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No. S224779

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CITIZENS FOR FAIR REU RATES, ET AL.
Plaintiffs and Appellants,

v.

CITY OF REDDING, ET AL.
Defendants and Respondents

ANSWER TO AMICUS CURIAE BRIEFS OF CALIFORNIA TAXPAYERS ASSOCIATION, GLENDALE COALITION FOR BETTER GOVERNMENT, HOWARD JARVIS TAXPAYERS ASSOCIATION, AND PACIFIC LEGAL FOUNDATION

Review of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

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INTRODUCTION

The Court granted review of these questions:

1. Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a "tax" under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))?
2. Does the exception for "reasonable costs to the local government of providing the service or product" apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))?
3. Does the PILOT predate Proposition 26?

Amici curiae Glendale Coalition for Better Government (GCBG), California Taxpayers Association (Cal. Tax), Howard Jarvis Taxpayers Association (HJTA), and Pacific Legal Foundation (PLF) (collectively, "Citizens' Amici") filed briefs in support of Plaintiff and Appellant Citizens for Fair REU Rates ("Citizens"). These briefs do little to assist decision here — not least because they do not address the questions on review.

Citizens' Amici address the last question in only conclusory terms. GCBG goes so far as to label it "irrelevant." (Brief of Amicus Curiae GCBG ["GCBG Br."] at p. 8.) In fact, the question is determinative here, as the trial court concluded. Because Proposition 26 is not retroactive and because the City's PILOT predates Proposition 26 and has not been changed since that measure's 2010 adoption, the PILOT survives review.

Citizens' Amici do make two helpful points: First, GCBG points out that only Redding's electric service **rates** could be a tax "imposed" on its customers; the PILOT itself is an accounting transfer from the Redding Electrical Utility ("REU") to the City's general fund that is not "imposed" on anyone. This successfully critiques not only the reasoning of the Court of Appeal majority below, but the Cal. Tax brief, too. Second, HJTA acknowledges that the PILOT is grandfathered by Proposition 26, but mistakenly concludes, as did the Court of Appeal majority and as does Cal. Tax, that Redding reenacted the PILOT post-Proposition 26. Citizens' Amici's arguments are otherwise either off-topic — such as those from Proposition 13 and article XIII, section 3, subdivision (b)'s exemption of public property from property tax — or mistaken — such as their unthinking analogy to Proposition 218 in construing Proposition 26 despite the pointedly different language of the measures.

None of Citizens' Amici engages the language of Proposition 26 or notes its necessarily meaningful differences from that of Proposition 218, which it amends. Indeed, Cal. Tax faults the City's careful reading of the Constitution as "microscopically dissecting." (Brief of Amicus Curiae Cal. Tax ["Cal. Tax Br."] at p. 6.) Yet that close reading is precisely what is demanded by this Court's ample precedents — and Cal. Tax's own argument —the

meaning of our Constitution is found first and principally in its language.

In sum, Citizens' Amici are of but little help here and, for the reasons detailed in the City's principal briefs, this Court should reverse the Court of Appeal and affirm the trial court's judgments for the City in both cases at bar.

DISCUSSION

I. GCBG MAKES ONE USEFUL POINT AND TWO ERRORS

A. PROPOSITION 26 REGULATES ELECTRIC CHARGES, NOT THE EXPENDITURE OF PROCEEDS OF THOSE CHARGES

GCBG makes one useful point: that Proposition 26's provisions distinguishing taxes from other local government revenues "refer to the fees **charged** to rate payers for providing electric rates and **not** how those fees are ultimately expended." (GCBG Br. at p. 1 [Application to File Amicus Curiae Brief] [original emphasis].) GCBG also argues the Court of Appeal majority erred to evaluate the PILOT rather than charges imposed on City power customers. The City agrees. This refutes not only the Court of Appeal majority's analysis (*Citizens for Fair REU Rates v. City of Redding* (2015) 182 Cal. Rptr. 3d 722, 730–732), but Cal. Tax's too.

(Cal. Tax Br. at pp. 12, 14.) Thus, Proposition 26 applies to fees charged, not the use of proceeds of those charges.

B. GCBG MISUNDERSTANDS PROPOSITION 26'S NON-APPLICATION TO EARLIER LEGISLATION

GCBG makes two errors as to the effect of Proposition 26 on earlier legislation.

