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6 Capistrano Unified School District

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 17 2009

ALAN CARLSON, Clerk of the Court

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BY: I. YU

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ORANGE

10 **30-2009**

11	CAPISTRANO UNIFIED SCHOOL DISTRICT,)	Case No.:	00329331
12	Petitioner,)	PETITION FOR WRIT OF MANDATE;	
13	and)	COMPLAINT FOR DECLARATORY RELIEF	
14	ORANGE COUNTY COMMITTEE ON)	JUDGE GREGORY H. LEWIS	
15	SCHOOL DISTRICT ORGANIZATION,)	DEPT. C26	
16	ORANGE COUNTY DEPARTMENT OF)		
17	EDUCATION, ORANGE COUNTY)		
	REGISTRAR OF VOTERS,)		
	Respondents)		

18
19
20 Petitioner alleges:

21 INTRODUCTION

22 1. Petitioner, Capistrano Unified School District, seeks a Writ of Mandate and
23 Declaratory Relief from this Court as to the decision by Defendant, Orange
24 County Committee on School District Organization, calling for a special
25 election on June 8, 2010 to determine whether or not the methodology by

1 which Trustees are elected to the District's Board of Trustees should be
2 changed from election at large to election by district. Petitioner seeks to have
3 the election held on November 2, 2010 pursuant to statute and resolution.

- 4 2. Petitioner contends that Defendant, Orange County Committee on School
5 District Organization (hereinafter "Committee") abused its discretion and
6 exceeded its authority when it called a special election for June 8, 2010 as
7 opposed to ordering the election to be held November 2, 2010, pursuant to
8 statute in accordance with the above referenced resolution.
- 9 3. Petitioner further contends that is was denied its due process rights in that a)
10 there is no mechanism providing for an independent administrative appeal of
11 the Committee's decision, b) that no exigent circumstances exist necessitating
12 the calling of a special election, c) that the Committee failed to take into
13 consideration that fact that Petitioner had already called for a November
14 election by resolution and d) that a special election would cause Petitioner
15 serious and irreparable financial damage.

16
17 THE PARTIES

- 18 4. Petitioner, Capistrano Valley Unified School District, is, and at all times
19 mentioned herein was, a unified school district in the County of Orange, State
20 of California organized and operating pursuant the Education Code of the
21 State of California.
- 22 5. Defendant, Orange County Committee on School District Organization is, and
23 at all times herein mentioned was, an entity organized and operating
24 pursuant to the Education Code of the State of California. Pursuant to Section
25 5020 of the California Education Code, Defendant is charged with reviewing

1 and approving school district boundaries and the methodology by which each
2 district's Board of Trustees is elected.

3 6. Defendant, Orange County Department of Education is, and at all times
4 mentioned herein was, an entity organized and operating pursuant to the
5 Education Code of the State of California. Defendant, Orange County
6 Department of Education has jurisdiction over Defendant, Orange County
7 Committee on School District Organization.

8 7. Defendant, Orange County Registrar of Voters is, and at all times mentioned
9 herein was, responsible for coordinating and managing elections in the
10 County of Orange, State of California. The election the subject of this petition
11 would be managed and overseen by the Orange County Registrar of Voters.

12
13 FACTUAL HISTORY

14 8. On August 10, 2009, Petitioner, at a duly called and noticed meeting, passed
15 Resolution No. 0910-16 calling for an election to determine whether or not
16 the residents of the Capistrano Unified School District desired to change the
17 methodology by which Trustees are elected to the Board of Trustees. A copy
18 of that Resolution is attached hereto as Exhibit A.

19 9. Pursuant to that resolution, as enabled by Section 5020 of the California
20 Education Code, the question of changing methodology was directed to be
21 placed on the ballot for the November 2, 2010 General Election, that election
22 being the next succeeding election for members of the governing board.

23 10. On September 30, 2009, Respondent, Orange County Committee on School
24 District Organization, held a duly authorized and noticed meeting to receive,
25 review and discuss petitions signed by approximately One Thousand Two

1 Hundred (1,200) residents, constituting less than one percent (1%) of
2 approximately Two Hundred Thousand (200,000) voters in the District, asking
3 that an election be held to determine whether or not to change the
4 methodology by which Trustees to the Board of Trustees are elected. In that
5 approximately thirty (30) days earlier, Petitioner, by resolution, had already
6 voted to put the issue on the ballot, the question taken up by the Committee
7 was, and is, moot. Despite the invalidity of the request, the Committee voted
8 to hold an election and determined that the election should be held as a
9 special election on June 8, 2010. A copy of that resolution is attached as
10 Exhibit B.

