

**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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**APPELLANT'S OPENING BRIEF**

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## I. ISSUES PRESENTED

Since 1974, the Legislature has charged the California State Board of Equalization (“State Board”) with administering and interpreting California’s property tax regime. The State Board has adopted, pursuant to express Legislative authority, longstanding and consistent regulations and interpretive guidelines. The Court of Appeal in this case adopted an interpretation contrary to the State Board’s.<sup>1</sup> This petition presents three issues for review:

1. Under *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (*Yamaha I*), did the Court of Appeal err by failing defer to the longstanding construction of California’s constitutional and statutory framework governing changes of ownership of real property by the agency charged with its administration and interpretation, where the agency’s construction was not clearly erroneous.

2. Where the *Yamaha I* analysis demonstrates that the State Board’s quasi-legislative regulations must be accorded the “dignity of statute” and its longstanding and consistent agency interpretation of the statute it administers must be accorded “great weight” and “respect,” what legal standard governs a courts’s departure from the State Board’s interpretation, where the court does not conduct any *Yamaha I* analysis?

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<sup>1</sup> The Court of Appeal’s majority opinion and dissent are attached as **Exhibit A** to Appellant’s Opening Brief.

3. Did the Court of Appeal err in concluding that the phrase “ownership interests” in the statutory framework governing changes of ownership has a different meaning depending on the form of property exchanged (real property versus stock) by giving the same phrase (ownership interests) different meanings in the same statutory scheme?

## **II. INTRODUCTION**

This case involves the property tax assessment of two family-owned grocery stores based on a novel interpretation of law that departs from all relevant guidance by the State Board. The Court of Appeal’s decision coins a unique definition of the term of art, “ownership interests,” in holding that corporate ownership interests are measured using all forms of stock when determining if a property has undergone a change in ownership. In contrast, the State Board has uniformly and consistently measured corporate “ownership interests” using voting stock alone for over forty years, since first promulgating its regulation contemporaneously with the enactment of the change-in-ownership statutory framework.

The Court of Appeal’s two-justice majority opinion undermines the uniformity of law on two important legal issues: the deference courts must give to the interpretation of a statute 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.



Since 1981, the State Board, pursuant to express statutory authority, has issued regulations and guidelines interpreting Proposition 13 and the statutes for changes in ownership, a detailed and technical framework it is charged with administering. The Court of Appeal below, contrary to decisions of this Court, failed to give deference to the State Board’s formal, longstanding, and consistent interpretation that corporate “ownership interests” are measured by voting stock alone in analyzing changes in ownership. This is error for two reasons.

First, the opinion conflicts with this Court’s decision in *Yamaha I* and subsequent case law, which require courts to defer to an agency’s consistent and longstanding interpretation of the statute it is charged with administering unless its interpretation is clearly erroneous. (See *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1014, quoting *Robinson v. Fair Employment & Housing Commission* (1992) 2 Cal.4th 226, 234 [“administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight and will not be overturned unless clearly erroneous.”].) The decisions of this and other courts have applied the clear error standard, whereas the court below disregarded the State Board’s consistent and longstanding interpretation without finding clear error—or even conducting a *Yamaha I* analysis. The Court of Appeal 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. The Court of Appeal also erred by failing to accord “great weight” to the State Board’s agency interpretations (six of which are in the record and attached here as exhibits), which explain 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.*”<sup>2</sup> As a result, Justice Baker, in his dissent below, recognizes that “the majority opinion reaches the wrong result,” “[a]s a matter of statutory interpretation and of implementing agency deference,” on this “issue of statewide importance,” because the Court of Appeal’s opinion “authorizes” county assessors “to reassess real property in a manner *inconsistent* with the considered legal view of the State Board of Equalization.” (Ex. A at p. 23, Baker J., diss. opn.) By failing to adhere to *Yamaha I*, the Court of Appeal has not only unsettled longstanding expectations, but has jeopardized the reliance of California taxpayers and local jurisdictions on the State Board’s current and future guidelines and, in consequence, jeopardized the State Board’s ability to administer this important statutory framework.

Second, the opinion fails to harmonize the statutes governing changes in ownership by creating multiple definitions

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<sup>2</sup> **Exhibit C** to Opening Brief, California State Board of Equalization, Assessors’ Handbook (2010, reprinted 2015) Ch. 401, Change in Ownership, at p. 58.

of the key phrase “ownership interests” despite the Legislature’s mandate for “uniformity and consistency” in applying the statutory framework. (*Pacific Southwest Realty co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161-162.) Corporate ownership interests are measured using voting stock alone in the change-in-ownership statutes (Rev. & Tax. Code, §§ 60-69.5) and the constellation of State Board regulations and guidance. In addition to Rule 462.180 and Assessors’ Handbook Section 401, quoted above, the State Board has issued four legal opinions and one Letter to Assessors between 2002 and 2011 that all measure corporate ownership interests using voting stock alone.<sup>3</sup> For example, the State Board’s legal opinion of September 30, 2011 states, “For corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by voting stock.” (Ex. F at p. 79.)<sup>4</sup> The Court of Appeal coined a new definition for the phrase “ownership interest” as used in Revenue and Taxation Code section 62(a)(2) (“Section 62(a)(2)”) that includes all forms of stock, and not just voting stock. To reach this result, the Court of Appeal applied the wrong standard to identify changes in ownership, overlooking the key phrase (“ownership interests”) in favor of the term “stock,” which is included in a subordinate clause of Section 62(a)(2)

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<sup>3</sup> The State Board’s legal opinions and Letter to Assessors are part of the record below, but they are also attached hereto as **Exhibits D-H** for convenience.

