No. E083505

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO

PACIFIC BELL TELEPHONE COMPANY, et. al.,

Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE, et. al.,

Defendants and Respondents.

On Appeal From a Judgment of the Superior Court of the County of Riverside, Case No. CVRI2305294, Department 1
Honorable Harold W. Hopp, Presiding

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS

MICHAEL K. SLATTERY (SBN 107303)
mslattery@publiclawgroup.com
RENNE PUBLIC LAW GROUP
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 848-7200
Facsimile: (415) 848-7230

Attorneys for Amicus Curiae California State Association of Counties

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(CALIFORNIA RULES OF COURT 8.208 AND 8.488)

Court of Appeal Case No.: ___**E083505**______________________

Case Name:	Pacific Bell Telephone Company, et. al. v. County of Riverside

__X__ There are no interested entities or persons to list in this certificate per California Rules of Court, Rule 8.208(e)(3).

_____ Interested entities or persons are listed below:

Name of Interested Entity or Person	**Nature of Interest**

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 (l) an ownership interest of 10 percent or more in __Entity or Person Name__ 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).

_Michael Slattery_________________
Signature of Attorney/Party Submitting Form

__Michael K. Slattery________________
Printed Name
RENNE PUBLIC LAW GROUP
350 Sansome Street, Suite 300
San Francisco, California 94104

Party Represented: Amicus California State Assn. of Counties
State Bar No: 107303

TABLE OF CONTENTS

TABLE OF CONTENTS 3

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT 6

INTEREST OF AMICUS CURIAE 6

NEED FOR FURTHER BRIEFING 6

ABSENCE OF PARTY ASSISTANCE 6

AMICUS CURIAE BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT COUNTY OF RIVERSIDE 8

I. THE PLAIN LANGUAGE OF SECTION 19 DOES NOT REQUIRE EQUAL RATES. 8

II. THE 6TH DISTRICT WAS RIGHT TO TREAT *ITT* AS DICTUM. 9

III. APPELLANTS' PROPOSAL WILL INCREASE THE BURDEN ON REGULAR TAXPAYERS 11

IV. APPELLANTS MISSTATE THE EQUITIES. 11

V. THERE IS NO UNFORM RATE FOR LOCALLY ASSESSED PROPERTY. 13

VI. THE CALIFORNIA PROPERTY TAX SYSTEM IS NOT BASED ON PRINCIPLES OF UNIFORMITY. 14

VII. APPELLANTS SHOULD USE THE POLITICAL PROCESS, NOT THE COURTS, TO ASK FOR THE RELIEF THEY SAY THEY DESERVE. 15

TABLE OF AUTHORITIES

Page(s)

Cases

Amador Valley Joint Union High School District v. State Board of Equalization
(1978) 22 Cal.3d 208 14

BNSF Railway Company v. County of Alameda
(9th Cir. 2021) 7 F.4th 874 .... 11, 12, 13

County of Santa Clara v. Superior Court of Santa Clara County (AT&T Mobility et al.)
(2023) 87 Cal.App.5th 347 .... 8, 10, 15, 16

Greyhound Lines, Inc. v. County of Santa Clara
(1986) 187 Cal.App.3d 480 16

ITT World Communications, Inc v. City and County of San Francisco
(1985) 37 Cal.3d 859 .... 9, 10

Jensen v. Franchise Tax Board
(2009) 178 Cal.App.4th 426 15

Martinez v. Public Employees' Retirement System
(2019) 33 Cal.App.5th 1156 16

Nordlinger v. Hahn
(1992) 505 U.S. 1 15

Statutes

Rev. & Tax. Code
§ 93 11
§ 100 .... 8, 12
§ 100(b) 10, 12, 14
§ 100(g) 12, 13
§ 401.17 14
§ 401.17(a)(1)(C) 14
§ 995 14
§ 995.2 14

Other Authorities

Cal. Const.
art. XIII, § 1 9

Cal. Const.
art. XIII, § 19 .... *passim*

Rule of Court
8.200(c) 6
8.200(c)(3) 6
8.500(b)(1) 15

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

Pursuant to Rule of Court 8.200(c), the California State Association of Counties ("CSAC"), through the County Counsels Association of California, requests the Court's permission to file the attached amicus curiae brief to support Respondent County of Riverside. This application is timely because the Court extended CSAC's time to file this application and brief to December 2, 2024.

