

**Case No.: S266590**

**IN THE SUPREME COURT OF CALIFORNIA**

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**AMEN FAMILY 1990 REVOCABLE TRUST, Real Party in  
Interest**

*Appellant*

**v.**

**JEFFREY PRANG, Los Angeles County Assessor**

*Respondent*

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After a Decision of the Court of Appeal  
Second Appellate District, Division Five  
Appeal Case No. B298794  
Appeal from Los Angeles Superior Case No. BS173698  
Hon. James C. Chalfant

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**REPLY IN SUPPORT OF PETITION FOR REVIEW**

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## I. Introduction

Supreme Court review of the two-justice majority opinion (“Opinion”) below by the Second Appellate District of the Court of Appeal of the State of California (“Second District”) is required to secure uniformity of the law on two important legal issues, including the deference courts must give to the administrative interpretation of statutes by an agency charged with its administration and, more specifically, the interpretation of the phrase “ownership interests” in the statutory framework governing changes in ownership for purposes of reassessing property under Proposition 13, the fundamental tax reform initiative passed in 1978.

The Opinion departs from the consistent interpretation of law promulgated by the California State Board of Equalization (“State Board”) for over forty years in order to coin a new definition of the term of art, “ownership interests,” that is unique to a single provision of the statutory framework and different from the term’s meaning in all other parts of the framework. The Opinion reaches this conclusion without conducting the analysis this Court requires under *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (“*Yamaha I*”) to determine the deference accorded to administrative interpretations of law. As a result, Justice Baker, in his dissent below, recognizes that this case involves “an issue of statewide importance” (Petition for Review (“Petition”), Ex. A at p. 63, Baker J., diss. opn.), as did *amicus* counsel in noting that the “case raises what appears to be a novel issue in the Court of Appeal” (Brief of Amicus Curiae

California State Association of Counties and the California Assessors Association at p. 5).

The Answer to Petition for Review (“Answer”) by the Respondent Los Angeles County Assessor (“County”) ignores the statewide problems the Opinion creates, arguing that the State Board’s interpretation of “ownership interests” in a binding regulation and a constellation of authoritative guidance deserves no deference. Perhaps if the Opinion were limited to addressing a question linked to the facts and circumstances of this case, then the County’s objection to review by this Court would have some merit. But, the Opinion’s implications are far reaching, as Justice Baker recognized in noting that “[a]nalytical vulnerabilities, however, are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern.” (Petition, Ex. A at p. 63, Baker J., diss. opn.) By ignoring the State Board’s consistent and longstanding interpretation of the law it administers, the Opinion undermines the State Board’s ongoing ability to administer changes in ownership, weakens the State Board’s authority in all other areas of the law it administers, and destabilizes the authority of all California agencies to administer the law. Taxpayers who have relied on the State Board’s guidance to structure transactions that comply with forty years of change in ownership law will also be unfairly impacted by the abrupt change in law produced by the Opinion. Such a decision should be made for the entire state, if at all, only by the highest Court. The County offers no reason to suggest otherwise.

For each of these reasons, and those described in more detail below and in the Petition, the Petition for Review should be granted.

**II. The County’s Answer Fails to Refute Any of the Reasons Review Should be Granted**

**A. The Petition Adequately Presents Two Grounds for Review, Including an Important Legal Question of First Impression**

The County opposes the Petition because, in its view, the Petition does not make “any argument [as to] how the Court of Appeal’s decision satisfies” the grounds for review enumerated in California Rule of Court 8.500(b) (Answer at p. 5) and because the “absence of prior appellate authority and Board of Equalization guidance suggest that th[e] situation [in this case] does not come up often” (*id.* at p. 6). These arguments ignore the issues raised in the Petition, the extensive caselaw governing judicial deference to administrative authority, and the numerous examples in the record of State Board guidance addressing the factual circumstances of this case. The Answer also suggests an unfounded standard for Supreme Court review based on the frequency with which an issue arises.

The Petition, in the opening sentence of the section entitled “Why Review Should Be Granted,” paraphrases Rule 8.500(b) in explaining that Supreme Court review is necessary to secure “uniformity of the law on two important legal issues: the judicial status of the administrative interpretation of statutes generally, and the particular interpretation of the change in ownership

statutes enacted pursuant to Proposition 13 in 1978.” (Petition at 8.) The Petition explains that the Opinion undermines uniformity on these issues, as follows:

This case thus provides the Court a valuable opportunity to resolve the meaning of the phrase ‘ownership interests’ in the framework governing changes in ownership, an extremely important issue given the immense tax consequences resulting from a change of ownership. This case is also an excellent vehicle for addressing, more broadly, that a government agency’s quasi-legislative actions must be given the dignity of statutes and its agency interpretations must be given great weight, especially where the public has relied on those rules for years. Because the Court of Appeal’s interpretation of ‘ownership interests’ creates two different definitions of the same phrase depending on the form of property transferred and departs from the uniform meaning found in the Revenue and Taxation Code, the California Code of Regulations, and all guidance by the State Board, this Court should grant review and reverse the judgment of the Court of Appeal.

