

Case No. A129295
COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

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 20, 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 years 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 from the June 30, 2010 Judgment from
Alameda County Superior Case No. VG08405316
Honorable Kenneth Mark Burr, Judge

BRIEF OF AMICUS CURIAE
CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF
RESPONDENT ALAMEDA UNIFIED SCHOOL DISTRICT

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INTRODUCTION

This case involves the legality of Respondent Alameda Unified School District's ("District") Measure H, a parcel tax approved by a supermajority of the District's voters in June 2008 under Government Code section 50079 ("section 50079"). (See Resp.'s Br. at p. 3.) Among other things, Measure H implements variable tax rates depending upon whether the property taxed is residential, commercial or industrial. (See *id.*) Measure H levies a \$120 per parcel tax for residential property, and a \$0.15 per square foot parcel tax for commercial and industrial property. (See *id.*) Additionally, there are graduated rates for commercial and industrial property based on size. (See *id.*, at pp. 3-4.) Measure H provides the District with an important alternative source of revenue to minimize the impact of ongoing education budget cuts. (See *id.* at p. 3.)

Below and before this Court, Appellants George Borikas et al. allege that Measure H violates section 50079 because it provides a bifurcated tax-rate structure and, thus, is purportedly not "uniform" as required by section 50079. (See Appellant's Opening Br. at pp. 8-11.) The District argued below and now, consistent with existing tax law parlance and precedent, Measure H is applied uniformly to properties within the same classification and, thus, does not violate section 50079. (See District's Resp.'s Br. at pp. 6, 7-19.) Having reviewed the legislative history of section 50079, the trial court agreed with the District, and held that "uniformly" as used in section 50079 has the same meaning as when used in other areas of taxation. (See *id.* at p. 6.) The trial court reasoned that the Legislature did not intend for the plain meaning of the word "uniform" to apply to the section at issue because the efforts and amendments of section 50079 were consistent with the normal definition of uniformly/uniformity in the tax law context. (See *id.* at pp. 6-7.) The trial court held that pursuant to case law interpreting the uniformly requirement in the tax context, the tax must apply uniformly to

all persons or properties within the *same classification*, and Measure H meets this requirement. (See *id.*)

This Court should affirm the trial court's judgment and reasoning in *Borikas v. Alameda Unified School*, Alameda County Superior Court Case No. VG08405316, as variable rate parcel taxes like Measure H are plainly lawful under section 50079 and the understanding of "uniformly" in the tax law arena. Any ruling to the contrary would cause significant injury to California school districts in light of the condition of California education financing, the growing and justifiable reliance by districts on the flexibility to put before and receive approval from their voters of variable rate parcel tax measures, and the overall flexibility, authority and discretion afforded to school districts under the law.

Amicus Curiae California School Boards Association therefore urges the Court to consider this appeal in its statewide context. Over the past 30 years, California's school finance system has increasingly fallen short for school districts and the State's children. While the condition of K-12 financing has worsened during this time period, the current condition of education funding is strikingly dire. Since 1983, school district parcel tax measures passed under section 50079 have become essential lifelines for school districts seeking to maintain educational services and programs. Such enactments are a means by which school districts can, if able to obtain two-thirds voter approval, generate an additional stable revenue source for education in bleak times. Such variable rate parcel taxes allow for the flexibility for districts to determine the right tax structure to serve districts' and their communities' needs, while also ensuring such aspirations are checked at the ballot box by local voters. By affirming the continued propriety of variable rate parcel taxes for school districts, this Court will validate the Legislature's grant of authority and discretion to school districts to use flexible and unique solutions to address unique local needs.

ARGUMENT

I. THE CURRENT PLIGHT OF CALIFORNIA SCHOOL FINANCING, AND ITS DIRE IMPACT ON LOCAL SCHOOL DISTRICTS, IS UNDISPUTABLE.

The road to the current stifling state of educational finance for California school districts started over thirty years ago in 1978 with the passage of Proposition 13. Proposition 13, incorporated into article XIII A of the California Constitution, made the following changes to the then-existing tax system in California: “(1) limit[ed] ad valorem property taxes to 1 percent of a property’s assessed value, (2) limit[ed] increases in assessed value to 2 percent per year unless ownership of the property has changed, and (3) require[d] two-thirds voter approval of any ‘special tax.’” (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1306, citing Cal. Const., art. XIII A, §§ 1, 2, subd. (a), (b), 4.)