INTEREST OF AMICUS CURIAE

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.

NEED FOR FURTHER BRIEFING

This case involves an issue of statewide concern to Counties and other local government taxing authorities. CSAC represents the interests of counties throughout California. CSAC is uniquely situated to present its views and analysis of the important issues this case presents.

ABSENCE OF PARTY ASSISTANCE

Pursuant to Rule of Court 8.200(c)(3), amicus CSAC confirms that no party or counsel for a party in this appeal authored this brief in whole or part or made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity made a monetary contribution

intended to fund the preparation or submission of this brief. Renne Public Law Group prepared this brief on a *pro bono* basis.

Respectfully submitted,

Dated: December 2, 2024 RENNE PUBLIC LAW GROUP

By: /s/ Michael Slattery

MICHAEL K. SLATTERY
Attorneys for Amicus Curiae
California State Association of Counties

AMICUS CURIAE BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT COUNTY OF RIVERSIDE

The Association supports the Respondent's position in this case. We urge the Court to follow the 6th District's published decision in *County of Santa Clara v. Superior Court of Santa Clara County (AT&T Mobility et al.)* (2023) 87 Cal.App.5th 347 ("*Santa Clara*"), which the Supreme Court has declined to review.

I. THE PLAIN LANGUAGE OF SECTION 19 DOES NOT REQUIRE EQUAL RATES.

Appellants argue that the "common sense meaning" and "ordinary meaning" of "same manner and extent" is same tax rate. (Appellants Opening Brief §II.A [quoting from pages 45 and 46].) We disagree.

"Manner" of property taxation means *ad valorem* taxation; a levy based on the value of the taxable property. It also means according to full *fair market value.*" "Extent" means what portion of the assessed value is taxed. The system established by Revenue & Taxation Code section 100 meets that test. Utility property and locally assessed property are each taxed on an *ad valorem* basis. And each is taxed on one hundred percent of their value, unless a different standard is prescribed by statute.

Our opinion on the meaning of "manner" derives from the plain meaning of section 19 of article XIII. But it is also consistent with the constitutional provision upon which Appellants rely. Section 1 of article XIII states:

> Unless otherwise provided by this Constitution or the laws of the United States:
>
> (a) All property is taxable and shall be assessed at the same percentage of **fair market value**. When a value standard other than **fair market**

> **value** is prescribed by this Constitution or by statute authorized by this Constitution, the same **percentage** shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
>
> (b) All property so assessed shall be taxed in proportion to its full value.

(Cal. Const., art. XIII, § 1 [bold added].)

Section 1 is also consistent with our understanding of "extent" of taxation. As Appellants note, at one point in time, property was assessed at a percentage of fair market value—the "assessment ratio." (Appellants' Opening Brief, pp. 32-33.)

II. THE 6TH DISTRICT WAS RIGHT TO TREAT *ITT* AS DICTUM.

Appellants' whole case turns on this statement:

> … article XIII, Section 19, does not impose a requirement of equal valuation between public utility and other property, but simply specifies that public utility property, after it has been placed on the local tax rolls, be levied on at the same *rate* as locally assessed property, instead of being subject to special gross receipts 'in lieu' tax."

(*ITT World Communications, Inc v. City and County of San Francisco* (1985) 37 Cal.3d 859, 870 ("*ITT*").)

ITT argued that a part of Proposition 13, which rolled back assessed values to a prior tax year, applied to its utility property. The Court's analysis focused on the difference between local assessment and utility property assessment. The Court made an important interpretation of the scope of Proposition 13. It limited the assessment of real property. Since

utility property is assessed as a "unit" or going concern, rather than as separate real and personal property assets, Proposition 13 does not apply to utility property.

The Court could have stopped there. But the opinion went on to address ITT's argument that the rollback provision "applies indirectly through the operation of article XIII, Section 19." (*ITT World Communications, Inc.*, *supra*, 37 Cal.3d at p. 869.) The "instead of" language is important. When the Court said that Section 19 specifies that utility property "be levied on at the same *rate* as locally assessed property, *instead of* being subject to a special gross receipts" tax, the Court was comparing *ad valorem* taxation to a system that came before Section 19—taxation of gross receipts instead of a property tax. (*Id.* at p. 870 [second italics added].) We believe that is the "equality" of taxation (*id.* at p. 871) the Court had in mind.

