C090473

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION, et al.,
Plaintiffs and Respondents,

v.

COUNTY OF YUBA, et al.,
Defendants and Appellants.

Appeal from the Superior Court of the State of California
County of Yuba, Case No. CV PT 18-02127
The Honorable Stephen W. Berrier, Judge Presiding

APPLICATION OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AN AMICUS BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF YUBA; PROPOSED AMICUS CURIAE BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C090473
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 178856 NAME: Benjamin P. Fay FIRM NAME: Jarvis, Fay & Gibson, LLP STREET ADDRESS: 492 Ninth Street, Suite 310 CITY: Oakland STATE: CA ZIP CODE: 94607 TELEPHONE NO.: (510) 238-1400 FAX NO.: (510) 238-1404 E-MAIL ADDRESS: bfay@jarvisfay.com ATTORNEY FOR (*name*): California State Association of Counties	SUPERIOR COURT CASE NUMBER: CV PT 18-02127
APPELLANT/ PETITIONER: Howard Jarvis Taxpayers Association, et al. RESPONDENT/ REAL PARTY IN INTEREST: County of Yuba, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): California State Association of Counties

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
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	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
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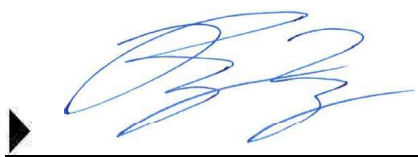
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: June 3, 2020

Benjamin P. Fay
(TYPE OR PRINT NAME)



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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT:

The California State Association of Counties ("CSAC") requests permission, pursuant to Rule 8.200(c) of the California Rules of Court, to file the attached amicus curiae brief in support of Defendant and Appellant County of Yuba ("the County").[1]

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

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[1]The deadline for submitting this application and amicus brief is June 4, 2020. Ordinarily it would have been May 5, 2020, 14 days after the County filed its reply brief on April 21, 2020. However, the deadline was extended by 30 days to June 4, 2020 pursuant to the Court's April 17, 2020 Implementation Order for the Renewed Order Pursuant to Rule 8.66 of the California Rules of Court, issued to address the effects of the ongoing COVID-19 pandemic. CSAC's brief is thus timely, having been filed by the June 4, 2020 deadline. CSAC appreciates the Court's willingness to allow it some scheduling flexibility during this difficult time.

CSAC and its member counties have a substantial interest in the outcome of this case because it raises important questions regarding special and general taxes under articles XIIIA and XIIIC of the California Constitution. In particular, in determining whether Yuba County's transactions and use tax is a special or general tax, this Court will consider the existing standards that differentiate special taxes from general taxes and, implicitly, whether those standards warrant modification. Counties have enacted many general taxes in reliance on these established rules, and many are putting taxes on the November 2020 ballot in reliance on these rules. This issue thus directly impacts counties and other local governments as they rely on the consistency of these standards to raise revenue and put taxes on the ballot. CSAC believes that its perspective on these issues is important for the Court to consider and will assist the Court in deciding this matter.

The undersigned counsel has carefully examined the briefs submitted by the parties and does not seek to duplicate those arguments here. Rather, the proposed amicus brief will highlight the critical distinction between special and general taxes and the importance of preserving the established case law on this issue. CSAC thus hereby requests leave to allow the filing of the accompanying amicus curiae brief.

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represents that they authored CSAC's brief in its entirety on a pro bono basis, that their firm is paying for the entire cost of preparing and submitting the brief, and that no party to this action,

or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief.

JARVIS, FAY & GIBSON, LLP

Dated: June 3, 2020 By 

Benjamin P. Fay
Carolyn Liu
Attorneys for *Amicus Curiae*
CALIFORNIA STATE
ASSOCIATION OF COUNTIES

AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES

I. INTRODUCTION

At issue in this case is the validity of a one percent sales tax increase imposed by the County of Yuba ("County"). The ballot measure imposing the tax, Measure K, was approved by a simple majority of County voters. Plaintiff and Respondent Howard Jarvis Taxpayers Association ("HJTA") seeks to invalidate the voters' approval on the basis that the measure imposes a special tax and thus violates articles XIIIA and XIIIC of the California Constitution by failing to secure the required two-thirds approval for special taxes. The County's position is that Measure K levied a general tax, as defined under article XIIIC and the case law interpreting it, and thus required only simple majority approval. The question in this case boils down to: where exactly is the dividing line between special and general taxes?

In its briefing, the County has ably demonstrated why HJTA's challenge should be rejected. CSAC agrees with the County that Measure K imposes a general tax, but it does not seek to duplicate the County's arguments here. Rather, CSAC files this brief to provide the Court with valuable information regarding the established standards differentiating "special" from "general" taxes and to stress the importance of preserving these standards. The potential impact to California counties and local governments should any inconsistency in these standards arise is significant.