<sup>4</sup> All emphasis is added, unless otherwise indicated.

listing non-exclusive examples of interests in a variety of legal forms.<sup>5</sup> The Court of Appeal’s interpretation of “ownership interests” thus creates two different definitions of the same phrase in the same statutory framework depending on the form of property transferred—using all stock when determining if a transfer of real property from one corporation to another is a change in ownership under Section 62(a)(2), while using only voting stock when determining if a transfer of corporate ownership interests from one corporation to another is a change in ownership under Section 64(c). This departs from the uniform meaning found in the Revenue and Taxation Code, the California Code of Regulations, and all guidance by the State Board. Justice Baker, in his dissent below, explained that the “majority’s oversimplified interpretive approach (the statute just says ‘stock,’ so that means any sort of stock) fails to harmonize the statutory scheme.” (Ex. A at p. 24.) The Court of Appeal’s interpretation fails to effectuate the purpose of Proposition 13 (limiting property tax increases) by expanding the circumstances that allow reassessment, dislocates Section 62(a)(2) from the change in

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<sup>5</sup> Section 62 provides, in relevant part: “Change in ownership shall not include: (a) . . . (2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional *ownership interests* of the transferors and transferees, *whether represented by stock, partnership interest, or otherwise*, in each and every piece of real property transferred, remain the same after the transfer.”

ownership statutes (by coining a definition unique to Section 62(a)(2)), creates loopholes enabling tax evasion (as outlined in Section IV.C, below), disrupts the State Board's ability to administer changes in ownership, and undermines taxpayers' reliance on the State Board's longstanding regulations and administrative guidance. The Court of Appeal's opinion also disrupts the authority of all California agencies to administer the law by encouraging efforts to ignore administrative guidance in violation of *Yamaha I*.

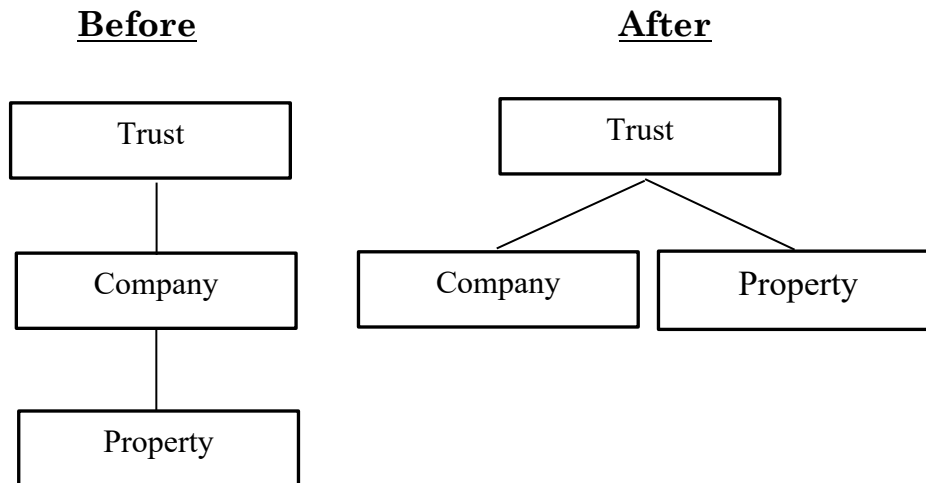
### **III. STATEMENT OF FACTS**

#### **A. The Ownership and Transfer of the Property**

The property ("Property") at issue consists of two family-owned supermarkets operating under the brand name "Super A Foods." (Administrative Record ("AR") 120.)

On December 5, 2014, the Property was transferred (the "Transfer") from Super A Foods, Inc. (the "Company") to the Amen Family 1990 Revocable Trust (the "Trust.") (AR 120, 318.) Before and after the Transfer, the Trust owned all 22,800 outstanding shares of the Company's voting stock (AR 165, 167, 170). The Company also had issued non-voting stock as gifts to employees (AR 122, 320), representing 7.20% of all outstanding stock (AR 205).

The Transfer is depicted in this diagram:



### **B. The Framework Governing Changes in Ownership**

Proposition 13, the landmark tax-reform initiative in 1978, made changes in ownership of real property significant in property taxation by adding article XIII A to the California Constitution. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 218.) Article XIII A caps property tax increases at 2 percent per year, unless the property is purchased, newly constructed, or there is a “change in ownership,” at which point the property is reassessed at fair market value. (Cal. Const., art. XIII A, § 2.) The implementation of article XIII A, and the resolution of its ambiguities, has “depended upon the contemporaneous construction of the Legislature or of the *administrative agencies* charged with implementing the new enactment.” (*Amador Valley*, 22 Cal.3d at p. 245, italics added.)

Division 1, part 0.5 of the Revenue and Taxation Code implements article XIII A. (Rev. & Tax. Code, §§ 50 *et seq.*) The Legislature defined “change in ownership” using a general definition (*id.*, § 60) and non-exclusive examples of what is, and is not, a change in ownership (*id.*, §§ 61-69.5). A “change in ownership” is a “transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” (*Id.*, § 60.) Either a transfer of real property or a transfer of an interest in the legal entity owning the real property may trigger a change in ownership. Analyzing either kind of transfer involving a corporation requires a review of the “ownership interests” before and after the transfer to determine if a change in ownership occurred.

One example of a change in ownership occurs when the transfer of an “ownership interest” in a legal entity results in a change in control of that entity. (*Id.*, § 64, subd. (c)(1).) This change in control is measured by the ownership of voting stock. (*Id.*) Specifically, section 64(c)(1) provides that when “control through direct or indirect ownership or control of more than 50 percent of the *voting stock* of any corporation,” or a “majority ownership interest” is obtained, “the purchase or transfer of that stock or other interest shall be a change of ownership of the real property.”

Another example of a change in ownership is the transfer of more than 50 percent of the “original co-owner” shares of an entity that owns real property. (*Id.*, § 64, subd. (d).) Pursuant to

Section 62(a)(2)—the statute at issue in this case—a change in ownership does not include:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

When Section 62(a)(2) excludes a transfer from being a change in ownership, those holding “ownership interests” in the legal entity immediately after the transfer are considered “original coowners.” (*Id.*, § 64, subd. (d).) Section 64(d), however, requires reappraisal when the original co-owners transfer more than 50 percent of their “ownership interests”:

Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under [Section 62(a)(2)] shall be reappraised.