The dispute did not involve tax rates or their debt service component. It certainly did not involve any interpretation of Rev. & Tax. Code section 100(b), which was not enacted until three years after the decision. (See *Santa Clara*, *supra*, 87 Cal.App.5th at pp. 370-371.) And the Court did not consider the basis for the *Santa Clara* decision. The third sentence of Section 19 states: "No other tax or license charge may be imposed on these companies which differs from that imposed on mercantile, manufacturing, and other business corporations." (Cal. Const., art. XIII, § 19.) The plain inference is that property taxes on utilities may "differ" from those on other businesses.

ITT also cuts against Appellants' idea that the "bedrock" of California's property tax system is equality among taxpayers. The Supreme

Court approved an arrangement that treats utilities and locally assessed taxpayers very differently.

III. APPELLANTS' PROPOSAL WILL INCREASE THE BURDEN ON REGULAR TAXPAYERS

Local agencies cannot default on their bond debt. And Article XIIIA gives them the right to raise the funds they need for debt service by putting that cost on real property owners' property tax bills. "This [Rev. & Tax Code section 93] formula ensures that each TRA [Tax Rate Area] will have enough revenue to make payments for the interest and principal on its bonded indebtedness." (*BNSF Railway Company v. County of Alameda* (9th Cir. 2021) 7 F.4th 874, 880 ("*BNSF*").) If Appellants and their industry pay less, the reduction they get will have to be shifted onto locally assessed taxpayers. Appellants acknowledge as much:

> Intervenors baselessly assert that they risk losing millions in revenue from utility property (RB70-71) but they do not (and cannot) dispute that any decrease in revenue from utility property or refunds would be offset by revenue from the rest of the tax base.

(Appellants' Reply Brief, p. 53.)

The amicus brief that California Senior Alliance *et al.* filed completely misses that point. If the debt service rate for utilities drops, normal taxpayers, like many seniors, will have to make up the shortfall. And for low-income renters, it is fair to assume that their landlords will pass on the added property tax cost to them.

IV. APPELLANTS MISSTATE THE EQUITIES.

Appellants say they are just asking for fair treatment: "All Appellants seek is to have their property treated the same as—not more favorable than—other property." (Appellants' Opening Brief, p. 19.) But

context matters a lot. Appellants' position is that this Court should invalidate a statutory taxation formula its own industry supported:

> Indeed, even as policymakers weighed its costs and benefits, no one—not the Legislature, the Board, the Attorney General, or industry – suggested section 100(b) violated Section 19. The bills passed overwhelmingly, with support from utilities and without recorded opposition. (7-AA-1765, 7-AA-1842, 7-AA-1948).

(Respondent's Brief, pp. 50-51.) We do not see anything in Appellants' briefing to dispute that history. Their Opening Brief (pp. 23-24) discusses the enactment of Rev. & Tax. Code section 100(b); it says no more than "for administrative convenience, a series of laws established a different system under section 100: …" (See Appellants' Opening Brief, pp. 23-24.)

Appellants' claims must be weighed against the important benefit the utility industry received as part of Rev. & Tax. Code section 100—the "administrative convenience" they mention. Before its enactment, the utilities received a tax bill for each County rate area where they had taxable property. Counties can have "hundreds or thousands of TRAs." (*BNSF*, *supra*, 7 F.4th at pp. 880-881.) Under current law:

> … unitary property holders do not need to demonstrate the TRAs in which their property is located. Instead, their value is allocated to a countywide TRA with a single tax rate. *See* Cal. Rev. & Tax. Code § 100.11(a)(2)(b).

(*BNSF* at p. 881.)

The special property tax rules Appellants challenge relieve them of the significant administrative burden of a large number of tax bills from each county. Under section 100(g), "(E)ach state assessee shall be issued only one tax bill for all unitary and operating non unitary property within

the county." (Rev. & Tax. Code § 100(g).) If Appellants secured true equality with locally assessed taxpayers, they will lose the benefit their industry bargained for.

Appellants say California Constitution article XIII, section 19 entitles them to the same tax rate as locally assessed taxpayers. Local assessees pay a debt service rate according to the TRA where their property is located. Equal treatment, under their reading, would mean they pay many, perhaps hundreds or thousands, of different rates in each county, and will receive a separate tax bill for each of those TRAs.

