

COPY

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

JOSH SHAW, etc., et al.,

Plaintiffs and Appellants,

C058479

v.

JOHN CHIANG, etc., et al.,

Defendants and Respondents.

Appeal from the Sacramento County Superior Court
No. 07CS01179
The Honorable Jack Sapunor, Judge

CROSS-APPELLANTS' REPLY BRIEF

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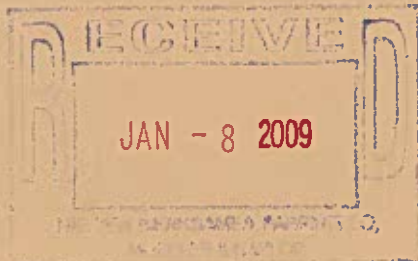


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INTRODUCTION

In their Opposition Brief, Cross-Respondents and Petitioners below fundamentally err in failing to afford the proper deference to the Legislature's decision to appropriate \$409,000,000 from the Public Transportation Account (PTA) to the General Fund to offset prior debt service on Proposition 108 bonds. First, despite acknowledging that there is no "direct evidence" that the Legislature did so, Cross-Respondents argue that the Legislature impliedly reimbursed the General Fund for Proposition 108 bond payments in earlier years. (Combined Brief at 14.) Absent any evidence that it did so, however, Cross-Respondents have not met their burden in showing that the appropriation in the 2007–2008 Budget Act is unconstitutional. So too do Cross-Respondents simply assert that there were sufficient funds in past years to cover the debt service on Proposition 108 bonds without offering any evidence in support of that assertion. (Combined Brief at 16.) Finally, contrary to Cross-Respondents' argument, there remains a meaningful limit on the use of funds in the Public Transportation Account. Given that Cross-Respondents properly concede that reimbursing the General Fund for current debt service on Proposition 108 bonds is proper, so too is the reimbursement of the General Fund for prior debt service on those same bonds.

ARGUMENT

Despite any evidence to support their argument, Cross-Respondents argue here, as they did below, that past transfers of spillover revenues to the General Fund should be presumed to have paid for Proposition 108 debt service in those years, such that the \$409,000,000 appropriation in the 2007–2008 Fiscal Year is in effect double-paying the General Fund. This argument ignores the fact that appropriations from the Public

Transportation Account are made for specific purposes.¹ When the Legislature transfers spillover revenues from the Retail Sales Tax Fund to the General Fund instead of the PTA, it specifies the uses to which those funds must be put. Thus, the prior transfers from the PTA to the General Fund were not in fact for the purpose of offsetting Proposition 108 bond funds.

Cross-Respondents' argument must be that the appropriations from the PTA to the General Fund freed-up funds that could then be used to pay the debt service on Proposition 108 bonds. In other words, by increasing the General Fund by transferring spillover revenues to it instead of the PTA, that increase should be viewed to pay for debt service for Proposition 108 bonds in that fiscal year. Such an indirect and unsubstantiated assertion, however, is insufficient to overcome the strong presumption of validity given to any legislative enactment, particularly the Budget Act, and fails to meet Cross-Respondents' burden of proof. (*In re Brian J.* (2007) 150 Cal.App.4th 97, 124; *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1025, 1221.) Moreover, the argument proves too much. As in prior years, the Legislature in the 2007–2008 Budget Act authorized the transfer of some portion of the spillover revenues from the Retail Sales Tax Fund to accounts other than the PTA. Under the Cross-Respondents' theory, those funds should be viewed as offsetting the General Fund's payment of debt service on Proposition 108 bonds, as Cross-Respondents

¹ For instance, the 2005 Budget Act, S.B. 77, provides, among other appropriations, the following: item 2600-001-0046 provides \$1.269 million for support to the California Transportation Commission, item 2640-101-0046 provides \$200.757 million for local assistance for Special Transportation Programs pursuant to Public Utilities Code section 99312, and item 2660-001-0042 provides \$132.409 million to the State Highway Account.

argue such payments did in previous years. If that is true, however, then the appropriation for current debt service on Proposition 108 bonds, which Cross-Respondents concede is valid, would be illegal for the same reason, since the debt service would be effectively paid twice: once in the direct appropriation, and once indirectly due to the reimbursement of the General Fund for other purposes, such as the appropriation for the Home to School program. Indeed, since Cross-Respondents argue that no “direct evidence” is needed, any payment to the General Fund could be argued to in effect result in a double payment for a wide variety of payments for which the General Fund is ultimately responsible, threatening the validity of hundreds of appropriations.

