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Date: August 10, 2006  
To: Francis X. Duda  
Fax Number: (314) 721-3515  
From: Maria E. Mazza  
Client: Jersey CSD #100  
Matter: Ferguson v. Jersey SD  
File Number: 472.06068

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Message: Attached please find a copy of our Memorandum of Law in support of the Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9). Because the exhibits are lengthy we have not attached copies of the same to this fax. A copy of the Memorandum and all exhibits will be placed in the mail for you today.

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7-21-06

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT JERSEY COUNTY, ILLINOIS

FILED

JUL 19 2006

CHARLES E. HUEBENER CLERK OF THE CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT JERSEY COUNTY ILL

JEFFERY D. FERGUSON, RON FLOYD, WOOD GOFORTH, HAROLD KALLAL, GARY KRUEGER, ROBERT RULAND, LELAND SYNDERS, and MARILYN J. WOOLSEY, INDIVIDUALLY AND AS TAXPAYERS OF JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS,

Plaintiffs

v.

CH Case No. 06-PH-52

LINDA J. CROTCHETT and DEBRA BANGHART, IN THEIR OFFICIAL CAPACITY AS THE DULY ELECTED AND ACTING COUNTY CLERKS OF JERSEY AND GRENE COUNTIES, STATE OF ILLINOIS, AND THE COMMUNITY UNIT SCHOOL DISTRICT #100, A SCHOOL DISTRICT IN JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS,

Defendants.

MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(a)(9)

Defendant, Community Unit School District #100, by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., move to dismiss pursuant to 735 ILCS 5/2-619(a)(9) the Complaint filed by Plaintiffs, Jeffery D. Ferguson, Ron Floyd, Wood Goforth, Harold Kallal, Gary Krueger, Robert Ruland, Leland Synders, and Marilyn J. Woolsey, Individually and as Taxpayers of Jersey and Greene Counties, State of Illinois (collectively, "Plaintiffs") and, in support thereof, state as follows:

- 1. Plaintiffs allege in their Complaint that the County Clerks and Community Unit School District #100 (the "District") should be permanently enjoined from extending any tax levies and/or collecting real estate taxes to pay for fire prevention and safety bonds issued for purposes of building a new high school and a new elementary school because the

bonds were allegedly issued contrary to the provisions of 105 ILCS 5/17-2.11.

2. Notwithstanding the fact that the fire prevention and safety bonds issued did not violate the provisions of 105 ILCS 5/17-2.11, as further discussed in Defendant's Motion for Summary Judgment filed contemporaneously herewith, Plaintiffs' claims are also barred by the doctrine of laches, as Plaintiffs have been aware of the bond issuance for several years and have not taken any action to object to the same. Thus, Plaintiffs' Complaint should be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the affirmative matter of laches bars Plaintiffs' claims.

3. A motion to dismiss pursuant to 735 ILCS 5/2-619 admits the legal sufficiency of the complaint, however, it raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim. LaSalle National Bank v. City Suites, Inc., 325 Ill.App.3d 780, 787, 758 N.E.2d 382 (1<sup>st</sup> Dist. 2001); Neopl v. Murphy, 317 Ill.App.3d 581, 584, 736 N.E.2d 1174 (1<sup>st</sup> Dist. 2000).

4. Plaintiffs allege that the District's Board of Education adopted a resolution to issue fire prevention and safety fund bonds in the amount of \$14,151,018 to secure funding necessary to build a new high school and elementary school. (¶48, Complaint).

5. Plaintiffs allege that after a public hearing on the matter, the District's board of education voted 6-1 to issue the fire prevention and safety fund bonds to defray the District's share of the cost of a new high school and elementary school. (¶49, Complaint).

6. Plaintiffs allege that the bond sales then took place on March 1, 2003 and September 14, 2004.

(¶50, Complaint).

7. Plaintiffs further allege that thereafter, the District proceeded with the construction of the new high school and elementary school and such construction has now been completed.