In other words, even though Section 62(a)(2) and Section 64(d) use corporate “ownership interests” to make change in ownership determinations governing the transfer of the same property, the Court of Appeal found the phrase has a different meaning in these two provisions. The Legislature did not enact statutory



definitions of the terms “ownership interest” or “stock” in Section 62(a)(2), or “ownership interests” or “shares” in Section 64(d).<sup>6</sup>

**C. The State Board’s Contemporaneous Regulation Measures Corporate “Ownership Interests” Using Voting Stock Alone**

The State Board is authorized to prescribe rules and regulations to govern equalization and to promote uniformity throughout California in the assessment of property. (Gov. Code, § 15606, subs. (c), (e), (f).) Contemporaneously with the enactment of the change in ownership statutes, the State Board promulgated Property Tax Rule 462 to clarify the statutes’ application to legal entity changes in ownership.(Cal. Code Regs., tit. 18, § 462.180, former Regulation § 462; see also State Board Letter to Assessors No. 81/91, Aug. 7, 1981.)<sup>7</sup> Rule 462.180 defines the terms “ownership interests” and “shares” in Section 64(d) to mean “voting shares.” (Rule 462.180, subd. (d)(2), former tit. 18, § 462, subd. (j)(4)(B).)

Former Rule 462(j)(4)(B) explained that Section 64(d) applies when “the ‘original coowners’ subsequently transfer, in one or more transactions, more than 50 percent of the total control or *ownership interests* in the entity as defined in (4)(A).” Rule 462(j)(4)(A)(i), in turn, provided a change in ownership

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<sup>6</sup> The Legislature enacted Sections 62(a)(2) and 64(d) in 1980, and they became operative in 1981. (Assem. Bill No. 2777 (1979-1980 Reg. Sess.) §§ 1-2; Stats. 1980, ch. 1349.)

<sup>7</sup> All references to Rules or Regulations are to title 18 of the California Code of Regulations.

occurs “[w]hen any corporation, partnership, other legal entity or any person obtains direct or indirect ownership or control of more than 50 percent of the *voting stock* in any corporation which is not a member of the same affiliated group of corporations . . . .” While Rule 462 has been renumbered, and is now contained within Rule 462.180, the definition of “ownership interests” and “shares” as meaning *voting* shares remains unchanged. (See Rule 462.180, subd. (d)(2).)

These Regulations were subject to the Administrative Procedure Act. (See e.g., Gov. Code, §§ 11346.2, 11346.45; see also State Board Letter to Assessors 81/22, Feb. 11, 1981.) The Final Statement of Reasons reflects no opposition to using “voting stock” to measure corporate “ownership interests” (Rule 462, Final Statement of Reasons, § IV, at p. 7) and, “except for this action, [the State Board] is not aware of any dispute over this language since adopting the legal entity change in ownership rules in 1981.”<sup>8</sup>

**D. All State Board Guidance Uniformly Interprets “Ownership Interests” Using Voting Stock Alone**

The State Board has always interpreted “ownership interest” in Section 62(a)(2) to mean voting stock. The State Board’s guidance includes the Assessors’ Handbook,<sup>9</sup> legal

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<sup>8</sup> **Exhibit B** to Opening Brief, Brief of *Amicus Curiae* California State Board of Equalization, at p. 39.

<sup>9</sup> “The *Assessors’ Handbook* is a collection of manuals or sections adopted and published by the Board of Equalization” that

opinions,<sup>10</sup> and Letters to Assessors.<sup>11</sup> Assessors' Handbook section 401 was promulgated in 2010 following a two-year interested-parties drafting process, with the participation of County Assessors, County Counsel, representatives of the elected State Board members, and the Deputy State Controller, as well as private attorneys and State Board staff members. (AR 76-77.)

Section 401 of the Assessors' Handbook, entitled Change in Ownership, focuses exclusively on voting stock in explaining Section 62(a)(2). The Chapter concerning Section 62(a)(2) provides: "For change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation's *voting stock*." (Ex. C, Assessors' Handbook Section 401, at p. 58.) Section 401 continues: "Control of a corporation exists when one entity or person has direct or indirect ownership or control of more than 50 percent of the *voting stock* of the corporation." (*Id.* at p. 60, original italics.)

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"address property tax appraisal and assessment practices." (AR 215; State Board Letter to Assessors No. 2003/039, May 29, 2003 ("LTA 2009/039").)

<sup>10</sup> "Legal opinions issued by the [State] Board staff are legal rulings of counsel which means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government, or other Board staff." (AR 216; LTA No. 2003/039.)

<sup>11</sup> "In the late 1960's, the [State] Board began issuing a series of letters to county assessors in order to comply with [Government Code] section 15606. . . . The LTA series covers a myriad of topics each year, including . . . policy-setting assessment guidelines . . . and *Assessors' Handbook* sections." (AR 216; LTA 2003/039.)

Section 401 also provides three examples (numbered 6-10, 6-11, and 6-12) to illustrate Section 62(a)(2)'s application—all of which evaluate “ownership interests” based on “voting stock” alone. (*Id.* at pp. 62-63; see also AR 191-193.) Example 6-10 is the most pertinent to this action because it concerns a transfer of real property to a corporation:

D and B, equal co-tenants, transfer their real property to Corporation X and each take back 50 percent of the single class of *voting stock*. No change in ownership occurs, since the proportional ownership interests remain the same before and after the transfer.

However, if D and B each take back 49 percent of the *voting stock* and C receives 2 percent of the *voting stock*, there will be a change in ownership of the entire property since the proportional ownership interests did not remain the same before and after the transfer.

(*Id.* at 62; see also AR 192.) Example 6-11 addresses facts different from this case but is relevant because it explains the rule that “there is no change in ownership” as long as “transfers are proportional to the[] ownership of the corporation’s *voting stock*.” (*Id.*, citing Rule 462.180(b)92); see also AR 192.)

The State Board has also issued four legal opinion letters explaining how Section 62(a)(2) applies in specific cases, which all state that Section 62(a)(2) measures corporate “ownership interests” using voting stock alone.<sup>12</sup>

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<sup>12</sup> The opinion letters are in the record below, attached hereto as exhibits, and annotated as follows: (i) State Board Opinion Letter re: “Change of Ownership – Transfer from Revocable Trust to Corporation,” Annotation 220.0267, May 31, 2007 (**Exhibit D**, see also AR 194-197); (ii) State Board Opinion Letter, Annotation

The State Board legal opinion dated May 31, 2007 concerns events similar to this case, where a husband and wife, as trustees, transferred real property to a corporation in which they held 49% and 51% of the voting stock, respectively. (Ex. D, see also AR 194-197.) The State Board used voting stock to analyze Section 62(a)(2):

[T]he transfer to the corporation caused their interests in the property, which were now represented by the interests in the corporation's *voting stock*, to change [from 50% each to 49% and 51%, respectively] so that husband and wife no longer had equal interest in the property. . . . However, if husband and wife can establish by clear and convincing evidence that their *voting shares* in the corporation are held as community property, the proportional interest transfer exclusion of section 62, subdivision (a)(2) would apply.

