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OVERSIGHT IN THE ERA OF GOVERNMENT BY WHAT IT CAN GET AWAY WITH IT

Testimony
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Unless otherwise specified, all observations are made in connection with Proposition 39 (Article XIII-A, Section 1(b)(3)) [APP. 1], all references to code sections refer to the Education Code, and all references to measures are to district bond measures initiated by staff.

EXECUTIVE SUMMARY

From the oval office to the halls of Congress, right on down through every elected and appointed office, we are living in the era of the government testing the boundaries of its governing documents to see what it can get away with.

This is exemplified by what staff is able to do under the aegis of a constitution and statutes that are unrecognizable in their implementation, or rather the lack thereof.

There is no oversight of district bond expenditures in California.

The express intent of the Smaller Classes, Safer Schools and Financial Accountability Act of 2000 (hereafter, "the Act") is to establish citizen oversight with the purpose "to inform the public concerning the expenditure of bond revenues." [15278(b)]

Oversight, however, even the limited after-the-fact oversight provided by the Act, cannot occur without a fixed set of rules to guide the overseer.

The rules, as re-iterated in the Act, are in the Constitution. So guess what happens when those rules are intentionally ignored.

School bond measures are controlled by a handful of private firms who work hand-in-hand to sell measures to districts. The two parties that have outsized control over this process are the bond counsel and the financial advisor. The part that bond counsel plays in this de facto partnership is especially egregious considering its position of authority, its oath to the Constitution, and its Rules of Professional Conduct.

The industry has "captured" the entire process, from the initial sale through to the last expenditure of revenue.

This capture has occurred primarily due to five factors:

1. Governing board members are politicians. They have no expertise in Wall-Street-level financial dealings or public works construction.

2. District staff, similarly lacking, hire outside advisors for expertise.

3. The players are members of a whole variety of alphabet-soup organizations run, primarily, by lobbyists working for their own self-serving agendas.

4. The free flow of public employees from district to district around the state and the revolving door of employment between the industry and state and district government.

5. The deals happen on a very local level thus avoiding the scrutiny that deals of this size might otherwise attract were they combined.

It's a good ol' boy network on a grand scale where those with the power to expend billions of dollars of public funds are the familiars of those who have the biggest financial interest in receiving those funds.

Documenting all the instances that support these factors would require a volume. I have not yet had the time, over the last year, to investigate each of the more than 1500 district bond measures that have been presented to the voters over the past 15 years. I have only begun to build a muckety-like [APP. 2] longitudinal relationship map of the connections of the players, large and small.

The connections, however, are real and valuable to both the public and the private participants.

I do not believe it's hopeless. Up until now, the industry has had the advantage of operating in plain sight among industry members, but in the dark with respect to the voters in the districts that comprise its clientele. Shining a light on its relationships and its methods of operation is, perhaps, the most effective way to provide oversight that actually means something.

The population at-large is more interested in the anatomical features of celebrities than they are in things that so remotely affect their pocketbook. The goal of any policy changes should be to empower the tiny minority that are aware and willing enough to protect the rights of everyone. Even seemingly modest barriers can dissuade otherwise interested people to expend the time and energy necessary to pursue the issue.

DEFINITIONS

"Committee" or "Independent Citizens' Oversight Committee" (my definition) is a committee carefully stacked by staff with cheerleaders and yes-men directed, intimidated, and overseen by high-level staff to make sure that the committee never performs any oversight with which staff doesn't agree.

"Committee Member" is a member of a citizen's oversight committee.

"District" includes both school districts and community college districts.

"Industry" is the school bond industry, including all the alphabet-soup associations, which, when observed in action, has the characteristics of a vertically integrated company or cartel.

"Measure" is a school bond measure.

"Revenue" is the proceeds of bond issues.

"Staff" are the administrators who, for all intents and purposes, act as the governing board. After reviewing hundreds of governing board minutes, it's clear that individual governing board members so infrequently question or oppose staff recommendations that one wonders why these boards exist in the first place. When one considers that public unions almost overwhelming back candidates who are in their thrall, it's not hard to understand why.

MY BACKGROUND

I come to this with, perhaps, a fresh perspective.

My education on this subject began with Los Angeles County Measure O in August 2015.

I had received the second of two mailers, paid for with public funds, "informing" me that the Walnut Valley Unified School District had placed a measure on the ballot.

I called the district asking for the survey which justified that action. I didn't get it.

That same week I received a link to a 361-page paper called "For the Kids" [APP. 2] by Kevin Dayton. I read it.

With that information and additional independent research, I called the district again and asked for the measure that was just adopted. From the CBO, I finally got a link (which has since been orphaned) to it buried in a non-searchable format, 300-page board packet.

I called the district again and spoke with the CBO. I asked him where I could find the list of specific projects. He said, "We don't have to provide one."

That was contrary to the plain language of Proposition 39. I decided to oppose the bond. There were still a few days before the deadline to file a ballot argument.

In the end, in spite of criminal violations, campaign finance violations, and $106,000 raised from industry members, by sheer force of will and execution, I delivered enough no votes to upset the district's carefully crafted campaign. The other eight bond measures on the ballot in November 2015 all passed.

As soon as the results were in, staff decided (wink, wink) to put the measure on the ballot again in 2016.

STARTING POINT

How can I make the claim that there is no oversight in California?

First, start with the law.

Second, the measure presented to the voters. If the measure provides for absolute discretion by staff, then there can be no oversight.

Third, the flowery, but useless imperatives, written into the statutes charging public officials to take action.

Fourth, the statutory oversight committee.

Fifth, the constitutional requirement of an independent performance audit.

Sixth, the constitutional requirement of an independent financial audit.

Seventh, the empirical evidence that statutory oversight is ignored with impunity.

Eighth, the actual practice of appointing and running the oversight committee.

Then I'll discuss other related areas that are completely bereft of meaningful oversight.

I. THE LAW (Proposition 39)

A. The Rule

The rule established by Proposition 13 is that ad valorem taxes are restricted to 1% of assessed property

value. In 1986, Proposition 46 carved out an exception to the rule "for the acquisition or improvement of real property" when approved by two-thirds of the voters.

Words have meaning. The term "improvement of real property" has legal meaning beyond its common meaning. Courts have clarified its meaning.

In 2000, an exception to the exception was carved out, expanding the purposes and lowering the voter approval level for districts.

A maxim of construction says that exceptions are construed narrowly lest the exception become the rule.

