1st Civil Number A164935

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FIVE

ALAMEDA UNIFIED SCHOOL DISTRICT; et al.,

Defendant-Appellant,

v.

LELAND TRAIMAN,

Plaintiff-Respondent.

Appeal From the Superior Court of the State of California
County of Alameda
Case Number RG20061550, Department 520
The Honorable Julia Spain, Judge

RESPONDENT'S BRIEF

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QUESTIONS PRESENTED

1. School districts' power to levy special taxes against taxpayers and property is limited by Government Code section 50079's "apply uniformly" mandate. This Court interpreted "apply uniformly" to mean school districts cannot create property classifications, classify taxpayers, and impose differential tax rates beyond what is expressed in section 50079. For example, the Alameda Unified School District's Measure A contains a $7,999 maximum tax that affects 150 properties and their owners by creating a different classification and tax rate from what all other properties and taxpayers face. Does Measure A violate Government Code section 50079?

2. California Constitution Article XIIIC, section 2 mandates that special tax increases must be submitted to the voters and approved by a two-thirds vote. Does the California Constitution permit a court to use the common law severability doctrine to increase taxes on certain property without two-thirds approval from voters?

INTRODUCTION

Unlike the federal government, where the taxation power rests solely with Congress, California's taxing power is shared between the Legislature and local government, which is comprised of its fifty-eight counties, hundreds of cities, and thousands of special districts.[1] The Legislature is generally supreme in the realm of taxation. In fact, the Constitutional provisions on taxation do not grant the Legislature the power to tax. Instead, it restrains the Legislature's otherwise unbridled taxation power. (*Cnty. of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1454.) Unlike the Legislature's power to tax, a local government must receive authority from the Legislature to impose taxes through enabling statutes. The enabling statute for school district special taxes is Government Code section 50079.[2] Courts interpret enabling statutes using the same rules of interpretation they use when construing constitutions and statutes. Those rules include the rule that words are presumed to bear their ordinary meaning, that words are to be given the meaning that proper grammar and usage would assign them, that courts should not adopt an interpretation of a statute that renders the provision in question superfluous, unlawful, or invalid, and every word should be given effect instead of reading it as surplusage.

The core of this case is about whether Alameda Unified School District's Measure A (2020) complies with section 50079's

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[1] California State Legislature, Senate Local Government Committee, *Revenues and Responsibilities, An Inventory of Local Tax Powers*. December 2010.

[2] Unless specified, all code section references are to the Government Code.

uniformity requirement.[3] Section 50079 requires that all special taxes imposed by school districts "apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property." (Gov. Code, § 50079.) Measure A (2020) levies a flat tax of $299 per vacant parcel, a square footage tax for all improved property at a tax rate of $0.265 for each building square foot, and then a maximum tax of $7,999 for each improved property. The $7,999 maximum tax, or cap, is Measure A's (2020) *facial* defect. The cap expressly lowers the tax rate for all improved parcels with buildings over 30,184.91 square feet.

Unfortunately for the benefactors of the tax revenue (who are the students and the school district employees), Measure A (2020) *facially* violates the uniformity requirement expressed in section 50079. Nine years ago, this Court thoroughly examined section 50079's "apply uniformly" language, and its central holding was that school districts cannot create property classifications, classify taxpayers and impose differential tax rates beyond what it expressed in the statute. (*Borikas v. Alameda Unified Sch. Dist.* (2013) 214 Cal.App.4th 135, 140, 151.) *Borikas* is the central case interpreting section 50079's uniformity requirement. Since *Borikas*, the Court of Appeal has twice confirmed *Borikas'* central holding. (*Golden Gate Hill Dev. Co., Inc. v. Cnty. of Alameda* (2015) 242 Cal.App.4th 760; *Dondlinger v. Los Angeles Cnty. Reg'l Park & Open Space Auth.* (2019) 31 Cal.App.5th 994.) *Borikas'* central holding is settled law, and *stare decisis* requires

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[3] In 2011, the District passed a tax measure called Measure A. Throughout this brief, Mr. Traiman will reference the 2011 Measure A as "Measure A (2011)" and the unrelated 2020 tax measure as "Measure A (2020)." The trial court used the same nomenclature in its Judgment.

adherence to the rule that "apply uniformly" means school districts cannot classify taxpayers and property and impose different tax rates other than what is expressly allowed in section 50079.

Measure A (2020) contains a broad severability clause that presumptively gives this Court latitude to sever the invalid portions of the measure and save the remainder. In *Borikas*, this Court severed the invalid classifications and different tax rates in the District's previous parcel tax measure and imposed a flat $120 tax for all property types. Here, the Court cannot mirror the *Borikas* remedy due to the language of Measure A (2020). Removing the invalid $7,999 cap will increase taxes on 150 parcels and raise an additional $1,900,000 annually, or $11,900,000 over the term of the measure. Rewriting Measure A (2020) and imposing a flat $299 tax similar to *Borikas* will increase taxes on 2,488 small parcels and taxpayers that currently pay less than $299. Increasing taxes on the smaller parcels will raise an additional $132,884.08 annually, or $930,188.56 over Measure A's (2020) term, on those small properties and taxpayers. Either attempt to sever the invalid portions of Measure A (2020) runs afoul of the Constitutional mandate that only the voters decide if they will face increased taxes.

CONSTITUTIONAL PROVISIONS, STATUTES, AND MEASURES INVOLVED

The constitutional and statutory provisions relevant to this matter are California Constitution Article XIIIA, section 4 and Article XIIIC, section 2, Government Code section 50079, Code of Civil Procedure sections 860 through 870, and Alameda Unified School District Measure A as approved by the District's Board as

Resolution 2019–2020.16. Article XIIIC, section 2, Government Code section 50079, and relevant provisions of Measure A (2020) are reprinted in this brief's appendix.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

The Legislature enacted section 50079 in 1987 due to concerns that California voters eliminated special districts' power to levy special taxes when they passed Proposition 62.[4] Section 50079 authorizes school districts to levy "qualified special taxes" to generate revenue for their operations after approval by two-thirds of the voters. "Qualified special taxes" are special taxes that apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property." (Gov. Code, § 50079.) In 2013, this Court held that the phrase "apply uniformly" limits school districts' taxation power and prohibits them from creating property classifications, classifying taxpayers and imposing different tax rates beyond what is expressed in the statute. (*Borikas*, *supra*, 214 Cal.App.4th at pp. 140, 151.)

This case arose after the voters approved Measure A (2020) during the March 3, 2020, election. Measure A (2020) is the District's fourth parcel tax since 2008. The prior parcel taxes are Measure H (the parcel tax at issue in *Borikas*), Measure A (2011), Measure B1, and Measure A (2020). Measure A (2020) is a seven-year tax that commenced at the start of the 2020–2021 fiscal year. Each year, Measure A (2020) will generate $10,500,000 in tax revenue for the District by levying a tax on improved parcels at a rate of $0.265 per building square foot with a maximum tax

[4] Proposition 62 was codified at Government Code sections 53720 through 53730.

of $7,999 and a flat tax of $299 per vacant parcel. Because the District's tax levy placed a $7,999 maximum tax on improved parcels, it intentionally reduced the $0.265 tax rate for 150 parcels with building square footage beyond 30,184.91 square feet. (1 Clerk's Transcript ("C.T.")191–197.) One of the largest parcels in the District's boundaries has 405,462 building square feet (1826 Poggi St. Alameda, CA 94501) and would pay $107,447 annually without the cap. (1 C.T. 191.) Restraining a $107,447 tax bill and artificially reducing it to $7,999 yields a $0.02 effective tax rate.[5] The cap results in an almost $0.25 tax rate reduction or, expressed as a percentage, a 92 percent decrease. Removing the cap and applying the $0.265 tax rate consistently without limitation yields $1,700,000 more in annual Measure A (2020) revenue and $11,900,000 over the measure's term. Approximately 50 of those 150 large parcels will face an unexpected tax increase of at least $10,000. (1 C.T. 191–193.)

Despite the plain language on the face of section 50079 and *Borikas'* central holding, the District proceeded with Measure A (2020). On or about November 12, 2019, the District's Board adopted Resolution Number 2019–2020.16, which authorized and ordered the election of Measure A (2020). (2 C.T. 301–306.) On March 3, 2020, the voters decided Measure A (2020). The question submitted for approval stated

> To support all Alameda students and maintain high-quality Alameda schools by attracting and retaining excellent teachers and employees, sustaining strong academic programs in reading, writing, math, arts/sciences, and helping counselors support struggling students, shall an Alameda Unified School District

[5] With the cap, the effective tax rate is calculated by dividing the $7,999 tax by 405,462 square feet. The quotient is the real tax rate – $0.02 per square foot (7,999/405,462 = 0.02).

> measure, levying $0.265 per building square foot *capped at $7,999 per parcel* and $299 per vacant parcel annually for 7 years, be adopted, raising $10,500,000 annually with senior exemptions, audits, oversight, and all funds staying local?

(2 C.T. 315, italics added). On March 24, 2020, the Alameda County Registrar of Voters certified the election. 29,142 individuals voted on Measure A (2020); 19,554 voters (67.10%) voted "Yes," and 9,588 voters (32.90%) voted "No." Measure A (2020) prevailed by an approximate margin of 1 percent. (2 C.T. 321.)

