Case No. A142500

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

GOLDEN GATE HILL DEVELOPMENT COMPANY, INC.,

Plaintiff and Appellant,

vs.

COUNTY OF ALAMEDA; ALBANY UNIFIED SCHOOL DISTRICT; **ALAMEDA COUNTY ASSESSOR,**

Defendants and Respondents.

Appeal from the May 19, 2014 Judgment from
Alameda County Superior Case No. RG14713078
Honorable John M. True, III, Judge

APPLICATION FOR LEAVE TO FILE, AND BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE IN SUPPORT OF RESPONDENT ALBANY UNIFIED SCHOOL DISTRICT

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, First APPELLATE DISTRICT, DIVISION Five	Court of Appeal Case Number: A142500
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APPELLANT/PETITIONER: Golden Gate Hill Development Company, Inc. RESPONDENT/REAL PARTY IN INTEREST: Albany Unified School District et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Amicus Curiae Cal. School Boards Assn.

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(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: January 12, 2015

Sloan R. Simmons
(TYPE OR PRINT NAME)

▶ /s/ Sloan R. Simmons
(SIGNATURE OF PARTY OR ATTORNEY)

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE BARBARA J. R. JONES, PRESIDING JUSTICE, AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FIVE,

Pursuant to Rule 8.200(c) of the California Rules of Court, leave is hereby requested to file the accompanying Brief of *Amicus Curiae* on behalf of the California School Boards Association's Education Legal Alliance ("CSBA," ELA" or "*Amicus Curiae*") in this action in support of Respondent Albany Unified School District ("District" or "Albany").

INTEREST OF *AMICUS CURIAE*

This case concerns the time period during which taxpayers of a school district may file legal actions to challenge a parcel tax measure approved by the school district's voters. While the present case involves only the Albany Unified School District and the fate of its 2009 parcel tax Measures I and J, the decision in this case will have great implications for the hundreds of other California public school districts that now rely on voter-approved taxes to support schools and educational programs within the school districts, including approximately a dozen with variable tax rates like Albany's. Because parcel taxes and bond measures play a critical role in the school funding equation, speedy finality to legal challenges to such taxes is particularly important.

ELA and its members have a substantial interest in the outcome of this litigation. CSBA is an association of virtually all of the state's more than 1,000 school districts and county offices of education. It brings together school governing boards and their districts and county offices of education on behalf of California's school children. CSBA is a member-driven association that supports the governance team of school districts, including board members, superintendents, and senior administrative staff, in their complex leadership roles. CSBA develops, communicates, and advocates

the perspective of California school districts and county offices of education. As an advocate for its constituent members, ELA has determined that this case affects the ability of California school districts to safely spend the proceeds from voter-approved tax measures, which measures enable districts to raise revenues for district operations and facilities, and are vitally important to districts.

BRIEF OF *AMICUS CURIAE* WILL ASSIST THE COURT

Amicus Curiae's Brief will assist the Court in three ways. First, the Brief will provide an overview of California's complex education funding system and its checkered recent history. Second, the Brief will address the statewide use, prevalence, and importance of voter-approved taxes passed under Government Code section 50079. Third, this Brief will explain the particular importance to school districts of a prompt determination of the validity of their parcel tax measures. A sound understanding of these points is essential for the Court's proper resolution of this case and recognition of the importance of its decision for California schools.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the Court accept the accompanying Brief for filing in this case.

Dated: January 12, 2015

Respectfully submitted,

LOZANO SMITH

/s/ Jeffrey L. Kuhn
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CALIFORNIA SCHOOL
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EDUCATION LEGAL ALLIANCE

Case No. A142500

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INTRODUCTION

This case involves the legality of Respondent Albany Unified School District's ("District" or "Albany") Measures I and J, parcel tax measures approved by a 2/3 majority of the District's voters in November 2009 under Government Code section 50079 ("section 50079"), and the time within which a taxpayer may file a legal challenge to the validity of those Measures. (Respondent's Brief ["RB"] at 2-3.) Among other things, Measures I and J have implemented variable tax rates that differ based on whether the property taxed is residential or non-residential in use. (RB at 2-3.) Measure I has levied taxes of $149 per taxable residential unit, and $0.03 per square foot of land area, or $149, whichever was the greater, on non-residential property.[1] (RB at 2-3.) Measure J has imposed a separate tax at the greater of: (a) $555 per taxable residential unit, or (b) $0.11 per square foot of land area or $555 on each parcel of nonresidential property. (RB at 2-3.)

