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The Honorable Tani Cantil-Sakauye, Chief Justice of California
Honorable Associate Justices
The Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW FILED BY ALAMEDA UNIFIED SCHOOL DISTRICT
California Special Districts Association (CSDA)
Borikas, et al. v. Alameda Unified School Dist.
Supreme Court Case No.: S209992
Court of Appeal Case No.: A129295

Dear Honorable Chief Justice Tani Cantil-Sakauye and Associate Justices,

Pursuant to California Rules of Court, rule 8.500(g), the California Special Districts Association (CSDA) respectfully submits this letter as *amicus curiae* in support of the Petition for Review filed by Alameda Unified School District in *Borikas, et al. v. Alameda Unified School Dist.*, 214 Cal.App.4th 135 (2013) (First Appellate District, Case No. A129295) (Supreme Court Case No. S209992) ("Opinion").[1]

I. Introduction and Interest of CSDA

This firm represents the California Special Districts Association (CSDA), a non-profit corporation representing over 1,000 individual special districts statewide. CSDA's members provide a wide range of important government services to rural and suburban communities throughout the state, including water distribution and treatment, fire suppression, park and recreation, sewage collection and treatment, and security and police protection among others. Like other local governments in California, special districts of all types are authorized pursuant to their enabling statutes to impose special

[1] *See Borikas, et al. v. Alameda Unified School Dist.*, 214 Cal.App.4th 135 (2013).

taxes in accordance with mandatory constitutional and statutory provisions.[2] CSDA has thus determined that this case involves significant issues affecting all of its member districts.

Review is proper because the court of appeal opinion in *Borikas*: 1) applies an anomalous definition of "uniformly" found in Government Code section 50079(b)(1), contrary to settled taxation law; 2) calls into question numerous statutes authorizing other local governments to impose special taxes, creating substantial uncertainty in the realm of local government special tax authority; and 3) severely restricts the ability of California voters to approve special taxes based on rational classifications and distinctions. Review in this case will ensure that the California electorate's right to approve special taxes has not been unduly restricted while reducing uncertainty for local governments of all types seeking to impose special taxes in the future.

At issue in *Borikas* was the validity of a "qualified special tax" approved by a direct vote of at least two-thirds of the qualified electors of the Alameda Unified School District,[3] which imposed different rates on residential and commercial properties.[4] The tax was adopted pursuant to the provisions of Government Code sections 50079(a) et seq., which were enacted by A.B. 1440 (1987, Hannigan).[5] A.B. 1440 (1987, Hannigan) was passed by the California Legislature in the wake of Proposition 62 of 1986, which called into question local government special tax authority under Government Code sections 50075 et seq., and was intended to "restor[e] any taxing authority deleted by Proposition 62."[6] Despite the clear legislative intent of A.B. 1440 (1987, Hannigan) to restore pre-existing special tax authority to districts, the Opinion held that "uniformly" as used in Government Code section 50079(b)(1) is actually language of limitation,[7] imposing entirely new restrictions on such tax authority and frustrating the legislative intent of the bill.

II. Background

The passage of Proposition 13 in 1978 ensured every California voter the right to vote on any proposed local government special tax: "Cities, Counties and special districts, *by a two-thirds vote of the qualified electors of such district*, may impose special taxes on such

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[2] *See, e.g.*, CAL. GOV. CODE § 61121(a) (authorizing special districts organized under Community Services District Law to impose special taxes that "appl[ly] uniformly to all taxpayers or all real property within the district"); CAL. PUB. RES. CODE § 5789.1(a) (authorizing special districts organized under Recreation and Park District Law to impose special taxes that "appl[ly] uniformly to all taxpayers or all real property within the district");
[3] *See Borikas*, 214 Cal.App.4th at 139.
[4] *Id.* at 140.
[5] *Id.*; *see also* CAL. GOV. CODE §§ 50079(a) et seq.
[6] Senate Rules Committee, *Analysis of AB 1440, Third Reading*, Office of Senate Floor Analyses, Aug. 17, 1987, at 1-2 (*hereinafter Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*).
[7] *See Borikas*, 214 Cal.App.4th at 157.

district . . . ."[8] The California Legislature subsequently enacted legislation providing broad authority to local governments to impose special taxes in accordance with mandatory constitutional and statutory provisions.[9] The initial special tax enabling statutes are found at Government Code sections 50075 et seq. providing: "It is the intent of the Legislature to provide cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."[10] Although free of any express requirement of uniformity, such taxes at the time were of course subject to the strictures of the Equal Protection Clause.[11]

As the United States Supreme Court explained:

> The appropriate standard of review is whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest. In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational[.] This standard is especially deferential in the context of classifications made by complex tax laws. In structuring internal taxation schemes the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.[12]