Mr. Traiman filed his Complaint for Invalidation on May 19, 2020, in Alameda County Superior Court. (1 C.T. 11–33.) Judge Julia Spain received the all-purpose assignment. (1 C.T. 34–37.) The Complaint alleged Measure A (2020) must be invalidated because the $7,999 cap on "improved parcels" created an impermissible classification that section 50079 did not permit. (1 C.T. 16.) Measure A (2020) created two classifications among improved property — a building square footage tax with a uniform $0.265 tax rate and a flat $7,999 tax for properties and taxpayers with building square footage beyond 30,184.91 square feet.

The District answered Mr. Traiman's Complaint on August 19, 2020. (1 C.T. 59–68.) The District then attacked the Complaint on November 30, 2020 by filing a Motion for Judgment on the Pleadings. (1 C.T. 88–103.) The District argued it had the power to create property tax classifications and differential rates among improved property because *Dondlinger* modified *Borikas*.[6] The

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[6] The District also challenged Mr. Traiman's claim the District's exemptions violated Section 50079 because it added a primary residence qualifier to the statutory exemptions for (1) persons who are 65 years or older; (2) persons receiving Supplemental

District argued that Mr. Traiman's argument was identical to Mr. Dondlinger's argument that "a tax based on square footage of structural improvements 'cannot apply uniformly to all taxpayers because the square footage of all parcels with structural improvements within [a district] are not the same.'" (1 C.T. 96–98; *Dondlinger*, *supra*, at p. 997.)

The trial court heard the District's motion on January 21, 2021 and issued its Order on March 9, 2021. (Reporter's Transcript of Proceeding, January 21, 2021, 1–24; 1 C.T. 177–181.) The trial court determined that Measure A (2020) facially exceeded the District's special taxing power and *Borikas'* central holding. "The $7,999 cap in Measure A creates a classification between properties and applies a varying tax rate which is prohibited." (1 C.T. 179.)

The trial court conducted a trial concerning Measure A's (2020) validity and whether any portion of it was severable. The trial occurred without live testimony. The briefing was completed by July 28, 2021, and oral argument occurred on September 24, 2021. (1–3 C.T. 187–690 are the trial documents; Reporter's Transcript on Appeal, September 24, 2021, 1–68 is the oral argument transcript.)

Instead of relying exclusively on *Dondlinger* to validate Measure A (2020), the District raised, for the first time, a procedural defense to validate Measure A (2020). The District argued that Code of Civil Procedure section 870 precluded Mr. Traiman's action because Measures A (2011) and B1 were validated by the Alameda County Superior Court in cases the

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Security Income; and (3) persons receiving Social Security Disability Insurance benefits. Mr. Traiman did not pursue this legal theory after the Court granted the District's Motion for Judgment on the Pleadings on that claim.

parties and the trial court referred to as *Nelco I* and *Nelco II*. (1 C.T. 229.) Code of Civil Procedure section 870 states that validation judgments are "forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated." (Code Civ. Proc., § 870.) Pointing to Measures A (2011) and B1's caps of $7,999, the District argued that Code of Civil Procedure section 870 validated the use of caps in subsequent unrelated special parcel taxes. (1 C.T. 229–231.) Not only were those measures validated, but their architectural structures were validated and "forever binding." (1 C.T. 230–231.) As for severability, the District argued that the trial court could remove the $7,999 cap and stay within the Constitutional mandate that only the voters can increase special district taxes. (1 C.T. 232–244.)

The trial court issued a proposed statement of decision dated November 22, 2021. (3 C.T. 693–702.) In a 9-page proposed decision, the trial court thoroughly examined Measure A's (2020) validity. Applying *Borikas'* central holding, the trial court concluded the District exceeded its taxation power because Measure A's (2020) $7,999 cap created a classification that violated section 50079. (3 C.T. 693–698.) The trial court rejected the District's plea to remove the $7,999 cap and increase taxes on 150 parcels because Article XIIIC of the Constitution prohibited it. (3 C.T. 698–701.) However, to try and parallel *Borikas*, the trial court's proposal revised Measure A (2020) to impose a flat tax of $299 for each taxable parcel of real property within the District's boundaries. (3 C.T. 701.)

On December 6, 2021, Mr. Traiman timely objected to the trial court's proposed statement of decision because the unintended consequence of imposing a flat $299 would raise taxes on 2,488

parcels. (3 C.T. 790–795.) Mr. Traiman argued that if the trial court agreed it could not raise taxes on the large parcels because of the Constitutional mandate of Article XIIIC, the trial court had to remain consistent and not cause a tax increase on the 2,488 smaller parcels. (3 C.T. 792.) The District also objected to the statement of decision and agreed with Mr. Traiman that the trial court could not raise taxes on the smaller parcels if the Constitution prohibited an increase on the larger parcels. (3 C.T. 799.)

On January 9, 2022, the trial court issued an order requesting Mr. Traiman and the District brief what the outcome would be if the trial court invalidated all of Measure A (2020). (3 C.T. 889.) The trial court asked if Measure A (2020) will revert to the validated Measure B1 tax. (3 C.T. 889.) In framing the question, the trial court noted that the Measure B1 judgment confirmed it was an extension of Measure A (2011). (3 C.T. 889.)

Mr. Traiman's response confirmed that Measures A (2020) and B1 have no relationship. (3–4 C.T. 891–947.) If the trial court invalidates Measure A (2020), Measure B1 remains in effect until it expires. (3 C.T. 891–893.) The District's response was twofold. First, it admitted Measures A (2020) and B1 were "independent." (4 C.T. 898.) The District could not argue otherwise because the District's resolution approving Measure A (2020) said it was in addition to Measure B1 — "[Measure A (2020)] will supplement the current parcel tax Measure B1 to recruit and maintain effective teachers and staff." (2 C.T. 302.) Second, it reargued its Code of Civil Procedure section 870 argument. "Where a validation action approves the structure of a tax, that same structure cannot later be challenged in litigation of a related agency action." (4 C.T. 901–902.)

On April 4, 2022, the trial court issued an 11-page Judgment. (4 C.T. 916–926.) The trial court invalidated all of Measure A (2020) and applied the severability doctrine to save the $299 flat tax on unimproved property. (4 C.T. 921–926.) In reaching this decision, the trial court addressed every disputed issue. The trial court began by construing section 50079 under the traditional rules of interpretation that this Court applied in *Borikas*. (4 C.T. 919–921.) The trial court reached the same conclusion this Court reached in *Borikas*, "the only classification with a differing tax rate possible under the law is improved or unimproved." (4 C.T. 920.) The trial court then turned to the District's Code of Civil Procedure section 870 argument. The trial court found the stipulated fact that the District and Mr. Traiman agreed that Measures A (2020) and B1 are independent tax measures and that an adverse ruling on Measure A (2020) has no effect on the continued validity of Measure B1. (4 C.T. 918.) This part of the Judgment effectively held that *Nelco I* and *Nelco II* had no precedential value or res judicata effect on Measure A (2020). (4 C.T. 920.) The Judgment also expressly rejected the District's second attempt to use *Dondlinger* to validate the $7,999 cap. (4 C.T. 921.) "*Dondlinger* only supports Defendant's authority to impose a fixed tax rate such as it endeavored to do with the $0.265 tax rate per square foot, as long as it is applied at the same rate to all subject property." (4 C.T. 921.) After holding Measure A (2020) exceeded the boundaries of section 50079, the trial court turned to severability and ruled it had to apply Article XIIIC of the Constitution consistently. (4 C.T. 921–925) Not only would it violate the Constitution to remove the $7,999 cap and cause a tax increase on 150 properties and their owners, but the same is also true for the 2,488 smaller properties that would face

a tax increase if the trial court mirrored the *Borikas* remedy and imposed a flat $299 tax. (4 C.T. 924–925.) Expressly acknowledging the supremacy of the Constitution, the trial court concluded that it was forced to eliminate all of Measure A (2020) except for a flat $299 tax for unimproved property. (4 C.T. 924–925.) "As sympathetic as this court may be to the desire to raise additional funds to support schools and quality education for students, it is nonetheless duty bound to uphold the provisions of the California Constitution." (4 C.T. 925.) In its concluding sentence, the trial court instructed the District to remedy its violation of section 50079 by returning to the voters or appealing to the Legislature to modify the express limitations of section 50079 for future special tax measures. (4 C.T. 925.) The trial court entered Judgment on April 5, 2022. (4 C.T. 928–932.) The District appealed the Judgment two days later. (4 C.T. 933–935.)

SUMMARY OF ARGUMENT

The District has been clamoring for absolute power to levy special taxes against taxpayers and property since 2008. The District wants the same power the Legislature has to tax property and taxpayers, with the only restraint being equal protection under the federal and California Constitutions. Despite multiple efforts to expand its power, the Legislature has rebuffed the District's pleas. The Legislature has told the District that school district special taxes must "apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property." (Gov. Code, § 50079.) The District remains

dissatisfied with the Legislature's delegation. Faced with no other options, the District returns to this Court seeking a remedy that it cannot fashion.