Below, Appellant Golden Gate Hill Development Company, Inc. ("Appellant") alleged that Measures I and J are invalid because they impose different tax rates on residential versus nonresidential properties, contrary to the uniformity requirement of section 50079, as interpreted by Division One of this Court in the case, *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135 ("*Borikas*"). (RB at 3.) Appellant further alleged that at all relevant time periods, it was the owner of a certain parcel

[1] Effective July 1, 2015, Measure I will be replaced by a new Measure, LL, approved by an 84.07% majority of Albany's voters voting on the Measure at the November 4, 2014 election. Under Measure LL, all taxable parcels within the District will be taxed at the same rate of $278 per year for 6 years, with permissible rate increases based on increases in the CPI beginning in fiscal year 2016-17. (See text of Measure LL, accessible at <http://www.ausdk12.org/apps/pages/?uREC_ID=92442&type=d> and <http://ballotpedia.org/Albany_Unified_School_District_Parcel_Tax_Question,_Measure_LL_(November_2014)> (last accessed Jan. 12. 2015).)

of real property that was subject to the Measures I and J parcel taxes for fiscal years 2010-2011, 2011-2012, and 2012-13, that it timely and fully paid those taxes, and that it filed a claim for refund of those taxes with the County of Alameda on July 9, 2013. (Appellant's Opening Brief ["AOB"] at 2-3.) When the refund claim was deemed rejected by the passage of time and the County's inaction on the claim, on February 6, 2014 (some 1,557 days after the voters' approval of Measures I and J) Appellant filed the instant suit seeking a refund of those Measures I and J parcel taxes. (AOB at 2-4.)

Respondent demurred to the Appellant's Complaint on the basis that Measures I and J were validated by operation of law in February 2010, and as such, there existed no legal basis for a refund to Appellant. (RB at 4.) The trial court agreed, sustained the demurrer without leave to amend, and dismissed Appellant's complaint. In doing so, the trial court found that the Appellant was time-barred from challenging the legality of the taxes based on the 60-day statute of limitations in the validation action procedure that applies to determining the legality of voter-approved tax measures. The court found that the basis of Appellant's complaint was that the Measures were illegal under section 50079 and the *Borikas* decision and that the only way to properly challenge the Measures on such basis was a "reverse validation action" under Code of Civil Procedure section 860 et seq. ("section 860 et seq.") which was time-barred as it was not brought within 60 days of the passage of the Measures. (RB at 4-5.)

On appeal, Appellant argues in essence that it was entitled to take either of two separate bites at the tax refund apple—the first being with a reverse validation action brought within 60 days of the voters' approval of the tax measures, and the second being with a refund action under Revenue and Taxation Code sections 5140 and 5096 brought within 4 years of the

date the taxes were paid, which was the subject of the verified complaint below.

Interestingly, in arguing that it could choose which bite at the apple to take, Appellant makes no mention at all in its Opening Brief of the *Borikas* decision. Nor does Appellant offer any rationale for why, in its view, the Legislature created these alternative, identical remedies. In contrast, Respondent correctly explains that the two remedies are not identical and are designed to address different kinds of problems a taxpayer may have with a tax measure. The first is a legal defect in the tax measure itself, such as the use of tax rates not meeting section 50079's uniformity requirement. The remedy for this kind of facial defect is a reverse validation action under Code of Civil Procedure section 860 et seq. For the reasons explained below, the Legislature has established a short 60-day period from voter approval to bring a facial challenge against a tax measure.

The second kind of problem a taxpayer might have is the improper application of a facially-valid (or validated) tax measure, such an incorrect calculation of the amount of taxes to be levied on a parcel and collected for a particular year. The remedy for this kind of problem is the filing of an administrative claim for refund, followed by civil action for a refund of taxes erroneously assessed, levied, or collected under section 5140 et seq. of the Revenue and Taxation Code if the claim does not result in the requested refund. The Legislature has established a 4-year period from payment of the taxes to file such a refund action. (RB at 15-16.)

