

COPY

No. H038971

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

SILICON VALLEY TAXPAYERS' ASSOCIATION;
OMAR D. CHATTY; and GREGORY COLADONATO
Petitioners/Appellants

Court of Appeal - Sixth App. Dist.
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v.

BARRY GARNER, REGISTRAR OF VOTERS OF THE COUNTY OF
SANTA CLARA; COUNTY OF SANTA CLARA, BOARD OF
SUPERVISORS OF THE COUNTY OF SANTA CLARA; GEORGE
SHIRAKAWA, in his capacity as President of the Board of Supervisors;
KEN YEAGER, in his capacity as Member of the Board of Supervisors;
DAVE CORTESE, in his capacity as Member of the Board of Supervisors;
LIZ KNISS, in her capacity as Member of the Board of Supervisors; and
DOES 1-10,
Respondents

ON APPEAL FROM THE SUPERIOR COURT FOR SANTA CLARA
(Santa Clara County Superior Court Case No. 1-12-CV-230732)
KEVIN E. MCKENNEY, JUDGE

**PROPOSED AMICUS CURIAE BRIEF OF SAN MATEO COUNTY,
CALIFORNIA STATE ASSOCIATION OF COUNTIES AND
LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF
RESPONDENTS COUNTY OF SANTA CLARA, ET AL.**

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INTRODUCTION/BACKGROUND FACTS

In August of 2012, the Santa Clara County Board of Supervisors voted to put Measure A, which proposed a one-eighth cent general sales tax, on the November 2012 ballot, and 56.61% of the Santa Clara County electorate voted to adopt it. (Resp. Request for Judicial Notice (“RJN”), Exh. P, at p. 130.) However, because all Santa Clara County supervisorial seats were filled at the June 2012 primary election, no runoff election for Board members at the regularly scheduled November 2012 supervisorial election was necessary.

Appellant Silicon Valley Taxpayers Association (“SVTA”) asserts that, under Proposition 218, Santa Clara County had no authority to place Measure A on the November 2012 ballot because there were no members of the Santa Clara County Board of Supervisors standing for election on the same ballot. However, as Respondents ably demonstrated in their brief, under statutory and case law, Measure A was properly on the ballot because the November 2012 election was, in fact, a “regularly scheduled general election for members of the governing body” within the meaning of Proposition 218 (notwithstanding that there was no run-off election in November). As established by Respondents, under Proposition 218, this term refers to the *type* of election at which a tax measure must be put to a vote of the electorate, rather than to whether there are Board members actually on the ballot.

Amicus Curiae agrees with and joins in the interpretation of Proposition 218 offered by Respondents and endorsed by the Superior Court based on the plain language of Proposition 218, which contains no requirement that members of the governing body actually be up for election or re-election on the same ballot as the proposed tax measure. In addition, and as discussed in this brief, there are compelling policy arguments supporting Respondents' position.

First, application of SVTA's interpretation of Proposition 218 would have significant negative effects on local government agencies and voters statewide, including San Mateo County. In many counties and cities, owing to their charters and local circumstances, there may not be elections in November in which even one member of the governing body - much less, two or more - is standing for election. Under the interpretation urged by SVTA, counties that do not need a run-off election in November could place general tax measures on the ballot only at the primary election held in the spring, at a time when there are typically many fewer voters participating. This would have the incongruous effect of limiting the involvement of the electorate in voting on such measures, in direct contradiction to the stated intent of Proposition 218.

In fact, in past election cycles, the voters of many cities and counties have approved general tax measures in November general elections even though no members of the governing body were running for election or re-

election on the same ballot. For example, in November of 2012 alone, there were ten California city or county general tax measures approved by voters in cases where there were no governing body members of those entities on the ballot for election or re-election. SVTA's interpretation of Proposition 218 would call into question the validity of each of these general taxes.

Similarly, if Proposition 218 is given the reading that SVTA suggests it should, San Mateo County's recent sales tax measure (also designated as Measure A), which was passed by a large majority of County voters this past November, would have been subject to challenge because there was only one supervisorial seat at issue on the November 2012 ballot and no incumbent was standing for re-election. In fact, between June of 1996 and November of 2012, only two elections for any seat on the San Mateo County Board of Supervisors were held in November (in 2010 and 2012) and each of those was for only one open seat; neither was for re-election of an incumbent.

