1st Civil Number: A129295

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 1

GEORGE J. BORIKAS, Trustee of the George J. Borikas 1999 Revocable Trust; EDWARD HIRSHBERG, Trustee of the Hirshberg Trust; SANTA CLARA INVESTORS II, a California General Partnership; and NELCO, INC., *Plaintiffs and Appellants*,

vs.

THE ALAMEDA UNIFIED SCHOOL DISTRICT; all persons interested in the matter of the imposition of a qualified special tax for the benefit of the Alameda Unified School District from July 1, 2008, for a period of four years, ending June 30, 2012, levied (A) on each taxable, residential parcel at the rate of $120 per year and (B) on each taxable commercial or industrial property at the rate of $0.15 per square foot per year (but commercial or industrial property of 2,000 square feet or smaller paying $120 per year and commercial or industrial property larger than 2,000 square feet paying $0.15 per square foot per year with a maximum tax of $9,500 per year) with exceptions for: (1) owners of single family residential units in which they reside who will attain the age of 65 year during the assessment year, who owns a beneficial interest in the parcel and who uses that parcel as his or her principal place of residence and (2) owners of single family residential units receiving supplemental security income for a disability, regardless of age, and proceedings and matters related to the above, *Defendant and Respondent.*

Appeal of Final Judgment Dated June 30, 2010, from
Superior Court of California, County of Alameda, Division 30
Trial Court Case No: VG08405316; Honorable Kenneth Mark Burr, Judge

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PETITION FOR REHEARING

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I. INTRODUCTION

This court should grant rehearing in this matter because the Court of Appeal's opinion ("Opinion") fails to account for relevant authority, misstates or omits material facts, and fails to address arguments made by Respondent Alameda Unified School District ("District.") (Cal. Rules of Court, rule 8.500(c)(2).)

To reach the conclusion that Measure H is beyond statutory authority, the Opinion side-steps relevant precedent and canons of statutory construction, and misconstrues legislative history. This results in an understanding of the statute that conflicts with precedent and is contrary to the base intent of the Legislature in enacting Government Code section 50079 which was to restore the full taxing authority of school districts in the wake of Proposition 62.

The District further submits that rehearing is appropriate to allow the parties the opportunity to be heard on the the legislative history identified and relied upon by the Court as well as the issues related thereto. [1]

II. SUMMARY OF ARGUMENT

Government Code section 50079[2] was enacted by Assembly Bill 1440 ("AB 1440") in 1987 with one primary purpose – to "clarify that school districts have the authority to impose special taxes, subject to two-thirds voter approval, thereby restoring any taxing authority deleted by Proposition 62." (Clerk's Transcript ("CT") 732.) At the same time, section 50079 clarified that "qualified special taxes" "must be uniform and not discriminate against a class of property or taxpayers." (CT 722.) In

[1] On August 23, 2012, after the case was fully briefed the Court of Appeal issued its Calendar Notice, setting oral argument for September 11, 2012. On the same day, the Court of Appeal issued and served notice that, "In accordance with Evidence Code section 459, subdivisions (a), (c), and (d), the parties are advised that the court may take judicial notice..." of certain legislative history related to Government Code sections 53730.1 and 50079.1 as well as Public Resources Code section 5789.1. The Court's notice provided that "the parties may, if they desire to do so, respond within 15 days of the date of this order." Notably, this legislative history was not part of the record and it was not clear what issue was to be addressed by a party's response. It is further noted that the District was not made aware of the Court's notice by its prior counsel nor did it have access to the full legislative history of these statutes to review and evaluate prior to the September 11, 2012 hearing date. Following hearing, the District made a request to brief the issues related to the statutes and legislative history identified by the Court but that request was denied.

[2] Unless otherwise noted all subsequent statutory references are to the Government Code.

taxation parlance, this means that school district special taxes could not discriminate against a group of taxpayers either by enforcing unreasonable classifications or by imposing the tax solely on a subset of the school district. The imposition of these boundaries followed the existing constitutional limits on taxation.

Section 50079 thus provided school districts with the same authority they possessed prior to Proposition 62. Subdivisions (b)(1) and (b)(2) did not create new limitations on this authority, they only clarified that the Constitution required that special taxes not discriminate, stressing that special taxes could not be imposed solely on a subset of the jurisdiction. In light of these limitations and under case law requiring that exemptions be express, subdivision (b)(1) was necessary to provide school districts the explicit flexibility to completely exempt seniors from these taxes.

The Opinion in this case, *Borikas v. Alameda Unif. Sch. Dist.* (2012) --- Cal.App.4th ---- (2012 WL 6084027), takes a different tack in applying section 50079. It finds that section 50079 was intended to be a new limitation on the authority of school districts, limiting the flexibility school districts possessed to structure special taxes under the taxing authority granted under Proposition 13. While the Opinion disclaims any interest in

"recalibrating the taxing power statutorily delegated to local entities" this is precisely the impact of its conclusion. (Opinion, *3.)

The Opinion's reasoning is flawed in several respects:

- The language and legislative history of section 50079 make clear that the statute was intended to restore the rights of school districts to allow them to continue to levy special taxes in conformity with constitutional requirements. Allowing classification-based taxes, such as Measure H, furthers this intent.
- The Opinion's use of the dictionary definition for "uniform" creates an anomalous definition in taxation precedent and is contrary to the well-established definition set forth in a long line of state and federal taxation case law which the Legislature is presumed to be aware of in enacting section 50079.
- The Opinion's definition of uniformity raises unaddressed questions and denies school districts the ability to utilize rate differentials needed to eliminate double taxation of parcels (which violate the constitutional uniformity requirements) and conflicts with the California Supreme Court's conclusion that a special tax which does not allow for a graduated tax base creates "an unjust result."

(*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 488 ["*Heckendorn*"].)

- The Opinion conflicts with the Court of Appeal's decision in *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212 [*"CBIA"*], which found that "uniformly" as used in section 50079 prohibited special taxes from being imposed only upon on a specific subset of taxpayers of a school district, but recognized that school districts could impose taxes employing "reasonable rate classifications."
- The Opinion misapplies the canons of statutory construction by relying on correspondence between the Legislature and four school districts that had adopted special taxes before section 50079, going so far as to rely on the opinion of one of the school district's legal counsel which was withdrawn from consideration. This information does not reflect the *Legislature's* intent. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30 [legislative history must shed light on the collegial view of the Legislature as a whole].)
- The Opinion's reliance on statutes granting the authority to levy special taxes to other agencies after the adoption of section 50079 is

misplaced as none of those statutes use the same wording as section 50079. Nonetheless, the Opinion depends heavily on these statutes and their legislative history although subsequent legislative action after AB 1440 reflects that the Legislature was focused on preventing taxes that discriminated (i.e., imposed on a small group of property owners) and that the uniformity requirement in section 50079 was not intended to prevent reasonable classifications such as tax rate differentials.

