S185457

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Gov't Code § 6103

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF ALHAMBRA, et al.,

Plaintiffs and Appellants

v.

COUNTY OF LOS ANGELES, et al.,

Defendants and Respondents

REPLY IN SUPPORT OF PETITION FOR REVIEW

. Of a Published Decision of the Second District Court of Appeal

Reversing a Judgment Entered by the Superior Court of the State of California for the County of Los Angeles, Case No. BC116375
Honorable James Chalfant, Presiding
[By C.C.P. § 638 Reference to the Hon. Dzintra Janavs (Ret.)]

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INTRODUCTION

This is the lead case presenting an important question of law whose resolution will have a substantial impact upon literally every city and county in the State. A host of other cities and counties have tolled their respective claims while they await the outcome of this case.[1] All these other litigation shoes will drop, and financial chaos for counties will follow, unless this Court chooses to grant review now and to establish a uniform rule applicable to all cities and counties in the State.

On the fitness of the case for review, the plaintiff cities ("Cities") answer with a strawman. On the merits of the issue presented, the Cities avoid, rather than confront, the analysis. Because the Cities' discussion of the merits underscores the weakness of their position, we reply to that discussion first.

LEGAL DISCUSSION

A. The Cities' Answer Misstates The Issue Presented.

The Cities' Answer misstates both the issue presented and the County's legal position on it. The Cities objected to the County's recouping the actual costs (PTAF) associated with assessing and collecting additional property tax revenues allocated to the Cities under two new statutes, the Triple Flip and VLF Swap. They brought a mandate action under which they had the burden of establishing that the County had violated a plain legal duty. Recognizing that Revenue and Taxation Code section 95.3 allows such recoupment, the Cities argued that section 97.75 impliedly forbade PTAF recoupment as to tax shares allocated under the Triple Flip and VLF Swap. Thus, the issue is precisely as stated in the Petition:

> Does section 97.75 implicitly repeal section 95.3's requirement that each city is responsible for the pro rata share of PTAF associated with all property tax revenues it receives and, in effect, impliedly

[1] According to the September 3, 2010, submission of amicus California State Association of Counties ("CSAC"), there are tolling agreements in at least 15 counties. Truly, as CSAC sums it, "the eyes of the State are on this case."

give the cities' new tax shares the same PTAF exemption granted to schools expressly?

The issue is ***not*** the Cities' strawman: "Does section 97.75 explicitly authorize the County's recoupment practices?" Nor, as the Cities suggest, has the County — a defendant with no obligation to prove anything — bottomed its defense on such a contention. Indeed, the County's position is, has been, and always will be that, so long as one interprets both sentences of section 97.75 consistently and does not rewrite the statute to add terms the Legislature did not include, ***the County is entitled to prevail under any interpretation***. (See Pet. at pp. 12-14.) More specifically, the Petition established the following basic points with respect to section 97.75:

First, the undefined term "services" — upon which section 97.75 turns — is inherently ambiguous and subject to two possible (and equally defensible) interpretations. It could mean all services necessary to assess, collect and allocate the additional property shares now going to cities under the Triple Flip and VLF Swap (as the trial court concluded). Or, it could mean only the incremental new services required to account for the revenues allocated under those two new statutes (as the Court of Appeal concluded). As ***both*** courts firmly agreed, the term "services" cannot mean two different things.

Second, provided one applies the same definition of "services" throughout, section 97.75 would not forbid recoupment under either reading. To elaborate:

- If "services" includes all services necessary to assess, collect and allocate the cities' additional tax shares under the Triple Flip and VLF Swap, then section 97.75 would expressly authorize recoupment after 2005-06.
- If "services" means only the incremental new accounting services to allocate the additional tax shares to cities, then: (i) section 97.75 simply would establish the rules for recovery of the incremental new mandated County costs ("no" for the first two fiscal years, and "yes" thereafter);

(ii) only section 95.3 is relevant to recovery of the traditional costs, and would allow recoupment in all fiscal years.

Third, having expressly found that the statute deals ***only*** with incremental new "services," the Court of Appeal erred by implying into section 97.75 a prohibition on recovery of the traditional cost of tax administration for the additional property taxes allocated to cities under the Triple Flip and VLF Swap. The point is simple: If section 97.75 deals only with the rules for recouping the cost of incremental new services, it cannot, and does not, deal with cost recovery for other services falling outside the ambit of the statute.

