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FILED
ALAMEDA COUNTY

MAY 28 2010

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CLERK OF THE SUPERIOR COURT
By KATHLEEN MOKEAN

Date:

GEORGE J. BORIKAS, TRUSTEE OF
THE GEORGE J. BORIKAS 1999
REVOCABLE TRUST, et al.,

Plaintiffs,

vs.

ALAMEDA UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

No. VG08405316

STATEMENT OF DECISION

Dept. 30

JOHN C. BEERY, et al.,

Plaintiffs,

vs.

ALAMEDA UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

No. RG08405984

STATEMENT OF DECISION

I. Factual and Procedural Summary

On March 4, 2008, the Alameda Unified School District's Board of Education adopted Resolution Number 08-0010, authorizing and ordering the Alameda County Superintendent of Schools to call an election, within the boundaries of the Alameda Unified School District ("District") on June 3, 2008, for voter approval of a measure to impose a qualified special tax on taxable residential, commercial and industrial property for a period of four years commencing on July 1, 2008, and ending on June 30, 2012 ("Resolution No. 08-0010"). [Trial Exhibit ("Exh. 1") 1.] The special tax was on the ballot as "Measure H." [Exh. 3.] Just over two-thirds of the voters in Alameda approved Measure H in the June 3, 2008 election. [Exhs. 2 & 4.] The Alameda County Registrar of Voters certified the results of the election on June 27, 2008, [Exh. 4], and the Alameda County Board of Supervisors declared the measure to have passed on July 8, 2008. [Exh. 5, p.8]

Measure H was proposed to "offset severe state budget cuts to Alameda schools, minimize school closures, and protect the quality of education" at schools within the District. [Exh. 1, p. 2.] Measure H classified and taxed residential property and commercial/industrial properties differently. Residential parcels were taxed \$120 per year. *Id.* Commercial/industrial parcels less than 2,000 square feet were taxed \$120 per year, while those more than 2,000 square feet were taxed at

\$.15 per square foot to a maximum of \$9,500 per year. *Id.*

The special tax provided two exemptions, both of which applied only to residential property. *Id.*, p. 3. First, the tax exempted all single-family residential units owned by persons 65 years or older who used that unit as their principal place of residence. *Id.* Second, the tax exempted all single-family residential units owned by persons receiving Supplemental Security Income for a disability, regardless of their age. *Id.* Taxpayers were required to apply to the District to receive these exemptions. *Id.*

The plaintiffs are all property owners in the City of Alameda who have been assessed a parcel tax under Measure H. Plaintiff John C. Beery submitted evidence that his residential property was taxed at the rate of \$120 per year. [Exh. 6.] Plaintiff Alameda Gateway Ltd. submitted evidence that three parcels owned by it were taxed at the maximum annual rate—\$9,500—for commercial or industrial properties. [Exhs. 7, 8 & 10.] Plaintiff Mariner Square and Associates submitted evidence that a parcel owned by it was taxed at an annual rate of \$990.44 for commercial or industrial properties. [Exh. 9.] Plaintiff George J. Borikas, as the trustee of the George J. Borikas 1999 Revocable Trust, submitted evidence that two residential parcels owned by the Borikas Trust were assessed at the rate of \$120 per year. [Exhs. 18-22.] Plaintiff Edward Hirshberg, as the trustee of the Hirshberg Family Trust, submitted evidence that four parcels owned by

the Hirshberg Trust were assessed varying amounts in accordance with the rates for commercial or industrial properties. [Exhs. 23-28, 31-34.] Plaintiff Santa Clara Investors II submitted evidence that a parcel owned by it was assessed at the annual rate of \$945 for commercial or industrial properties. [Exhs. 29 & 35.] Finally, Plaintiff Nalco Inc. submitted evidence that a parcel owned by it was assessed at the maximum annual rate of \$9,500 for commercial or industrial properties. [Exhs. 30 & 36.]

The Borikas Plaintiffs—trustee George J. Borikas, trustee Edward Hirshberg, Santa Clara Investors II, and Nalco, Inc.—initiated this action by filing a complaint on August 21, 2008, that seeks to invalidate Measure H pursuant to California Code of Civil Procedure section 860 et seq. The Beery plaintiffs—John C. Beery, Alameda Gateway Ltd., and Mariner Square & Associates—filed a similar complaint four days later on August 25, 2008. The Beery complaint was subsequently consolidated with the present action.

