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October 18, 2021

VIA EMAIL & U.S. MAIL

Melanie Hall, President
Rebecca Neilson, Vice President
Nate Bryson, Board Member
McKay Jensen, Board Member
Jennifer Partridge, Board Member
Teri McCabe, Board Member
Gina Hales, Board Member
The Provo City School District Board of Education
280 W 940 N
Provo, UT 84604

Re: Referendum on Bond by the Municipal Building Authority of the Provo City School District to Build a New Middle School and Remove Dixon Middle School

Dear School Board Members:

This law firm represents the Political Issue Committee, Save Dixon Middle School ("Save Dixon") with respect to the matters that follow. We have been retained by Save Dixon to assist them in challenging the recent action taken by the Provo City School District ("School Board") at its regularly scheduled meeting held on September 14, 2021, wherein the School Board voted 4-3 to move Dixon Middle School ("Dixon") and approved a separate Bond Authority concomitantly voting to issue bonds. We are advised that the School Board has taken the position that any challenge to the issuance of the lease revenue bond authorizing funds for the relocation of Dixon Middle School (the "Bond"), would be controlled exclusively by Utah Code § 17D-2-502 and 601. We further understand the School Board issued a *Notice of Bonds to Be Issued* ("Notice") on September 18, 2021, that purported to specify the only avenue for challenging the bond as, a petition signed by 20% of active voters within 30 days after Notice.

As explained below, Utah Code § 17D-2-502 is neither the controlling nor only avenue by which a voter may challenge the issuance of the Bond by the School Board. In fact, the more common and intended avenue is Utah Code § 20A-7-602, which codifies the Constitutionally granted co-extensive power of the voters to refer and initiate law. Accordingly, Save Dixon properly filed an application for referendum with the Utah County Clerk on September 21, 2021, to bring the Bond to a vote of the people. The Bond, like all legislative action of the School Board, is subject to referendum under Utah Code § 20A-7-602, the process set in place by the legislature to regulate the voters' Constitutional power to refer legislative acts. Save Dixon requests the School Board properly engage in the referendum process along with the voters and the local clerk.

Because the School Board has attempted to obscure the process for referendum, the only meaningful remedy at this juncture would be to enact a voluntary temporary stay of all actions associated with the Bond. This stay will most likely be enacted regardless as provided by § 20A-7-6, as Save Dixon has already begun collecting signatures. If the School Board persists in its current course, Save Dixon may be forced to seek judicial intervention.

Background

On September 14, 2021, the School Board formally voted to remove Dixon Middle School from its current central location to another part of town. This vote was made in the face of strong opposition from the voters. Then on September 18[1], 2021 the School Board issued a Notice "pursuant to the provisions of 17D-2-502 and 17D-2-601 Utah Code Annotated 1953" which purported to begin the period of thirty days afforded a voter challenging the issuance of a bond under § 17D-2-502 and 601. This part of the Utah Code provides that a voter challenging the issuance of a bond may do so by collecting signatures on a petition from 20% of voters in the impacted district within thirty days from the point at which notice is given.

Meanwhile, directly after the School Board's vote to approve the Bond to relocate Dixon and build a new middle school, Save Dixon immediately began the referendum process. The members of Save Dixon were advised by local clerks as to the procedures to begin the referendum process and submitted on September 21, 2021, an application packet to the Utah Country Clerk that complied with the requirements of Utah Code. *See* § 20A-7-602. Once Save Dixon submitted their application packet, preparation of an unbiased, good faith fiscal impact should have promptly begun, and the School Board had twenty days to provide a determination on referability of the subject of the application. *See* § 20A-7-602.5 and § 20A-7-602.7. Save Dixon received neither an impact estimate nor a determination on referability from the School Board within the 20-day time limit. The School Board's failure to provide such a determination within the allotted 20 days precludes any challenge to the referability of their action. *Id.*

Instead of receiving statutorily mandated communications about the status of their referendum, the members of Save Dixon were simply told that their application was under review. They were then later contacted by a representative of the County Elections office and told that § 17D-2-502 and 601 were to be used and were "controlling."

