No. S194861

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

PETITION FOR WRIT OF MANDATE; APPLICATION FOR TEMPORARY STAY; AND SUPPORTING MEMORANDUM AND DECLARATIONS

STAY REQUESTED BY AUG. 15, 2011 (IMPLEMENTATION OF AB1X 26 AND 27)

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PETITION FOR WRIT OF MANDATE

Petitioners California Redevelopment Association, *et al.*, bring this Petition for a writ of mandate under Article VI, Section 10 of the California Constitution, and by this verified Petition allege:

1. Petitioner California Redevelopment Association ("CRA") is a California non-profit corporation. The CRA has 361 redevelopment agency members. CRA brings this Petition on its own behalf and on behalf of these members.

2. Petitioner League of California Cities ("League") is an association of over 400 California cities. The League brings this Petition on its own behalf and on behalf of its members.

3. Petitioner City of Union City is a general law city located in the County of Alameda.

4. Petitioner City of San Jose is a charter city located in the County of Santa Clara.

5. Petitioner John F. Shirey is the Executive Director of Petitioner California Redevelopment Association. He has paid a tax to the State within the last year.

6. Respondent Ana J. Matosantos is the Director of Finance of the State of California, and is named as a Respondent in her official capacity.

7. Respondent John Chiang is the Controller of the State of California and is named as a Respondent in his official capacity.

8. Respondent Patrick O'Connell is the Auditor-Controller of the County of Alameda and is named as a Respondent in his official capacity and as a representative of the county auditor-controllers.

9. This case concerns the constitutionality of AB1X 26 and 27 (the "Redevelopment Bills"). These bills, signed by the Governor on June 28, 2011, effectively require redevelopment agencies ("RDAs") to pay $1.7 billion this fiscal year and $400 million each year thereafter to schools, transit districts and fire districts.

10. For the reasons stated in the Memorandum of Points and Authorities that follows ("Memorandum"), the Redevelopment Bills violate Sections 24(b), 25.5(a)(1), 25.5(a)(3), and 25.5(a)(7) of

Article XIII, Section 6(b)(3) of Article XIIIB, and Section 16 of Article XVI of the California Constitution.

11. Respondents are therefore under a clear and present ministerial duty not to enforce the Redevelopment Bills. However, they intend to enforce the Redevelopment Bills unless restrained by a writ of mandate.

12. CRA and its members and the League and its members have a beneficial interest in not having to make the unconstitutional payments exacted by AB1X 27. CRA and its members also have a beneficial interest in not being dissolved pursuant to AB1X 26. Petitioner Shirey has a beneficial interest in not having his taxpayer dollars spent on implementing unconstitutional statutes.

13. Petitioners have no plain, speedy and adequate remedy at law other than this Petition. A civil action filed in the Superior Court could not possibly result in a final ruling regarding the validity of the Redevelopment Bills prior to January 15, 2012, when cities and counties throughout California must pay almost $850 million dollars to "Education Revenue Augmentation Funds," and thereby pay part of the State's support of schools required by Article XVI, Section 8 of the California Constitution.

14. This Petition is being filed in this Court as an original matter because of the statewide importance of the issues presented. Moreover, as noted in the previous paragraph, filing a petition for writ of mandate in the Superior Court or a Court of Appeal could not afford Petitioners timely relief.

15. In addition to a writ of mandate restraining Respondents from implementing the Redevelopment Bills, Petitioners also seek a stay of AB1X 26 and 27 pending resolution of this Petition. A stay is necessary to prevent dissolution of numerous RDAs while this case is being resolved, and to avoid the other harms described in Part IV of the Memorandum.

16. This Petition is based on the Memorandum and declarations that follow, all of which are incorporated herein by reference.

WHEREFORE, Petitioners pray that:

1. This Court issue its alternative writ of mandate and/or order to show cause ordering Respondents to refrain from enforcing AB1X 26 and 27 or to show cause why a peremptory writ as set forth below should not issue;

2. Upon return of the alternative writ and/or the hearing on the order to show cause, or alternatively in the first instance, a peremptory writ issue ordering Respondents to refrain from enforcing AB1X 26 and 27;

3. This Court order that implementation of AB1X 26 and 27 be stayed pending disposition of this Petition;

4. Petitioners be awarded their costs of suit, including reasonable attorneys' fees; and

5. Petitioners be awarded such further relief as may be just and proper.

DATED: July 18, 2011.