B. Purposes

The purposes for which revenues may be expended are:

"construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities"

"Improvement" was expanded to "construction, reconstruction, rehabilitation, or replacement." "Furnishing and equipping" was added. "Acquisition" was expanded to "lease."

"School facilities" are specified three times. "Community facilities," "joint-use facilities," or "other facilities" are excluded by their omission.

C. Exclusions

To reinforce the limited additional purposes of the provision, explicit exclusions were established.

"and not for any other purpose, including teacher and administrator salaries and other school operating expenses"

When you look at the measures written by bond counsel anywhere in the state, you wouldn't even recognize that they had any relation to the clear language of the constitution.

Notably, purposes like "maintenance," "modernization," "renovation," "repair," "retrofit," and "upgrade", that have become ubiquitous in the measures, are not provided for in the exception.

Reading the typical measure, you wouldn't recognize how these stated purposes comply:

"help protect and improve local property values"
"protect the quality of life in our community"
"maintain the quality of education"
"provide advanced courses in core subjects"

Yet these subjective and explicitly prohibited purposes are stated in the measures.

Whether the law (constitution, statutes, and regulations) is worth anything is the extent to which there are undesirable consequences for ignoring it, whether the law be mandatory, prohibitory, or advisory.

There are no consequences for ignoring the law, therefore, the law is ignored.

II. MEASURES

The writing of measures has "devolved" over the past sixteen years. A measure written in 2001 or 2002 [APP. 3] is a world apart from those highly-crafted and honed by bond counsel today. In fact, it's unlikely

that bond counsel was even involved in writing the early measures.

Proposition 39 requires four things in a measure. [APP. 1]

A - a self-referential requirement that specifically excludes district operating expenses.

B - a list of the specific school facilities projects to be funded and a certification that the specific issues were addressed in coming up with the list.

C - an independent performance audit

D - an independent financial audit

The Act requires one additional thing, that an oversight committee be appointed. [15272]

Today's measures are intentionally vague and all provide staff with absolute, after-election discretion to spend the money on anything it wishes.

A news report of the Fairfield-Suisun board meeting that approved a $250 million measure for June memorialized the exchange between a trustee and the tag-team of the financial advisor and the facilities superintendent.

"The board is not required to determine specific prioritized projects until after the bond is passed." [APP.2]

Today's measures typically include broad categories of vague projects, sometimes even mentioning the names, and most importantly from a marketing perspective, the ages of the schools that revenues might be spent on. Laying a guilt trip on voters gets more yes votes than any other technique.

While filing my argument against this year's Measure WV at the Los Angeles County Registrar's office in August, I chatted with a CBO who was filing an argument in favor of her district's measure. She told me she had a very detailed list of the projects the revenue would be spent on. Bond counsel told her NOT to put it in the measure.

When you look at the 229 measures that were filed in 2016, not a single one contains a list of the specific school facilities projects to funded. It's not an accident. It's intentional. Lawyers are violating their Rules of Professional Conduct and telling their clients explicitly to NOT comply with the constitution's mandate.

One easily overlooked issue is the writing of the question to which the voters actually say "Yes" or "No." Currently, this is pure marketing hype that gives an unfair advantage to the proponents. It can also be wholly removed from what the measure will actually do. How is it that state measures undergo such scrutiny of the title and the question and bond counsel can create a formulaic question using focus-group-tested language? In my opinion, the question could be set in stone -- "Shall the XXX district be authorized to issue $$$ of bonds, to be paid back to investors with interest, secured by taxes on your property, to complete the projects contained in the project list?"

III. MISUSING REVENUES

What's one to do when legislative intent is ignored?

The legislature makes hay with all the flowery language describing its intentions, like:

"Vigorous efforts are undertaken to ensure that the expenditure of bond measures ... are in strict conformity with the law." [15264(a)]

Wow! Should bond counsel be scared? Should staff be scared?

"Taxpayers directly participate in the oversight of bond expenditures." [15264(b)]

Really? Taxpayers? Then why doesn't the statute require that Committee Members must be district taxpayers?

"The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money." [15264(c)]

Seriously? Oversight committees rarely meet, sometimes only once a year to approve the annual report. A local Committee Member complained to me that the committee only reviewed the audit reports. Nothing to see here! Just move along!

"That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures." [15264(d)]

That's comforting! Let's see now, over 16 years, how many prosecutions have been made? You say zero? How many restraining orders have been issued? I guess the industry members are really angels after all.

I am actually aware of one restraining order. It came about as a result of a NIMBY (not in my back yard) group that complained of a proposed parking structure at Mount San Antonio Community College District. Where was the oversight committee? How could it have possibly missed that misuse?

"It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds." [15288]

With scandals in districts all over the state, no one has yet answered those questions.

I guess staff must all have a get-of-jail-free card.

If taxpayers must rely on the financial ability of a few to prosecute civil suits against the wayward or criminal staff, there is no oversight at all. How many billions of dollars have been wasted or misused by districts over the past 16 years?

IV. OVERSIGHT COMMITTEE

When I make generalizations, I except the few post-scandal outlier committees that have gained stature after the fact of a scandal.

Districts with previous bond measures trumpet the fact that the oversight committee has "approved" its "good stewardship" of public funds. You hear it in public meetings. You read in committee annual reports. There's no empirical evidence to support it. Why? Because the committee is "captured" by staff.

In my review of dozens of oversight committee documents, I have yet to find a report critical of any aspect of the expenditure of revenues.

In fact, the reports are often written by or with the close oversight of staff.

For an example of a large bond program with no oversight, one only has to look at Long Beach Unified. The committee is composed entirely of cheerleaders, including a former district principal with political ambitions and a facilities manager employed by Long Beach Community College District. [APP. 2] This is

not atypical.

For another example, one can review Santa Clarita Community College District where Committee Members also served on the campaign committee for the June 2016 Measure E. Others are college foundation board members which funded the campaign for Measure E to the tune of $150,000. And still others serve on other local boards with staff or trustees.

These examples are not outliers. They are the rule. Key people with high local profiles whose interests do not comport with the concept of oversight are placed on the committees. Often it takes only one or two planted leaders to influence the decisions of the whole committee, even of those who try to act in good faith.

Have you ever tried to contact a Committee Member? I have not found a single web site where personal phone and e-mail address is provided. When any kind of contact information is provided it's a district gatekeeper. If the public, district employees, or even vendors have any concerns, they are funneled through a system where the district will be aware of the concerns well before the Committee Members are. This has a clearly chilling effect on potential whistle blowers.