Finally, if SVTA's interpretation of Proposition 218 is accepted, local government agencies would be divested of the ability to respond in a timely and flexible way to local fiscal conditions, in light of the budget processes of local agencies and the State. The need for a tax measure ordinarily comes to light during the formulation of a budget for the next fiscal year and generally not in time to place the measure on the spring

primary ballot prior to the regularly scheduled November general election. Therefore, if local government agencies are prohibited from placing general tax measures on the ballot in November, as SVTA's position would require in many cases, elections on such measures would be delayed for another year and a half, until the next regularly scheduled general election, leading to a possible reduction in vital services without affording voters the opportunity to decide between the reduction in services and increased taxes. Local governments need the flexibility in general election years to place a measure on the ballot in November after its budget needs are determined, even if it turns out that the members of the governing body are elected at the primary and there is no need for a runoff election, or if there are no seats on the governing body up for election.

ARGUMENT

I. LOCAL GOVERNMENT FLEXIBILITY TO PLACE TAX MEASURES ON THE BALLOT, AND VOTER RIGHTS TO VOTE ON THE NEED FOR SUCH MEASURES, WOULD BE IMPROPERLY CONSTRAINED UNDER THE SVTA INTERPRETATION OF PROPOSITION 218.

Under Proposition 218, local general taxes may only be proposed at a "regularly scheduled general election for members of the governing body of the local government..." (Cal. Const., art. XIII C, § 2, subd. (b).) As demonstrated by Respondents' Brief, a runoff election for County supervisors is "regularly scheduled" by law for November in even-numbered years and is a general election as defined by the Elections Code,

even if a November general election ballot does not actually include a runoff supervisorial race. (Elections Code sections 324, 348, 1000, 8140, 8141 and 8141.5.)(Respondents' Brief, pp. 8-12.)¹

Although most counties therefore regularly schedule runoff elections for members of their governing bodies at general elections in November of even years, following the spring primary of that same election year, depending on the local agencies' charters and circumstances, November runoffs are often unnecessary. In San Mateo County, for example, between March 1996 and November 2012, only two elections for a seat on the San Mateo County Board of Supervisors were held in November. (Appellant's Appendix ("AA"), Exhibit 14, pp. 390-396.) Each of these two elections was for one open supervisorial seat, with none of the candidates on either ballot being an incumbent. (AA, Exhibit 14, pp. 390-396.)

¹ The regularly scheduled general election for members of the San Mateo County Supervisors is set forth on the website for the County's Elections Office. For the Board of Supervisors' Second and Third District seats, regularly scheduled general elections are the gubernatorial primaries and the following November general elections (e.g. 2014, 2018, 2022) and for the First, Fourth and Fifth District seats the regularly scheduled general elections are the presidential primaries and following November general elections (e.g. 2012, 2016, 2020). (San Mateo County Elections website at <https://www.shapethefuture.org/elections/regscheduledelections.asp> ; see also, <https://www.shapethefuture.org/elections> and click on Guide to Calling Elections; See, Government Code sections 24202, 25000; Elections Code sections 8140, 8141 and 8141.5.)

By greatly limiting the opportunities for voters to vote on measures at the November general election, SVTA's proposed interpretation of Proposition 218 would often thwart the will of the voters by depriving local entities of the ability to ask the electorate to approve a general tax in order to avoid cuts in services. In fact, the voters in many local jurisdictions have, since the enactment of Proposition 218, approved general tax measures in November elections where no members of the local agency's governing body, incumbent or otherwise, were on the ballot for election or re-election. A decision endorsing SVTA's interpretation of Proposition 218 would call into question the validity of many local taxes and the practices of local government agencies throughout the state in scheduling elections for general taxes.

For example, in the November 2010 general election, twelve city and county general sales tax measures were approved by voters, and in two of those cities in which a measure passed, no city council member seat was on the same ballot: the City of South El Monte in Los Angeles County (Measure R) and the City of Novato in Marin County (Measure F).²

² RJN Exhibit N, p. 0085; CaliforniaCityFinance.com; Institute for Social Research report entitled *California City and School District Election Outcomes, 2010 Elections* at http://www.csus.edu/isr/reports/california_elections/2010.html, click on "City Reports", Table 2.1, pp. 68-69.

In addition, there were six other general tax measures approved by city voters in November of 2010 in which no city council members were on the ballot for that election. Specifically, there were two general utility user general tax measures: the City of Santa Fe Springs in Los Angeles County (Measure S) and the City of Newark in Alameda County (Measure U);³ one city transient occupancy tax measure: City of Riverside, County of Riverside (Measure V);⁴ and three general business license tax measures in two cities: City of Long Beach (Measure B) and the City of La Puente (Measures M, N).⁵ Recapping the November 2010 election results, eight general tax measures passed in cities where there were no City Council members on the ballot.⁶

³ RJN Exhibit N, p. 0084; Institute for Social Research report entitled *California City and School District Election Outcomes, 2010 Elections* at http://www.csus.edu/isr/reports/california_elections/2010.html, click on “City Reports”, Table 2.1, pp. 49, 68.