The District is an experienced litigant concerning section 50079. In 2008, the District passed a special tax called Measure H, which had four classifications of property — residential properties, commercial and industrial properties with less than 2,000 building square feet, commercial and industrial properties with more than 2,000 square feet, and a $9,500 maximum amount of tax. In 2013, this Court invalidated all of these classifications after applying the canons of textual interpretation and analyzing the Legislative history of section 50079 as well as other enabling statutes *in para materia*. This Court concluded that "section 50079 does not authorize school districts to impose special taxes that classify and differentially tax property within the district." (*Borikas*, *supra*, 214 Cal.App.4th at p. 164.)

Despite *Borikas*, the District continues to pursue its quest to have the same power as the Legislature — the power to tax, with the only limitation being rational basis review. Examination of the post-*Borikas* legislative history shows that despite two legislative efforts to reverse *Borikas*, the Legislature will not alter the "apply uniformly" phrase as it concerns special taxes levied against improved property. Likewise, the Court of Appeal has twice heard arguments about *Borikas'* central holding, and the Court did not deviate from its holding. *Borikas* is almost a decade old and appears to be followed by all school districts in California except the District. The District finds itself at a dead end. The Legislature refuses to give school districts unbridled taxation power and the courts cannot re-write section 50079. The District's solution is to continue on its current path by proposing

measures that the voters support and hope for a good litigation outcome. For the District, the calculus is simple; even if Measure A (2020) is invalidated, the District will collect tens of millions of dollars during the pendency of the litigation.

Although nothing is novel or unique in this case, the District needs another reminder of how two of the three branches of government work. The Legislature passes laws and the courts interpret them using the centuries old canons of interpretation. Section 50079 was divined from the Legislature in clear language leaving nothing for the courts to interpret.

Measure A (2020) is the District's second post-*Borikas* parcel tax. The first post-*Borikas* measure was Measure B1 and was erroneously validated by the trial court in a case entitled *Nelco II*. While Measures A (2020) and B1 are independent tax levies, the District twists statutory and common law to argue that Measure A (2020) is immune from invalidation because of its structural similarities with Measure B1. No statute or California case decision supports the District's novel argument. Instead, the case authority points in the other direction. The validation statutes apply to each governmental act, including previously validated governmental acts that are subsequently modified, amended, or even adjusted with automatic adjustments. (Gov. Code, § 50077.5.)

Measure A's (2020) defect is the $7,999 cap on its $0.265 tax rate applied against building square footage. A basic algebraic equation reveals that any parcel with building square footage above 30,184.91 will face a tax rate of less than $0.265. The District's records revealed that it knew 150 parcels within its

jurisdiction would pay a rate less than $0.265. In fact, the $7,999 cap restrained almost $12,000,000 in tax revenue over Measure A's (2020) seven-year term.

The District argues that using Measure A's generic severability clause, the Court can rewrite Measure A (2020) by removing the cap or, borrowing from the *Borikas* remedy, imposing the flat $299 tax Measure A (2020) levies against unimproved property across all property types. Neither solution works because it will cause tax increases on the 150 large parcels or 2,488 improved parcels that pay less than $299. Article XIIIC section 2(d) of the Constitution mandates that "[n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." (Cal. Const., art. XIIIC, § 2, subd. (d).) As the trial court concluded in its Judgment, "[a]s sympathetic as this court may be to the desire to raise additional funds to support schools and quality education for students, it is nonetheless duty bound to uphold the provisions of the California Constitution." (4 C.T. 925.) Severability cannot save Measure A (2020) because the Constitution mandates any modification to the tax measure that increases taxes return to the voters.

ARGUMENT

I. Code of Civil Procedure section 870 does not bar Mr. Traiman from challenging Measure A (2020)

The District asserts that this reverse invalidation action cannot proceed because trial courts validated Measures A (2011) and B1 in *Nelco I* and *Nelco II*. The District centers its flawed argument around Code of Civil Procedure section 870. Section 870(a) states

> The judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall, notwithstanding any other provision of law including, without limitation, Sections 473 and 473.5, thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.

(Code Civ. Proc., § 870, subd. (a).)

The District would have an excellent argument if Mr. Traiman attacked Measures A (2011) and B1. He did not attack those special tax measures. Instead, this case centers exclusively on Measure A (2020), which has no relationship to Measures A (2011) or B1. Neither Code of Civil Procedure section 870 nor any California case decision support the District's novel argument that because a newly enacted parcel tax is similar to a previously validated parcel tax, the new parcel tax is immune from invalidation.

A. The validation statutes are designed to permit judicial review of subsequent governmental acts irrespective of prior validated governmental acts

Code of Civil Procedure sections 860 through 870 are the validation statutes and the exclusive means by which an interested person seeks judicial review of school district parcel taxes. (*Golden Gate Hill Dev. Co., Inc. v. Cnty. of Alameda*, *supra*, 242 Cal.App.4th at p. 766 [school district parcel taxes are subject to the validation statutes].) Validation is a statutory mechanism to "provide a simple and uniform method for testing the validity of government action." (*Moorpark Unified Sch. Dist. v. Superior*

Court (1990) 223 Cal.App.3d 954, 960.) The government and interested persons have standing to seek a judicial validation or invalidation of the governmental act.

According to Code of Civil Procedure section 860, a public agency may subject its action to judicial review by initiating a validation proceeding. For example, a school district may validate its special tax by filing an action in a superior court within 60 days after the voters approve the district's special tax. (Code Civ. Proc., § 860.) The validation action empowers a court to "determine the validity of such matter." (Code Civ. Proc., § 860) If the court validates the act and no appeal is taken or if the judgment is affirmed on appeal, the parcel tax approved by the voters is "forever binding and conclusive … against the agency and all other persons." (Code Civ. Proc., § 870.) Code of Civil Procedure section 863 also permits an interested person to challenge the validity of a school district parcel tax by filing a reverse invalidation action on or before 60 days after the voters approve the district's special tax. (Code Civ. Proc., § 863.) If a court validates the governmental act in a reverse invalidation action, application of Code of Civil Procedure section 870 leads to the same outcome. The governmental act is "forever binding and conclusive … against the agency and all other persons." (Code Civ. Proc., § 870.)

Filing a validation or reverse invalidation action is an affirmative act taken by the governmental agency or an interested person. What happens if the governmental agency does nothing to validate its action and no interested person files a timely reverse invalidation action? This Court answered that question in *Golden Gate Hill Development Co., Inc. v. County of Alameda*. "Practically speaking, this means that 'an agency may

indirectly but effectively validate its action by doing nothing to validate it.'" (*Golden Gate Hill Dev. Co., Inc. v. Cnty. of Alameda*, *supra*, 242 Cal.App.4th at p. 766; see also *Coachella Valley Water Dist. v. Superior Court of Riverside Cnty.* (2021) 61 Cal.App.5th 755, 767–768 ["Importantly, if the agency does nothing, and no interested person brings a reverse invalidation action within 60 days, the action is deemed valid and 'become[s] immune from attack.'"].)

The District attempts to distinguish governmental acts validated by action versus inaction when the law makes no distinction. The District argues that if a school district parcel tax is validated through a validation action, all subsequent challenges to unrelated parcel taxes that mirror the validated parcel taxes' structure are barred. However, if the school district's parcel tax is validated by inaction, an interested person can challenge the tax's validity. (Appellant's Brief at p. 24.) The District misinterprets a good deal of law in making its argument. It misreads Code of Civil Procedure section 870, the validation statutes, and has no case authority to support its position. The District cannot bolster its theory using *Eiskamp*, *Griffith*, or *Buena Park*.

Code of Civil Procedure section 870 makes no distinction on validated governmental acts. When quoting Code of Civil Procedure section 870, the District emphasizes the clause "the judgment shall permanently enjoin the institution by any person or any action or proceeding raising any issue." (Code Civ. Proc., § 870.) That clause, in isolation, changes the entire meaning of the statute. Instead, it must be read with the first part of the section as one integrated whole — "[t]he judgment, … shall become and thereafter be forever binding and conclusive, as to *all*

matters therein adjudicated or which at that time could have been adjudicated." (Code Civ. Proc., § 870, italics added.) The matter adjudicated in *Nelco I* was Board Resolution 10–0118, which became Measure A (2011). The matter adjudicated in *Nelco II* was Board Resolution 2015–16.83, which became Measure B1. Mr. Traiman's action concerns yet another Board Resolution, this time 2019–2020.16, which became Measure A (2020). The previously validated Measures A (2011) and B1 are unrelated governmental acts according to the validation statutes.

The District's argument not only misconstrues Code of Civil Procedure section 870 but also fails to work *in para materia* with Code of Civil Procedure sections 860 and 863. Those sections provide the framework that each school district parcel tax may be validated or invalidated within 60 days of the effective date of the tax. The District's argument that Measure A (2020) is immune from attack because different parcel taxes (Measures A (2011) and B1) were validated, even if erroneously, is its attempt to have this Court misconstrue Code of Civil Procedure section 870 and the validation statutes as a whole.