[1] Although the Notice is dated September 14, 2021 it was not made available to the public and therefore not effective until September 18, 2021.

Analysis

The following explains why UCA § 17D-2-502 and 601 is neither the controlling nor exclusive process for referendum and why it cannot be applied in that way because, the School Board is attempting to circumvent and replace the voters' referendum rights.

First, there is nothing in the language of either § 17D-2-502 or § 20A-7-602 to suggest that the paths and procedures created for a voter to challenge a bond measure are mutually exclusive. Nothing in the language of either statute suggests that one controls or invalidates the other. In fact, well-established rules of statutory construction would give meaning to both statutory provisions and seek to harmonize the statutes. *See*, *Croft v. Morgan Cty.*, 2021 UT 46, ¶ 15. The two separate statutes simply provide multiple avenues for the voters to invoke their Constitutional power of referendum.

Nowhere in Utah Code § 17D is there any language indicating that its internal referendum process replaces the statutory scheme created by the legislature for voters to refer local legislative decisions. The two processes do not contradict and there is no language in either statute that supports the conclusion that these separate and distinct statutory pathways could not coexist. There are merely multiple avenues provided for a voter to challenge the issuance of a bond.

Second, §17D-2-502 is not meant to override an entire statutory scheme the legislature provided to invoke a Constitutional power.

Voters in Utah have been given the power to require that laws passed "be submitted to the voters . . . as provided by statute, before the law may take effect." Utah Const. art. VI, § 1. Utah courts have ruled that under Article VI of the Utah Constitution the "people and the legislature hold parallel and coextensive power." *Carter v. Lehi City*, 269 P.3d 141, 149. The statute that has codified the requirements referred to in Article VI is Section 20A and the existence of a much shorter and more onerous process for referring a particular type of law does not supersede that statute or the Constitutional power that requires it more broadly.

Third, issuance of a municipal bond qualifies as referable to the voters. The Utah Supreme Court has held that "an ordinance authorizing the issuance of municipal bonds was legislative and subject to referendum" because a bond was "a matter of public policy of vital importance to the inhabitants of the city." *Id.* at 158. Further, here by failing to issue a determination as to referability in response to Save Dixon's application for referendum, the School Board has already lost the ability to challenge whether the law can be referred. § 20A-7-602.7.

Fourth, even if § 17D-2-502 was the only avenue to challenge the School Board's Bond, which it is not, § 17D restrictions on the referendum process would not withstand a Constitutional challenge. Although it is true that a legislative body may limit the method of a

voter referendum, said limitations must be *reasonable* and not *unduly burdensome*. Both the timeline and the signature requirement laid out in §17D-2-502 are unreasonable and unduly burdensome. A thirty-day timeframe to collect 20% of active voters is, in all practical senses, an elimination of the voters right to referendum.

Conclusion

In sum, the referendum power of the voters cannot be limited by § 17D-2-502 in the manner attempted by the School Board. If anything, this Section simply creates another avenue for the voters to challenge the issuance of a bond. Save Dixon seeks to exercise its Constitutional powers in the manner intended by the legislature.

This letter is meant as an opportunity for the School Board to enact a voluntary stay on all actions relating to the Bond, as the referendum process moves forward. Doing so would save everyone the time and expense of an inevitable legal challenge if the School Board instead persists on its current path. The confusion caused by the School Board's attempt to limit the voters' recourse benefits no one, least of all the citizens that the School Board is mandated to serve.

Ultimately, Save Dixon would like the School Board to voluntarily reconsider the vote to move Dixon Middle School from its historic location. Save Dixon believes this would allow the rebuild to occur without further delays. This would be an act that would be fiscally responsible and help restore the faith of voters that has been shaken by this attempt to circumvent the democratic process. However, if the School Board will not reconsider its position, Save Dixon will move forward with the proper referendum process.

Thank you for your consideration in this matter.

Sincerely,

PARR BROWN GEE & LOVELESS

/s/ *Claire McGuire*
Attorney for Save Dixon Middle School, PIC