# *ROLLAND JACKS & ROVE ENTERPRISES v. CITY OF SANTA BARBARA*

S225589

Supreme Court of California

April 6, 2015

**Reporter**
2015 CA S. Ct. Briefs LEXIS 943

ROLLAND JACKS and ROVE ENTERPRISES, INC., Plaintiffs and Appellants vs. CITY OF SANTA BARBARA, Defendant and Respondent.

**Type:** Petition for Appeal

**Prior History:** Of a Published Decision of the Second Appellate District, Division Six, Case No. B253474. Reversing a Judgment of the Superior Court of the State of California for the County of Santa Barbara, Case No. 1383959. Honorable Thomas P. Anderle, Judge Presiding.

## Counsel

**[*1]** ARIEL PIERRE CALONNE, City Attorney (110268), TOM R. SHAPIRO, Asst. City Attorney (127383), CITY OF SANTA BARBARA, Santa Barbara, CA, MICHAEL G. COLANTUONO (143551), *RYAN THOMAS DUNN (268106), LEONARD P. ASLANIAN (278327), COLANTUONO, HIGHSMITH & WHATLEY, PC, Los Angeles, California, Attorneys for Petitioner City of Santa Barbara.

## Title

Petition for Review

## Text

**To the Honorable Chief Justice of the State of California and Associate Justices of the California Supreme Court:**

The City of Santa Barbara respectfully petitions for review of a published opinion of the Court of Appeal.

**QUESTIONS FOR REVIEW**

**INTRODUCTION**

Franchise agreements have long been held to be matters of contract between investor-owned entities and municipalities that own rights of way in which they operate. Franchises and franchise fees are expressly authorized by our Constitution and excluded from its definition of the ″taxes″ which require voter approval. The Court of Appeal's opinion below (″the Opinion″) undermines this understanding of settled law - and all municipal franchise agreements.

No court previously suggested a franchise fee is a tax requiring voter approval under 1978's Proposition **[*3]** 13, 1986's Proposition 62, 1996's Proposition 218 or 2010's Proposition 26. Few, if any, franchise agreements are limited to the cost of public services to franchisees or their customers, yet the Opinion newly imposes that limit, citing this Court's decision applying Proposition 13 to regulatory fees in *Sinclair Paint Co. v. State Board of Equalization (1997) 15 Cal.4th 866*

(″*Sinclair Paint*″). Thus, the Opinion reads Propositions 13 and 26 to impliedly repeal or to narrow article XI, section 9, subdivision (b) [7] and article XII, section 8 [8] without citing those provisions.

The Opinion also suggests that, instead of analyzing a revenue measure's **legal** incidence - on whom legislation imposes the duty to pay - courts may examine its **economic** incidence **[*4]** - who bears that duty in light of the relative market power of the parties to a given transaction. This conflicts with precedent and invites challenge to every revenue measure assessed on payors who have market power to impose it on others.

These conclusions undermine a vital municipal revenue source, fail to harmonize our Constitution's provisions, and muddle the law of public revenues. This Court should grant review. [9]
**[*5]**

## STATEMENT OF FACTS

### I. THE HISTORY AND IMPORTANCE OF FRANCHISE FEES

#### A. Case Law Has Long Afforded Chartered Cities Broad Authority to Set Franchise Terms

Cities and counties have had authority to charge utilities for the privilege of using public resources for the provision of electricity, water, telephone services, gas, and other utilities since the formation of our State. Article XI, section 19 of the 1879 Constitution, as amended in 1884, granted private utilities the right to use municipal rights of way to provide water and light It partly - and temporarily - displaced the local authority to grant franchises now conferred by its present-day successor in article XI, section 9, subdivision (b) and by article XII, section 8. (See *City of Santa Cruz v. Pacific Gas & Elec. Co. (2000) 82 Cal.App.4th 1167, 1171* (*Santa Cruz*).) [10] Because electric franchises under that Constitutional provision were limited to the provision of ″light,″ utilities negotiated ″complementary″ franchises which required payment of a fee to use those rights of way to provide gas or electricity for other purposes. (*Ibid*.) Progressive-era amendments to the Constitution **[*6]** repealed this ″constitutional franchise″ in 1911. (*Id. at p. 1172.)* A further amendment in 1914 shifted to the Public Utilities Commission most power to regulate investor-owned utilities' rates, but the local franchising power remained. (Grodin, et al., The California State Constitution: A Reference Guide (1993) p. 210.)

Even before the 1911 and 1914 amendments to our Constitution, the Legislature enacted the Broughton Act of 1905 to restore municipal power to grant franchises, but required bidding and limited fees to a percentage of receipts from the use of the franchise. (Pub. Util. Code, § 6001 et seq.; see *Santa Cruz, supra, 82 Cal.App.4th at p. 1172.)* The Broughton Act proved difficult to implement and was therefore supplemented by the 1937 Franchise Act, which eliminated the bidding requirement (Pub. Util. Code, § **[*7]** 6201 et seq.) and set the rate at 2 percent of the franchisee's receipts from use of the franchise or 1 percent of gross annual receipts from sales within the franchising municipality. (Pub. Util. Code, § 6231, subd. (c)). Chartered cities, of course, have direct constitutional authority, but are also authorized to implement these two statutes unless their charters provide otherwise. (Pub. Util. Code, §§ 6001, 6205; see *Southern Pacific Pipe Lines, Inc. v. City of Long Beach (1988) 204 Cal.App.3d 660, 669-670* [general law allows chartered cities to adopt home-rule franchise

---

[7] Article XI, section 9 is quoted at page 33 *infra*. Unspecified references in this Petition to articles and sections of articles are to the California Constitution.

[8] This provision is quoted at pages 33-34 *infra*.

[9] It may also be appropriate for this Court to grant review pursuant to California Rules of Court, rule 8.512, subdivision (d) and defer briefing pending decision of *Citizens for Fair REU Rates v. City of Redding (Redding)*, Case No. S224779, should this Court grant review there. *Redding* applies Proposition 26 to Redding's electricity utility and that city's practice of transferring proceeds of electric rates to its general fund as payments in lieu of property taxes the utility would pay if it were investor-owned. Grant and hold might also be appropriate with respect to a pending case on taxpayer standing under Code of Civil Procedure section 526a. (*Wheatherford v. City of San Rafael*, review granted Sept. 10, 2014, S219567.) *Wheatherford* also involves the distinction between the legal and economic incidence of local taxes.