B. *Coachella Valley* and not *Eiskamp* is the analogous case

The District attempts to steer this Court away from *Coachella Valley* and towards the misplaced *Eiskamp*. (Appellant's Brief p. 24 ["[T]his case is *Eiskamp*, not *Coachella Valley*."].) Not so. In *Coachella Valley*, the plaintiff brought two invalidation proceedings to invalidate two tax rate increases under the State Water Project (or SWP). The plaintiff filed his invalidation action challenging the Coachella Valley Water District's 2013 resolution increasing the SWP tax by $0.02 in 2018, which was untimely and dismissed by the trial court on demurer. (*Coachella Valley*

Water Dist., *supra*, 61 Cal.App.5th at p. 763.) The second action was Coachella Valley Water District's resolution to increase the SWP for the 2019–2020 fiscal year. The Coachella Valley Water District passed its resolution on June 25, 2019, and plaintiff timely filed for invalidation on August 23, 2019. (*Id.* at p. 765.)

While the issue on appeal was the trial court's dismissal of the first action, plaintiff argued that applying the SWP tax to the invalidation statutes would immunize the water district from liability due to the continuing illegality of its annual tax increases. In response, the Court of Appeal rejected that argument not once but twice in two sections of the opinion. The Court held that the Coachella Valley Water District does not have perpetual immunity because its previous acts were validated by inaction.

> The water district must fix the SWP tax rate anew each year (citation), thereby creating a new 'assessment' the validity of which must be determined under the validation statutes. Indeed, [the plaintiff] filed a timely reverse validation action against the SWP tax rate the water district fixed for the 2019–2020 fiscal year.

(*Coachella Valley Water Dist.*, *supra*, 61 Cal.App.5th at p. 773.) And one page later

> [t]he water district cannot evade judicial review, as [the plaintiff] worries. Although the claims in his 2018 complaint are time barred, he may challenge (and indeed already has) future resolutions adopting the SWP tax by bringing a validation action within 60 days of the resolution setting those taxes.

(*Coachella Valley Water Dist.*, *supra*, 61 Cal.App.5th at p. 774.)

The District's only response to the *Coachella Valley* holdings is to claim it is dictum. These holdings were not incidental. Plaintiff

argued the application of the validation statutes to his first action was manifestly unfair. The water district could continue to exceed its taxing power because its prior tax increases were validated. The Court of Appeal alleviated the plaintiff's concerns not once but twice.

Eiskamp is a readily distinguishable case. In *Eiskamp*, the plaintiff, a Pajaro Valley Water Management Agency's Board member, challenged the previously validated ordinance 2002–02 three years after its validation. (*Eiskamp v. Pajaro Valley Water Mgmt. Agency* (2012) 203 Cal.App.4th 97, 102.) The judgment validated three Agency ordinances, 2002–02, 2003–01, and 2004–02 in February 2008. (*Ibid.*) In August 2010, Mr. Eiskamp filed an invalidation action to invalidate ordinance 2002–02; the same ordinance validated in the February 2008 judgment. (*Ibid.*) The Agency demurred to the invalidation complaint, and the trial court sustained the demurrer and entered a judgment of dismissal. (*Ibid.*) The Court of Appeals affirmed the judgment applying res judicata and Code of Civil Procedure section 870. "[T]he stipulated judgment resolved the issue that [plaintiff] now raises, that is, the validity of . . . [ordinance 2002–02]." The court concluded that "[Mr.] Eiskamp is barred from relitigating the same issues that were resolved in the pending litigation." (*Ibid.*)

While *Eiskamp* supplies the District with an attractive tidy quote to support its argument that Measure A (2020) is immune from attack, the case has no similarity with Mr. Traiman's case. Mr. Traiman was not involved in the Measures A (2011) and B1 litigations, and he is not challenging them. Mr. Traiman whole heartily agrees that Measures A (2011) and B1 are immune from attack under Code of Civil Procedure section 870. Instead, Mr. Traiman challenged Measure A (2020), an entirely new school

district parcel tax. Simply because the new parcel tax has similarities with prior validated parcel taxes does not allow this Court to use res judicata or Code of Civil Procedure section 870 to bar Mr. Traiman's invalidation of Measure A (2020).

Equally unpersuasive are the District's citations to *Griffith v. Pajaro Valley Water Mgmt. Agency* (2013) 220 Cal.App.4th 586, 604 and *Buena Park Motel Ass'n v. City of Buena Park* (2003) 109 Cal.App.4th 302, 308. In *Griffith*, a case factually related to *Eiskamp*, the plaintiff's challenge to ordinance 2002–02 failed for the same reasons as the plaintiff in *Eiskamp*. The *Griffith* plaintiff sought to invalidate ordinance 2002–02 after it was validated. (*Ibid.*) Identical to the outcome in *Eiskamp*, the Court of Appeal determined the validation judgment extinguished all of plaintiff's claims that had been made or could have been made concerning the validity of ordinance 2002–02 and that it was immune from further challenge. (*Id.* at p. 606.) *Buena Park Motel Association* has even less application to the present matter since that case deals with the plaintiff missing the 90-day limitations period to challenge "the validity of a local zoning regulation." (*Ibid.*) Candidly, *Griffith* and *Buena Park Motel Association* provide no support for the District's argument that Measure A (2020) is immune from attack. Despite the District's best efforts to persuade the Court otherwise, *Coachella Valley Water District* is the relevant case.

C. Government Code section 50077.5 permits Mr. Traiman's action, even if Measure A (2020) was an extension of Measures A (2011) and B1

"Statutes *in pari materia* are to be interpreted together, as those they were one law." (Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 252.)

Quoting from Justice Felix Frankfurter's law review article entitled *Some Reflections on the Reading of Statutes* in a 1947 Colombia Law Review article, Scalia and Garner say that statutes "cannot be read intelligently if the eye is closed to consideration evidenced in affiliated statutes." (*Ibid.*) Government Code section 50077.5 is part of the enabling statutes authorized by the Legislature. Section 50077.5 states that the validation statutes

> [apply] to any judicial action or proceeding to validate, attack, review, set aside, void, or annul an ordinance or resolution approved by the voters . . . that levies a special tax, or modifies or amends an existing ordinance or resolution that levies a special tax.

(Gov. Code, § 50077.5.)

Section 50077.5 addresses two topics. First, it confirms that validation is the exclusive means to test the validity of any special tax authorized by the voters. (*Golden Gate Hill Dev. Co., Inc. v. Cnty. of Alameda*, *supra*, 242 Cal.App.4th at p. 768 [trial court determined the plaintiff's tax refund action was a reverse invalidation action and subject to a 60-day limitations period].) Second, it states that if a previously passed special tax is modified, amended, or has any automatic adjustments that increase the amount of the special tax, it is subject to a validation or invalidation action. (Gov. Code, § 50077.5.) To rephrase within the context of school district special taxes, if a school district special tax modifies, amends, or has an automatic tax increase, a new 60-day limitations period commences for a validation or invalidation action. The statute does not qualify what may be validated or invalidated. Instead, the Legislature has expressly

authorized the school district or an interested person to commence an action for validation or invalidation of an existing special tax that was modified or amended by the voters.

The District argues that the Court should apply Code of Civil Procedure section 870 to bar Mr. Traiman's invalidation of Measure A (2020) because it shares the same cap as Measure B1. (Appellant's Brief at p. 24.) Assume for the sake of argument that Measure A (2020) is a voter approved modification of Measure B1 because it has the same $7,999 maximum tax. The flaw in the District's argument is that it ignores Government Code section 50077.5. Government Code section 50077.5 permits Mr. Traiman's action to invalidate Measure A (2020) by its express language. (Gov. Code, § 50077.5.)

II. *Dondlinger* contains no legal authority that authorizes school districts to create a maximum amount of tax and comply with section 50079's uniformity requirement

At every stage of the litigation below, the District tried mightily to persuade the trial court that *Dondlinger v. Los Angeles County Regional Park & Open Space District* modified *Borikas'* central holding and validated Measure A (2020).[7] It is a puzzling argument once one considers that *Dondlinger* reaffirmed *Borikas'* central holding and that section 50079 differs from the enabling statute for regional parks and open space districts, Public Resources Code section 5566. (Appellant's Brief p. 30.) The District argues that *Dondlinger* modified *Borikas* simply because of one quote: "[w]e do not read the statute to require uniform

[7] Although the District alleges Mr. Traiman relied on *Dondlinger*, that is not true. (Appellant's Brief p. 30.) Only the District tried to persuade the trial court that *Dondlinger* applied to the facts of this case.

effect or *outcome*, but rather uniform *application*." (*Dondlinger*, *supra*, 31 Cal.App.5th at p. 1001.) The District argues that this quote means, within the context of section 50079, that so long as the special tax is applied to each property and taxpayer, the special tax is "applied uniformly." Applying one tax formula with different classifications and rates within the formula violates section 50079.

Mr. Traiman agrees with *Dondlinger's* construction of Public Resources Code section 5566, but it has no application within the context of section 50079. In *Dondlinger*, the Los Angeles County Board of Supervisors submitted to the voters a resolution calling for voters to create a tax on all improved parcels in the District at a rate of 1.5 cents per square foot of structural improvements, excluding parking structures. (*Dondlinger*, *supra*, 31 Cal.App.5th at p. 996.) While Public Resources Code section 5566 mandates uniform taxation, it differs from section 50079. Public Resources Code section 5566 permits a taxing district to "establish a zone or zones and a rate of tax for each zone, which is to be applied uniformly to all taxpayers within the zone." (Pub. Resources Code, § 5566.) That enabling statute authorizes a regional park district to create classifications (e.g., zones), and the taxation must be uniform only to taxpayers, who are people or entities, not property. In contrast, section 50079 provides a school district with no discretion to create a zone or zones with a different rate for each zone. A school district's only discretion is that it may tax unimproved property throughout the district at a lower rate than improved. Further, a school district's tax levy must be uniform in application to taxpayers (people and entities) and property.