(Ex. D, see also AR 196.)

The State Board legal opinion dated October 30, 2009 considers whether Section 62(a)(2) applied to a real property transfer resulting from the merger of two corporations into one surviving corporation in which, like here, there were two classes of corporate stock. (Ex. E, see also AR 198-201.) Corporation "US"

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220.0067, Oct. 30, 2009 (**Exhibit E**, AR 198-201); (iii) State Board Opinion Letter re: "Request for Legal Opinion -BOE-100-B, Statement of Change in Control and Ownership of Legal Entities for [Redacted] & Subsidiaries," Sept. 30, 2011 (**Exhibit F**, submitted below as Ex. A to Appellant's Motion for Judicial Notice to the Court of Appeal ("MJN")); and (iv) State Board Opinion Letter re: "Exchange, Transfer and Conversion of Interests in a Limited Partnership Owning Real Property," Apr. 12, 2002 (**Exhibit G**, submitted below as Ex. B to MJN).

merged into corporation “KB” and the shareholders of “US” received “class B” voting stock in “KB,” which was the surviving corporation. (Ex. E, see also AR 199-201.) “KB” thus had at least two classes of stock: class A and class B. Nevertheless, in concluding that Section 62(a)(2) did not apply, the State Board advised:

[F]or the exclusion of section 62, subdivision (a)(2) to apply complete proportionality between transferees and the transferors is required. In other words, the shareholder’s interest in [companies 1 and 2] as represented by their *voting stock* must have been the same prior to the Merger, and after the Merger.

(Ex. E at p. 73, see also AR 201.)

The State Board legal opinion dated September 30, 2011, addresses the change in ownership implications, under Sections 62(a)(2) and 64(c)(1), of a complex transaction involving two businesses. (Ex. F.) While the facts are different from this case, the State Board stated that corporate ownership interests are measured by voting stock alone:

Under California property tax law, it is necessary to measure ownership interest in a legal entities for purposes of determining or measuring changes in control, and as discussed below, proportionality of ownership. *For corporations, the ownership interests for measuring changes in control and proportionality of ownership are represented by voting stock.* (See Rev. & Tax. Code, § 62, subd. (a)(2); § 64, subd. (c)(1); and Rule 462.180, subd. (d)(1)(A).)

(Ex. F at p. 79.)

The State Board legal opinion dated April 12, 2002 addresses whether transfers of partnership interests constituted

a change in ownership under Section 62(a)(2) or Section 64. (Ex. G.) The State Board described the standard to measure corporate “ownership interests” under Section 62 and Section 64:

While the term “ownership interests” used in sections 62 and 64 is not defined in the code, it is defined in Property Tax Rule 462.180(d)(1) (18 Cal. Code of Regs., § 462.180) which interprets those provisions. In this regard, *Rule 462.180, in effect, defines “ownership interest” as the voting stock in a corporation, or as the “total interest in partnership capital and . . . profits.”* Accordingly, it is these definitions of “ownership interest” to which we look in determining the applicable interests in entities, such as limited partnerships.

(Ex. G at p. 85.)

The State Board issued a Letter to Assessors on April 27, 2011 entitled “Legal Entities Change in Ownership – Overview” that “provides a brief overview of the applicable change in ownership laws that affect real property owned by legal entities.”<sup>13</sup> It explains the application of the “original coowners” exception of Section 64(d), discussed above. The Letter to Assessors provides:

Section 64(d) provides that when *voting stock* or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the original co-owners in one or more transactions, the real property that was

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<sup>13</sup> The State Board’s Letter to Assessors is attached hereto as **Exhibit H** and was submitted below as Ex. C to Appellants’ MJN. This quote is on page 20, with the capitalization removed in title.

previously excluded from change in ownership under section 62(a)(2) will be reassessed.

(Ex. H at 93.) The State Board’s understanding of Section 64(d) is consistent with its understanding that corporate “ownership interests” are measured using voting stock alone in Section 62(a)(2). It would be illogical to measure ownership interests in the original transaction using all stock (under Section 62(a)(2)) and then measure ownership interests in the same entity in future transactions concerning the same property using only voting stock (which all parties agree is the correct application of Section 64(d)).

**E. The Los Angeles Assessment Appeals Board Grants the Trust’s Assessment Appeal, but the Trial Court Overturns the Findings and the Court of Appeal Affirms**

The Los Angeles County Assessor (“Assessor”) considered the Transfer a change in ownership and reassessed the Property from \$5,140,120 to \$10,280,000. (AR 425-441.) The Trust appealed to the Assessment Appeals Board (“AAB”), contending that the Transfer was not a change in ownership under Section 62(a)(2) because the Transfer only changed the method by which the Trust held title. (AR 417-449.)

On December 11, 2018, the AAB ruled for the Trust and concluded the Transfer was excluded under Section 62(a)(2). (AR 126.) The AAB held that “for purposes of Section 62(a)(2), where voting stock is issued by a corporation, the proportional interest transfer exclusion should be analyzed with respect to only those



shares of voting stock issued and outstanding,” and without regard for non-voting stock. (AR 126.)

On June 10, 2019, the trial court found “[t]he Board erred when it concluded that the December 4, 2014 transfers did not constitute a change of ownership of the Properties.” (Joint Appendix (“JA”) 486.) The trial court found: “the term ‘stock’ in section 62(a)(2) has a different meaning than voting stock, and therefore means all types of stock, both voting and non-voting.” (JA 493.)

After the Court of Appeal heard argument on February 10, 2020, it requested *amicus* briefs from the State Board, three private practitioners specializing in property tax, and two trade organizations representing California assessors and counties. The State Board and all three private practitioners argued that the Transaction was exempt under Section 62(a)(2), while the trade organizations jointly urged affirmance. The State Board explained: “Reading the statutory scheme implementing Proposition 13 as a whole, ‘stock’ in Section 62(a)(2) should be interpreted to mean ‘voting stock.’ Interpreting ‘stock’ in Section 62(a)(2) to include non-voting stock would render the statutes inconsistent, and lead to problems in administering the statutory scheme and create opportunities for gamesmanship to avoid reassessment.” (Ex. B at p. 33.)