Respectfully, the cities have misstated the issue and the County's legal position on it precisely because they have no cogent response to this straightforward analysis.

B. The Cities' Defenses Of The Flawed Decision Below Provide No Defense At All.

1. At Best, The Answer Offers a Different Incongruity.

The Answer offers no logic to support the indefensible; instead, it largely contents itself with offering favorable quotations from the Court of Appeal's Decision. To the extent the Answer strays near a merits theory, the best that can be said is it spins the illogic in a slightly different way than the Court of Appeal.

As established in the Petition, the Court of Appeal rewrote section 97.75 by reading unstated constraints into its opening phrase. In contrast, the Cities seem to read Section 97.75 "services" differently in the first and second sentences (Answer at p. 6 [beginning of § 97.75 directly affects availability of §95.3 recovery for traditional services] and p. 7, [second sentence of §97.75 permits only recovery of "marginal" services.].) In effect, the Cities have: (i) given two different meanings to the same term ("services") in a single statute; and (ii) for good measure, changed the second sentence from one permitting recovery of all actual costs embraced by the statute, to one that limits recovery to incremental costs. Fundamental rules of interpretation preclude such an interpretation, which even

the Court of Appeal rejected. (Decision at p. 12 [word "services" must be given same meaning throughout § 97.75].)

2. The County's Interpretation Creates Harmony, Not Surplus.

In part III of their Answer, the Cities observe that, if section 97.75 is read to control all tax administration costs, its second sentence duplicates the authority of section 95.3. (Answer at pp. 10-11.) Initially, if section 97.75 deals only with marginal services (as the Cities' urge elsewhere and the Court of Appeal held), the Cities' surplussage argument collapses. Indeed, to accept the premise that section 97.75 deals with incremental new services not covered by section 95.3 is to defeat all the Cities' remaining arguments, including this one, by confirming that the two statutes deal with different things. But, even reading the term "services" to include all the traditional services associated with assessing, collecting and allocating property taxes, there still would be sound reasons for having a second sentence that overlaps with authority created by section 95.3. (See Pet. at pp. 17-18.)

In short, there are good reasons for the second sentence of section 97.75 no matter how one reads the term "services" in section 97.75. To reiterate:

- By requiring counties to provide new tax allocation services, the Triple Flip and VLF Swap created a mandate for which reimbursement is constitutionally required. Section 97.75 provided such a recovery mechanism, and it did so within the same Article of the code in which the Triple Flip and VLF Swap reside.
- Unlike section 95.3 — which would have provided for costs associated with the Cities' additional tax shares to be spread out among all property tax recipients — section 97.75 ensured that cost recovery would come from benefiting cities alone.
- For whatever reason, section 97.75's cost recovery mechanism is expressly delayed two years. Signaling permission to begin recoupment upon expiration of a two-year prohibition hardly is "meaningless."

3. No Context Is Not A Context.

The Court of Appeal did not interpret section 97.75 in context with the rest of the statutory scheme — and, indeed, considered itself forbidden from doing so. (See Pet. at p. 14, fn. 18 [quoting Court].) The Cities do not expressly concede the error, but try to distance themselves from the issue. The Cities argue that the Court of Appeal ***did*** place section 97.75 "in its legislative context" — by supposedly concluding that the Legislature intended section 97.75 to "create an express exception to the earlier, more general rules" embodied in section 95.3. (Answer at p. 6.)

Of course, if the Legislature intended to create "an express exception" to section 95.3, the place to do so would have been in section 95.3's own exceptions. Yet, not only did the Legislature not write this supposed exception into section 95.3, it enacted an entirely new statute and placed it in an entirely different Article of the Code.[2]

In any event, the Cities' observation steers them again into the cul-de-sac of inconsistent meanings of "services." Simply, for the Legislature to have created an exception to section 95.3, it necessarily follows that sections 95.3 and 97.75 both must deal with the same "services" as to which costs may be recouped. Otherwise, the conclusion must be that the two sections embody two rules dealing with different subjects.[3]

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[2] The six property tax allocation Articles of Chapter 6 of the Revenue and Taxation Code progress from general to more specific topics. Section 95.3 is in Article 1, entitled "Definitions and Administration." Article 2 is "Basic Revenue Allocations." Article 3, including section 97.75 (with the Triple Flip and VLF Swap) concerns "Revenue Allocation Shifts For Education" reflecting the "Educational Revenue Allocation Fund" diversions and allocations. Article 4 supplements allocations to defined "low-tax" cities. Article 5, "Jurisdictional Changes and Negotiated Transfers" sets the rules when service boundaries change. Chapter 6 concludes with Article 6, "Miscellaneous Provisions."

