

SRVUSD: THEY FOUGHT THE LAW, BUT THE LAW WON



The front-page photo above, from March 5th, 1996 showed the final Superior Court count of contested ballots in the 1996 Superior Court decision against SRVUSD's costly election-contest attempt to rehabilitate illegal ballots — after a vote in favor of Measure C was overturned in a recount.

Background: after SRVUSD's apparent win in November, 1995's \$82 Million Measure C bond election was overturned in a ballot recount — and then, after SRVUSD's lawyers lost their Superior Court challenge of that result in March of 1996 (despite facing two non-attorneys), the District's lawyers appealed the decision.

On July 15, 1997, both sides in the Measure C election contest presented oral arguments before California's First District State Court of Appeals, after Measure C's prior overturn in the recount and then confirmation of the Measure C loss in a 7-day Superior Court trial. What some courtroom observers and readers of various newspapers might not have realized is that by the time of the hearing, the Appellate Court had probably drafted a "bench memorandum" — i.e., a preliminary decision subject to further refinement prior to issuance.

The three appellate judges had previously received and read the School District's opening appellant brief and reply brief, as well as two respondents' briefs — one from the Contra Costa Election Office and one from Ernie Scherer and Michael Arata — along with a number of related motions. From the tenor of its oral-argument questions, it appeared that Appellate Court was prepared to affirm Measure C's defeat.

For those who may not recall, Measure C peddled the San Ramon Valley Unified School District's attempt to extract "\$82 million" (or about \$204 million including interest) from district taxpayers. SRVUSD's exorbitant spending plans included \$5013 in each of 738 classrooms just to run computer cables, \$520 for each of 783 electrical sockets, and an average of \$671 for each of 1881 replacement windows.

The tax promoters' Measure B & C campaigns were substantially underwritten by vendors of goods and services to SRVUSD, and by others with an apparent existing or prospective financial interest in the school board's decisions — which (as in more recent SRVUSD tax campaigns) smelled like a shakedown and/or a kickback.

But getting back to the District's courtroom maneuvers: representing SRVUSD at the Appellate level was Robin Johansen, of Remcho, Johansen & Purcell, a San Francisco firm prominent among California litigators after its involvement in creating "motor voter" registrations and in opposing term limits. Michael Arata argued the Scherer-Arata (non-attorneys') respondents' position before the Appellate panel.

Johansen's contingency-fee work on the SRVUSD appeal had been portrayed in the local press as a charitable gesture, with alternate claims of school-district penury and confidence in winning the appeal.

What the daily press didn't mention was that Johansen's firm has already been paid at least \$187,204 in taxpayer funds for its work *prior* to appeal. Another \$39,932 has gone to Sandy Skaggs of McCutchen, Doyle, Brown & Enerson. Stephen Bedrick, another attorney, was paid \$10,902 to represent SRVUSD's claims during the recount process that preceded trial.

That already added up to over \$238,000 of hard-earned taxpayer dollars, expended by SRVUSD in opposing two non-lawyers, working part-time — accomplishing to that point only a Superior Court determination that Measure C had indeed lost.

The non-attorneys' 50-page Appellate respondents' brief enumerated the ballots still challenged by SRVUSD — including double votes, ballots with spurious signatures on identification envelopes, provisional ballots submitted in the wrong precincts (in violation of the law then in effect), late-returned absentee ballots, and absentee ballots returned by ineligible would-be voters [one of whom testified he'd been advised by a current school-board member to "use [his] previous residence because [he] had not re-registered" — felonious advice under then-current Election Code sections 18500, 18501, 18561].

Another 4 dozen absentee ballots which were counted despite very obvious signature mismatches were part of a conditional, backup case for annulment of the election, in case Measure C wasn't defeated outright.

The non-attorneys' respondents brief, though citing 78 cases and 4 dozen statutes, was summarized in two key paragraphs:

"There is certainly no 'legitimate state interest, much less a compelling one' in **(1)** admitting ballots shown in proper evidentiary proceedings to be illegal; or **(2)** countenancing the misconstruction or outright misrepresentation of statute and precedent; or **(3)** conferring on tax-supported public agencies an ends-justifies-means retroactive exemption from the law because they hypothecate a noble-sounding purpose" (p. 9); and ...

"Measure C lost on November 7, 1995 despite the errors of election officials, not because of same. Appellants, unhappy with that result, unreasonably now seek a *de novo* review of facts adduced at trial, bypass or outright dismantling of the substantial evidence rule, and wholesale nullification of unequivocal statute and precedent correctly applied by the court below in confirming Measure C's defeat" (p. 50).

The Appellate Court's comments at the hearing seemed to reiterate the last paragraph in particular. And after all was said and done, the Appellate Court's judgment finally affirmed SRVUSD's Measure C defeat in September, 1997.

As mentioned, SRVUSD's recount and Superior Court challenge had already costed taxpayers at least \$238,000; but their lawyers decided to bill the District for the Appellate Court process only if they prevailed.

So in the end, at least, SRVUSD's attorneys lost their appeal for free.