[10] A useful history of these provisions appears at Grodin, et al., The California State Constitution: A Reference Guide (1993) pp. 194-197 and 209-210.

regulations or to issue franchises under either Broughton or 1937 Franchise Acts].) As article XI, section 9, subdivision (b) and article XII, section 8 require, the Legislature has carefully preserved local autonomy as to franchises to ensure vital funding for local services. (E.g., Pub. Util. Code, § 6350 et seq. [imposing surcharge on utilities operating in city rights of way to replace franchise fees otherwise lost to changes in the regulatory environment such as ″unbundling of the gas industry″].)

Franchise fees are typically negotiated between a city and the would-be franchisee and **[*8]** approved by ordinance - a legislative act subject to referendum. (See Cal. Municipal Law Handbook (Cont.Ed.Bar 2014) § 6.62; *County of Kern v. Pacific Gas & Electric Co. (1980) 108 Cal.App.3d 418, 421* [companies ″awarded gas franchises through county ordinances, which were adopted by the County of Kern″ and affirming ordinances' validity]; cf. Pub. Util. Code, § 6001.5 [preempting ″**the ordinance** of any chartered municipality insofar as **that ordinance** governs the granting of franchises to construct [oil pipeline] facilities...″ emphases added].) The 1937 Franchise Act authorizes local franchise awards for any term of years (Pub. Util. Code, § 6264) and cities have long had discretion on that and many other franchise provisions. (See *Contra Costa County v. American Toll Bridge Co. (1937) 10 Cal.2d 359, 363* [″the public body making the grant can prescribe terms and conditions in the granting and for the acceptance of a franchise″ including fees]; *People ex rel. Spiers v. Lawley (1911) 17 Cal.App. 331, 346-347* [franchise agreement construed as any writing]; *Santa Barbara County Taxpayer Assn. v. Board of Supervisors (1989) 209 Cal.App.3d 940, 949* **[*9]** (*Santa Barbara County Taxpayer Assn.*) [franchise fees not ″proceeds of taxation″ subject to Gann Limit of article XIII B (November 1979's Proposition 9): ″*A* franchise is a negotiated contract between a private enterprise and a governmental entity for the long-term possession of land.″].)

**B. Franchise Fees Are a Significant Portion of Statewide Municipal Revenues**

Franchise fees make up a significant percentage of municipal revenues, and defining franchise fees as taxes requiring voter approval would result in significant revenue losses for many cities. According to data gathered by the State Controller, California cities derived $ 1,015 **billion** in franchise fees in fiscal year (FY) 2011-2012, the last year for which data are available. (Motion for Judicial Notice (″MJN″), Exh. A at p. MJN00014.) This averages $ 61.40 per capita. (*Id.* at p. MJN00039.)

Cities' receipts vary greatly from the average, of course. The median city received 5.8 percent of its general fund revenues from franchise fees in FY 2011-2012. (MJN, Exh. A at p. MJN00064.) Many cities relied much more heavily on this source, including:

- Hemet - 41.7% of general fund revenues
- **[*10]** Needles - 29.7%
- Jurupa Valley - 26.2%
- Lodi - 26.0%
- Azusa - 20.0%
- Arvin - 19.3%
- Pittsburg - 19.1%
- Monte Sereno - 17.9%
- Adelanto - 17.4%
- Fort Bragg - 16.8%

(MJN, Exh. A at pp. MJN00064-MJN00076.)

Santa Barbara relies on franchise fees for 4.4 percent of its general revenues - almost $ 3.7 million in FY 2011-2012. (MJN, Exh. A at pp. MJN00024, MJN00074.)

## II. THE 1989 PUC RULING ON UTILITIES' RECOUPMENT OF FRANCHISE FEES

As the Opinion acknowledges, the Public Utilities Commission (PUC) requires investor-owned utilities subject to its regulation to distinguish some franchise fees from others. (Opinion, p. 3.) PUC Decision 89-05-063 (″the 1989 Decision″) acknowledged the impact of Proposition 13 on municipal property tax receipts. (AA2:415-448. [11]) It noted that, since Proposition 13, many cities had relied upon other charges - including utility user taxes (″UUT″), business license taxes, and transient occupancy (or hotel bed) taxes - to replace property taxes. (AA2:420.) The 1989 Decision noted that utilities were then recouping franchise fees from service fees on all customers in a utility service area which **[*11]** included the franchise - not just customers in the city which granted the franchise. (AA2:421.) This was perceived as unfair and the PUC therefore initiated the rulemaking which produced the 1989 Decision. (AA2:422.)

The 1989 Decision discusses many charges utilities pay municipalities - including utility user taxes, franchise fees, business license taxes, fees for permits to excavate in rights of way, parking and business improvement district assessments, natural gas storage fees, special taxes, property taxes, and other real-property and business assessments. (AA2:423-431, AA2:445-446 at PP 1(a)-1(d).) The PUC categorized these fees into classes which serve its regulatory purposes; it did not purport to determine the legal character of revenue measures or to interfere with the home rule power of a chartered city like Santa Barbara under article XI, sections. In particular, the PUC was concerned with revenue measures **[*12]** which could result in a ″significantly higher level of costs″ for customers outside the municipality which legislates a measure. (AA2:436.) Accordingly, the 1989 Decision distinguishes utility user taxes from other revenues a utility pays a city, because utility user taxes ″are merely collected for the governmental entity by the utility″ - i.e., the utility collects and remits the fee but does not pay it because it bears neither the legal nor the economic incidence of the tax. (AA2:438.)

Given its authority to regulate rates to protect consumers from utilities' monopoly pricing power, the PUC is necessarily concerned with the economic incidence of local revenue measures affecting regulated utilities. For the PUC's rate regulation, who ultimately pays a fee or charge matters. However, economic incidence is not a tool used by courts, for the reasons elaborated below. By ignoring case law's focus on legal rather than economic incidence of revenue measures, the Opinion allows PUC regulation of utility rate-making to infringe the home rule power of chartered cities to grant franchises, overlooking that the PUC and chartered cities are legislative equals as to the areas within their respective **[*13]** reaches.

