

1 Case No. S222329

# SUPREME COURT COPY

## IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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5 926 NORTH ARDMORE AVENUE, LLC

6 *Plaintiff and Appellant,*

SUPREME COURT

OCT 07 2015

7 v.

8 Frank A. McGuire Clerk

9 COUNTY OF LOS ANGELES,

Deputy

10 *Defendant and Respondent*

11  
12 After a Decision by the Court of Appeal,  
13 Second Appellate District, Division Seven, Case No. B248536  
14 Los Angeles County Superior Court, No. BC 476670  
15 The Honorable Rita Miller, Judge Presiding

16  
17 **APPLICATION FOR PERMISSION TO FILE**  
18 ***AMICUS CURIAE BRIEF and***  
19 ***BRIEF OF AMICUS CURIAE***  
20 **CALIFORNIA ALLIANCE OF TAXPAYER ADVOCATES**  
21 **IN SUPPORT OF PLAINTIFF AND APPELLANT**

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OCT 15 2015

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1                                   **APPLICATION FOR PERMISSION TO FILE**  
2                                   **AMICUS CURIAE BRIEF**

3 To The Honorable Chief Justice Cantil-Sakauye and  
4 Associate Justices of the California Supreme Court:

5  
6       Pursuant to California Rules of Court, Rule 8.200(c), the California  
7 Alliance of Taxpayer Advocates (“CATA”) respectfully requests  
8 permission to file the attached brief as *amicus curiae* in support of  
9 Plaintiff/Appellant 926 North Ardmore Avenue, LLC (“Ardmore”).  
10 Pursuant to Rule 8.520(f) of the California Rules of Court, CATA states that  
11 (1) there is no party in the pending appeal who authored the proposed  
12 *amicus* brief in whole or in part; (2) there is no party or counsel for any party  
13 who made a monetary contribution intended to fund the preparation or  
14 submission of the brief; and, (3) no other person or entity, other than the  
15 *amicus curiae* or its counsel, made a monetary contribution intended to fund  
16 the brief.  
17  
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19  
20

21                                   **INTEREST OF AMICUS**

22       CATA is a nonprofit trade association based in Sacramento, California.  
23 CATA was formed in 2012. CATA’s objective is to preserve and promote  
24 the equitable and nondiscriminatory state and local taxation of California  
25 taxpayers. This is a mission CATA has steadfastly maintained since its  
26 inception.  
27  
28

1 CATA members represent part of California's business sector that is most  
2 directly affected by state and local taxation. For that reason, CATA is  
3 keenly interested in cases, such as this legal controversy, that present issues  
4 significantly affecting the interpretation of California tax laws. CATA  
5 members employ a significant number of California residents, own extensive  
6 property in California, and conduct substantial business in California.  
7

8  
9 Counsel for CATA has reviewed the briefings submitted to this Court by  
10 the parties, and has determined it is important for CATA to comment in this  
11 matter. CATA's *amicus curiae* brief provides missing context and analysis  
12 from a constitutional perspective, which is critical to an informed  
13 understanding of distinctions between California's documentary transfer tax  
14 scheme and the state's property tax system. CATA's *amicus curiae* brief  
15 will provide this Court with a constitutional analysis critical to an informed  
16 decision on the legal issues presented in this case.  
17  
18

19 CATA respectfully requests permission to file the attached *amicus* brief.  
20  
21

22 Dated: October 5, 2015

LAW OFFICE OF PETER MICHAELS

23  
24 By: 

Peter Michaels  
Attorney for *Amicus Curiae*  
California Alliance of Taxpayer Advocates  
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## LEGAL CONTENTION

It was unconstitutional for Defendant County of Los Angeles to impose documentary transfer tax on Plaintiff.

The Court of Appeal did not consider whether Article XIII D of the California Constitution was violated by Defendant's expanded application of the tax authorized in Revenue and Taxation Code Section 11911.

