

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 SOUTHERN CALIFORNIA EDISON,

4 Appellant,

5 v.

6 THE STATE OF NEVADA, *ex rel.*
7 DEPARTMENT OF TAXATION,

8 Respondent.

Supreme Court No. 67497

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APPELLANTS
SUPPLEMENTAL APPENDIX
 Talia R. Lindeman
 Clerk of Supreme Court

9
10 Appeal from the First Judicial District Court, Carson City

11 The Honorable James T. Russell

12 District Court Case No. 09-OC-00016-1B

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No.	Document Title	Bates Nos.
1	Excerpt from January 24, 2014 trial testimony of Richard Pomp	1548-1549
2	Excerpt from January 30, 2014 trial testimony of John Swain	1550

Respectfully submitted this 13th day of November, 2015.

By: 

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CERTIFICATE OF SERVICE

This document was filed electronically with the Nevada Supreme Court on November 13, 2015. Electronic service of this document shall be made in accordance with the Service List as follows:

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100 N. Carson Street
Carson City, NV 89701


Rhonda Azevedo

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1 go ahead and take the stand.

2 Are you feeling better today?

3 THE WITNESS: I do. I am, yes.

4 THE COURT: All right.

5 Your witness, counsel.

6 MR. READ: Thank you, Your Honor.

7

8 RICHARD POMP,

9 having been previously duly sworn by the court clerk,
10 was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 (Resumed)

14 BY MR. READ:

15 Q Good afternoon, Professor Pomp.

16 A Good afternoon.

17 Q Just a few additional questions for you. The
18 Department in its trial brief raises the issue of whether
19 or not SCE has standing to assert the unconstitutionality
20 of this use tax as applied to its purchase of coal.

21 Do you have any comment on the issue of
22 standing for this Court?

23 A I have never understood a taxpayer not to
24 have standing to challenge a tax that it's paid. And, in

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1 fact, if I can just read you one sentence from Larry
2 Tribe's treatise on constitutional law, which is sort of
3 the leading treatise in the field.

4 In his long chapter on standing he has one
5 sentence, as follows, with respect to taxation: "A
6 taxpayer, of course, has standing to challenge the
7 validity or application of a taxing statute in
8 determining his or her tax obligations." And cites one
9 of the cases that we have talked about, or at least I
10 talked about yesterday, *Bacchus*, B-a-c-c-h-u-s, 468 U.S.
11 263, where I believe the State of Hawaii tried to say
12 that the importers of wine and alcohol beverages didn't
13 have standing.

14 So it's pretty black-letter law. You pay the
15 tax, of course you have standing to challenge it. Who
16 else so would be able to?

17 Q By the way, Professor Pomp, just for your
18 information, I had my office last night prepare a list of
19 all the cases, full name and citations, that you referred
20 to yesterday, so I have provided that to the Court and
21 opposing counsel. Just so you know --

22 A Okay.

23 Q -- you can use shorthand here, to some
24 extent, in referring to any of these.

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1 again.

2 Q Let me use the legal term "standing."

3 It's correct, isn't it, that there are -- a
4 taxpayer can bring an action and has standing to bring an
5 action to claim an unconstitutional violation of the
6 commerce clause even though that taxpayer may ultimately
7 not be able to meet your requirement showing harm due to
8 an actual competitor?

9 A Oh, absolutely, in a general sense. There
10 might be some weird case, but, yes, we get to challenge
11 our taxes, and we can be wrong about that.

12 Q But while that standing to challenge
13 the -- to challenge the statute does not require a
14 showing of harm due to a competitor, advantage to a
15 competitor, there is that requirement in your view in
16 order to obtain a refund?

17 A You made an assumption that I think I
18 generally agree with as a rule. I just -- I have
19 knowledge of kind of an interesting case called Tesoro in
20 Alaska that just came down at the end of October.

21 It's quite interesting because the Alaska
22 Supreme Court applied -- involved the internal
23 consistency test, but in a fair apportionment case, but
24 it was an internal consistency test, and the taxpayer