V. THERE IS NO UNFORM RATE FOR LOCALLY ASSESSED PROPERTY.

Appellants' argument for rate uniformity with nonutility assessees rests on a false premise. Though locally-assessed taxpayers all pay the basic 1% levy, the total rate they pay can vary widely depending on the Tax Rate Area in which they own property. The debt service part of the tax rate depends on the amount of voter approved bond debt within that area.

BNSF made exactly that point. "A TRA is a small geographical area serviced by the same combination of local governmental entities, including the county, city, special district, and school districts. [Citation.] A county may have hundreds or thousands of TRAs—for example, San Diego County has over five thousand TRAs." (*BNSF*, *supra*, 7 F.4th at p. 880.) "As a result, each County, with its hundreds or thousands of TRAs, likewise has hundreds of thousands of different tax rates applied to property in that County …." (*Id.* at pp. 880-881.) Appellants acknowledge that "The debt service component can differ among TRAs in a county due to different combinations of local agency, school entity, and special district bonded

indebtedness in different areas within the county." (Appellants' Opening Brief, p. 23.)

VI. THE CALIFORNIA PROPERTY TAX SYSTEM IS NOT BASED ON PRINCIPLES OF UNIFORMITY.

Appellants say: "Uniformity is the bedrock of California's Constitutional property tax system." (Appellants' Opening Brief, p. 27.) Again, we disagree.

Revenue and Taxation Code section 100(b) is just one example of a special property tax rule for a particular industry. The commercial airline industry, like the utilities, negotiated property tax formulas that differ from those applicable to other taxable property. After the 9/11 attacks crippled the airline industry, the airlines and the County Assessors' Association agreed on a formula to account for the economic obsolescence the industry suffered which the Legislature enacted. (Rev. & Tax. Code § 401.17(a)(1)(C).) Other parts of section 401.17 provided very specific taxation rules for tax years 2005-06 to 2016-17.

Revenue and Taxation Code sections 995 and 995.2, which provide specific rules for the taxation of computer storage media, are another example of industry-specific taxation rule. (See Rev. & Tax Code §§ 995, 995.2.)

But the most obvious example of **non**uniformity is the Proposition 13 system, which ties the assessed value of property to its acquisition cost. Owners of neighboring properties with the same physical characteristics can have vastly different tax bills but both the California Supreme Court in *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208 and the United States Supreme Court in

Nordlinger v. Hahn (1992) 505 U.S. 1, upheld the system against equal protection challenges.

It is settled that the tax laws need not treat all taxpayers the same. They will survive an Equal Protection Clause challenge so long as "rationally related to achievement of a legitimate state purpose." (*Jensen v. Franchise Tax Board* (2009) 178 Cal.App.4th 426, 435 [quoting *Western & Southern L.I. Co. v. Board of Equalization* (1981) 451 U.S. 648, 657].)

VII. APPELLANTS SHOULD USE THE POLITICAL PROCESS, NOT THE COURTS, TO ASK FOR THE RELIEF THEY SAY THEY DESERVE.

Appellants here are largely the same entities who were appellants in *Santa Clara*, *supra*, 87 Cal.App.5th 347, and they make many of the same arguments here while hoping for a different result. The *Santa Clara* docket shows that BNSF Railway Company was granted leave to file an amicus brief. The 6th District rejected AT&T Mobility's arguments. The decision was unanimous and published. AT&T Mobility then petitioned for review. The Supreme Court denied the petition.

Here, Respondent demurred to Appellants' claims in the trial court. Appellants conceded that the *Santa Clara* holding bound the trial court below at argument on Respondent's demurrer.

We acknowledge that Rule of Court 8.500(b)(1) lists "secur[ing] uniformity of decision" among the grounds for review. But the Supreme Court did that by denying review in *Santa Clara* and this Court should not lightly disagree with *Santa Clara* and undermine that finality and uniformity.

The parties have apprised this Court of other appeals by these same plaintiffs in every District of the Court of Appeal. (County's Notice of Related Cases [filed May 21, 2024]; Respondent's Brief, p. 22.)

To be sure, this Court is "not bound by an opinion of another District Court of Appeal, however persuasive it might be." (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485.) But courts "ordinarily follow the decisions of other districts without good reason to disagree." (*Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156, 1176 [quotation marks omitted].) *Santa Clara* was well-reasoned, unanimous, and informed by an amicus brief to support the industry's position. We appreciate that the Supreme Court's denial of review is not a decision on the merits. But if the 6th District's decision on an important issue were as plainly wrong as Appellants argue, it is fair to assume that the Supreme Court would have chosen to review or depublish it.