Respectfully,

STEVEN L. MAYER
EMILY H. WOOD
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A PROFESSIONAL CORPORATION

BY Steven Mayer /ehw
STEVEN L. MAYER

Attorneys for Petitioners

VERIFICATION

I, John F. Shirey, declare:

I am one of the Petitioners herein. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on July 15, 2011, at Sacramento, California.

JOHN F. SHIREY

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

INTRODUCTION

In November 2010, the voters enacted an initiative measure known as Proposition 22 "to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local government. Prop. 22, §2.5. The revenues protected by Proposition 22 specifically include the annual increments of property taxes allocated to California's 400 redevelopment agencies ("RDAs"). Nevertheless, two recent statutes—AB1X 26 and 27—effectively require RDAs to pay $1.7 billion this fiscal year and $400 million each year thereafter to schools, transit districts and fire districts.[1]

These bills accomplish this result by giving cities and counties a Hobson's Choice: they can either make the payments required by AB1X 27 or have their RDAs dissolved by AB1X 26. This is no choice at all. Cities, counties and their RDAs are enmeshed in a host of ongoing projects and intricate financial arrangements. *See* Declaration of Chris McKenzie ("McKenzie Decl.") ¶¶3-4, 9.[2] Dissolving the RDAs unilaterally and suddenly will stop many important, half-completed redevelopment projects dead in their tracks and expose cities and counties to legal liability for the obligations of their now dissolved RDAs. *See* pp.14-15, *infra*.

AB1X 26 and 27 achieve an unconstitutional result by unconstitutional means. The result is unconstitutional because the payments compelled by threat of RDA dissolution violate Article XIII, Section 25.5(a)(7)(A), added to the California Constitution by Proposition 22. Section 25.5(a)(7)(A) provides that the Legislature

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[1]AB1X 26 and 27 have now been chaptered as Nos. 5 and 6 of 2011 Cal. Statutes, respectively. A.B. 1X 26, 2011-12 1st Ex. Sess. (Cal. 2011); A.B. 1X 27, 2011-12 1st Ex. Sess. (Cal. 2011).

[2]The declarations cited herein follow this Memorandum and are arranged alphabetically by declarant.

may not "[r]equire a community redevelopment agency . . . to pay, remit, loan, or otherwise transfer, directly or indirectly, [the RDAs' annual property tax increment] to or for the benefit of the State, any agency of the State, or any jurisdiction." AB1X 27 violates this provision because the payments that statute exacts will benefit the State, school districts and special districts; the payments are "required" because the RDAs will be dissolved if the payments are not made; and although the payments are nominally to be made by cities and counties in the first instance, the payments are apportioned according to RDA revenues, and the money used to make them will inevitably come from the RDAs' tax increments. *See* Part I(A), *infra*.

The threat of dissolution used to exact these payments is likewise unconstitutional. Article XIII, Section 25.5(a)(7)(A) prevents the Legislature from transferring a single dollar of the redevelopment agencies' annual allocations of property tax increment to the State or other local public entities. *A fortiori*, this provision invalidates AB1X 26's threatened dissolution of *all* redevelopment agencies, the total *elimination* of their tax increment and the transfer of *all* that increment to other local governments. Moreover, the voters did not prohibit the Legislature from diverting the property tax increments annually allocated to redevelopment agencies in order to exacerbate the State's budgetary woes. Instead, protecting the RDAs' revenue stream was a means to an end: ensuring that these agencies could continue to fulfill their constitutional and statutory responsibilities. Article XIII, Section 25.5(a)(7) therefore protects these agencies against the Legislature's attempt to dissolve them. *See* Part I(B), *infra*.[3]

The payments required by AB1X 26 and 27 would be unconstitutional even if the Court assumed that they would be made by cities and counties rather than the RDAs. Under Article XIII, Sections

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[3]Descriptions of how RDAs are financed and the types of projects they undertake will be found in the Shirey and McKenzie Declarations submitted herewith. *See* Declaration of John Shirey ("Shirey Decl.") ¶¶5-10, 13-14; McKenzie Decl. ¶¶5-8.