- The Opinion erroneously concludes that the District's interpretation creates surplusage by conflating rate based classifications with exemptions.
- The correct interpretation, supported by the plain language of the statute, legal precedent, and legislative history provides that section 50079, subdivision (a) sets forth the broad general authority of school districts to impose special taxes; subdivision (b)(1) reinforces that any classifications must be uniformly applied in conformity with constitutional requirements and that the only exemptions are those expressly stated in subdivision (b)(1); and, (b)(2) provides that (in answer to challenges by the CBIA) taxes must be imposed "upon the district" in conformity with article XIII A, section 4 of the California

Constitution, by mandating that the taxes may not be imposed "on a particular class of property or taxpayers."

- Surplusage is only created by the Court's interpretation in that if uniform means a singular tax to be applied without differentiation, there would be no need for the language in (b)(2) requiring the tax be imposed on all classes of property or taxpayers.

Together, the Opinion's conclusion and the questions it raises obfuscate the original and primary purpose of section 50079.

III. ARGUMENT

A. The Opinion Does Not Further the Legislature's Intent Of Providing Taxing Authority To School Districts

The intent of AB1440 was plain: to "clarify that school districts have the authority to impose special taxes, subject to two-thirds voter approval, thereby restoring any taxing authority deleted by Proposition 62." (CT 732.) Section 50079 intended to clarify that "qualified special taxes" "must be uniform and not discriminate against a class of property or taxpayers" in conformity with the requirements of Article XIII A, section 4. (CT 722.) Neither the Appellants, nor the Opinion, offer evidence that in adopting AB 1440 the Legislature intended to limit the school districts' powers.

While acknowledging this intent, the Opinion nonetheless interprets section 50079 in a way which could substantially limit school districts' authority to levy special taxes. The analysis' razor sharp focus on portions of the statute rather than the statute in context leads to a conclusion that restricts the very authority that section 50079 was intended to fortify.

1. The Overriding Purpose Of AB 1440 Was To Continue School Districts' Authority To Impose Special Taxes

As recounted in *CBIA*, until the adoption of Proposition 62, school districts had the authority to adopt special taxes. (206 Cal.App.3d 212.) This authority was founded in Article XIII A, section 4, and based on section 50075 which "provide[d] all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution." However, Proposition 62, adopted in November 1986, added section 53727:

> Neither ... Article XII A of the California Constitution, nor Article 3.5 of Division 1 of Title 5 of the Government Code (commencing with Section 50075) shall be construed to authorize any local government or district to impose any general or special tax which it is not otherwise authorized to impose...

(§ 53727 (a).) *CBIA* held that this language "specifically withdrew the enabling legislation contained in section 50075 et seq." (206 Cal.App.3d at

224.) This led *CBIA* to the conclusion that following the adoption of Proposition 62 school districts no longer possessed the authority to levy special taxes.[3]

Although *CBIA* was not issued until after enactment of section 50079, the language of section 50079 clearly indicates that it was intended to allow school districts to impose qualified special taxes:

> (a) Subject to Section 4 of Article XIII A 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) 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 "qualified special taxes" may include taxes that provide for an exemption from those taxes for taxpayers 65 years of age or older.
> "Qualified special taxes" do not include special taxes imposed on a particular class of property or taxpayers.

(§ 50079, as enacted by Stats. 1987, ch. 100.)[4]

---

[3] The legislative history reflects that this result was not intended by the proponents of Proposition 62: "Because the school's sole authority to impose special taxes stems from Government Code section 50077 [sic], Proposition 62 has been widely interpreted to eliminate district's special taxing authority. The California Taxpayers Association, which sponsored Proposition 62, indicates that it did not intend the proposition to have this effect." (CT 733.)

[4] While the opinion in *CBIA* was not issued until after enactment of section 50079, the Legislature did have the benefit of an Opinion of the Legislative Counsel that reached the same conclusion as *CBIA*. (CT 880-892.)

The legislative history of section 50079 makes clear that the reasoning which drove *CBIA*'s ultimate conclusion was also the primary motivating factor in the Legislature's enactment of section 50079. As the legislative history states:

> The Purpose of This Bill is to Clarify Current Law to Permit Schools Levy Special Taxes
>
> Because of the passage of Prop. 62 in 1986, there is some question that school districts can impose special taxes. This bill **clarifies current law** to permit school districts to impose such taxes with two-thirds vote of the people.

(CT 743; emphasis added.) This intent is also evident in the Department of Finance's Enrolled Bill Report:

> Currently some school districts impose special taxes to finance school facilities and other programs. Proposition 62, which was approved by the voters last November, may have deleted school district's authority to impose such taxes. This bill would **clarify that school districts can continue to impose special taxes**, subject to two-thirds voter approval.

(CT 739; emphasis added.) The same report explained further that AB 1440 "merely authorizes school districts to **continue to impose special taxes**,..." (CT 740; emphasis added.)

In other words, section 50079 was enacted to undo the potential effect of Proposition 62 on school districts and to continue to allow school districts to impose qualified special taxes as before enactment of Proposition 62. (Opinion, *4-5 [noting that Propositions 13 and 62 could

be viewed as intended to limit taxing powers, but acknowledging that the Legislature acted quickly to counteract any limitation these propositions imposed on the right of local entities to impose special taxes].)

Contrary to the Opinion's conclusions, this backdrop illustrates that section 50079 was not intended to limit the taxing authority of school districts, but rather to insure that they continued to have broad powers to levy special taxes. This is the purpose that must be effectuated by any interpretation of the statute. (Opinion, *5, fn 11.)

2. The Opinion Undermines The Legislature's Intent By Reading Section 50079 To Limit School Districts' Authority

The Opinion directed its attention to subdivision (b)(1) of section 50079 which states that qualified special taxes are defined as taxes which "apply uniformly to all taxpayers or all real property within the school district...." As explained below, this language simply mirrors the general requirement of uniformity imposed on all taxes. Putting aside numerous cases that support this approach, the Opinion instead concluded that this language "was intended to be a constraint on the extent of the taxing authority delegated to local governmental entities." (Opinion, *1.) The Opinion reached this conclusion despite the overwhelming legislative

history stating that section 50079 was intended as a grant of power, not a limitation on school districts, and in the absence of any explicit statement that the Legislature intended to place any restrictions on the authority of school districts.