⁴ RJN Exhibit N, p. 0086; Institute for Social Research report entitled *California City and School District Election Outcomes, 2010 Elections* at http://www.csus.edu/isr/reports/california_elections/2010.html, click on “City Reports”, Table 2.1, at p. 87.

⁵ RJN Exhibit N, p. 0086; Institute for Social Research report entitled *California City and School District Election Outcomes, 2010 Elections* at http://www.csus.edu/isr/reports/california_elections/2010.html, click on “City Reports”, Table 2.1, at p. 67.

⁶ The Institute for Social Research report entitled *California County, City and School District Election Outcomes, 2010 Elections* can be found at: http://www.csus.edu/isr/reports/california_elections/2010.html, click on “City Reports”, pp. 47-120.

Similarly, in November 2012, (in addition to Santa Clara County's Measure A) there were six general add-on sales tax measures approved by voters in cities where no member of the city council was on the ballot for election or re-election.⁷ These six city general sales tax measures were approved by voters in Culver City (Measure Y),⁸ Carmel-by-the Sea (Measure D),⁹ Commerce (Measure AA),¹⁰ Nevada City (Measure L),¹¹ Fairfield (Measure P)¹² and La Mirada (Measure I).¹³

⁷ RJN Exhibit M, p. 0069; CaliforniaCityFinance.com.

⁸ See *Los Angeles County Election Results*, <http://rrcc.co.la.ca.us/elect/12110012/rr0012ma.html-ssi>, and click on "Cities" and then "Culver City"; <http://culvercity.org/en/Government/CityClerk/ElectionInformation.aspx>.

⁹ *County of Monterey Final Official Report*, <http://www.montereycountyelections.us/Election%20Result.htm>, and click on "Measure D"; <http://ci.carmel.ca.us/carmel/index.cfm/government/elected-officials/index.cfm>.

¹⁰ See *Los Angeles County Election Results*, <http://rrcc.co.la.ca.us/elect/12110012/rr0012ma.html-ssi>, and click on "Cities" and then "Commerce"; <http://www.ci.commerce.ca.us/index.aspx?nid=88>.

¹¹ See *County of Nevada Official Cumulative Report*, <http://www.mynevadacounty.com/nc/elections/docs/2012%20Elections/November%206%202012/Results/Cumulative%20Report.pdf>; <http://www.nevadacityca.gov/content/city-council-management-salaries>.

¹² See *Solano County Official Election Results*, <http://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=14432>, http://www.fairfield.ca.gov/gov////city_council/default.asp.

In addition to the seven local general sales tax measures (in six cities and the County of Santa Clara), there were also three other local general tax measures approved by voters in November of 2012 even though no member of the governing body was also up for election or re-election on that ballot, specifically, a general transient occupancy tax in Amador County (Measure Q);¹⁴ a general utility user tax in the City of Bellflower (Measure P);¹⁵ and a general business license tax in the City of Artesia (Measure M).¹⁶

There are also local jurisdictions that had general tax measures on the ballot in November 2012 with only a single member, and no incumbent member, of the local government agency's governing board on the same ballot. For example, San Mateo County's Measure A general sales tax

¹³ See *Los Angeles County Election Results*, <http://rrcc.co.la.ca.us/elect/12110012/rr0012ma.html-ssi>, and click on "Cities" and then "La Mirada"; <http://www.cityoflamirada.org/index.aspx?page=156>.

¹⁴ RJN Exh. M, p. 0070; *2012 General Election Results* - <http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentid=13105>.

¹⁵ RJN Exh. M, p. 0071; *Los Angeles County Election Results*, <http://rrcc.co.la.ca.us/elect/12110012/rr0012ma.html-ssi>, and click on "Cities" and then "Bellflower"; <https://www.bellflower.org/home/index.asp?page=233>.

¹⁶ RJN Exh. M, p. 0071; *Los Angeles County Election Results*, <http://rrcc.co.la.ca.us/elect/12110012/rr0012ma.html-ssi>, and click on "Cities" and then "Artesia"; http://www.cityofartesia.us/election_results.html.

measure, also on the ballot this past November, was approved overwhelmingly by 65.4% of the voters. However, under the literal reading of Proposition 218 that SVTA advances, there must be incumbent “members” (*plural*) of the County Board of Supervisors on the same ballot. Therefore, this tax measure would also be open to challenge, along with the other sales tax measures and other general tax measures noted herein because, as is often the case, there was only one seat up for election (and no incumbent member of the Board of Supervisors standing for re-election) in November 2012. (AA, Exhibit 14, pp. 390-396.)