8. Based on Plaintiffs own allegations they have been aware of the District's alleged intent of proceeding with a bond issuance since at least April 17, 2002, Plaintiffs only now seek to enjoin the County Clerks of Jersey and Greene Counties from continuing to levy property taxes to pay for the interest and principal of the bonds and to extend tax levies and taxes, annually, until the bonds are paid. (¶52, Complaint).

9. Laches is an equitable principle that bars relief to a party whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *People ex rel. Daley v. Strayhorn*, 121 Ill.2d 470, 482, 521 N.E.2d 864, 869 (1988).

10. The doctrine of laches is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party. *In re Marriage of Smith*, 347 Ill.App.3d 395, 401, 806 N.E.2d 727 (2<sup>nd</sup> Dist. 2004).

11. The party seeking to prove laches must show that there was an unreasonable delay in bringing an action and that the delay materially prejudiced the party. *Hannigan v. Hoffmeister*, 240 Ill.App.3d 1065, 1074, 608 N.E.2d 396, 403 (1<sup>st</sup> Dist. 1992).

12. Plaintiffs have been aware of the subject bond issuance for over four years, but, until now, have not taken any action to question the propriety of the bond issuance.

13. Such delay on the part of Plaintiffs in enforcing their claimed rights is unreasonable.

14. Moreover, such delay has materially prejudiced Defendant, as Defendant has proceeded with the bond issuance and the subsequent construction of the new high school and elementary school because they lacked any knowledge of Plaintiffs' claimed rights. Furthermore, as a result of such delay, it is impossible for Plaintiffs to obtain any relief, as the bond issuance and the construction of the new high school and elementary school cannot be undone.

15. Since Plaintiffs have unreasonably delayed in bringing this action and since delay has materially prejudiced Defendant, the doctrine of laches is an affirmative matter which bars Plaintiffs' claims. Accordingly, Plaintiffs' Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9).

WHEREFORE, Defendant, Community Unit School District #100, requests that this Court grant their Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9).

Respectfully submitted,

Community Unit School District #100

By: Kenneth M. Florey  
One of the Defendant's Attorneys

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**IN THE CIRCUIT COURT OF THE  
SEVENTH JUDICIAL CIRCUIT  
JERSEY COUNTY, ILLINOIS**

**JEFFERY D. FERGUSON, RON FLOYD, WOOD )  
GOFORTH, HAROLD KALLAL, GARY KRUEGER, )  
ROBERT RULAND, LELAND SYNDERS, and )  
MARILYN J. WOOLSEY, INDIVIDUALLY AND AS )  
TAXPAYERS OF JERSEY AND GREENE )  
COUNTIES, STATE OF ILLINOIS, )**

**Plaintiffs**

**v.**

**Case No. 06-CH-52**

**LINDA J. CROTCHETT and DEBRA BANGHART, )  
IN THEIR OFFICIAL CAPACITY AS THE DULY )  
ELECTED AND ACTING COUNTY CLERKS OF )  
JERSEY AND GRENE COUNTIES, STATE OF )  
ILLINOIS, AND THE COMMUNITY UNIT SCHOOL )  
DISTRICT #100, A SCHOOL DISTRICT IN JERSEY )  
AND GREENE COUNTIES, STATE OF ILLINOIS, )**

**Defendants.**

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO 735 ILCS  
5/2-619(a)(9)**

Defendant, Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois (the "District"), by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., hereby set forth its Memorandum in support of its Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9) against Plaintiffs, Jeffery D. Ferguson, Ron Floyd, Wood Goforth, Harold Kallal, Gary Krueger, Robert Ruland, Leland Synders, and Marilyn J. Woolsey, Individually and as Taxpayers of Jersey and Greene Counties, State of Illinois (collectively, "Plaintiffs") and, in support thereof, states as follows:

## **STATEMENT OF FACTS**

### **Plaintiffs' Complaint**

On July 14, 2006, Plaintiffs filed a Complaint alleging that the County Clerks and Community Unit School District #100 (the "District") should be permanently enjoined from extending any tax levies and/or collecting real estate taxes to pay for fire prevention and safety bonds issued for purposes of building a new high school and a new elementary school because the District did not comply with the provisions of 105 ILCS 5/17-2.11. (¶¶62, Complaint). Although Plaintiffs allege that the county clerks have already begun to assess property taxes for the bonds (¶¶65, Complaint), Plaintiffs do not allege that they have paid such taxes.

