria were satisfied, *and* it separately decided in its own discretion when to begin construction of that school. Not surprisingly, since March 2004 – when Prop. H. was first passed by East County voters, and despite the enrollment criteria in Prop. U being met in many years since – no new high school in Alpine has been constructed by Grossmont.

Alpine now raises two fundamental challenges to the trial court's Judgment. First, Alpine explains how (A) the trial court's interpretation of Prop. U's enrollment trigger, finding that it provided Grossmont with unrestricted discretion to decide when (if ever) it would use voter approved funds to build the new Alpine high school, was incorrect as a matter of law. Second, Alpine describes alternatively how (B) assuming that enrollment trigger language is ambiguous, the

trial court improperly excluded consideration of voter ballot and pamphlet information in construing the meaning of that language, relying instead on the self-serving testimony offered by Grossmont's Board members concerning what they intended that language to mean. Accordingly, Alpine respectfully requests this Court either to: (1) reverse the trial court's erroneous construction of Prop. U's enrollment trigger language as a matter of law and its resulting Judgment, and to direct the lower court to enter judgment instead in favor of Alpine; or (2) reverse the trial court's Judgment to allow a new trial to proceed in which voter ballot and pamphlet information is properly admitted and duly considered by the lower court in construing the meaning of that enrollment trigger language.

II.

RELEVANT FACTS AND PROCEDURAL HISTORY

The essential facts necessary to decide this appeal are not disputed. In fact, *both* Grossmont and Alpine previously moved for summary judgment, each offering their own interpretation of Prop. H. and Prop. U, and each asserting they were entitled to judgment as a matter of law. (See 2 AA 397 – 15 AA 3688.)[1] In

[1] All factual references in this brief are to Alpine's Appellants' Joint Appendix, filed concurrently with Co-Appellant, Alpine Taxpayers for Bond Accountability ("ATBA"), and abbreviated as: ([volume] AA [page]); the Reporter's Transcript, abbreviated as: ([volume] RT [page]); the trial exhibits

(continued on the next page)

an inexplicable departure from the findings it previously made when issuing its preliminary injunction, the trial court agreed with Grossmont's interpretation of those two propositions, granting Grossmont's summary judgment motion. (15 AA 3692.)

But as fate would have it, this Court issued its Opinion, affirming the lower court's preliminary injunction order, *within a few short days after the trial court issued its tentative order granting summary judgment for Grossmont.* (15 AA 3696.) This created a unique dilemma for the trial court, as this Court (again, at Grossmont's behest, and as detailed further below) construed the same language of Prop. H and Prop. U in a manner *diametrically opposed to how the trial court construed that same language*. Consequently, faced with this Court's irreconcilable construction of those two propositions, the trial court *on its own motion* asked the parties to brief whether it should "reconsider" its grant of summary judgment to Grossmont in light of the opposing findings made in this Court's Opinion. (15 AA 3714.) Ultimately, it did just that, realizing it was bound instead by how this Court had interpreted both Prop. H and Prop. U, and on that

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admitted by the parties at trial, abbreviated as: (Exh [number]; and to this Court's prior Opinion, dated November 3, 2015, abbreviated as: (Opn. at [page number].)

basis, denied all of the parties' respective summary judgment motions and set the matter for trial.

All of that is important prologue to this appeal, as it demonstrates three vital foundational points: (1) both Grossmont and Alpine agree that the construction of Prop. H and Prop. U presents a pure issue of law; (2) the trial court, which later sat as the factfinder at trial, demonstrated its predisposition to construe that language, as a matter of law, in favor of Grossmont, and would have disposed of this case on summary judgment on that basis had this Court's intervening Opinion, reaching a contrary construction, not been handed down *within a few short days thereafter*; and (3) notwithstanding the fact that the case later did proceed to trial, the trial court's ultimate construction of Prop. H and Prop. U after trial simply mirrored what it had previously decided at summary judgment. Thus, trial in this matter did not change the trial court's construction of Prop. H and Prop. U in any meaningful way. Rather, it merely provided the lower court with the opportunity to further solidify its rationale for avoiding the contrary findings previously made by this Court (even after acknowledging they were "law of the case"), so it could reach the same conclusion it previously reached at summary judgment.

A. Background.

Grossmont is a public high school district serving grades 9-12 and encompassing communities throughout east San Diego County and part of the City of San Diego. (21 AA 5381.) Alpine is a public elementary school district serving grades K-8 in an unincorporated mountain foothill community in east San Diego county. (*Ibid*.) Alpine's elementary school district acts as a "feeder" to Grossmont's high school district. (1 AA 235; 21 AA 5381.) Alpine has alleged that this requires Alpine resident students to trek miles "down the hill" to high schools in other communities. (1 AA 235.) Alpine further contends that the average commute for Alpine students to attend high school is thirty (30) miles with a maximum commute of up to forty (40) miles. (*Ibid.*) That lengthy commute on mountain roads is dangerous for Alpine's inexperienced student drivers, and Alpine residents have suffered multiple, deadly accidents while commuting to and from high school. (*Ibid.*)

B. Grossmont and Alpine Collaborate to Pass Prop. H, Which Proposed to Build the Alpine High School.

In December of 2003, Grossmont proposed Prop. H, a $274 million bond measure to renovate and expand existing facilities and to construct a new high school to serve Alpine.· (21 AA 5384-5385.) The voters who passed Prop. H in March of 2004 were promised that those funds would be used to "construct a new

school," among other things. (*Ibid*.) It is undisputed that all Prop. H bond funds have been spent by Grossmont or reallocated such that no school was built in Alpine. (21 AA 5387 [detailing how for a "variety of circumstances, including underestimating project costs and construction inflation," Grossmont underestimated the cost for repairs and upgrades required for existing District high schools, leaving insufficient Prop. H funds to construct the new Alpine high school].)

C. Grossmont Mismanages Prop. H Funds, Obtains Additional Prop. U Bond Revenue, and Purchases a Site to Build the Alpine High School.

Alpine contended that by 2005, Grossmont had burned through most Prop. H funds, triggering criticism from the San Diego Taxpayers Association about lack of bond oversight and program management. (1 AA 238.) In light of that criticism, Grossmont proposed a new $417 million ballot proposition – Prop. U – which specifically promised the voters that funds would be used for acquisition of property and construction of a "New High School in the Alpine/Blossom Valley area." (21 AA 5387-5388.) In fact, in Grossmont's Official Statement for all five Prop. U bond issue series, Grossmont consistently identified only three categories of projects. (15 AA 3765, 3772, 3779-3780.) Yet the new Alpine high school is the only specific project identified to investors. (*Ibid*.) Additionally, Jim Kelly, then a Grossmont Board Member, published to the voters in the ballot pamphlet

itself that "[a]ttached to Proposition U is the promise of the construction of a new high school in Alpine," a school the ballot project list said would be designed for 800 Alpine students. (2 AA 481 [Argument Against Prop. U].)