SVTA’s interpretation of Proposition 218 would have thwarted the will of the voters in all of these cities and counties and potentially forced cuts in essential services without allowing the voters a choice in the matter as promised by Proposition 218 text and ballot arguments.

II. DUE TO THE TIMING OF THE LOCAL BUDGET PROCESS, LOCAL AGENCIES STATEWIDE NEED THE FLEXIBILITY TO CONSOLIDATE MEASURES WITH ANY REGULARLY SCHEDULED GENERAL ELECTION FOR GOVERNING BOARD MEMBERS, WHETHER OR NOT A RUNOFF IS NECESSARY.

California law requires that counties adopt a balanced budget each fiscal year, running from July 1 to June 30 of each year. (Government Code section 29001, *et seq.*) The recommended budget is due to the Board of Supervisors for adoption during June of each year for the next fiscal year. (Government Code sections 29040, 29062.) Thus, local governments

typically gather information to determine the need for a tax measure to cover services for the next fiscal year until, at the earliest, each May or June after their annual budgets for the next fiscal year are determined.

However, for a June primary ballot, the California Elections Code sets deadlines in March for placing a local measure on the ballot, as such measures must be consolidated 88 days before a June primary, with many mandatory deadlines in March prior to a June primary election, and even earlier for February or March primaries. (See, e.g. California Elections Code Sections 1405, 10002, 10403, 12001.) The deadlines for submission of a local measure for the November general election ballot, however, are in August rather than in March. (Id.) The alternative to a tax measure is not simply “no tax”; rather the alternative to a tax measure is a cut in essential or desirable governmental services. The voters’ intent in approving Proposition 218 was to increase the opportunities for voters to decide whether or not a local tax measure should be enacted, not to constrain such opportunities for such voter input when the voters recognize the need for a measure. (See, ballot arguments in favor of Proposition 218, at AA, pp. 371-372.)

For example, San Mateo County’s Measure A, which as noted was approved by the voters by a 65% majority in November 2012, was proposed after the County held its annual budget hearings for fiscal year 2013-2014, when it was determined that the County faced a budget shortfall

which could result in cuts to essential County services and programs, absent additional revenue.

The recitals contained in the full text of San Mateo County's Measure A stated that without the additional revenue proposed by the Measure A sales tax increase, "the County of San Mateo will be hampered in providing ... essential County services". The ballot measure further recited that "...the County of San Mateo continues to face increased demand for, and expenses in providing, essential County services and facilities that its residents rely on, such as maintaining child abuse protection programs, maintaining 911 dispatch services, maintaining healthcare for low income children, seniors and disabled, maintaining fire protection and response", and many other services as listed in the ballot measure.¹⁷

In order to avoid such cuts, the County placed the one half cent tax measure on the November 2012 ballot to allow voters to decide whether the tax was necessary or desirable to avoid such cuts. (Revenue and Taxation Code Sections 7285 and 7251, et seq.)

In short, the interpretation proposed by SVTA would have the undesirable effect of requiring local agencies to move forward with placing measures on the ballot for a primary election even before all of the

information is available to determine whether or not additional general tax revenue is needed.

III. ALLOWING ELECTIONS FOR GENERAL TAX MEASURES IS MOST CONSISTENT WITH THE INTENT OF PROPOSITION 218 BECAUSE THERE IS SIGNIFICANTLY HIGHER VOTER TURNOUT IN NOVEMBER GENERAL ELECTIONS THAN IN PRIMARY ELECTIONS.

Interpreting Proposition 218 to limit the ability of local governments to place general tax measures on November ballots in only those elections where there are actually candidates for governing board members would regularly result in many voters not weighing in on tax proposals because, while November runoffs for county supervisor seats are often unnecessary or there is no open city council seat, voter turn-out is generally *significantly higher* in November elections than in the primaries held in March or June, given the other offices and matters on the November ballot. Thus, November elections provide a better opportunity for more voters to weigh in on tax measures.