### **The District's Decision to Issue Fire Prevention and Safety Bonds**

The District's decision to issue the fire prevention and safety bonds arose from the need to make certain repairs to the Jerseyville High School and Grafton Elementary (collectively, the "Schools"). On November 27, 2002, Larry Pfeiffer, the Regional Superintendent of Schools for the District issued an order directing the District to make certain repairs or alterations necessary to effect full compliance with the applicable provisions of the Health/Life Safety Code for Public Schools. See copy of the Regional Superintendent's November 27, 2002 order, attached hereto as Exhibit "A." In addition, the State Superintendent also granted approval for the District to proceed to complete the work required for the Schools. See copy of Certificate of Application for Expenditure of Fire Prevention and Safety Funds dated November 26, 2002, attached hereto as Exhibit "B."

There were insufficient funds in the operations and maintenance fund of the District to make the proposed alterations and records to confirm such insufficiency were forwarded to the State Superintendent of Education. See Insufficient Funds Certificate dated February 20, 2003, attached hereto as Exhibit "C." Thus, in order to finance the work required for the Schools, the District proceeded with the requirements to issue bonds pursuant to 105 ILCS 5/17-2.11.

**The District's Determination That Cost to Replace the Schools Was Less Than Cost to Repair the Schools**

The cost to complete the necessary repairs for Jerseyville High School was \$13,988,124 and for Grafton Elementary School was \$2,470,413. See copies of Schedule of Recommended Work Items and Estimated Costs for the Schools attached hereto as Exhibit "D." Based on the reports of architect David Pool, the District determined that the cost to replace the Schools was actually less than the cost to make the necessary repairs to the Schools. See reports of David Pool dated November 21, 2001 and May 13, 2002, attached hereto as Exhibit "E." As set forth in Pool's reports, the estimated cost to replace Jerseyville High School was \$12,684,893 and to replace Grafton Elementary School was \$2,470,413.

Since the cost to repair the Schools was greater than the cost to replace the same, the District was authorized to replace the Schools instead of making the repairs under 105 ILCS 5/17-2.11. After the District made the determination that the cost to replace the schools was less than the cost to complete the repairs based upon the comparison of the estimates, the Regional Superintendent of Schools and the State Superintendent of Education approved the replacement of the Schools. See copy of Project Certificate dated

August 19, 2004 indicating the approval of the replacement of the Schools, attached hereto as Exhibit "F."

### **Public Hearing and Approval of Bond Issuance**

Pursuant to a Resolution adopted by the Board of Education of Community Unit School District #100 (the "Board"), on January 15, 2003, public notice was provided concerning the Board's intent to sell \$16 million in school fire prevention and safety bonds and to hold a special meeting concerning the same on January 28, 2003. See copy of January 15, 2003 Resolution and Certificate of Publication regarding publication of notice in the Telegraph newspaper, attached hereto as Exhibit "G." During the January 28, 2003 special meeting, the Board considered the proposed bond issuance and the President requested oral testimony or public comment. See copies of minutes of January 28, 2003 special meeting attached hereto as Exhibit "H"

The bonds issued by the District were issued in two series (one for 2003 and one for 2004), bore interest at a rate not exceeding the maximum rate authorized by law, matured within 20 years and were signed by the president of the school board and the treasurer of the school district. See copies of the Notification of Sale of General Obligation School Bonds for series 2003 and for series 2004, attached hereto as Exhibit "I."