As will be discussed in greater detail below, Prop. U contained an "enrollment trigger" which required enrollment to equal or exceed 2007-2008 levels (23,245 students) before the high school could be funded. (21 AA 5388.) That trigger was met when Grossmont's enrollment exceeded 2007-2008 levels in the three following school years. (21 AA 5392.) In response to that trigger being satisfied, in 2009 Grossmont purchased a 93-acre site (known as the "Lazy A" property) for $15.6 million for the new Alpine high school. (15 AA 3698.) It then commenced construction operations by clearing the land of existing buildings, removing contaminated soil, and approving various contracts for development, design, and construction. (21 AA 5393-5394.)

D. Grossmont Delays the Alpine High School Promised to Voters.

Even though the Lazy A site had already been purchased, Grossmont indefinitely delayed all plans to construct the promised new Alpine high school in the Spring of 2012. (15 AA 3698.) Specifically, it withdrew building and facilities plans and removed the new school from the 2012 project list. (*Ibid.*; 1 AA 366.) At that time, Alpine estimated the cost of constructing the new Alpine high school on the Lazy A site at $70 million. (1 AA 242.)

It was Alpine's position that simultaneous with its decision to delay construction on the new Alpine high school, Grossmont used Prop. H and Prop. U funds on numerous other projects which were not specified in, or incidental to, those projects identified to the voters as is explicitly required by law. (1 AA 244.) Grossmont has also received over $100 million in state matching funds, some of which were specifically allocated for new construction, like the new Alpine high school. (*Ibid*.; see also 1 AA 368)[2] Additionally, Grossmont received a special state "hardship" match of $8 million, specifically for constructing the Alpine high school. (1 AA 368.) Alpine has contended that even though Grossmont received state matching funds for the sole purpose of building Alpine High School, Grossmont spent those funds on other, unauthorized projects. (1 AA 244.)

Grossmont justified those bond-funded projects with a "Master Facility Plan," even though it differs substantially from the project lists approved by the voters to support Prop. H and Prop. U. (1 AA 124, 132, 217.) Grossmont further dismissed those diverted expenditures as mere "deviations" from those projects approved in Prop. H and Prop. U bond funding, despite established law that explicitly prohibiting such "deviations." (See *Taxpayers for Accountable School*

[2] State matching funds are part of the statewide system of public school construction. (See Ed. Code §§17070.10, *et seq*.) In short, the state pays about half of new school site acquisition and construction costs, so long as the district pays its "local matching" funds. (See Ed. Code §17072.12.)

Bond Spending v. San Diego Unified School District (2013) 215 Cal.App.4th 1013, 1024-1031 [holding that new field lighting was not authorized in text of bond proposition providing upgrades for football stadium, and was therefore improper use of school bond revenues].)

E. Recognizing That Grossmont May Never Build the New Alpine High School as Promised, Alpine Petitioned the County and State for "Unification" of Alpine.

In light of Grossmont's indefinite delay of the completion of the Alpine High School – and in response to Grossmont's continuing misuse of bond funds on unauthorized projects – a community organization called the Alpine High School Citizens Committee ("AHSCC") was organized to facilitate the gathering of signatures to support the arduous school district unification process, and to ensure completion of the Alpine High School by the Alpine district, rather than Grossmont. (15 AA 3698-3699.) Those revived efforts continued prior initiatives by Alpine to explore unification, which Alpine previously shelved when Grossmont convinced Alpine that its support of Prop. H would provide the quickest path to getting a high school in Alpine constructed because Grossmont would agree to use Prop. H funds for that project. (21 AA 5385.)

AHSCC began collecting the necessary signatures in support of Alpine's unification petition. (21 AA 3698-3699.) Thereafter, AHSCC filed supporting signatures to that unification petition with San Diego County Office of Education

("SDCOE") and on February 25, 2014, the San Diego County Registrar of Voters certified that sufficient valid signatures were obtained to proceed with unification. (*Ibid*.)

SDCOE then held two public hearings regarding that unification petition. (*Ibid*.; 1 AA 170-187.) Following those hearings, on August 13, 2014, the SDCOE Board, acting in its capacity as the County Committee on School District Reorganization, unanimously voted to approve Alpine's unification petition. (*Ibid*.) SDCOE also recommended that the State of California award Alpine its equitable and "fair share" of Grossmont's total assets to be substantially paid from remaining Prop. H and Prop. U bond funds. (*Ibid*.) On September 19, 2014, SDCOE transmitted its unification recommendations on Alpine's petition to the State Board of Education ("SBE") for final approval, where they are currently being considered. (*Ibid.*; see also 15 AA 3698-3699.)

F. Grossmont Moves Swiftly to Deplete All Bond Funding Before the SBE Finalizes Alpine's Unification and Apportions Bond Funds to Alpine.

The only disputed issue before the SBE – the final decision-maker on Alpine's unification petition – is "how" the equitable division of bond funds, assets and liabilities between Grossmont and Alpine will occur. Thus, there is no credible dispute that *some* equitable division of assets and liabilities will occur. Alpine has maintained that the SDCOE Board's unanimous determination that

Alpine be allocated an equitable and "fair share" of Grossmont's total assets weighs heavily in favor of the SBE adopting that recommendation in its final decision. (1 AA 245.) However, due to SBE processes and scheduling, it may be another one to two years before a final determination and order are issued by the SBE.

As of June 30, 2014, Grossmont's school construction program had approximately $104 million in assets, including over $85 million in cash assets derived from Prop. H, Prop. U, and state matching funds. (15 AA 3711.) Grossmont was spending those funds at the rate of $2 million to $11 million per month, or roughly $90,000 to $500,000 per day. (*Ibid*.) As this Court previously agreed when it affirmed the trial court's preliminary injunction, if that spending continued unabated, Grossmont would have exhausted all bond and related state matching funds by 2017 and would have exhausted its bonding capacity for the near future. (15 AA 3711-3712.)

Tellingly, on September 11, 2014, Grossmont's Board passed Resolution No. 2015-02 entitled "Resolution to Reaffirm Opposition for the Unification of the Alpine Union School District." (1 AA 114, 345; 15 AA 3699.) Recognizing that it will certainly lose some or all of the limited bond funds that remain when the SBE issues its determination, the Grossmont Board reversed its previous position and formally acted to deplete the remaining bond funds before the SBE determines the

portion that will be allocated to Alpine. To compound its misrepresentations to the voters, taxpayers, and the Grand Jury about the new Alpine high school and unification, Grossmont's resolution claimed that "38%" of Grossmont's "operating budget" would be cut if the SBE reapportioned Prop. H and Prop. U bond funds. (1 AA 114.) But by definition, school bond revenues can never be part of a district's operating budget.[3] (See Const., art. XIIIA, § 1, subd. (b)(3)(A) [" . . . proceeds from the sale of the bonds shall be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses"].)