The alternative is to attend one of the typically rare committee meetings. There, of course, you'll be intimidated by the overwhelming presence of staff and vendor representatives. Are there any sympathetic ears on the committee? Good luck trying to find out. It's clear that the current way oversight committees are run, anyone with any information potentially relevant to the waste or misuse of funds will be unlikely to risk retaliation by presenting it at a public meeting. Additionally, with staff favorites on the committee, presenting anything to anyone on the committee may end up being reported to staff as soon as it’s presented.

I was contacted by a school district employee whose facility had been "modernized" with expensive equipment only a short time ago. The equipment was not operable and there were no plans to fix it despite the pleas of the employee. Oversight committee? You're joking, right? It's not in the committee's limited jurisdiction, according to staff. The money's already been spent on an "approved" project.

This is one area where, a sub-committee, in executive session, separate from the times and places of public meetings should be allowed. In my opinion, it is already permissible under the law and under Robert's Rules. It's just that an intimidated oversight committee is not likely to assert itself against the monolithic pressure of the governing board, staff, vendors, and the always-at-the-ready district lawyers who would shut it down without thinking twice, in violation of their Rules of Professional Conduct.

V. INDEPENDENT PERFORMANCE AUDIT

This is the bigger joke of the two mandatory audits.

How did Montebello Unified reimburse itself for over $8 million from the $98 million Measure M (2004)? How did all that money get past a performance audit? Aren't the payment of administrator and teacher salaries with bond funds prohibited? All I can say is, where there's a will there's a way. The number of corrupt minds working on the problem of how to get their piece of the pie far outweighs the narrow scope of the performance auditor.

The failure of any performance audit to make the ever-to-be-avoided "findings" to have ever uncovered corruption or scandals is testimony in itself to the ineffectiveness of the process.

You also have the coziness of staff working with the same people who audit the district finances, year after year -- even with laws requiring districts to change auditors.

Another problem with the audit process is that there is no way for the public or the committee (even if they knew what to look for) to get wind of it.

The comfort level, financial interest, and familiarly between staff and the auditor makes the audit susceptible to the kind of social engineering that would place an auditor into a situation where the appearance of deference, if not in fact deference, results.

To be independent, as required by Proposition 39, staff must NOT be able to recommend the performance auditor.

While the state may revise the standards for a performance audit, even if standards exist, who's looking out that the standards are being followed. Is there a consequence for ignoring the standards?

Is the committee ever given the same materials that are given to the auditor? If the committee doesn't have those materials, how can it possibly make any evaluation of the auditor's report.

In fact, Committee Members are often not even permitted to contact the auditor. It's that who's the client thing.

But going to the heart of the underlying subject of the audit, does the auditor use Proposition 39, the measure, or an after-the-fact list of projects provided by staff? When it's intentionally written as the typical "anything goes" measure, doesn't anything the district expends revenues on comply? What's the point of such an audit, except to give cover to staff against anyone who complains?

VI. INDEPENDENT FINANCIAL AUDIT

May I suggest that you attempt to find one instance of an audit uncovering anything of a serious nature. How can it be that all the scandals occurred, up and down the state, and yet the audits revealed nothing?

When considering the value of audits, one has to look at the purpose of the audit, the process used, and the mind-set of the auditor.

It's actually pretty easy to do. Auditors have formulaic letters that they fill with disclaimers. If I might summarize it, an auditor takes the documents that the client provides, extracts representative samples, applies some tests to those samples, and then renders an opinion.

So, assuming professional ethics are not in question, who has the most influence on the auditor? The staff that provides the information. Might the staff be getting advice from industry members on how to account for different types of expenses so as to not raise red flags? If staff has already coded transactions in a way that favors the outcome staff desires, the auditor will never be the wiser for it.

Another factor that complicates an audit is the standards that the auditor must comply with. In the case of districts, these standards are adopted by state departments that may have an interest in all audits going smoothly or that may be influenced by the auditors lobby.

Garbage in, garbage out. If the auditor receives documents that do not truly represent what actually occurred, the tests are useless.

Several times I've contacted auditors to inquire about audits. I've never once received even an acknowledgement. I may be the taxpayer who pays for the audit, but I'm not the client.

VII. STATUTORY OVERSIGHT

What, in fact, can an oversight committee do that is of any value in informing the public of misspent revenues?

Receive and review, receive and review, inspect, receive and review, review [15278(c)(1) through (5)]. Even the receiving activity is frustrated by staff's use of public records law to its advantage. (See XVIII.) To review months after the fact of expenditures is equally useless. Courts are very unwilling to undo actions where the parties have performed in reliance on the facts available at the time.

Do Committee Members even know what they're reviewing? If staff were self-interested, the Committee Members wouldn't know. Staff would make Committee Members rely on staff or vendors to explain. How is that oversight?

The statutory composition of the committee almost mandates that no oversight will be performed. What exactly do stakeholders (a term I thoroughly reject) have to do with oversight for taxpayers? The implication is that a senior will be looking out for seniors, except of course, when she's a former principal on a district pension with the hope of grabbing a seat on the governing board (Long Beach USD).

It's illogical. I believe the legislature intended it that way. It looks good on paper, but it falls apart in practice.

The more sizzle that staff can infuse the oversight committee with, the more likely it is that not even the limited oversight authorized by the Act occurs.

"Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the district." [15280(b)]

Where are these documents?

The San Diego County Taxpayers Association developed a transparency scorecard [APP. 2] which sets criteria and then scores district bond programs against it. Many of the criteria are required by law; some might be considered best practices. Note, however, that the scorecard is about transparency, not oversight. The two can easily be muddled together.

Of all the districts in the state, San Diego County districts are the most compliant, at least on their web sites. But there's a reason for that -- the taxpayers association endorses many measures. It's almost like a pay-to-play situation. If staff wants an endorsement, they must put on a good show.

While the criteria are useful in that they exist, they do not even remotely guarantee that oversight is occurring. Like any checklist, the point is to check it off. The difficulty or willingness of staff to check items off depends on their interest in the pay-off.

The taxpayers association is "captured" by business interests, so the criteria is somewhat suspect. However, when complying with a statutory mandate gets the same point as a minor administrative detail, it's easy to tip the result by adding minor details that don't go to transparency or oversight at all.