This Court should affirm the trial court's granting of District's demurrer and the trial court's judgment dismissing the complaint without leave to amend, as Appellant's complaint for refund of taxes depends on its facial challenge to Measures I and J based on *Borikas*, and plainly was time-barred by section 860 et seq. Any ruling to the contrary would bring with it massive amounts of uncertainty about the validity of voter-approved

tax measures now in effect in hundreds of other school districts. The impact of having the validity of their tax measures called into question would be tremendous, especially when many of the measures were voter-approved years ago and all have helped the districts weather the all-too-recent reductions and deferrals of State education funding.

Amicus Curiae therefore urges the Court to consider this appeal in its statewide context. Over the past 35+ years, California's school finance system has often fallen short for school districts and the State's children. Since 1983, school district tax measures passed under section 50079 have become essential lifelines for school districts seeking to maintain educational services and programs. Such enactments are the only means by which school districts can, if able to obtain voter approval, generate additional, stable revenues for education operations and facilities that are not subject to control by the state of federal governments. Such tax measures allow for the flexibility for districts to determine the right tax rate 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 applicability of the 60-day period of limitations to facial challenges to tax measures, this Court will allow school districts to continue to budget and expend proceeds of those tax measures with confidence once the 60-day period has passed and without fear that the measures may be subjected to facial attacks long after the voters approved the measures.

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ARGUMENT

I. CALIFORNIA HAS A COMPLEX EDUCATION FUNDING SYSTEM WITH A CHECKERED RECENT HISTORY.

The road to the recent 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 the California Constitution, as Article XIIIA, making 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. XIIIA, §§ 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.) The State's complex educational funding system and its recent checkered past suggest that school districts must use whatever means are available to put a stable, local source of operational funds in place before the next downturn in State funding. As explained next, that is exactly what increasing numbers of California school districts have done through local tax measures.

II. LOCAL TAXES ARE AN IMPORTANT PART OF CALIFORNIA SCHOOL FINANCING AND ARE THE ONLY MEANS SCHOOL DISTRICTS HAVE TO SECURE STABLE SOURCES OF OPERATIONAL REVENUE.

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 & Sonstelie eds., 2001) p. 189.)[2] 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 *Sasaki, supra,* 23 Cal.App.4th at 1451; 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

[2] Accessible at <http://www.ppic.org/content/pubs/report/R_601JSR.pdf> (as of Jan. 12, 2015).

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 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.)[3] 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 2014, elections took place on 635 school district parcel tax measures, of which 371 were approved and 264 were defeated. (Ballotpedia, *Parcel tax elections in California* (Jan. 2015); Ed-Data,

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[3] Accessible at < http://eric.ed.gov/?id=ED506638> (as of Jan. 9, 2015).

School District Bond and Parcel Tax Elections (Sept. 2014).)[4] In light of the volatility in school district funding, the number of school districts attempting to pass parcel tax measures generally is increasing. While in 2006 only 13 school districts placed parcel tax measures on the ballot, in 2009 this number increased to 31, to 38 in 2010, to 28 in 2011, 35 in 2012, 13 in 2013, and 20 in 2014. (Ballotpedia, *Parcel tax elections in California* (Jan. 2015); Ed-Data, *School District Bond and Parcel Tax Elections* (Sept. 2014).) Once passed, these school districts typically have essential and stable revenue streams for three to ten years. (See Perry, *supra*, p. 2.)

At least a dozen school districts passed "variable rate" parcel tax measures, similar to Albany's Measures I and J, which utilize separate rates, based on square footage or other property improvements. (See Chavez and Freedberg, *Raising Revenues Locally - Parcel Taxes in California School Districts 1983–2012* (May 2013) EdSource, p. 6.)[5]

Two examples of variable rate tax measures passed between 2003 and 2013 are measures by the Piedmont Unified School District and the Mountain View-Whisman School District. (See BallotPedia, *Mountain View-Whisman School District parcel tax, Measure C (June 2008)*; Piedmont Unified School District, *School Parcel Tax* (June 10, 2010).)[6] The Piedmont Unified School District passed two variable rate parcel taxes,

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[4] Accessible at <http://ballotpedia.org/Parcel_tax_ elections_ in_ California> (as of Jan. 12, 2015) and <http://www.ed-data.k12.ca.us/Pages/SchoolDistrictBondAndTaxElections.aspx> (as of Jan. 12, 2015), respectively.