G. Pre-Trial Proceedings Before the Trial Court.

Alpine and ATBA filed their initial Verified Complaint on October 14, 2014, alleging two causes of action for (1) Permanent Injunction and (2) Taxpayer and School Bond Waste Prevention (Code Civ. Proc. §526a; Ed. Code §15284). (1 AA 20.) Following the filing of further amended pleadings, Alpine and ATBA then filed their operative Second Amended Complaint, with Alpine seeking a permanent injunction and declaratory relief. (1 AA 233-256.) After the trial court

[3] The ballot measure that authorizes the bond funds at issue (Proposition 39) was called the "Strict Accountability in Local School Construction Bonds Act of 2000." (See Ed. Code §15264, *et seq*.)

overruled Grossmont's further demurrer to that complaint (1 AA 353-358), Grossmont filed its operative Answer. (1 AA 359-377.)

1. The Trial Court's Preliminary Injunction.

Following the filing of their initial Complaint, Alpine moved for a preliminary injunction seeking, among other things, to enjoin Grossmont from spending any remaining Prop. H and Prop. U funds required to complete the construction of the new Alpine high school until the merits of Alpine's and ATBA's claims could be fully adjudicated. (15 AA 3696-3713.) After the parties extensively briefed that preliminary injunction issue in the trial court (*ibid.*), the trial court granted Alpine's requested injunctive relief, ordering Grossmont to set aside or preserve $14 million in bond funding immediately, and an additional $28 million by January 15, 2016, for the continued construction of the high school. (*Ibid*.) In doing so, the lower court made critical factual findings with respect to its assessment of the likelihood that Alpine would ultimately prevail on the merits, including that: (1) by passage of Prop. H and Prop. U, Grossmont promised East County voters to construct a new high school in Alpine; (2) contrary to Grossmont's arguments, voters did not appear to vote for "board discretion" concerning the construction of the high school, but instead voted for a bond (twice) that would include a new high school; (3) Grossmont represented to voters that a high school would be constructed at some point from proceeds from Prop. U,

informed investors that bond revenues would be spent on the high school, and the voters approved the bond with that understanding; and (4) as the community expected, based upon the representations of Grossmont that bond funds would be used for construction, those funds should be preserved for that purpose. (*Ibid*.) Further citing the rapid rate by which Grossmont was depleting those bond funds, and noting the "legitimate concerns" that Grossmont may be equivocating on its commitment to build a high school or that funding for the high school will ultimately not be available, the trial court issued a narrow injunction requiring Grossmont to incrementally set aside some of the already allocated funding for the eventual construction of the Alpine High School. (*Ibid*.)

Grossmont's timely appealed that ruling to this Court and sought supersedeas relief. (*Ibid*.) However, when this Court denied that auxiliary writ and instead ordered that Grossmont's preliminary injunction appeal proceed instead on an expedited basis, both the appeal and the underlying dispute in the trial court continued on parallel tracks.

2. The Parties' Cross-Summary Judgment Motions and the Trial Court's Grant of Summary Judgment in Grossmont's Favor.

As the key dispute between the parties remained the meaning and operation of the language of Prop. H and Prop. U, both Grossmont on the one hand, and Alpine on the other (joined by ATBA), subsequently moved the trial court for

summary judgment. (2 AA 397 – 15 AA 3673.) In doing so, both sides advanced their own interpretation of those bond measures – and in particular, the "enrollment trigger" language found in Prop. U – to claim that they each were entitled to judgment as a matter of law. (*Ibid*.)

In a stunning reversal of the interpretation of Prop. H. and Prop. U it had reached at the preliminary injunction stage, the trial court granted Grossmont's summary judgment motion, making the following contrary findings: (1) the language of Prop. U does not obligate Grossmont to build a new high school in Alpine; (2) the plain meaning of Prop. U merely "authorizes" Grossmont to fund projects, including a high school in Alpine, but it does not obligate any particular project; (3) inclusion of a project on the Bond Project List contained in Prop. U is not a guarantee that the project will be funded or completed, and in that respect, a stated "intention to build" is not the equivalent of "promise to build"; (4) and Grossmont was not required to build the new high school in Alpine, even if the "enrollment trigger" language in Prop. U had been satisfied, as that trigger language does not turn what was authorized into an obligation. (1 AA 3692-3693.) On that basis, the trial court then ordered the entire case dismissed with prejudice, in Grossmont's favor. (15 AA 3695.)

H. <u>This Court's Prior Opinion in This Case.</u>

As previewed above, *within a few short days after the trial court issued its summary judgment ruling, this Court handed down its Opinion on Grossmont's preliminary injunction appeal*. In deciding that appeal – and at the behest of Grossmont – this Court examined the language of Prop. H. and Prop. U as a matter of law. It concluded in relevant part:

> Assuming arguendo, as Grossmont argues, the trial court decided solely a question of law whether it promised to construct a new high school in the Alpine area, we conclude the court correctly decided that issue. Prop. H stated its bond proceeds would be used to "construct a new school." Prop. U was even more specific, stating its bond proceeds would be used for "constructing a new school in Alpine/Blossom Valley." (Opn. at 11; 15 AA 3706.)

After then citing verbatim the enrollment trigger language found in Prop. U (discussed in greater detail, below), this Court continued:

> Independently construing the language of Prop. H and Prop. U, *we conclude those propositions contain a promise by Grossmont to construct a new high school in the Alpine area*. Contrary to Grossmont's argument, 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. Disregarding the extrinsic evidence submitted by Alpine (*e.g.*, declarations of voters regarding their subjective beliefs, statements by Grossmont officials, ballot measure arguments, and a grand jury report), which Grossmont argues is not relevant to the interpretation of Prop. H and Prop. U, the unambiguous language of those propositions nevertheless does not

> support its proffered interpretation of Prop. H and Prop. U. Although Prop. H's language arguably is insufficiently specific regarding the construction of a new high school in the Alpine area (*i.e.*, "construct a new school"), *the language of Prop. U, as quoted above, 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. Grossmont argues a new high school was not promised by Prop. U, citing its language that "inclusion of a project on the Bond Project List is not a guarantee that the project will be funded or completed." However, *we disagree that a caveat regarding the lack of a guarantee a listed project will be funded or completed necessarily precludes, as Grossmont argues, a promise that a new high school in the Alpine area will be constructed if sufficient bond proceeds are received*.
>
> Grossmont also cites Prop. U's language stating that the 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." *Contrary 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*. (Opn. at 11-13, 15 AA 3706-3708 [emph. added].)