The effect of Proposition 13 “was to drastically cut property tax revenue, and thereby sharply reduce the funds available from that source to local governments, and also schools.” (*County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1451; see *Hartzell v. Connell* (1984) 35 Cal.3d 899, 902, fn. 1 [“Proposition 13, commonly known as the Jarvis-Gann initiative, was adopted by the voters in June of 1978. It enacted article XIII A of the California Constitution, which sharply limits the power of local and state governments to increase tax rates or enact new taxes.”]; see also *Sasaki, supra*, 23 Cal.App.4th at 1450-53 [detailing historical perspective of significant school finance legislation and changes]; *Arvin Union Sch. Dist. v. Ross* (1985) 176 Cal.App.3d 189, 194-201 [detailing history of California school financing since Supreme Court’s *Serrano v. Priest* (1971) 5 Cal.3d 584, up and through passage of Proposition 13; ultimately affirming under Proposition 13 denial of revenue raised by school districts by tax overrides].)

“One year after Prop[osition] 13 was passed, another popular initiative, the ‘Gann Amendment,’ limited increases in total state spending regardless of the source of revenue[,]” resulting, among other things, in the inability of California’s spending on education “to increase sufficiently to replace the money school districts lost from the 1978 cut in property taxes.” (West, *Equitable Funding of Public Schools Under State Constitutional Law* (Spring 1999) *J. of Gender, Race & Just.*, p. 302.) Thereafter, several other Legislative enactments and initiatives have shaped the State’s educational finance scheme. (See Timar, *How California Funds K-12 Education* (Sept. 2006) Institute for Research on Education Policy and Practice, pp. 5-29 [explaining legal and practical elements of K-12 education finance].)¹

Correspondingly, between the 1969-1970 and 1999-2000 school years, California’s spending per pupil “fell about 20 percent relative to spending per pupil in all other states.” (Brunner & Sonstelie, *California’s School Finance Reform: An Experiment in Fiscal Federalism* (Apr. 1, 2006), Economics Working Papers (Paper No. 2000609), p. 13.)² Based on one report, in the year *before* the passage of Proposition 13, California spending per pupil was 16 percent higher than in other states. (*Id.*; see also West, *supra*, pp. 308-09 [stating, in 1999, “[t]he past and current starvation of California’s public school system stands in stark contrast to the wealth of its residents. Among the states, California ranked twelfth in disposable

¹ Accessible at <<http://www.stanford.edu/group/irepp/cgi-bin/joomla/a-research-project-examining-california-s-school-governance-and-finance-systems.html>> (as of Dec. 6, 2011). For secondary sources such as Timar’s study and report, and all other secondary sources regarding the nature and condition of California’s school financing scheme, current financial conditions for California schools, as well as the history and status of school district parcel tax measures in California, *Amicus Curiae* has requested judicial notice in a motion filed separately but concurrently herewith.

² Accessible at <<http://digitalcommons.uconn.edu/>> (as of Dec. 8, 2011).

personal income in 1995. This ranking has changed little over the years: in 1970, when California ranked fifth in school spending, it ranked sixth in per capita personal income; in 1992, when California had fallen to thirty-sixth in school spending, it ranked ninth in disposable personal income.”], footnotes omitted.)

Fast forward to 2010. As of September of that year, and primarily through state-based revenue sources, California ranked 28th nationwide on per-pupil spending. (See Edwards, *How California Ranks* (Sept. 2010) EdSource, pp. 1, 7 [discussing California’s ranking]; see also Kaplan, *How California’s Schools Get Their Money* (Feb. 2009) California Budget Project, pp. 1-4 [discussing structure of California’s K-12 education finance system].)³ Worse yet, “[w]hen the expenditure numbers are adjusted for differences in labor costs (the major component in a cost-of-living comparison), California’s rank falls to 43rd.” (Edwards, *supra*, pp. 1, 7; see also Loeb et al., *Getting Down to Facts: School Finance and Governance in California* (Mar. 2007) Bill & Melinda Gates Foundation et al., p. 36 [“Adjusting for salary differences across states reduces California’s spending relative to other states. While it is difficult to make such adjustments with precision, the adjustments suggest that Texas spends 12 percent more than California; Florida, 18 percent; New York, 75 percent, and the rest of the country, 30 percent.”].)⁴ Such conclusions are consistent with California’s repeatedly low nationwide ranking on the amount of personal income Californians contribute to the state’s K-12 education system. (Edwards, *supra*, pp. 5-6.)

