COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

SEAN PATRICK MONETTE-SHAW, Petitioner, vs. SAN FRANCISCO BOARD OF SUPERVISORS, the Board of Supervisors of the City and County of San Francisco; GAVIN NEWSOM, Mayor of the City and County of San Francisco; CITY AND COUNTY OF SAN FRANCISCO, a city and county of the State of California; SAN FRANCISCO HEALTH COMMISSION, a board of the City and County of San Francisco; and EDWARD HARRINGTON, Controller of the City and County of San Francisco, Respondents.	Case No. A110378 (San Francisco Superior Court No. CPF 04-504777)

RESPONDENTS' BRIEF

The Honorable James L. Warren, Presiding

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INTRODUCTION

In June 1999, after the settlement of San Francisco's landmark litigation against the tobacco industry, the City's Board of Supervisors adopted an ordinance calling a special election for a bond measure to secure financing for a new Laguna Honda Hospital. The bond measure proposed that the City build "a new health care facility, assisted living and/or other type of continuing care facility or facilities." In November 1999, the voters agreed with the Board's proposal and adopted the measure, known as Proposition A.

Those events undermine petitioner Monette-Shaw's claims. Under California law, a city's obligations arising from a bond measure are limited to those set forth in the so-called "bond contract," which consists of the ordinance calling the special election and the ballot question accepted by the voters. (*Tooker v. San Francisco Bay Area Rapid Transit Dist.* (1972) 22 Cal.App.3d 643, 649.) Monette-Shaw ignores this settled rule, and seeks to re-write Proposition A's express language to include new terms and obligations that were neither proposed by the Board nor approved by the voters. The Superior Court correctly denied Monette-Shaw's petition for writ of mandamus. Indeed, because San Francisco was, and is, complying with the express terms of Proposition A, the Superior Court was compelled to deny Monette-Shaw's petition.

Monette-Shaw's challenge to San Francisco's implementation of Proposition A boils down to two questions. First, does Proposition A, which makes no mention of the size or type of "facility or facilities" to be constructed, require San Francisco to build a 1200-bed hospital that meets the statutory criteria for a "skilled nursing facility"? And second, does Proposition A – contrary to its express terms – nonetheless require San Francisco to allocate all

funds that the City ever received from the settlement of the tobacco litigation to the Laguna Honda Hospital project ("the Project")? As the trial court correctly determined, the answer to both questions is no.

Monette-Shaw's first claim fails because the Board chose to describe the proposed Project in broad and general language, and the voters agreed to the Project as proposed. The ordinance placing Proposition A on the ballot described the Project only as the "construction and/or reconstruction" of a "new health care facility, assisted living and/or other type of continuing care facility or facilities." The voters approved this broad description. Nothing in Proposition A dictates the size of the facility San Francisco must build. Nor does anything in the measure compel the City to construct a skilled nursing facility, rather than some other type of care facility.

Monette-Shaw's second claim fails because it is contrary to Proposition A's plain language. In proposing Proposition A to the voters, the Board only obligated San Francisco to spend "available tobacco settlement revenues" on the Laguna Honda Hospital project. And the Board specifically defined the term "available tobacco settlement revenues" to mean only those settlement proceeds that the City receives "*over the term of any lease financing, bonded debt and/or other evidence of indebtedness authorized [by Proposition A*]" – in other words, when such bonds or other evidence of indebtedness already have been issued and are still outstanding. The voters agreed, accepting this definition.

As a result, rather than mandating that San Francisco use all proceeds from the tobacco lawsuit settlement, whenever received, for the Project, the voters agreed to limit San Francisco's obligation to only those funds that the City receives when Proposition A bonds have already been issued and are still outstanding. Thus, Proposition A does not require the City to spend on the

Project any tobacco settlement funds it received before the term of indebtedness authorized by Proposition A had even begun.

While Monette-Shaw may disapprove of the proposal that the Board made and the voters accepted, this Court may not rewrite Proposition A to suit Monette-Shaw's preferences. The judgment should be affirmed.

STATEMENT OF FACTS

I. PROPOSITION A – THE 1999 BOND MEASURE

In June 1999, the Board adopted Ordinance No. 180-99, calling a special election for November 1999, and placing on the ballot a measure for the construction of a new Laguna Honda Hospital. (Appellant's Appendix ("AA") 113 – 121.)