It's almost like the taxpayers association is providing oversight. That makes its endorsement credible to voters. It's another rating that staff can point to imply that they're being "good stewards" of revenues.

I used the criteria in my Measure O campaign in 2015. [APP 3.] My district scored 1 point out of 25. Of the approximately 150 committees outside San Diego that I've collected data on, almost all would score 0 to 5 points. Even Long Beach Unified, which has an overwhelming amount of information about its bond program on its web site would score poorly. Why? Because it's using the web site as a marketing brochure to show off the fancy new facilities that it's spending the revenue on.

Even the San Diego county committees that have a perfect score don't guarantee oversight.

Take Cajon Valley Union which is a November 2016 measure. It has no less than five distinct menus on its home page. TEDX rates a menu position. Where does one find the mandatory oversight committee web page? On the sub-menus? Not yet. After trying the different menus, you might recognize "Bond Program" as a likely candidate in the alphabetized list of "Departments."

Eureka! And what do we see? No less than 20 professional photographs or futuristic architectural renderings of fantastic facilities. I was totally impressed by the new 500+ seat theater for the middle school. I can't wait to see the Broadway-caliber productions performed by the precocious pre-teens at the school. After all, this page is not about oversight, it's about marketing.

Detailed project list? Yes, a fancy, single page Excel spreadsheet rendered as a PDF with lots of stars on it. Is that list from the measure the voters approved? No way to tell.

Committee Member list? Sure enough! All categories (not the statutory categories) are accounted for, whatever that implies, except, wait a minute, taxpayer organization. So, the committee isn't even complying with the law, but the taxpayers association has given it a 100% score.

By the way, I didn't plan on that. I picked Cajon Valley because the meeting to place its measure on the November 2016 ballot was held on, hold onto your seat, November 19, 2014. That's not a typo. (How's that for transparency? Luckily, someone found it and remembered to file it.) It's November 2014 bond failed, so staff decided let's do it again, at taxpayer expense, of course. (You did know that taxpayers pay the county for the full cost of every election a district orders, didn't you?)

So what's in the agenda packet for the most recent July 28, 2016 committee meeting? (You just can't make this stuff up. And, no, I didn't plan on this either.) Why the brand spankin' new San Diego County Taxpayers Association Scorecard, of course. What does that have to do with oversight? Supposedly, there was some oversight at the meeting -- project updates (without documents), and a staff-led tour of one of the construction sites. Minutes from the meeting? Not yet. I wonder if the committee approved its 100% score on the scorecard.

How much revenue was spent this year? Can't find it. Since the last meeting? Can't find it. On what was it spent? Can't find it.

Aren't those questions that an oversight committee might be interested in? Isn't the committee supposed to be reporting on expenditures to the public? I guess we'll have to wait for the annual audits.

What about the actual measures that authorized all this spending? Not a sign of them anywhere. By the way Cajon Valley, in the last measure that passed, Measure C (2012), used the deceptive Reauthorization® technique covered in the 'For the Kids' report. That means staff has been spending like there's no tomorrow.

Cajon Valley, like Long Beach Unified, has a tremendous bond marketing program. I'm going to be cynical and say that the marketing is covering up a complete lack of oversight.

VIII. OVERSIGHT COMMITTEE IN PRACTICE

It is the rare district that provides any biographical information about Committee Members. For the few sites that do provide the statutory category that the Committee Member fills, the qualifying organization is almost never named.

A. Bylaws and Robert's Rules

Although not a registered parliamentarian, I consider myself expert in parliamentary procedure, having been a board member or officer of corporations and years of helping the minority factions of political organizations navigate minefields.

In my estimation, based on agendas and minutes, it would be the rare exception for any Committee Member in the state to have his or her own personal copy of Robert's Rules of Order. In reviewing hundreds of meeting minutes, which are prepared, invariably, by staff, there is no indication that any rules of order are observed, except pro forma, most often needless, motions. This is an ideal setting for staff to run everything.

The Bylaws, when they can be found, are canned and apparently written by some long-forgotten lawyer whose objective was to make it crystal clear to Committee Members that they have no authority. The bylaws simply repeat statutes, a poor practice to begin with, but which impresses on the Committee Members that they are under the control of and at the whim of staff.

The Bylaws are imposed on the committee by the governing board. I have yet to find one set of bylaws where the committee has the authority to amend its own bylaws. None provide any parliamentary authority. That would probably be too much information for a dissident Committee Member to exploit.

B. Applications

When reviewing the applications for dozens of oversight committees, one can distinguish two kinds. The first is a simple information page -- name, contact information, and a list of the statutory categories under which an applicant might qualify.

The second type is a horse of a different color. In addition to basics, the application demands or implies qualifications that go well beyond the statutory scheme. In some cases, staff have seen fit to prominently include a warning about the conflict-of-interest prohibitions. In other cases, the application requires detailed experience in finance, real estate, construction trades, engineering, accounting, project management or other skills that are remotely related to the skills of the vendors that would typically be hired to perform the facilities projects.

Some governing boards have even gone so far as to impose new criteria on applicants to ensure that the committee is composed of experts. Do they impose those criteria on staff hiring? The legislature has preempted the field, so this is patently illegal. But it's even more laughable that a governing board of politicians with no expertise is trying to appoint a committee of experts in fields the governing board knows little to nothing about. I suspect it's just a ruse to exclude any potential troublemakers from getting on the committee.

These kinds of applications are, in a word, intimidating. I speculate that of the desirable, hand-picked Committee Members that finally get appointed, none had to worry about what they put on their application. (This is an area about which I'm doing more investigating.)

Some districts require staff or board interviews -- another intimidating practice.

If by some miracle, a lone Committee Member, who actually believes that she can have some salutary effect on the process, is actually appointed, she is but one vote in a committee of at least seven, where she can be easily dismissed, ignored, or criticized for not getting with the program.

C. Appointment

The method of appointment of Committee Members often signals the extent to which staff have control over it. After all, Committee Members serve at the pleasure of the governing board and can be removed at any time without cause. So say the bylaws.

In the case of a June 2016 measure, one board had occasion to appoint the Committee Members last week. There were more applications than there were positions (7), so a winnowing had to occur. Without any policy or rule to authorize it, each governing board member (as if by prior arrangement in violation of the Brown Act) chose one Committee Member and the two remaining were chosen en banc. One

Committee Member was the spouse of district employee. Someone active in a bona fide taxpayer association? You're kidding, right? The only applicant that was part of those opposing the measure was, of course, not chosen. I guarantee that staff will trot out the annual report with glowing praise for the committee and the good work it did in performing its duty. There's no law against lying to the public.