25.5(a)(1) and (a)(3), the Legislature cannot require cities and counties to make these payments with property tax proceeds. *See* Part II(A), *infra*. Similarly, Article XIII, Section 24(b) prevents the Legislature from requiring that these payments be made with the proceeds of local taxes other than the property tax. Accordingly, AB1X 27 is unconstitutional because the Legislature cannot compel payment from any constitutionally permissible source of funds. *See* Part II(B), *infra*. The fact that the Legislature left it up to local jurisdictions to determine which tax proceeds must be surrendered does not excuse these constitutional violations. *See* Part II(C), *infra*. Finally, AB1X 27 also violates Article XIIIB, Section 6(b)(3) because it compels the RDAs during FY 2011/12 to use property taxes to repay the cities and counties for the cost of complying with a state mandate: paying part of the State's constitutional obligation to support education. *See* Part II(D), *infra*.

The issues presented by this Petition affect almost 400 redevelopment agencies, operating in every corner of the State, as well as every city and county that created these RDAs. They therefore warrant the exercise of this Court's original jurisdiction. Moreover, only this Court can render an authoritative decision by January 15, 2012, when half of the $1.7 billion annual payment for FY 2011/12 required by AB1X 27 must be made. While one provision in AB1X 26 purports to limit the venue of "actions" challenging the validity of that statute to the Sacramento County Superior Court, that provision does not apply to "special proceedings" such as this Petition, and in any event could not constitutionally interfere with this Court's original jurisdiction under Article VI, Section 10. *See* Part III, *infra*.

Finally, the Court should stay implementation of AB1X 26 and 27 pending its resolution of the Petition. A stay is necessary to prevent making of the payments required by AB1X 27 and dissolution of the RDAs pursuant to AB1X 26 while this Court considers the constitutionality of the two bills. To avoid unnecessary disruption, Petitioners respectfully request that the Court issue a stay by August 15, 2011. *See* Part IV, *infra*.

Petitioners are mindful that the State faces an extraordinary and unprecedented fiscal crisis. But the voters who enacted Proposition 22 were told that its provisions would "[p]rohibit[] the State, *even during a period of severe fiscal hardship*, from delaying the distribution of tax revenues for . . . redevelopment, or local government projects and services." CALIFORNIA SECRETARY OF STATE, *California General Election, Official Voter Information Guide* (Nov. 2010) ("Ballot Pamp. (Nov. 2010)") at 30 (emphasis added). The State's fiscal hardship provides no basis for disregarding the voters' mandate.

STATEMENT OF FACTS

Proposition 1A was adopted to limit the State's use of local funds for its own purposes. Proposition 22 was enacted to further safeguard local revenues against State interference and specifically to protect RDA tax increments. To understand these measures, which are both at issue in this case, it is necessary to describe the abuses they were meant to eliminate.

A. The Voters Enact Proposition 1A To Limit The Legislature's Use Of Local Revenues To Benefit The State Or Other Local Entities.

In 1992, "in response to a shortfall in state revenues and a period of severe fiscal difficulty" (*City of El Monte v. Comm'n on State Mandates*, 83 Cal. App. 4th 266, 272 (2000)), "the Legislature redirected $1.3 billion in property tax revenues from cities, counties, special districts and redevelopment agencies to schools." *County of Los Angeles v. Sasaki*, 23 Cal. App. 4th 1442, 1452 (1994). In the following year, the Legislature "reallocate[d] another approximately $2.6 billion in such revenues from local governments and special districts to schools." *Id.* These shifts were made by reallocating property taxes that would otherwise have gone to cities, counties and special districts to an "Educational Revenue Augmentation Fund" (ERAF) in each county. *See id.* at 1447. These revenue shifts were upheld by the Courts of Appeal. *See id.* at 1456-57. And although

"[t]he ERAF legislation lessened the burden imposed by Proposition 98 on the state General Fund by reducing the property tax allocation of cities, counties and special districts, and shifting the amount of the reduction to ERAF's for distribution to schools" (*Los Angeles Unified Sch. Dist. v. County of Los Angeles*, 181 Cal. App. 4th 414, 420 (2010)), the courts also held that it was not a reimbursable state mandate under Article XIIIB, Section 6. *County of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th at 1275, 1282-89 (2000).