A. Proposition 62 of 1986

Proposition 62 was passed partly in response to perceived misinterpretations of local government special tax authority under Article XIII A of the California Constitution. [13]

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[8] CAL. CONST. art. XIII A, § 4 (emphasis added).
[9] *See* CAL. GOV. CODE § 50075 (stating: "It is the intent of the Legislature to provide cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution").
[10] *Id.*
[11] *See, e.g.*, *Nordlinger v. Hanh*, 505 U.S. 1 (1994) (citing *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174 (1980)).
[12] *Nordlinger*, 505 U.S. at 11 (quotations omitted) (citations omitted).
[13] *See City and County of San Francisco v. Farrell*, 32 Cal.3d 47 (1982); *see also* California Secretary of State, *California Ballot Pamphlet: November 4, 1986, General Election*, at 42, *available at* http://librarysource.uchastings.edu/ballot_pdf/1986g.pdf (hereinafter *Official Ballot Pamphlet for Proposition 62 of 1986*) (stating: "[T]he State Supreme Court twisted the language of Proposition 13 in a

Proposition 62 sought to remedy these evils by defining all taxes as either special taxes or general taxes[14] and prohibiting any local government or district from "impos[ing] any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue."[15] In addition to other substantive requirements, the initiative contains the following language having widespread and unintended consequences: "Neither this Article, nor Article XIII A of the California Constitution, nor . . . [sections 50075 et seq. of the] Government Code . . . 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* . . . .[16]

As the court of appeal acknowledged in its opinion, "[t]his provision called into question the taxing power of all local districts that looked to the general enabling legislation enacted after Proposition 13 and commencing with *section 50075* [of the Government Code] as the source of their authority."[17] The California Legislature quickly enacted "a host of statutory provisions expressly authorizing local districts . . .[] to levy special taxes in accordance with the dictates of Propositions 13 and 62."[18]

B. *The Opinion Applies an Anomalous Definition of "Uniformly" found in Government Code section 50079(b)(1), Contrary to Settled Taxation Law*

The passage of Proposition 62 in 1986 called into question the taxing authority of all local governments under Government Code sections 50075 et seq.[19] In response, the California Legislature passed and the Governor signed among others A.B. 1440 (1987, Hannigan), authorizing school districts to impose special taxes, as defined, in accordance with: 1) Article XIII A of the California Constitution; 2) the procedures outlined in Government Code sections 50075 et seq.; and 3) any other applicable procedures provided by law.[20]

As the Senate Rules Committee analysis of A.B. 1440 (1987, Hannigan), implementing Government code sections 50079(a) et seq., explains:

1982 decision (City and County of San Francisco vs. Farrell) which took away your right to vote on city and county tax increases").

[14] *See* CAL. GOV. CODE § 53721 (stating: "All taxes are either special taxes or general taxes").

[15] CAL. GOV. CODE § 53722; *see also Official Ballot Pamphlet for Proposition 62 of 1986*, *supra* note 13.

[16] CAL. GOV. CODE § 53727 (emphasis added); *see also Official Ballot Pamphlet for Proposition 62 of 1986*, *supra* note 13.

[17] *Borikas*, 214 Cal.App.4th at 144.

[18] *Id.*

[19] *Id.*; *see also Official Ballot Pamphlet for Proposition 62 of 1986*, *supra* note 13, at 40-43 (providing official voter ballot pamphlet for Proposition 62 of 1986 on November 4 General election ballot).

[20] *See* CAL. GOV. CODE § 50079(a); *see also* A.B. 1440, 1987-1988 Reg. Sess. (Cal. 1987).

> Proposition 62, which was approved by voters last November, appears to have deleted school districts' authority to impose special taxes. [. . .] [¶] Because the schools' sole authority to impose special taxes stems from Government code Section 50077, Proposition 62 has been widely interpreted to eliminate districts' special taxing authority. The California Taxpayers Association, which sponsored Proposition 62, indicates that it did not intend the proposition to have this effect. *This bill would clarify that school districts have the authority to impose special taxes . . .[] thereby restoring any taxing authority deleted by Proposition 62*.[21]

C. The Overriding Legislative Intent of A.B. 1440 (1987, Hannigan) Was to Restore Pre-Existing Special Tax Authority

In other words, the overriding legislative intent of A.B. 1440 (1987, Hannigan) was to restore pre-existing special tax authority to districts after a drafting error in Proposition 62 ostensibly removed such authority.[22] The authority of districts under Government Code sections 50079(a) et seq. should therefore be read with this overriding legislative intent in mind. The special tax at issue in *Borikas* is well within the pre-existing special tax authority of the district prior to the passage of Proposition 62,[23] which the California Legislature intended to restore when it enacted A.B. 1440 (1987, Hannigan).[24]