Since the adoption of Proposition 218 in 1996—and even before that while courts were interpreting Proposition 13—the case law concerning special and general taxes has consistently established that a tax only becomes "special" when there is an absolute commitment to spending on specified purposes. The critical distinction between special and general taxes hinges on whether the revenues from the tax are legally committed to a specific purpose or whether they can be used for any governmental purpose.

Counties and local governments have, for over 20 years, obtained voter approval for general taxes in reliance on these established rules and continue to do so as they put taxes on the November 2020 ballot. A disruption to these established precedents would call into question not only general taxes that have already been passed, but also those that will be approved in November 2020 based on these standards. Amicus curiae thus urges this Court to preserve these rules in deciding the case before it.

II. ARGUMENT

A. A "special tax" is a tax that is earmarked for specific purposes.

In 1978, the voters of California adopted Proposition 13, which added article XIIIA to the California Constitution. Section 4 of article XIIIA ("section 4") first imposed the two-thirds voter approval requirement for a "special tax."[2] It did not, however, define "special tax."

[2]It states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on

The California Supreme Court, in *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, addressed the meaning of the term "special tax." The question there was whether San Francisco's payroll and general receipts tax was a "special tax" within the purview of section 4 and thus subject to its two-thirds voter approval requirement. (*Id*. at 50.) The Court determined that, because the City's payroll tax revenues were to be used for general City expenses, the tax was deemed a "general" one beyond the reach of section 4 and not subject to the supermajority voter approval requirement. (*Id*. at 51.)

The California Supreme Court observed that "special tax" was an ambiguous term that had been given varying interpretations, but that applying settled interpretive principles, the term as used in section 4 means "taxes which are levied for a specific purpose rather than … a levy placed in the general fund to be utilized for general governmental purposes." (*Id*. at 57.) Thus began the standard for "special taxes"—taxes whose proceeds are "earmarked for a special purpose." (*Id*. at 53.)

B. Any tax enacted by a limited purpose special district is, by definition, a special tax in that it is earmarked for the specific purposes of that district.

The *Farrell* standard was then reinforced when the California Supreme Court decided *Rider v. County of San Diego* (1991) 1 Cal.4th

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such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

1. At issue was the validity of a sales tax that passed with just over 50 percent approval. (*Id*. at 5-6.) It was imposed by a "limited purpose special district" for the purpose of financing the construction and operation of criminal detention and courthouse facilities for the County. (*Id*. at 5.) A taxpayer challenged the tax, claiming that it was invalid for failing to garner the two-thirds approval required for special taxes by section 4 of article XIIIA of the California Constitution. (*Id*. at 6.)

The special district claimed that although the sales tax had a specific purpose, it was nevertheless a "general tax" because the revenues were placed in its general fund for the general governmental purposes *of the Agency*. (*Id*. at 13.) The California Supreme Court rejected this argument, reasoning that if such were allowed, then any county could avoid section 4's supermajority voter approval requirement by simply creating a local taxing agency to accomplish a specific, narrow governmental purpose, and provide that tax revenues shall be deposited in the agency's general fund for the "general governmental purposes" of that agency. (*Id*. at 15.)

The Court concluded that a more reasonable interpretation of section 4, consistent with *Farrell*'s guideline that a special tax is one earmarked for a specific purpose, is that a special tax "is one levied to fund a specific governmental project or program, such as the construction and financing of the county's justice facilities." (*Id*. at 13, italics omitted.) Because any tax imposed by a special, limited purpose district is earmarked for specific, rather than general, governmental purposes, it is, by definition, a special tax. (*Id*. at 15.)

The definitions provided by *Farrell* and *Rider* were later codified in 1996 by Proposition 218, which added article XIIIC—at issue in this case—to the California Constitution. It defines "special tax" to mean "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund" and "general tax" to mean "any tax imposed for general governmental purposes," and states that "[s]pecial purpose districts or agencies … shall have no power to levy general taxes." (Cal. Const., art. XIIIC, § 1, subd. (a) & (d), § 2, subd. (a).) However, "the 'essence' of a special tax remains the same after the passage of Proposition 218: a tax is 'special' when 'its proceeds are earmarked or dedicated in some manner to a specific project or projects.'" (*Johnson v. County of Mendocino* (2018) 25 Cal.App.5th 1017, 1028, quoting *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 696.)

C. The critical distinction between special and general taxes is that a special tax's revenues must be legally dedicated to specific purposes.

Case law further establishes that in order for a tax to be "earmarked" for specific purposes, there must be some binding and enforceable limitation on the expenditures. In other words, the revenues must be limited *by law* to particular projects or activities.