First, GCBG argues the City must abandon the PILOT when it raises power rates post-Proposition 26. (GCBG Br. at p. 3.) Curiously, GCBG states (without any persuasive basis), that the City could lawfully increase the PILOT's share of rate proceeds post-Proposition 26 provided it does not raise energy rates themselves. GCBG's position assumes Proposition 26 applies retroactively to void earlier local legislation requiring the PILOT. Yet Proposition 26 is in pari materia with Proposition 218, and omits the provision of the earlier measure — article XIII D, section 6, subdivision (d) — that makes it retroactive so as to terminate the effectiveness of earlier legislation. That section states: "Beginning July 1, 1997, all fees or charges shall comply with this section." Because Proposition 26 has no similar provision, it cannot have the same effect.

The City's principal briefs amplify the point. (Opening Brief [OB] at pp. 39, 44; Reply Brief [RB] at p. 19.) The framers of Proposition 26 plainly excluded any analog to article XIII D,

section 6, subdivision (d) from the measure, and Citizens' Amici are entirely silent as to the implications of that drafting decision. Under the usual rules of construction, the City's PILOT is grandfathered by Proposition 26 and may continue even if the City could not enact or increase that PILOT after 2010.

Second, GCBG argues the PILOT is not a lawful cost of service after adoption of Proposition 26 because it expresses local rather than state or federal policy. (GCBG Br. at pp. 7–8.) Cal. Tax makes the same claim. (Cal. Tax. Br. at pp. 15, 17.) Neither provides authority for this distinction. Nothing in the text or context of Proposition 26 suggests voters intended to grandfather non-cost-justified elements of power rates arising from state and federal law (like compliance with A.B. 32 greenhouse gas mandates or federal workplace safety standards), but not from local law. Rather, Proposition 26 is entirely prospective in its application to local government. (*Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195.) GCBG argues Proposition 26's "purpose" was to allow voters to control local government. Cal. Tax simply asserts the City and its utility are one legal person and one cannot charge the other for services. Both points fail.

Proposition 26's text makes plain it was intended to regulate the state and local governments alike. (Compare Cal. Const., art. XIII A, § 3, subd. (b) with art. XIII C, § 1, subd. (e)

[Proposition 26's substantially identical provisions for state and local government].) Thus the text of the measure provides no justification for disparate treatment of local versus state and federal legislation.

Cal. Tax argues costs imposed by local governments cannot be included in service charges they impose. (Cal. Tax Br. at p. 17.) This would mean that the costs for complying with the many state statutes which impose operational and construction costs on all levels of government (e.g., the California Environmental Quality Act) could only be included in fees charged by local agencies, not state agencies. This argument would end a range of state and local legislative policies like low-income and senior discounts and public goods charges, as argued by Amicus Curiae California Municipal Utilities Association in its Letter in Support of Petition for Review. (Letter at p. 7.)

Similarly, Cal. Tax confuses a fee — which government imposes on private actors subject to its authority — with cost allocation within a government. (Cal. Tax Br. at p. 15.) Even under the more demanding standards of Proposition 218, a local government can recover the full cost of its services and can also repay its general fund for services that fund provides for the benefit of the utility. (E.g., *Howard Jarvis Taxpayers Association v. City of Roseville* (2002) 97 Cal.App.4th 637, 650–651 (*Roseville*) [city could recover cost of police, fire and street services from water and sewer charges subject to Prop. 218]; *Howard Jarvis Taxpayers Association v.*

City of Fresno (2005) 127 Cal.App.4th 914, 926 (*Fresno*) [same]; and *Moore v. Lemon Grove* (2015) 237 Cal.App.4th 363, 376–77 (*Lemon Grove*) [sewer utility could repay general fund its share of personnel costs and resulting funds could be used for any lawful purpose of the city].) Under Proposition 26, the City may similarly require its utility to repay the general fund — via a PILOT — for the value of its services to that utility.

II. CITIZENS' AMICI MISTAKENLY ASSERT ELECTRIC RATES FUND THE PILOT

PLF asserts the PILOT is funded by the electric rates challenged here, without citation to the record or to authority. (Brief of Amicus Curiae PLF [PLF Br.] at p. 2.) Cal. Tax makes the same, erroneous claim. (Cal. Tax Br. at pp. 5, 11.) However, the trial court found otherwise as a matter of fact. (3 CT 741 ["[T]here is no evidence that the PILOT is paid out of customer's rates"].) Moreover, the City demonstrates that finding to be supported by substantial record evidence. (OB at pp. 35–36; RB at p. 6–7; see IV AR Tab 145, p. 831; IV AR Tab 149, p. 873; XIII AR Tab 205, p. 2975].) Thus, Citizens' Amici are simply wrong on this point.