For another successful (weren't they all?) June 2016 measure, Santa Clarita Community College District simply added the new measure to the duties of the committee overseeing its previous measure. This is a practice that explicitly serves staff and not the public. It's almost universal.

In my view, the statute requires a separate committee to be appointed for each measure. The measure explicitly promises that as well. The measure never states that a pre-existing committee will be used.

It's egregious because it means that staff, the committee monitors, only have a single meeting to arrange, attend, and manage. Staff has already trained its current committee. The current committee knows what's expected and what's not. Bringing new eyes and brains into the process might lead to actual oversight.

In some cases, a single oversight committee can be overseeing three or sometimes even more measures.

This also happens when more than one measure is approved at the same election (a not uncommon occurrence when the goal is to exceed tax rate limitations), even when no previous measure exists. Both measures are assigned to a single committee. Oftentimes, the governing board amends the bylaws when measures are added to an existing committee.

Districts often allocate the individual governing board members with the appointment power. Even when governing board members are skeptical of the measure, which is rare, this practice flies in the face of independence. This practice is most often found on seven-member boards like Pasadena Area Community College District. Of measures that reach a vote, 99.44% are approved, and 95% of those are approved unanimously.

The independent citizens' oversight committee is a double oxymoron. Neither is it independent nor does it provide oversight. It might even consist of non-citizens, for a trifecta.

There are a few, rare exceptions, but only where an underlying scandal has been exposed, such as West Contra Costa Unified and Sweetwater Union High. In my testimony, you may treat these outliers as exceptions to the general statements that I am making.

However, just to demonstrate the endemic nature of the problem, the Sweetwater Union High committee is the only committee in the state whose Committee Members have a term of more than two years. It's legal thanks to the amendment that extended the number of consecutive terms from two to three, but also, as if guided by an invisible hand, extended the term of Committee Members to anything staff wish. There's now no constraint on terms of 5 years, or 10 years, or, hey, why not the life of the committee? Those terms would all be "legal." Staff that actually look at the statute can then easily avoid the annoyance of putting on a show and create a permanent committee. Thankfully, in this one instance, most staff don't read the law.

The clearest example of staff domination over the committee is Torrance Unified. It's all documented in the minutes of its initial meeting. I wrote an article on it. [APP. 3] This is the norm. If, immediately after an election, the language of the measure is tossed down the memory hole, just imagine what a "captured" committee like this will be looking at years down the road.

IX. [OMITTED]

X. FACILITY MAINTENANCE

If there were one other thing that might dampen districts' unbridled enthusiasm for measures, it would be a requirement that it establish a sinking fund (just like the bond servicing sinking fund) for the maintenance or replacement of every facility it completes. I've read nationally recognized facility experts claim that 3% of replacement value per year is a reasonable figure.

Right now, the districts are not required to have any skin in the game. In fact, staff has a perverse incentive to complete things like energy efficiency projects and reimburse themselves for anything they can sneak past the oversight committee (not a hard task) to protect the operating budget.

Did you know that staff recover all the pre-election costs and the cost of the election itself from revenues? Normal maintenance, like painting, is commonly covered by a measure's full text, if not explicitly in a vague list, then in the catch-all boilerplate.

You see, to staff it's free money, to spend as they please on whatever they please.

This fall's Riverside Unified Measure O contains this as a project:

"Make energy and water efficiency improvements that will free-up money to retain highly qualified teachers and improve the quality of classroom instruction."

Translated, it plans to use a ton of borrowed money to reduce operating expenses a little so it can spend more on teachers and instruction. Except for the reason being expressed, this is the underlying concept behind much of the language found in measures' so-called project lists.

The incentive is for staff to neglect repairs for years and then whine to voters that it needs them to approve measures to fix everything. Did you know that every measure in the state claims there are "leaky roofs?" That's one of those guilt-laden hot buttons that surveys say voters respond to. You will never see a specific building in the measure that has that alleged leaky roof.

You'll also likely not see that ubiquitous leaky roof on the facility section of the School Accountability Report Card. In Walnut Valley Unified, $100,000,000 has been spent on facilities in the past 10 years. Measure S (2007) claimed that there were leaky roofs. Both Measure O (2015) and Measure WV (2016) claim that there are leaky roofs in need of repair. The SARCs for the past two years running and likely many years before that show all 15 schools with an overall facility rating of Exemplary (9 schools) or Good (6 schools) and nary a mention of a leaky roof anywhere. SARCs are required every year and must be reviewed by the governing board. Staff has no problem speaking out of both sides of its collective mouth -- one to the state and the parents it curries favor with and the other to the taxpayers who pay the bills.

This is another aspect related to the intentional omission of a list of the specific school facilities projects to be funded. When bond counsel fills the measure with marketing hype, how can anyone know what the real needs are?

XI. OTHER OVERSIGHT

There are a few other ways that some consider oversight might be achieved. They are not robust enough to place any reliance in.

A. Grand Juries

When I first started delving into this subject, I was amazed at the number of grand juries reports that I was able to find.

Unfortunately, even if it were up to the task, the civil grand jury system is not the venue for oversight. It's

slow and cumbersome and dependent on the interests of the individual grand jurors. In Los Angeles County, the composition of the grand jury directs its investigations to the pet projects of the grand jurors, which each appear to have their own personal social agendas.

In the end, it is a paper tiger. Districts criticized in grand jury reports simply hire lawyers, at great taxpayer expense, to provide all the cover they need. The response ends the process. The statutory obligations are met. The general public is, in all cases, never even aware of the report or the response because it is buried in multi-hundred page board agendas on the consent calendar.

For the extant grand jury reports, I have not seen a single instance where it even gets a mention in oversight committee reports.

B. Investigative Journalists

I am forever grateful to the investigative journalists who invest their time and skill to investigate anything.

Pieces like the Los Angeles Times investigation of the bond program at Los Angeles Community College District in February to March 2011 [APP. 2] are the only time the public ever gets even a smidgen of oversight.

Investigative journalists, unfortunately, are, like the newspapers that they work for, a dying breed. Radio and television will never be able to replace what these journalists do because the format is not suitable for the kind of document-intensive scrutiny that is needed. There are neither sexy photo ops, nor catchy sound bites.

Even investigative journalists are not likely to investigate the scandals waiting to be exposed at the hundreds of small and remote districts around the state.