On December 7, 2020, the Court of Appeal issued a published opinion in which two Justices (Rubin, J. and Moor, J.) affirmed and the third Justice (Baker, J.) dissented. The majority found the State Board’s interpretations “not particularly helpful”

to its analysis. (Ex. A at p. 17 fn. 10.) The majority opinion analyzes the plain meaning of the term “stock”—even though Section 62(a)(2) analyzes “ownership interests” before and after a transaction—and concludes that all forms of stock must be used in applying the statute. (Ex. A at p. 10.)

Justice Baker in his dissent concludes that “[a]s a matter of statutory interpretation and of implementing agency deference [citations], *the majority opinion reaches the wrong result.*” (Ex. A at p. 23, Baker, J. diss. opn.) The final paragraphs of Justice Baker’s dissent summarize his concerns and are worth quoting in full:

The majority’s oversimplified interpretive approach (the statute just says “stock,” so that means any sort of stock) fails to harmonize the statutory scheme, and that is an analytical flaw. Analytical vulnerabilities, however, are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern. The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board specifically charged with achieving that end. (Gov. Code, § 15606, subd. (e).) The majority nonetheless permits the Los Angeles County Assessor to disregard the Board’s instructions and expertise, thereby opening the door to a patchwork, county-by-county system of differing reassessment methods that is the opposite of what the Legislature intended. Not only that, decisions about how to structure an untold number of property transactions and legal entity relationships in Los Angeles County have almost certainly been informed by the Board’s longstanding guidance regarding Section 62(a)(2) and related statutes. The majority upends these reliance interests with unpredictable and, at least in some cases, unfair consequences.

Let us therefore hope today's decision is not the last word on the meaning of Section 62(a)(2). For now, I respectfully dissent.

(Ex. A at pp. 24-25, Baker J. diss. opn.)

#### **IV. STANDARD OF REVIEW**

The question of whether the Transfer is a change in ownership within the meaning of the Revenue and Taxation Code is a question of law that this Court reviews independently.

(*Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 795.)

#### **V. ARGUMENT**

##### **A. The Court of Appeal Erred in Holding that the State Board's Quasi-Legislative Regulations and Agency Interpretations are Not Entitled to Deference**

While courts have final responsibility for interpreting statutes (*Yamaha I*, 19 Cal.4th at p. 11, fn. 4), they defer to the construction of an agency empowered with administering the statute. The degree of deference depends on whether the interpretation is a "quasi-legislative rule" or an "agency interpretation" (*Id.* at p. 10.) "[A]dministrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature." (*Id.* at p. 6, fn. 3.)

"Quasi-legislative regulations are those 'adopted by an agency to which the Legislature has confided the power to make law'" (*Ramirez*, 20 Cal.4th at 798-799; quoting *Yamaha I*, 19 Cal.4th at p. 7), and such rules "have the dignity of statutes"

(*Yamaha I*, 19 Cal.4th at p. 10). Quasi-legislative acts “bind this and other courts as firmly as statutes themselves.” (*Id.* at p. 7; see also *Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 359 [“quasi-legislative acts . . . are the formulation of a rule to be applied to future cases.”].) Courts deferentially review quasi-legislative acts: “Our inquiry necessarily is confined to the question whether the classification is ‘arbitrary, capricious or [without] reasonable or rational basis.’” (*Yamaha I*, 19 Cal.4th at p. 11, quoting *Wallace Berrie and Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65.)

“[I]nterpretive regulations are those which involve ‘an agency’s interpretation of a statute or regulation’” (*Ramirez*, 20 Cal.4th at p. 799, quoting *Yamaha I*, 19 Cal.4th at p. 7), “and are given variable deference according to a number of factors” (*Ramirez*, 20 Cal.4th at p 799.) The first factor that suggests deference is the agency’s expertise and technical knowledge. (*Yamaha I*, 19 Cal.4th at p. 12.) The second group of factors—“those suggesting the agency’s interpretation is likely to be correct”—are: (a) “careful consideration by senior agency officials;” (b) evidence that the agency has “consistently maintained the interpretation in question, especially if [it] is long-standing;” (c) an indication that the agency’s interpretation was “contemporaneous with legislative enactment of the statute being interpreted;” and (d) whether the agency has enacted a regulation pursuant to the Administrative Procedures Act. (*Id.* at pp. 12-13.) After *Yamaha I*, on remand, the court deferred to a State Board annotation (legal opinion), holding it was entitled to

“great weight.” (*Yamaha Corp. of Am. v. State Bd. of Equalization* (2000) 73 Cal.App.4th 338, 354 (“*Yamaha I*”).)

By failing to adhere to these principles—and by not conducting any *Yamaha I* analysis—the Court of Appeal departed from binding precedent, unsettled longstanding legislative and regulatory expectations, jeopardized the reliance of the 58 counties and millions of taxpayers in California on the State Board’s guidelines, and threatened the State Board’s ability to administer change in ownership laws.

**1. The Court of Appeal Failed to Accord the “Dignity of Statute” to the State Board’s Quasi-Legislative Regulation Defining Corporate “Ownership Interests” to Mean Voting Stock**

The State Board exercised its quasi-legislative powers in enacting Rule 462.180 because the regulation does not merely interpret a statute, but implements and applies the change in ownership rules enacted by Proposition 13 pursuant to authority delegated by the Legislature.

Courts find administrative agencies exercise quasi-legislative power in interpreting a statute “when the agency is expressly or impliedly delegated interpretive authority.” (*Yamaha I*, 19 Cal.4th at p. 17 (Mosk, J., conc. opn.); *Ramirez*, 20 Cal.4th at 799.) Delegated authority is implied “when there are broadly worded statutes combined with an authorization of agency rulemaking power” or “when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make.” (*Yamaha I*, 19 Cal.4th at p. 17 (Mosk, J.,

conc. opn.) The Legislature has expressly delegated such authority to the State Board. The statutes governing changes in ownership, which are broadly worded with undefined terms and concern policy decisions, also show the State Board's implied interpretive authority.