11 11. Subsequent to the passage of that resolution and an order of election
12 presented to the Orange County Registrar of Voters, Petitioner requested that
13 Respondent, Orange County Committee on School District Organization,
14 reconsider their decision to call a special election on June 8, 2010 as opposed
15 to holding the election, pursuant to statute, in conjunction with the general
16 election to be held November 2, 2010. A copy of that request is attached as
17 Exhibit C.

18 12. Petitioner was forced to make the request for review to the same Committee
19 that improperly ordered the election due to the fact that no appeal process is
20 provided so as to allow for an independent unbiased review of the decisions
21 of the Committee. This lack of any available independent review is, in this
22 matter, exacerbated by the fact that the two principal committee members
23 seeking a special accelerated election are individuals who were recalled by
24 the voters from the very board they now seek to modify via a special election.
25

1 These individuals failed to acknowledge that conflict prior to voting on the
2 matter and failed to recuse themselves prior to the vote.

3 13. On November 18, 2009, Respondent, Orange County Committee on School
4 District Organization, held a hearing to reconsider its decision to order a
5 special election in June as opposed to holding the election in November as
6 part of the general election. After taking public testimony, Respondent went
7 into closed session. Upon emerging from that closed session, the Committee
8 announced that no action was taken on the request to change the date of the
9 election. As such, a conflict exists between the decision by the Committee for
10 a June 2010 election and the resolution by Petitioner for a November 2010
11 election.

12 14. For the reasons stated herein, Petitioner requests that this Court issue a writ
13 of mandate directing Respondent, Orange County Committee on School
14 District Organization and Respondent, Orange County Department of
15 Education, to modify their order of election and direct the Registrar of Voters
16 to hold the election for a determination as to whether or not to change the
17 methodology by which Trustees are elected to the Board of Trustees in
18 conjunction with the November 2, 2010 general election.

19
20 FIRST CAUSE OF ACTION

21 (Writ of Mandate Against All Parties)

22 15. Petitioner restates and realleges each and every allegation in Paragraphs 1
23 thru 15, inclusive, as if fully set forth herein.
24
25

1 16. California Code of Civil Procedure Section 1085 provides that the Court may
2 issue a writ of mandate to compel an entity to perform an act required by
3 regulation or statute. Pursuant to California Code of Civil Procedure Section
4 1094.5(b), the inquiry shall include a determination by the Court as to whether
5 or not the Respondent has proceeded without, or in excess of, jurisdiction and
6 whether there was any prejudicial abuse of discretion. Finally, California Code
7 of Civil Procedure Section 860 allows for the review of any decision made by a
8 public agency.

9 17. As discussed above, Respondent, Orange County Committee on School
10 District Organization, exceeded its authority by calling for a special election
11 on the question of whether the methodology by which Trustees are elected to
12 the Board of Trustees should be changed instead of placing the question on
13 the ballot for the general election to be held on November 2, 2010.

14 18. Respondent, Orange County Committee on School District Organization,
15 exceeded its authority and jurisdiction, abused its discretion and denied
16 Petitioner its due process rights in the following ways:

- 17 a) failing to comply with the mandates of Education Code Section 5020
18 which require that the election regarding changing methodology be
19 held at the next succeeding election for members of the governing
20 board
- 21 b) failing to acknowledge a conflict of interest by two members of
22 Respondent, Orange County Committee on School District
23 Organization as to the question being considered
24
25