In that measure, later denominated Proposition A, the Board did not specify the particular size or type of new facility that the City would build. Instead, the Board broadly defined the proposed construction project

> to include, without limitation, all works, property and structures necessary or convenient for the acquisition, improvement, construction and/or reconstruction of *a new health care, assisted living and/or other type of continuing care facility or facilities* to replace Laguna Honda Hospital, including, without limitation, infrastructure or other improvements in the areas appurtenant to, or which provide access to, such new facility or facilities.

(AA 114 – 115 [emphasis added].)

The Board also specified that the ballot question for Proposition A – that is, the question that would appear on the voters' ballots – would be worded in similarly broad fashion. Ordinance No. 180-99 stipulated that the ballot question should state as follows:

> LAGUNA HONDA HOSPITAL, 1999. Shall the City and County of San Francisco incur bonded debt and/or other evidences of indebtedness and/or undertake lease financing, in an aggregate principal not to exceed $299,000,000, for the acquisition, improvement, construction and/or reconstruction of a new health care facility, assisted living and/or other type of continuing care facility or facilities to replace Laguna Honda Hospital and reduce the property tax impact by requiring the

> application of available tobacco settlement revenues received by the City and County, and any state and/or federal grants or funds received by the City and County that are to be used to fund these facilities, (a) to finance the acquisition, improvement, construction and/or reconstruction costs of such facilities, and (b) to pay the principal and redemption price of, interest on, reserve fund deposits, if any, and/or financing costs for the obligations authorized hereby?

(AA 116 – 117.)

In Ordinance No. 180-99, the Board explicitly defined "available tobacco settlement revenues" as the proceeds from the tobacco lawsuit settlement that San Francisco receives while any Proposition A bonds already have been issued, but have not yet been paid off. The Board defined "available tobacco settlement revenues" to mean

> the total payments the City and County receives under the 1998 Master Settlement Agreement (the "Agreement") *over the term of any lease financing, bonded debt and/or other evidences of indebtedness authorized hereby* that the City and County may use for the Project under applicable law, less $1,000,000 of the amount the City and County receives each year under the Agreements *during the term of any obligation authorized hereby*, which amount the City and County will use for tobacco education, prevention, and control purposes.

(AA 114 [emphasis added].)

The Board also required that San Francisco allocate $100,000,000 in "available tobacco settlement revenues" – that is, in proceeds from the tobacco litigation settlement that San Francisco receives while any Proposition A bonds already have been issued, but have not been paid off – toward the Project. Section 3 of Ordinance No. 180-99 provided that

> the first $100,000,000 *of available tobacco settlement revenues* and/or any state or federal funds or grants received by the City and County that are required to be used to fund the Project shall first be applied to finance the costs of acquisition, construction and/or reconstruction of the Project. Any additional amounts from such sources received by the City and County shall be applied to reduce the amount of the outstanding obligations authorized hereby.

(AA 115 [emphasis added].)

The bond measure appeared as Proposition A on the November 1999 ballot. (AA 124 – 148.) It received an affirmative vote of 73.2%, more than the 2/3 margin needed to pass. (AA 150 – 156.)

II. THE PROJECT

After Proposition A passed in 1999, San Francisco started the planning and design process for the Project. (AA 84.) The City established a $401,600,000 budget for the Project. (*Ibid.*) The budget includes the following categories: Construction ($311,000,000); Professional Services ($75,000,000); and Assisted Living ($15,000,000). (*Ibid.*) San Francisco intends to finance the Project from the following sources: bond proceeds ($299,000,000); bond interest ($2,600,000); and tobacco lawsuit settlement funds ($100,000,000). (*Ibid.*)

The Project consists of constructing three new buildings for Laguna Honda residents and a fourth new building that will house a rehabilitation facility; remodeling portions of the existing Laguna Honda Hospital; and demolishing other portions of the existing facility. (AA 85.) In the summer of 2000, San Francisco selected an architectural firm to design the new facilities. (*Ibid.*) The architects completed the design components of the Project in December 2002. (*Ibid.*) In December 2002, San Francisco submitted its construction documents to the Office of Statewide Health Planning and Development and the San Francisco Department of Building Inspection. (*Ibid.*)

As of March 2005, the City had constructed a new road into the hospital complex, had relocated utilities, and had began preparing the footprints for three of the four new buildings. (*Ibid.*)

III. TOBACCO SETTLEMENT FUNDS

While the City was at work on the Project, it was also receiving unexpectedly bountiful revenues from the tobacco lawsuit settlement. By