At the time Government Code sections 50075 et seq. were enacted in 1987, "uniform" had a well established meaning in the context of taxation law.[25] The Equal Protection Clause permits state tax laws to "discriminate[] 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."[26] Local government special tax authority prior

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[21] *Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.
[22] *Id.*; *see also Official Ballot Pamphlet for Proposition 62 of 1986*, *supra* note 13, at 40-43 (providing official voter ballot pamphlet for Proposition 62 of 1986 on November 4 General election ballot).
[23] *See Borikas*, 214 Cal.App.4th 135; *see also Kahn*, 416 U.S. at 355; *Nordlinger*, 505 U.S. at 10 (stating: "The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike").
[24] *See Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.
[25] *See, e.g.*, *Nordlinger*, 505 U.S. at 11-12 (stating: "[The Equal Protection Clause] is especially deferential in the context of classifications made by complex tax laws"); *see also Williams v. Vermont*, 472 U.S. 14, 22 (1985) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973)); *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983) (stating: "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes").
[26] *Kahn v. Shevin*, 416 U.S. 351, 355 (1974) (citations omitted) (internal quotations omitted); *see also Nordlinger v. Hanh*, 505 U.S. at 10 (stating: "The Equal Protection Clause does not forbid classifications. It

to the passage of Proposition 62 in 1986, therefore, included the power to make rational classifications and distinctions between taxpayers and properties.[27] Government Code sections 50079(a) et seq. should be read to restore this taxing authority to districts as intended by the California Legislature when it enacted A.B. 1440 (1987, Hannigan).[28] The California Legislature is presumptively deemed to be aware of existing law at the time it enacts any given statute.[29]

In light of the overriding legislative intent of the bill, the Opinion applies an unnecessarily restrictive and pedantic interpretation of "uniformly" found in Government Code section 50079(b)(1).[30] After recognizing that Government Code sections 50079(a) et seq. were enacted in response to Proposition 62, the court began its analysis by applying "[t]he basic rules of statutory construction"[31] that "[t]he words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context."[32] Concluding that "uniformly" as used in Government Code section 50079(b)(1) was "unambiguous,"[33] the court found that further consideration of the legislative history of A.B. 1440 (1987, Hannigan) was unnecessary but nevertheless worthwhile.[34]

Despite the clear legislative intent of A.B. 1440 (1987, Hannigan) to restore pre-existing special tax authority to districts, the Opinion held that "uniformly" as used in Government Code section 50079(b)(1) is actually language of limitation,[35] imposing entirely new restrictions on such tax authority and frustrating the legislative intent of the bill. When read in the overall context of the California Legislature's response to the passage of Proposition 62, however, the term "uniformly" as used in Government Code section 50079(b)(1) takes on a different meaning than that applied to it by the court of appeal in *Borikas*.[36] Indeed, Government Code sections 50079(a) et seq. should be read to "restor[e] any taxing authority deleted by Proposition 62,"[37] which, as mentioned

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simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike").

[27] *See, e.g.*, *Nordlinger*, 505 U.S. at 11-12.

[28] *See Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 2; *see also* A.B. 1440, 1987-1988 Reg. Sess. (Cal. 1987).

[29] *See City of San Jose v. Operating Engineers Local Union No. 3*, 49 Cal.4th 597, 606 (2010) (noting "legal presumption that the Legislature is deemed to be aware of existing judicial decisions that have a direct bearing on the particular legislation enacted").

[30] *See Borikas*, 214 Cal.App.4th at 146-47 (applying dictionary definition of "uniform").

[31] *See Borikas*, 214 Cal.App.4th at 146.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 153.

[35] *See Borikas*, 214 Cal.App.4th at 157.

[36] *See Borikas*, 214 Cal.App.4th at 135; *Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2; *see also* CAL. GOV. CODE § 50079(b)(1); *Official Ballot Pamphlet for Proposition 62 of 1986*, *supra* note 13, at 40-43 (providing official voter ballot pamphlet for Proposition 62 of 1986 on November 4 General election ballot).

[37] *Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 2.

above, authorized local governments to impose special taxes based on rational classifications and distinctions.[38]

D. The Opinion Calls into Question Numerous Statutes Authorizing Other Local Governments to Impose Special Taxes, Creating Substantial Uncertainty

The legislative history of A.B. 1440 (1987, Hannigan) is replete with express statements that the bill was intended to "clarify that . . . districts have the authority to impose special taxes . . .[] thereby restoring any taxing authority deleted by Proposition 62."[39] The Opinion, however, applies an interpretation of "uniformly" to Government Code section 50079(b)(1) that creates an anomalous definition in statute and frustrates the clear legislative intent of A.B. 1440 (1987, Hannigan), namely to restore pre-existing special tax authority that was called into question by the passage of Proposition 62 in 1986.[40] Moreover, the Opinion calls into question numerous statutes authorizing other local governments to impose special taxes in accordance with mandatory constitutional and statutory provisions.[41]