When there is no legally binding restriction on how the revenues from a tax must be used, the tax is general. For instance, in *Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946, a taxpayer challenged a city's "municipal services tax," the enacting ordinance

of which provided that "[a]ll proceeds of the tax … shall be paid into the general fund of the City of Mill Valley and may be used for any and all municipal purposes." (*Id*. at 951.) The taxpayer argued that the tax was a special tax because, while the ordinance appeared to allow the city to use the proceeds for any purpose, almost all of the tax money was used for the specific purpose of street improvements. (*Id*. at 953.) The court of appeal disagreed, holding that it was not a special tax because all of the proceeds were nonetheless available for use for general municipal purposes through the city's budget process. (*Id*. at 952, 959.) That the city used most of the proceeds for one specific purpose, and even the record's apparent showing that the city's purpose in imposing the tax was to fund street improvements, did not make it a special tax. (*Id*. at 956-957.) The tax was a general one because the proceeds were not *legally dedicated* to any specific purpose but *could* have been used for any purpose. (See *id*. at 956.)

In contrast, in *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178 ("*Roseville*"), the appellate court found that a ballot measure to incorporate an existing utility user's tax, which was a general tax, into the city's charter, was a special tax because it sought to add the limitation that all revenue from the tax shall "be budgeted and appropriated solely for police, fire, parks and recreation or library services." (*Id.* at 1186.) Similarly, *Neilson v. City of California City* (2005) 133 Cal.App.4th 1296 ("*Neilson*") held that a flat-rate parcel tax was a special tax dedicated to specific purposes because the resolution adopting the tax stated that the revenues "shall be deposited into a special tax fund to be spent"

only on fire services, parks and recreation, police services, water services, and street improvements. (*Id*. at 1304, 1310-1311.) The critical distinction between special and general taxes thus hinges on whether the revenues from a tax are legally committed to a specific purpose or whether they can be used for any governmental purpose. If there is no binding language in the taxing ordinance, and the revenues may be used for any governmental purpose, then the tax cannot be a special tax.

D. The revenues of a special tax can be dedicated to multiple specific purposes, but there must be a limitation on expenditures.

While a "detailed formula for allocations of revenues" is not required for a special tax, there must be some limitation on the use of revenues that is specific enough to enforce. (*Roseville*, *supra*, 106 Cal.App.4th at 1187.)

In *Roseville*, the appellate court addressed the dividing line between general and special taxes. As explained above, the issue in this case was the validity of a charter amendment that would move the City's existing general utility user's tax into the city's charter and require that all revenue from the tax shall "be budgeted and appropriated solely for police, fire, parks and recreation or library services." (*Id*. at 1186.) The court determined that the tax was a special tax because it restricted the use of its revenues to five specific purposes: police, fire, parks and recreation, and library services. (*Id*. at 1183, 1186.) This was true even though these purposes accounted

for over 50 percent of the city's general fund expenditures. (*Id*. at 1187.) The court explained:

> "[A] tax is special whenever expenditure of its revenues is limited to specific purposes; this is true even though there may be multiple specific purposes for which revenues may be spent. A tax is general only when its revenues are placed into the general fund and are available for expenditure for any and all governmental purposes." (*Id*. at 1185, internal citations omitted.)

Analyzing *Roseville*, the court in *Neilson*, *supra*, 133 Cal.App.4th 1296 held that the flat-rate parcel tax, the proceeds of which were to be used for five enumerated purposes—fire services, parks and recreation, police services, water services, and street improvements—was a special tax dedicated to specific purposes. (*Id*. at 1310.) The court rejected plaintiff's argument that the tax was a general one because the five purposes were by their nature general governmental purposes. (*Id*.) The court, citing *Roseville*, stated that such a "construction of 'general' is not convincing because it does not fit well with the dividing line created by the constitutional definitions, which looks to the question whether the purposes for which the tax can be used have been specified or not. The specification of purposes is important because it is the means for providing voters with control over the use of tax revenues. When purposes are not specified, then the local government has the discretion to determine how the funds will be spent." (*Id*., internal citations omitted.)

The *Neilson* court echoed the proposition advanced by *Roseville* that as long as the expenditures for a tax are limited to

specified purposes, the tax is special even when those specified purposes are so numerous that they account for a significant part of the city's budget. (*Id*. at 1311.) The court acknowledged, however, that "we can conceive of a special tax that permits expenditures for so many specific governmental purposes that the parts might swallow the whole." (*Id*.)