Mr. Dondlinger claimed no difference between section 50079 and Public Resources Code section 5566. He argued that the

$0.15 tax could not meet the uniformity standard expressed in Public Resources Code section 5566 because the square footage of parcels differed, which rendered different tax outcomes for each taxpayer. (*Dondlinger*, *supra*, 31 Cal.App.5th at p. 997.) For example, a taxpayer with a parcel with improvements totaling 1,500 square feet would pay $225, whereas another taxpayer with 3,000 square feet of improvements on their parcel would pay $450. Mr. Dondlinger argued that this outcome did not meet the uniform application requirement expressed in Public Resources Code section 5566 and *Borikas'* central holding. (*Dondlinger*, *supra*, at p. 999.)

The respective enabling statutes are vital to understanding the contextual difference between *Dondlinger* and *Borikas*. Applying Mr. Dondlinger's theory of uniform taxation with the parameters of Public Resources Code section 5566, the Court of Appeals reasoned that

> no property or parcel tax could ever be valid. Even the most earnest attempt at uniformity could not have a uniform effect, which is what Dondlinger's assertion presupposes the statute requires; a simple parcel tax applied to each parcel in a zone, or zones, or the District would treat 'taxpayers' different based on the number of parcels they owned. Not even the parcel tax that the Borikas court approved – a flat $120 per parcel tax – would survive under Dondlinger's requested interpretation.

(*Dondlinger*, *supra*, 31 Cal.App.5th at p. 1000.)

The Court of Appeal correctly held that uniformity in the context of Public Resources Code section 5566 (not section 50079) requires a uniform application of the tax across all property types within a zone or zones. One express rate or fixed tax for each zone. So long as $0.15 is the rate against which each parcel's

building square footage, excluding parking structures, is taxed, the tax statute complies with Public Resources Code section 5566. (*Dondlinger*, *supra*, 31 Cal.App.5th at p. 1001 ["Each taxpayer is required to pay the same 1.5 cents per square foot of structural improvements on their real property not used for parking"].)

Dondlinger does not modify *Borikas'* central holding in the context of section 50079. The trial court in this matter agreed. "*Dondlinger* only supports [the District's] authority to impose a fixed tax rate such as it endeavored to do with the $0.265 tax rate per square foot, as long as it is applied at the same rate to all subject properties." (4 C.T. 921.) Relevant to this discussion is what, if anything, does *Dondlinger* provide in the context of permitting school districts to create a classification of taxpayers and real property (those who will pay a maximum amount of tax because the building square footage exceeds 31,184.91 square feet) within its tax measure? Nothing. The questions presented in *Dondlinger* had nothing to do with school district parcel taxes and maximum amounts of tax under section 50079, and the opinion did not venture beyond examining uniform taxation among taxpayers within the context of Public Resources Code section 5566. *Dondlinger* does not even have dictum that supports the District's arguments.

III. The plain reading of section 50079 prohibits school districts from classifying taxpayers and property and imposing different tax rates on improved property

The District attempts to upend *Borikas* and contorts the canons of statutory interpretation beyond their reasonable parameters in a misguided attempt to exceed their taxing authority. Mr. Traiman agrees with Justice Scalia and Mr.

Garner that the legal system relies upon a "sound approach" to interpreting legal texts. (Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 3.) Holding the phrase "apply uniformly" is surplusage and a restatement of equal protection is not sound. (Appellant's Brief p. 39 ["Here, the application of the rule against surplusage should not be applied to Section 50079 as an infallible canon where it is clearly contrary to the legislative intent to restore, not limit taxing authority."].)

The foundational canon of interpretation is the ordinary meaning canon: words in statutes are read in light of their ordinary, plain meaning. (*Borikas*, *supra*, 214 Cal.App.4th at p. 146.) The District's ongoing arguments since 2008 that section 50079's "apply uniformly" phrase is a reiteration of the equal protection clause disregards the canons and should be rejected. To give merit to the District's arguments concerning the construction of section 50079's "apply uniformly" phrase would undermine those canons' usefulness and purpose in supporting a system of faithful interpretation of legal texts.

A. The text of section 50079 confirms the Legislature restricted school district taxing power by qualifying its power to only tax property or taxpayers "uniformly"

This Court in *Borikas* followed the canons when it construed the phrase "apply uniformly" in the context of section 50079. *Borikas* began its analysis by explaining the context of section 50079 within the greater body of law in Propositions 13, 62, and 218. Those propositions amended the Constitution and the Government Code to mandate that all local governments seek voter approval to levy taxes and fees on property and taxpayers. *Borikas* construed section 50079 using several interpretive

canons: the ordinary-meaning canon, the general-terms canon, the surplusage canon, the harmonious-reading canon, and the related-statutes canon.[8] (*Borikas*, *supra*, 214 Cal.App.4th at p. 146.) The Court then reached its foundational holding

> We agree with plaintiffs that the plain language of Section 50079 and attendant rules of statutory construction demonstrate the definitional language at issue is language of limitation and does not empower school districts to classify taxpayers and property and impose different tax *rates*.[9]

(*Borikas*, *supra*, 214 Cal.App.4th at p. 151, italics added.)

Applying the law to the facts, *Borikas* invalidated Measure H. "We therefore conclude Measure H's property *classifications* and differential tax *burdens* exceed the District's taxing authority under section 50079 …" (*Borikas*, *supra*, 214 Cal.App.4th at p. 140, italics added.)

Measure H had four *facial* classifications for improved property — residential properties, commercial and industrial properties with less than 2,000 building square feet, commercial and industrial properties with more than 2,000 square feet, and a $9,500 maximum amount of tax. (4 C.T. 920; *Borikas*, *supra*, 214

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[8] The Court examined the words of the statute giving meaning to each of the words and phrases. The Court gave the words their ordinary meaning because it found none of the words to be technical. The Court applied the Oxford English Dictionary and Webster's 10th New Collegiate Dictionary definitions to the word "uniform." (*Borikas*, *supra*, 214 Cal.App.4th at p. 147.) In response to the District's argument that "apply uniformly" was the reiteration of equal protection, the Court rejected that argument concluding that interpretation would render the phrase "meaningless surplusage." (*Ibid.*)

[9] Applying the grammar canon, the Court used common plural nouns to explain "apply uniformly" does not permit the creation of classifications and different tax rates or burdens.

Cal.App.4th at p. 140.) Measure A (2020) has two *facial* classifications for improved properties — a $0.265 tax rate against building square footage and a $7,999 maximum amount of tax that limits the tax rate for 150 properties. (4 C.T. 920.) *Borikas* eliminated all *facial* classifications and used severability to revise Measure H and levy the $120 flat tax for all residential property across all property types. (4 C.T. 920, 921; *Borikas*, *supra*, at pp. 167–168.)

Measure A (2020) fails section 50079's uniformity requirement concerning improved property. By installing a maximum amount of tax in the measure, the District manufactured a *facial* classification that applies Measure A (2020) differently depending on the parcel's building square footage. Under Measure A (2020), improved parcels with less than 30,184.91 building square feet pay a tax with a rate of $0.265 per square foot, while improved parcels with building square footage larger than 30,184.91 pay a flat tax of $7,999, or alternatively viewed, pay a tax with a rate less than $0.265 per building square foot. For example, the residential parcel located at 1900 Cambridge Drive has 1,380 building square feet. (2 C.T. 395.) Measure A (2020) applies a tax of $0.265 per building square foot for an annual tax liability of $365.70. (2 C.T. 395.) However, the District manipulated Measure A (2020) for Bladium Sports & Fitness Club ("Bladium"), located at 800 West Tower Avenue. That parcel has 105,768 building square feet. (3 C.T. 685.) But for the District's legislative manipulation, Baldium's annual tax liability would be $28,028.52. The $7,999 cap, or flat rate, reduces Baldium's effective tax rate to $0.075, a 71.7 percent reduction from the rate expressed in Measure A (2020). The Bladium parcel is just one of 150 parcels larger than 30,184.91. Each of the 150

parcels pays a different rate under the tax formula, but there is no doubt that each of those 150 parcels pays less than the $0.265 per square foot rate expressed in Measure A (2020). (3 C.T. 704–789.)

Substantively, it does not matter how the Court views the classification created by the cap — either a flat rate of $7,999 or a tax with a rate less than $0.265 per square foot for parcels with more than 30,184.91 square feet. Measure A (2020) expressly applies a different tax structure to parcels larger than 30,184.91 square feet than for parcels smaller than 30,184.91 square feet. As stated in *Borikas*, section 50079 does not imbue districts with the authority to create classifications and impose differential tax rates unless the Legislature expressly provides the authority to do so.[10] The Legislature did not empower school districts to make these classifications. (*Borikas*, *supra*, 214 Cal.App.4th at p. 163.) The imposition of one tax on some improved parcels and a completely different tax on other improved parcels results in the exact type of impermissible classification that section 50079 and *Borikas* expressly prohibit. *Borikas* made clear that the Legislature provided school districts with a choice, either a flat uniform amount levied against property or uniform rate.[11] The

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[10] Congress has a myriad of enabling statutes where federal agencies have authority to exercise Article I powers. As the United States Supreme Court said during its last term, "'Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" (*West Virginia v. Envtl. Prot. Agency* (2022) 213 L.Ed.2d 896.)