Finally, as to whether Grossmont was bound by any particular time frame to build the new Alpine high school it promised under Prop. U, this Court further opined:

> Grossmont asserts that, even if Prop. H and Prop. U contained a promise that it would construct a new high school in the Alpine area, it did not break that promise and therefore no preliminary injunction should have been issued. Grossmont argues that because neither Prop. H nor Prop. U contained any time frame for construction of the new high school, it could not have broken any promise to construct the school, especially at the time the preliminary injunction was issued (*i.e.*, Jan. 22, 2015). *However, the absence of a specific date by which a new high school must be constructed did not preclude the trial court from inferring Prop. U implicitly included a reasonable time frame for construction of that new high school.* Furthermore, based on Alpine's evidence showing Grossmont was rapidly spending bond proceeds on projects other than a new high school, *the court could determine that Grossmont had not shown an intent to complete construction of the high school at any time in the reasonable future*. In fact, in 2012 Grossmont decided to postpone further work on construction of the new high school in the Alpine area. Grossmont withdrew its building and facilities plans and removed the new high school from its project list. *There is substantial evidence to support the trial court's implied finding that Grossmont had either broken its promise, or was unlikely to fulfill its promise, to construct a new high school in the Alpine area within a reasonable time frame using Prop. U bond proceeds*. (Opn. at 14-15, 15 AA 3709-3710 [emph. added].)

On that basis, this Court affirmed the lower court's preliminary injunction order. Of course, this created an immediate dilemma for the trial court, as it had adopted diametrically opposing conclusions in granting summary judgment in favor of Grossmont just days earlier. (15 AA 3692-3693.) Consequently, *on its own motion*, the very next day the trial court asked the parties for further briefing

as to whether it should reconsider its summary judgment ruling. (15 AA 3714.) The parties then filed extensive briefing on that reconsideration motion, with Alpine and ATBA arguing that the Court's construction of the language and operation of Prop. H and Prop. U was law of the case (see 15 AA 3715-3833, 16 AA 3974-4064), and Grossmont asserting that this Court's Opinion was neither law of the case nor contrary to the lower court's summary judgment ruling in its favor. (15 AA 3834 – 16 AA 3874.)

Conceding the nature and scope of this Court's *de novo* review of the language of Prop. H. and Prop. U, the lower court granted reconsideration. (16 AA 4065-4071.) The trial court then (again) reversed course, denying Grossmont's summary judgment motion on reconsideration, but also denying both Alpine's and ABTA's summary judgment motion. (*Ibid*.) It further found that although this Court concluded that Prop. H. and Prop. U contained a promise to construct the new Alpine high school, the issue of whether or not "the prerequisites were satisfied that triggered that promise" remained to be tried.

I. The Trial Court's Statement of Decision After Trial.

As previewed above, although the trial court appeared to be chastened by this Court contrary interpretation of Prop. H and Prop U just days after it had granted summary judgment in favor of Grossmont, and even afforded this Court's interpretation "law of the case" status, the lower court nevertheless ruled in

Grossmont's favor after trial. It did so, once again, based upon its own interpretation of the "enrollment trigger" language found in Prop. U. (21 AA 5353-5354.) Specifically, the trial court interpreted that language to have *two separate components*, the first being the objective amount of the student enrolled and the second being Grossmont's discretionary decision to "release of request of construction bids" when it alone believed it was appropriate to do so. (*Ibid*.) In other words, under the lower court's interpretation of that trigger language, it was not enough that the district-wide enrollment numbers were satisfied, as it recognized they were. Instead, the court concluded that once those numbers were met, Grossmont then retained the discretion to determine *whether* and *when* to request bids for construction of the Alpine high school. (21 5357-5358.) Despite there being no language contained in Prop. U describing that supposed discretion retained by Grossmont, the trial court then went on to explain how Grossmont properly exercised that discretion in deciding to forego construction of the new Alpine high school. (21 AA 5359-5361.)

Moreover, regardless of the actions taken by Grossmont previously indicating its belief that the enrollment trigger had been "fully satisfied" (including the passage of its own Board resolution recognizing as much – see Exhs. 92, 1066), the trial court further accepted the self-serving testimony of Grossmont Board members concerning what they now claimed the enrollment trigger language of

Prop. U meant *to them*. (21 AA 5354-5357.) It did so without also considering what *the voters intended or understood that same language to mean when they passed Prop. U*, and in that regard, rejected consideration of relevant ballot pamphlet materials, including arguments made by at least one Board member against Prop. U. (*Ibid*.)

The upshot of the lower court's ruling was to validate the exercise of *virtually unlimited discretion* by Grossmont to decide when to construct the new Alpine high school, despite this Court's previous conclusion that the language of Prop. U did not afford Grossmont such "unfettered discretion." (Opn. at 12; 15 AA 3707.) Indeed, although the trial court and this Court previously determined that the voters who passed Prop. U did not merely vote for Grossmont's discretion but voted instead that specific bond funds would be used to finance specific projects, the trial court's final ruling elevated Grossmont's discretion over the will of the voters, leaving it to Grossmont alone to decide *if and when* those bond funds will be used to build a new Alpine high school.

Following the timely filing of objections by Alpine and ATBA to the trial court's Statement of Decision (19 AA 4959), and the entry of Judgment in Grossmont's favor (21 AA 5370), Alpine filed its Notice of Appeal. (21 AA 5405.)

III.

STANDARDS OF REVIEW

Whether the language of a proposition creates an enforceable obligation is a question of law subject to *de novo* review. (*Monette-Shaw v. San Francisco Bd. of Supervisors* (2006) 139 Cal.App.4th 1210, 1215). It is also well-settled that questions of law are raised by the interpretation of statutory language. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916; see also *People v. Rizo* (2000) 22 Cal.4th 681, 685 ["In interpreting a voter initiative, (the courts) apply the same principles that govern statutory construction"].) The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) "In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction. [Citations.] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]" (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008.)

Moreover, additional requirements guide this Court's interpretation of Prop. H. and Prop. U. For example, courts have consistently held that a school district cannot spend bond funds obtained through Proposition 39 on projects not authorized in the text of the bond proposition. (See, *e.g., Taxpayers for Accountable School Bond Spending, supra,* 215 Cal.App.4th at 1024-1031.) Indeed, the Education Code requires that "[v]igorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to . . . [Proposition 39], are in strict conformity with the law." (Ed. Code §15264.) Consistent with the intent of the Legislature, Proposition 39's accountability requirements must be strictly construed. Consequently, a school district cannot spend bond funds obtained through Proposition 39 on projects not authorized in the text of the bond proposition. (See, *e.g., Taxpayers for Accountable School Bond Spending, supra,* 215 Cal.App.4th at 1024-1031.)