Thus the Opinion requires that school districts impose the same tax on all property regardless of the characteristics of that property. This not only eliminates valuable tools that school districts now use to balance the burden of qualified special taxes, but it raises questions about the application of common-sense provisions found in many qualified special tax measures. Moreover, it runs counter to the Supreme Court's decision in *Heckendorn* which recognized that to interpret the statute to require that all property be taxed the same without rate differentials would lead to "unjust results." (*Heckendorn, supra,* 42 Cal.3d at 488 ["To construe the term parcel otherwise would lead to the unjust result that any special tax imposed on a parcel basis under this statute would have to be equal for a lot of 9,000 square feet and an estate the size of Huntington Library. (Cf. *Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259-260, 104 Cal.Rptr. 761, 502 P.2d 1049 [statutory language should be construed to best attain the statute's purpose in order to avoid absurdity or to prevent injustice."].)

Many qualified special taxes include provisions intended to prevent property owners from being taxed twice where their residence may sit on more than one contiguous parcel. This can be a particularly large problem in older communities where lots have been combined and larger homes built across the lots. Previously, this problem has been addressed by including a provision in qualified special tax measures providing classification for contiguous parcels containing a single residence and imposing a tax rate equal to what would otherwise be imposed on a single parcel. In holding that school districts cannot make distinctions between parcels for any reasons, the Opinion calls into question the ability of school districts to include such logical provisions in their qualified special taxes intended to avoid violations like double taxation. (*Container Corp. of America v. Franchise Tax Bd.* (1930) 463 U.S. 159; *Fox Bakersfield Theatre Corp. v. City of Bakersfield* (1950) 36 Cal. 2d 136, 140 [in many cases double taxation is prohibited by the Constitution].)

These implications create new restrictions on the authority and discretion that section 50079 was intended to provide to school districts. It limits their authority to design the reasonable parcel taxes that section 50079 was enacted to allow. This result is at odds with the Legislature's

express intent that section 50079 be a declaration of existing authority, not the imposition of new limitations.

B. Interpreting Section 50079 To Allow Classification-Based Parcel Taxes Is Consistent With Precedent And Implements The Legislature's Intent

Despite the intent evident in the statute and the legislative history, the Opinion concludes that subdivision (b)(1) of section 50079 strictly prohibits classification of real property for purposes of qualified special taxes. In creating a new meaning for the word "uniform" in the context of taxation, the Opinion rejects the position that subdivision (b)(1) simply restates the general uniformity requirements that had applied to special taxes proposed by school districts prior to enactment of Proposition 62: (1) that the tax be imposed uniformly across the school district; and (2) that any classifications the tax uses to determine the amount of tax must be reasonable. This reading of subdivision (b)(1) harmonizes its language with the rest of section 50079, well-established judicial interpretation of its terms, relevant legislative history, and the rules of statutory construction. Perhaps most importantly, this understanding of section 50079 advances the clear intent of the Legislature in adopting AB 1440 by continuing the

authority and discretion provided to school districts since adoption of Proposition 13.

1. The Opinion Supplants The Established Meaning Of "Uniform" With An Anomalous Dictionary Definition Creating Conflict In Law and Undermining Legislative Intent

The Opinion focuses on the meaning of the word "uniformly" as used in section 50079. As the District has pointed out, the term has a well-established meaning in the area of taxation. "Uniformity of taxation means that **all property of the same class** shall be taxed at the same rate." (McQuillan The Law of Municipal Corporations, Chapter 44 Taxation, III Limitations on Tax Power Generally, § 44.19; emphasis added.) However, the Opinion chooses not to employ the ordinary meaning as defined by extensive precedent, and which the Legislature is deemed aware. (*Watts v. Crawford* (1995) 10 Cal.4th 743, 754-755 [The Legislature is presumed to have acted in light of existing judicial decisions].) By relying upon on the dictionary definition anomalous in taxation law, the Opinion creates conflict in law and undermines the intent of the Legislature by restricting the authority intended to be delegated to school districts by the Legislature.

Taxation in California is governed by the California Constitution. Article XIII A, section 4, is the foundation for school districts' authority to impose special taxes. The concept of "uniformity" is express in the Constitution and specifically applied to taxation. Article IV, section 16 requires that "[a]ll laws of a general nature have uniform operation." Indeed, "uniform" is defined by extensive case law existing at the time section 50079 was enacted and its "ordinary meaning" is as defined by the courts in tax related matters. (*Walnut Valley Unif. Sch. Dist. v. Super. Ct.* (2011) 192 Cal.App.4th 234 ["As always, we begin with the words of a statute and give these words their ordinary meaning. [Citation.] If the statutory language is clear and unambiguous, then we need go no further. [Citation.] ..."]; see also, *Watts v. Crawford,supra,* 10 Cal.4th at 754-755 [The Legislature, in enacting a statute, is presumed to have knowledge of existing judicial decisions and to have acted in light of those decisions].)

The premise that taxation is subject to uniformity has been repeatedly addressed in a long line of case law, both state and federal. As the court held in *Roth Drug, Inc. v. Ct. of Appeal* (1936) 13 Cal.App.2d 720, 733, "In determining the validity of classifications for the purpose of imposing taxes, it has been said that the classes or groups of persons legally and naturally affected by the statute should be considered. While it is

necessary that the law shall affect alike all persons in the same class and under similar conditions, so long as the law operates alike on all persons and property under the same conditions, it is not subject to criticism on the ground that it is not uniform. While the classification should be reasonable, natural and just, in the absence of a showing to the contrary, it will be assumed there are good grounds for the classification, and the act will be upheld."

The court in *Northwest Financial, Inc. v. State Bd. of Equalization* (1991) 229 Cal.App.3d 198, 201-202, held, citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 220, "As made clear in *Amador*, Proposition 13 places taxpayers into different classes based on when they purchased their property, in order to effectuate the rational goal of tying taxes to the value of property when it was purchased rather than to the increasing value of property as the years go by. Thus, neighbors who own properties of comparable values, but who are classified differently based on value at the time of purchase, need not be taxed uniformly since the classification has a rational basis related to a legitimate state purpose. In short, no equal protection violation has been shown since the alleged disparity arises from a rationally based

classification system, rather than from different treatment of those within the same classification."

The *Shafer v. State Bd. of Equalization* (1985) 174 Cal.App.3d 423, 431 court held, "'We have long held that "[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." [Citation.] A state tax law is not arbitrary although it "discriminate[s] in favor of a certain class ... if the discrimination is founded upon a reasonable distinction, or difference in state policy," not in conflict with the Federal Constitution. [Citation.] This principle has weathered nearly a century of Supreme Court adjudication....' [Citation.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra,* 22 Cal.3d at pp. 233–234 ....)."