[11] Since *Borikas*, there have been roughly 175 school district parcel taxes submitted to the electorate under section 50079. All these parcel taxes were either flat taxes imposing the same rate per parcel or square footage taxes with a constant rate, applying without variation or difference to each parcel based on taxable

Legislature did not empower school districts to mix the two different tax structures to create a hybrid tax that maximizes tax revenue and appeals to the voters. While the District might believe it is good politics to create a hybrid parcel tax, the Legislature has thus far thought otherwise. As the trial court stated in the Judgment, the District should "appeal to the Legislature to modify that limitation and to discontinue exceeding the current bounds of its taxing authority." (4 C.T. 925.)

B. *Borikas* eliminated the Measure H maximum tax

The District argues that *Borikas* did not construe section 50079 to prohibit a maximum amount of tax. (Appellant's Brief p. 9.) The District missed the common plural nouns in *Borikas'* central holding "we therefore conclude Measure H's property *classifications* and differential tax *burdens* exceed the District's taxing authority." (*Borikas*, *supra*, 214 Cal.App.4th at p. 140, italics added.) Measure H had a $9,500 cap, and *Borikas* eliminated all classifications leaving a $120 flat tax across all property types. Measure H imposed "classification-based taxes which section 50079 does not even hint at authorizing," and all of Measure H's property classifications (including the $9,500 cap) and differential tax burdens exceed the District's taxing authority

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square footage. To Mr. Traiman's knowledge, the District's Measure A (2011), Measure B1, and Measure A (2020) are the only school district parcel taxes in California, post-*Borikas*, that create classifications and different tax rates by imposing a maximum (or minimum) amount of tax. (Respondent's Motion for Judicial Notice pp. 1-2.) This data strongly suggests that school districts around the state understand *Borikas'* central holding and that the District stands alone in its interpretation that *Borikas* permits tax structures that create classifications and impose different rates.

under section 50079. (*Borikas*, *supra*, at p. 172 (conc. opn. of Marchiano, PJ.).) It is difficult to understand the District's logic that a cap on school district parcel taxes survived *Borikas*. (*Id.* at p. 147.) *Borikas* expressly rejected all of the District's classifications. The $7,999 cap found in Measure A (2020) must be invalidated, as the $9,500 cap was in *Borikas*.

C. The legislative history of section 50079 supports the conclusion that the Legislature expressly limited school districts' power to classify taxpayers and property and impose different tax rates on improved property and that the Legislature has subsequently affirmed its intent

When a statute is clear and unambiguous, a court does not need to examine legislative history to determine a statute's meaning. Instead, meaning is derived from the words of the statute. As *Borikas* noted, however, section 50079's legislative history confirms that the phrase "apply uniformly" aligns perfectly with the common definition of those words. *Borikas* thoroughly examined the history behind section 50079 with particular emphasis on the Bader Amendment, which was the amendment from Assemblyman Charles W. Bader that added the "apply uniformly" phase into section 50079. (Appellant's Request for Judicial Notice, pp. 295–296.) Four school districts with existing parcel taxes engaged in the legislative process, one of which had differing tax rates between residential and non-residential property. (*Borikas*, *supra*, 214 Cal.App.4th at p. 154.) The four school districts expended great effort to lobby the Legislature to eliminate the Bader amendment, including retaining counsel and appealing to then State Senator John Garamendi, who at the time was Chairman of the Senate Committee on Revenue and Taxation. (Appellant's Request for

Judicial Notice pp. 295–296.) Despite the four school district's efforts, they could not persuade the key Legislature members to remove the "apply uniformly" phrase from AB 1440, which became section 50079. (*Ibid*.) Thus, while *Borikas* found it unnecessary to examine the history behind section 50079, it showed the Legislature's intent to limit school districts' taxing power.

> It is significant that school districts that were in immediate need of the legislation and closely following its course through the Legislature, opposed the language and tried on multiple fronts to have it removed from the bill—specifically because it appeared to preclude the kind of differential tax treatment required by their special tax measures, including treating seniors differently from other taxpayers and treating residential properties differently from commercial properties.

(*Borikas*, *supra*, 214 Cal.App.4th at p. 157.)

Not only is the text of section 50079 clear, but the Legislature has implicitly affirmed *Borikas*' central holding. In the 2013–2014 legislative session, two attempts were made to overrule *Borikas*' central holding. Both attempts failed. Proposed in the wake of *Borikas*, AB 59 would have allowed school districts to impose parcel taxes with equal protection based classifications of taxpayers and property. (Respondent's Motion for Judicial Notice, Exhibit A, AB 59 as introduced in the Assembly.) AB 59 stated

> It is the intent of the Legislature, in enacting Section 1 of this act, to clarify, and not change, existing law, by confirming that a school district may assess taxes in accordance with rational classifications among taxpayers or types of property, and nevertheless satisfy the requirement that the taxes apply uniformly to all taxpayers or all real property within

> the school district, so long as the taxes are applied uniformly within those classifications. It is further the intent of the Legislature to abrogate the holding in Borikas v. Alameda Unified School District 2012 WL 6084027 to the extent that the court's holding restricts the right of the Alameda Unified School District to retain any of the qualified special taxes imposed pursuant to Measure H, as approved by the district's voters on June 3, 2008.

(Respondent's Motion for Judicial Notice, Exhibit A.)
In February 2014, AB 59 died in the Assembly. (*Id.* at Exhibit B, Summary of AB 59.)

Similarly, SB 1021 sought to modify *Borikas*' central holding by allowing school districts to classify certain enumerated types of property (i.e., residential, multifamily residential, industrial, or commercial) and tax each classification differently, as long as all properties within a classification were taxed the same. (Respondent's Motion for Judicial Notice, Exhibit C, SB 1021 as Amended in the Senate on April 2, 2014.) The sponsor of SB 1021 used the same argument the District made in *Borikas* — equal protection and rational basis review should be used to interpret the "apply uniformly" phrase in section 50079. (*Borikas*, *supra*, 214 Cal.App.4th at p. 139.) In the Assembly Committee on Revenue and Taxation, the committee members were informed that

> This bill would prospectively overturn the Borikas decision, allowing school districts to use property classifications – commercial, industrial, single family residential and multifamily residential – to levy different parcel tax rates within the classification.

(Respondent's Motion for Judicial Notice, Exhibit D, Assembly Committee on Revenue and Taxation Analysis of SB 1021, June 25, 2014.) SB 1021 never made it out of committee. (*Id.* at Exhibit

E, Summary of Status for SB 1021.) By rejecting both AB 59 and SB 1021, the Legislature implicitly affirmed *Borikas* central holding that school districts cannot create property classifications, classify taxpayers and impose differential tax rates beyond what it expressed in the statute. (*Borikas*, *supra*, 214 Cal.App.4th at pp. 140, 151.)

Since *Borikas*, the Legislature has amended *Borikas* five times, all of which have worked harmoniously with *Borikas'* central holding. (Respondent's Motion for Judicial Notice, Exhibit F, Summary of Status for all post-*Borikas* Amendments to section 50079.) The only modification to section 50079's uniformity mandate was in 2018, when the Legislature authorized school districts to tax unimproved property less than improved property. (Respondent's Request for Judicial Notice, Exhibit G, Amendment to AB No. 2954.) The bill that added that language was AB 2954. (*Ibid.*)

The District supported AB 2954 and urged the governor to sign the bill into law. (Respondent's Motion for Judicial Notice Exhibit H, Letter from Alameda Unified School District Superintendent Sean McPhetridge to Governor Jerry Brown.) By supporting AB 2954, the District implicitly recognized that the only method to classify taxpayers and property and impose different tax rates was by legislative grace. However, the District made no effort to seek authority from the Legislature to create classifications and different tax rates by imposing a minimum or maximum amount of tax. Why the District sat on its lobbying right to obtain the power it desperately wants is something only the District can answer. The District believes the easiest path is to try and persuade the courts to exercise raw judicial power rather than engage in the democratic political process. The trial

court reached this determination after hearing the District's arguments during the Motion for Judgment on the Pleadings and trial. As stated in the Judgment, if the District wants the power to classify taxpayers and property and impose different tax rates on improved property, it must appeal to the Legislature and refrain from turning to the court. (4 C.T. 925.) Thus far, the Legislature has affirmed *Borikas* and is not inclined to modify the definition of uniformity under section 50079.

IV. Severability cannot save Measure A (2020)

The rules of severability are long established and well understood. An invalid provision can be severed if it is "grammatically, functionally and volitionally separable." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821–822; see also *Borikas*, *supra*, 214 Cal.App.4th at p. 166.) The District and Mr. Traiman agree that the first two elements of the severability test are met — grammatical and functional. The dispute concerns the third element — volitional. For a statute to be volitionally severable, the determination depends on whether the remainder of the statute is complete and would have been adopted by the enacting body had the latter foreseen the partial invalidity of the statute or constitutes an entirely operative expression of the enacting bodies' intent and is not so connected with the rest of the statute as to be inseparable. (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331; *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714; *Abbott Labs. v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346, 1357.)