[5] Accessible at <edsource.org/wp-content/publications/pub13-ParcelTaxesFinal.pdf> (as of Jan. 12, 2015).

[6] Accessible at < http://ballotpedia.org/Mountain_View-Whisman_School_District_parcel_tax,_Measure_C_(June_2008)> (as of Jan. 12, 2015) and <http://www.piedmont.k12.ca.us/district-info/budget/parcel-tax> (as of Jan. 12, 2015), respectively.

Measure E (lasting three years) and Measure B (lasting four years) in 2009. (See Piedmont Unified School District, *School Parcel Tax*, *supra*.) 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. (See BallotPedia, *Mountain View-Whisman School District parcel tax, Measure C*¸ *supra*.)

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 implemented rates of $20.00 per dwelling unit and $200.00 for all other parcels, and was expected to result in revenues of $3.2 million per year. (See Davis Joint Unified School District, *District Dollars Balancing the Budget for Davis Schools*.)[7] 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. (BallotPedia, *San Francisco Unified School District parcel tax, Proposition A (June 2010)*.)[8]

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[7] Accessible at <http://www.districtdollars.org/parcel> (as of Jan. 12, 2015).

[8] Accessible at http://ballotpedia.org/San_Francisco_Unified_School_District_parcel_tax,_Proposition_A_(June_2010) (as of Jan. 12, 2015).

All told, non-*ad valorem* tax measures continue to grow in favor and necessity, as school districts maneuver to maintain sound educational programs for their communities and students. Up until the decision in the *Borikas*, school districts were increasingly passing variable rate parcel tax measures like the District's, while maintaining uniform rates for similarly categorized property.

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—support that ultimately assists in saving staffing positions, purchasing materials for classrooms, continuing low teacher-student classroom ratios, and the saving of valued extracurricular programs. (See Chavez and Freedberg, *Raising Revenues Locally*¸ *supra*, pp. 2, 3.) The flexibility afforded under section 50079 to put local tax measures with short statutes of limitation 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 without having to worry about legal challenges to the measures gaining traction long after the local voters have spoken.

III. THE COURT SHOULD NOT DISTURB THE CERTAINTY PRO-VIDED BY THE 60-DAY PERIOD OF LIMITATIONS FOR FACIAL CHALLENGES TO LOCAL TAX MEASURES AP-PROVED BY SCHOOL DISTRICT VOTERS—CERTAINTY THAT IS INCREASINGLY CRITICAL FOR SCHOOL DISTRICTS AROUND THE STATE

As the trial court alluded to in its order sustaining Albany's demurrer, there are important public policy considerations behind the validation statute and procedure provided by Code of Civil Procedure section 860 et seq., citing to the case of *California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406 ("*Commerce Casino*").

Commerce Casino concerned a challenge to a California statute approving an amended "gaming compact" among the State of California and five Indian tribes. Through its action, plaintiff sought to invalidate the statute and amended compact as being violative of various State Constitution provisions. (*Id*. at 1414.) As defendants, Governor Schwarzenegger and other State officials and agencies demurred to the complaint on the grounds that included a failure to file the action within the 60-day period of limitations provided by Code of Civil Procedure section 860 et seq. The trial court sustained the demurrer on that ground, without leave to amend. (*Id*. at 1416.)

In affirming the judgment, the Court of Appeal reviewed the validation statute and procedure. The Court noted that a public agency, like Albany in this case,

> "may indirectly but effectively 'validate' its action *by doing nothing to validate it*; unless an 'interested person' brings an action of his own under section 863 within the 60-day period, the agency's action will become immune from attack whether it is legally valid or not," (citing, *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341-342 (*Ontario*); accord *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 851 (*Friedland*); *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 792.) As to matters "which have been or which could have been adjudicated in a validation action, such matters -- including constitutional challenges -- must be raised within the statutory limitations period in section 860 et seq. or they are wai*ved*." (*Friedland*, supra, at pp. 846-847.)

(*Id.* at 1420, emphasis in original.)