These cases make clear that "uniformly" in the realm of taxation has a distinct meaning: taxpayers are not denied equal protection of the laws and are not discriminated against so long as any classification used in fashioning the tax has a rational basis related to a legitimate state purpose. That the Legislature intended to adopt this definition for the term "uniformly" in section 50079 (b)(1) is demonstrated by the language of the

bill: "[AB 1440] [p]ermits school districts to impose special taxes with the approval of 2/3 of the voters in the district. Such taxes must be uniform and not discriminate against a class of property or taxpayers." (CT 722.)

The uniformity requirement found in section 50079 was intended to require that any qualified special tax must be uniform such that it does not violate principles of equal protection under Article XVI and comports with Article XIII A, section 4. To this end, section 50079(b)(1) sets forth the exclusive exemptions from school district imposed special taxes. Section 50079 is properly interpreted to provide for exemptions exclusively for taxpayers over the age of 65 or persons receiving Supplemental Security Income for a disability per subdivision (b)(1), but also to allow for classifications. Classifications under the general authority set forth in subdivision (a), such as rate differentials, are within the declared authority so long as they are uniform so as not to discriminate in violation of the right to equal protection.[5]

Employing the definition of uniform as used in well-established taxation case law serves the will of the Legislature by recognizing the taxing authority granted to school districts prior to Proposition 62.

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[5] As explained in Section B.2., *supra*, the inclusion of express exemptions by the Legislature for seniors and disabled does not mean that the Legislature was limiting a school district's authority to allow for classifications.

2. Applying The Established Meaning Of "Uniform" Does Not Create Surplusage And Is Consistent With Precedent and Legislative Intent

The California Supreme Court has explained that where a term used by the Legislature has an existing judicial construction, a court should presume that the Legislature meant to incorporate that definition in enacting a statute containing that term. Indeed, where the California Supreme Court sought to interpret the meaning of "ad valorem tax" as used in Proposition 13, it looked to the existing definition:

> In the absence of evidence of a contrary legislative or popular intent, terms used in a constitutional amendment are normally construed in light of existing statutory definitions or judicial interpretations in effect at the time of the amendment's adoption.

(*Heckendorn, supra,* (1986) 42 Cal.3d at 487, citing *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 850; see also, *Watts v. Crawford, supra,* 10 Cal.4th at 754-755 [The Legislature, in enacting a statute, is presumed to have knowledge of existing judicial decisions and to have acted in light of those decisions].)

The Opinion does not cite any "evidence of a contrary legislative or popular intent" to explain its decision to avoid applying the established definition of "uniform." Instead, it relies on the guidance of a rule of

statutory interpretation, namely that surplusage should be avoided when possible, and its belief that language regarding exemptions would not be necessary under the District's interpretation. Under *Heckendorn*, neither of these points supports diverging from the well-established meaning of "uniform."

The Opinion provides that:

> Thus, if the Legislature had intended to delegate to school districts the broadest possible taxing authority bounded only by equal protection principles – it needed only to have authorized school districts to impose special taxes, in other words, it need only have enacted subdivision (a). That would mean the, however, that the entirety of subdivision (b) is meaningless surplusage, a result that cannot be ascribed to the Legislature in any context, and particularly not in legislation specifying the bounds of delegated taxing power. [Footnote] [Citations.]
>
> Similarly, there was no need for the Legislature to have expressly allowed exemptions for senior and disabled taxpayers if the definitional language in and of itself allowed school districts to create rational tax classifications and impose different tax burdens on different tax payers. [Citations.]

(Opinion, *10.)

The Opinion concludes that if the statute did not limit school districts' authority to create classifications, the portion of the statute setting forth exemptions was "surplusage." Not so. As explained below, under the District's construction, each provision of section 50079 is given

significance and is construed in context, consistent with the evident purpose and intent of the statute and in harmony with its manifest purpose. (*Dubois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388; *Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040.)

The District first notes that the Opinion views tax rate classifications and exemptions as one and the same and on this basis concludes that setting forth exemptions in the statute renders any classifications a nullity. However, existing law recognizes a distinction between classifications for purposes of a tax rate and exemptions from taxation. "There is, of course, a distinction in common parlance between a tax exemption and a lower rate of tax. A rate of tax does not include zero." (82 Ops.Cal.Atty.Gen. 90 (1999).) Indeed, a classification of property for tax rate purposes does not serve to exclude any taxpayer from the requirement to contribute as does an exemption.

This distinction was also recognized in *CBIA*: "[Article XIIIA] Section 4 provides that the special taxes imposed by cities, counties and special districts must be imposed 'on such district.' For the reasons discussed below, we interpret this directive language to preclude taxes which the electorate imposes on others and not directly or indirectly on themselves (*allowing, of course, for reasonable tax exemptions, such as the*

one found in section 50079, and for reasonable rate differentials)." (206 Cal.App.3d at 237; emphasis added.)

Moreover, the law recognizes that where an exemption from taxation is invoked it must be expressly and unequivocally stated in the enabling statute. (*Associated Beverage Company, Inc. v. Board of Equalization* (1990) 224 Cal.App.3d 192, 211 [In order that there be an exemption from taxation, it must be granted in clear and unmistakable terms]; see also, *Sterigenics International v. County of Orange* (1996) 47 Cal.App.4th 1541, 1545.) The same is not required with regard to tax rates based upon classification of property.

The purpose of section 50079 was to restore the taxing authority founded in the Constitution subject to the rule that no tax may be imposed in violation of equal protection guarantees. This purpose is in the language section 50079(a). The purpose of section 50079(b)(1) was to expressly authorize exemptions for seniors in conformity with law requiring exemptions to be express and clearly stated. Section 50079(b)(2) was intended to stress the requirements of Article XIII A, section 4, that the tax be imposed "upon such district" in answer to the challenges posed by *CBIA* that by only imposing taxes on new development, some districts were not imposing special taxes "upon itself." Section 50079(b)(2) thus disallows

school districts from invoking any classifications that would serve to eliminate "a particular class of property or taxpayers."

As is evident, this construction does not create surplusage. However, the District notes that even to accept that exemptions and tax rate classifications should be treated as one and the same, this does not render the section 50079 (b) surplusage. It may just as well be interpreted as the Legislature's intent to clarify the taxing authority of school districts in the wake of the confusion created by Proposition 62. The courts recognize that "[a] statute may clarify and emphasize a point notwithstanding the rule against surplusage." (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1044–1046; see also, *Santa Clara County Local Transp. Auth. v. Guardino* (1995) 11 Cal. 4th 220, 234-35 ["The rule of construction that petitioner invokes, moreover, is not absolute; like all such rules, the rule against surplusage will be applied only if it results in a reasonable reading of the legislation."].)