- 1 c) failing to adhere to the dictates of the resolution previously passed by
2 Petitioner calling for the question to be put to the voters during the
3 November general election as mandated by the Elections Code
- 4 d) abusing its discretion by issuing an order for a special election that will
5 cost the District approximately Five Hundred Thousand Dollars
6 (\$500,000.00) as opposed to Eight Thousand Five Hundred Dollars
7 (\$8,500.00) if the question were consolidated with the general election
8 in November
- 9 e) abusing its discretion by failing to consider the ancillary costs to
10 Petitioner if the special election held in June, 2010 were to be
11 successful and thus requiring the drawing of district areas which will
12 have to be completely redrawn for the next election pursuant to the
13 issuance of the 2010 census on or about April 1, 2011
- 14 f) failing to state any exigent or extraordinary circumstances justifying a
15 special election as opposed to consolidating the question regarding
16 methodology with other issues on the November 2010 ballot
- 17 g) failing to provide Petitioner its due process rights by failing to have an
18 independent appeals process by which the decision of the Committee
19 could be reviewed in an unbiased manner
- 20 h) subjecting Petitioner to potential liability for violation of both Federal
21 and State voting rights laws by allowing for the possibility that, by
22 having to draw new districts twice within eighteen (18) months, certain
23 voters will be able to vote twice while others will be excluded from
24 voting at all
25

1 19. If the Court does not issue the requested writ of mandate, Petitioner will
2 suffer great and irreparable harm in that it will be forced to spend
3 approximately Five Hundred Thousand Dollars (\$500,000.00) from an already
4 battered and bloodied budget for an election that could be held just as easily,
5 and much more economically and efficiently, a mere five (5) months later.
6 Furthermore, not only will Petitioner potentially be required to draw two
7 different sets of district boundaries with eighteen months, costing the district
8 upwards of One Hundred Thousand Dollars (\$100,000.00) for each set of new
9 boundaries, but given the fact that the boundaries will change between the
10 first and second election, there is the real possibility that, as the boundaries
11 shift, some voters will have the opportunity to vote twice in consecutive
12 elections and some voters will be excluded from voting in successive
13 elections. This situation could potentially result in litigation against Petitioner
14 under State and Federal voting rights legislation.

15 20. The issuance of a writ is indispensable to the enforcement of Petitioner's
16 rights in that Petitioner has no plain, speedy or adequate remedy in the
17 ordinary course of law whereby its rights can be upheld or whereby
18 Respondents, and each of them, can be compelled to comply with the
19 California Elections and Education Codes. If the relief sought by Petitioner is
20 not granted, great and irreparable injury will be caused to Petitioner, the
21 voters of the district and the taxpayers and parents residing in the district.

22
23 SECOND CAUSE OF ACTION

24 (Declaratory Relief Against All Respondents)

1 21. Petitioner repeats and realleges each and every allegation contained in its
2 First Cause of Action as if fully set forth herein.

3 22. As discussed above, a dispute has arisen between the parties as to their
4 respective rights and obligations.

5 23. It is necessary for the Court to determine the rights and obligations of the
6 parties as they pertain to the authority and ability of each of the parties to
7 establish and/or call for an election, what the appropriate methodology is for
8 determining when an election should be held and what are the appropriate
9 rights and remedies available to the parties in appealing such a decision.

10 24. Without such a determination, Petitioner will suffer great and irreparable
11 damage.

12
13 WHEREFORE, Petitioner, Capistrano Unified School District, prays judgment as
14 follows:

15
16 FIRST CAUSE OF ACTION

17 1. That the Court issue a Peremptory Writ of Mandate compelling Respondents to
18 hold the election on the question of whether the methodology by which Trustees are
19 elected to the Board of Trustees should be modified on November 2, 2010 as opposed
20 to June 8, 2010;

21 SECOND CAUSE OF ACTION

22 2. That the Court make a determination as to the rights and obligations of the
23 parties as to who has the authority to call an election, what is the appropriate
24 methodology for determining when an election should be held and what are the
25

1 appropriate rights and remedies available to the parties in appealing such a
2 determination;

3 3. That the Court make a determination that Respondents, and each of them,
4 abused their discretion in ordering a special election for June, 2010 as opposed to
5 ordering it for November 2010;

6 4. That the Court order the Registrar of Voters to hold the election to consider
7 the question on November 2, 2010 in conjunction with the General Election;

8 ALL CAUSES OF ACTION

9 4. That costs of suit be awarded to Petitioner

10 5. For such further and other relief as the Court deems just and proper

11
12 Dated this 17th day of December, 2009

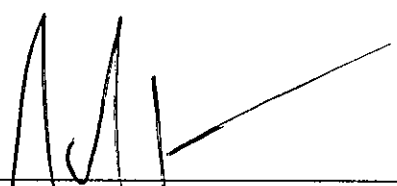
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15 _____
16 Phillip B Greer
17 Attorney for Petitioner
18 Capistrano Unified School District
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Exhibit A