Justice Baker’s dissent also recognizes that this case involves “an issue of statewide importance.” (Petition, Ex. A at p. 62) The statewide importance is heightened because “this is the first case in which the courts have been asked to determine the ‘ownership interests’ that trigger a change in ownership resulting in reassessment.” (Petition at pp. 23-24.) *Amicus Curiae* the

California State Association of Counties and the California Assessors Association similarly recognized “[t]his case raises what appears to be a novel issue in the Court of Appeal.” (Brief of Amicus Curiae California State Association of Counties and the California Assessors Association at p. 5.) The County’s Answer ignores Justice Baker’s assessment, *amicus* counsel, and the Petition to claim a “procedural defect” that simply does not exist. (Answer at p. 5.) The statewide importance of the legal issues of first impression decided in the Opinion warrants review. (Cal. R. Ct. 8.500, subd. (b)(1).)

The County also appears to argue that a petition cannot meet the standard for review under Rule 8.500(b) unless it raises an issue that arises frequently. (Answer at p. 5-6.) That is not the standard. This court's role is to “secure harmony and uniformity in the decisions [of the appellate courts], their conformity to the settled rules and principles of law, a uniform rule of decision throughout the state, a correct and uniform construction of the constitution, statutes, and charters, and, in some instances, a final decision by the court of last resort of some doubtful or disputed question of law.” (*People v. Davis* (1905) 147 Cal. 346, 348.) The Petition satisfies these bases for Supreme Court review because the Opinion fails to use the correct standard to analyze and defer to an agency’s interpretation of the law and, as a result, departs from the State Board’s uniform and consistent interpretation of the law to coin a new definition of an important term of art (“ownership interests”) with far reaching consequences to property tax law.



**B. The Second District Did Not Accord the “Dignity of Statute” to State Board Rule 462.180**

The Petition argues that the Second District erred by failing to accord the “dignity of statute” to State Board Rule 462.180 (Cal. Code Regs., tit. 18, § 462.180 (“Rule 462.180”), in which the State Board defined corporate “ownership interests” as “voting stock” contemporaneously with the enactment of the change in ownership statutory framework under Proposition 13. (Petition at § IV.A.1.)

The County argues the Second District was free to disregard this binding regulation. It argues that the definition of “ownership interests” as “voting stock” in Rule 462.180, subsection (d)(1) is irrelevant because it purportedly applies only to transfers of corporate ownership interests under Revenue and Taxation Code section 64(c),<sup>1</sup> and not to transfers of real property under Section 62(a)(2). This distinction between Section 62(a)(2) and Section 64 does not exist, which is why the Second District was required to follow Rule 462.180 here or, at the very least, conduct a *Yamaha I* analysis to explain its departure.

The State Board promulgated a single regulation—Rule 462.180—to govern changes of ownership involving transfers of real property or corporate ownership interests. (Petition at pp. 14-15.) Section 62 has been amended twenty times since Rule 462.180 was promulgated, eight times since the State Board

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<sup>1</sup> All statutory references are to the Revenue and Taxation Code, unless otherwise indicated.

stated in its April 12, 2002 Legal Opinion that “Rule 462.180, in effect, *defines ‘ownership interest’ as the voting stock in a corporation’ for purposes of Section 62(a)(2)*” (Petition at p. 20),<sup>2</sup> and four times since Assessors’ Handbook Section 401 stated in 2010 that “[f]or change in ownership purposes, *ownership in a corporation is determined by the percentage of ownership or control of a corporation’s voting stock*” (*id.*, Ex. B at p. 78). The Legislature never objected to the State Board’s interpretation of Section 62(a)(2). “[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent. (*Yamaha I*, 19 Cal.4th at pp. 21-22, Mosk, J. concur. opn., quoting *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 862.)

The County’s central premise—that Section 62(a)(2) only applies to transfers of real property so it is not governed by Rule 462.180’s definition of “ownership interest”—is wrong. Regulation 462.180 provides in subsection (d)(4), that “[*t*]ransfers of stock, partnership interests, limited liability company interests, or any other interests in legal entities . . . which result solely in a change in the method of holding title and in which proportional ownership interests . . . remain the same after the transfer, do not constitute changes in ownership, as provided in subdivision (b)(2) of this rule and *Revenue and Taxation Code section 62*,

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<sup>2</sup> All emphasis has been added, unless otherwise noted.