The sum total of record support for Citizens' argument , as Cal. Tax also notes, is that a December 2010 City Council resolution increasing power rates referred to "transfers authorized by law" as among the costs the increases were to cover. (Cal. Tax Br. at p. 12; Citizens' Answer Brief [Ans. Br.] at p. 12.) As detailed in the City's

Reply Brief, however, the PILOT is not the only transfer from the electric utility to the general fund. Other lawful transfers account for shared costs, such as general overhead. (RB at pp. 6–7; see IV AR, Tab 159, pp. 1030–1034 [Nov. 19, 2010 staff report]; IV AR, Tab 166, pp. 1065–1098.) Other record evidence demonstrates the December 2012 electric rate increase was not required to fund the PILOT and that, indeed, the PILOT need not be funded by rates at all, as the trial court found. (3 CT 741.) Cal. Tax makes no effort to refute the finding.

Cal. Tax further argues that, even if the PILOT is not funded from rates, the PILOT is a tax requiring voter approval because it does not fall within any of the seven exceptions to Proposition 26's definition of "tax." (Cal. Tax Br. at p. 12.) As GCBG points out, Cal. Tax erroneously treats the PILOT as a revenue measure imposed on a third party. It is not. It is a fund transfer internal to the City. Accordingly it is not "imposed" on a third party so as to trigger Proposition 26 — electric rates are. (Cal. Const., article XIII C, § 1, subd. (e) ["As used in this article, 'tax' means any levy, charge, or exaction of any kind **imposed** by a local government, except the following: ..."] (emphasis added).) Cal. Tax reads "impose" out of the Constitution, a reading which would make every general fund expenditure a tax, which cannot have been voters' intent.

III. CITIZENS' AMICI SELECTIVELY RECITE LEGISLATIVE HISTORY TO OBSCURE PROPOSITION 26'S INTENT TO PRESERVE EARLIER LEGISLATION

PLF, HJTA, and Cal. Tax quote selectively from Proposition 26's ballot materials to argue the measure was intended to broadly reduce local governments' revenue authority. (PLF Br. at pp. 12–13; Brief of Amicus Curiae HJTA [HJTA Br.] at p.1; Cal. Tax Br. at pp. 9–10.) Proposition 26 was intended to narrow the authority of state and local governments to impose fees in some respects. However, the measure's proponents argued vigorously it would not displace existing laws that protect consumers and the environment. Earlier ballot measures seeking to undermine this Court's ruling in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 (*Sinclair Paint*) had been defeated by environmental and consumer opposition and, indeed, the arguments against Proposition 26 reflected those same concerns. (1 CT 279–280.) Thus, the voters who approved Proposition 26 were apparently persuaded it would not undermine existing laws that protect consumers and the environment.

This, of course, supports the City's argument that Proposition 26 grandfathers the PILOT along with its discounted power rates for low-income and senior households and similar deviations from the cost-of-service principles that serve other social and legislative objectives. (1 CT 279–280.) For what language in

Proposition 26 allows selective retroactivity depending on the content of the earlier policy? None, of course.

A more complete review of relevant legislative history is appropriate to support the claim that Redding's PILOT survives the adoption of Proposition 26. Proposition 26's legislative history demonstrates a clear intent the measure not have retroactive effect. For example, the Legislative Analyst's Impartial Analysis told voters the measure would apply only prospectively:

> [M]ost other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless ... [t]he ... local government later increases or extends the fees or charges. (1 CT 277.)

Ballot arguments in favor of Proposition 26 also disclaim any retroactive effect:

> PROPOSITION 26 PROTECTS ENVIRONMENTAL AND CONSUMER REGULATIONS AND FEES
> Don't be misled by opponents of Proposition 26. California has some of the strongest environmental and consumer protection laws in the country. Proposition 26 preserves those laws and PROTECTS LEGITIMATE FEES SUCH AS THOSE TO CLEAN UP ENVIRONMENTAL OR OCEAN DAMAGE, FUND NECESSARY CONSUMER REGULATIONS, OR

PUNISH WRONGDOING, and for licenses for professional certification or driving.

(1 CT 279, original emphasis.) The proponents' rebuttal to the "no" argument was to the same effect:

Prop. 26 protects legitimate fees and WON'T ELIMINATE OR PHASE OUT ANY OF CALIFORNIA'S ENVIRONMENTAL OR CONSUMER PROTECTION LAWS, including:

—Oil Spill Prevention and Response Act

—Hazardous Substance Control Laws

—California Clean Air Act

—California Water Quality Control Act

—Laws regulating licensing and oversight of Contractors, Attorneys and Doctors

"Proposition 26 doesn't change or undermine a single law protecting our air, ocean, waterways or forests — it simply stops the runaway fees politicians pass to fund ineffective programs." — Ryan Broddrick, former Director, Department of Fish and Game

(1 CT 280, original emphasis.)