Special districts organized under the Community Services District Law, for example, are authorized to impose special taxes that "appl[ly] uniformly to all taxpayers or all real property within the district . . . ."[42] Likewise, special districts organized under the Recreation and Park District Law of 1987 are authorized to impose special taxes that "appl[ly] uniformly to all taxpayers or all real property within the district . . . ."[43] The court of appeal opinion in *Borikas*, therefore, is potentially far-reaching, creating substantial uncertainty in the realm of local government special tax authority. Review in this case will ensure that the California electorate's right to approve special taxes has not been unduly restricted while reducing uncertainty for local governments of all types seeking to impose special taxes in the future.

Additionally, the Senate and Assembly committee and floor votes for the bill are noteworthy in that A.B. 1440 (1987, Hannigan) garnered not a single no vote throughout the entire legislative process. [44] One would expect considerably more debate and analysis of the bill if the California Legislature had in fact intended to impose entirely new

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[38] *Kahn*, 416 U.S. at 355 (internal quotations omitted) (citations omitted); *see also Nordlinger*, 505 U.S. at 10 (stating: "The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike").
[39] *Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.
[40] *Id.*; *see also* A.B. 1440, 1987-1988 Reg. Sess. (Cal. 1987).
[41] *See, e.g.*, CAL. GOV. CODE § 61121(a).
[42] *Id.*
[43] CAL. PUB. RES. CODE § 5789.1(a).
[44] *Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.

restrictions on district special tax authority as the court of appeal in *Borikas* held,[45] representing a significant departure from settled taxation law.[46]

III. Conclusion

After the passage of Proposition 62 in 1986, calling into question the authority of all local governments to impose special taxes pursuant to Article XIII A of the California Constitution and Government Code sections 50075 et seq., the California Legislature enacted a series of bills including A.B. 1440 (1987, Hannigan) intended to restore pre-existing local government special tax authority.[47] Prior to the passage of Proposition 62, local governments were authorized to impose special taxes based on rational classifications and distinctions "if the discrimination is founded upon a reasonable distinction, or difference in state policy, not in conflict with the Federal Constitution."[48] Government Code sections 50079(a) et seq. should therefore be read in the overall context of the California Legislature's response to Proposition 62 to "restor[e] any taxing authority deleted by Proposition 62."[49]

The court of appeal opinion in *Borikas* applies an anomalous definition of "uniformly" found in Government Code section 50079(b)(1), contrary to settled taxation law and creating substantial uncertainty in the realm of local government special tax authority.[50] Moreover, the opinion also calls into question numerous statutes authorizing other local governments to impose special taxes. Review in this case is warranted in order to reduce uncertainty for local governments of all types seeking to impose special taxes in the future. Review will also ascertain the California Legislature's intent in enacting A.B. 1440 (1987, Hannigan) and thereby determine the scope of the Opinion and its future application if any.[51]

The right of California voters to have the final say on any proposed local government special tax is enshrined in our constitution and subject to mandatory statutory provisions.[52] In the wake of Proposition 62 of 1986, the California Legislature sought to

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[45] *Id.*; *see also Borikas*, 214 Cal.App.4th 135.
[46] *Kahn*, 416 U.S. at 355 (internal quotations omitted) (citations omitted); *see also Nordlinger*, 505 U.S. at 10 (stating: "The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike").
[47] *See Borikas*, 214 Cal.App.4th at 144; A.B. 1440, 1987-1988 Reg. Sess. (Cal. 1987).
[48] *Kahn*, 416 U.S. at 355 (internal quotations omitted) (citations omitted); *see also Nordlinger*, 505 U.S. at 10 (stating: The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike"); *Williams v. Vermont*, 472 U.S. 14, 22 (1985) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973)); *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983) (stating: "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes").
[49] *See Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 2.
[50] *See Borikas*, 214 Cal.App.4th at 146-47 (applying dictionary definition of "uniform").
[51] *Id.*; *see also Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.
[52] *See* CAL. CONST. art. XIII A, § 4; CAL. GOV. CODE §§ 50075 et seq.

restore this pre-existing tax authority by enacting among others A.B. 1440 (1987, Hannigan).[53] Because the court of appeal opinion in *Borikas* is potentially far-reaching, affecting numerous statutes enabling other local governments to impose special taxes, CSDA respectfully submits this letter as *amicus curiae* in support of the Petition for Review filed by Alameda Unified School District.

Very truly yours,

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[53] *See* A.B. 1440, 1987-1988 Reg. Sess. (Cal. 1987); *see also Senate Rules Committee Analysis of A.B. 1440 (1987, Hannigan)*, *supra* note 6, at 1-2.