Thus, it is the PUC's policy under the 1989 Decision to require a utility to state a line item on bills of ratepayers within the jurisdiction assessing a charge, fee, or tax that exceeds comparable revenue measures charged by other local governments. (AA2:444 at P 16, AA2:446 at P 3.) As chartered cities - but not general law cities and counties - have constitutional power to exceed the revenue limits of the 1937 Franchise Act, the 1989 Decision has particular implications for chartered cities' franchise fees.

The 1989 Decision requires utilities subject to charges - other than a utility users tax - which a utility or the PUC views as more than charged by other local governments - to seek an advice letter of the PUC. (AA2:445-447.) The PUC makes no distinction among taxes, fees, charges, assessments, or any other levies; it merely requires utilities seek advice letters for:

> Franchise, general business license, or special taxes and/or fees upon the public utility **which in the aggregate significantly exceed the average aggregate of taxes or fees imposed by the other local governmental entities** within the public utility's service territory.

(AA2:445-446 at **[*14]** P 1(a), emphasis added.) Thus, whether a local jurisdiction assesses a tax as defined in Proposition 218 and 26 or a fee exempt from voter-approval requirements, the PUC requires utilities to list separately on utility bills charges exceeding the average of local charges in the utility's service area. The 1989 Decision thus identifies revenue measures it views to exceed the average in a service area; it does not purport to determine the legal character of measures. Nor could it. The power of a chartered city to impose taxes, assessments and fees and charges of various types assured it by article XI, section 5 (home rule power of chartered cities) and section 7 (police power of all cities and counties). It is

---

[11] Citations to the Appellant's Appendix are in the form: AA[Volume]: [page number(s)].

not for the PUC to circumscribe that constitutional authority.

## III. SANTA BARBARA'S FRANCHISE FEE

Southern California Edison ("SCE") has held a franchise to use Santa Barbara's rights of way to distribute electricity in the City since at least 1959. [12] (AA2:387-392.) The 1959 franchise agreement expired in 1984. (AA2:389 at § 2.) The City and SCE negotiated a new franchise agreement expiring in 1994. (AA2:394-401.) This agreement, consistently with the 1937 Franchise **[*15]** Act, required compensation of 2 percent "of the annual gross receipts of [SCE] arising from the use, operation or possession" of the franchise, but "in no event" less than 1 percent "of the annual gross receipts derived by [SCE] from the sale of electricity" within the City. (AA2:396 at § 4; see Pub. Util. Code, § 6231, subd. (c); *County of Alameda v. Pacific Gas & Electric Co. (1997) 51 Cal.App.4th 1691, 1696.* [13]) When the franchise expired again in 1994, the parties agreed to five short extensions through December 1999 to negotiate a new, long-term agreement. (AA2:344 at PP 6-7.)
**[*16]**

In these negotiations, the City sought to increase the franchise fee from 1 to 2 percent of SCE's gross revenues in the City. (AA2:345 at P 8.) SCE agreed, but only if it could recoup that cost from customers. (AA2:345 at P 9.) Under the 1989 Decision, that required PUC approval and that SCE separately state the 1 percent increase on customers' bills. (*Ibid.*) Based in part on SCE's assurance it would pursue PUC consent to the increase, the parties agreed to a 30-year franchise agreement on December 7, 1999. (AA2:403-413.) Under that agreement, if SCE failed to pay the 2 percent franchise fee - either because the PUC refused to approve it or SCE failed to seek that approval - the City could terminate the franchise. (AA2:407 at § 6(E).) Indeed, if the **[*17]** Opinion stands, it will be sensible for the City to do so.

SCE did not immediately pursue PUC approval of the 1 percent increment given turmoil in the electricity market following California's famously failed experiment with energy deregulation. (AA2:348 at P 17.) The franchise agreement required SCE to pay only the base 1 percent until the PUC approved the 1 percent increment. (AA2:406 at §§ 6(A), 6(C).) In November 2004, when energy markets stabilized, the City Council authorized a letter to SCE instructing it to seek PUC approval to recoup the 1 percent increment from customers. (AA2:348 at PP 18-19.) SCE did so on March 30, 2005 (AA2:468-471), and the PUC gave its approval April 20, 2005 (AA2:479). SCE has paid at the 2 percent rate since and - as the 1989 Decision requires - identified the 1 percent increment on customers' bills. (AA2:350 at P 23.)

## PROCEDURAL HISTORY

## I. THE TRIAL COURT FOUND THE SURCHARGE TO BE A TAX, BUT GRANDFATHERED BY PROPOSITION 26

Thirteen years after the City and SCE agreed on the current franchise, and seven and a half years after SCE began remitting 2 percent, Plaintiffs and Appellants Rolland Jacks and Rove Enterprises, Inc. (collectively, **[*18]** "Jacks") sued.

Jacks filed a First Amended Complaint ("FAC") on September 12, 2012. (AA1:063-080.) The FAC alleges the 1 percent increment in the franchise fee is a tax and unlawful because voters did not approve it. (AA1:076-077.)

The parties brought cross-motions for summary adjudication (and in the City's case, summary judgment) based primarily on stipulated facts. (AA2:343-351.) Jacks sought summary adjudication of liability. (AA1:081-084.) The City sought

---

[12] Jacks argued below that SCE held a constitutional franchise and the City could therefore charge no more than 1 percent of SCE's gross revenues derived from the sale of electricity. The trial court ruled Jacks presented insufficient evidence to prove the claim. (AA3:608-610.) The court also ruled that, as a chartered city, Santa Barbara is not limited to the rates authorized by the Broughton Act and the 1937 Franchise Act. (AA3:609-610.) Jacks does not challenge these rulings on appeal and the Opinion therefore does not address them.

[13] The 1937 Franchise Act led many cities to adopt the 2 percent / 1 percent language, but the 1 percent formula generally results in higher fees. (See County of Alameda v. Pacific Gas & Electric Co. (1997) 51 Cal.App.4th 1691, 1696.) As such, most utilities have paid franchise fees at the same rate for nearly 80 years.

summary judgment arguing, inter alia, that the parties to the franchise agreement intended the 1 percent increment to compensate the City for SCE's use of rights of way and that such franchise fees are not taxes. (AA3:500-527.)

