Howard Jarvis Taxpayers Association

California Commentary

Volume 4, Issue 33 Week of August 14, 2006

Big Court Win for Taxpayers: Proposition 218 Means What It Says

By Jon Coupal and Tim Bittle

Although it received very little press attention, taxpayers recently won a *huge* victory in the California Supreme Court. The ruling in *Bighorn-Desert View Water Agency v. Verjil* (hereafter *"Bighorn"*) has created shockwaves throughout the state among those concerned with local taxation.

To fully appreciate the importance of this ruling, we must travel back to 1978 when Proposition 13 was overwhelmingly approved by voters. Californians understand that Proposition 13 effectively limited our property taxes. It still does. But Proposition 13 also imposed a two-thirds voter approval requirement for other local taxes.

It was *this* provision that was immediately attacked by the tax-and-spend lobby. Like termites on wood, they ate away at Proposition 13's voter requirements, greatly weakening them.

Twice taxpayers counterattacked against this assault on Proposition 13 with successful statewide ballot measures in 1986 and 1996. In the latter year, taxpayers passed the powerful "Right to Vote on Taxes Act" (Proposition 218) to close several court-created loopholes in Proposition 13.

These loopholes had been conjured up by local governments to impose a myriad of "fees," "charges" and "assessments" on property owners *without* their approval. But even with strong language requiring voter or property owner approval of new "levies," local governments continued to fight back.

That brings us to the court case.

In June 2003, the Bighorn-Desert View Water Agency (hereafter "Agency") placed Measure "L" before its voters, to reinstate certain fees it had previously eliminated due to a suit brought by the Howard Jarvis Taxpayers Association (hereafter "HJTA"). The Agency promised rate relief if the voters passed Measure "L." The voters dutifully passed Measure "L." Instead, however, the Agency substantially jacked *up* its water rates.

One frustrated ratepayer, E. W. Kelley, collected enough signatures to qualify an initiative that would roll back consumption rates to a reasonable level. The Agency then filed suit against the County Registrar to keep Kelley's initiative off the ballot.

In a two-pronged decision against taxpayers, the Court of Appeal in Riverside held that, despite the expanded initiative power under Proposition 218, metered water rates are not subject to Proposition 218 and thus cannot be adjusted by the people using their initiative power. As authority for its holding that metered water rates are not subject to Proposition 218, the Court cited *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (hereafter *"Los Angeles"*),

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a case HJTA lost in 2000.

The *Los Angeles* decision was *horrible* and directly contrary to the clear language HJTA had placed in Proposition 218. In essence, the Court of Appeal had concluded that water rates are not "property-related" and thus not subject to Proposition 218's limitations.

Although HJTA won subsequent cases against the cities of Roseville and Fresno that held water rates are subject to Proposition 218, the *Los Angeles* case has nonetheless been a thorn in our side for six years as cities, counties, and special districts throughout California have taken cover behind that case to justify *not* following Proposition 218's rules for rate setting.

In HJTA's brief to the Supreme Court in the *Bighorn* case, we explained the conflict between Los Angeles, Roseville, and Fresno: "The conflict is causing confusion as illustrated by the present case. To eliminate this confusion, *Jarvis v. Los Angeles* should be overruled." Understand that it is a *big* deal to ask the Supreme Court to overrule a precedent that has been on the books for several years, especially if it is a case where the Supreme Court previously denied review.

On July 24th, the Supreme Court answered our request with a big *Yes*. The Court held that the lower court had erred *both* in limiting the scope of the people's initiative power *and* in holding that metered water rates are not subject to Proposition 218. In the Court's words, Proposition 218 applies to "charges for a property-related service, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee." In a footnote, the Court ruled, "*Howard Jarvis Taxpayers Assn. v. City of Los Angeles* . . . is disapproved insofar as it is inconsistent with this conclusion."

The importance of this ruling cannot be overstated. Water rates, sewer rates, and other property-related fees are *now* subject to Proposition 218's "cost of service" requirements. What that means is that the hundreds of millions of dollars transferred to cities' general funds from enterprise funds is now *illegal*.

Let the games begin!

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