*subdivision (a)(2).*” Clearly, Section 62(a)(2) is not limited to only transfers of real property. In its legal opinion dated October 30, 2009, the State Board applied Section 62(a)(2) to a merger transaction that involved transfers of corporate ownership interests (not a transfer of real property) and measured the ownership interests using voting stock alone. (Petition at pp. 18-19.) The State Board separately explained its legal opinion dated September 30, 2011: “For corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by voting stock.” (*Id.* at p. 19.)

The County’s position ignores the critical similarity between all the relevant provisions, including Section 62(a)(2), Section 64(c), and Section 64(d): they all concern the transfer of corporate “ownership interests.” There is no basis to create unique definitions of that phrase in the same framework. This Court’s review is required to ensure a consistent definition of this important term of art and compliance with this Court’s standard under *Yamaha I.*

**C. The Second District Did Not Accord Great Weight to the State Board’s Agency Interpretations**

The Petition argues that the Second District erred by failing to accord “great weight” to the State Board consistent and longstanding agency interpretations that corporate “ownership interests” are measured by voting stock, as expressed in the Assessors’ Handbook, four legal opinions, and one Letter to Assessors. (Petition, § IV.A.2.)

The County argues Petitioner “has no argument based on Assessor’s Handbook 401 that the Court of Appeals failed to defer to administrative regulations” because the Handbook “does not have force of law.” (Answer at p. 7.) The County does not dispute that the Assessor’s Handbook supports Petitioner’s position or address the constellation of other State Board guidance summarized in the Petition. Regardless, the County’s position ignores the standard in *Yamaha I* that longstanding administrative guidance in publications that are less formal than a binding regulation (like the Assessors’ Handbook) are still entitled to “great weight” and “respect.” (*Yamaha I*, 19 Cal.4th at pp. 6-7.) The Second District was required to conduct a *Yamaha I* analysis before dismissing out of hand the State Board’s directly-relevant interpretations, but it did not do so or address the bulk of this guidance.

As the Petition urges, Supreme Court review is necessary to “address the circumstances in which the courts may depart from quasi-legislative regulations and consistent and longstanding administrative interpretations,” as the Second District did here. (Petition at p. 33.)

**D. The Second District Created a Conflict in the Statutory Framework Governing Changes in Ownership**

The Petition argues that the Opinion’s isolated interpretation of Section 62(a)(2) produced a unique definition of “ownership interests” in Section 62(a)(2) different from all other parts of the same statutory framework, contravening the rule

that a statutory framework should be harmonized and the Legislature's instruction to apply change in ownership statutes with "uniformity and consistency." (Petition at 34, quoting *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161-162.)

The County argues in its Answer that the Opinion does not create a conflict in the statutory framework because the Legislature's use of the word "stock" in Section 62(a)(2) indicates its intent to measure corporate ownership interests under Section 62 using all forms of stock. (Answer at p. 8.)

This overlooks the incongruous results in change in ownership determinations that will follow from the Opinion unless this Court grants review, while also ignoring the root cause of the Opinion's analytical error. As Justice Baker noted in his dissent, this "oversimplified interpretive approach (the statute just says 'stock,' so that means any sort of stock) fails to harmonize the statutory scheme." (Petition, Ex. A at p. 63, Baker J., diss. opn.) Harmonizing the change-in-ownership framework is critical, not only to implement the Legislature's intent, but to ensure consistency in change in ownership determinations over time as property changes hands and the various statutes interact. For example, a property that is excluded from a change in ownership determination under Section 62(a)(2) will be reassessed in the future under Section 64(d) when there is a transfer of 50 percent of the original co-owners' shares in the entity holding the property. The State Board and Justice Baker both recognized the incongruous effect that the Opinion will have

on such transactions: “If Section 62(a)(2) means ‘all stock,’ the exclusion under Section 62(a)(2) would be measured under one standard—all stock—but under a different standard—voting stock—to measure when the exclusion ends under [Revenue and Taxation Code] Section 64(d).” (Ex. A at p. 63, Baker J., diss. opn., original brackets, quoting Brief of Amicus Curiae California State Board of Equalization, attached as Ex. B to Petition.) Section 62(a)(2) and Section 64(d) are in *pari materia* and should read together in harmony.