2003, it was clear that San Francisco already had received, and would continue to receive, significantly more money from that settlement than the City had expected when the voters adopted Proposition A four years earlier. (*Ibid.*) In June of 2003, San Francisco projected that the City would receive $820,208,050 in settlement proceeds over the next 37 years – which was $237,993,333, or 40.9%, greater than the original 1999 projection of $582,214,717. (*Ibid.*) In 2003, San Francisco also projected that the settlement funds it would receive over 25 years would exceed the initial 1999 projection of $347,345,002 by $137,549,722, or 39.6%. (*Ibid.*) San Francisco also projected that through June of 2003, plus interest earnings in fiscal year 2003-2004, it would receive $87,209,086 in settlement funds, which was $25,005,645 or 40.2% greater than the 1999 projection of $62,203,441. (*Ibid.*)

IV. THE TRANSFER OF $25 MILLION

In fiscal year 2003-2004, San Francisco faced an unprecedented budget deficit. (AA 81.) As part of its response to this crisis, San Francisco transferred $25,005,645 in tobacco settlement funds – the amount of such funds that San Francisco had received in excess of its 1999 projection – to the General Fund, to cover Department of Public Health costs. (AA 163 – 167.)

In making the transfer, San Francisco acknowledged that it had not yet issued any bonds under Proposition A. The Board also expressly guaranteed that at least $100,000,000 of tobacco funds would be used to finance the Project's direct costs, as mandated by Proposition A. Ordinance No. 191-03, the legislation which approved the transfer, states:

> From amounts received by the City under the Agreement and deposited into the Tobacco Settlement Sub-account *prior to the issuance of the Bonds*, for transfer in fiscal year 2003-2004 to the General Fund for payment of certain costs of the Department of Public Health, provided that the amount so transferred shall not exceed $25,005,644.60;

> If and when the Director of Public Finance certifies that (i) the City has not received Tobacco Settlement Revenues in amounts sufficient to contribute $100,000,000 to finance the Project and (ii) the Project requires a payment equal to the difference between $100,000,000 and the amount of Tobacco Settlement Revenues actually expended to finance the Project (the "Shortfall") to achieve completion, then the City shall transfer from the General Fund an amount equal to the lessor of the Shortfall or $25,005,644.60.

(AA 164 – 165 [emphasis added].)

V. THE ORDINANCE AUTHORIZING NEGOTIATION OF CONTRACTS

In March 2004, San Francisco began advertising for bids for the major construction of the Project. (AA 85.) In October 2004, the City received bids, all of which exceeded the Project's budget by 25-30%. (*Ibid.*) Because the bids were significantly more expensive than the City's original estimates, the City sought to achieve cost savings to bring the Project within its construction budget, without reducing the Project's size. To that end, the Board passed Ordinance 252-04, which waived the applicable requirements of Administrative Code section 6.20(A), a local law that ordinarily requires contracts to be awarded to the lowest competitive bidder.[1] (AA 211 – 214.) By waiving Administrative Code section 6.20(A), the Board hoped that San Francisco could negotiate with bidders on trade packages to achieve the following benefits:

- Provide an incentive for bidders to suggest cost savings.
- Create the opportunity for cost savings to the [Project].
- Demonstrate savings by comparing results of the negotiations with the baseline bids.

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[1] A true and correct copy of San Francisco Administrative Code section 6.20(A) is included as Exhibit 1 to Respondents' Request for Judicial Notice.

- Allow for an efficient and cost competitive adjustment of the scope to match the budget.
- Mitigate the risk of change orders after contracts were awarded.[2]

Under the authority of Ordinance 252-04, San Francisco re-bid all of the October 2004 bids. (AA 86.) As of March 2005, San Francisco had received 25 re-bid packages. (*Ibid.*) The re-bidding process yielded a little more than $2 million in construction savings. (*Ibid.*) San Francisco continued to negotiate subsequent bids in hopes of achieving further cost savings without reducing the size of the Project. (*Ibid.*)

VI. THE SUPERIOR COURT PROCEEDINGS

On November 23, 2004, Monette-Shaw filed a Verified Petition for Writ of Mandamus in San Francisco Superior Court. He claimed that Proposition A required San Francisco to construct a skilled nursing facility for 1,200 patients and "to replace $25 million in construction funds" for the Project. (AA 30 – 50.)[3]

On March 15, 2005, Superior Court Judge James L. Warren heard oral argument on Monette-Shaw's Petition. (Reporter's Transcript (RT) 1 – 17.)

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[2] The Board's intent in adopting Ordinance 252-04 is evidenced by the analysis of that legislation that was prepared by the Board of Supervisor's Budget Analyst during the legislative process. A true and correct copy of that analysis is included as Exhibit 2 to Respondents' Request for Judicial Notice.