³ Accessible at <<http://www.edsource.org/pub10-how-ca-ranks.html>> (as of Dec. 6, 2011) and <http://www.cbp.org/pdfs/2009/090202_SFF_HowSchoolsGetTheirMoney.pdf> (as of Dec. 6, 2011), respectively.

⁴ Accessible at <<http://irepp.stanford.edu/documents/GDF/GDF-Overview-Paper.pdf>> (as of Dec. 6, 2011).

Most recently, California budget woes and the potential repercussions for same have hit a fever pitch. In January of 2011, the State Superintendent of Public Instruction, Tom Torlakson, declared a state of emergency regarding California's school system. (See Cal. Dept. of Ed., *Schools Chief Tom Torlakson Declares Schools in State of Financial Emergency* (Jan. 6, 2011) (Release No. 11-04).)⁵ State Superintendent Torlakson summarized the situation as follows:

There's simply no other way to describe it: this is an emergency...Every day, teachers, school employees, and principals are performing miracles, but the \$18 billion in cuts [to education] over the last three years are taking their toll. We have 174 districts teetering on the financial brink. If this isn't an emergency, I don't know what is.

(*Id.*) Summarizing the impact of the State's ongoing, poor budget conditions, the State Superintendent noted that, based on a study conducted by the California Department of Education in 2010:

- 58 percent of school districts had cut instructional materials;
- 35 percent had increased class size;
- 35 percent had reduced their teaching force;
- 48 percent had cut nurses, counselors, and psychologists; and
- almost half of local educational agencies have reduced the pay of their employees, according to a CDE survey conducted last year.

(*Id.*)

In context, the State's financing of K-12 education had progressed to its current condition on a long and increasingly troublesome path with origins in the late 1970s. Now, more than ever, school districts throughout California, like the District, have found it imperative to reach out to local voters for financial support of their public school programs through parcel

⁵ Accessible at <http://www.cde.ca.gov/nr/ne/yr11/yr11rel04.asp?print=yes> (as of Dec. 8, 2011).

tax measures under section 50079—support that ultimately assists in saving staffing positions, purchasing materials for classrooms, continuing low teacher-student classroom ratios, and/or the saving of valued extracurricular programs. The flexibility afforded under section 50079 to put variable rate parcel tax measures before voters is critical in ensuring that school districts can do all that is legally permissible to keep their educational programs afloat, and continue to provide a sound education to their communities’ children.

II. PARCEL TAXES AND, INCREASINGLY, VARIABLE RATE PARCEL TAXES, ARE AN IMPORTANT GRANT OF AUTHORITY AND FLEXIBILITY TO CALIFORNIA SCHOOL DISTRICTS AND THE COMMUNITIES THEY SERVE, ESPECIALLY DURING TIMES OF ONGOING STATEWIDE BUDGET SHORTFALLS.

Before Proposition 13, school districts were able to choose their own level of spending, and were able to finance such spending prerogatives through local property taxes. (See Brunner, *The Parcel Tax*, in *School Finance and California’s Master Plan for Education* (Richardson & Sonsteliie eds., 2001) p. 189.)⁶ As noted above, in 1978 California voters passed Proposition 13. (See *Sasaki*, *supra*, 23 Cal.App.4th at 1451; see also Brunner, *supra*, p. 189.) Proposition 13 essentially turned the property tax into a state tax by restricting property tax rates to one percent of the assessed value. (See *id.*; see also *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929, 945 [“the purpose of Proposition 13 itself was to achieve statewide control over escalating local property tax rates.”].) As noted, this had a dismal effect on school district funding, as school districts lost control over their largest source of discretionary revenue. (See Brunner, *supra*, p. 189.) Under California’s current fiscal scheme, the state