Thus, Proposition 26's legislative history demonstrates neither its proponents nor voters intended it to displace existing laws advancing important social policies. By ignoring these passages,

Citizens' Amici present an incomplete and misleading picture of Proposition 26.

GCBG also quotes the League of California Cities' Proposition 26 Implementation Guide, which explains that costs imposed pursuant to legislation which predates Proposition 26's adoption are grandfathered. (GCBG Br. at p. 7.) Yet, GCBG nonetheless dismisses without substantive argument as "irrelevant" the third question on which this Court granted review — whether Redding's PILOT predates Proposition 26. (GCBG Br. at p. 8.) GCBG's claim is unpersuasive.

IV. CITIZENS' AMICI ARGUE IRRELEVANT LAW

A. PROPOSITION 13 HAS NO APPLICATION HERE

Citizens' Amici rely on Proposition 13, even though Citizens does not sue under it and even though this Court limited its grant of review to questions arising under Proposition 26. (PLF Br. at pp. 2–3; HJTA Br. at pp. 2–3.) Moreover, Proposition 13 would not forbid the PILOT in issue here. (See *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1181–1184 (*Hansen*) [allowing city to earn reasonable return on investment in water utility]; *Oneto v. City of Fresno* (1982) 136 Cal.App.3d 460, 468 (*Oneto*) [city could earn return on its water utility in the form of a PILOT even though charter prohibited city from generally profiting from it]; cf. *Fresno, supra,* 127 Cal.App.4th at

p. 926 [same PILOT violated Prop. 218 as applied to water and sewer utilities].)

B. NOR DOES PROPOSITION 218 APPLY HERE

Citizens' Amici argue from Proposition 218 even though that measure expressly exempts electric rates. (PLF Br. at pp. 10–13; HJTA Br. at pp. 6–9). Article XIII D, section 3, subdivision (b) provides:

> For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Proposition 218's proponents (including HJTA) assured voters "[l]ifeline rates for elderly and disabled for telephone, gas, and electric services are NOT affected" by that measure. (2 CT 349, original emphasis.)

Thus, Proposition 218 cannot answer the questions on review.

C. THE CONSTITUTIONAL EXEMPTION OF PUBLIC PROPERTY FROM PROPERTY TAXES IS ALSO IMMATERIAL

Cal. Tax and PLF argue the constitutional immunity of public property from the ad valorem property tax authorized by Proposition 13. (Cal. Tax. Br. at pp. 21–25; PLF Br. at p. 4.) However, Citizens do not argue — and neither lower court found — the PILOT

is a tax on utility assets. As GCBG correctly argues, the issue here is whether there is proof the City uses the proceeds of charges for electric service to fund the PILOT and, if so, whether doing so violates Proposition 26. (GCBG Br. at pp. 1, 3.)

Moreover, both Cal. Tax and PLF overlook article XIII, section 11 of our Constitution, which allows taxation of city property located outside the county in which the city is located. For example, Redding's share of generation and transmission assets of joint powers authorities are located outside Shasta County (RT 73 line 4 – RT 74 line 6; XI AR Tab 203, p. 2469), as are Los Angeles's Owens Valley assets of *Chinatown* fame (*City of Los Angeles v. Inyo County* (1959) 167 Cal.App.2d 736 [assessment of taxable water rights owned by City located in Inyo County]) and San Francisco's airport (*City and County of San Francisco v. County of San Mateo* (1995) 10 Cal. 4th 554, 567 [dispute over property tax on airport land in San Mateo County owned by San Francisco].)

Cal. Tax's authorities on this point bear discussion. It cites an Attorney General opinion concluding the Legislature could not tax properties owned by the California Public Employees' Retirement System ("PERS") to fund local governments that serve those properties. (74 Ops.Cal.Atty.Gen. 6 (1991).) However, the case at bar does not involve a tax imposed by the Redding City Council on a third party under its police or tax powers. Instead, it involves a legislative decision of the City — authorized by *Hansen* and *Oneto* —

to earn a return on its investment in its electric utility and to reflect the value of City services to the utility. (*Hansen, supra,* 42 Cal.3d at pp. 1181–1184; *Oneto, supra,* 136 Cal.App.3d 460, 468.) Thus, the PILOT simply does not implicate the exemption under article XIII, section 3, subdivision (b) of some (but not all) REU property from the 1 percent property tax authorized by Proposition 13.