Notably, the Opinion overlooks the fact that its own interpretation of section 50079 renders portions of subdivision (b) surplusage. If "uniform" is interpreted to require a singular tax be imposed on all parcels within a school district, what is the purpose of subdivision (b)(2) which states that "'Qualified special taxes' do not include special taxes imposed on a

particular class of property or taxpayers"? Under the Opinion's reasoning, this limitation would be inherent in the Court's dictionary definition of "uniform" making subdivision (b)(2) surplusage.

Courts are not to assume that the Legislature used the most economical or artful language in drafting a statute. (*Voters for Responsible Retirement v. Bd. Of Supervisors* (1994) 8 Cal.4th 765, 772-773.).) This is especially true when legislative history indicates that the statute was drafted by several parties, including individuals outside the Legislature. In such a situation, it is imprudent to use the "rules" of statutory interpretation to avoid using the judicially established definition of a term of art and instead create a new definition where the legislative history provides no explicit support for the new and anomalous meaning.

In sum, it is error for the Opinion to diverge from the well-established judicial understanding of the term "uniform" as it is used in the context of taxation law when interpreting section 50079. Instead the Opinion should heed precedent's warning against using canons of statutory interpretation too strictly to undermine the Legislature's intention. (*People v. Cruz* (1996) 13 Cal. 4th 764, 782-83 ["Rules such as those directing courts to avoid interpreting legislative enactments as surplusage are mere guides and will not be used to defeat legislative intent."].) Applying the

established definition of "uniform" to section 50079, serves to implement the Legislature's intent to restore the taxing authority held by school districts under the Constitution.

C. The Opinion Conflicts With *CBIA's* Interpretation Of Section 50079 Allowing Classification-Based Taxes

Although the Opinion cites to *CBIA*, it adopts a reading of section 50079 at odds with the application given to it by *CBIA*. *CBIA* applied the uniformity requirement of section 50079 to find that, in combination with Article XIII A, section 4, section 50079 allowed for reasonable rate differentials.

CBIA stemmed from the adoption of special taxes by school districts in the mid-1980's. Ostensibly the purpose of the taxes was to offset the cost of booming residential growth. (206 Cal.App.3d at 212.) To meet this purpose, the taxes were designed only to be levied on new construction, essentially excluding all existing residents from contribution.

A building industry group ("CBIA") challenged these special taxes approved by voters in five school districts in Northern Los Angeles County.[6] Each of the taxes had been premised on the authority provided by Article XIII

[6] The Court in *CBIA* also noted Education Code sections which validated a similar tax on new residential development imposed by the Chino Valley Unified School District. (*Id.* at 225, fn.17.) Documents in the legislative file of AB 1440 suggest that such taxes were common throughout the State and communications from the CBIA and other groups portrayed these type of discriminatory taxes as a major concern. (CT 830-831.)

A, section 4. (*CBIA, supra,* 206 Cal.App. 3d at 220.) While the amount of each tax varied, all of the taxes were confined to persons receiving building permits or for new construction of new residential units. (*Id.* at 221, fn.3.) "In each of the five school districts it is clear that the special taxes were not imposed upon all persons, or property owners or parcel of real property, but rather only upon new units of residential development." (*Id.* at 221, fn.4.) The CBIA argued, *inter alia*, that this meant the taxes were not valid special taxes.

The court began its analysis by concluding that post-Proposition 62, Article XIII A, section 4, was not self-executing, but instead required enabling legislation to allow local entities to propose special taxes. (*CBIA, supra,* 206 Cal.App.3d at 232.) The court explained that this meant without enabling legislation the taxes would be invalid.

Although the taxes at issue in *CBIA* were enacted before adoption of section 50079, the court nonetheless analyzed the tax under its language to determine if section 50079 ratified the taxes. It concluded that the taxes would not have been authorized under section 50079 because the exclusion of a large portion of taxpayers did not comply with the uniformity requirement.

> [Section 50079] specifically authorized school districts to impose "qualified special taxes," but defined that term so as

> to require any such imposition to be made in a uniform manner.
>
> [FN16] Section 50079 provides: "(a) Subject to Section 4 of Article XIII A of the California Constitution, any school district may impose qualified special taxes upon the district pursuant to the procedures established in Article 3.5 (commencing with Section 50075) and any other applicable procedures provided by law. [¶] (b) As used in this section, 'qualified special taxes' means special taxes which apply uniformly to all taxpayers or all real property within the school district, except that 'qualified special taxes' may include special taxes which provide for an exemption from those taxes for taxpayers 65 years of age or older. [¶] 'Qualified special taxes' do not include special taxes imposed on a particular class of property or taxpayers." (Italics added.)
>
> While this section is proper authority for the imposition of special taxes by school districts, it cannot constitute a post-vote ratification of the exactions here at issue. Leaving aside the issue of whether such legislative ratification is possible, the taxes imposed by the school districts do not, as we point out below, satisfy the requirements of "qualified special taxes" set out in section 50079.

(206 Cal.App.3d at 225.) The court clarified that because the taxes at issue only applied to a limited number of taxpayers or real property they did not meet the requirements of section 50079, "which grants specific post-Proposition 62 authority to school districts to impose 'qualified special taxes' (i.e. taxes imposed and applied uniformly on all persons or property within the district, a characteristic which the subject exactions do not possesses.)" (*Id.* at 232.)

Most pointedly, the court concluded by stating that:

> Section 4 provides that the special taxes imposed by cities, counties and special districts must be imposed 'on such district.' For the reasons discussed below, we interpret this directive language to preclude taxes which the electorate imposes on others and not directly or indirectly on themselves **(allowing, of course, for reasonable tax exemptions, such as the one found in section 50079, and for reasonable rate differentials).**

(206 Cal.App.3d at 237; emphasis added.) These statements by the court reflect that it viewed the language of section 50079 in conformity with the established understanding of "uniform" in the tax context, authorizing school districts to invoke reasonable classifications such as rate differentials.

D. The Legislative History and Context Of Section 50079 Supports An Interpretation That Allows Classification-Based Taxes

The majority of the Opinion focuses on the legislative history of section 50079. However, the legislative history does not contain an explicit statement explaining why subdivisions (b)(1) and (b)(2) were added to the statute. At best the history is muddled, preventing the Opinion from drawing any conclusions which contradict the authority discussed above. Alternatively, when viewed in context, the legislative history suggests that the use of the term "uniform" and insertion of these two

subdivisions was narrow and consistent with the position proffered by the District.