The Court of Appeal then reviewed the policy considerations behind the validation statute and procedure, noting that a validation action implements important public policy considerations:

> "'[A] central theme in the validating procedures is speedy determination of the validity of the public agency's action.' [Citation.] 'The text of [Code of Civil Procedure] section 870 and cases which have interpreted the validation statutes have placed

> great importance on the need for a single dispositive final judgment.' [Citation.] The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action.' [Citation.] [¶] … [¶] A key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency's ability to operate financially. [Citation.]" (*Friedland, supra,* 62 Cal.App.4th at pp. 842-843.) A validation action also serves to fulfill the important objective of "facilitat[ing] a public agency's financial transactions with third parties by quickly affirming their legality." (*Id.* at p. 843.) In particular, "'[t]he fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds[.]'" (*Id.* at p. 843.)

(*Id.* at 1420-21.)

The same public policy considerations have been cited with approval in many other cases, including *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341; *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 850-851, among others.

These policy considerations are particularly relevant to California school districts with voter-approved tax measures. As noted above, parcel tax proceeds have typically been budgeted and expended by school districts for operational purposes, often including core functions and programs at risk of reduction or elimination during the recent State funding shortfalls. For example, Albany's Measure I recited the following as its purpose:

> Moneys raised under this Emergency Education Funding Act shall be authorized to be used to restore programs and services cut from the District's budget as a direct result of a reduction in State funding for schools, including but not limited to:
>
> •Restore teaching positions and support services
> •Restore music and arts courses
> •Restore English language learning services
> •Restore campus safety and security services
> •Restore library services
> •Restore counseling

> •Restore reading, writing and math support and to restore and preserve other academic programs, instructional equipment, materials and supplies from State budget cuts, to the extent of available funds.

(See full text of Albany Unified School District's 2009 Measure I.)[9]

Generally, school districts proposing parcel taxes to their voters will have already made serious, sometimes drastic, budget cuts, laid off teachers and other staff, drawn down budget reserves, and engaged in all manner of fund raising before requesting local voters to tax themselves. For example, in voting to put Measure I on the ballot, Albany's Board of Education made the following finding: "The direct impact of these State cuts on local Albany schools has meant eliminating 17 teaching positions and many more student support and District support staff." (*Id.*)

Imagine the consternation of school officials who have made those gut-wrenching decisions, then persuaded a 2/3 majority of their local voters to support parcels taxes and successfully survived the 60-day validation

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[9] Accessible at accessible at <http://www.ausdk12.org/apps/pages/?uREC_ID=92442&type=d> (as of Jan. 12, 2015).

period, only to be faced with a refund claim and lawsuit like Appellant's as much as 5½ years after the voter approval![10]

Further complicating the matter for school officials, they are mandated by state law to produce multi-year budgets twice per year for review and approval by their county superintendent of school. (California Legislative Analyst's Office, *School District Fiscal Oversight and Intervention* (May 2012).)[11] If a school district's multi-year budget projections show that it may not, or will not, be able to pay all its expenses, then the district must develop a plan to bring those budgets into balance and may ultimately lose many aspects of its financial autonomy, which could even include a state takeover of the district's budgeting and financial affairs in the most serious cases. (*Id.*) How is a school official to develop balanced multi-year budget

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[10] Under Government Code section 50077, parcel taxes can be collected on behalf of the taxing district by the applicable county as part of the county's *ad valorem* property tax bills. Because of the long lead-time needed to add a new tax to a county's *ad valorem* property tax bills (see California State Association of County Auditors, California Property Tax Managers' Reference Manual, pp. B2-B3 (Feb. 2011) (Accessible at <http://calsaca.org/sites/default /files/tax_managers/pdfs/PropTaxManual_Feb2011.pdf >, (as of January 12, 2015) it can be 13 months at the fastest before a taxpayer receives a bill for a new parcel tax. A county's *ad valorem* property tax bills, including any included parcel taxes, are typically paid in two installments, due in December and the following April (see Rev. & Tax Code, §§ 2617, 2618). Under Appellant's theory, a taxpayer then would have four years from its April payment to challenge the underlying parcel tax measure, or nearly 5½ years after the voters approved the parcel tax.