Once a scandal erupts, such as the federal investigation of the practices of Fresno Unified, even beat reporters are likely to pick it up. The news, however, rarely goes beyond the district's borders. To most of the people in the state, even the tens of millions with bond programs already in place, it doesn't even appear on their news stream. The Kardashians, yes. Bonds, no.

XII. COUNTY ELECTION OFFICIALS

While one might think that the Elections Code with regard to measures is straight-forward and uniform, actually dealing with the county election officials in all 58 counties, as I have done for the last two elections (2016 Primary and 2016 General), you will become quickly disabused of that idea.

I can safely say that there are not two counties in the entire state that have the same procedures regarding measures.

In the age of Internet and the ease with which material can be displayed, one might think that everything, at the point that it is filed with an election official, can easily be converted to a document that can be easily made accessible to the public at-large.

Over two elections, I can definitely say that if you believe that, you've not had to deal with election officials.

From Humboldt to Imperial (there have been no measures from Del Norte this year), the stories and problems, whether real or self-imposed vary by each county.

Why is this an issue for oversight? Because right now, the entire process of putting measures on the ballot is rigged, either intentionally or inadvertently, against the taxpayer.

Allowing a system where due process is subject to the whim of a public employee encourages the industry to keep putting through more and more measures.

According to statute, 88 days before an election is the deadline for a measure. Depending on your county, if you wait for that day, the entire process will already be over. In Plumas, Santa Barbara, and Ventura, just to name a few you've already missed it.

How can this be? Each county has created its own interpretation of different sections of the election code that may appear, to some, to conflict with each other. In most cases, the issue revolves around public notice and consolidation of the measure for an election. In others, it's just the whim of the elections official.

In some cases, districts are given special accommodations that will not be given to taxpayers. This is just plain wrong. In Fresno County last month, the proponents' argument in favor of the measure was signed and filed four days after the deadline set by the public notice. This is due process run amok. No argument against was filed. Fresno County doesn't go by the 88 days rule. Each measure's deadlines are set by an individual public notice.

You'd think that it's uniform. It isn't. It needs to be fixed.

The other issue for elections officials is qualifications. Candidates are qualified according to statutory provisions before being placed on the ballot. Initiative or recall petitions are qualified by valid signatures according to statute. Measure qualifications are in the Constitution and a statute or two. Why doesn't the elections official qualify the measures? The governing boards certainly don't qualify the measures. Here's where the undue influence of bond counsel seems to provide unquestioned authority.

As to county counsel, who write the ridiculously brain-dead impartial analyses, they should be ashamed of themselves. They gloss over, as if by pre-arrangement, the requirements of Proposition 39 with barely a thought being given to it. Perhaps they see bullets in the measure, so there's a list. Perhaps they think one list is as good as any other list. It's pretty pathetic.

County counsel, really demonstrates its ignorance or incompetence or both, when it comes to the deceptive Reauthorization® bonds, such as Santa Clara Measure I in June. There is no such legal term. It's just a marketing scheme. The district has unissued bonds that it can't issue without exceeding the tax rate. That's because it made wildly fabulous assumptions when it calculated the tax rate for the previous measure. It wants to issue new bonds so as to issue bonds against another tax rate, effectively doubling the maximum tax rate allowed by the original measure. Does county counsel mention this? Does county counsel even know what the scheme is? It's incredible that county counsel just drones on and on in the analyses and not alert the voters to the scheme. I guarantee you that not one voter in a million understands this, unless they've read 'For the Kids.' Therefore the scheme works 100% of the time.

XIII. PUBLIC REVIEW PERIOD

This is, perhaps, a little used aspect of the process. It can nevertheless be chilling on the free-speech of the opposing argument authors.

It's so insidious, that I believe that if the argument authors were actually fully-informed of their potential liability as a ballot argument author, that arguments against and rebuttals to arguments in favor would evaporate overnight.

At issue is the writ of mandate that any affected person can bring against an argument or rebuttal.

Right now, I believe this is rarely used by measure proponents primarily because staff see little to be gained. If, however, the soaring approval percentage of measures were to come back to earth, it would be another weapon that could easily be wielded against opponents.

On the other hand, because of the expense involved and the knowledge that the proponents have a virtual limitless source of funds, measure opponents have never used this tactic, giving the proponents a free pass to lie to their hearts content -- actually to bond counsel's heart's content, because bond counsel writes the argument. Just examine a sampling of arguments from around the state. It's easy to see the same small set of authors reusing the same tried and true, survey-tested arguments.

For instance, in 2015 Measure O authors were able to argue:

"Vote Yes on O to improve our Walnut Valley Unified School District schools and prepare our students for college and 21st century careers -- without raising taxes!"

"Without raising taxes?" I guess money just grows on trees.

In addition, one of the authors, who used the title "Independent Citizen Oversight Committee, Chair-Vice" was no longer on the committee and was not even a voter in the district.

I've been quoted $1000 up front to file a writ of mandate. So the proponents get away with the lies and misleading statements -- all the time.

In the June 2016 election, I became aware of one instance where this weapon was used -- Alameda County Measure E.

The proponents brought a writ of mandate. The controversy was, primarily, about Level III developer fees. (The same issue at the heart of Proposition 51 this year.) The proponents filed the writ. The opponents never returned my calls, but I've surmised that they agreed to a consent decree against them in exchange for not being subject to the proponents attorneys fees and costs. It's a lethal weapon in the hands of proponents with unlimited resources.

XIV. CAMPAIGN COMMITTEES

This is a particularly sore spot with me. My experience on this is limited to the subset of campaign activities as it relates to primarily-formed measure committees. However, large districts, such as Los Angeles Community College District have continuously active campaign committees. I suspect that issues with those committees, because they are professionally run, would be even more difficult to deal with.

Let's start out with the fact that the Fair Political Practices Commission (FPPC) has been totally ineffective in reigning in the illegal practices that it has been charged to oversee. With respect to bond measures, where hundreds of millions and billions of dollars are riding on the outcome, the puny fines and wrist-slaps on "yes" committees create willful disregard for the law. Meanwhile any action or even threat of action against "no" committees would have a devastating or chilling effect on opposition.

While state measures, under more scrutiny, are required to have committees that identify their sponsors, "yes" committees can get away with deceit and deception, knowing the risk is tiny and the reward great. Did the responsible officers know the law? Were they told how to fill out Form 410? Prosecutions for perjury or subornation of perjury on Form 410? Forget about it.