[3] A "skilled nursing facility" is one of many classifications of health facility established under California law. (Health & Safety Code §1250(c) [defining "skilled nursing facility" as "a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis"].)

On April 4, 2005, the Superior Court entered its order denying petitioner's motion for writ of mandate. (AA 4 – 6.) In the order, the trial court rejected both of Monette-Shaw's claims, and made the following two rulings:

> a. The Proposition A "bond contract" defined "*available tobacco settlement revenues*" as tobacco settlement proceeds that the City receives "over the term of any lease financing, bonded debt and/or other evidence of indebtedness authorized [by Proposition A]." At the time the City transferred the $25,005,645 in tobacco settlement proceeds to the General Fund, the City had not issued any general obligation bonds authorized under the Proposition A "bond contract." Therefore, transfer of $25,005,645 in tobacco settlement proceeds to the General Fund did not violate the Proposition A "bond contract."
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> b. The Proposition A "bond contract" described the Laguna Honda Hospital construction project as the "construction and/or reconstruction" of a "new health care facility, assisted living and/or other type of continuing care facility or facilities." Nothing in the Proposition A "bond contract" limits the type of facility the City must construct to a "long term care facility." Moreover, nothing in the Proposition A "bond contract" requires the City to construct a facility of a specific size.

(AA 5 [emphasis original].)

On April 4, 2005, the trial court entered judgment in favor of all respondents. (AA 2, 3.) On May 3, 2005, Monette-Shaw filed his Notice of Appeal from the Superior Court's order and judgment. (AA 20, 21.)

LEGAL ARGUMENT

I. STANDARD OF REVIEW

This appeal turns on the interpretation of Proposition A, a voter-approved bond measure. "In reviewing a trial court's judgment on a petition for writ of ordinary mandate, the appellate court applies the substantial evidence test to the trial court's factual findings, but exercises its

independent judgment on legal issues, such as interpretations of statutes." (*Abbate v. County of Santa Clara* (2001) 91 Cal.App.4th 1231, 1239.)

II. UNDER SETTLED PRINCIPLES OF BOND LAW, THE CITY'S OBLIGATIONS TURN ON THE ORDINANCE THAT PLACED PROPOSITION A ON THE BALLOT AND THE QUESTION THAT WAS SUBMITTED TO THE VOTERS

According to Monette-Shaw, Proposition A requires San Francisco to construct a 1,200-bed skilled nursing facility, and requires that all funds San Francisco receives *at any time* from the settlement of the tobacco litigation must be used toward the Project. Monette-Shaw's arguments fail because they ignore basic rules of bond law.

A. The Elements Of The Bond Contract

California courts have described the relationship between a public entity and the voters arising out of a bond election as either a contractual relationship (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348) or "analogous to a contract" (*Tooker, supra,* 22 Cal.App.3d at p. 649).[4] "[C]ourts have been consistent in defining the elements which comprise" the bond contract. (*Associated Students of North Peralta Community College v. Board of Trustees of the Peralta Community College Dist.* (1979) 92 Cal.App.3d 672, 677.) There are four elements to a bond contract: (1) "the statute authorizing the creation of the bonded indebtedness [which] is presumptively within the knowledge of each elector," (2) "the resolution by which the bonding entity resolves to submit the issue to the [] electors," (3) "the ballot proposition submitted to the voters," and (4) "assent or ratification by the electors" of the ballot proposition.[5] (*Id.* at

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[4] San Francisco uses the term "bond contract" for convenience, not to suggest that Proposition A created an actual "contract" in the ordinary legal sense.

[5] The first element ("the statute authorizing the creation of the bonded indebtedness [which] is presumptively within the knowledge of (continued on next page)

pp. 677-78 [citations omitted]; *see also Tooker, supra,* 22 Cal.App.3d at p. 649; *East Bay Municipal Utility Dist. v. Sindelar* (1971) 16 Cal.App.3d 910, 918.)

A legislative body is only bound by the express terms that it chooses to place in the documents that make up the bond contract. As the California Supreme Court has held, "the rule is that public bodies may submit bond propositions in broad and general terms. Such a body may make its order of submission 'just as broad, and just as narrow[,]' or just as specific as it is willing to be bound by." (*Sacramento Mun. Util. Dist. v. All Parties and Persons* (1936) 6 Cal. 197, 202 [citing *O'Farrell, supra,* 189 Cal.3d at p. 347].) "[W]hen the authority, having the power and responsibility of proposing the bond issue, has not confined it to an absolutely definite and inflexible plan of construction and expenditure by the proposal submitting the bond issue, and has proceeded free from fraud and in good faith," a court cannot read or imply into the bond contract any limitations or terms that are not expressly stated in the bond proposal. (*Sacramento-Yolo Port Dist. v. Rodda* (1949) 90 Cal.App.2d 837, 840; *see also East Bay Municipal Utility Dist. v. Sindelar*, *supra*, 16 Cal.App.3d at p. 919; *Mills v. San Francisco Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668-69.)