[11] Accessible at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.lao.ca.gov%2Freports%2F2012%2Fedu%2Fschool-district-fiscal-oversight-and-intervention%2Fschool-district-fiscal-oversight-and-intervention-043012.pdf&ei=Ukq0VP68DcvnoATU_IGQDQ&usg=AFQjCNEPMSB3nobR3WXC7mpnUzfUdhY51w&bvm=bv.83339334,d.cGU>, (as of Jan. 12, 2015).

projections if those projections depend on the receipt of parcel tax revenues that could be taken away more than 5 years after the voters approved those taxes? And how would that school official be able to refund such taxes so many years later?

The difficulty, if not impossibility, of these tasks illustrates why its is particularly important to California school districts with current or future parcel tax revenue streams that the Court safeguards the 60-day period of limitations applicable to challenges to parcel tax measures under Government Code section 50077.5. This Court should confirm that local communities will continue to have the certainty that comes from the 60-day period of limitations as the exclusive means for facial challenges to parcel tax measures and not allow taxpayers like Appellant to sit on their rights during the 60-day period and later bring a challenge that could have and should have been brought within the 60-day period.

Not surprisingly, the identical strategy has been used, unsuccessfully, to attack the identical 60-day validation period for school district bond measures. In *McLeod v. Vista Unified School District* (2008) 158 Cal.App.4th 1156 ("*McLeod*"), 4+ years after local voters approved a bond measure to improve district schools, taxpayer McLeod sued the district under Code of Civil Procedure section 526a (taxpayer action against illegal expenditure or waste of public funds) and Education Code section 15284 (action to prevent school bond waste) to stop the district from issuing the remainder of its bonds and spending the proceeds on projects McLeod did not like.

The trial court entered judgment for the school district. On appeal, the appellate court affirmed, holding that notwithstanding the availability of the generic remedy of a taxpayer action against illegal expenditure or waste of public funds under Code Civil Procedure section 526a, and the more specific remedy of an action to prevent school bond waste under Education

Code section 15284, policy and practical considerations required that the taxpayer's actions must have been brought within the 60-day limitations period of a validation action under Code of Civil Procedure section § 860 et seq., instead of more than 4 years later. (Cf. *Community Youth Athletic Center v. City of National City* (2009) 170 Cal. App. 4th 416, 428; *Hollywood Park Land Co., LLC v. Golden State Transportation Financing Corp*. (2009) 178 Cal. App. 4th 924, 933.)

Just as the Court decided in *McLeod*, this Court should not allow plaintiff to use generic remedies as a way around the more specific 60-day period of limitations.

CONCLUSION

Based on the foregoing and for those reasons set forth in the District's Respondent's Brief, *Amicus Curiae* respectfully requests that this Court affirm the judgment of the Alameda County Superior Court.

Dates: January 12, 2015

Respectfully submitted,

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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 Microsoft® Office Word 2003 word-processing computer program used to prepare this brief (excluding the cover, tables, and this certificate) is 4,508 words.

Dates: January 12, 2015

Respectfully submitted,

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PROOF OF SERVICE

I, Krista Paterson, 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, and my electronic service address is kpaterson@lozanosmith.com.

On January 12, 2015, at approximately 4:50 p.m., I electronically served a copy of the:

APPLICATION FOR LEAVE TO FILE, AND BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE IN SUPPORT OF RESPONDENT ALBANY UNIFIED SCHOOL DISTRICT

On the parties of this action, and the California Supreme Court, by filing the document with the First District Court of Appeal's electronic filing system pursuant to Rule 8.71(f) and First District Court of Appeal Local Rule 16(j). The electronic service addresses for the parties are:

California Supreme Court: http://www.courtinfo.ca.gov/courts/courtsofappeal/appbriefs.cfm	Plaintiff and Appellant: Golden Gate Hill Development Company, Inc. Karen Rosenthal rosenthalk@gtlaw.com
Defendant and Respondent: County of Alameda Donna R. Ziegler John T. Seyman john.seyman@acgov.org	Defendant and Respondent: Albany Unified School District David A. Soldani dsoldani@aalrr.com Lisa R. Allred lallred@aalrr.com

In accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Sacramento, on the following party:

Superior Court of Alameda County 2233 Shoreline Alameda, California 94501

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 12, 2015, at Sacramento, California.

/s/ Krista Paterson
Krista Paterson