On February 12, 2003, the Board adopted a Resolution for the 2003 series of bonds wherein it authorized the issuance of the bonds, set the amount of the bonds, the date of the issuance of the bonds and the maturity of the bonds, the rate of interest, place of payment and denomination and it provided for the levy of an annual tax beginning with tax year 2002 upon taxable property to pay the principal and interest on such bonds. See copy of Resolution dated February 12, 2003, attached hereto as Exhibit "J." Subsequently, on

February 19, 2003, the Board filed a copy of the Resolution dated February 12, 2003 with the Clerk of Jersey County and on February 20, 2003, the Board filed the same with the Clerk of Greene County. See copies of Filing Certificates of February 12, 2006 Resolution, attached hereto as Exhibit "K." The Board also adopted a similar Resolution on August 18, 2004 which provided that the tax levy for the 2004 bond series would begin for tax year 2004. See copy of Resolution dated August 19, 2004, attached hereto as Exhibit "L." Said Resolution was filed with the Clerk of Jersey County on September 3, 2004 and with the Clerk of Greene County on September 7, 2004, copies of the Filing Certificates are attached hereto as Exhibit "M."

**Plaintiffs' Actual and Imputed Knowledge of the District's Bond Issuance For Several Years**

Plaintiffs have been aware of the District's decision to issue the fire prevention and safety bonds at the latest since the publication of the notice of special meeting on January 28, 2003. Plaintiffs began their investigation of the propriety of the bond issuance no later than in 2003, in which they formed a "Coalition for Public Awareness" (the "Coalition"). On June 12, 2002 Plaintiff Jeffrey D. Ferguson ("Ferguson") sent a letter to Governor Rod Blagojevich concerning the Plaintiffs' investigation and their request that any grant money payable to the Schools be withheld. See copy of said correspondence attached hereto as Exhibit "N." Furthermore, as indicated in an article published in the Jersey County Journal on October 15, 2003, Ferguson expressed that it was the Coalition's intention to seek an injunction to stop the construction of the Schools. See copy of Jersey County Journal article dated October 15, 2003, attached hereto as Exhibit "O." Ferguson again expressed the Coalition's intention of filing suit and seeking an injunction in an article published in the

Telegraph on December 22, 2003. See copy of the December 22, 2003 Telegraph article, attached hereto as Exhibit "P." Plaintiffs and the Coalition have also publicized their investigation of the bond issuance in articles in their own website ([www.jccfpa.org](http://www.jccfpa.org)), copies of such articles being attached hereto as Exhibit "Q," and in an article published in the Illinois Leader website ([www.illinoisleader.com](http://www.illinoisleader.com)), a copy of which is attached hereto as Exhibit "R."

### STANDARD OF REVIEW UNDER 735 ILCS 5/2-619

A motion to dismiss pursuant to 735 ILCS 5/2-619 admits the legal sufficiency of the complaint, however, it raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim. LaSalle National Bank v. City Suites, Inc., 325 Ill.App.3d 780, 787, 758 N.E.2d 382 (1<sup>st</sup> Dist. 2001); Nepp v. Murphy, 317 Ill.App.3d 581, 584, 736 N.E.2d 1174 (1<sup>st</sup> Dist. 2000).

### ARGUMENT

**1. Since Plaintiffs' Cause of Action is Barred by the Doctrine of Laches, This Court Must Dismiss Plaintiffs' Complaint Pursuant to 735 ILCS 5/2-619(a)(9).**

Laches is an equitable principle that bars relief to a party whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *People ex rel. Daley v. Strayhorn*, 121 Ill.2d 470, 482, 521 N.E.2d 864, 869 (1988). The doctrine of laches is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party. *In re Marriage of Smith*, 347 Ill.App.3d 395, 401, 806 N.E.2d 727 (2<sup>nd</sup> Dist. 2004).