Relying on these fundamental rules of bond law, the courts have consistently rejected litigants' efforts to expand governmental obligations arising from bond measures. For example, in *Associated Students of North Peralta Community College, supra,* this Court held that a community college district was not required to use the proceeds of a bond issue to build and

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(footnote continued from previous page)
each elector") and the fourth element ("assent or ratification by the electors" of the ballot proposition) are not at issue in this appeal.

maintain four campuses. (*Id.*, 92 Cal.App.3d at p. 681.) Even though, as this Court conceded, "all interested parties fully expected that four campuses would be built," and even though a pre-election campaign created "considerable publicity which indicated in part an intention to build four campuses," this Court affirmed the denial of a writ of mandate because none of the documents comprising the bond contract – that is, neither "the resolution, the ballot proposition, or the governing statutes" – expressly *promised* that a fourth campus would be built. (*Id.* at pp. 674, 675, 680.)

Similarly, in *Tooker, supra,* this Court held that the Bay Area Rapid Transit District was not required to construct a subway tunnel from West Portal to St. Francis Woods in San Francisco, because the bond contract did not expressly impose any such requirement. As this Court explained:

> [W]e note that nowhere in the Act, or in the BART's resolution calling for the bond election and stating the object and purpose of incurring the bonded indebtedness, or in the specific proposals placed before the district's voters on voting machines and paper ballots, is there any statement of indication that the intended plans embraced a West Portal subway, or indeed any specific subway location anywhere in the system. Instead *general language was used; details of whether any, and which, parts of the proposed system would be elevated, or on the surface, or underground, were nowhere stated.*

(*Id.,* 22 Cal.App.3d at pp. 649-50 [emphasis added].)

Likewise, in *Mills v. San Francisco Bay Area Rapid Transit Dist., supra*, the plaintiff claimed that BART was required to build a rapid transit station at the particular location described in an official report that had been prepared for BART before the bond election, and that was specifically referred to in the resolution calling the election. This Court rejected the claim, because it was contradicted by the few documents making up the bond contract: "neither the ballot proposition nor the notice of election

specified the location of any station, nor even required a station in or adjoining Lafayette." (*Id.*, 261 Cal.App.2d at p. 669.) As the Court held, neither the pre-election report, nor any "statements 'disseminated to the general public' before the election," could "be deemed to modify the intentionally broad language of the proposition in fact submitted to the voters [or] the call of election published to them[.]" (*Id.*)

B. Requirements of Proposition A

The Proposition A "bond contract" only requires San Francisco to perform those obligations that are expressly stated in the ordinance that placed Proposition A on the ballot and in the ballot question approved by the voters. By their plain language, these controlling documents do not obligate San Francisco to use toward the Project any tobacco settlement funds that it received before the term of indebtedness authorized by Proposition A had begun. Nor do these controlling documents tie San Francisco's hands with regard to the type or size of "facility or facilities" it must construct.

Under the terms of Proposition A, as proposed by the Board and approved by the voters, San Francisco was authorized or required to do the following four things:

- incur bonded debt in an aggregate principal not to exceed $299,000,000;
- construct a new health care facility, assisted living and/or other type of continuing care facility or facilities as the new Laguna Honda Hospital;
- use the first $100,000,000 of "*available tobacco settlement revenues*" for the Project, less $1,000,000 used for tobacco education, prevention, and control purposes; and

- use additional "*available tobacco settlement revenues*" to pay off Proposition A bonds.

III. THE TRIAL COURT CORRECTLY DETERMINED THAT PROPOSITION A DOES NOT REQUIRE SAN FRANCISCO TO CONSTRUCT A 1,200-BED SKILLED NURSING FACILITY

Monette-Shaw claims that Proposition A requires San Francisco construct a 1200-bed skilled nursing facility. (*See, e.g.*, Appellant's Opening Brief ("AOB") at 16, 20-24.) But Proposition A specifies neither the size nor the type of facility that San Francisco must construct.