The County’s Answer does not address the core reason for the Second District’s error. Instead of using the statutory standard for measuring changes in ownership (*i.e.*, “ownership interests”), the Opinion focuses on the term “stock,” which is found in a subordinate clause of the statute that merely lists examples of various legal interests. Putting the examples aside, the Section 62(a)(2) provides that a change in ownership does not include “any transfer between an individual or individuals, and a legal entity or between legal entities . . . in which proportional *ownership interests* of the transferor and transferees . . . remain the same after the transfer.” The inclusion of “stock” as a non-exclusive example of corporate interests does not justify an interpretation of Section 62(a)(2) that sets it apart from the rest of the framework (which uniformly uses “ownership interest” to mean voting stock) and departs from forty years of State Board interpretation and the State Board’s specific guidance in this case that corporate “ownership interests” are measured by voting stock alone.

**E. The Second District’s Opinion Will Upset Settled Expectations and Undermine the State Board’s Ability to Ensure Local Governments and Taxpayers Comply with Proposition 13**

The Petition argues that changing the standard for measuring “ownership interests,” in a departure from forty years of settled practice and the tax-limiting intent of Proposition 13, will upend taxpayers’ reliance on State Board guidance in structuring transactions, undermine the State Board’s administrative authority, produce a patchwork of approaches across California as county assessors ignore State Board directives, and induce courts to ignore the guidance of other California agencies in violation of the *Yamaha I.* (Petition, § IV.C.) Justice Baker’s dissent voices the same concern: “Analytical vulnerabilities, however, are the least of the [O]pinion’s problems; the deleterious practical consequence of today’s holding are the real concern.” (Petition, Ex. A at p. 63, Baker J., diss. opn.)

The County argues the Opinion will not have this effect because “there is just nothing in the record to suggest” that “this case presents a fact situation which is very common” (Answer at pp. 8-9) and that any disruption can be remedied by the State Board promulgating an amendment to Regulation 462.180.

The County fails to appreciate the far-reaching consequences of a decision that undermines confidence and reliability in the State Board’s authority. The immediate effect of the Opinion is to change the standard for measuring change in

ownership, but its long-term consequence is to undermine taxpayer reliance on, and county compliance with, State Board guidance on all legal issues it is charged with administering. The State Board promulgates guidance on basic appraisal techniques (see Assessors' Handbook, § 501), the tax exemptions of charitable and religious institutions (see Assessors' Handbook, § 267), and the assessment of various specialized kinds of property (see Assessors' Handbook, §§ 510-577), among many other legal issues. Once the State Board's authority to issue authoritative guidance is undermined in one area, as it has been here, its authority is undermined in all areas of the law. The "patchwork" of county-by-county systems for administering changes in ownership predicted by Justice Baker may become a patchwork of systems for applying basic appraisal principles, assessing intangible assets, or determining any aspect of property taxation. This would represent a breakdown of California's uniform system of taxation. The Opinion will also undermine the deference given to other agencies charged with administering California law, as it can be used to depart from those agencies' longstanding guidance too.

The County also incorrectly suggests the facts presented in this case are rare. The State Board has dedicated an entire Section of its Assessors' Handbook series to changes in ownership (Assessors' Handbook, § 401), and the record below contains four legal opinions and one Letter to Assessors by the State Board to address similar situations in response to questions from taxpayers, including an October 30, 2009 legal opinion involving



two classes of corporate stock. (Petition at pp. 18-19.) The first line of the *amicus* brief of Ajalat, Polley, Ayoob & Matarese, a property tax boutique, notes that its attorneys “have long debated what constitutes ‘ownership interests’ in a corporation under . . . Section 62(a)(2),” further indicating the frequency with which this issue arises. (Brief of Ajalat, Polley, Ayoob & Matarese at p. 1.)

The County’s Answer also ignores the concerns of Justice Baker and the State Board that the Opinion will create “significant administrative difficulties” because of the inherent impossibility of “having to assign what may amount to random percentages of ownership to particular classes of stock since . . . owners of corporation have no specific right to any corporate real property.” (Petition, Ex. A at p. 63, Baker J., diss. opn., quoting Brief of California State Board of Equalization.) Nor does the County’s Answer address the tax-evasion schemes that the Opinion opens the door to under its new interpretation. (Petition at p. 39.)

Supreme Court review is necessary to protect the already-overwhelmed State Board from further administrative burdens and to prevent a construction that fosters tax gamesmanship.

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### III. Conclusion

For all the foregoing reasons, and those set forth in the Petition, Petitioner respectfully requests that the Court grant the Petition for Review. The issues presented should be briefed and heard on the merits, and the Opinion should be reversed.

February 11, 2021

Respectfully submitted,  
GREENBERG TRAURIG, LLP

By: /s/ Colin W. Fraser

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DATE: February 11, 2021

Respectfully submitted,

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**PROOF OF SERVICE**

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*/s/ Vanessa Hudak*

\_\_\_\_\_  
Vanessa Hudak

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PRANG v.**  
**AMEN**

Case Number: **S266590**

Lower Court Case Number: **B298794**

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