The trial court denied both motions, but held that the 1 percent increment was not a tax under Proposition 218's article XIII C, section 2 but consideration for the franchise. (AA3:617.) However, the trial court did find the 1 percent increment to fall within Proposition 26's definition of ″tax,″ rejecting the City's argument from article XIII C, section 1, subdivision (e)(4)'s exemption from that definition for ″[a] charge imposed for entrance to or use of local government property ....″ (AA3:617-620.) **[*19]** The trial court noted the parties had not briefed retroactive application of Proposition 26 to the 1 percent increment. (AA3:620.)

Recognizing the implicit invitation to do so, the City moved for judgment on the pleadings, arguing Proposition 26 is not retroactive and could not apply to a franchise fee agreed in 1999 - 11 years before adoption of Proposition 26 in November 2010. (AA3:622-628.) The trial court agreed and granted the motion. (AA1:16-20.) Judgment for the City entered on October 25, 2013, and Jacks timely appealed. (AA1:2-21, AA3:784-787.)

## II. THE COURT OF APPEAL REVERSES, FINDING THE I PERCENT INCREMENT ″AN ILLEGAL TAX MASQUERADING AS A FRANCHISE FEE″

Division Six of the Second District heard argument and submitted the matter on December 10, 2014. On January 26, 2015, the DCA requested supplemental letter briefs addressing the Third District's January 20, 2015 decision in *Citizens for Fair REU Rates v. City of Redding*, from which a petition for review is also pending. [14] On February 26, 2015, the DCA issued its opinion (″the Opinion″), reversing the trial court and instructing it to grant summary adjudication to Jacks. **[*20]**

The Opinion characterizes the 1 percent increment as ″an illegal tax masquerading as a franchise fee.″ (Opinion, p. 1, citing *In re Estate of Claeyssens (2008) 161 Cal.App.4th 465, 467* [probate court fee based on value of estate that succeeded estate tax repealed by voters was tax ″masquerading″ as a fee].) The Opinion distinguishes the case law upholding franchise fees summarized above, including its own decision in *Santa Barbara County Taxpayer Assn*. finding Santa Barbara County's franchise fee not to be a tax within the reach of the Gann Limit, article XIII B. The Opinion concludes those cases concerned ″traditional franchise fees collected for grants of rights of way rather than, as here, a surcharge collected for general revenue purposes.″ (Opinion, p. 1.) This is a distinction without a difference - all franchise fees are collected for ″general revenue purposes.″ [15]

The Opinion relies on the ″primary purpose″ test this Court established in *Sinclair* **[*21]** *Paint* to distinguish permissible regulatory fees from those made taxes by Proposition 13 and its implementing statute, Government Code section 50076. The Opinion concludes that - because the 1999 franchise agreement distinguished the earlier 1 percent franchise fee from the 1 percent increment and because the 1989 Decision requires the latter to be listed separately on SCE's bills - the increment was not part of the franchise fee, but a tax. (Opinion, pp. 6-9.) The Opinion emphasizes the 1999 agreement states revenues from the 1 percent increment would be ″for use by the City Council for general City governmental purposes″ (*id*. at p. 7) but overlooks that the earlier franchise fee and the first 1 percent of the current franchise fee are also used for those purposes - as are all franchise fees. Thus, rather than discern the legal incidence of the franchise fee by applying the usual rules of statutory construction to the franchise agreement, the Opinion accepts Jacks' argument as to the economic incidence of the 1 percent increment. In so doing, it undermines all franchise fees - whether on electric utilities under chartered city authority or the franchise acts or on other profit-making **[*22]** beneficiaries of rights of way such as water utilities, oil and gas producers, cable television providers or solid waste franchisees. The Opinion also notes the franchise agreement required SCE to collect and remit any UUT (which would be true whether or not the franchise agreement said so; Pub. Util. Code section 799) and rejected the argument of amicus curiae League of California Cities that SCE voluntarily agreed to the franchise agreement and the City therefore did not ″impose″ the fee so as to trigger article XIII C, section 2 [Proposition 218] and Article XIII C, section 1, subdivision (e) [Proposition 26]. (*Id*. at pp. 10-11.)

---

[14] The *Redding* case is case number S224779. The Opinion discusses the Court of Appeal's *Redding* decision at length in footnote 4, disagreeing with its suggestion local gas and electricity rates are categorically exempt from Proposition 218.

[15] See footnote 16 below.

The City sought rehearing. The Court of Appeal invited an answer to that petition and thereafter denied rehearing without change to the Opinion.

## ARGUMENT

## I. THE OPINION UNDERMINES ALL MUNICIPAL FRANCHISE FEES

### A. The Opinion Misapplies *Sinclair Paint*

The Opinion applies *Sinclair Paint's* ″primary purpose″ test of purported regulatory fees to bargained franchise fees which should instead be analyzed using the canons of construction. (Opinion, pp. 6-7.)

*Sinclair Paint* instructs courts to examine the ″primary-purpose″ **[*23]** of regulatory fees to determine if they are special taxes requiring voter approval under Proposition 13 (article XIII A, section 4) rather than regulatory fees exempt from that measure. *(15 Cal.4th at pp. 879-881,* citing *United Business Com. v. City of San Diego (1979) 91 Cal.App.3d 156, 166-168* (*United Business*); see also Gov. Code section 50076 [fees which do not exceed cost of regulation are not taxes].) Applying *Sinclair Paint's* ″primary purpose″ test to franchise fees is inappropriate.

*Sinclair Paint* tested whether a fee on manufacturers of lead-containing products to fund lead remediation programs was a tax under Proposition 13. *(15 Cal.4th at pp. 871-872.)* This Court noted ″taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.″ (*Id. at p. 874.)* Further, ″[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.″ (*Ibid.*) Thus, the challenged franchise is not a tax under *Sinclair Paint* because SCE receives a specific privilege from the City - use **[*24]** of rights of way - and agreed to pay for that privilege.