The Board deliberately described the Project in broad and general language that reserved considerable discretion to the City. In adopting Ordinance No. 180-99, the Board stated that the Project would consist of the "construction and/or reconstruction" of a "new health care facility, assisted living and/or other type of continuing care facility or facilities." The voters approved this general and broad description. Therefore, Proposition A does not obligate the City to construct a skilled nursing facility, as opposed to another legal classification of health care facility. Nor does it dictate the specific size of the facility that the City is to build. (*See Mills v. San Francisco Bay Area Rapid Transit Dist.*, *supra*, 261 Cal.App.2d at p. 668 [refusing to read additional requirements into proposition submitted to the voters that spoke generally of "acquiring, constructing and operating a rapid transit system"]; *see also County of Alameda v. Garrison* (1930) 108 Cal.App.3d 122, 127-28 ["Here the board chose to use broad language. Undoubtedly they wanted some latitude and discretion as to the location of this bridge. The people were willing to give it to them, and so voted "].)

Seeking to get around the latitude that the Board proposed and the voters accepted, Monette-Shaw claims that Proposition A is "ambiguous" as to the type and size of the Project. (*See, e.g.*, AOB at 2.) But the phrases in Proposition A at issue – the "construction and/or reconstruction" of a "new health care facility, assisted living and/or other type of continuing care facility or facilities" – are not ambiguous. They are intentionally general in scope, allowing San Francisco to determine what kind and size of facility or facilities it will construct. Had the Board and the voters wanted to specify the type and size of the facility or facilities they wanted to build, they could have done so by expressly including such specifications in the Proposition A bond contract. Because the Board and the voters did not do so, and instead expressed the requirements in only broad and general terms, the Court cannot read terms into the Proposition A bond contract that would compel the City to build a skilled nursing facility – or that would require the City to build a facility with a certain number of beds.[6]

Monette-Shaw also argues that because Proposition A directs San Francisco "*to replace Laguna Honda Hospital*," it must build a new facility that duplicates the size and statutory classification of the current hospital. (AOB at 21.) But this argument fails for several reasons. First, petitioner ignores Proposition A's express terms, which, as stated above, reserve for

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[6] Interestingly, Monette-Shaw claims San Francisco must build a 1,200-bed skilled nursing facility "unless a factual study is used which shows that the [tobacco settlement revenues], plus the bond proceeds, are insufficient to enable this to be done." (AOB at 15.) But nothing in Proposition A, or in any other ordinance or statute, mentions, much less requires, such a study. Monette-Shaw is simply asking this Court to assume the role of a legislative body by rewriting Proposition A to include new conditions and requirements.

the City the discretion to construct a "new health care facility, assisted living and/or other type of continuing care facility or facilities," without confining the City to building a *skilled nursing* facility. Second, the concept of "replacement" does not necessarily imply sameness, or even any particular degree of similarity; a person may replace her car with a bicycle. And third, under Monette-Shaw's theory, San Francisco would be required to construct a new hospital that mirrors Laguna Honda Hospital as it currently exists – even including its "old-fashioned large open wards which violate federal and state regulations for patient privacy." (AOB at 21.) If sameness is required, there is no principled basis to determine how, if at all, the new Lagune Honda Hospital could differ from the current facility.

Finally, Monette-Shaw's contention that Ordinance 252-04 authorizes the reduction of the Project to less than 1,200 beds (AOB at 24) is similarly without merit. The Board adopted Ordinance 252-04 in an attempt to reduce the *cost*, not the size, of the Project. Moreover, there is nothing in the record that shows that Ordinance 252-04 has impacted the size of the Project in any manner.

IV. THE TRIAL COURT CORRECTLY DETERMINED THAT PROPOSITION A DOES NOT REQUIRE SAN FRANCISCO TO ALLOCATE ALL TOBACCO SETTLEMENT FUNDS TO THE PROJECT

Monette-Shaw contends that Proposition A forces San Francisco to devote all tobacco settlement funds, whenever received, to the Project. Monette-Shaw also claims that San Francisco violated Proposition A by enacting Ordinance No. 191-03 and transferring $25,005,644.60 in tobacco settlement proceeds to pay certain Department of Public Health costs. (AOB at 17-20.) But as the bond contract cases cited above make clear, Monette-Shaw's

contention fails because it contradicts the express terms that the Board proposed and the voters approved.

In proposing Proposition A to the voters, the Board defined the phrase "available tobacco settlement revenues," limiting it to only those settlement proceeds that San Francisco receives "*over the term of any lease financing, bonded debt and/or other evidence of indebtedness authorized [by Proposition A*]" – in other words, after such bonds or other evidence of indebtedness already have been issued and have not yet been paid off. And the voters adopted this definition by passing Proposition A. This Court cannot change the scope of the obligation proposed by the Board, and accepted by the voters, by reading the limiting phrase "over the term of any lease financing, bonded debt and/or other evidences of indebtedness authorized hereby" out of Proposition A.[7] To accept Monette-Shaw's definition of "available tobacco settlement revenues," this Court would need "to engage in the most extreme form of judicial rewriting of [Proposition A]." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 902.) It may not do so.