Are the "yes" committees even independent committees at all? Everything is done for the responsible officers by staff. In almost all cases, the committee officers are merely names on a piece of paper who make no decisions of any import.

Does the committee raise the tens to hundreds of thousands of dollars? Or does staff do it while on the public's dime?

Does the committee find the vendors to perform the services it needs? Or has staff already done that and

told the committee who to use?

Does the committee prepare a campaign plan, or was that already worked out, and perhaps even paid for with district resources, by staff with the advisors?

Then add the fact that the FPPC acts purposefully slowly to ensure that its decisions are never timely and never pose a threat to the illegal practices of the violators.

A campaign committee formed for a measure that passed in June in Los Angeles has yet to file its semi-annual report. It's more than a month past the deadline. Right now, no one knows exactly how much more than the $330,000 it's reported was actually raised, nor how much was actually spent.

Wait long enough and the news value is lost. The governing board candidates in the November election might use that information, but only if it's reported.

And the cycle repeats. Incumbents are re-elected. More measures are rubber-stamped. More unfair illegal campaign practices are used.

The existing system favors the industry.

XV. MEASURE CAMPAIGN FUNDING

In June, the "yes" committees of two tiny school districts in Shasta County with measures on the ballot each received a $5,000 contribution from Jones Hall, their bond counsel. Both measures passed.

In the State Attorney General's January opinion [APP. 2], this practice was found to be, most likely, illegal.

On July 27, 2016 State Treasurer John Chiang, who had asked for the Attorney General's opinion, made a reasonable attempt to crack down on this industry practice. Chiang's press release warned that any firm in the state's bond counsel, financial advisor, or underwriter pool would be removed if the firm contributed to a local measure campaign. Allegedly, all the County Treasurers are in agreement, but took no similar action individually. It's too early to tell if this will have any effect, but it exposes the pay-for-play aspect that the industry has fostered for many years.

Jones Hall is in Chiang's bond counsel pool. Other bond counsel are not. How will Chiang ever find out if a pool member contributes to a local measure campaign? Is he going to monitor every county's campaign filings or rely on the "honor" system? Give me a break!

All bond counsel have contingency contracts with districts. If the measure passes, bond counsel gets paid -- well-paid. If the measure fails, the services are written off. Wouldn't you like to have a deal like that? The bigger issue is industry contributions, not just for bond counsel, but for all the other contributors with skin in the game, made with a tacit understanding that those contributions will be recovered in the price of existing or subsequent contract awards. The Los Angeles Times report and other investigations, like 'For the Kids', find a high correlation. Of the industry contributors to the $106,000 raised by the "yes" committee for Measure O in 2015, the correlation is nearly 100%. Coincidence?

Financial advisors, almost universally also have contingency contracts with districts in the same vein. If the financial advisor is also providing campaign services, they might be contingent or they might not.

Sometimes financial advisors also contribute to the "yes" committee.

The biggest contributors to the campaign committee are, invariably, industry members, especially architects and those in the construction trades.

Although I haven't had time to research back from June, the other outsized campaign contributors are

community college foundations. In June, the community college foundations kicked in huge amounts for Cabrillo ($190,000), Santa Clarita ($150,000), and State Center ($150,000). These are pre-election reported amounts, I've not gone back to look at the finals. Cabrillo's measure failed thanks to an excellent campaign run by a professor at the college who was terrorized for his effort with legal sanctions on the chance that he might be making a campaign phone call while at work.

The "yes" committee for June's Measure E in Santa Clarita also received $50,000 from a local construction management firm that is intimately associated with the college, the foundation, and C.A.S.H.

The point here is that these foundations are 501(c)(3) organizations. Contributions to them are tax-deductible to the donor. My investigation as to whether the foundations or their donors violated either state or federal law is on-going. Clearly, I don't have the resources to do an adequate job, but the disturbing nature of this kind of influence on an election where billions of dollars of property taxes are in play is too much to overlook. Might it be "legal?" Perhaps. Should it be? Absolutely no.

No reasonable person could look at this situation and not conclude that measure elections are being bought by industry members. A $100,000 investment for $100,000,000 in revenues is a 1000% return on investment. Property owners around the state are being taken to the cleaners by an industry that has found a money printing press and is inexorably cranking up the volume.

When oversight on expenditures is non-existent, one can fairly conclude that there's a lot of room for padding contracts. No matter the actual value of the resulting facilities, the property owner is still stuck with the bill to the bond investors.

By its own admission, the industry allows one-third of bond revenues for soft costs that don't result in actual facility improvements. With a minimum two-to-one ratio to repay the bonds, at best, only one out of every six taxpayer dollar assessed results in facility improvements. That's an extraordinarily poor investment return in anyone's book.

XVI. BONDS ISSUED

How is it that, when the bonds are issued, they nearly always command premiums in the market?

The State Treasurer requires reporting, in advance, of proposed bond issues. One of the characteristics the Treasurer tracks is whether the issue is negotiated or competitively bid.

We're talking about millions of dollars, yet staff almost always use the negotiated method rather than competitively bidding method.

This underscores the cozy relationship that staff have with the financial advisor and underwriter. The contracts are already set in stone at the same time the measure is adopted. The method has already been agreed upon.

What's to prohibit financial advisors or underwriters from spiking the interest rates of the issues to above-market rates so that there is a built-in premium that pays for their fees and commissions and leaves something left over for the district. After all, the taxpayers are the ones that are obligated to pay. The parties negotiating both have an interest that conflicts with the taxpayers' interest.

The other side of these above-market issues is that, later, those same underwriters can come back and recommend refunding issues to buy back previous issues and replace them with issues at a lower rate. One party gets a whole new set of fees and commissions. The staff gets to claim it's saving taxpayers money. Negotiated refunding issues yielding premiums set up the prospect of future refunding issues down the road.

Have you seen how many refunding issues have been executed by districts this year alone? Would it

surprise you to learn that nearly every district with a measure on the ballot this year has also sold refunding issues?

Where's the oversight on this kind of manipulative practice? Even the taxpayers are likely a little bit happy until they realize that the lower interest rates now means that there were higher interest rates previously.

XVII. PRE-ADOPTION SURVEYS

The surveys are invariably designed to get a result that the voters favor a measure. This is the third-party corroboration for the sale.

Just as invariably, the surveys contain questions that specifically test arguments of proponents and opponents that are used in preparing materials for the campaign, including the argument and the rebuttal.

