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February 13, 2023

VIA ELECTRONIC MAIL:

Monroe School Board Members
925 16th Avenue
Monroe, WI 53566

Re: The Monroe School District's Referendum

Dear Monroe School District Board:

As you are well aware, many voters and taxpayers in Monroe, perhaps most, did not understand the tax impact of last fall's \$88 million referendum, due to repeated statements by the District that the net impact would be an increase of \$13 in taxes per \$100,000 in home value. The true impact was *ten to fifteen times* that. The District has already apologized and acknowledged to voters that its communications about the costs were misleading. We submit this letter to urge the school board to do more—to pause the project and call for a special referendum, under Wis. Stat. §§ 8.06 and 8.55, to re-submit the question to the voters, so that they can vote with accurate information. If the District wants to “regain the public's confidence,” as it has acknowledged it needs to do, the best way to do that is to let voters decide knowing the true costs.

To be clear, we have no opinion on whether the Monroe School District should build a new high school; but we strongly believe that voters should have accurate financial information and be able to trust the information given to them by the government officials who have primary access to and understanding of the numbers. In a situation like this where the costs were so grossly misunderstood, due to the way the District communicated about them, it is impossible to say that the referendum result represents the “will of the electors.” Wis. Stat. § 5.01(1). The right thing to do in this situation is to redo the referendum. The board can, and should, offer that to voters.

As the Wisconsin Supreme Court wrote nearly a century ago, “Nothing is more important in a democracy than the accurate recording of the untrammelled will of the electorate. Gravest danger to the state is present where this will does not find proper expression due to the fact that electors are corrupted or are misled.” *State ex rel. Hampel v. Mitten*, 278 N.W. 431, 435 (1938). Consistent with that sentiment, Wisconsin law prohibits “knowingly mak[ing] or publish[ing] ... a false representation pertaining to a ... referendum which is intended or tends to affect voting at an election.” Wis. Stat. § 12.05.

Understanding how the District misled voters requires a basic understanding of mill rates and school taxes. A property's total tax is equal to its valuation times the mill rate. Each year, the mill rate changes based on how much property values change, **so that total taxes stay the same**: you start with the "levy" (total taxes to be raised) and divide by total valuations to get the new mill rate.¹ If property values increase, the mill rate will go down by exactly the same percentage, but **this does not lower net taxes**. Net taxes go down only if the District reduces its spending or obtains revenue from other sources. Anyone with an understanding of school finance would know this.

The District knew that the referendum would increase the mill rate by \$1.99/thousand (which would translate to an increase of \$199 in taxes per \$100,000 in home value), and this was, in the end, close to the actual effect on property taxes. But the District misleadingly and inaccurately told the public that this increase would be "offset" by various things, such that the *net effect* would be only \$13 in taxes per \$100,000 in home value. The District's [Q&A page](#), for example, after noting the costs of the debt to be \$1.99/thousand, then immediately says, "*With that said,*" and lists "\$1M of additional state equalization aid" and "a declining operating levy rate" as things that would offset the \$1.99. The Q&A page concludes with a statement that is clearly intended to communicate that the *net* effect would be substantially lower: "*This means* the expected increase with a passed referendum would be closer to \$13 on a \$100,000 home and \$26 on a \$200,000 home."

The District superintendent and business administrator said this even more explicitly during [a presentation](#) on September 21 (from 29:51–33:23). After mentioning the \$1.99 figure, the business administrator immediately followed with, "The reality is," and then started talking about various offsets, including state aid and a TIF district, which he said would "significantly reduce our operating levy." He concluded as follows, "So *the impact* will be far less because of some of those other factors that are coming into play." Later he said, "So that \$1.99, we're gonna say is going to be no more than \$.50, my latest projections would say closer to \$.32."

Both the superintendent and business administrator also spoke to the [local paper](#) and communicated that these things would "offset" the \$1.99/thousand increase from the debt: "We've had a significant drop in our levee rate the last five years. We've talked about the state aid that's additionally coming in. We also talked about the other debts being retired and so *all of those offset*. I would say that our levee rate would go up less than 50 cents from where it is this year." The superintendent then translated this into a net effect for taxpayers: "Figueroa added that the increased cost could be as low as 35 cents more per \$1,000, *which would mean* only an added \$70 per year on a home valued at \$200,000."

¹ See *Wisconsin School District Taxes and Levy Rates*, DPI, <https://dpi.wi.gov/sfs/statistical/basic-facts/district-tax-levy-rates> ("The equalized levy rate is the total property tax levy divided by the current year equalized property value").

The District’s “[Fact Sheet](#),” under the “How much will it cost?” section, put the following statement in bold and a separate box, indicating that this was the *net* effect voters needed to know: “A levy rate increase of \$.13 would equate to \$13 for a \$100,000 home and \$26 for a \$200,000 home.”