For similar reasons, this Court found article XIII, section 3, subdivision (b) of little use in construing the property related fee provisions of article XIII D, section 6. (See *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 422 [water connection fee not an "assessment" in violation of article XIII, section 3, subdivision (b)].) *Richmond* distinguished *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154 [capital component of water district's rate was illegal tax on school property] and its discussion of article XIII, section 3, because:

> the characteristic that [this Court] found determinative for identifying assessments in *San Marcos*—that the proceeds of the fee were used for capital improvements — forms no part of article XIII D's definition of assessments.

(*Richmond, supra,* 32 Cal.4th at p. 422.) So, too, here.

The determinative factor in the Attorney General's analysis is that the fee in question was for general governmental services. (74 Ops.Cal.Atty.Gen. 6, at p.*3 (1991).) However, that point is not

germane to Proposition 26, which looks to the reasonable cost to government of providing a service, even if those costs are repaid to a city's general fund. (Cal. Const., art. XIII C, § 1, subd. (e)(2).)

Moreover, the rationale of the Attorney General's opinion is not persuasive here. It found the Legislature imposed a tax on PERS because the imposition was involuntary and triggered by PERS' ownership of property alone. (74 Ops.Cal.Atty.Gen. 6, at p.*3 (1991).) Again, here we deal with the 1988 legislative decision of the Redding City Council to earn a return on its investment in its electric utility measured by the amount of the 1% property tax; it imposes no tax. Even if the PILOT were funded from electric rates (contrary to the trial court's finding), it is not imposed on mere property ownership, but on elective decisions to purchase power from the City whether those decisions be made by property owners or tenants.

No more helpful is *California State Teachers' Retirement System v. County of Los Angeles* (2013) 216 Cal.App.4th 41. That case considers a statutory method to value a private leasehold in a building owned by the California State Teachers' Retirement System ("STRS") for purposes of property tax. It considered whether that method violated article XIII, section 3, subdivision (a) by taxing STRS' fee as well as the leasehold. There is no question an ad valorem property tax was in issue there. The case did not involve expenditure of the proceeds of a service fee or the allocation of costs between a city's general fund and its utility enterprise funds. It adds

nothing to the discussion of the Attorney General's opinion and is unhelpful here for the same reasons. Furthermore, it is misleading to state that the Court of Appeal "cit[ed] with approval" the Attorney General's opinion. (Cal. Tax Br. at p. 23.) The Court of Appeal merely cited the Attorney General opinion to explain why the Legislature amended the section at issue, and suggested nothing about the court's view of the Attorney General's analysis. (*California State Teachers' Retirement System, supra,* 216 Cal.App.4th at p. 58.)

In short, this case involves no tax on REU's assets but rather the use of the proceeds of its earnings from wholesale power transactions. Even if it were shown to involve the use of proceeds of retail rates, it would still involve the use of fee proceeds and not the taxation of utility assets. This case is not governed by article XIII, section 3, subdivision (b) — just as *Hansen* and *Oneto* were not.

V. PLF AND CAL.TAX MISUNDERSTAND THE CITY'S BURDEN OF PROOF

PLF and Cal. Tax accuse the City of ignoring its burden of proof under the final, unnumbered paragraph of article XIII C, section 1, subdivision (e). (PLF Br. at pp. 13–15; Cal. Tax. Br. at p. 11.) However, the City acknowledges its burden and meets it. (OB at pp. 13–15; RB at pp. 2–5, 25–26.)

PLF and Cal. Tax overlook two important points as to burdens of proof. First, **Citizens** bears the burden to make a prima facie case that the PILOT falls outside Proposition 26's exemptions.

Propositions 218 and 26 do shift the ultimate burden of proof from plaintiff to rate-making agency. (Cal. Const., art. XIII D, § 6, subd. (b)(5) ["In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article."]; art. XIII C, § 1, subd. (e), final unnumbered para. ["The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax ..."].) However, under the familiar canon of *expressio unius est exclusio alterius,* that Propositions 218 and 26 change one element of tax litigation procedure means they leave all others undisturbed. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195 ["Under the familiar rule of construction, *expressio unius est exclusio alterius,* where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed."] [superseded by statute on other grounds as stated in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086].)

Thus, we look to earlier law which requires Citizens to state a prima facie case here. (E.g., *Elliott v. City of Pacific Grove* (1975) 54 Cal.App.3d 53, 59 [plaintiff has burden to establish charges are unreasonable under common law rate-making standard; burden then shifts to defendant to establish rates were reasonable, fair, and lawful]; OB at pp. 13–14; RB at pp. 3–4; see *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal. 4th 421, 436 [construing Proposition 13]; see also *California Building Industry*

Association v. State Water Resources Control Board (2015) 235 Cal.App.4th 1430, 1451 [same].)

