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School Bond Proposition Met Proposition 39 Requirements And, Therefore, Only Required 55 Percent Voter Approval Even Though It Did Not Set Forth The Fiscal Accountability Provisions Verbatim To Proposition 39 And Did Not List Minute Detail For Each Planned Project

In *Foothill-De Anza Community College District v. Emerich*, (--- Cal.Rptr.3d ---, 2007 WL 4415362, Cal.App. 6 Dist., Dec. 19, 2007), a California Court of Appeal considered whether a school bond proposition met the requirements of Proposition 39 so that only a 55 percent voter approval was required where the measure did not set forth Proposition 39's fiscal accountability provisions verbatim and did not list in detail the projects to be completed with the bond money. The Court of Appeal held that the bond proposition met Proposition 39's requirements and, therefore, only 55 percent voter approval was required.

Facts

In February 2006, the governing board of the Foothill De Anza College District ("District") passed a resolution calling for a bond election. The measure, called Measure C, sought the issuance of \$490.8 million in general obligation bonds to be repaid by a new ad valorem tax levied on all nonexempt real property within the geographical boundaries of District. After Measure C was approved by 65.69 percent of the voters, District passed resolutions to issue \$300 million in bonds and then filed an action to validate the issuance of the bonds.

Melvin Emerich and Aaron Katz answered District's petition and filed cross-complaints alleging that Measure C did not meet the Proposition 39 requirements to qualify for approval by only 55 percent of the voters. Because the measure had fallen short of a two-thirds vote, Katz and Emerich alleged that Measure C had not been approved by the voters. Katz also alleged that the voting scheme was unconstitutional because it excluded nonresident property owners from voting on Measure C. The trial court entered judgment for District, validated Measure C, and awarded costs to District.

Decision

The Court of Appeal concluded that Measure C met the requirements of Proposition 39, the voting scheme was not unconstitutional, and costs could be taxed against Katz and Emerich.

Generally, under California law, if a local public entity wants to issue a bond that must be repaid by taxes on real property, the measure must be approved by two-thirds of the voters. However, Proposition 39 reduced this approval requirement to only 55 percent where the bonds are issued to pay for certain types of projects by school and community college districts and county offices of education. However, the 55 percent approval requirement only applies if the bond proposition that is submitted to voters meets Proposition 39's accountability requirements. Under Proposition 39, a bond proposition must include the following accountability requirements: (1) The proposition must provide that the proceeds from the sale of the bonds may only be used for specific purposes, (2) the proposition must include a list of the specific school facilities projects to be funded and must also certify that the entity has evaluated safety, class size reduction, and information technology needs when the entity composed the list, and (3) the proposition must include a requirement that the education entity 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 project."

The Measure C ballot provided that that bond proceeds would be used to repair and upgrade Foothill and De Anza Colleges, improve job training and university transfers, upgrade electrical, heating and ventilation systems, upgrade fire and seismic safety, repair leaky roofs, improve access for the disabled, repair/

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expand classrooms for nurses and paramedics, upgrade technology, and repair, construct, and equip classrooms, libraries and other buildings. The voter information pamphlet, which was mailed to all eligible voters prior to the election, also described the projects planned for the colleges. The pamphlet stated, "By law, performance and financial audits will be performed annually, and all bond expenditures will be monitored by an independent citizens' oversight committee to ensure that funds are spent as promised and as specified."

Katz and Emerich first asserted that Measure C failed to satisfy Proposition 39's accountability requirements because it failed to certify that the District had evaluated the safety, information technology needs, and class size reduction in developing the project list. However, the court rejected this argument finding that the proposition clearly states that District had evaluated these areas.

Next, Katz and Emerich claimed that District failed to show that Measure C included a requirement that District would conduct an annual audit. The court found that District's statement that annual performance and financial audits would be performed meets this requirement even though District failed to identify who the auditor will be. The court found that the California Constitution does not require District to identify the auditor.

Katz and Emerich also argued that Measure C does not meet Proposition 39's requirements because it fails to list the specific school facilities projects to be funded since the list of the projects included in the full text ballot merely sets forth different categories of projects. The court rejected this argument, stating that the "list of projects submitted to the voters must be specific enough that the voters know what it is they are voting for and the auditors know how to evaluate the district's performance." It is unnecessary to inform voters about which buildings will receive new doors or which roofs will be replaced or repaired. Requiring such minute detail would be impractical.

The court also concluded that the voting scheme was not unconstitutional because it

limited the vote on Measure C to registered voters residing in the District. It also found that the award of costs to District and against Katz and Emerich by the trial court was not punitive in nature and was not, therefore, prohibited by law.