Both groups of plaintiffs brought separate motions for summary judgment, which the Court denied. The parties then stipulated that no testimony was necessary to try the case and that the matter could be decided essentially on a paper record. The parties submitted a joint set of trial exhibits. Most of the exhibits were submitted without objection. The Court's rulings on the evidentiary objections are set out below. The parties also submitted as evidentiary submissions their prior separate

statements in support of or in opposition to the motions for summary judgment. The parties submitted their prior briefing on the motions for summary judgment as trial briefs. Finally, the Borikas Plaintiffs submitted a supplemental trial brief to which the District filed an opposition. At the request of the Court, District filed a proposed Statement of Decision. Both sets of Plaintiffs filed objections to the proposed Statement of Decision. On the basis of this record, the Court reaches the following Decision.

II. Conclusions

a. Measure H is uniform.

Plaintiffs contend that Measure H is void and must be invalidated because it does not meet the "uniformity" requirements of Government Code section 50079.

Section 50079 provides as follows:

(a) Subject to Section 4 of Article XIII A of the California Constitution, any school district may impose qualified special taxes within the district pursuant to the procedures established in Article 3.5 (commencing with Section 50075) and any other applicable procedures provided by law.

(b)(1) As used in this section, "qualified special taxes" means special taxes that apply uniformly to all taxpayers or all real property within the school district, except that "qualified special taxes" may include taxes that provide for an exemption from those taxes for taxpayers 65 years of age or older or for persons receiving Supplemental Security Income for a disability, regardless of age.

(2) "Qualified special taxes" do not include special taxes imposed on a particular class of property or taxpayers.

Plaintiffs contend that Measure H does not apply "uniformly" to all taxpayers or all real property within the District. Plaintiffs point out that the

tax rate for all residential properties and for commercial or industrial properties that are 2,000 square feet or smaller is \$120 per year, whereas the rate that applies to larger commercial or industrial properties is based on square footage. Moreover, Plaintiffs contend that there is a lack of uniformity in the manner in which commercial and industrial properties are taxed. First, smaller parcels are taxed at a flat rate and larger parcels are taxed on a square foot basis. Second, the \$9,500 cap on the tax assessed against larger parcels means that parcels over 63,000 square feet are taxed at an effective rate per square foot that is lower than the rate paid by parcels between 2,001 and 63,000 square feet in size.

The Beery plaintiffs also contend that Measure H violates Government Code section 50079 because it is contrary to subsection (b)(2) of section 50079, which specifically excludes from the definition of special taxes any tax imposed "on a particular class of property or taxpayers." Plaintiffs acknowledge that the claims under their First and Second Causes of Action are interrelated, since both causes of action are based on the premise that the parcel tax under Measure H is not being applied "uniformly to all property within the school district."

In support of their position, plaintiffs introduced dictionary definitions of the word "uniform." [Exhs. 14-17.] Plaintiffs (and the District) also referred the court to the legislative history of Assembly Bill No. 1440, which became Government Code section 50079 when it was enacted. And the parties also presented argument regarding the meaning of

uniformity in the context of tax decisions.

Plaintiffs have not shown that the special tax imposed by Measure H violates the uniformity requirement of Government Code section 50079. "Uniformity" is not defined in section 50079, but the concept of uniformity has been defined by case law dealing with the question of uniformity in other tax cases. Article 4, section 16 of the California Constitution requires that "all laws of a general nature shall have a uniform operation." In general, the term uniformly is interpreted to mean that a tax is "uniform" in the constitutional sense, so that tax classifications are upheld if they bear a rational relationship to a legitimate government purpose. *Fox Bakersfield Theatre Corporation v. City of Bakersfield* (1950) 36 Cal.2d 136, 141-144. Based on case law interpreting the term "uniform," the court concludes the term "special taxes that apply uniformly to all taxpayers or all real property owners within the school district" means simply that the tax applies uniformly to all persons or properties in the same classification. *Los Angeles SMSA Ltd. Partnership v. State Bd. of Equalization* (1992) 11 Cal. App. 4th 768, 780. Measure H meets this standard because it applies uniformly to all persons or properties within the same classification.

The Borikas Plaintiffs challenge the applicability of the case law dealing with the requirement of uniformity in situations that do not involve a challenge to special taxes. They have not, however, cited authority imposing a different test in the context of a challenge to special taxes.