1. The Involvement Of Schools Districts In The Drafting Of AB 1440 Cannot Support The Opinion's Conclusion

The Opinion focuses on the involvement of four school districts, whose voters had adopted parcel taxes before section 50079 was enacted by AB 1440. (Opinion, *11-13.) Three of these districts, Kentfield, Mill Valley, and Lagunitas, adopted taxes that exempted senior citizens, while Albany (collectively "Districts") had adopted a classification-based tax. (CT 764.) The Opinion found their involvement important:

> It is also 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. When it became clear the districts could not effect removal of the language, they sought and obtained only an exemption for seniors, which was described in the committee report for the concurring vote as an 'exception' to the uniformity requirement.

(Opinion, *13.) The Opinion relies on this information to conclude the Legislature intended to prohibit classification-based taxes like the one

adopted by Albany; however, this conclusion is based upon incorrect assumptions rather than analysis of the legislative history.

The Opinion relies upon a June 9, 1987 letter to the Kentfield Superintendent from its legal counsel. (Opinion, *12; CT 763-767.) This letter suggested the "uniform" requirement in AB 1440 might not comport with the taxes adopted by the Districts. However, the Opinion fails to note two important facts:

First, the June 9 letter repeatedly stresses that its analysis is "preliminary ... based on brief review." (CT 763.) Further, it disclaims that:

> [the] advice given in this letter was prepared after our very abbreviated review of the issues posed by the Districts with the express understanding that this letter would not be viewed as a legal opinion regarding the matters addressed herein.

(CT 767.) The letter does not even broach the topic of the definition of "uniform" in the context of tax law. The Opinion treats this letter exactly as the type of "legal opinion" that is declares it is not.

Second, the legislative history contains a subsequent letter to Kentfield's Superintendent from the same counsel one day later which omits the entire analysis upon which the Opinion relies. (CT 768-771.) In short, a central piece of the record relied on by the Opinion stated that it should not be relied on and was withdrawn by its author. Clearly, the

Legislature is not deemed to have considered and relied upon an analysis that proclaims itself invalid and withdrawn. Moreover, this correspondence was apparently submitted to a legislator, not the Legislature, and does not reflect the intent of the Legislature in enacting section 50079. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., supra,* 133 Cal.App.4th at 30 ["Even where . . . resort to legislative history is appropriate, as a general rule in order to be cognizable, legislative history must shed light on the collegial view of the Legislature as a whole. (Citations omitted.)]."

Nothing in this correspondence, even its existence in the first instance, defines the uniformity requirement or explains the intent of the legislators who voted for it. The Districts did not propose the language at issue, nor is there evidence they communicated with the legislator who offered the amendment. This makes it impossible to link their involvement to the Legislature's intent.

The Opinion looks to Albany's involvement to suggest that because the language regarding uniformity was never amended it must have meant what Albany feared it did – that the language prohibited classification-based taxes. This is an assumption without support. The Opinion cites a June 11, 1987 letter from Kentfield to Assemblyman Hannigan's chief of

staff indicating that after a meeting with her, it was reconsidering its position and not seeking to rewrite subdivision (b). (Opinion, *12.) The Opinion thus infers that the Districts had been unable to change the language to allow for classification-based taxes and that following this letter, the other three school districts focused solely on an exemption for senior citizens. (Opinion, *12-13, fn. 22.)

The Opinion does not explain how it can discern from this correspondence Albany's position or the intent of the Legislature as a whole. In fact, the Opinion fails to recognize a letter sent on June 16, 1987 by all four school districts, including Albany, supporting the bill if it were amended to allow for exemptions for senior citizens. (CT 793-795.) Nor does the Opinion acknowledge that even after the bill was amended to specify exemptions for senior citizens only, Albany continued to support the bill. (CT 739-740.)

The more consistent explanation is that Albany and the Legislature adopted the District's view of the language: AB 1440 did not prevent classification-based taxes and that only exemptions, like the seniors' exemption, need be expressly stated in the statute. This explains the withdrawal of counsel's June 9 letter, the implied decision by Albany (via Kentfield's letter) to halt any attempt to amend AB 1440, and the

subsequent legislative history indicating Albany's support of AB 1440. This understanding is buttressed by the fact that notwithstanding its involvement in the drafting of AB 1440, the same year, and at regular intervals since, Albany has continued to ask its voters to levy classification-based taxes.[7]

2. The Court Does Not Account For Documents Supporting The District's Position

The record contains legislative history that lends support to the District's construction of section 50079. These records demonstrate that the provisos in section 50079 were intended to incorporate and emphasize the general restrictions otherwise imposed on the school districts' taxing authority by the Constitution. (*State Farm Mutual Automobile Ins. Co. v. Garamendi, supra,* 32 Cal.4th at 1044–1046 ["statute may clarify and emphasize a point not withstanding the rule against surplusage"].)

At the time the uniformity language was added to section 50079, a bill analysis noted that the purpose of the limitation was to prevent "discrimina[tion]." (CT 720.) This reference to discrimination is a clear link to equal protection and the underlying uniformity requirement placed on all taxes by the Constitution.

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[7] See http://ausdk12.edlioschool.com/apps/pages/?uREC_ID=92442&type=d.

Also, at the time AB 1440 was being considered, the legislative history and the *CBIA* case indicate that many groups were concerned about the use of special taxes to impose taxes on subsets of a school district rather than "the district" as a whole as contemplated by Article XIII A, section 4. This concern was spurred by school districts including Chino Valley, Newhall, and Fontana that had or were attempting to pass special taxes which only applied to new residential development. Prior to *CBIA*'s holding (that such taxes were not authorized by section 4), these concerns were addressed by inserting language into section 50079 to reassure that special taxes would not "be imposed on a particular class of property or taxpayers." (§ 50079(b)(2).)

Most telling may be information in the June 9 letter (relied upon by the Opinion) which indicates that revisions to AB 1440 were in response "to concerns raised at one of the earlier Committee hearings concerning special taxes that discriminate against new construction or new residents." (CT 767.) Additionally, the file contained a letter from the California Building Industry Association enclosing an article about a proposed similar tax, suggesting that "[t]he new homeowner is the most unfairly taxed

person in our society."[8] This explains why at least one bill analysis noted that under the amended draft "[s]uch taxes must be uniform and not discriminate against a class of property or taxpayers." (CT 736.) These documents, in combination with the *CBIA* case, suggest that the Legislature was concerned with, and intended to stress, the non-discriminatory nature of any special tax adopted under section 50079.