Finally, the legal and factual determinations in this action involve matters of Constitutional and public electorate compliance. While ordinarily Grossmont might be entitled to deference for its administrative or legislative adoptions, cases involving constitutionally enacted tax measures require that courts exercise independent judgement as a standard of review. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448-449.)

IV.

DISCUSSION

A. The Trial Court's Interpretation of Prop. U's Enrollment Trigger Language, Finding That It Provided Grossmont with Unrestricted Discretion to Decide When (If Ever) It Would Use Voter Approved Funds to Build the New Alpine High School, Was Incorrect As a Matter of Law.

1. The Trial Court Improperly Disregarded the Law of the Case.

a. General Principles.

As this Court is surely aware, when an appellate court "states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal . . . ." (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893.) Consequently, "a matter adjudicated on a prior appeal normally will not be relitigated on a subsequent appeal in the same case." (*Davies v. Krasna* (1975) 14 Cal.3d 502, 507.) Furthermore, the law of the case doctrine "does extend to questions that were implicitly determined because they were essential to the prior decision." (*Sargon Enterprises, Inc. v. University of Southern California* (2013) 215 Cal.App.4th 1495, 1505.)

In *North Coast Coalition v. Woods* (1980) 110 Cal.App.3d 800, the Department of Social Services appealed an order granting a preliminary injunction

forbidding enforcement of a statutory welfare regulation. (*Id*. at 802-803.) On appeal, the Department argued "that appellate review of the order granting the preliminary injunction is limited to a determination whether the trial court abused its discretion when it determined the probability that respondents would prevail on the merits of the action. It further argued that the reviewing court could determine the validity of the challenged actions because the case presented "solely a question of law." (*Id*. at 804.) The reviewing court agreed and determined "[t]he issue of the validity of the challenged regulations is solely one of law, and this court is in as good a position to resolve the issue now as the trial court would be after determination of this appeal." (*Id*. at 805.) In so ruling, the *North Coast Coalition* court concluded that "[a] determination of the validity of the challenged regulations is thus within the scope of review on this appeal, and will be the law of the case." (*Ibid*. [citations omitted].)

Similarly, in *City of Los Angeles v. Los Angeles Bldg. and Const. Trades Council* (1952) 109 Cal.App.2d 81, the reviewing court in that case reached the same conclusion when it decided an appeal from a judgment making permanent a temporary injunction prohibiting violation of public policy expressed in the Los Angeles City Charter. There, the Court of Appeal specifically refuted the appellant labor unions' argument that "[t]he decision on the appeal from the temporary injunction is not the law of the case." (*Id*. at 83-85.) That reasoning was best

summarized in the concurring opinion stating: "Though it be conceded that the evidence in part was different, there was no difference in any material respect. Consequently, the holding in the former appeal became the law of the case, and both the trial court and this court are without authority to reconsider the rulings made on the former appeal." (*Id*. at 87, Conc. Opn. of White, J.)

b. Lack of Any Ambiguity Requiring Trial.

As summarized above, in this case Grossmont appealed the trial court's entry of a preliminary injunction which it claimed "turned on the interpretation and construction of Propositions H and U." (15 AA 3697, 3705-3706.) Identical to *North Coast Coalition*, Grossmont argued "[o]n appeal, that interpretation and construction presents a question of law reviewed de novo" by the appellate court. (*Ibid*.) To that end, Grossmont specifically invited this Court to interpret the language of Prop. H and Prop. U as a matter of law by arguing "[w]hen the propriety of an injunction turns on a question of law, the grant of a preliminary injunction is reviewed *de novo*." (*Ibid*.) This Court accepted Grossmont's invitation and, after "[i]ndependently construing the language of Prop. H and Prop. U," concluded "those propositions contain a promise by Grossmont to construct a new high school in the Alpine area." (Opn. at 11; 15 AA 3706.)

As further explained in the *City of Los Angeles* concurring opinion, neither the trial nor Grossmont could credibly argue that the language of Prop. H. and

Prop. U previously interpreted by this Court is in any way different than the same language interpreted by the trial court after trial. Indeed, while the parties presented additional extrinsic evidence at trial intended to buttress their respective interpretations of the language of those two measures, both Grossmont and Alpine agreed that the task of interpreting those two measures was one of law, perhaps evidenced best by the fact that they both made that same argument in their cross-motions for summary judgment, with each seeking judgment as a matter of law. Moreover, there was nothing about the evidence presented at trial that changed that simple interpretive task, especially where this Court had already concluded that the language of both propositions was "unambiguous" and that extrinsic evidence was not needed to interpret the plain meaning of that language as a matter of law. (Opn. at 12; 15 AA 3706 [where this Court further opines that Prop. U's plain language is "very specific regarding the location of, and the actions to be taken to construct, a new high school"].) To be sure, this Court already found that the language of both Prop. H. and Prop. U could be interpreted as a matter of law, and that those voter-approved measures "include such a promise" to build a high school in Alpine. (Opn. at 12-13; 15 AA 3707-3708.)

But perhaps most importantly, by finding Prop. H and Prop. U were unambiguous, this Court eliminated any need to consider extrinsic evidence at trial. (*Foothill-De Anza Cmty. Coll. Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 18-19

[disregarding the lower court's analysis of the language of the bond measure in question and reaching its own interpretation as a matter of law].) And the trial court apparently agreed, construing what it considered the "plain meaning" of Prop. U's enrollment trigger language without the aid of extrinsic evidence. (21 AA 5353-5354.) Consequently, *a threshold error committed by the trial court was trying the case and receiving extrinsic evidence to interpret statutory language this Court had previously found to be unambiguous, in direct contravention of the law of the case doctrine, and contrary to its own subsequent "plain meaning" interpretation of that same language*. The subsequent trial therefore served only the purpose of providing the lower court with an additional opportunity to interpret that language (again) as a matter of law, consistent with how it had previously ruled when it granted Grossmont's summary judgment motion, but this time with the supposed intellectual weight of ruling after trial. Yet in doing so, it reached the same conclusion (as a matter of law), paying only lip service to the Court's prior contrary ruling and the impact of the law of the case doctrine.

Ultimately, however, the case should never have proceeded to trial. Rather, consistent with this Court's plain meaning interpretation of the unambiguous language of Prop. H and Prop. U, the lower court should have done nothing more but reconsider its prior summary judgment ruling in favor of Grossmont and instead *granted Alpine's summary judgment motion*. Doing so was the only

conclusion which could fairly be squared with this Court's interpretation of that unambiguous statutory language in its prior Opinion, and which properly adhered to the law of the case impact that analysis had on what remains a pure issue of law. Accordingly, this Court should reverse the trial court's denial of Alpine's summary judgment motion, reached by the lower court after this Court's Opinion was handed down and became law of the case on that central interpretive question.

c. Further Instances Where the Trial Court Disregarded the Interpretative Findings Previously Made by This Court.