This Court has not only recognized that the State Board possesses "quasi-legislative rulemaking powers" (*Yamaha*, 19 Cal.4th at p. 8), but also that the implementation of article XIII A of the California Constitution and the resolution of its "ambiguities may be resolved by the contemporaneous construction of the Legislature or of the administrative agencies charged with implementing the new enactment." (*Amador Valley*, 22 Cal.3d at p. 245.) "[T]he orderly functioning of our property tax system depends on administrative regulations to implement general statutory directives." (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 414.)

The State Board adopted Rule 462.180 pursuant to its authorization to prescribe rules and regulations to govern and promote uniformity of assessment throughout California. (Gov. Code, § 15606, subds. (c), (e), (f).) Rule 462.180 squarely falls within the State Board's delegated rulemaking authority because it is necessary to "fill in the gaps"<sup>14</sup> of Section 62 and Section 64,

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<sup>14</sup> (See *Helene Curtis, Inc. v. Assessment Appeals Board* (1999) 76 Cal.App.4th 124, 129 ["An administrative agency granted quasi-legislative powers may, however, adopt regulations to fill in the details of the statutes enacted by the Legislature."]; *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997 [deference to agency's expertise especially

which did not define “ownership interests” or “stock.” The State Board needed to fill this gap because the Task Force charged with implementing Proposition 13—of which the State Board was a member (*Pacific Southwest Realty Co. v. Cnty. of Los Angeles* (1991) 1 Cal.4th 155, 161)—recommended using “‘examples’ to elaborate on common transactions” because “[l]ay assessors and taxpayers would otherwise have difficulty applying legal concepts” (*id.*). (See also Attorney General Opinion No. 79–1005 (1980) 63 A.G. Op. 304, 309 [“nothing in article XIII A or the materials presented to the voters provides any guidance as to the meaning of “change in ownership”].])

The Court of Appeal, however, failed to consider that Rule 462.180 defines corporate “ownership interests” to mean voting stock. The Respondent will likely argue that the Court of Appeal was free to disregard Rule 462.180 because the definition of “ownership interests” as “voting stock” in Rule 462.180, subsection (d)(1) purportedly applies only to transfers of corporate ownership interests under Section 64(c), 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.

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appropriate “in construing language which is not clearly defined in statutes.”].)

The State Board promulgated a single regulation—Rule 462.180—to govern changes of ownership involving transfers of real property or corporate ownership interests. Section 62 has been amended twenty times since Rule 462.180 was promulgated, eight times since the State Board 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)*” (Ex. G at 85), 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. conc. opn., quoting *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 862.)

The County’s argument for ignoring Rule 462.180 below—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:

*Transfers 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, subdivision (a)(2)."*

Section 62(a)(2) by its plain terms 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. (Ex. E at 73.) 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." (Ex. F at p. 79.) The State Board's *amicus* brief advised the Court of Appeal here that the "exclusion in Section 62(a)(2) should likewise apply when there is no change in the proportional ownership interest as measured by *voting* stock, and BOE has consistently interpreted it as such." (Ex. B at p. 43, original italics.) 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 should ensure a consistent definition of this

important term of art and compliance with this Court's standard under *Yamaha I*.

“[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.) Section 62 has been amended *twenty* times since Rule 462.180 was promulgated in 1979, eight times since the State Board's April 2002 Legal Opinion stated that “Rule 462.180, in effect, defines ‘ownership interest’ as the voting stock in a corporation’ for purposes of Section 62(a)(2),” 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*.” The amendments did nothing to suggest the Legislature had any problem with the State Board's interpretation of Section 62(a)(2).

The Court of Appeal has created two different definitions of “ownership interests” by ignoring the State Board's regulation and interpreting Section 62(a)(2) in isolation, even though Section 62 and Section 64 are part of the same statutory framework. One definition applies where real property is transferred and a different definition applies where stock is transferred. In doing so, the Court of Appeal erred by failing to accord Rule 462.180 the dignity of a statute. (See *Ramirez*, 20

Cal.4th at p. 799 [court of appeal erred in failing to accord dignity of statute to agency’s regulatory definition of “outside salesperson”]; *Magrabian v. Saenz* (2005) 130 Cal.App.4th 468, 273, 275 [trial court erred in failing to accord dignity of statute to agency’s regulatory definition of “entered into the United States”].) This Court should reverse the opinion below as a result.

**2. The Court of Appeal Failed to Accord “Great Weight” to the State Board’s Consistent and Long-Standing Agency Interpretations that Corporate “Ownership Interests” are Measured by Voting Stock Alone**

Even if this Court does not view Rule 462.180 as a quasi-legislative regulation, the Court of Appeal still erred by failing to accord great weight to the constellation of State Board guidance that has uniformly measured corporate “ownership interests” using voting stock alone for over forty years, which was buttressed with particular force here by the State Board’s *amicus* brief in favor of the Trust. All the *Yamaha I* factors suggest the highest degree of deference (*i.e.*, great weight) to the State Board’s agency interpretations of Section 62(a)(2). The Court of Appeal not only failed to accord any deference but failed to conduct a *Yamaha I* analysis at all.

1. The State Board has an interpretive advantage interpreting change in ownership statutes. “Because part of [State] Board’s function is to assess the tax consequences resulting from the myriad ways in which property may be held, it has practical expertise a court may lack. With its expertise and

background, the Board is positioned to establish consistent rules regarding change in ownership.” (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 491.) “[T]he [State] Board and its staff have accumulated a substantial body of experience and informed judgment in the administration of the business tax law to which the courts and litigants may properly resort for guidance.” (*Yamaha I*, 19 Cal.4th at p. 14, citations omitted.) The weight is even greater where the law is “exceedingly comprehensive and complex,” as with change in ownership laws. (*Loeffler v. Target Corp.*, 58 Cal.4th at pp. 1103, 1106 & 1127.)

2. The State Board has “consistently interpreted ‘stock’ in Section 62(a)(2) to mean voting stock.” (Ex. B at p. 39). The State Board’s consistent and longstanding understanding of Section 62(a)(2) is expressed in a regulation and six agency interpretations issued over forty years. “A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially *legislative* in nature even if it merely *interprets* applicable law.” (*Yamaha I*, 19 Cal.4th at p. 18, Mosk. J. conc. opn., quoting *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574–575, original italics.) This principle is particularly appropriate where, as here, such legal opinions have been collected and made public so taxpayers can order their transactions according to such policies. (*Id.* at p. 23.)