As previously noted, for example, from June 1998 through November 2010 in San Mateo County, the November elections always had significantly higher voter turn-out than the primary election in the same year, ranging from 21% to 70.1 % higher. (AA, Exh. 14, p. 394.) This holds true statewide, as well. From June 1996 to November 2012, a

¹⁷ <https://www.shapethefuture.org/elections/2012/nov>

significantly higher percentage of registered voters turned out state-wide to vote in November than did in the spring primary, as illustrated in the table below.¹⁸

CALIFORNIA STATEWIDE VOTER TURNOUT¹⁹

P or G	Date of Election	Total Registered Voters	Total Votes	Turnout % of Registered Voters
P	June 2, 1998	14,605,677	6,206,618	42.49%
G	Nov. 3, 1998	14,969,185	8,621,121	57.59%
P	March 7, 2000	14,631,805	7,883,385	53.88%
G	Nov. 7, 2000	15,707,307	11,142,843	70.94%
P	March 5, 2002	15,280,808	5,286,204	34.59%
G	Nov. 5, 2002	15,303,469	7,738,821	50.57%
P	March 2, 2004	15,091,160	6,684,421	44.29%
G	Nov. 2, 2004	16,557,273	12,589,683	76.04%

¹⁸ Statement of the Vote, June 5, 2012 Presidential Primary Election, California Secretary of State, p 5;
<http://www.sos.ca.gov/elections/sov/2012-primary/pdf/2012-complete-sov.pdf>; Statement of the Vote, November 6, 2012 General Election, California Secretary of State, pp. 4 – 5;
<http://www.sos.ca.gov/elections/sov/2012-general/sov-complete.pdf>.

¹⁹ Chart compiled by Amicus from data from: Statement of the Vote, June 5, 2012 Presidential Primary Election, California Secretary of State, p 5;
<http://www.sos.ca.gov/elections/sov/2012-primary/pdf/2012-complete-sov.pdf>; Statement of the Vote, November 6, 2012 General Election, California Secretary of State, pp. 4 – 5;
<http://www.sos.ca.gov/elections/sov/2012-general/sov-complete.pdf>.

P or G	Date of Election	Total Registered Voters	Total Votes	Turnout % of Registered Voters
P	June 6, 2006	15,668,439	5,269,142	33.63%
G	Nov. 7, 2006	15,837,108	8,899,059	56.19%
P	Feb. 5, 2008	15,712,753	9,068,415	57.71%
G	Nov. 4, 2008	17,304,091	13,743,177	79.42%
P	June 8, 2010	16,977,031	5,654,993	33.31%
G	Nov. 2, 2010	17,285,883	10,300,392	59.59%
P	June 5, 2012	17,153,899	5,328,296	31.06%
G	Nov. 6, 2012	18,245,970	13,202,158	72.36%

P = Primary, G = General Election

As acknowledged by SVTA and as evidenced by the ballot

arguments in favor of Proposition 218, the intent of the voters in enacting Proposition 218 (“The Right to Vote on Tax Initiatives”) was to “*enhanc[e] voter consent*” for local tax measures, and to constitutionally guarantee voters their rights to vote on taxes. (Appellant’s Opening Brief (AOB), at p. 21.)(See, ballot arguments in favor of Proposition 218, at AA, pp. 371-372.)

Interpreting Proposition 218 to require local governments to place general tax measures before the voters only at regularly scheduled general elections when there is actually a member of the local government agency governing body on the ballot will result in fewer elections on general tax

measures taking place in November, thereby anomalously resulting in *less*, rather than more, voter input regarding general taxes, contrary to the express intent of Proposition 218.


CONCLUSION

For all of the foregoing reasons, and for all of the reasons set forth in the Respondents' Brief, this Court should affirm the ruling of the Santa Clara Superior Court denying the writ petition, uphold the voters' approval of Measure A and reject Appellant's interpretation of Proposition 218.

Dated: March 14, 2013

Respectfully submitted,

JOHN C. BEIERS, COUNTY COUNSEL

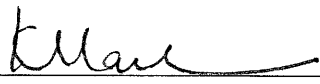
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**BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204(c)
OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204(c) of the California Rules of Court I certify
that **PROPOSED AMICUS CURIAE BRIEF OF SAN MATEO
COUNTY, CALIFORNIA STATE ASSOCIATION OF COUNTIES
AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF
RESPONDENTS COUNTY OF SANTA CLARA, ET AL.** is
proportionately spaced, has a typeface of 13 points or more and contains
3,352 words.

Dated: March 14, 2013



Kimberly A. Marlow

PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of San Mateo, over 18 years old and that my business address is 400 County Center, Redwood City, California. I am not a party to the within action.

On March 14, 2013, I served the following document(s):

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF RESPONDENTS COUNTY OF SANTA CLARA,
ET AL.**

on all other parties to this action by placing a true copy of said document(s) in a sealed envelope in the following manner:

(BY U.S. MAIL) by placing a true copy of said document(s) in a sealed envelope(s) addressed as shown below for collection and mailing at Redwood City, California following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


KRISTA LYSSAND

Silicon Taxpayers Association, et al. v. Barry Garner, et al. – H038971

**NAME AND ADDRESS OF EACH PERSON TO WHOM SERVICE
WAS MADE**

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