A determination of volitional severability logically requires that the remaining provisions must be viewed from the

perspective of the enacting body. (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 331) Regarding initiatives

> the test [for volitional severability] is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the invalid portions.

(*Gerken*, *supra*, 6 Cal.4th at p. 719, quoting *People's Advocate, Inc.*, *supra*, 181 Cal.App.3d at p. 333.)

In this case, the critical question for determining volitional severability is whether the voters' attention was sufficiently focused on the tax of $0.265 per square foot for buildings on improved properties so that the voters would have separately considered and adopted the uniform $0.265 tax in the absence of the $7,999 cap or imposed a uniform $299 tax on all improved property types. (*Gerken*, *supra*, 6 Cal.4th at p. 719; *People's Advocate, Inc.*, *supra*, 181 Cal.App.3d at pp. 331–332.) Measure A's (2020) tax was presented to the voters as a whole and included the $7,999 cap. However, the language of Measure A (2020) does not mention a minimum $299 tax. *On its face*, Measure A (2020) says the tax was "capped at $7,999 per parcel," and mentions nothing about a minimum tax of $299 on improved properties. (2 C.T. 315.) The voters relied on this plain and unambiguous language when they approved Measure A (2020). The trial court agreed when it analyzed severability within the context of the $7,999 cap. "Merely excising the cap would not represent what the [District] or the voters intended…." (4 C.T. 924.)

It is impossible to discern from the record how much of an impact the $7,999 cap and the lack of a $299 floor had on the

electorates' decision to approve Measure A (2020). Despite passing with a two-thirds vote, Measure A (2020) was a close election. It prevailed by a 1 percent margin. (2 C.T. 321.) What the vote tally would have been if the voters knew the courts could remove the $7,999 cap or install a $299 floor is conjecture. Nothing in the record supports a factual finding that "the electorates intent was sufficiently focused" on the $0.265 per building square foot tax within the $7,999 cap or the possibility it could morph into a $299 uniform tax across all improved property types. The voters did not consider a possible standalone tax without the $7,999 cap, and they certainly did not consider a $299 uniform tax. The far more reasonable inference of the voters' intent is that the electorate voted on one integrated tax statute (without knowledge of its illegality) — a $0.265 rate with a $7,999 maximum tax liability.

The District's lone piece of evidence to support its severability argument is Measure A's (2020) severability clause. Voters could not have understood that the presence of the severability clause could permit a court to implement a higher tax on larger or small properties than the one they approved. A severability clause does not give a court creative license to rewrite a special parcel tax to make it lawful. Case law does not support such a far-reaching interpretation of the severability doctrine and would have disastrous results in this matter and subsequent voter-approved tax statutes. If a severability clause could be used to approve taxes not explicitly considered by the voters, then localities would be able to craft a politically appealing tax but implemented in a revenue maximizing manner after judicial severability. Such bait-and-switch taxation would violate the Constitution's protections against local taxation. (*City of San Diego v. Shapiro*

(2014) 228 Cal.App.4th 756, 770 [The California Supreme Court has determined that courts are "obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law."].) Nothing could be more dangerous for democracy than applying the severability doctrine in such a broad way as to allow a court to rewrite the law after it was passed. Using a severability clause as a catch-all to approve any form a tax could take after invalid provisions have been excised would set a dangerous precedent and ignore limitations on local taxation guaranteed by the Constitution.

V. The Constitution prohibits the Court from removing the $7,999 cap on improved property or implementing a flat $299 tax on all improved property

The Constitution's limitations on local taxation and the statutory scheme to enforce them were implemented with a clear intent to provide tax relief to California property owners. Further, these Constitutional amendments were designed to increase citizenry control over local taxation by requiring voter approval of all new local taxes imposed by all local governmental entities. (*Santa Clara Cnty. Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 233.) Severing Measure A's (2020) tax would usurp the will of all Californians by creating a shortcut around the Constitution's strict voting requirements for new special taxes and would allow local governments to impose taxes that were never approved or even considered by the voters.

A. Constitutional amendments — Proposition 13 and Proposition 218

In 1978, California voters approved Proposition 13, which added Article XIIIA to the state Constitution and dramatically

changed state and local tax structures. (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1182.) The general purpose of Proposition 13 was to afford tax relief to California real property owners by imposing limitations on the state and local government's ability to tax property. (*California Bldg. Indus. Assn. v. Governing Bd. of the Newhall Sch. Dist. of Los Angeles Cnty.* (1988) 206 Cal.App.3d 212, 219.)

Proposition 13 was codified by adding Article XIIIA to the Constitution. (Cal. Const., art. XIIIA.) Amongst the newly added Constitutional provisions was Article XIIIA, section 4, which protects taxpayers from unconstitutional taxation by specifying that a two-thirds affirmative vote is required for any special tax proposed by a county, city or special district. (Cal. Const., art. XIIIA, § 4 ["Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district …".].) The California Supreme Court found that Article XIIIA, section 4 was "intended to circumscribe the taxing power of local government" and that section 4's restriction on local taxes is part of an "interlocking package" deemed necessary by Proposition 13's framers to assure effective real property tax relief. (*Rider v. Cnty. of San Diego* (1991) 1 Cal.4th 1, 7, quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231.)

Despite Proposition 13's stated purpose of protecting all Californians against excessive taxation, eventually, local governments discovered and exploited loopholes that allowed for the imposition of increased taxes without complying with the strict supermajority voting requirement provided in Article XIIIA, section 4.) In response to these encroachments, another statewide initiative, Proposition 218, entitled the "Right to Vote

on Taxes Act," was passed in 1996. (*Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022, 1038 [Article XIIIC was enacted when voters passed Proposition 218 in 1996 to implement Proposition 13, the predecessor initiative that voters passed in 1978 to constrain the taxation powers of state and local government].) Proposition 218's stated purpose was

> The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

(citation omitted) *Bay Area Cellular Tel. Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 692–693.)

Article XIIIC section 2(d) states, "[n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." (Cal. Const., art. XIIIC, § 2, subd. (d).) Under Proposition 218, a tax is "increased," thereby triggering the Constitutional requirement of voter approval if the math behind the tax is altered so that a larger tax rate is part of the calculation, and the revision results in increased taxes levied against any person or parcel. (*A.B. Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 763; Gov. Code, § 53750, subd. (h).)

The California Supreme Court has determined that courts are "obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." (*City of*

San Diego v. Shapiro, *supra*, 228 Cal.App.4th at p. 770; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 212.) Applying these Constitutional provisions to the current case requires the new text of Measure A (2020) to be submitted to the electorate and approved by a two-thirds vote for the tax to be imposed on Alameda taxpayers and their property.

B. With the $7,999 cap removed, Measure A (2020) is a new and increased tax

If the $7,999 cap is removed, the text of Measure A will read as follows: "[t]he tax shall be levied on improved parcels at the rate of $0.265 per building square foot ~~not to exceed $7,999 per parcel~~ and at the rate of $299 per vacant parcel." (2 C.T. 315.) Further, the ballot question presented to the voters would be modified as follows: "[s]hall [Measure A], levying $0.265 per building area square foot ~~(capped at $7,999 per parcel)~~ and at the rate of $299 per vacant parcel annually for seven years, be adopted." (2 C.T. 307.) Although striking the $7,999 cap is an easy grammatical edit, it creates a different tax than the one submitted to and approved by the voters. Without Measure A's (2020) $7,999 cap, there is no limit to the District's revenue stream. This increase is a new tax with additional revenue for the District that was not before the voters.

The District's resolution and the full text of Measure A (2020) assured voters that the tax was "capped at $7,999 per parcel." The voters who read and approved Measure A (2020) clearly understood that the maximum amount collectible under the tax would be $7,999. Removing the $7,999 cap and implementing the $0.265 per square foot tax across all property types without voter approval would constitute the exact type of unlawful tax that Article XIIIA, section 4 of the Constitution (Proposition 13) and

Article XIIIC, section 2(d) of the Constitution (Proposition 218) prohibits. Removing the $7,999 cap from the property that Bladium operates increases its annual Measure A (2020) tax liability by 250 percent to $28,028.52. As mentioned previously, the Bladium parcel is just one of 150 parcels larger than 30,184.91 building square feet. Removing the $7,999 cap and leaving the remainder of Measure A (2020) will have significant financial ramifications on those select properties and taxpayers. Occupants of those properties include small manufacturing businesses, multi-unit residential properties, hotels, medical facilities, and various other commercial and residential properties. The suddenly increased tax would be absorbed by tenants, landlords, and consumers. Removing the cap will yield approximately $1,700,000 more each year in Measure A (2020) taxes (or $11,900,000 over the term of Measure A (2020)) than the version the voters approved. The only legal way for a version of Measure A (2020) to survive without the $7,999 cap is for the District to return to the voters. (*A.B. Cellular LA, LLC*, *supra*, 150 Cal.App.4th at p. 763.)