[3] The Answer also attempts to lead this Court astray with inflammatory and unsupported factual assertions on matters such as (i) the circumstances

C. **Review By This Court Is Appropriate Now.**

In addition to their flawed merits arguments, the Cities offer two contentions as to why this Court should delay a seemingly inevitable review. Each argument is wrong.

First, in a variety of ways, the Cities offer the trite suggestion that anyone dissatisfied with section 97.75 can go to the Legislature for a remedy. (Answer at p. 15.) At the risk of stating the obvious, however, the true dissatisfied party in need of legislative intervention will be known only after this Court definitively interprets section 97.75.

Next, while the Cities effectively concede that the Petition presents an "important question of law," they urge this Court to wait until a different Court of Appeal gets it right and creates a conflict among appellate decisions. (Answer at pp. 2-3.)[4] But this Court needs no conflict to grant review. (See, e.g., *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 766 ["We granted review to address a significant issue of first impression"]; Cal. R. Court 8.500(b)(1) [review appropriate to "secure uniformity of decision ***or*** settle an important question of law"].) More to the point, the legal issue presented by this Petition is far too important for this Court to defer inevitable review.

Where, as here, the issue presented goes to the heart of governmental functioning, review would be wholly appropriate even in the best of times. But,

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surrounding preparation of the Uniform Guidelines developed to interpret the legislation in issue, and (ii) whether the Cities, in light of the recession, will continue to enjoy a greater revenue stream with the Triple Flip and VLF than they would have enjoyed without it. Because such matters are irrelevant to the issues before this Court, the County will reserve its refutation for merits briefing.

[4] The Cities' suggestion that there has been uniformity of decision so far (based on an uncitable trial court decision from Fresno and the Court of Appeal's decision below) is cynical, as it ignores the thoughtful contrary decision of the highly-experienced trial court in this case. Needless to say, dissonance only will grow in proportion to the number of lawsuits filed — and, unless this Court grants review now, a flood of lawsuits is inevitable.

delaying review will allow the interim impacts statewide will crash down upon state and local government in a time of great vulnerability. Further, this is not a case where an issue is confined to a handful of litigants or where an erroneous outcome will have no effect beyond the parties below. Rather, every city and county in the State is significantly impacted, and each needs a uniform rule that only this Court can provide.

Even if the Court of Appeal had correctly interpreted section 97.75, these considerations would cry out for review. But, for reasons explained above and in the Petition, the Court of Appeal has erred and, unless corrected now, that error will (i) create immediate financial hardship for every county in this State; and (ii) in the long run, harm everyone depending upon an adequately funded property tax administration system to generate revenues, including the Cities and the State.

CONCLUSION

The issues raised by this Petition present a dilemma of widespread public importance that impacts each city, each county, and the State.

Forty-seven cities, rationally consulting their own short-term self-interest, attacked the means by which property taxes come to fund schools and local government. Those cities' "gains" — if the Court of Appeals' rule of implied legislative intent stands — necessarily come at severe cost to the State, other local governments, and the cities themselves. It is not in anyone's long-term interest for this to happen. It is equally true that in the short-term, the new rule would have profoundly disruptive effects on California governments already deep in crisis.

Cities (and the Court of Appeal) say that blunders can always be corrected by the Legislature. True and irrelevant. Whether the Legislature, on the thinnest and most ambiguous evidence, intended a major policy aberration, remains a question for the courts — now this Court, on this Petition — to settle.

To achieve the statutory harmony and logical consistency this important question demands, we respectfully urge the Court to grant this Petition.

DATED: September 13, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

Scott D. Bertzyk
Attorneys For Petitioners

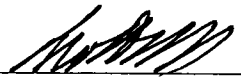
CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to Rule 8.504(d) of the California Rules of Court, that the enclosed brief was produced using 13-point type, including footnotes, and contains 2,328 words, which is less than the 4,200 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: September 13, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2450 Colorado Avenue, Suite 400E, Santa Monica, California 90404.

On September 13, 2010, I served the **REPLY IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Supreme Court of California (Original + 13 copies)
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Executed on September 13, 2010, at Santa Monica, California.

Vikki Barnette

VIKKI BARNETTE