Monette-Shaw claims that there is a conflict between "the ballot proposal … which the Board of Supervisors drafted" and the "bond ordinance." (AOB at 18.) But no such conflict exists. As stated above, the ballot question mandated

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[7] Similarly, Monette-Shaw's reliance on dictionaries to define "available tobacco settlement revenues" ignores fundamental rules of statutory construction. "The court turns first to the words themselves for the answer." (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724.) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Proposition A clearly and unambiguously defines the phrase "available tobacco settlement revenues." The court's review ends there.

by Ordinance No. 180-99 uses the term "available tobacco settlement revenues." And Ordinance No. 180-99 itself – which was included within the Voter Information Pamphlet provided to every voter – states that "for purposes of this ordinance and the proposition to be voted upon," "available tobacco settlement revenues" includes only those settlement proceeds that San Francisco receives "over the term of any lease financing, bonded debt and/or other evidence of indebtedness authorized [by Proposition A]." (AA 147.) Ordinance No. 180-99, therefore, uses the phrase in multiple places, and specifically defines it for all purposes relevant to Proposition A. Thus, there is no conflict between the wording of the ordinance that placed Proposition A on the ballot and the wording of the Proposition A ballot question.

Because the specially defined terms in Proposition A were plainly set forth in Ordinance No. 180-99, and because the City provided the entire text of that ordinance to each registered voter, Monette-Shaw's repeated insistence that the City has pulled a "bait and switch" is simply unfounded. (AOB at 17.) The Board was entitled to adopt a bond ordinance containing specially-defined terms. Petitioner cites no requirement that the ballot question contain each such special definition; indeed, in the case of many ballot measures, including Proposition A, it would be singularly impractical to do so. Petitioner's claims of unfairness are simply the gripes of a voter who disapproves of the permissible policy choices that the Board and the voters made.

V. PAID BALLOT ARGUMENTS AND THE BALLOT SIMPLIFICATION COMMITTEE DIGEST DO NOT SWAY THE INTERPRETATION OF PROPOSITION A

A. Paid Ballot Arguments

Citing *Legislature v. Eu* (1991) 54 Cal.3d 492, Monette-Shaw contends that the Court should look to paid ballot arguments, submitted by third parties

who supported or opposed Proposition A, to ascertain the "voters' intent." (AOB at 20, 22-23.) Here, too, petitioner is mistaken.

Eu is simply inapposite. It concerned a ballot proposition that amended several provisions of California's constitution, not a bond measure. This distinction is crucial: the legal standards governing the interpretation of bond measures – which, if adopted, result in the creation of vested contractual rights in bondholders, and often enormous municipal financial obligations – are materially more restrictive than those governing the interpretation of ordinary initiatives. To the City's knowledge, no California court interpreting the obligations of a governmental entity under a bond measure has allowed the use or incorporation of paid ballot arguments into a bond contract. To the contrary, the courts have consistently held that the intentions and expectations of individual voters – even if based on officially-disseminated information and pre-election statements – are irrelevant to the interpretation of bond contracts.

For example, in *Associated Students of North Peralta Community College, supra*, this Court refused to rely on the "Argument for Peralta College Bonds" provided to the voters to expand the public entity's resulting obligations, observing that "no case or statutory authority supports the proposed incorporation into the 'bond contract' of the ballot argument submitted to the voters prior to the election." (*Id.*, 92 Cal.App.3d at p. 678-79.) The Court also noted some of the problems that would ensue if documents outside of the bond contract's four elements could influence a public entity's obligations as to the use of bond proceeds:

> [I]f whenever a group of voters considered that their electoral will had been frustrated, they could argue for implementation of *their* understanding of the sense of official assurances, preelection statements, publicity and unofficial discussions, an intolerable number of disputes would result.

(*Id.*, 92 Cal.App.3d at p. 680.)

Likewise, in *Mills v. San Francisco Bay Area Rapid Transit Dist., supra,* the court held that "statements 'disseminated to the general public' before the election" were irrelevant to the public entity's obligations, because "these cannot be deemed to modify the intentionally broad language of the proposition in fact submitted to the voters, the call of election published to them, and the statutes authorizing the procedure adopted." (*Id.*, 261 Cal.App.2d at p. 669.)