In contrast, the court in *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107 found a utility user's tax, levied to fund "essential services, including sheriff's deputies, parks, libraries, street repairs, *and other general fund servic*es," to be a general tax. (*Id*. at 114; emphasis added.) The court stated that "[t]he essence of a special tax is that its proceeds are earmarked or dedicated in some manner to a specific project or projects" and found that such language "did not earmark the revenues for any specific project." (*Id*. at 131.) *Owens* did not impose a special tax because, while it states examples of uses, the proceeds could nonetheless be spent on "other general funds services," and thus there was no specific enforceable restriction on the use of revenues.

E. A tax is not "special" merely because it states funding priorities.

Lastly, courts have repeatedly held that a general tax is not transformed into a special tax by merely stating funding priorities. In *Coleman v. County of Santa Clara* (1998) 64 Cal.App.4th 662, the county put two related measures on the ballot: Measure A stated that it was "not a tax," but was "an advisory measure that states Santa Clara County voters' intent that any new sales tax funds be spent on

[a list of] transportation improvements," and Measure B authorized "the enactment of a 1/2 cent retail transaction and use (sales) tax for general county purposes." (*Id*. at 665-666.) Appellants alleged that Measure A made Measure B a "special tax," and it was thus invalid for only being approved by a simple majority of voters. (*Id*. at 667.)

The court, however, held that the sales tax was not a special tax even though the advisory measure stated the voters' intent that sales tax revenues be spent on specified transportation improvements, emphasizing that the "spending priorities … were not compulsory" and "[t]he County was free to spend … revenue on any and all County purposes without restriction." (*Id*. at 671.) This was true even though the ordinance enacting the tax created a watchdog committee to oversee the expenditures, implicitly recognizing that the existence of such a committee does not "legally restrict the scope of the County's right to use the tax proceeds for 'general governmental purposes.'" (*Id*. at 666.)

The issue was again analyzed in *Johnson v. County of Mendocino*, *supra*, 25 Cal.App.5th 1017. There, plaintiffs argued that a business tax imposed by a ballot measure was not a general tax but, together with a related advisory measure, amounted to a special tax requiring approval by a supermajority of county voters. (*Id*. at 1020.) The advisory measure asked voters if the county should "use the majority of that [business tax] revenue for funding enforcement of marijuana regulations, enhanced mental health services, repair of county roads, and increased fire and emergency medical services." (*Id*. at 1022.) The court held that the companion measure stating

funding priorities did not make the tax special. (*Id*. at 1031.) While it "listed some of the general services that could be funded, none of the funds were 'earmarked or dedicated' to any specific project." (*Id*. at 1029.) Because there was no concrete binding commitment of how the funds would be spent, the tax was a general one.

The established case law thus shows that a tax is "special" only when there is an absolute commitment of expenditures to specified purposes. If the county or local government only illustrates purposes for which the revenues can be spent, the tax is general and only required to be approved by a simple majority of the voters. These are the rules upon which counties and local governments have relied for over 20 years when bringing general taxes to the voters and the rules amicus curiae seeks to bring to the Court's attention in its consideration of this case. The alteration of these standards would throw into question general taxes that have already been enacted based on these standards and the general taxes that will be approved by the voters in the upcoming election, potentially significantly impacting counties and local governments and their ability to raise revenues.

III. CONCLUSION

Since the adoption of Proposition 13 in 1978, case law concerning special and general taxes has consistently established that a tax only becomes "special," and subject to the supermajority voter approval requirements imposed by the California Constitution, when the revenues from the tax are legally committed to a specific purpose. If the revenues can legally be spent on any governmental purpose, no

matter how that purpose is described, the tax is general. Courts have determined that only illustrating purposes for which the revenues can be spent does not create an absolute commitment to spending on specified purposes, and thus does not create a special tax. Because counties and local governments have relied on the consistency of these standards in submitting general taxes to the voters, including for the November 2020 election, amicus curiae urges the Court to preserve these rules in deciding the case before it and to reject the challenge of HJTA and uphold the Measure K sales tax as a general tax.

JARVIS, FAY & GIBSON, LLP

Dated: June 3, 2020 By 

Benjamin P. Fay
Carolyn Liu
Attorneys for *Amicus Curiae*
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ASSOCIATION OF COUNTIES

CERTIFICATE OF WORD COUNT

I certify that this brief contains a total of 2,999 words (excluding the cover page, tables, signature block, and this certification), as indicated by the word count feature of Microsoft Word, the computer program that was used to prepare it.

Dated: June 3, 2020

Benjamin P. Fay

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

On June 3, 2020, I served the within

APPLICATION OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AN AMICUS BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF YUBA; PROPOSED AMICUS CURIAE BRIEF

on the parties in this action as follows:

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By U.S. Mail: I caused an such envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California, addressed as follows:

Clerk of the Court
Yuba County Superior Court
215 Fifth Street, Suite 200
Marysville, CA 95901

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 3, 2020, at Oakland, California.

Jennifer Dent

Jennifer Dent