This rule applies alike to Proposition 218 claims. (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 913 (*Morgan*) ["[W]e do not find it sufficient for an appellant to merely claim the respondent should not have been successful at trial and then the burden shifts to the respondent to prove its case in its entirety again"]; *Lemon Grove, supra,* 237 Cal.App.4th at p. 368 [agency charging fee bears burden to prove compliance; "whether a fee or charge violates article XIII D is subject to de novo review"].)

Second, an appellate court reviews a trial court's factual findings. The City argues the appropriate standard of appellate review of trial court fact-finding in its principal briefing. (OB at pp. 12–13 citing *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1317 (*Schmeer*); *Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700]); see also RB at pp. 2–3.) However, regardless of the standard, an appellate court always reviews the trial court's findings in light of the record evidence. (*Lemon Grove, supra,* 237 Cal.App.4th at p. 368; *Morgan, supra,* 223 Cal.App.4th at p. 913.) Appellate courts are not trial courts.

Citizens and its Amici simply fail to refute the trial court's factual finding there is no evidence the PILOT is funded by REU's retail rates. (3 CT 741.) The record amply supports the trial court's finding, and neither Citizens nor its Amici make any meaningful

attempt to address it. (OB at pp. 35–38 [REU has multiple sources of income], IV AR Tab 145, p. 831 [FYs 2010 & 2011 budget, showing PILOT can be funded twice over from unrestricted revenues] (second table on page), IV AR, Tab 149, p. 873 [2010 audit showing PILOT of $6,055,950], XIII AR Tab 205, p. 2975 [FYs 12 & 13 budget]; RB at p. 6 [same].) Nor do they demonstrate this record evidence to be inadequate under either the preponderance standard set forth in the final, unnumbered paragraph of Article XIII C, section 1, subdivision (e) or either of the appellate standards of review the City argues — de novo or substantial evidence. (OB at pp. 12–15.) Citizens and its Amici make no effort whatsoever to satisfy Citizens' burden as Plaintiff and Appellant.

Proposition 26 did not rewrite article VI of our Constitution nor did it alter the judicial process or the essentials of the appellate function. The trial court's factual finding that the PILOT is not funded from REU electric rates survives review under any standard. The Court of Appeal majority erred to conclude otherwise. (*Citizens for Fair REU Rates, supra,* 182 Cal. Rptr. 3d at p. 731.)

VI. CITIZENS' AMICI CONFLATE PROPOSITIONS 218 AND 26

Citizens' Amici rely on Proposition 218 authorities to construe Proposition 26 with barely an acknowledgement that the two measures use different language to impose different cost of service limitations.

PLF simply equates the two without discussion. (PLF Br. at pp. 15–16.) HJTA acknowledges the measures use different language but argues "they are conceptually identical." (HJTA Br. at p. 9.) This, of course, cannot be; the intent of a measure is gleaned from its language. (*Schmeer, supra,* 213 Cal.App.4th at p. 1317.) Different language — particularly the absence from Proposition 26 of anything like the express retroactivity language of Article XIII D, section 6, subdivision (d) — requires different meanings. That is even more so given that Propositions 26 and 218 are in pari materia. (*Gately v. Cloverdale Unified School Dist.* (2007) 156 Cal.App. 4th 487, 494 ["Statutory provisions that are in pari materia, i.e., related to the same subject, should be construed together as one statute and harmonized if possible"].) In this case, the harmonization of the two constitutional measures requires us to account for their intentional differences.

As the City's principal briefing argues in detail — to complete silence from Citizens' Amici — the measures use different language to invoke different standards. (OB at pp. 30–33; RB at pp. 13–18.) Both propositions require service fees not exceed the cost of the service as to all customers in toto. (Cal. Const., art. XIII D, § 6, subd. (b)(1); *id.*, art. XIII C, § 1, subd. (e)(2).) However, Proposition 218 imposes a further requirement that a fee "not exceed the proportional cost of the service attributable to a parcel." (Cal. Const., art. XIII D, § 6, subd. (b)(3).) By contrast, Proposition 26

imposes the more lenient *Sinclair Paint* standard: Redding must show only that "the manner in which those costs are allocated to a payor bear **a fair or reasonable relationship** to the payor's burdens on, or benefits received from, the governmental activity." (Cal. Const., art. XIII C, § 1, subd. (e) [final, unnumbered paragraph]; *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 879 [quoting *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1146] [emphasis added].)

"Fair or reasonable relationship" is not the same as the cost justification *Roseville* and *Fresno* found Proposition 218 to require for the property related fees to which it applies. Nor does the language of article XIII C, section 1, subdivision (e)'s final, unnumbered paragraph support the very exacting cost justification suggested by dicta in *Capistrano Taxpayers Association v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1506–1507, 1515–1516 [invalidating tiered water rates due to complete absence of record evidence to justify price differences between tiers; dicta suggesting cost-justification under Prop. 218 must be very precise].