The overarching goal of the Legislature was to restore the taxing authority held by school districts before Proposition 62; however, it also wanted to stress that those taxes would be subject to the same restrictions as taxes adopted before Proposition 62. This meant that the uniformity requirements of the California Constitution at articles XVI and XIII A, section 4, applied to those taxes preventing discrimination through imposition on a subset of the school district. The Opinion's reliance on portions of the legislative history to suggest a more restrictive intent section undermines this purpose.

E. Subsequent Legislative Action Did Not Change The Meaning of Section 50079

The Opinion places importance on statutes enacted after section 50079 that employed some of its language. It finds that the later shared

[8] While this letter was not sent until after AB 1440 had been enacted, it evidences the concern that groups were expressing to the Legislature during consideration of AB 1440.

language allows those statutes to be used to divine the Legislature's intent years prior. However, precedent requires courts to be careful using later enacted statutes, and the legislative history of those statutes, to create an after-the-fact understanding of the intent behind an earlier statute. Even if these statutes and their legislative history are relevant, there is nothing explicit in the cited statutes or legislative history that supports the Opinion's conclusions. Additionally, the Opinion's citation to only a few statutes and limited legislative history leaves out important pieces which support the District's position. This results in conclusions unsupported by the Legislature's actions and that undermine the intent of section 50079.

1. Distinct Language Employed In Later Statutes Does Not Impact Section 50079

The Opinion emphasizes section 50079.1 which provided special taxing authority to community college districts. It reasons the use of some of the language from section 50079 in section 50079.1 helps establish the meaning of section 50079. (Opinion, *7-8, *10.) However, the fact that section 50079 uses different language, was enacted in a different context, and the Legislature chose not to amend section 50079 to match section 50079.1, suggest this reliance is misplaced.

Section 50079.1 allows community college districts to impose "special taxes" that must "be applied uniformly to all taxpayers or real property within the district, except that unimproved property may be taxed at a lower rate than improved property." The Opinion reasons that this specific allowance for differentiation between improved and unimproved property means that such language is necessary to allow for this flexibility. (Opinion, *10.)

The Opinion relies on the maxim that similar statutes should be construed in *pari materia*. This rule is not absolute. It is a corollary to the principal that the goal of statutory interpretation is to determine legislative intent. (*Lewis v. Super. Ct.* (1999) 19 Cal.4th 1232, 1245.) "Establishing terminological uniformity throughout the codified law is less important than discerning the intent of the Legislature...." (*Community Care and Rehabilitation Ctr. v. Super. Ct.* (2000) 79 Cal.App.4th 787, 795.) The Opinion ignores this warning.

There are several indicators that interpretation of section 50079's meaning should not be driven by section 50079.1. First, the statutes use different language. Section 50079.1 allows for "special taxes," not

"qualified special taxes."[9] The language in section 50079 allowing for exemptions, that is central to the Opinion's reasoning, is not found in section 50079.1. Second, the language from section 50079.1 was not taken directly from section 50079, but rather from intervening bills that were enacted in a different context and with a different intent. (MJN, Ex. 2.) Finally, several bills provided the Legislature the opportunity to reconcile the language of section 50079 and 50079.1, yet the Legislature demurred. (See MJN, Ex. 2 [as introduced Senate Bill No. 158 (1991 Reg. Sess.) ("SB 158") made amendments to 50079, however, these were taken out of the bill before adoption]; see *Estate of McDill* (1975) 14 Cal.3d 831, 837-38 ["'The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.'"].) These factors signal the legislative intent behind sections 50079 and 50079.1 is different despite their statutory proximity.

The Opinion goes on to consider the legislative history of section 50079.1 and two post AB 1440 statutes which enacted similar, but not identical provisions. The Opinion takes this leap despite acknowledging

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[9] The Legislature made a similar distinction in enacting sections 50079.2 and 50079.3. A review of these statutes supports the District's position that the uniformity proviso attached to "qualified special taxes" is intended to require that such a tax be imposed across an entire jurisdiction.

the difficulty in using the legislative history of later-enacted bills to understand the Legislature's intent in adopting an earlier bill. (Opinion, *14, fn. 25, citing *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 54 and fn. 17.)

Nonetheless, the Opinion soldiers on, beginning with Assembly Bill No. 3596 (1987-88 Reg. Sess.) ("AB 3596"), then looking to Assembly Bill No. 4158 (1989-90 Reg. Sess.) ("AB 4158"), and finally SB 158. None of these statutes use language identical to section 50079 and the legislative history cited by the Opinion does not explain the intent behind section 50079. Rather, the Legislature's intent in enacting these sections was to restore authority to levy special taxes, not to impose new restrictions. This makes these bills ineffective in supporting the Opinion's conclusion.

2. The Cited Legislative History Of Later Enactments Provides Little Support For The Opinion

Even if the subsequently enacted statutes are relevant, their legislative history provide little guidance and, in some cases, actually support the District's interpretation.

AB 3596, the first bill cited by the Opinion, says nothing directly about the meaning of the language borrowed from AB 1440. It was intended to restore taxing authority arguably removed by Proposition 62, but there is no suggestion of any intent to impose new or different limits on

the taxing authority. Language from AB 1440 was added to AB 3596 on April 27, 1988. As one analysis notes:

> The April 27 amendments to AB 3596 address the concerns expressed by the California Association of Realtors (CAR) which testified in opposition to AB 3596 at the Committee hearing of April 20, 1988. At that hearing, the CAR testified that it was particularly concerned about the prospect of a hospital district, or any other type of local agency, **imposing a general or special tax on new homebuyers alone**.
>
> The **amendments to AB 3596 preclude that possibility** by requiring that any tax imposed pursuant to the provisions of the bill must apply uniformly to all taxpayers or all real property within the district. The language in the **amendments was taken directly from provisions in AB 1440 (Hannigan)** of 1987, which gave special authority to school district to levy special taxes.

(MJN, Ex. 3, emphasis added.) This makes it clear that the language shared by AB 3596 and AB 1440 was intended to prevent agencies from imposing special taxes on subgroups within the jurisdiction, not to require imposition of a flat rate tax.

The legislative history of AB 4158 and SB 158 are similarly unhelpful. They do not contain any explanation as to the meaning of the language in question. Instead, they again point to an intent to restore the same scope of taxing authority provided to agencies prior to Proposition 62.[10]

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[10] The relevancy of SB 158 to AB 1440 is more attenuated than the other statutes as it was enacted several years later and its language was derived from AB 4158, not from AB 1440. (MJN, Ex. 2.)