3. The State Board interpretation was contemporaneous with the enactment of Section 62(a)(2), as it promulgated former

Rule 462 in 1978, contemporaneous with Section 62(a)(2). (Ex. B at pp. 33, 37.)

4. The State Board's agency interpretations are subject to careful consideration by senior agency officials, and its regulations are enacted pursuant to the APA. Former Rule 462 was "subject to public comment and discussion as part of the required rulemaking process under the Administrative Procedure Act." (Ex. B at p. 38.) The Foreword of Assessors' Handbook Section 401 explains that "Board staff met with members of the California Assessors' Association, County Counsels' Association of California, and industry representatives to solicit input for this handbook section." (Ex. C at 57; see also AR 22-23, 29-30.) "Legal opinions issued by the [State] Board staff are legal rulings of counsel which means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee." (AR 216.)

The Court of Appeal dismissed the State Board's guidance as "not particularly helpful" because "[n]one of the examples cited in these materials addresses the situation in which both voting and non-voting stock are at play in determining ownership under Section 62(a)(2)." (Ex. A at p. 17.) While the Court of Appeal is correct that the *examples* in Assessors' Handbook Section 401 and the letters to assessors do not address the facts presented here, this ignores the *rule* routinely expressed by the State Board in its guidance: "For corporations, the ownership interests for measuring changes in control and proportionality of ownership are represented by voting stock." (Ex. F at p. 79); see also (Ex. G

at p. 85) [“while the term ‘ownership interests’ used in sections 62 and 64 is not defined in the code, it is defined in Property Tax Rule 462.180(d)(1) (18 Cal. Code of Regs., § 462.180) which interprets those provisions. . . . [and] defines ‘ownership interest’ as the voting stock in a corporation”].)

\* \* \*

This Court should reverse the Court of Appeal’s opinion because it failed to afford the “dignity of statute” to Rule 462.180 or “great weight” to the State Board’s agency interpretations. The State Board regulation interpreting Section 62 and Section 64 should have been dispositive, and its agency interpretations reflected its years of expertise in a technical subject matter, and is correct. The Court of Appeal erred in rejecting it.

**B. The Court of Appeal Created a Conflict in the Statutory Framework for Changes in Ownership that Contravenes Legislative Intent**

The Court of Appeal held that the phrase “ownership interests” has a unique meaning in Section 62(a)(2) that is different from its meaning in Section 64, resulting in different definitions of the same phrase in the same statutory framework. The court based this holding on the plain meaning of the term “stock,” which it found includes all forms of stock. As Justice Baker recognized in his dissent, “[t]he majority’s oversimplified interpretive approach (the statute just says ‘stock,’ so that means any sort of stock) fails to harmonize the statutory scheme, and that is an analytical flaw.” (Ex. A at 24, Baker J. diss. opn.) This error arose because the Court of Appeal focused on the wrong

term in Section 62(a)(2)—overlooking the key standard, “ownership interests,” and focusing instead on the term “stock,” which is found in a subordinate clause that merely lists non-exclusive examples of various legal interests.

The Court of Appeal’s isolated interpretation of Section 62(a)(2) ignores the rule that statutes must be read in context to harmonize the statutory scheme (*Lungren v. Deukmejian*, 45 Cal.3d 730, 735) and the Legislature’s instruction to courts and the State Board to apply the change in ownership statutes with “uniformity and consistency” (*Pacific Southwest*, 1 Cal.4th at pp. 161-162; see also Ex. A at pp. 24-25, Baker J. diss. opn. [“The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board specifically charged with achieving that end.”].)

Corporate “ownership interests” are measured using voting stock alone throughout the statutory scheme governing changes in ownership. (See Ex. B at p. 45 [“interpreting “stock” in Section 62(a)(2) to mean voting stock is consistent with the statutory scheme implementing Proposition 13.”].) Two provisions of Section 64 are relevant here.

First, Section 64(c) provides that transferring an ownership interest in a legal entity triggers a change in ownership of the entity’s real property if the buyer obtains “ownership or control of more than 50 percent of the voting stock of any corporation” “including any purchase or transfer of 50 percent or less of the *ownership interest* through which control or a majority ownership

interest is obtained.” (Rev. & Tax. Code, § 64(c).) The corporate “ownership interest” used in determining a change in ownership under Section 64(c) is voting stock alone. The amendments to Section 64(c) made in 1994 by Senate Bill 1805 (“SB 1805”) demonstrate that the Legislature intended corporate “ownership interests” to be measured using voting stock alone. The Legislative Counsel’s Digest of SB 1805 provides that one of the reasons for amending Section 64(c) was to make it consistent with “Bank and Corporation Tax Law,” which “defines, for those purposes, that direct or indirect *ownership* or control of more than 50% of the *voting stock* of the taxpayer *shall constitute ownership or control.*” (Section 68 to Stats. 1994, c. 1243 (S.B.1805); 1994 Cal. Legis. Serv. Ch. 1243 (S.B. 1805 (WEST).)

Second, as set forth above, Section 64(d) requires reassessment of property excluded from a change in ownership under Section 62(a)(2) when 50 percent of the original co-owners’ shares are transferred. As the State Board explained: “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 Section 64(d).” (Ex. B at p. 45; accord Brief of *Amicus Curiae* Charles J. Moll at p. 15; Brief of *Amicus Curiae* Ajalat, Polley, Ayoob & Matarese at p. 16.)

The Court of Appeal justified this approach because it found Section 62 and Section 64 must be interpreted separately. (Ex. A at p. 15 [“Because the two sections deal with different methods of changing property ownership, section 64’s rules



relating to control of a corporation do not fit in the proportionality exclusion under section 62(a)(2).”.) But this Court has rejected efforts to interpret the change in ownership statutes in isolation, holding that “because sections 60, 61, and 62 are in *pari materia*, we strive to interpret them in a manner that gives effect to each yet does not lead to disharmony with the other two.” (*Pacific Southwest*, 1 Cal. 4th at 167.) And the State Board has recognized the overlap between Sections 62 and 64 from the beginning by issuing a single rule, Rule 462.180, to guide application of both statutes. The State Board’s legal opinions have also interpreted Sections 62 and 64 together, recognizing that “[f]or corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by *voting stock* (Ex. F at p. 79, citing *both* Section (a)(2) and Section 64(c)(1)) and that “[w]hile the term ‘ownership interests’ used in sections 62 and 64 is not defined in the code, it is defined in Property Tax Rule 462.180(d)(1) (18 Cal. Code of Regs., § 462.180) which . . . defines ‘ownership interest’ as the voting stock in a corporation” (Ex. G at p. 85). The Court of Appeal is also factually incorrect that Sections 62 and 64 measure different kinds of ownership: both statutes measure “ownership interests” in legal entities. The Court of Appeal erred by interpreting the change in ownership statutes inconsistently to coin a new standard that gives different meanings to the same phrase in the same statutory scheme.