Based on these statements from the District, the Monroe Times ran [a piece](#), shortly before the referendum, with a headline emphasizing the net effect to voters: “Taxes to go up just \$13 per year on \$100k house should referendum pass.”² The Superintendent spoke to the paper for the piece, and told the paper he “hopes voters see the minimal price hike of taxes and vote ‘yes’”—again, connecting the \$.13 mill rate increase to the relevant net effect for voters.

After the referendum passed, taxes increased by much closer to the \$199 per \$100,000 figure mentioned above. From the tax bills we have reviewed, the net effect was a tax increase of between \$160 and \$190 per \$100,000 in home value (using the 2021 valuations).³ In other words, while there was a small “offset” from the state aid and TIF district, it was nowhere near as large as the District suggested it would be. Voters understandably [felt misled](#), and the District eventually [issued an apology](#), claiming that it made a mistake and that it did not “underst[and] the impact” that “unprecedented increase[s] in valuation” would have on property taxes.

The claim that this was a “mistake” is, to put it bluntly, hard to believe. Again, the “offset” that the District pitched to voters was based on the lower mill rate this year. But, as explained above, and as anyone familiar with school finance would know, the lower mill rate was *caused primarily by* increased property valuations; indeed, that is *how the mill rate is calculated*. If average home values increase by 20% in a given year, the mill rate goes down by 20%, so that the net tax for each taxpayer stays the same. **In other words, a lower mill rate due to increased valuations does not “offset” anything, in terms of *net* taxes.** Most of the lower mill rate that the District pitched as an “offset” was due to higher valuations.

The idea that the District was surprised by “unprecedented increase[s] in valuation” also defies belief. The District repeatedly represented that it was waiting for numbers from the Department of Revenue, but the number it was waiting for was the “equalized valuations”—i.e., *how much property valuations had increased*. To say that the District did not foresee the effect of valuation increases on taxes, when it used that very number to calculate its mill rate and to trumpet an “offset” to taxpayers, does not make any sense. The increased valuation would simply lower the mill rate and leave total taxes unaffected unless the District reduced spending.

But the point of this letter is not to place blame. Even if being “off” by 1,000% to 1,500% was just a mistake, the right thing to do is to correct the mistake. And the way to do that is to redo the referendum. If the District is unwilling to go before its

² <https://themonroetimes.com/local-news/mill-rate-monroe-013/>

³ Using the larger, 2022 valuations, the tax increase was still between \$130 and \$160 per \$100,000 in home value.

voters again, now that they have accurate information—that alone would suggest something about whether this truly was a mistake.

In a recent [FAQ document](#), the District has stated that it cannot redo or undo the referendum. That does not appear to be true, for any reason that we are aware of—at the very least, the District needs to explain why not in far more detail than it has. Wis. Stat. § 8.06 authorizes school districts to call for a special referendum for any lawful reason. Even if such a referendum would not technically undo the spending authorization from the prior referendum, the school board can commit to abide by the second referendum’s results. From what we’ve seen, the District so far has only issued short-term bonds and has not spent any of the money, so those could be repaid with the proceeds from the sale of those bonds (if the re-vote fails to pass). The District would lose some money on the interest in the interim, and the District can and should explain that extra cost to voters, but at least the voters would have an opportunity to vote on the project with accurate information. It is well worth a short pause to allow a vote where voters have accurate information about the costs.

We would also add that, should this get before the courts, there may be grounds to set aside the referendum. The Wisconsin Supreme Court has held that courts have power to void the results of a referendum where there is “[f]raud, illegality, defects, mistakes, and irregularities [that] go[] to the groundwork of the referendum and its validity as an election.” *Clapp v. Joint Sch. Dist. No. 1 of Villages of Hammond & Roberts*, 21 Wis. 2d 473, 478 (1963). And the Court has, in at least one situation, “set aside” the results of a referendum where the errors were “so egregious in character as to seriously undermine the appearance of fairness.” *McNally v. Tollander*, 100 Wis. 2d 490, 505 (1981). This is a high bar—“[t]he defects, mistakes, irregularities or illegality in the election procedure must be of such a nature as to cast serious doubt upon the legality of the entire election as an orderly and proper means of ascertaining the will of the people entitled to vote.” *Clapp*, 21 Wis. 2d at 481–82. But the District’s massive (and repeated) understatement of the costs of the referendum—one of the most important factors voters were considering—is the kind of error so serious that “substantial doubt is cast upon its results.” *Id.* at 479. It certainly leaves no confidence whatsoever that the result was an “expression of the will of the voters.” *Id.* at 481.

Protracted litigation is not in anyone’s interests, especially when the board can still correct this mistake. For all these reasons, we urge the board to do the right thing and give the voters in Monroe another chance at the referendum. We are issuing this letter publicly, and we urge the board to respond publicly, in the near future, to let voters know whether it will do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "Luke Berg". The signature is fluid and cursive, with the first name "Luke" and last name "Berg" clearly distinguishable.

Luke N. Berg
Deputy Counsel
Wisconsin Institute for Law & Liberty