And in *City of Los Angeles v. Dannenbrink* (1965) 234 Cal.App.2d 642, the court held that even express advocacy by public officials cannot sway the interpretation of a bond measure away from that dictated by the documents drafted by the legislative body:

> A system of law which authorizes the electorate to pass upon proposed charter amendments will not permit a court to assume that the voters did not know what they were doing when they voted upon a specific proposal. Moreover, if the enlightenment of the electorate should be subject of judicial inquiry, the court could not infer that the knowledge of the voters was limited to what appeared in the campaign propaganda of the protagonists. The full text of each proposed charter amendment . . . was mailed to every voter well in advance of election day. *No public official or private citizen is authorized to change the substance or effect of such a proposal by the characterization he employs in advocating its adoption or defeat.*

(*Id.* at p. 655 [emphasis added].)

These cautionary holdings are directly applicable here. If San Francisco's obligations under Proposition A could be influenced by ballot arguments and other statements by proponents or opponents of the measure, including individual elected officials, then San Francisco's Board of Supervisors, and the voters, would effectively forfeit control of the bond process. Spin and self-interested advocacy would rule the day, to the considerable detriment of the City's ongoing financial commitments. Fortunately, this is not the law. Individuals, including public officials, and ballot arguments cannot change the substance of the Proposition A bond

contract or expand San Francisco's obligations beyond those set forth in the official legislative documents.

The ballot arguments for and against Proposition A underscore the relevance of these warnings. Of the 53 paid ballot arguments for and against the measure, only seven refer to a 1,200-bed or patient facility. (AA 131, 133, 143, 144, 145.) In fact, only two of the arguments for Proposition A suggest that the new Laguna Honda Hospital would serve 1,200 patients or beds. (AA 131, 133.) Each of these two arguments was submitted by an organization or individual that is not authorized to speak for the City and County of San Francisco. They merely express the personal views or self-interests of the proponents. They cannot interfere with the Board's ability to define its obligations by adopting Ordinance No. 180-99, and the voters' ability to accept those obligations by adopting Proposition A.[8]

B. Ballot Simplification Committee Digest

Monette-Shaw also places great weight on the Ballot Simplification Committee Digest, claiming that the Ballot Simplification Committee is "the official city agency which tells voters what ballot measures mean." (AOB at p. 18.) But his reliance on the Ballot Simplification Committee Digest is misplaced for at least three reasons.

First, by its nature, the digest is merely an overview or capsule summary of the principal features of a measure – a simplification – which cannot possibly capture every nuance or definition of the measure. (*See Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820.) This is particularly

[8] Even if *Eu* were not inapposite, it would still not help Monette-Shaw. *Eu* limits the use of paid ballot arguments to situations in which the text of the ballot proposition is ambiguous. (*Legislature v. Eu, supra*, 54 Cal.3d at p. 504.) As explained above, Proposition A is not ambiguous.

true under San Francisco's local elections law, which ordinarily limits the digest to 300 words in length, and, consistent with the goal of "simplification," requires that the digest be written at an eighth grade reading level. (San Francisco Election Code §§ 515(b), (c); AA 283.) Therefore, the fact that the digest may fail to accurately convey every minute aspect of a ballot measure is simply unremarkable. The fact that the Ballot Simplification Committee may have simplified the measure to describe its basic features to the voters does not create any conflict between the digest and the actual text of Proposition A.

Second, the digest is most reasonably read as being consistent with Proposition A's text. The digest's term "tobacco settlement monies" merely echoes Proposition A's specifically defined term "tobacco settlement revenues." And the digest does not purport to override or negate the precise definitions found in Proposition A. Therefore, the digest merely refers to the obligation proposed by Proposition A itself –under which San Francisco must allocate proceeds from the settlement of the tobacco litigation toward the Project if those proceeds meet the definition of "available tobacco settlement revenues," that is, if San Francisco receives them while any Proposition A bonds already have been issued but have not been paid off.

Third, even if the Ballot Simplification Committee Digest were materially different from the documents that make up the Proposition A bond contract, it would be irrelevant. "No public official or private citizen is authorized to change the substance or effect of such a proposal by the characterization he employs" in discussing a bond measure. (*City of Los Angeles, supra*, 234 Cal.App. at p. 655.) Where the Board has carefully defined the scope of the City's obligations, and the voters have approved those obligations as thus defined, neither the Ballot Simplification Committee, nor

any other official or person, may alter or enlarge the scope of San Francisco's resulting duties.

CONCLUSION

This Court should affirm the judgment.

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