Further, in the 18 years since *Sinclair Paint*, no court has applied it to a franchise fee, even though such fees are borne by a variety of litigious industries. Rather, the courts view franchise fees as creatures of contract, not taxes; and to require compensation for use of rights of way. Lower courts have applied *Sinclair Paint* only to the purported regulatory and service fees for which its test was fashioned. (E.g., *Weisblat v. City of San Diego (2009) 176 Cal.App.4th 1022, 1043-1044* [fee for services associated with enforcing a tax was itself a tax]; *Bay Area Cellular Telephone Co. v. City of Union City (2008) 162 Cal.App.4th 686, 693-694 & fn. 7* [fee on telephone customers to fund 911 services was a tax]; *Northwest Energetic Services, LLC v. Cat Franchise Tax Bd. (2008) 159 Cal.App.4th 841, 855* [levy on LLCs' total income was tax]; *Morning Star Co. v. State Bd. of Equalization (2004) 115 Cal.App.4th 799, 9 Cal.Rptr.3d 600, 612* [hazardous materials fee not a tax], revd. on other grounds *(2006) 38 Cal.4th 324.)*

For example, **[*25]** *California Taxpayers' Ass'n v. Franchise Tax Bd. (2010) 190 Cal.App.4th 1139* (*CTA v. FTB*) interpreted a statutory penalty on underpayment of corporate taxes according to its terms, not its consequences for State revenues. CTA argued measures which raise substantial revenue are taxes under *Sinclair Paint's* ″primary purpose″ test - as the Opinion here concludes. (*Id. at pp. 1145-1146.)CTA v. FTB* rejected the argument and analyzed the penalty using ″the traditional analytical framework for determining a statute's constitutionality,″ giving the benefit of the doubt to the Legislature and initially assuming the Legislature properly labeled its enactment a ″penalty.″ (*Id. at pp. 1146-1147.)*

The Opinion misapplies *Sinclair Paint* to examine the City's use of the 1 percent increment rather than the purpose of the franchise agreement - compensation for private, profit-making use of City rights of way. (AA2:404 at § 2.) Thus, the Opinion empowers courts to disregard the stated purpose of legislation and to strip the City of general fund resources by applying the wrong law.

If the Opinion's logic holds, every franchise fee agreement **[*26]** is a tax, as each is intended to derive revenues from private use of public property, none is limited to the cost of maintaining rights of way, and most are flat percentages unchanged in eight decades. Because franchisees commonly (but not universally) have market power to pass such fees onto customers, the Opinion jeopardizes every franchise fee in the state.

**B. The Opinion Overlooks Proposition 26's impact on *Sinclair Paint***

Nor does the Opinion analyze the extent to which *Sinclair Paint* survives Proposition 26 - an untested question. Proposition 26 plainly aimed to change *Sinclair Paint* to some extent. (*Schmeer v. County of Los Angeles (2013) 213 Cal.App.4th 1310, 1322-1323* (*Schmeer*).) On the other hand, Proposition 26 was also intended to preserve some aspects of *Sinclair Paint:*

> The concluding sentence of the newly added subdivision provides: '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, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated **[*27]** 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).) This language repeats nearly verbatim the language of prior cases assessing whether a purported regulatory fee was indeed a fee or a special tax.

(*Griffith v. City of Santa Cruz (2012) 207 Cal. App.4th 982, 996.)*

Nor does the Opinion consider the range of revenue measures to which the surviving portions of *Sinclair Paint* apply under Proposition 26 - including its exemption for franchise fees, i.e., ″[a] charge imposed for … use of local government property.″ (Cal. Const, art. XIII C, § 1, subd. (e)(4); see also art. XIII A, § 3, subd. (b)(4) [substantively identical exemption for State fees].)

Moreover, applying *Sinclair Paint* here is conclusory - no revenue measure intended as such can survive a test designed to distinguish what are intended as regulatory fees from revenue measures.

**C. The Opinion Overlooks That Most, If Not AH, Franchise Fees Fund General Governmental Services**

The Opinion describes the 1 percent increment as a ″surcharge collected for general **[*28]** revenue purposes.″ (Opinion, p. 1.) The same can be said of any franchise fee. The Opinion observes by footnote that the City reallocated franchise fees to its general fund in 2009, but overlooks that this is common practice. (Opinion, p. 2, fn. 1.) If the City's general fund pays to improve and maintain rights of way, what other fund should benefit from fees for their use? Because the PUC required SCE to collect part of the franchise fee as a line-item on bills to shield customers outside the City, and because the parties to the franchise agreed the City would use the 1 percent increment for ″general City governmental purposes″ as it had for decades, the Opinion sees not a fee, but ″something else entirely.″ (Opinion, p. 7.) This despite the plainly expressed intent of the franchise agreement that these funds be consideration for SCE's profitable use of City's rights of way. (AA2:404, § 2.)

The Opinion also overlooks that the City also used the pre-1999 franchise fee to fund general governmental purposes. (AA1:281 [prior 1 percent fee ″equates to approximately $ 500,000 annual revenue to the General Fund″].) All franchisors do likewise. [16]
**[*29]**

Thus, the Opinion fails to distinguish Santa Barbara's from other franchise fees and endangers essential revenues to every city and county in California.

**D. Proposition 26 Excludes Franchise Fees from Its Definition of ″Taxes″**

Proposition 26 expressly excludes franchise fees from its definition of ″taxes″ (Cal. Const, art. XIII C section 1, subd. (e)(4); art. XIII A, section 3, subd. (b)(4)), but the Opinion questions them under section 2 of that same article - adopted by Proposition 218, which Proposition 26 amends. This, despite the express language of Proposition 218 that fees for electric service are not property related fees within its reach. (Cal. Const., art. XIII D, § 3, subdivision (b).)

---

[16] (MJN, Exh. H at p. MJN00217 [defining franchise fee: ″[p]ayment to a municipality from a franchisee as 'rent' or 'toll' for the use of the streets and rights of way of a municipality. … Use of Revenues: Unrestricted″]; see also Cal. State Controller, Cities Annual Report 2011-2012 (Apr. 23, 2014) pp. v-vi [Figure 1], x [including franchises with ″other taxes″], at <http://www.sco.ca.gov/Files-ARD-Local /LocRep/1112cities.pdf> [as of Mar. 31, 2015].)