RESOLUTION NO. 0910-16

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
CAPISTRANO UNIFIED SCHOOL DISTRICT RECOMMENDING THAT THE
ORANGE COUNTY COMMITTEE ON SCHOOL DISTRICT ORGANIZATION
APPROVE A TRANSITION TO A "BY TRUSTEE" AREA ELECTION PROCESS
FOR THE NOVEMBER 2012 GENERAL BOARD MEMBER ELECTION**

WHEREAS, the Capistrano Unified School District ("District") currently uses an "at large" system of electing its governing board members from trustee areas within the District; and

WHEREAS, the expense borne by candidates for governing board member positions in running for office on an at-large basis is significant and may preclude the meaningful participation of many would-be candidates with fewer financial resources; and

WHEREAS, at-large electoral systems such as the District's are subject to challenge under the California Voting Rights Act of 2001, codified at Sections 14025-14032 of the California Elections Code ("CVRA"); and

WHEREAS, "by trustee" area electoral systems are not vulnerable to challenge under the CVRA; and

WHEREAS, in a by trustee area system of election, candidates for the District's governing board (the "Board") must reside within a specific geographic subarea of the District called a "trustee area" and candidates are elected only by the voters of that trustee area; and

WHEREAS, one method of transitioning from an at large electoral system to a by trustee area electoral system is for a school district to propose such a change by the adoption of a resolution pursuant to California Education Code Section 5019(c)(1) (the "District Proposal"); and

WHEREAS, following receipt of the District Proposal by the Orange County Committee on School District Organization ("Committee"), the Committee must hold a public hearing within the District's boundaries and after such hearing, must approve or disapprove the District Proposal by resolution; and

WHEREAS, the Committee's approval of the District's Proposal constitutes an order of election under Education Code Section 5020(a), whereby the District's electors, no later than the District's next succeeding election, must vote on whether or not to approve the District Proposal; and

WHEREAS, the District's next succeeding election is scheduled to occur in November of 2010; and

WHEREAS, the cost to the District for including the District Proposal on the November 2010 ballot is estimated by the Registrar of Voters to be approximately \$8,500; and

WHEREAS, the cost to the District for including the District Proposal in an earlier special election is estimated to be as high as \$496,000; and

WHEREAS, given that District has not been immune to the financial challenges faced by school districts in California at this time, District has a strong preference for conducting an election on the District Proposal at the November 2010 election, rather than at an earlier special election; and

WHEREAS, transitioning to a by trustee area electoral process without modifying the existing trustee areas could subject the District to liability under the CVRA and Federal Voting Rights Act; and

WHEREAS, Education Code Section 5019.5 requires that districts that have adopted a by trustee area electoral process update the specific trustee area boundaries following every decennial census; and

WHEREAS, the next decennial census will occur in 2010, with results released in 2011; and

WHEREAS, the District can transition to a by trustee area electoral process utilizing the 2010 census data in time for the November 2012 District governing board member election; and

WHEREAS, the Board finds it to be in the best interests of the District to transition to a by trustee area electoral system after the existing trustee areas are modified following the 2010 census and prior to the November 2012 election.

NOW THEREFORE, be it resolved by the Board of Education of the Capistrano Unified School District as follows:

1. That the above recitals are true and correct.
2. That the Board by this resolution proposes that the County Committee at its next meeting approve the District Proposal which is as follows:

That the current election method utilized by the District for the election of its governing board members be changed from a "from trustee area" process whereby candidates for the District's governing board must reside within a specific trustee area but are voted upon "at large" by all of the voters of the District, to a "by trustee area" process where candidates for the District's governing board must reside within a specific trustee area and are voted upon only by the voters that reside in the same trustee area.

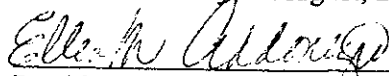
That the District's proposed transition to a by trustee area election method be voted upon by all of the District's voters at the next general election scheduled to occur in November of 2010.