The party seeking to prove laches must show that there was an unreasonable delay in bringing an action and that the delay materially prejudiced the party. *Hannigan v. Hoffmeister*, 240 Ill.App.3d 1065, 1074, 608 N.E.2d 396, 403 (1<sup>st</sup> Dist. 1992). Lack of diligence must result in some inequity to the adverse party such that it would be unfair and unjust to allow the belated assertion of the claim. *LaSalle National Bank v. Dublin Residential Communities Corporation*, 337 Ill.App.3d 345, 351, 785 N.E.2d 997 (1<sup>st</sup> Dist. 2003). Lack of diligence cannot be excused because a party was unaware of his or her rights. It is well settled that ignorance of the law or legal rights will not excuse delay in bringing suit. *Pyle v. Ferrel*, 12 Ill.2d 547, 554, 147 N.E.2d 341 (1958).

Plaintiffs have been aware of the subject bond issuance for several years, but, until now, have failed to take any action to enforce their alleged rights. At the very latest Plaintiffs have been aware of the Board's decision to issue the fire prevention and safety bonds since the publication of the notice of special meeting on January 28, 2003 wherein the bond issuance was considered. A party is deemed to have constructive knowledge of matters in the public records. *Pyle*, 12 Ill.2d at 554; *Blakeship v. County of Kane*, 85 Ill.App.3d 621, 624, 407 N.E.2d 145 (2<sup>nd</sup> Dist. 1980).

Moreover, Plaintiffs' knowledge of their possible claims is further demonstrated by the various actions taken by Plaintiffs since 2003, including sending correspondence to Governor Rod Blagojevich concerning the Plaintiffs' investigation of the bond issuance, appearing in numerous newspaper articles, and forming a website detailing their efforts. See Exhibits "O" through "R." Furthermore, since 2003 Ferguson expressed the intention to seek an injunction to stop the construction of the Schools. See copy of the October 15,

2003 Jersey County Journal article, attached hereto as Exhibit "Q" and copy of the December 22, 2003 Telegraph article, attached hereto as Exhibit "R." Thus, Plaintiffs were well aware of their possible claims for several years and, in fact, considered the possibility of seeking an injunction to halt the construction of the Schools.

In *Blakeship*, the plaintiffs filed suit challenging the validity of an ordinance enacted ten years prior granting a special use for a restricted landing area to be developed in the northwest corner of Kane County. 85 Ill.App.3d at 621. The defendants filed a motion to dismiss, arguing that the plaintiffs' claims were barred by laches. *Id.* The court noted that laches is a defense based on the neglect or omission of a plaintiff in asserting his or her rights in conjunction with a lapse of time and other circumstances causing prejudice to an adverse party, as will act to bar the plaintiff's claims. *Id.* The court found that the defendants had spent several million dollars in developing the subject property in reliance on the ordinance and that plaintiffs had constructive or actual notice of the development. *Id.* at 623. Subsequent to the filing of the petition for special use, notice of the public hearing concerning the petition was published in the local newspaper and thus, actual notice of the application for special use and the ordinance could be imputed to the plaintiffs who were residents at the time of the published notice. *Id.* Furthermore, for those plaintiffs who were not residents at the time of the published notice but who became residents thereafter, constructive notice of the special use ordinance could be imputed upon them since all subsequent purchasers are charged with constructive knowledge of the current zoning ordinances. *Id.* Thus, the court concluded that the plaintiffs' complaint was properly dismissed on the basis of laches. *Id.* at 624.