Proposition 26 excludes from its definition of the ″taxes″ which require voter approval under article XIII A, section 4 (Proposition 13) and article XIII C, section 2 (Proposition 218) ″[a] charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.″ (Cal. Const., art. XIII C, § 1, subd. (e)(4).) Such fees are not limited to cost as are those governed by other exceptions to Proposition 26. (Cf. *id*. at **[*30]** subds. (e)(1)-(e)(3) [exceptions for fees for benefits, services, and regulation limited to cost]. [17]) Indeed, what ″cost″ is relevant to the use of a community meeting room? What policy indicates government may not earn a reasonable return on such proprietary activities? When government engages in proprietary activity, it is entitled to do so on the same terms as its for-profit competitors. (McQuillin, The Law of Municipal Corporations (3d Ed. 2014) § 36:2 [''When the legislature empowers a municipal corporation to engage in a business, the corporation may exercise its business powers much in the same way as a private entity.″]; see *Ravettino v. City of San Diego (1945) 70 Cal. App. 2d 37, 47* [″The delegation of power to municipal corporations … impliedly gives them the right to select lawful and reasonable means whereby that power is to be carried out.″].)

**[*31]**

Proposition 26 must be interpreted in light of articles XIII A, XIII C, and XIII D, which it amends. The rule is ancient but vital. (*In re Wright's Estate (1929) 98 Cal.App. 633, 635.)* ″It is a basic canon of statutory construction that statutes in pari materia should be construed together so that all parts of the statutory scheme are given effect.″ (*Lexin v. Superior Court (2010) 47 Cal.4th 1050, 1090-91.)* Of course, our Constitution is construed as statutes are. (*Schmeer, supra, 213 Cal.App.4th at p. 1316.)*

The reverse is true, as well: Proposition 218 may not be read to nullify any substantive provision of Proposition 26 because the latter amended the former. Thus, the Opinion erred to read article XIII C, section 2's requirement that taxes be voter-approved to defeat Proposition 26's exemption from its definition of ″tax'' (which Proposition 218 did not define) of fees for use of government property. (Cal. Const., art. XIII C, § 1, subd. (e)(4).) Much less can article XIII A, section 4 and article XIII C, section 2 be read to defeat municipal authority conferred by article XI, section 9, subdivision (b) and article XII, section **[*32]** 8 - nowhere mentioned within either though Proposition 218 did mention, and alter, article II, sections 8 and 9. (Cal. Const., art. XIII C, § 3.)

Further, the Legislature has recently seen fit to protect and expand the opportunities for local agencies to generate revenues from franchise fees. Assembly Bill 2987, passed nearly unanimously in 2006 and signed by Governor Schwarzenegger, enacted the Digital Infrastructure and Video Competition Act of 2006, to allow the PUC to issue a statewide franchise to cable television providers to encourage them to extend service to underserved areas but to require it to preserve local franchise fees. (See MJN, Exh. B at pp. MJN00077-MJN00078; Pub. Util. Code, § 5810, subd. (a)(2)(C); see also *id*. at subd. (b) [″Legislature recognizes that local entities should be compensated for the use of the public rights-of-way and that the franchise fee is intended to compensate them in the form of a rent or a toll″].)

Thus, changes to the long-standing classification of franchise fees as contracts between sophisticated parties - and thus not ″taxes″ which require voter approval under Propositions 13, 62, [18] 218, and 26 - would adversely affect cities **[*33]** and counties large and small, rich and poor, everywhere in California. That outcome is contrary to the intent of the Legislature, which has long recognized franchise fees as important local revenues. Proposition 26's exemption of fees on private use of public property suggests this result contravenes the will of California's voters, too.

Thus, the Opinion confuses case law as to the relation of Propositions 218 and 26 and overlooks other provisions of our Constitution authorizing municipal franchises. Review is appropriate to harmonize these constitutional provisions.

## II. CALIFORNIA COURTS NEED GUIDANCE WHETHER A REVENUE MEASURE'S LEGAL OR ECONOMIC INCIDENCE CONTROLS ITS INTERPRETATION

The Opinion deviates from the long-standing rule that the legal character of a revenue measure turns on its legal incidence - on whom the legislator intended to impose it - which can be determined in a predictable and stable way using traditional

---

[17] Proposition 26 has nearly identical definitions of ″tax″ - and exemptions from that definition - for the State and local governments. (Compare art. XIII A, section 3, subd. (b)(1)-(5) with art. XIII C, section 1, subd. (e)(1)-(5).) It also provides two exemptions unique to local government. (Cal. Const., art. XIII C, section 1, subd. (e)(6) & (7).)

[18] Government Code section 53750 et seq.

tools of courts: the canons **[*34]** of construction. The Opinion employs an economic incidence test which, applied elsewhere, will require proof as to who has market power to compel another to bear the economic burden of the fee in a given transaction. (Opinion, p. 10 [PUC requirement that SCE recover 1 percent increment as line-item on bills because City's fee exceeds others charged in SCE's service area].)

The Court of Appeal has explained the distinction between legal and economic incidence of a revenue measure:

> The economic incidence of a tax refers to the party or parties who will ultimately bear the economic burden of the tax. The economic incidence of a tax may differ from the legal incidence of the tax, which refers to the party or parties who are responsible for remitting a particular tax to the government. The *Fulton Corp*. court explained this distinction by stating, ″It is well established that 'the ultimate distribution of the burden of taxes [may] be quite different from the distribution of statutory liability' [citation], with such divergence occurring when the nominal taxpayer can pass it through to other parties ....″

(*City of San Diego v. Shapiro (2014) 228 Cal. App. 4th 756, 784,* **[*35]** citing *Fulton Corp. v. Faulkner (1996) 516 U.S. 325, 341.)*

While legal incidence can be discerned by applying canons of construction to legislation which authorizes or imposes a revenue measure, economic incidence will be disputable in many cases. This is dangerous precedent. Critics of other local government revenues seek to undermine the traditional rule and to gain leverage in municipal finance disputes by arguing who ″really″ pays one fee or another at one time or another. If we are to exchange a fixed standard that applies the usual rules of statutory construction to determine the legal incidence of a fee for a factual free-for-all of competing expert opinion to determine who bears the economic burden of a fee in light of the relative power of various market participants at various times and places, this Court should say so.

Just a few cases are sufficient to demonstrate the range of disputes which raise this issue. In *Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1038-1039,* plaintiffs challenged Yorba Linda's redevelopment plan, alleging residency in neighboring Anaheim and payment of sales tax to Yorba Linda. Payment of sales tax **[*36]** did not confer standing because ″a sales tax is a levy imposed on the retailer, not the consumer.″ (*Id. at p. 1047.)* Thus, the legal incidence of the sales tax controlled for purposes of standing even though its economic incidence is commonly on the buyer. It is for this reason this Court pays sales tax even though it is exempt from taxation - the tax is on vendors who have market power to pass the tax on to the Court.