That should the District's proposed transition to a by trustee area election method by approved by the voters at the November 2010 general election, the District revise

its existing trustee areas utilizing census data from the 2010 decennial census and conduct the first governing board member election utilizing the by trustee area election method for the revised trustee areas at the November 2012 general election.

3. That the Superintendent and/or her designees take all actions necessary to notify the County Committee of the Board's determination forthwith and provide whatever assistance may be required by the County Committee to complete the process.

ADOPTED, SIGNED AND APPROVED this 10th day of August, 2009.



President of the Governing Board for the
Capistrano Unified School District

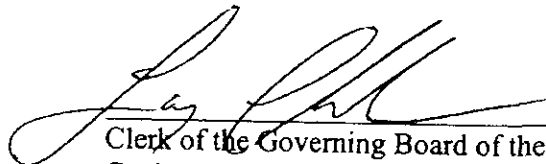
I, Larry Christensen, Clerk of the Governing Board of the Capistrano Unified School District, do hereby certify that the foregoing Resolution was adopted by the Governing Board of said District at a meeting of said Board held on the 10th day of August, 2009, and that it was so adopted by the following vote:

AYES: 5

NOES: 2

ABSTAIN:

ABSENT:



Clerk of the Governing Board of the
Capistrano Unified School District

Exhibit B

1 RESOLUTION ADOPTING THE PROPOSAL TO CHANGE
2 THE METHOD OF ELECTING GOVERNING BOARD MEMBERS FOR THE
3 CAPISTRANO UNIFIED SCHOOL DISTRICT AND ORDER OF ELECTION

4 WHEREAS, on July 1, 2009 the Orange County Committee on School District
5 Organization received a citizens' petition to change the method of elections from the
6 "from trustee area" to the "by trustee area" method.

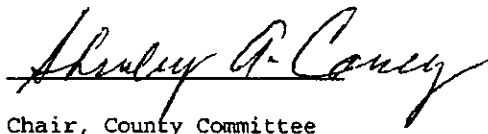
7 WHEREAS, on July 20, 2009, the required number of signatures on the citizens'
8 petition were validated by the Orange County Registrar of Voters, and

9 WHEREAS, on August 10, 2009 the Capistrano Unified Board of Trustees adopted a
10 resolution requesting the Orange County Committee on School District Organization to
11 change the method of elections from the "from trustee area method" to the "by trustee
12 area" method, and

13 WHEREAS, in accordance with Education Code Section 5019, the County Committee
14 on School District Organization held a public hearing on September 30, 2009, within
15 the Capistrano Unified School District, heard public comments on the proposal and
16 having considered the proposal;

17 NOW, THEREFORE, BE IT RESOLVED, that the above recitals are true and correct
18 and that the Orange County Committee on School District Organization hereby approves
19 the proposal to change the method of elections in the Capistrano Unified School
20 District from the "from trustee area" method to the "by trustee area" method, and
21 orders the election on the proposal to be held on June 8, 2010.

22 ADOPTED, SIGNED AND APPROVED THIS 30th DAY OF SEPTEMBER 2009.
23
24
25

26 
27 Chair, County Committee
28

1 I, Wendy Benkert, Secretary to the Committee on School District Organization of
2 Orange County, California, hereby certify that the above and foregoing Resolution was
3 duly and regularly adopted by said Committee at a special meeting thereof held on the
4 30th day of September, 2009, by the following vote:

5 AYES: MEMBERS Sheila Benecke, Shirley Carey, Mary Fuhrman, Shelia Henness, Dean
6 McCormick, Jo-Ann Purcell, James Reed, Virginia Wilson

7 NOES: MEMBERS Karin Freeman

8 ABSTAIN: None

9 ABSENT: MEMBERS Carolyn McInerney, Robert Singer

10 IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September,
11 2009.

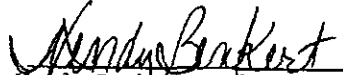
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13 
14 Wendy Benkert, Ed.D.
15 Secretary to the Committee
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Exhibit C

PHILLIP BARRY GREER
ATTORNEY AT LAW

Suite B9-531
1280 Bison Road
Newport Beach, California

(949) 640-8911 (phone)
(949) 759-7687 (fax)
philbar@adl.com

October 30, 2009

Ms. Shirley Carey
President
Orange County Committee on School District Organization
200 Kalmus Drive
Costa Mesa, California
92628

Re: Capistrano Unified School District
Trustee Election

Dear Ms. Carey:

This office has been retained to represent the Capistrano Unified School District in regard to your Committee's proposed election to modify the manner in which Trustees of the District are elected.