Denying Alpine's summary judgment motion and ordering the case to trial was not the only instance where the trial court disregarded this Court's prior interpretative findings. Critically, the trial court made several findings in its Statement of Decision which directly contradicted this Court's prior interpretation of the operation and effect of the language of Prop. H. and Prop. U.

Specifically, although Grossmont asserted in its prior appeal before this Court that Prop. U's language identified the new Alpine high school merely as "one of many projects" that bond initiative "authorized" but did not "require" to be built, and further claimed that the "inclusion of a project on the Bond Project List is not a guarantee that the project will be funded or completed," this Court flatly rejected both of those arguments. Instead, this Court opined that "[c]ontrary to Grossmont's argument, 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," and that, in particular, the language of Prop. U "is very specific regarding the location of, and the actions to be taken to construct, a new high school. (Opn. at 11-12; 15 AA 3706-3707 [explaining how that language clearly mandated that Grossmont would "begin and complete construction" of the new high school in the Alpine area].) It further disagreed with Grossmont that "a caveat regarding the lack of a guarantee a listed project will be funded or completed necessarily precludes, as Grossmont argues, a promise that a new high school in the Alpine area will be constructed if sufficient bond proceeds are received." (Opn. at 12; 15 AA 3707.) Yet those same rejected arguments inexplicably found their way back into the trial court's final Statement of Decision, all included to support the trial court's further erroneous finding that because there was no promise to build the new Alpine high school, Grossmont retained broad discretion to decide whether and when to build that school. (See 21 AA 5359-5360 [where the lower court completely disregards this Court's prior contrary findings on those *same exact contentions previously raised by Grossmont*].) Doing so constituted a blatant disregard for the law of the case doctrine, which the trial court had no discretion to ignore, even under the guise of making the same findings (as a matter of law) after trial.

2. The Trial Court's Interpretation of Prop. U's Enrollment Trigger Language Was Incorrect As a Matter of Law.

Putting aside the binding effect the law of the case doctrine attached to prior interpretative findings made by this Court, the trial court's construction of Prop. U's enrollment trigger language was further incorrect as a matter of law. In particular, it found that trigger language to include two separate components: (1) that district-wide enrollment must equal or exceed 23,245 students; and (2) that enrollment must be 23,245 students or higher at the time of release of request for construction bids. (21 AA 5353-5354.) From there, the trial court concluded that second component afforded Grossmont unlimited discretion to decide, in its own judgment, when to release the request of construction bids. Consequently, under the trial court's interpretation of Prop. U's enrollment trigger provisions, the objective enrollment threshold could be satisfied at any time, but Grossmont nevertheless retained for itself at that time the "unfettered discretion" to commence (or *not* to commence) the construction process when (and if) it saw fit. Such an interpretation of those trigger provisions is incorrect for two fundamental reasons.

First, the trial court's reasoning depends on a false dichotomy – that the "construction bids" language in Prop. U included only the construction of "school buildings," and not other construction activities, including demolition of buildings and other improvements already existing on the Lazy A site acquired by Grossmont for the new Alpine high school. There is no support for such a limited

interpretation of what "construction" means found anywhere in Prop. U. Moreover, other provisions of law have provided a much broader definition of "construction" to include, among other things "removal of or demolition of any building, highway, road, parking facility, bridge, water line, sewer line, oil line, gas line, electric utility transmission or distribution line, railroad, airport, pier or dock, excavation or other structure, appurtenance, [and] development or other improvement to real or personal property . . . . (Civ. Code § 2783.) Indeed, the Legislature, in defining the term "construction" in various contexts, has recognized that the term may have a broad meaning encompassing a spectrum of building endeavors beyond simply constructing a new building. For example, the Legislature has defined the "construction" of state buildings as "includ[ing] the extension, enlargement, repair, renovation, restoration, improvement, furnishing, and equipping of any public building." (Gov. Code., § 15802, subd. (b); see also id., § 53800, subd. (d) [providing an identical definition of "construction"].) Certain administrative regulations likewise define "construction" as including substantial renovation, repair, and demolition efforts. (Cal. Code Regs., tit. 2, § 8102 [defining "construction" as "the process of building, altering, repairing, improving, or demolishing any public structure or building]; Cal. Code Regs., tit. 8, § 11160 [defining "construction occupations" as "all job classifications associated with construction, including but not limited to, work involving

alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work"].) Those definitions suggest that laypersons do not limit the phrase "construction" to the erection of completely new buildings, but that such a definition properly includes a wide range of activities, including the demolition and removal of buildings. Voters of Prop. U. undoubtedly viewed that term the same way, as did Grossmont itself. Specifically, at the time district-wide enrollment equaled or exceeded 23,245, Grossmont: (1) invited "bids for the construction project described" as "Demolition & Abatement of Buildings at 12th High School Site (Ex. 147-4); and (2) invited "bids for the construction project described" as "Removal Action Workplan at 12th High School Site" (Ex. 130). Those invitations for "sealed bids" to complete various "construction" projects then further served as the basis for Grossmont to pass a resolution acknowledging that "the enrollment threshold set forth in Proposition U was met in 2010/11." (Exh. 26; see also Exh. 1030 [the 2011 Annual Report of Grossmont's independent Citizens' Bond Advisory Committee, mirroring that same finding stating "final enrollment numbers confirmed that the District had met the enrollment threshold"].) Those bids for "construction" work at the Lazy A site also allowed Grossmont's facilities staff to further represent to Grossmont's Board and the public that "construction" was in progress on the new Alpine high school project, during which time contractors with construction equipment were present at the

project site for 18 weeks. (See Exhs. 359, 360, 362, 367, 373, 393, 430, 448 [all depicting or describing demolition of buildings and other bidded "construction" work going forward at the Lazy A site].)

Second, the trial court's narrow interpretation of the word "construction" ignores the delivery method Grossmont chose – a so-called "lease lease-back" – for the construction of the new Alpine high school. By that delivery method, Grossmont agreed to lease the Lazy A site to a construction contractor for the development and construction of all phases of the new Alpine high school, which it would then be leased back to Grossmont once construction was completed. (Accord *San Diegans For Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 425-426 [describing the commonly used lease lease-back arrangement for development of publicly owned property]; see also *Hensel Phelps Construction Co. v. San Diego Unified Port District* (2011) 197 Cal.App.4th 1020, 1033 [where this Court examined a similar lease-back contract and concluded that notwithstanding the fact that it was called a "lease," it "plainly requires construction of a hotel according to the Port District's exacting specifications"].)