The root cause of this error is that the court applied the wrong standard to identify changes in ownership. Section 62(a)(2)

measures corporate “ownership interests,” but the Court of Appeal instead focused on the term stock. “Stock” is included in Section 62(a)(2) as part of a subordinate clause listing general examples of interests in a variety of legal forms that are non-exclusive (the list ends open-endedly with the phrase “or otherwise”), not as the standard for determining changes in ownership. Section 64(c) employs the same pattern, listing a variety of legal forms (*i.e.*, “corporation, partnership, or limited liability company”) followed by a list of examples of legal interests (*i.e.*, “corporate stock, partnership, or limited liability company interest”). This pattern suggests interpreting the statutes together, not in isolation.

The Court of Appeal’s conclusion is not even required by the text of Section 62(a)(2), but instead requires adding language to the statute. What the statute literally says is that the “ownership interests” that are being measured for a corporation must consist of “stock,” as opposed to some other indicia of ownership or control. The requirement that corporate ownership interests be “represented by stock,” is not the same as requiring that it be represented by “all of the stock in the corporation.” It is simply a distinction between using stock for corporations, partnership interests for partnerships, and other interests for other types of entities. To read Section 62(a)(2) as requiring that all stock should be considered would require adding words to the statute that are not there: all of the corporation’s stock, or even the stock in the corporation.

**C. The Court of Appeal’s Opinion Will Upset Settled Expectations and Undermine the State Board’s Ongoing Ability to Ensure Statewide Compliance by Local Governments and Taxpayers with Proposition 13**

Proposition 13 is one of the most consequential laws ever enacted through the initiative process. Because of its strict limits on annual *ad valorem* tax increases, Proposition 13’s change-in-ownership reassessment-trigger presents assessors with their primary opportunity to reset value. Expanding the circumstances that constitute a change in ownership, 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, hinder the State Board’s administrative authority, invite assessors to ignore the State Board resulting in a patchwork of approaches, and induce courts to ignore long-standing agency interpretations in violation of the *Yamaha I* standard. As Justice Baker correctly recognized in his dissent: “Analytical vulnerabilities . . . are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern.” (Ex. A at p. 2, Baker J. diss. opn.; see also *In re Dannenberg* (2005) 34 Cal.4th 1061, 1082 [“The court may also consider the impact of an interpretation on public policy, for ‘where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.’”], quoting *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.)

1. The Court of Appeal's construction creates loopholes that allow for tax evasion. For example, the State Board explains: "if 'stock' in Section 62(a)(2) were interpreted to mean 'all stock,' a legal entity could engineer a transfer of real property without any reassessment" by creating and selling a new class of non-voting stock to a third-party (an exempt transaction under Section 64(c)(1) since control is unchanged) and then dissolving such that the entity's real property would be partially owned by the new non-voting shareholder (an exempt transaction under Section 62(a)(2) because ownership would remain proportional according to the Court of Appeal's opinion). (Ex. B at pp. 47-48.) The State Board's use of voting stock to measure corporate ownership interests prevents this gamesmanship because it destroys the proportionality of the transfer caused by dissolution, since the original shareholder's interest would be reduced upon dissolution by the proportion of real property held by the non-voting shareholder. (*Id.* at p. 49.) This is merely one loophole created by the Court of Appeal that the parties addressed below. (See Appellant's Response to *Amicus Curiae* Briefs at pp. 8-9.)

2. Justice Baker recognized that "[r]eading 'stock' in Section 62(a)(2) to mean voting stock also avoids significant administrative difficulties because, as the Board again explains, 'evaluat[ing] the proportional ownership interests of voting stock is relatively straightforward and readily ascertainable' while '[a]ssessing whether or not the 'proportional ownership interests of the transferors and transferees' remained the same [for all stock shares] would necessitate an evaluation of all the different

classes and types of stock and their attendant rights, having to assign what may amount to random percentages of ownership to particular classes of stock since . . . owners of corporations have no specific right to any corporate real property.” (Ex. A at p. 24, Baker J., diss. opn.)

3. The import of the Court of Appeal’s decision is not limited to the construction of this statute. If not reversed, it invites lower courts to reach statutory interpretations inconsistent with long-settled legislative and regulatory expectations. (See *Yamaha*, 19 Cal.4th at 21, Mosk, J., conc. opn., quoting *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* ( 1944) 24 Cal.2d 753, 757) (“When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation.”)]; Ex. A at 25, Baker J., diss. opn.

[ “[D]ecisions about how to structure an untold number of property transactions and legal entity relationships in Los Angeles County have almost certainly been informed by the Board’s longstanding guidance regarding Section 62(a)(2) and related statutes. The majority upends these reliance interests with unpredictable and, at least in some cases, unfair consequences.”].) Assessors will similarly use the majority’s opinion to avoid State Board regulation. Justice Baker correctly recognized this too: “The majority nonetheless permits the Los Angeles County Assessor to disregard the Board’s instructions and expertise, thereby opening the door to a patchwork, county-

by-county system of differing reassessment methods that is the opposite of what the Legislature intended.” (Ex. A at p. 3, Baker J. diss. opn.)

## **VI. CONCLUSION**

For the foregoing reasons, Appellant Amen Family 1990 Revocable Trust respectfully asks the Court to reverse the opinion of the Court of Appeal, hold that corporate “ownership interests” are measured by voting stock alone under Section 62(a)(2), and hold that the Transfer was not a change in ownership as a matter of law.

DATE: April 15, 2021

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ Colin W. Fraser

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

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/s/ Vanessa Hudak  
Vanessa Hudak

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Supreme Court of California

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