The Supreme Court should squarely address that threshold and dispositive legal question.

**I. Article XIII D, Assessment and Property-Related Fee Reform**

California Constitution Article XIII D, "Assessment and Property-Related Fee Reform," (Proposition 218) was adopted in 1996. Article XIII D establishes that no *new* or *expanded* tax shall be imposed, pursuant to state statute or local government authority, except under four specified circumstances.<sup>1</sup>

Article XIII D was approved by voters in response to widespread disregard of the limitations of Proposition 13 by local government. Article XIII D

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<sup>1</sup> Article XIII D, Section 1 provides: "... Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.



1 established strict limitations on all *future* local general taxes, including real  
2 property transfer taxes.

3 **New or Expanded Taxes Are Unconstitutional, with Four Exceptions**  
4

5 The four specified exceptions are set forth in Article XIII D, Section 3:

6 (a) **No tax**, assessment, fee, or charge shall be assessed by any  
7 agency upon any parcel of property or **upon any person as an**  
8 **incident of property ownership except**:

9 (1) The ad valorem property tax imposed pursuant to Article XIII  
10 and Article XIII A.

11 (2) Any special tax receiving a two-thirds vote pursuant to Section 4  
12 of Article XIII A.

13 (3) Assessments as provided by this article.

14 (4) Fees or charges for property related services as provided by this  
15 article. (Emphasis added.)

16 **None of the Four Constitutional Exceptions Apply in This Case**

17 None of those four constitutional exceptions apply in this case.

- 18  
19 1. Documentary transfer tax is not an ad valorem property tax imposed  
20 pursuant to Article XIII and Article XIII A. ("Such a [documentary  
21 transfer] tax is an excise tax rather than a property tax." *City of*  
22 *Huntington Beach v. Superior Court* (1978) 78 Cal. App.3d 333, 341.)  
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1 2. Defendant County's documentary transfer tax is not a "special tax", as  
2 defined in Article XIII D, Section 2(e).<sup>2</sup> (A non-ad valorem tax may be  
3 imposed upon real property if the tax is a "special" tax dedicated to  
4 specific purposes and approved by a two-thirds vote of the qualified  
5 electors of the city, county, or special district imposing the  
6 tax. *Neilson v. City of California City* (2005) 133 Cal.App.4th 1296.)

7  
8  
9 3. Defendant County's documentary transfer tax is not an "assessment," as  
10 defined in Article XIII D, Section 2(b).<sup>3</sup> (The definition of "assessment"  
11 in subdivision (b) unambiguously applies only to levies upon real  
12 property. *Howard Jarvis Taxpayers' Assn. v. City of San Diego* (1999)  
13 72 Cal.App.4th 230. An assessment within the meaning of this article  
14 must not only confer a special benefit on real property, but it also must be  
15 imposed on identifiable parcels of real property. *Richmond v. Shasta*  
16 *Community Services Dist.* (2004) 32 Cal.4th 409, 413.)

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21 <sup>2</sup> SEC. 2. Definitions. As used in this article . . .

22 (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an  
23 assessment, imposed by an agency upon a parcel or upon a person as an incident of property  
ownership, including a user fee or charge for a property related service.

24 <sup>3</sup> SEC. 2. Definitions. As used in this article . . .

25 (b) "Assessment" means any levy or charge upon real property by an agency for a  
26 special benefit conferred upon the real property. "Assessment" includes, but is not limited to,  
27 "special assessment," "benefit assessment," "maintenance assessment" and "special assessment  
28 tax."