To that end, at the time district-wide enrollment figures exceeded the numeric threshold, Grossmont issued a bid "requesting Statements of Qualification (SOQ) from Lease-Lease Back (LLB) entities qualified to provide to the District constructability review, value engineering, scheduling and construction services

for phase 1 construction of a new 800-student high school in the community of Alpine." (Exh. 124.) It then chose Erickson-Hall Construction Company to be that lease lease-back contractor for the entire construction of the new Alpine high school. (Exh. 342.) Notably, Erickson-Hall's proposal to act as that lease lease-back contractor detailed how it would provide "pre-construction services building" (Exh. 1013-5), "site construction" (Exh. 1013-6), "building construction" (Exh. 1013-7, 35) and "post-construction and closeout" (Exh. 1013-8, 36) services, while touting itself as "a school builder, it is our main source of business, and our primary specialty." (Exh. 1013-27.)

That lease lease-back arrangement is significant for two reasons. First, in seeking a bid for a lease lease-back contractor when the enrollment threshold had been met, Grossmont effectively made a request for "construction bids" satisfying the enrollment trigger criteria found in Prop. U. Consequently, it was then required under that same language to "begin and complete" that construction, and had no discretion to do otherwise. Second, once Grossmont authorized staff to enter contracts with Erickson-Hall "for lease lease-back services" for the new Alpine high school (Exh. 126-5), Grossmont will never issue further bids for construction of that school, as Erickson-Hall would issue those bids instead, control and manage all construction work, and deliver the completed high school to Grossmont on a "to not exceed" contract price. (See 7 RT 1136 [where the

Executive Director of Facilities Management for Grossmont confirmed "[t]he contractor under a lease-leaseback would do the bidding, yes"].) Thus, by requesting the bid for the lease lease-back contractor (Exh. 124), *Grossmont requested the only construction bid it would request for the entire construction of the new Alpine high school*, a fact the trial court either completely misunderstood or conveniently ignored, dismissing the nature of that lease lease-back arrangement as "not relevant" to its analysis of Prop. U's enrollment trigger language. (21 AA 5358.) Doing so was clearly error.

Finally, it should not go without saying that all of the aforementioned interpretations reached by the trial court have as their central goal the resuscitation of what the trial court previously tried to conclude at summary judgment before being overruled by this Court's interim Opinion: that Prop. U afforded Grossmont with almost *limitless discretion* to decide when and if to build the new Alpine high school with the funds voters approved in passing Prop. U. Indeed, laced throughout the lower court's Statement of Decision is the pervasive theme that Grossmont had wide latitude to decide how to use those Prop. U funds, and retained the power to decide when (if ever) it would use those funds to construct the new Alpine high school or, alternatively, spend the same money on other projects, whether they were enumerated in Prop. U or not. Such an interpretative approach to Prop. U cannot be reconciled with this Court's previous findings that

the unambiguous language of Prop. H and Prop. U constitute a "promise" to voters to build the new Alpine high school, that Prop. U is "very specific regarding the location of, and the actions to be taken to construct, a new high school" (*i.e.*, "begin and complete construction"), and that the voters did not simply vote for "board discretion regarding the construction of a new high school in the Alpine area" when they approved Prop. U. (Opn. at 12-13; 15 AA 3707-3708; see also Opn. at 12-13; 15 AA 3706-3707 [where this Court again confirmed that Grossmont did not have "unfettered discretion" to ignore the promise to build that new high school].)

All of which brings into clear focus the choice this Court now faces in interpreting Prop. U's enrollment trigger language. It can affirm the lower court's ruling and approve of an interpretation which is contrary to both the scope and substance of its prior Opinion, and which would likely leave East County voters who approved Prop. U utterly bewildered, especially where Grossmont already promised to build a "new school" under Prop H but depleted those funds for other projects. Or it can reverse the trial court's interpretation as being inconsistent with both the letter and intent of Prop. U, and uphold the expectations of voters who approved that measure. Based upon the unambiguous language contained in Prop. U, as well as the promise that was made to voters to "begin and complete" construction of a new Alpine high school if they approved Prop. U (without any

further conditions or exercise of "discretion"), Alpine respectfully requests this Court to reverse the trial court's "plain meaning" interpretation of Prop. U's enrollment trigger language.

B. Assuming That Prop. U's Enrollment Trigger Language Is Ambiguous, the Trial Court Improperly Excluded Consideration of Voter Ballot and Pamphlet Information in Construing the Meaning of That Language, Relying Instead on the Self-Serving Testimony Offered by Grossmont's Board Members Concerning What *They* Purportedly Intended That Language to Mean.

The question placed before voters on the ballot for Prop. U specifically asked if bonds should be raised to construct "a new school in Alpine/Blossom Valley" with the goal of "better prepar[ing] high school students for college and high demand jobs . . . ." (2 AA 477.) If there was any uncertainty about what voters would be asked to approve with Prop. U, the argument in favor speaks about how much work remained to be done in the Grossmont District following the passage of Prop. H "four years ago," and again lists "construct[ing] a new high school in the Alpine/Blossom Valley area" as one of the primary purposes of Prop. U. (2 AA 479.) The arguments against Prop. U similarly identified its purpose of constructing a new high school in Alpine and railed against such an expenditure to the exclusion of other projects. (2 AA 481.) And perhaps most compelling of all is the fact that the actual language of Proposition U specifies (as required under Proposition 39) that the bonds funding it would raise would be spent on a "New

High School – Alpine/Blossom Valley Area," further highlighting and detailing that project for voters. (2 AA 487.) Of course, that Jim Kelly, a Grossmont Board member, also published to the voters in the ballot pamphlet itself that "[a]ttached to Prop. U is the promise of the construction of a new high school in Alpine" only further exemplified the extent to which Grossmont represented to voters that their vote on Prop. U would result in the construction of the new Alpine high school. (1 AA 48; 2 AA 481; see also *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* (2006) 142 Cal.App.4th 1178, 1184 [confirming that obligations and restrictions set forth in voter-enacted bonds are comprised not only of the ballot proposition, but also the resolution and other materials accompanying the ballot measure that is made available to the voters].)

The trial court, however, wholly disregarded the information contained in the ballot and pamphlet materials – *the very information the voters of East County were asked to consider* – and relied instead exclusively upon evidence of the individual understanding of various Grossmont Board members in drafting Prop. U. (21 AA 5355-5357.) Doing so constituted error for several critical reasons, not the least of which is that our Supreme Court has consistently confirmed the well-established rule that "[i]n construing a statute we do not consider the motives or understandings of individual legislators who cast their votes in favor of it."

(*California Teachers Assn. v. San Diego Community College District* (1981) 28 Cal.3d 692, 699-700.)