Plaintiffs do not show that the legislative history supports their contention that the Legislature intended the word "uniformly" to have a different meaning in section 50079 than the meaning ascribed to it in other areas of taxation. The fact the Legislature enacted section 50079 to create an exception to Proposition 13 does not, on its face, show that the Legislature intended a more limited definition of the word "uniformly." In general, the evidence that Plaintiffs proffer from the legislative record shows that some non-legislators thought that the statute might be interpreted in the manner advocated by Plaintiffs. At the same time, much of the evidence from the legislative record concerns attempts to add a provision to section 50079 to allow an exemption for seniors. This ultimately resulted in language in section 50079(b)(1) allowing school districts to include an exemption for taxpayers 65 years and older and those receiving Supplemental Security Income. As Defendant points out, these efforts and amendments are consistent with the usual definition of uniformity in the tax context.

Assuming that the Legislature did not intend the word "uniformly" to have the same meaning as when the term is used in other taxing schemes, Plaintiffs do not explain what kind of uniformity the Legislature intended to require. A rational argument can be made that a special tax imposing a flat rate on each parcel, regardless of size or use, lacks uniformity because its effect is to tax smaller parcels more heavily per square foot than larger parcels. Similarly, a special tax based solely on

square footage does not necessarily treat properties uniformly, in that it makes no provision for the uses made of particular property. It would, for example, over tax properties that are vacant and likely to receive less benefit from the special tax. Given that the legislative history fails to show that the legislature intended the word "uniformly" to have the meaning ascribed by Plaintiffs, and in the absence of any indication that "uniformly" was intended to restrict the electorate's discretion by imposing absolute tax uniformity in some particular way, the Court concludes that this was intended.

The Beery Plaintiffs also claim that there is a distinction between the requirement of "strict uniformity" applicable to property taxes and the general and looser requirement of uniformity in the operation of other laws. The latter requirement of uniformity is analogous to the analysis applicable to federal equal protection claims. The cases that the Beery Plaintiffs rely upon, however, do not hold that there is a recognized distinction between the meaning of uniformity when used in a provision allowing special taxes and the meaning of the same term when used in other areas of the law. It is even less apparent that the Legislature would have or should have been aware of this distinction when it drafted section 50079. Finally, the cases do not explain what "strict uniformity" would mean in the context of a parcel tax.

Thus, the Court concludes from the evidence before it that the Legislature has not provided any indication in the statute that a

particular type of uniformity beyond the usual meaning of the word was intended. Plaintiffs have not provided a persuasive showing that the Legislature intended to limit the flexibility generally granted to the electorate in enacting tax measures.

b. The exceptions in Measure H do not violate section 50079.

The Borikas plaintiffs contend that Measure H violates section 50079 because the two exemptions contain requirements not found in the exemptions that are set out in section 50079. Section 50079 permits a qualified special tax to exempt persons 65 years old or older and persons receiving Supplemental Security Income ("SSI"). Measure H provides an exemption for taxpayers 65 years or older who (1) are owners of single family residential units and (2) use the property as their principal residence. Measure H also provides an exemption for persons receiving SSI who are owners of single family residential units. Measure H requires both groups to apply for the exemption with the District. Plaintiffs challenge the requirements that the property be residential, that those taxpayers over 65 years of age use the property as their residence, and that those seeking an exemption apply for it with the District.

The provisions in Measure H imposing requirements on those seeking exemptions do not violate section 50079. The statute allows "qualified special taxes," such as Measure H, to include an exemption for those who are 65 years of age or older and persons receiving SSI, regardless of age.

It does not require qualified special taxes to provide either exemption. The voters in Alameda have chosen, by enacting Measure H, to provide an exemption for some persons who are 65 years of age or older and for some persons receiving SSI, and to deny it to others. Section 50079 does not contain any language prohibiting the electorate from exercising its discretion in this manner and the law generally grants substantial flexibility in making classifications. Plaintiffs do not argue that the limitations on the scope of the exemptions lack any rational basis.

Plaintiffs provide no argument explaining why the requirement that those seeking exemptions apply to the District for the exemption is inconsistent with section 50079 and the Court sees no facial inconsistency. The application requirement appears to create a reasonable administrative procedure for implementing the exemptions to the special tax.

c. Measure H is a special tax, not a general tax.

Plaintiffs contend that Measure H is not really a "special" tax, but is in fact a "general" tax. A "general" tax is defined to mean any tax imposed for general governmental purposes; a "special" tax is defined as any tax imposed for specific purposes and is placed into a general fund. Article XIII C, Section 1 of the California Constitution. Plaintiffs contend that Measure H should be invalidated because under Article XIII A, Section 4, and Article XIII C, Section 2(a), school districts are only authorized to enact special taxes.