In the case of *Bays v. Matthews*, 108 Ill.App.3d 1112, 1113, 440 N.E.2d 142 (5<sup>th</sup> Dist. 1982), the court applied the doctrine of laches to bar an action to quiet title to a mineral estate after the mineral estate had been sold for delinquent taxes. The court found that the plaintiffs were chargeable with constructive notice of the public records which indicated that the estate had been sold for delinquent taxes. *Id.* at 1119. In applying the doctrine of laches, the court also considered the fact that the defendants had incurred risks and obligations which made it inequitable to allow the plaintiffs to redeem their land. *Id.* The party claiming under the tax title had entered into an oil and gas lease and incurred other contractual obligations which would have worked a hardship upon them if the doctrine of laches was not applied. *Id.*

In *Zegers v. Zegers, Inc.*, the court also found that the plaintiff's claim was barred by the doctrine of laches. 38 Ill.App.3d 546, 348 N.E.2d 210 (1<sup>st</sup> Dist. 1976). The plaintiff alleged that he was owner of 20 shares of common stock of the defendant company issued to him in 1934. *Id.* at 548. In his suit, the plaintiff sought payment of all cash and stock dividends to which he was entitled on the 20 shares of common stock, recognition of preemptive rights to the stock issued by the corporation, and a shareholder derivative action on behalf of the corporation against the individual defendants charging them with misappropriating corporate funds for personal gains. *Id.*

The court concluded that the plaintiff had knowledge that the defendant company did not consider him to be a shareholder and that this required that plaintiff not sleep on his rights to the detriment of the defendants. *Id.* at 552. The court reached this conclusion

based upon the fact that the plaintiff had been employed by the defendant company, held a position of responsibility within the company, and was a knowledgeable investor. *Id.* Furthermore, the court found that the defendants changed their position and were prejudiced by the plaintiff's failure to assert his claim earlier. *Id.* at 555. During the period of time the plaintiff failed to take action, the defendant company had grown substantially and borrowed several million dollars to finance the expansion. *Id.* The loans were secured by the pledge of stock of the individual defendants and, in addition, the individual defendants made personal loans to the corporation totaling half a million dollars. *Id.* The court noted that the defendants "labored, took risks, and incurred obligations to insure the financial success of the company while the plaintiff sat by and risked nothing." *Id.* Accordingly, the court found that laches barred the plaintiff's claim. *Id.* at 556.

The doctrine of laches should also be applied in the instant case to bar Plaintiffs' actions. Plaintiffs should be charged with having actual knowledge of the bond issuance since at least January 15, 2003, when notice of the special meeting to consider the bond issuance was published.

Furthermore, Plaintiffs' actions demonstrate their knowledge of the bond issuance since 2003. Plaintiffs' over three year delay in enforcing their rights is unreasonable under the circumstances because Plaintiffs knew of their right to seek an injunction to stop the construction of the Schools but nevertheless failed to take any action. Moreover, such delay has materially prejudiced the District, as the District has proceeded with the construction of the Schools and has incurred millions of dollars in contractual obligations in connection with the bond issuance, which would make it inequitable for Plaintiffs to

obtain an injunction when Plaintiffs failed to take action to enforce their rights for several years. As the defendants in the *Bays*, *Blakenship* and *Zegers* cases, the District, assuming for the sake of argument that Plaintiffs' claims have any merit, has changed its position due to Plaintiffs' failure to assert their claims in a timely manner. Given such change of position, it would be inequitable to allow Plaintiffs to proceed with their claims after they have delayed asserting their claims and while the District has incurred millions of dollars of obligations by proceeding with the bond issuance and construction of the school buildings.

In addition, as a result of such delay, it is impossible for Plaintiffs to obtain any relief, as the bond issuance and the construction of the Schools cannot be undone. Since Plaintiffs have unreasonably delayed in bringing this action and since delay has materially prejudiced the District, the doctrine of laches bars Plaintiffs' claims. Accordingly, this Court should dismiss Plaintiffs' Complaint pursuant to 735 ILCS 5/2-619(a)(9).

### CONCLUSION

For all of the foregoing reasons, Defendant, Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois, requests that this Court dismiss Plaintiffs' Complaint pursuant to 735 ILCS 5/2-619(a)(9).

Respectfully submitted,

Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois,

By: Maia E. Mazza  
One of the Defendant's Attorneys

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