⁶ Accessible at <http://www.ppic.org/content/pubs/report/R_601JSR.pdf> (as of Dec. 8, 2011).

controls 90% of school district revenue and school districts have very few options for alternative sources of funding. (See *id.*)

While Proposition 13 severely diminished the ability of school districts to raise additional revenue, it did not eliminate it. (See *id.*) Prior to Proposition 13, parcel taxes were forbidden because property had to be taxed in proportion to its full value. (See Perry, *Local Revenues for Schools: Limits and Options in California* (Sept. 2009) EdSource, p. 2.)⁷ However, the parcel tax was born out of Proposition 13, allowing local governments, including school districts, to pass a new “non ad-valorem” tax if they received approval from two-thirds of local voters. (See *id.*) Thus, parcel taxes are a means for school districts to raise additional funds, and a tax on real estate parcels as opposed to the actual value of real property, permissible under Proposition 13. (See Brunner, *supra*, at pp. 189-90.)

The first parcel tax was passed by a California school district in 1983, five years after approval of Proposition 13. (See *id.* p. 190.) Between 1983 and November 2010, voters approved 289 parcel taxes in 542 elections. (See EdSource, *Parcel Tax Election Trends* (Jan. 2011).)⁸ In light of the past decades’ K-12 fiscal climate, the number of school districts attempting to pass parcel tax measures is increasing. While in 2006 only 13 school districts placed parcel tax measures on the ballot, in 2009 this number increased to 31, and, in 2010, 38 school districts placed parcel taxes on the ballot. (*Id.*) In 2011 parcel tax proposals remained steady, as approximately 27 school districts placed parcel tax measures on
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⁷ Accessible at <http://www.edsource.org/pub_local-revenues.html> (as of Dec. 6, 2011).

⁸ Accessible at <http://www.edsource.org/iss_fin_sys_parceltax.html> (as of Dec. 6, 2011).

the ballot and over half of such measures passed. (CalTax, *2011 Local Tax Elections* (Nov. 17, 2011) California Taxpayers Association.)⁹

Parcel taxes provide California school districts with an alternative source and essential helping hand for school funding. Between 2001 and June 2009, 132 of the California's 980 school districts have put parcel tax measures on the ballot for voter approval. (See EdSource, *Parcel Tax Election Trends, supra.*) This amounts to 13 percent of all California school districts over that eight year time period. Of those 132 school districts to put parcel tax measures before their voters, 83, or over 60 percent, were successful. (See *id.*) Once passed, these school districts typically have essential and stable revenue streams for three to ten years. (See Perry, *supra*, p. 2.)

The majority of parcel taxes passed by school districts have assessed a flat fee on each parcel of property, and do not take into account the size or use of the parcel. (*Id.*) However, between 2001 and 2009, at least eight school districts have passed "variable rate" parcel tax measures that utilize separate rates, based on square footage or other property improvements. (*Id.*)

Two examples of variable rate tax measures passed between 2001 and 2009 are measures by the Piedmont Unified School District and the Mountain View-Whisman School District. (See Santa Clara County Registrar of Voters, *June 3, 2008 Primary Election Official Final Results* (June 25, 2008), p. 3; Piedmont Unified School District, *School Parcel*
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⁹ Accessible at <http://www.caltax.org/homepage/local_tax_elections.htm> (as of Dec. 7, 2011).

Tax (June 10, 2010).)¹⁰ The Piedmont Unified School District passed two variable rate parcel taxes, Measure E (lasting three years) and Measure B (lasting four years) in 2009. (See Alameda County, *Official Final Results Alameda Special Election* (June 2, 2009); Piedmont Unified School District, *School Parcel Tax, supra.*)¹¹ Measure E produces revenues for Piedmont Unified of up to \$997,000 per year. (*Id.*) In terms of Measure B, “[a]nnual revenues for 2009-2010 and 2010-2011 are \$8,145,000, and the Board [of Education for Piedmont Unified] has the authority to raise annual levies by as much as 5 percent above the pervious year’s levy, in 2011-2012 and 2012-2013.” (*Id.*) The Mountain View-Whisman School District’s parcel tax lasts for eight years, and implements a variable tax rate scheme with six different rates based on a parcel’s square footage. (EdSource, *Altogether 83 districts passed parcel taxes* (Sept. 2009), p. 2.)¹²