In *Cornelius v. Los Angeles County etc. Authority (1996) 49 Cal.App.4th 1761, 1764,* the plaintiff challenged the Los Angeles County Metropolitan Transportation Authority's affirmative action program. The court found no taxpayer standing under Code of Civil Procedure section 526a, because the sales and gasoline taxes the plaintiff paid were ″taxes on the retailer, not the consumer to whom the retailer passes the burden.″ (*Id. at p. 1777.)* [19]

Pending **[*37]** cases abound that seek standing via the very rule of economic incidence the Opinion applies. In San Diego, pending cases challenge:

- 57 maintenance assessment districts,
- 18 business improvement districts,
- a tourism marketing district,
- the city's downtown business improvement district.

(MJN, Exhs. C-F.) In each case, the plaintiff asserts standing as a ″taxpayer and voter organization″ with ″an interest in open government″ even though its members do not pay all the challenged levies. [20] (See MJN, Exh. C at p. MJN00120

---

[19] This question arises anew in *Wheatherford v. City of San Rafael*, case number S219567,

[20] The trial court found SCE was not a necessary party here and allowed plaintiffs to challenge a franchise agreement to which they were not party. (AA3:610.) That finding is not challenged on appeal.

[asserting standing as implied third-party beneficiary to assessment district management contract]; Exh. D at pp. MJN00127-MJN00128 [status as taxpayer association insufficient for standing to challenge assessment]; Exh. E at p. MJN00156 [organization's assertion it was not required to allege it paid assessment]; Exh. F at pp. MJN00175-MJN00176 [assertion it ″shouldn't be necessary″ to assert payment of assessment for standing].) A similar standing dispute in a challenge to Ontario's tourism marketing district assessment is pending in the Fourth District. (MJN, Exh. G at p. MJN00201 [″to establish standing [to challenge **[*38]** special district assessment], all Appellant needs to allege is that at least one of its members was qualified to vote and denied that opportunity″].) The First District has noted the danger of such a generous view of standing. (*Chiatello v. City and County of San Francisco (2010) 189 Cal.App.4th 472, 476* [allowing non-taxpayers to challenge tax carries ″unacceptable risk of paralyzing the financial stability of local governments with a flood of lawsuits″].)

Thus, accepting the Opinion's reliance on the economic incidence of a revenue measure to determine its legal character has profound implications for court dockets and for public finance, both.

## III. REVIEW IS APPROPRIATE BECAUSE THE PUBLISHED OPINION MAKES A NEGATIVE CONTRIBUTION TO THE LAW

### A. The Opinion Ignores the Constitution's [*39] Grant of Municipal Franchising Power

Existing law is clear that franchise fees are not taxes - indeed, the Second District so held 26 years ago. (*Santa Barbara County Taxpayer Assn., supra, 209 Cal.App.3d at p. 950,* citing *City and County of San Francisco v. Market St. Ry. Co. (1937) 9 Cal.2d 743, 748-749.)* For a century, municipalities have had wide latitude to set franchise fees by contract. (*Tulare County v. City of Dinuba (1922) 188 Cal. 664, 670* [franchise receipts ″neither a tax nor a license″ and ″purely a matter of contract″ because ″obligation to pay is not imposed by law but by his acceptance of the franchise″]; *People ex rel. Spiers v. Lawley (1911) 17 Cal.App. 331, 346-347* [franchise agreement construed as any writing]; see also *Contra Costa County v. American Toll Bridge Co. (1937) 10 Cal.2d 359, 363* [″the public body … can prescribe terms and conditions in the granting and for the acceptance of a franchise″]; cf. *Linnell v. State Dept. of Finance (1962) 203 Cal.App.2d 465, 469* [parking fee ″optional″ and therefore not a tax - ″a forced charge, imposition, **[*40]** or contribution; [which] operates in invitum, and is in no way dependent upon the will or contractual assent, express or implied, of the person taxed″].)

Our Constitution has made this clear for more than a century. Article XI, section 9 states:

> (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.
>
> (b) Persons or corporations may establish and operate works for supplying those services**upon conditions and under regulations that the city may prescribe under its organic law**. (Emphasis added.)

Similarly, Article XII, section 8 states:

> A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does not affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless **[*41]** that power has been revoked by the city's electors, or **the right of any city to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law**. (Emphasis added.)

Thus the Opinion conflates what our Constitution distinguishes - the regulation of business activity at issue in *Sinclair Paint* with the franchising power long recognized by our Constitution. [21] Santa Barbara's voters confirmed the City's franchise power. (AA2:382 at § 1400 [Charter empowers City Council to grant franchises].)

---

[21] In Southern Pacific Pipe Lines, Inc. v. City of Long Beach, supra, 204 Cal.App.3d 660, the Court of Appeal referenced the PUC's implied determination that chartered cities were not bound by the Broughton Act and 1937 Franchise Act and that the utility could pass

**[*42]**

Thus, the Opinion vitiates as a tax under articles XIII A and XIII C what article XI, section 9, subdivision (b) and article XII, section 8 define as a fee. This Court should grant review to harmonize these provisions.

**B. The Opinion Allows the PUC to Convert Franchise Fees to Taxes Without Evidence It Could or Would Do So**

The Opinion ignores the legislative intent of not only the City's franchise, but also of the PUC's 1989 Decision, allowing the latter to convert the former into a tax as neither legislative body intended.

The PUC's authority to regulate SCE to protect consumers from its monopoly pricing power cannot vitiate a chartered city's franchise power. Yet the Opinion effectively compels the state's minority of chartered cities to limit their franchise fees to the amount statute authorizes general law cities and counties to impose. The 1989 Decision's formula - ″the average aggregate of taxes or fees imposed by the other local governmental entities within the public utility's service territory″ (AA2:445-446 at P 1(a)) - will weight statutory fees more heavily than those of the relatively fewer chartered cities which can charge more. Thus, the Opinion empowers the **[*43]** PUC to strip chartered cities of the power to deviate from the 1 percent rule of the 1937 Franchise Act expressly conferred by Public Utilities Code section 6205 and the constitutional provisions cited above. Yet the PUC has no such power under our Constitution and the PUC expressly disclaimed intent to do so. (See AA2:416 [″Nothing prevents or interferes with the local entity's power or ability to tax; our procedure merely identifies the source and localizes excess costs imposed by a local entity.″]; AA2:442 [″The Commission has no jurisdiction to determine the authority of local taxing entities to impose taxes on utility customers, or utilities, or users' taxes on commodities used by a utility to produce its product.″].)

