

Case No. S150518

**IN THE
SUPREME COURT OF CALIFORNIA**

CALIFORNIA FARM BUREAU FEDERATION ET AL.,

Plaintiffs and Appellants,

v.

**CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
ET AL.,**

Defendants and Respondents.

**SUPREME COURT
FILED**

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Deputy

After A Decision By The Court Of Appeal,
Third Appellate District, Case No. C050289

Sacramento County Superior Court
The Honorable Raymond M. Cadei
Case No. 03CS01776 consolidated with Case No. 04CS00473

**SUPPLEMENTAL BRIEF OF CALIFORNIA FARM BUREAU
FEDERATION ET AL. REGARDING RECENT CALIFORNIA
SUPREME COURT AUTHORITY**

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INTRODUCTION

Pursuant to California Rules of Court, rule 8.520, subdivision (d), Plaintiffs-Appellants California Farm Bureau Federation et al. (“Farm Bureau”) respectfully file this supplemental brief to address this Court’s recent decision in *Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority* (July 14, 2008, S136468) __ Cal.4th __ [2008 WL 2717789] (“*Silicon Valley*”).

In *Silicon Valley*, this Court examined the legal standards applicable to a challenge brought under Proposition 218—issues that are directly “analogous” to those raised by the parties here under Proposition 13. (*Silicon Valley, supra*, __ Cal.4th __ [2008 WL 2717789, at *5].) Accordingly, *Silicon Valley* addresses two of the key issues presented in this case: (1) the standard of review for constitutional challenges, under both Propositions 13 and 218, to an agency’s quasi-legislative acts, and (2) the impact of the “proportionality” requirement of Propositions 13 and 218 on attempts to “reverse-engineer” the amount of fees by working backwards from an agency’s entire annual budget, without any consideration of the specific benefits received or burdens imposed by the fee payors.

DISCUSSION

1. Standard of Review.

Respondents have invoked the doctrine of separation of powers to argue that, in reviewing the constitutionality of the SWRCB's emergency regulations under Proposition 13, this Court must apply a "highly deferential standard." (Respondent's Br., p.29.) *Silicon Valley* expressly rejected this argument in the analogous context of Proposition 218. (See *Silicon Valley, supra*, __ Cal.4th __ [2008 WL 2717789, at *9] ["These substantive requirements [of Proposition 218] are contained in constitutional provisions of dignity at least equal to the constitutional separation of powers provision."].) In short, there no longer can be any dispute that "a more rigorous standard of review is warranted" under *both* Propositions 13 and 218—"courts should exercise their independent judgment" to review the decisions of a State or local agency "acting in a legislative capacity" because the agency "has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect." (*Id.* at *9-*11; see also *Apt. Ass'n of L.A. County v. City of L.A.* (2001) 24 Cal.4th 830, 837 [constitutionality under Proposition 218 is "a question of law for the appellate courts to decide on independent review of

the facts”]; *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874 [same standard under Proposition 13].)

2. Proportionality.

Like Proposition 218, Proposition 13 imposes a strict “proportionality” requirement on forced government exactions. (Compare Cal. Const., art. XIII D, § 4, subd. (a) [under Proposition 218: “No assessment shall be imposed on any parcel which *exceeds the reasonable cost of the proportional special benefit conferred* on that parcel”], italics added, with *Sinclair Paint, supra*, 15 Cal.4th at p.877 [under Proposition 13: Valid regulatory fees must not “*exceed the reasonable cost of providing services* necessary to the activity for which the fee is charged and [must not be] levied for unrelated revenue purposes.”], italics added.)

As the Farm Bureau has argued, Water Code section 1525 necessarily fails any “proportionality” test because the Legislature left the SWRCB with “the impossible task of attempting to legally impose all of the costs of the [water rights program] on one class of water right holders, while other classes of water right holders and the general public would get a free ride.” (Farm Bureau Op. Br., p.14.) The SWRCB itself has acknowledged this inequity. (See, e.g., *id.* at

pp.12-13.) Yet given its statutory mandate, the SWRCB simply took the entire proposed annual budget of its water rights program and “reverse-engineer[ed]” the ‘fees’ rather than setting them according to any analysis of the actual costs of the benefits received, or burdens imposed, by those water right holders.” (*Id.* at p.15.) As a result, annual fee payors now subsidize the benefits received and burdens created by the federal government, other water right holders who are exempt from paying fees, the general public, users of “one-time” services, and even other annual fee payors. (See *id.* at pp.16-23.)

In *Silicon Valley*, this Court unanimously rejected the same flawed “reverse-engineering” methodology that Respondents have employed here. The Santa Clara County Open Space Authority (“OSA”) imposed a \$20 per year “assessment” on 314,000 single-family homes to subsidize the cost of acquiring and maintaining open space lands. (*Silicon Valley, supra*, __ Cal.4th __ [2008 WL 2717789, at *2-*3].) The assessment was unconstitutional under Proposition 218 because the OSA had “fail[ed] to directly connect any proportionate costs of and benefits received from the [assessment] to the specific assessed properties.” (*Id.* at *17.) In striking down the assessment, this Court noted that “an assessment calculation that

works backward by starting with an amount taxpayers are likely to pay, and then determines an annual spending budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218.” (*Ibid.*, italics added.)

Moreover, this Court stressed that an “assessment” or “fee”—unlike a “tax”—must be designed to pay the costs of the benefits received or burdens created by the fee payor, “and not to fund an agency’s ongoing budget.” (*Silicon Valley, supra*, __ Cal.4th __ [2008 WL 2717789, at *16]; see also *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [under Proposition 13, “fees,” as opposed to “taxes,” “do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and . . . are not levied for unrelated revenue purposes”].) Thus, in *Silicon Valley*, the assessment was unconstitutional “largely because the special assessment is based on [the annual budget for the program] rather than on a calculation or estimation of the cost of the particular public improvement to be financed by the assessment.” (*Silicon Valley, supra*, __ Cal.4th __ [2008 WL 2717789, at *16].)

CONCLUSION

The Farm Bureau requests that Water Code section 1525 be de-

clared unconstitutional on its face and as applied, and that the BOE be ordered to issue refunds to all Farm Bureau members who paid the illegal "fees."

August 1, 2008

Respectfully submitted,



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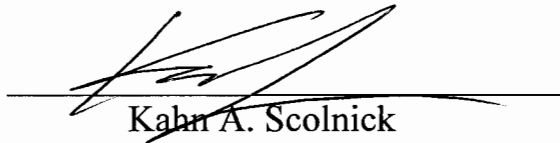
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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520, subdivision (c), of the California Rules of Court, the undersigned hereby certifies that the foregoing Supplemental Brief of California Farm Bureau Federation is in 14 point Times New Roman font and contains 1,030 words, exclusive of those items identified in subdivision (c)(3) of Rule 8.520, according to the word count generated by the computer program used to produce the brief.

August 1, 2008



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CERTIFICATE OF SERVICE

I, Mark Michael G. Zamora, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed by Gibson, Dunn & Crutcher, LLP and am currently assistant to Kahn A. Scolnick, a member of the bar of this Court, and at his direction, on **August 1, 2008** I served the within:

**SUPPLEMENTAL BRIEF OF
CALIFORNIA FARM BUREAU FEDERATION ET AL.
REGARDING RECENT
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