Since 2009, other school districts, such as the Davis Joint Unified School District and the San Francisco Unified School District, have passed variable rate parcel tax measures under section 50079. Davis Joint Unified’s two year variable rate parcel tax implements rates of \$20.00 per dwelling unit and \$200.00 for all other parcels, and is expected to result in revenues of \$3.2 million per year. (See Davis Joint Unified School District,

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¹⁰ Accessible at <<http://www.sccgov.org/elections/results/june2008/>> (as of Dec. 7, 2011) and <<http://www.piedmont.k12.ca.us/district-info/budget/parcel-tax>> (as of Dec. 7, 2011), respectively.

¹¹ Accessible at <<http://www.acgov.org/rov/v092/results.pdf>> (as of Dec. 7, 2011).

¹² Accessible at <http://www.edsource.org/assets/files/data_83districtsPassedParcelTaxesBe t0109.pdf> (as of Dec. 7, 2011).

District Dollars Balancing the Budget for Davis Schools.)¹³ San Francisco Unified passed a variable rate parcel tax up to \$32.20 per parcel for single family residential and non-residential parcels, and \$16.10 per dwelling unit for mixed use and multifamily residential parcels; the parcel tax operates for 20 years and is expected to result in revenues of \$6.8 million per year. (City & County of San Francisco Dept. of Elections, *Voter Information Pamphlet* (Apr. 9, 2010), p. 103; *id.*, *Results Summary June 8, 2010 Consolidated Statewide Direct Primary Election* (Nov. 8, 2010).)¹⁴

All told, non-ad valorem parcel tax measures continue to grow in favor and necessity, as school districts maneuver to maintain sound educational programs for their communities and students. Paralleling the increasing overall turn to parcel tax measures, so too are school districts increasingly passing variable rate parcel tax measures like the District's, while maintaining uniform rates for similarly categorized property. As such, public policy interests in maintaining certainty for school districts with established variable rate parcel tax revenue streams buttresses the overall legality of Measure H under section 50079. This Court should confirm that local communities will continue to have the choice to enact variable rate parcel tax measures to support their educational priorities while serving as a financial bridge during these difficult financial times.

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¹³ Accessible at <<http://www.districtdollars.org/parcel>> (as of Dec. 7, 2011).

¹⁴ Accessible at <http://sfpl.org/pdf/main/gic/elections/June8_2010.pdf> (as of Dec. 7, 2011) and <<http://sfelections.org/results/20100608/summary.php>> (as of Dec. 7, 2011), respectively.

III. THE COURT SHOULD NOT DISTURB THE LOCAL CONTROL EXERCISED BY THE DISTRICT AND APPROVED BY THE DISTRICT'S VOTERS IN THIS MATTER—LOCAL CONTROL AND DISCRETION THAT IS INCREASINGLY CRITICAL FOR SCHOOL DISTRICTS AROUND THE STATE.

The trial court's decision that section 50079 does not prohibit Measure H's variable tax rate is consistent with the flexibility and local control the Legislature has granted to local school districts to address their communities' unique needs.

Education Code section 35160.1, subdivision (a), provides, in pertinent part:

The Legislature finds and declares that school districts...have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts...should have the flexibility to create their own unique solutions.

(Ed. Code, § 35160.1, subd. (a); see *American Civil Rights Foundation v. Berkeley Unified Sch. Dist.* (2009) 172 Cal.App.4th 207, 216.) Education Code section 35160.1 "is a clarification of section 35160, which in turn provides flexibility [for school districts] to 'act in any manner which is not in conflict with or inconsistent with, or preempted by, any law....'" (*San Rafael Elementary Sch. Dist. v. State Bd. of Ed.* (1999) 73 Cal.App.4th 1018, 1027; see also *Dawson v. East Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1017.) Correspondingly, Education Code section 35160 provides, in pertinent part:

the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

(Ed. Code, § 35160.)