Appellants should use their rights and resources in the political process to advocate their position, just like they did when their industry supported the enactment of the formula they now oppose.

Respectfully submitted,

Dated: December 2, 2024 RENNE PUBLIC LAW GROUP

By:

MICHAEL K. SLATTERY
Attorneys for Amicus Curiae
California State Association of Counties

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

The foregoing application and brief contains 2,569 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

Dated: December 2, 2024 RENNE PUBLIC LAW GROUP

By: Michael Slattery
Michael Slattery

PROOF OF SERVICE

Case Name: PACIFIC BELL TELEPHONE COMPANY, et. al. v.
COUNTY OF RIVERSIDE, et. al.
Case No.: E083505

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On December 2, 2024, I served the following document(s):

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS

MANNERS OF SERVICE:

✓ BY EMAIL TRANSMISSION (TRUEFILING): By electronically submitting for filing and service the document(s) listed above through TrueFiling, an electronic filing vendor approved by this Court. The name of the vendor and the transaction receipt I.D. are given in the vendor's emailed Notification of Service.

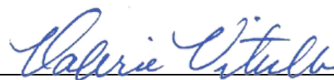
upon the addressees designated by said attorney(s) for that purpose by depositing the number of copies indicated above, of same, in the manner(s) listed below, as indicated for each addressee on the attached service list.

SERVICE LIST

Benjamin J. Horwich *Gabriel M. Bronshteyn* *Munger, Tolles & Olson LLP* *560 Mission Street* *Twenty-Seventh Floor* *San Francisco, CA 94105* *Email: ben.horwich@mto.com* *Email: gabriel.bronshteyn@mto.com*	Attorneys for Plaintiff and Appellant Pacific Bell Telephone Company
Faye Paul Teller *Munger, Tolles & Olson LLP* *350 South Grand Avenue* *Fiftieth Floor* *Los Angeles, CA 90071* *Email: faye.teller@mto.com*	
Ginger D. Anders *Andra Lim* *Munger, Tolles & Olson LLP* *601 Massachusetts Avenue, NW* *Suite 500E* *Washington, DC 20001* *Email: Ginger.Anders@mto.com* *Email: Andra.Lim@mto.com*	
Eric J. Miethke *Capitol Law and Policy, Inc.* *1215 K Street, Suite 1510* *Sacramento, CA 95814* *Email: eric@capitollawandpolicy.com*	

Michael C. Thomas, Deputy County Counsel *Office of the County Counsel* *3960 Orange Street, Suite 500* *Riverside, CA 92501* *Phone: (951) 955-6300* *Email: mcthomas@rivco.org*	Attorneys for Defendant and Respondent County of Riverside
Margaret R. Prinzing *Robin B. Johansen* *Eric Lee* *Olson Remcho, LLP* *1901 Harrison Street, Suite 1550* *Oakland, CA 94612-3597* *Email: mprinzing@olsonremcho.com* *Email: RJohansen@olsonremcho.com* *Email: elee@olsonremcho.com*	
Brian D. Wesley *Supervising Deputy Attorney General* *Hutchison B. Meltzer* *Deputy Attorney General* *Jarrad L. Wood* *Deputy Attorney General Office of the State Attorney General* *300 South Spring Street, Suite 1702* *Los Angeles, CA 90013-1230* *Email: brian.wesley@doj.ca.gov* *Email: hutchison.meltzer@doj.ca.gov* *Email: jarrad.wood@doj.ca.gov*	Attorneys for Defendant and Respondent California State Board of Equalization
Piero C. Dallarda *Michael T. Riddell* *Miles B. Krieger* *Best Best & Krieger LLP* *3390 University Avenue, 5th Floor* *P.O. Box 1028* *Riverside, CA 92502* *Email: piero.dallarda@bbklaw.com* *Email: michael.riddell@bbklaw.com* *Email: miles.krieger@bbklaw.com*	Attorneys for Intervener and Respondents Desert Water Agency and Rancho California Water District

I declare, under penalty of perjury that the foregoing is true and correct. Executed on December 2, 2024, in San Francisco, California.



Valerie Vitullo