1 4. Defendant County's documentary transfer tax is not a fee or charge for a  
2 "property-related service", as defined in Article XIII D, Section 2(h).<sup>4</sup>  
3  
4

5 **Article XIII D Prohibits Tax on an Incident of Property Ownership**

6 If it can be demonstrated that documentary transfer tax is, as a matter of law,  
7 imposed upon an "incident of property ownership," it necessarily follows that  
8 Defendant County's expanded documentary transfer tax is unconstitutional.  
9

10  
11 **Conveyance Is an Incident of Property Ownership**

12 Article XIII D, Section 3(a) forbids new or expanded tax upon any person "as  
13 an incident of property ownership. . ." Article XIII D does not define the phrase  
14 "incident of property ownership." (Section 2 ("Definitions").)  
15

16  
17 In *Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4<sup>th</sup> 1084, the court  
18 recognized incidents of property ownership to include "... sale, **transfer**, rental,  
19 special use of certain city services, and so on." (*Id.* at 1088, emphasis added.)  
20

21 *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333,  
22 established that documentary transfer tax attaches to the privilege of exercising one  
23 of the incidents of property ownership, its conveyance. (*Id.* at 340-341.)  
24

25 \_\_\_\_\_  
26 <sup>4</sup> SEC. 2. Definitions. As used in this article. . .

27 (h) "Property-related service" means a public service having a direct relationship to  
28 property ownership.

1 Likewise addressing documentary real property transfer tax the court  
2 observed in *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, “It is a one-  
3 time burden only, imposed solely on the privilege of disposing of one's property. . .  
4  
5 “(Id. at 145.)

6 In *City of Huntington Beach, supra*, the court recognized the “well  
7 established” principle that a tax on the exercise of one of the incidences of property  
8 ownership is not a tax on the property. Specifically addressing real property  
9 transfer tax, the court concluded: “Liability for the tax in question arises only when  
10 property is conveyed; the transferor and transferee become jointly and  
11 severally liable for the tax upon delivery of the instrument of transfer; and the tax  
12 is a debt collectible by an action against the persons liable. The [documentary  
13 transfer] tax is, therefore, on the exercise of one of the incidences of property  
14 ownership . . . .” (78 Cal. App.3d 333 at pp. 340-41.)  
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1 **II. Defendant County's Transfer Tax Violates Article XIII D**

2 The present case appears to be the first ever to question whether unilateral  
3 expansion of a local documentary transfer tax is unconstitutional under Article XIII  
4  
5 D.

6 Indisputably, documentary transfer tax attaches to the privilege of exercising  
7 one of the incidents of property ownership, its conveyance. The constitution bars  
8  
9 Defendant County of Los Angeles from imposing an unconstitutional tax.

10  
11  
12  
13 Dated: October 5, 2015

LAW OFFICE OF PETER MICHAELS

14  
15 By: 

16 Peter Michaels  
17 Attorney for *Amicus Curiae*  
18 California Alliance of Taxpayer Advocates  
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1 **CERTIFICATE OF LENGTH**

2 I certify, pursuant to California Rules of Court, 8.520(c), that the *amicus*  
3 *curiae* brief of the California Alliance of Taxpayer Advocates in Support of  
4 Plaintiff and Appellant is in 14-point type and contains 1.059 words (including  
5 footnotes), as determined by the Microsoft Word word-processing software used to  
6 prepare the brief.  
7

8  
9 Dated: October 5, 2015

LAW OFFICE OF PETER MICHAELS

10 By: 

11 PETER MICHAELS

12 Attorney for *Amicus Curiae*

13 California Alliance of Taxpayer Advocates  
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**DECLARATION OF SERVICE BY U.S. MAIL**

Supreme Court of the State of California  
Case Name: *926 North Ardmore Avenue, LLC v. County of Los Angeles*  
Case No. S222329

I declare:

I am over the age of 18 years and am not a party to this matter. On October 5, 2015, I served the attached:

**APPLICATION FOR PERMISSION TO FILE  
AMICUS CURIAE BRIEF and  
BRIEF OF AMICUS CURIAE  
CALIFORNIA ALLIANCE OF TAXPAYER ADVOCATES**

by depositing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, into a United States Postal Service mailbox in Oakland, California, addressed as shown on attached service list:

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 5, 2015 at Oakland, California.

*Peter Michael*

Peter W. Michaels

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