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The broad discretion of the District and other California school districts to take lawful action to address their unique and common community needs, including flexibility in the structure of lawful, local parcel taxes, flows from the overarching mandate of the California Constitution, article IX, section 14:

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

(Cal. Const., art. IX, § 14; cf. Ed. Code, § 14000 [“It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies: [¶] The system of public school support should be designed to strengthen and encourage local responsibility for control of public education...”]; *Cal. Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1523-24 [“It has been and continues to be the legislative policy of this state to strengthen and encourage local responsibility for control of public education through local school districts. (§ 14000.)”].)

Over time, California courts have repeatedly recognized the significance of Education Code section 35160 in conformity with the constitutional grant of authority and discretion to school districts. (See, e.g., *American Civil Rights Foundation, supra*, 172 Cal.App.4th at 216 [“the Legislature has granted school boards wide authority to set policies for the communities they serve.”]; *Dawson, supra*, 28 Cal.App.4th at 1017-19.) And with this grant of local discretion, “[t]here is a correlative limitation upon the authority of courts to control the actions of local school districts.” (*Dawson, supra*, 28 Cal.App.4th at 1018, citing *Johnson v. Bd. of Ed.* (1986) 179 Cal.App.3d 593, 600-01.)

This case calls for the Court to take into consideration the local control and flexibility at stake under Appellant's challenge to Measure H. The State's education finance scheme is in shambles. Parcel taxes approved by local voters under section 50079 and, more importantly here, variable rate parcel taxes passed under such authority, are an already important and increasingly critical funding lifeline for school districts.

By gaining two-thirds voter approval for qualified special parcel taxes under section 50079, designated for specific education and school purposes, the District and school districts around the State have been able to address precise educational needs critical for the delivery of a sustainable and satisfactory educational program to their constituents. The flexibility to structure such parcel tax measures in variable rate forms, applying uniform rates to similarly situated types of property, enables school districts to address the unique and common needs of their school systems through unique solutions. Because Measure H is lawful under section 50079, this Court should affirm the Judgment, and reject Appellant's challenge to the District's proper exercise of local school district control and flexibility already validated by the District's voters.

CONCLUSION

Based on the foregoing and for those reasons set forth in District's Respondent's Brief, this Court should affirm the judgment of the Alameda County Superior Court.

Dates: December 9, 2011

Respectfully submitted,

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CALIFORNIA SCHOOL BOARDS
ASSOCIATION

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, counsel hereby certifies that the word count of the computer program used to prepare this brief (excluding the cover, tables, and this certificate) is 3,684 words.

Dates: December 9, 2011

Respectfully submitted,

LOZANO SMITH

 /S/ Sloan Simmons

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CALIFORNIA SCHOOL BOARDS
ASSOCIATION

PROOF OF SERVICE

I, Krista Steiner, declare as follows: I am employed in the County of Sacramento, State of California. I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled cause; my business address is 1 Capitol Mall, Suite 640, Sacramento, CA 95814. On December 12, 2011, I served the attached:

**APPLICATION FOR LEAVE TO FILE, AND BRIEF OF AMICUS CURIAE
CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF
RESPONDENT ALAMEDA UNIFIED SCHOOL DISTRICT**

on the interested parties in said action, by placing a true copy thereof in sealed envelopes addressed as follows:

<u>Attorney for Appellants</u> David Joseph Brilliant BRILLIANT LAW FIRM, A Professional Corporation 2540 Camino Diablo, Suite 200 Walnut Creek, CA 94597	<u>Attorneys for Alameda USD</u> George David Nied CHAPMAN POPIK & WHITE 650 California Street, 19th Floor San Francisco, CA 94108
Umung D. Varma 533 Clayton Street San Francisco, CA 94114	Page Barnes, Esq. FOLEY & LARDNER One Maritime Plaza, 6th Floor San Francisco, CA 94111
	<u>Clerk</u> Judge Kenneth M. Burr, Dept. 30 Alameda County Superior Court 201 Thirteenth Street Oakland, CA 94612

[X] (**By Electronic Mail**) on all parties in said action by transmitting a true and correct to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

California Supreme Court 350 McAllister Street San Francisco, CA 94102 http://www.courtinfo.ca.gov/courts/courtsofappeal/appbriefs.cfm

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2011, at Sacramento, California.

/S/ K. Steiner

Krista P. Steiner