The Attorney General agrees that this is the use of district resources for campaign activity and gives an illegal advantage to one faction.

The surveys also test price points for bond authorization amounts and tax rate amounts. As the professor exposed in his winning campaign against Cabrillo's Measure Q, the bond authorization amount has no relation to the actual needs (as opposed to the wants and desires) of the district. It's all about not leaving any money on the table and determining what the market will bear. The tax rate options then determine how far into the future repayment must be made in order to satisfy bonding capacity limits. Most districts don't even bother to do the calculus, they just use the maximum tax rate allowable under Proposition 39 so that they can get the 55% voter approval threshold.

In one recent instance, a governing board member objected to the "research" survey. He wanted a copy of the survey questions and the results. He was told that it would be "unethical" and was denied.

Once again, sunshine is the antidote.

XVIII. PUBLIC RECORDS

With respect to oversight, either pre-adoption or post-election, there is one tactic that the districts use to their exclusive advantage.

At what point does a record become public and subject to a public records request?

As I was told by one open-government lawyer, staff can do anything they wish in total secrecy for as long as they wish.

The industry takes absolute advantage of this. In most cases, nothing is made public until the first time the governing board has the item on its agenda.

In the pre-adoption period, staff hire the firms, negotiate for campaign services, prepare or bring in a campaign committee, all in secret.

In the post-election period, staff arranges and determines the amount and nature of bond issues, qualifies contractors, prepares proposals, negotiates with vendors, again, all outside of public view until suddenly it appears on the governing board's agenda for action.

How can oversight occur when a committee doesn't know what the plan is until it's a done deal?

XIX. THE CALIFORNIA BAR

This problem is not unique to this issue. In many cases, the money interests have captured the legal expertise of the lawyers around the state.

Just try to find a lawyer that knows anything about Proposition 39 or bonds in general who does not work for, or in tandem with, the industry.

Last year, after exhausting a small list of private public interest lawyers, who's expertise was mostly in public meetings or public records, I turned to the local bar association. (I wasn't expecting much.) What I found was a lawyer who knew less than I did, but would be happy to learn for a hefty retainer.

Law schools would seem to be the most likely place to find the kind of idealistic talent that might have an interest in protecting constituents against the excesses of their local governing boards.

The other avenue of course is trying to get the bar to reign in their ethically challenged brethren. When I search the California Bar Association's, Rules of Professional Conduct, it only took me a few minutes to find Rule 3210 - Advising the Violation of Law. [APP. 2]

It's not a coincidence that there isn't a measure in California that's written by a lawyer, that doesn't explicitly replace a list of the specific school facilities projects to be funded with boilerplate that permits everything under the sun.

I have run across one or two measure in this year's batch that appear to be home grown. Even those, however, fail the requirements by including things that are outside the scope of the authorizing constitutional provisions.

It's really so simple that a lawyer shouldn't be needed -- no operating expenses, tell the voters specifically on what authorized projects the money will be spent, do a performance audit, and do a financial audit. It was done that way, however unartfully, at the beginning.

XX. RECOMMENDATIONS

The theme of this testimony is that the districts are no stranger to the strategy of pushing well past legal and ethical lines to see what they can away with it. I don't think it can be any clearer than that. If the same results were seen in any other marketplace or if independent prosecutors were given free reign, prosecutions for fraud and all manner of public misfeasance and malfeasance would likely be commonplace until the practices stopped, which they would, and very quickly. It's just like Bob Dylan observed, "That some people rob you with a fountain pen."

First reactions may immediately conjure up more and more law and regulation. Fighting natural tendencies with regulation, in my view, is a no-win situation. I suggest that if Proposition 39 were to simply be enforced as written, the entire problem would evaporate. The voters would get what that voted for in 2000 and it would be clear enough that even low-information would be able to understand it.

Unfortunately, good intentions, when billions of dollars are on the line every year, don't get one very far.

A significant minority have been denied due process by the secretive process that has grown up around measures.

If any burdens are to be placed, they should be placed at the level closest the people, so long as there is authority to take the action needed.

1. As a first step, place oversight of the language of the measure itself on local county officials. The officials that come to mind immediately, are the elections official, the county treasurer, and the county counsel. Meaningful oversight cannot occur when the measures are written as they are now. The

question and the measure should not be allowed to be written as marketing material. That's for the campaign.

2. Make all documents pertaining to negotiations, agreements, advisory communications, including legal advice (this is not a law suit or a real estate negotiation), public record and available on a web site exclusively for bond communications.

3. Create a quiet period, much like an initial public offering, 10 months before any election at which bonds may be voted on. During that quiet period, the district may not use any district resources to make any outreach to the public except at public meetings where opponents have an equal opportunity to address the public.

4. Remove the appointment process for the oversight committee, the performance auditor, and the financial auditor from the governing board. Perhaps, the county office of education and the county treasurer could make the appointments from nominations received.

5. Provide a multi-level whistle blower and help line of independent advisors who can assist in determining whether the report of waste or misuse of bond revenues has merit.

6. Have court costs and lawyers costs born by the district from the initiation of any legal action, should the district fail to reach an agreement with its opponents.

7. The State Treasurer chooses bond counsel, financial advisors, and underwriters from three pools of pre-approved and pre-qualified firms. By analogy, counties could do the same. Either require the district to choose from the pools, or use a round-robin approach to assign the firms to districts in an impartial manner.

8. Create two more pools at the county level. One for performance auditors and one for financial auditors. Let the county treasurer assign auditors from each pool to expenditure audits for districts within the county on a round-robin basis so long as the performance audit and financial audit are not performed by the same firm in the same year, nor the same audit be performed by the same firm in consecutive years.

9. Require any audit "findings" to be reported to the county treasurer, the COE, and the CBOC at the same time they are reported to staff. Sunlight can't hurt.

10. Prohibit districts from hiring campaign advisors. This should be the sole responsibility of the campaign committee.

11. Create a special prosecutor in the Attorney General's office with the authority to investigate and prosecute complaints about the use of district resources in support of a bond measure.

APPENDIX 1 Proposition 39

California Constitution
Article XIII-A
Section 1.
(b)

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds 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.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

APPENDIX 2 Internet Bibliography

I have included references for major points. I have many more references for just about every fact I state in my testimony. If you find anything of interest not referenced below, an Internet search may yield it, but if requested I'll dig up the reference if you can't find it.

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