Plaintiffs argue that the enumerated purposes for Measure H are so broad that there is no effective limitation on the uses to which the revenue can be put. The Court does not agree that the "purposes" of the tax as set out in the resolution provide no effective limitation on the uses to which the revenue can be put. All that is required for a special tax is that its proceeds are earmarked or dedicated in some manner to a specific project or projects. *Neecke v. City of Mill Valley* (1995) 39 Cal. App. 4th 946, 956. The purposes specified in Measure H all relate to improvements to education within the District and are proper under the holding of *N.L. Nielsen v. City of California City* (2005) 133 Cal. App. 4th 1296, 1310-12. Finally, the District is a "special purpose" district, so every tax levied by the District is deemed a special tax. *Rider v. County of San Diego* (1991) 1 Cal. 4th 1, 13-15.

d. Severability

All parties have presented arguments about the application of the "severability" clause included in Resolution 08-0010. In light of the Court's conclusion that Measure H does not violate any statute or the Constitution, there is no need for the Court to address the severability arguments in this decision and the Court declines to do so.

III. Evidentiary Issues and Request for Separate Statements of Decision

District's evidentiary objection to "A Split Property Tax Roll: A Brief Summary of Legal and Administrative Considerations," a power point presentation prepared by Richard S. Moon, an attorney employed in the Legal Department of the California State Board of Equalization, is SUSTAINED. The document is hearsay and lacks relevance. The Borikas Plaintiffs' request for judicial notice of the same document is DENIED. The facts that this document is offered to show are not capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Evidence Code section 452(h).

The Borikas Plaintiffs' objections to Resolutions adopted by the Albany School District, the Berkeley Unified School District, the Piedmont City Unified School District, and the Emery Unified School District, are SUSTAINED. The existence of a resolution passed by another school district is not relevant to the issue of whether Measure H violates Government Code section 50079 or to any other material issue in this action.

There is no objection to the other exhibits offered by the parties and on that basis they are all admitted.

The request by the Borikas Plaintiffs in their Objections to Inaccuracies, Omissions and Ambiguities in the Proposed Statement of Decision, for issuance of separate Statements of Decision, is DENIED. The Borikas Plaintiffs contend that the consolidation order in this case was not for all

purposes, because it was for the sake of convenience and uniformity, but they do not show that the reasons for the order determine its scope. The holding in Sanchez v. Superior Court (1988) 203 Cal.App.3d 1391, 1395-1396, is distinguishable because the consolidation in this case was not just for trial. Nor is there any apparent prejudice from the issuance of a single Statement of Decision. The Borikas Plaintiffs concede that they and the Beery Plaintiffs both seek a ruling on the statutory interpretation of uniformity, and whether Measure H violates section 50079. They concede that the Court can enter one judgment that Measure H is valid or invalid. The Borikas Plaintiffs contend that their complaint did not include some of the theories asserted in the complaint by the Beery Plaintiffs, and that they are entitled to findings based exclusively upon their one cause of action. They also contend that they cannot be bound by findings or a judgment based upon broader allegations pleaded by a different party. It is not apparent how the issuance of a joint Statement of Decision affects the res judicata and collateral estoppel effect, if any, of the Court's rulings on any additional claims in the complaint by the Beery Plaintiffs, or why a separate statement that addresses the claims in the one cause of action the Borikas Plaintiffs have alleged is not sufficient.

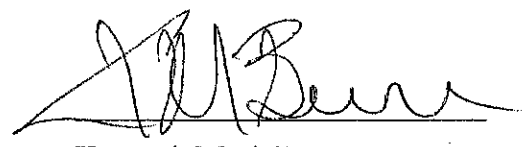
IV. Ruling

The Court rules that Measure H comports with the requirements of Government Code section 50079 and the California Constitution. Accordingly, judgment for the District shall be entered. District is directed to submit directly to

Department 30 a proposed Judgment consistent with this
Statement of Decision.

5-28-10

Date

A handwritten signature in black ink, appearing to read 'K. Burr', written over a horizontal line.

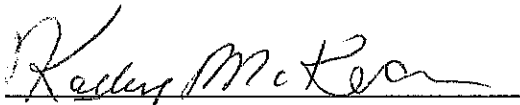
Kenneth Mark Burr
Judge of the Superior Court

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk in Dept. 30 of the Superior Court of California, County of Alameda and not a party to this cause. I served the attached Statement of Decision, in Case Number VG08-405316 consolidated with RG08-405984, by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Dated: 6/1/10

Pat Sweeten
Executive Officer/Clerk of the Superior Court

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