The PUC distinguishes the initial 1 percent franchise fee from the 1 percent increment and requires the latter to be separately stated on bills, but the City does not. The City demands - and SCE agreed to pay - **both** as consideration for use of its rights of way. Thus, the Opinion elevates matters of form not of the City's choosing over the substance of what its Council intended and what our Constitution allows.

The stipulated facts state SCE and the City **[*44]** agreed the surcharge was consideration for the franchise. (See AA2:345-346 [Stipulated Fact 10]; see also AA2:406 [2 percent rate ″compensation for use of the streets in the City″].) Therefore, the surcharge cannot be a tax. True, the City accommodated SCE's desire to pass the increase through to customers, for which it needed PUC approval; and SCE agreed to pay the increased fee only if it could recoup it from customers. (AA2:345 [Stipulated Fact 9].) But SCE agreed to seek PUC approval and to pay the full 2 percent upon that approval. (AA2:406 [2 percent fee ″express condition″ of franchise].) And SCE agreed the City could terminate the contract if the 2 percent franchise fee were not approved and paid. (AA2.-407 at § 6(E).) Without assurance the City could collect 2 percent of SCE's gross revenues from use of City property, there would be no franchise to dispute here.

The Opinion endangers any charge the PUC opts to require invest-owned utilities to separately state on bills as well as other levies which can be shown to be economically incident on persons other than the legal obligee - such as sales and use taxes.

The Opinion does not explain why a PUC policy should limit **[*45]** municipal power to negotiate franchise fees in amounts the PUC views as out of the ordinary. It is unlikely the PUC intended that effect, given statutory direction otherwise. (See Pub. Util. Code, § 6205 [1937 Franchise Act franchise rates ″shall not be construed as a declaration of legislative judgment as to the proper compensation to be paid a chartered municipality for the right to exercise franchise privileges therein,″].) Where does our Constitution empower the PUC to allocate revenue-generating authority between the voters and the city council of a chartered city? Is that not a role for our Constitution and a for City's charter?

**CONCLUSION**

Review of the important questions here is necessary to determine whether and how the *Sinclair Paint* test applies to franchise fees and forbids their use for general government purposes, whether courts may look to the economic rather than

---

San Diego's 3 percent rate on to San Diego customers but not non-San Diego customers. (Id. at p. 670, fn. 8, citing *In re San Diego Gas & Elec. Co.* ***(1972) 73 Cal.P.U.C. 623.)***

legal incidence of revenue measures to determine their legal character, whether and to what extent *Sinclair Paint* survives Proposition 26 and how to harmonize Propositions 13, 26, 218 and 26 with our constitutional grant of municipal franchising power.

DATED: April 6, 2015

**ARIEL [*46] PIERRE CALONNE, City Attorney**
**TOM R. SHAPIRO, Asst. City Attorney**

**COLANTUONO, HIGHSMITH & WHATLEY, PC**

/s/ [Signature]
MICHAEL G. COLANTUONO
RYAN THOMAS DUNN

Attorneys for Petitioner City of Santa Barbara

**CERTIFICATION OF COMPLIANCE WITH CAL. RULES OF COURT, RULE 8.504(D)**

Pursuant to Rule 8.504, subdivision (d) of the California Rules of Court, the foregoing Petition for Review contains 8,231 words (including footnotes, but excluding the tables and this Certification) and is within the 8,400 word limit set by the rule. In preparing this Certification, I relied upon the word count generated by Microsoft Word 2010.

DATED: April 6, 2015

**COLANTUONO, HIGHSMITH & WHATLEY, PC**

/s/ [Signature]
RYAN THOMAS DUNN
Attorney for Petitioner
CITY OF SANTA BARBARA

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071.

On April 6, 2015,1 served the within document(s):

**PETITION FOR REVIEW**

[] **BY FACSIMILE:** By transmitting via facsimile the **[*47]** document(s) listed above to the fax number(s) set forth below on this date.

[X] **BY ELECTRONIC MAIL:** By transmitting via electronic mail the document(s) listed above to those identified on the Proof of Service listed below.

[X] **BY MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

[] **OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Postal Service for overnight delivery, caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. § 1013(c), with delivery fees fully prepaid or provided for.

[] **PERSONAL SERVICE:** I caused such envelopes to be delivered by hand to the addresses indicated on the attached list.

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 **[*48]** fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on April 6, 2015, at Los Angeles, California

/s/ Pamela Jaramillo
Pamela Jaramillo

SERVICE LIST

David W.T. Brown
Paul E. Heidenreich
Huskinson, Brown & Heidenreich, LLP
1200 Aviation Blvd, Suite 202
Redondo Beach, CA 90278
Telephone: (310) 545-5459
huskinsonbrown@att.net

Attorneys for Plaintiffs and Appellants Rolland Jacks, et al.

Ariel P. Calone
City Attorney
*Tom R. Shapiro, Asst. City Attorney
City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93102
Telephone: (805) 564-5326
Facsimile: (805) 897-2532
tshapiro@santabarbaraca.gov

Attorneys for Defendant and Respondent City of Santa Barbara

Superior Court Court Clerk for Honorable Thomas P. Anderle
1100 Anacapa Street
Santa Barbara, Ca 93121

Re: Case No. 1383959

Clerk of the Court of Appeal
Second Appellate District, Division 6
200 East Santa Clara Street
Ventura, CA 93001

Re: Case No. B253474

California **[*49]** Supreme Court
350 McAllister
San Francisco, CA 94102

Via e-submission/hard copies by Federal Express www.courts.ca.gov/2dca-esub.html

[SEE ATTACHMENT I (CAL. RULES OF COURT, RULE 8.204(D)) IN ORIGINAL]

[SEE ATTACHMENT I (CAL. RULES OF COURT, RULE 8.204(D)) IN ORIGINAL]