Cross-Respondents’ assertion that there were sufficient funds in the PTA to pay for Proposition 108 debt service in fiscal years 2003–04 through 2006–07 fails for the same reason. Cross-Respondents appear to argue that because there were sufficient spillover revenues to pay for debt service on Proposition 108 bonds in those prior fiscal years, the Legislature did not in fact need the flexibility to use those spillover revenues for other projects knowing that it could reimburse the General Fund in a future year when there was not the same need for spillover revenues. (Combined Brief at 16.) While the PTA funds in each of those years were certainly greater than the amount of debt-service payments made on Proposition 108 bonds, those funds were also used to pay a wide variety of other transportation-related expenses. Forcing the Legislature to use those funds to pay debt service on Proposition 108 bonds in those years would likely have reduced the amount of funds for those projects. By having the flexibility to pay past debt service on transportation-related bonds, the Legislature has more freedom to provide funds in the PTA to transportation-related projects that need immediate funding, knowing that the Legislature can reimburse the

General Fund for debt service when the need for such funds is reduced in a future year.

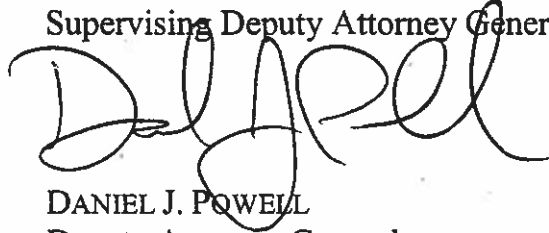
Finally, Cross-Respondents argue that if this Court were to permit the Legislature to reimburse the General Fund for prior debt-service on Proposition 108 bonds, the restriction on funds in the PTA would be rendered meaningless. (Combined Brief at 15.) To the contrary, however, the Legislature would be limited to reimbursing those obligations of the General Fund that were for “transportation planning and mass transportation purposes.” Pub. Util. Code § 99310.5. Only a limited number of bonds are for such purposes, and there is only a limited number of years for which the General Fund could be reimbursed for their payment. Even so, the fact of the matter is that the \$409 million appropriation is consistent with the requirements of Public Utilities Code section 99310.5, and the superior court’s conclusion to the contrary was in error.

CONCLUSION

The State’s current fiscal crisis illustrates the need for this Court to apply the plain language of the Revenue and Taxation Code section 7102, Public Utilities Code section 99310.5, and the other provisions governing the appropriations at issue in this case. While that fiscal crisis is not a justification to ignore the text of the constitutional and statutory provisions governing the use of spillover revenues, it does highlight the danger in adding additional requirements to their use. As the appropriation of \$409,000,000 from the Public Transportation Account to the General Fund to offset prior debt service payments on Proposition 108 bonds is for a mass transportation purpose and thus comports with the requirements of Public Utilities Code section 99310.5, it is valid and the decision of the superior court should be reversed.

Dated: January 7, 2009

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A handwritten signature in black ink, appearing to read "D. Powell", written over the typed name of Daniel J. Powell.

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CERTIFICATE OF COMPLIANCE

I certify that the attached CROSS-APPELLANTS' REPLY BRIEF
uses a 13 point Times New Roman font and contains 1173 words.

Dated: January 7, 2009

EDMUND G. BROWN JR.
Attorney General of California

A handwritten signature in black ink, appearing to read "D. Powell", written in a cursive style.

DANIEL J. POWELL
Deputy Attorney General
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DECLARATION OF SERVICE

Case Name: *Shaw, Josh, et al. v. John Chiang, et al.*

No.: C058479

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 7, 2009, I served the attached **CROSS-APPELLANTS' REPLY BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

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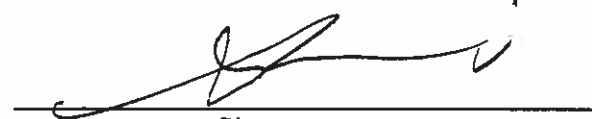
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On January 7, 2009, I caused five (5) copies of the **CROSS-APPELLANTS' REPLY BRIEF** in this case to be delivered to the California Supreme Court at **350 McAllister Street, San Francisco, CA 94102 by Personal Delivery.**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 7, 2009, at San Francisco, California.

Susan Chiang

Declarant



Signature