The history of the subsequently enacted statues does little to suggest the Legislature intended to place new limits on the taxing authority of school districts in enacting section 50079. It supports the view that the terminology the Legislature used in AB 1440 was intended to continue the authority previously provided to school districts under the Constitution and clarify that school districts could not, per constitutional limitations, impose special taxes on a small subset of a school district.

3. The Opinion Excludes Legislative Action That Supports The District's Interpretation

The Opinion reviews legislative actions taken after AB 1440 but fails to examine one particularly relevant piece of legislative history that supports the District's interpretation. Assembly Bill No. 4431 (1987-88 Reg. Sess.) ("AB 4431") was introduced to require that all special taxes authorized by the Legislature must be "uniform."[11] While the bill did not become law, the intent expressed in its consideration is informative.[12]

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[11] As amended, AB 4431 would have added section 53730.2 requiring all special taxes to "appl[y] uniformly to all taxpayers or all real property . . ." (MJN, Ex. 1.)

[12] The legislative history of related by proposed bills may be considered to determine the intent of enacted legislation. (*Martinez v. Regents of the University of California* (2010) 50 Cal.4th 1277, 1292.)

AB 4431's language "was lifted almost word for word from AB 1440 (Hannigan)" passed only a few months earlier. (MJN, Ex. 1.) The history shows that the uniform requirement was suggested by the Building Industry Association and California Association of Realtors to prevent targeted special taxes on new construction. More importantly, it explains that this was the purpose behind the uniform requirement in AB 1440. In a letter to the bill's author, a consultant for the Assembly Republican Caucus committee explained:

> It appears Mr. Hartman is simply wrong about your AB 4431. As you recall, Chris and I put in that bill to deal with the problem of some school districts imposing a fee on new construction by calling it a special tax. They simply get 2/3 of the city or district to vote to tax new construction.
>
> The Realtors and the CBIA both believe that this problem is not limited to school district. Any special district that can levy a "special tax" could conceivably use this dodge. The answer lies in AB 1440 (Hannigan) which passed last year. It gave school districts authority to levy special taxes – but only if the tax is "uniform." That does not mean that some property will be taxed at a higher rate than others – just that everyone who is going to vote for the tax has to pay. That is the law today – but only for school districts.... AB 4431, ... just takes the language in existing law and applies it to all entities that levy a special tax.

(MJN, Ex. 1.)

This letter makes clear the uniformity language was intended to address the levying of special taxes solely on subsets of a school district

and was a separate issue from the rates that would be imposed on different properties. This underlying intent is repeated several times in AB 4431's legislative history. (See also MJN, Ex. 1 [Assem. Rev. & Tax. Comm. Republican Analysis noting AB 4431 "Requires local 'special taxes to be applied uniformly to all taxpayers or all real property . . . " and that this was "[i]ntended to prohibit local government from imposing special taxes on a particular class of property or taxpayers. The building industry opposes taxes that are levied upon new construction exclusively. Such discriminatory forms of taxation have the effect of significantly increasing the cost of housing for new home purposes."].)

Perhaps the most telling piece of legislative history comes from the Department of Finance's analysis of AB 4431 which admits:

> The definition of uniformity in this bill is unclear. An assessment of special taxes on a per capita basis may be uniform. Alternatively, an assessment based upon relative usage may also qualify as being uniform whether based upon the taxpayers or the real property. Similarly, an assessment based upon size or type of parcel may be considered to be uniform. The bill fails to clarify whether uniformity must be by category of taxpayer or by type of property, or whether it must be determined for each taxpayers or parcel of property.

(MJN, Ex. 1) In short, less than a year after adoption of AB 1440, the Department of Finance is informing the Legislature that the use of the

uniformity language in that statute is unclear and could be read to allow for "an assessment based upon size or type of parcel."

If the Opinion values the perspective and actions of the Legislature after AB 1440 it cannot ignore that many of these bills, especially AB 4431, raise serious questions about the Opinion's conclusions. They suggest that in enacting AB 1440, the Legislature's insertion of the uniformity requirement was, as the District suggests, intended only to prevent discriminatory taxing of a subset of the school district.

Granting this petition would provide the parties, and the Court, an opportunity to review, consider, and brief the impact of these bills and ensure that the Opinion is in conformity with the relevant authorities.

IV. CONCLUSION

The voters of Alameda Unified School District approved Measure H for the specific purpose of supporting the District's educational program. This vote fully complied with the supermajority requirement of Article XIII A, section 4, and indicated the voter's willingness to be taxed for the purposes stated in Measure H. The Opinion invalidates Measure H, in part, and with it, the will of the voters.

The District respectfully requests rehearing to address the meaning and intent of section 50079. This statute, enacted immediately following Proposition 62, was intended to restore a school district's taxing authority and to delegate to school districts the authority to impose rate based classifications. The interpretation proffered by the District is supported by the plain language of the statute, legal precedent, legislative history and allows Measure H and similar parcel taxes across the state to remain intact.

For the above stated reasons, the District respectfully requests that the Court grant the District's Petition For Rehearing.

Dated: December 21, 2012

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JANET L. MUELLER
WILLIAM B. TUNICK

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Attorneys for Defendant and Respondent

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c) of the California Rules of Court, Petition for Rehearing was produced using 13-point Roman type including footnotes and contains approximately 10,231 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: December 21, 2012

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 71 Stevenson Street, Suite 1900, San Francisco, CA 94105.

On the date set forth below I served the foregoing document described as **PETITION FOR REHEARING** on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

1 Copy David Joseph Brillant Brilliant Law Firm, APC 2540 Camino Diablo, Suite 200 Walnut Creek, CA 94597 Attorneys for Appellants **Via U.S. Mail**	4 Copies Clerk California Supreme Court 350 McAllister Street San Francisco, CA 94102-4797 **Via Personal Delivery**
1 Copy Sloan R. Simmons Lozano Smith One Capitol Mall, Suite 640 Sacramento, CA 95814 Attorneys for Amicus Curiae California School Boards Association **Via U.S. Mail**	1 Copy Honorable Kenneth Mark Burr, Judge Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612 **Via U.S. Mail**

☒ **(VIA U.S. MAIL)** I caused such document to be placed in the U.S. Mail at San Francisco, California with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

AND:

I declare that on December 21, 2012, the original and 4 copies have been hand delivered for filing on this date to:

Clerk
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

Executed on December 21, 2012, at San Francisco, California.

Anat Barel
Type or Print Name

Anat Barel
Signature