Thus, HJTA's makes two fundamental errors to argue — as does Cal. Tax — that the absence from the City's two administrative records here of cost-of-service justification for the PILOT necessarily means the challenged rates exceed service cost. (HJTA Br. at p. 10; Cal. Tax. Br. at 20.) First, they assume without justification that

Proposition 26 requires the same cost-of-service justification that Proposition 218 does despite the language the later measure uses to amend the earlier. Second, they further assume the electric rates challenged here fund the PILOT, although the trial court found otherwise with record support.

Thus, the different language of Propositions 218 and 26 means that cases construing the former may not be blindly applied — wholesale — to determine disputes under the latter. *Fresno* concluded that city could apply a PILOT to water and sewer fees under Proposition 13 (as *Oneto* held), but not under Proposition 218. Those measures use different language to achieve different results. So, too, Propositions 218 and 26. *Fresno*'s decision under Proposition 218 simply does not resolve application of Proposition 26 here. The contrary conclusion of the Court of Appeal majority, and the comparable arguments by Citizens and their Amici, simply fail to account for the language of our Constitution.

VII. HJTA AND CAL. TAX ERR TO ARGUE THE CITY REENACTED THE PILOT

HJTA agrees with the City that the PILOT is grandfathered by Proposition 26. (HJTA at pp. 11–12.) It also agrees with the Court of Appeal majority below that this grandfathering lasted only through the 2009–2010 budget and that the June 2011 adoption of the 2011–2012 budget legislated the PILOT anew in violation of

Proposition 26. This second point is unsupported by citation to the record or to authority; it is also wrong.

As demonstrated by the City's principal briefing, the trial court found with record support that the City did not reenact, amend or increase the PILOT after 2005. (3 CT 736–737; XI AR Tab 203, p. 2466; OB at pp. 16–18; RB at pp. 24–28.) Reenactment of legislation without change is not new legislation, but the maintenance of earlier legislation. (E.g., Gov. Code, § 9605 [portions of legislation "not altered are considered as having been the law from the time they were enacted"]; *Southern California Edison Co. v. P.U.C.* (2014) 227 Cal.App.4th 172, 191 [legislative authority for PUC's public goods charge evidenced by subsequent, related legislation which did not displace it].)

Nothing in Proposition 26 indicates voters intended to change these fundamental rules of statutory construction. Indeed, the omission of anything like article XIII D, section 6, subdivision (d) from Proposition 26 — and ballot arguments it would not disturb preexisting consumer and environmental protection laws — are powerful evidence to the contrary. Thus all factors point to the conclusion that, absent a change in the PILOT's calculation, it survives Proposition 26.

Cal. Tax, too, argues the PILOT lapsed with the City's FY 2009–2010 budget. (Cal. Tax Br. at pp. 25–26.) Unlike HJTA, it cites authority. Its cases are distinguishable, however. *Yes on 25,*

Citizens for an On-Time Budget v. Superior Court (2010) 189 Cal.App.4th 1445 rejected a challenge to the Attorney General's ballot title and summary of 2010's Proposition 25, which allowed the Legislature to adopt budgets by simple majority vote, eliminating the previous requirement for two-thirds approval. Writing for himself, Justices Raye and Hull, Presiding Justice Scotland found the measure was not misleading and issued a writ to overturn a trial court ruling ordering amendment of the argument. (*Id.* at p. 1450.)

In the discussion Cal. Tax cites, the Court of Appeal was unpersuaded by a claim the measure would also allow taxes to be approved by a simple majority vote, in violation of Proposition 13:

> However, Proposition 25 would affect only the budget bill and other bills providing for appropriations related to the budget bill. Indeed, the annual budget bill is a list of appropriations, "itemizing recommended expenditures' for the ensuing fiscal year." (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1197, 219 Cal.Rptr. 664.) By definition, appropriations are not taxes. Accordingly, we find nothing in the substantive provisions of Proposition 25 that would give a green light to the Legislature to circumvent the existing constitutional requirement of a two-thirds vote to raise taxes.

(*Id.* at p. 1455.) In this, Cal. Tax finds a rule that all provisions of all budgets lapse in a year. (Cal. Tax Br. at pp. 26–27.) This is obviously not so. Redding, like many agencies, adopts two-year budgets. (E.g., VII AR Tab 183, p. 1598 [Resolution No. 2009-61, budget for FYs 2010 and 2011].) Moreover, neither the Court of Appeal majority below nor Amici cite any language from Redding's budget resolutions stating a sunset. While most appropriations are specific to given fiscal years, and are replaced by new appropriations in subsequent budgets, policy language in budgets — such as the PILOT — need have no sunset and, indeed, the City has demonstrated its intent to maintain the PILOT indefinitely. (OB at pp. 22–28; RB at 24–25.)