But even if it could be said that the intentions of Grossmont Board members were communicated to each other, *they were never effectively communicated to East County voters*. Indeed, the trial court's citation of case law to support the proposition that the testimony of Grossmont Board members' intent was relevant to construing Prop. U's trigger language (citing, *e.g., C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 932) forgot to quote the critical exception from *C-Y Development*: that such statements are properly considered *only if the statements were clearly and prominently communicated to the voters*. In that regard, the best the lower court could offer was that Grossmont Board members made their statements about the enrollment triggers during public meetings that were "available to the public via the internet." (21 AA 5356.) This is hardly a sufficient basis on which to disregard the contrary information viewed by East County voters in the ballot materials accompanying Prop. U, and makes the tenuous assumption that voters paid more attention to what was said by Grossmont Board members in unidentified "public meetings" than what was more plainly represented to them in Prop. U's ballot materials.

Two recent decisions further emphasize the primacy of voter ballot and pamphlet information in determining the meaning of ambiguous language

contained in a voter initiative. First, in *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, the City of Escondido attempted to rely on declarations by the drafters of Prop. K (a voter initiative establishing rent control) to construe the voters' intent in enacting that measure. (*Id.* at 42.) This Court, however, rejected those efforts, stating "that such evidence is not persuasive as to voter intent, and that the ballot arguments are the *only* proper extrinsic aid which could be considered on that subject. (*Id.* at 42, fn. 6 [emph. added].)

A similar approach was followed in *Californians for Political Reform Foundation v. Fair Political Practices Commission* (1998) 61 Cal.App.4th 472, where the issue involved the interpretation of Prop. 208, a statewide initiative limiting campaign contributions and spending. (*Id.* at 474.) One of the key issues was what qualified as a "contribution" under that law. While the plaintiff argued the voters intended to "freeze" the "then-existing" definition of contribution, the Court of Appeal disagreed:

> Plaintiff cites no supporting evidence for this argument. Nothing in Proposition 208 purports to define, or redefine, the term "contribution," nor is there any language which removes from the Commission its authority to regulate in this area. Moreover, there is nothing in the ballot arguments – *the only extrinsic aid that may be considered to show the intent of the voters in passing an initiative* (citations) – that addresses such issues. In fact, the ballot arguments are silent on the

> issue of administrative support for sponsored PACs. (*Id.* at 485 [emph. added, citations omitted].)

All of which underscores the trial court's misconstruction of the enrollment trigger language of Prop. U without proper consideration of *what the voters intended through an examination and analysis of the ballot information put to voters when it passed that bond measure*. Relying solely on the self-serving testimony of Grossmont Board members was simply not enough. This is especially true where there is no necessary correlation between what the drafter supposedly understood the text of an initiative to mean, and what the voters enacting the measure understood it to mean. (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 118, fn. 6.)

Simply put, California law consistently recognizes that a voter initiative or proposition is "interpreted and applied in a manner consistent with the probable intent of the body enacting it: the voters[.]" (*Hill v. Nat'l. Collegiate Athletic Assn*. (1994) 7 Ca1.4th 1, 16-17; see also *Legislature v. Eu* (1991) 54 Ca1.3d 492, 504 [further instructing that "to help resolve such ambiguities 'it is appropriate to consider indicia of the voters' intent other than the language of the provision itself.' (Citations.) Such indicia include the analysis and arguments contained in the official ballot pamphlet"].) Voters were told in the ballot materials that the funds from Prop. U would be used to "begin and complete" construction of the new Alpine high school once district-wide enrollment equaled or exceeded 23,245.

(2 AA 487.) Once approved by the voters, the accountability requirements in the information submitted to the voters must be followed, and specifically promised projects must be built. (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 347-348.) In *O'Farrell*, the Supreme Court long ago rejected only building 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" when the bond funds in that case were approved by the voters to build a road between two specifically delineated terminals. (*O'Farrell*, *supra*, 189 Cal. at 348.) As the plain language of Prop. U makes clear, voters voted for "beginning and completing" a specific project, the new Alpine high school. The voters most certainly did *not* vote for $23 million dollars of taxpayer funds to be used to purchase the Lazy A property and obtain resource agency permits, only to have the property and permits unused and remain vacant until Grossmont decides, at some undetermined time in the future, to complete that project. As the trial court critically erred in failing to consider the intent of the voters and related ballot materials in determining the operation and effect of Prop. U., this Court should reverse the trial court's resulting Judgment.

V.

CONCLUSION

The record before this Court demonstrates how the lower court erred when it attempted to construe critical provisions of Prop. U contrary not only to how this Court previously interpreted that same language, but in a manner inconsistent with the plain meaning of that language. The trial court further compounded that error by disregarding probative evidence of voter intent, relying instead exclusively on the purported intent of Grossmont Board members.

Accordingly, Alpine respectfully requests this Court either to: (1) reverse the trial court's erroneous construction of Prop. U's enrollment trigger language as a matter of law and its resulting Judgment, and to direct the lower court to enter judgment instead in favor of Alpine; or (2) reverse the trial court's Judgment to allow a new trial to proceed in which voter ballot and pamphlet information is properly admitted and duly considered by the lower court in construing the meaning of that enrollment trigger language.

Respectfully submitted,

DATED: 04/13/17

WILLIAMS IAGMIN LLP

/s/ Jon R. Williams
Jon R. Williams, Esq.
Attorneys for Plaintiff and Appellant,
ALPINE UNION SCHOOL DISTICT

CERTIFICATE OF COMPLIANCE PURSUANT TO THE CALIFORNIA RULES OF COURT, RULE 8.204(c)

Pursuant to the California Rule of Court, Rule 8.204, subd. (c), I certify that the foregoing brief is proportionally spaced, has a typeface of 14 points, is double-line spaced, and based upon word count feature contained in the word processing program used to produce this brief (Microsoft Word 2015), contains 11,011 words, excluding captions, tables, and additional certificates.

DATED: 04/13/17

/s/ Jon R. Williams
Jon R. Williams

ALPINE UNION SCHOOL DISTRICT, et al. v.
GROSSMONT UNION HIGH SCHOOL DISTRICT, et al.
Court of Appeal of the State of California
Fourth Appellate District, Division One
Court of Appeal Case No.: D070583
San Diego County Superior Court Case No.: 37-2014-00034850-CU-MC-CTL

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I, the undersigned, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Court of Appeals – Fourth Appellate District, Division One by using the appellate EFS system on **April 13, 2017**.

1) APPELLANT'S OPENING BRIEF
2) APPELLANTS' JOINT APPENDIX (21 Volumes)

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Dated: **April 13, 2017** Signature: /s/Chenin M. Andreoli
Chenin M. Andreoli