I am in receipt of a copy of the Committee's September 30, 2009 decision to place the question of whether or not to modify the methodology by which Trustees are elected on the June 8, 2010 ballot. For the reasons articulated below, it is respectfully requested that you immediately call a special meeting of the Committee for the purpose of reconsidering your decision and resetting the ballot question for the November 2, 2010 election. Such a reconsideration and resetting would conform with the Capistrano Unified School District Resolution No. 0910-16, which established the date of the election as November 2, 2010.

S. Carey
Re: Capistrano Unified School District
October 30, 2009
Page Two

While California Education Code Section 5019 et seq provides the Committee with the opportunity to call an election, it is our opinion that the Committee, in establishing the June 8, 2010 date, exceeded its authority, abused its discretion and denied the District its Constitutionally protected due process rights. As such, in reviewing the District's request, we believe that the Committee should consider the following issues and concerns.

First, the September 30, 2009 decision could potentially expose CUSD, CCSDO and the County of Orange to civil liability. Specifically, there exists a potential violation of the 14th Amendment to the United States Constitution and the California Voting Rights Act.

Second, the involvement of Sheila Benecke and Sheila Hennes in the decision raises the specter of a perceived, if not actual, conflict of interest. Ms. Benecke and Ms. Hennes, the two individuals leading the charge for the proposed change are both former CUSD Trustees who were removed from office by the electorate. In fact, Ms. Benecke was recalled by the voters in the district. The fact that they not only voted for the proposed change, but actually moved and seconded the item, raises serious concerns as to the underlying motivation for the entire process.

Third, a June 8, 2010 special election would impose an undue financial burden on the District. There does not appear to be any legitimate purpose for calling a special election as opposed to allowing the process to proceed on its natural course. California Education Code Section 5020(a) provides that any proposed change in election methodology should be submitted to the voters no later than the next succeeding election for members of the governing board. The next regular election is scheduled for November 2010.

A special election prior to the November 2010 election would, according to the Orange County Registrar of Voters, subject the District to significant costs, estimated to be in the neighborhood of One Half Million Dollars. Conversely, putting the proposed change on the November 2, 2010 ballot would result in nominal costs to the District.

S. Carey
Re: Capistrano Unified School District
October 30, 2009
Page Three

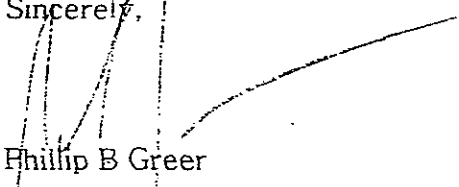
Considering the current economic crisis facing our schools, to require the District to spend almost a half million dollars on an election, when that money could be better spent on vital school programs, would seem to be a foolish use of scarce resources. Given the tremendous cost to the District and the lack of any exigent circumstances necessitating a special election, it would appear to be in the best interests of the students, parents, teachers and community to reset this election for November.

Finally, we believe that holding a special election on June 8, 2010 could possibly create a result in conflict with both Education Code Section 5019(d) and Elections Code Sections 15372 and 10603). Furthermore, with the April 1, 2011 release of census data, any districts hastily drawn to comply with a June 8, 2010 special election will have to be redrawn to comply with the newly released census data, creating yet another significant cost for the District.

It is the desire and intent of the Capistrano Unified School District to work with the Committee to facilitate an election so that all voices can be heard and all points of view reasonably and rationally considered. However, to rush an election and, as such, burden an already cash strapped school district with close to a half million dollars in unnecessary costs does not serve the students, the parents or the teachers of the district.

It is therefore respectfully requested that you immediately call a special meeting of the Committee for the purpose of modifying your decision and resetting the election for November 2, 2010. Please be advised that if we do not have a response from you within ten (10) days, this office has been instructed to take any and all action necessary to protect the interests of the students, parents and taxpayers of the district.

Sincerely,



Phillip B Greer