Similarly, *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252 involved a challenge to abortion-funding restrictions on state budget appropriations for Medi-Cal services. This Court noted there that the disputed appropriations lapsed after one year and that certain claims were therefore moot. (*Id.* at p. 260, fn. 3.) Again, Cal. Tax reads this Court's observation that state budgets **typically** lapse in a year as evidence that **all** appropriations — state and local — **necessarily** do. This is not even true as to the state. (Defendants' and Respondents Supplemental Brief [filed Oct. 15, 2014] at pp. 1–3; see, e.g., 25 Stats. 2014 (SB 852) § 1.80, subd. (a) [funds are appropriated for each fiscal year]; *id.*, § 1.80, subd. (b) [capital outlays may be encumbered until June 30, 2017]; see also 22 Stats. 2013 (AB 75) §§ 21 [operative until July 1,

2018]; *White v. Davis* (2003) 30 Cal.4th 528, 538; Gov. Code, § 16304 [Legislature has expressly approved continuing state appropriations].) Nor is it true as to the City here, as demonstrated above.

None of Citizens' Amici engages the City's authorities for the rule that readoption of legislative language without change is not read to renew, but rather to continue, that legislation. This Court may take that silence as an admission that Amici have nothing useful to say on the point.

Finally, if Cal. Tax's and HJTA's arguments are accepted, then Redding's PILOT fails because it was legislated by budget action rather than by ordinance or charter provision. Under that rule, cities which enacted PILOTs by charter or ordinance benefit from the non-retroactive character of Proposition 26, while those which acted by resolution do not. This treats similarly situated cities differently based on an irrational and arbitrary distinction, and therefore works injustice. Such a rule not only elevates form over substance, but it amounts to retroactively imposing a requirement for the form of PILOT legislation — a requirement not previously required by law.

CONCLUSION

Citizens' Amici make two helpful points. GCBG correctly notes the Court of Appeal erred to evaluate the PILOT rather than the City's electric rates. HJTA correctly notes the PILOT is at least partly grandfathered by Proposition 26.

In every other respect, however, Citizens' Amici's briefs are of little help here — they misunderstand the facts, cite inapplicable law, and fail to meaningfully address the City's arguments and authorities. Accordingly, and for the reasons detailed in its principal briefs, the City respectfully urges this Court to reverse the Court of Appeal and to affirm the trial court's judgments for the City in both cases at bar.

DATED: September 25, 2015

COLANTUONO, HIGHSMITH & WHATLEY, PC

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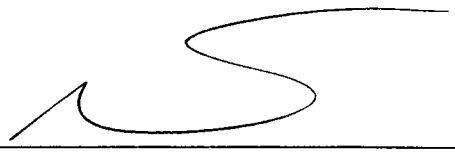
CERTIFICATION OF COMPLIANCE WITH CAL. R. CT. 8.520(B) & 8.204(C)(1)

Pursuant to California Rules of Court, rules 8.520(b) and 8.204(c)(1), the foregoing Reply to Amicus Briefs of California Taxpayers Association, Glendale Coalition For Better Government, Howard Jarvis Taxpayers Association, and Pacific Legal Foundation by Defendants / Respondents City of Redding and City Council of Redding contains 6,221 words (including footnotes, but excluding the tables and this Certificate) and is within the 14,000 word limit set by California Rules of Court, rule 8.520(c). In preparing this certificate, I relied on the word count generated by Word version 14, included in Microsoft Office Professional Plus 2010.

DATED: September 25, 2015 **COLANTUONO, HIGHSMITH & WHATLEY, PC**



MICHAEL G. COLANTUONO

PROOF OF SERVICE

Citizens for Fair REU Rates v. City Of Redding
Third District Court of Appeal Case No. C071906
California Supreme Court Case No. S224779

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On September 25, 2015 I served the document(s) described as **ANSWER TO AMICUS CURIAE BRIEFS OF CALIFORNIA TAXPAYERS ASSOCIATION, GLENDALE COALITION FOR BETTER GOVERNMENT, HOWARD JARVIS TAXPAYERS ASSOCIATION, AND PACIFIC LEGAL FOUNDATION** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

X BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Grass Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 25, 2015 at Grass Valley, California.

Ashley A. Lloyd

SERVICE LIST

Citizens for Fair REU Rates v. City of Redding
Third District Court of Appeal Case No. C071906
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