C. Imposing a $299 tax across all improved property types will increase taxes on 2,488 small properties and their owners

Borikas used severability to save a portion of Measure H by levying a $120 tax across all parcel types. (*Borikas*, *supra*, 214 Cal.App.4th at pp. 167–168.) The trial court attempted the same remedy when it tried to impose a $299 tax across all improved property types. (3 C.T. 702.) The *Borikas* remedy is not available here because of the critical factual difference — 2,488 parcels

within the District's boundaries pay less than $299 annually.[12] (3 C.T. 704–789.) The average annual Measure A (2020) tax paid by parcels with buildings less than 1,128.3 square feet is approximately $245.59. The impact of the District's proposed remedy would increase Measure A's (2020) tax for those 2,488 parcels by an average of 17.8 percent, or $53.41 annually.[13] Those amounts become alarming once they are analyzed over Measure A's (2020) term. If this Court applies a uniform tax of $299 across all improved property types, it increases taxes on the smaller properties by $930,188.56. Thus, the same legal arguments that prevent the trial court from using severability to eliminate the cap and impose a $0.265 per square foot rate for all improved parcels also apply here. The Constitution forbids any increase in taxes unless the voters agree.

Either of the District's severability solutions will create uncertainty and more litigation over whether the District has the right to collect additional taxes for those 2,488 parcels that paid less than $299 during the previous fiscal years. This is also true if the $7,999 cap is removed. Would the District sue the small or large property owners to collect additional tax if this Court increased taxes on the small or large property owners? The outcome from *Borikas* was elegant because all parcels under

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[12] Dividing $299 into the current tax rate of $0.265 results in a quotient of 1,128.3, meaning any improved parcel with a building less than 1,128.3 square feet pays less than $299 annually.

[13] One such property the Court could examine is 1919 Minturn Street. (2 C.T. 457.) The structure on that property is 568 square feet in size and paid $150.52 under Measure A (2020) in 2020-21. If the Court were to sever the term "vacant" from Measure A and impose a $299 flat tax, the owner of 1919 Minturn Street would suffer a 98.6 percent increase under the Court's proposed revision to Measure A (2020).

Measure H paid a minimum tax of $120 per parcel. However, because of Measure A's (2020) terms, the *Borikas* remedy is unavailable. The only Constitutional option for the Court is to affirm the Judgment and allow Measure A (2020) to exist as a $299 tax for unimproved property. Whether the District returns to the voters is within its discretion. It is a viable option once it cannot collect Measure A (2020) revenue.[14] Aside from one election in 2010, the District has never lost a parcel tax election.

CONCLUSION

Since this Court decided *Borikas* in 2013, it is the law in California that a school district's power to tax improved property must be applied uniformly to taxpayers and property. School districts cannot create classifications among property or taxpayers and impose different tax rates. The District rejects *Borikas*. Since this Court's decision in *Borikas*, the District has lobbied the Legislature and engaged in litigation to overturn *Borikas*. The Legislature and the binding precedents from the Court of Appeal have not changed.

The trial court slowly and methodically analyzed Measure A (2020) using *Borikas* as its roadmap. The trial court's decision analyzed every issue the parties presented, including the faulty theories that Measure A (2020) was related to Measure B1 and that *Dondlinger* modified *Borikas*. The trial court correctly invalidated Measure A (2020) and followed the Constitutional

[14] The District obtained a stay of the Judgment on appeal, which means it continues to collect Measure A (2020) revenue during the pendency of this action. Mr. Traiman anticipates a Petition for Review to the Supreme Court if it is unhappy with this Court's decision so it can effectively continue to collect the Measure A (2020) revenue until the matter is remitted to the Superior Court.

mandate that only the voters decide if they face increased special taxes. Accordingly, *stare decisis* requires this Court to affirm the Judgment of the Alameda County Superior Court in a published opinion to make clear that section 50079 does not empower school districts to create property classifications, classify taxpayers, and impose differential tax rates among improved property.

Brillant Law Firm

Respectfully submitted,

Dated: October 21, 2022

By: /s/ David Brillant

David Brillant

Attorney for Plaintiff and Respondent
Leland Traiman

APPENDIX

California Constitution Article XIIIC, section 2

Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

Government Code section 50079. School districts; qualified special taxes

(a) Subject to Section 4 of Article XIIIA of the California Constitution, any school district may impose qualified special taxes within the district pursuant to the procedures established in Article 3.5 (commencing with Section 50075) and any other applicable procedures provided by law.

(b)(1) As used in this section, "qualified special taxes" means special taxes that apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property. "Qualified special taxes" may include taxes that provide for an exemption from those taxes for any or all of the following taxpayers:

(A) Persons who are 65 years of age or older.

(B) Persons receiving Supplemental Security Income for a disability, regardless of age.

(C) Persons receiving Social Security Disability Insurance benefits, regardless of age, whose yearly income does not exceed 250 percent of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.

(2) "Qualified special taxes" do not include special taxes imposed on a particular class of property or taxpayers.

(c) The amendments made to this section by Chapter 81 of the Statutes of 2015 are declaratory of existing law.

(d) Any exemption granted pursuant to subdivision (b) shall remain in effect until the taxpayer becomes ineligible. If the taxpayer becomes ineligible for the exemption for any reason, a new exemption may be granted in the same manner.

(e)(1) If a school district provides for an exemption for a qualified special tax pursuant to subdivision (b), and the school district contracts or enters into an agreement with the county to collect the qualified special tax within the district, the school district shall annually provide to the tax collector of that county the following information:

(A) A hyperlink to the location on the Internet Web site of the school district that contains exemption information, if available.

(B) A hyperlink to the location on the Internet Web site of the school district that contains the application for the exemption, if available.

(C) A phone number to provide persons with exemption information or direct persons requesting exemption information.

(2) If a county contracts or enters into an agreement with a school district to collect a qualified special tax for the district and for which that district provides for an exemption pursuant to subdivision (b), the tax collector of that county shall include a hyperlink, which shall be identified as "Parcel Tax Exemptions," on the tax collector's Internet Web site homepage to another location on the tax collector's Internet Web site that posts the hyperlinks and information provided by the school district in paragraph (1).

(3) Paragraph (2) shall only apply when the school district provides the information to the tax collector required by paragraph (1). The tax collector shall not post any hyperlink to a location on a school district Internet Web site that is invalid.

(f) This section shall become operative on January 1, 2020.

Select Provisions of Alameda Unified School District Measure A

This Proposition may be known and referred to as the "Alameda Teacher/Staff Retention Measure" or as "Measure A."

To support all Alameda students and maintain high-quality Alameda schools by attracting and retaining excellent teachers and employees, sustaining strong academic programs in reading, writing, math, arts/sciences, and helping counselors support struggling students, shall an Alameda Unified School District measure, levying $0.265 per building area square foot (capped at $7,999 per parcel) and $299 per vacant parcel annually for 7 years, be adopted, raising $10,500,000 annually with senior exemptions, audits, oversight, and all funds staying local?

Amount and Basis of Tax

Upon approval of two-thirds of those voting on this Measure, the District shall be authorized to levy an annual qualified special tax (education parcel tax) on all Parcels of Taxable Real Property, commencing on July I, 2020 for a period of7 years. The tax shall be levied on improved parcels at the rate of $0.265 per building square foot not to exceed $7,999 per parcel and at the rate of $299 per vacant parcel.

This qualified special tax is estimated to raise $10.5 million in annual local funding for District schools. The amount of annual local funding raised by this special tax will vary from year to year due to changes in the number of parcels exempt from the levy and the amount of building square footage on parcels.

For purposes of the tax levy, the following definitions shall apply: "Parcel of Taxable Real Property" is defined as any unit of real property in the District that receives a separate tax bill for property taxes from the County Treasurer-Tax Collector's Office.

All public property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

"Building" is defined as any structure having a roof suppo1ted by columns or by walls and designed for the shelter or housing of any person or property of any kind. The word "building" includes the word "structure" and encompasses, without limitation, all residential, commercial, and industrial structures.

"Improved parcel" is defined as a parcel on which exists any building. "Vacant parcel" is defined as a parcel on which no building exists.

The District annually shall provide the Alameda County Tax Collector a report indicating the parcel number and amount of tax for each Parcel of Taxable Real Property.

Severability

The Board hereby declares, and the voters by approving this Measure concur, that every section and part of this Measure has independent value, and the Board and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this Measure by the voters, should any part of the Measure or tax rate be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts of the Measure and/or tax rate shall remain in full force and effect to the fullest extent allowed by law.

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **12,828** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.204(c), 8.360(b), 8.412(a) or by Order of this Court.

Brillant Law Firm

Dated: October 21, 2022 By: /s/ David Brillant

David Brillant

Attorney for Plaintiff and Respondent
Leland Traiman

PROOF OF SERVICE

I declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 2540 Camino Diablo, Suite 200, Walnut Creek, CA 94597. I served document(s) described as Respondent's Brief as follows:

By U.S. Mail

On October 21, 2022, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope(s) with the US Postal Service with the postage fully prepaid, addressed as follows:

Alameda County Superior Court
Clerk of the Court
Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94501

I am a resident of or employed in the county where the mailing occurred (Walnut Creek, CA).

By TrueFiling

On October 21, 2022, I served via TrueFiling, and no error was reported, a copy of the document(s) identified above on:

Sue Ann Salmon Evans
(for Alameda Unified School District)

William Benjamin Tunick
(for Alameda Unified School District)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 21, 2022 By: /s/ Christine Boccia
Christine Boccia