The Legislature also required redevelopment agencies to contribute to the county ERAFs. *See City of El Monte*, 83 Cal. App. 4th at 272-74. These contributions were likewise held not to require state reimbursement under Article XIIIB, Section 6. *Id.* at 277-82. The Legislature required RDAs to transfer funds to ERAFs in FY 1992-93, 1993-94, 1994-95, 2002-03, 2003-04, 2004-05 and 2005/06. *See* former HEALTH & SAFETY CODE §§33681, 33681.5, 33681.7, 33681.9 and 33681.12.[4]

The State took several additional steps in 2004 to use local government revenue for its own purposes. In legislation known as the "triple flip," the Legislature decreased all local sales taxes by .25%, imposed a new state sales tax in the same amount to finance deficit reduction bonds and required that property tax proceeds be transferred to local governments to make up the lost sales tax revenue. REV. & TAX. CODE §§97.68(a), 7203.1. The Legislature also enacted a two-year shift of $1.3 billion annually in property taxes from local governments to schools and community colleges. *See* CALIFORNIA SECRETARY OF STATE, *California General Election, Supplemental Official Voter Information Guide* (Nov. 2004) ("Ballot Pamp. (Nov. 2004)") at 5.

Local government interests then put a measure on the November 2004 ballot known as Proposition 65. *See* Ballot Pamp. (Nov. 2004)

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[4]Unless otherwise noted, all subsequent statutory references are to the Health and Safety Code.

at 15. However, before the election these groups agreed to oppose Proposition 65 and back a compromise proposal that became Proposition 1A. *Id.* Proposition 1A was approved at the November election, while Proposition 65 was defeated. CALIFORNIA SECRETARY OF STATE, *Statement of Vote* (Nov. 2004) at xxi.

Among other things, Proposition 1A prohibits the State from: (1) reducing the share of property tax revenue going to cities, counties and special districts from below the percentage applicable under current law; and (2) changing the way in which property tax revenues are apportioned between cities, counties and special districts (except for statutes passed with a two-thirds vote of each House). *See* Ballot Pamp. (Nov. 2004) at 6; CAL. CONST. art. XIII, §25.5(a)(1), (2), (3). Proposition 1A also expanded the definition of a "state mandate" under Article XIIIB, Section 6. While the courts had previously held that this provision did not require the State to reimburse local governments if the State made local entities pay part of its educational funding obligations under Proposition 98 (*see* pp. 8-9, *supra*), Proposition 1A added Article XIIIB, Section 6(c), which reads as follows:

> A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

B. The Voters Enact Proposition 22 To Further Protect Local Revenues And Prevent The Legislature From Using RDA Funds To Benefit The State Or Other Local Entities.

Because RDAs are not among the "local agencies" whose property taxes are protected by Proposition 1A, that measure did not specifically protect RDA tax increments against diversion. *See* CAL. CONST. art. XIII, §25.5(b)(2); REV. & TAX. CODE §95(a) (defining "local agency" as a "city, county or special district"). However, in his ballot argument in support of Proposition 1A, Governor Schwarzenegger explained that "*[r]edevelopment agency tax*

increment revenues are already protected by the State Constitution and do not need to be further protected by Proposition 1A." Ballot Pamp. (Nov. 2004) at 8 (emphasis added).

Notwithstanding this assurance, the State again decided to require RDAs to transfer funds to ERAFs or similar entities, as it had done seven times between FY 1992/93 and 2005/06. *See* p.9, *supra*. When it did so in FY 2008-09 (§33685), this transfer (of $350 million) was held unconstitutional by the Sacramento County Superior Court because the statute did not guarantee that funds transferred from an RDA to an ERAF would be used by school districts that served students from within the redevelopment area. *See California Redevelopment Ass'n v. Genest*, No. 34-2008-00028334-CU-WM-GDS, 2009 WL 2844387, at 7, 9-10 (Cal. Super. Ct. Apr. 30, 2009). The Legislature responded to this ruling by requiring RDAs to transfer $1.7 billion in tax increment funds during FY 2009-10 and $350 million in FY and 2010-11 for the purported benefit of school districts or county offices of education located partially or entirely within RDA project areas. §§33690(a)(1), 33690.5(a)(1).[5]

To eliminate these fund transfers, and to provide additional protection for local revenues beyond that afforded by Proposition 1A, the voters adopted Proposition 22 in November 2010. Proposition 22 protected local tax receipts by adding Article XIII, Section 24(b) to the California Constitution. That section provides that the Legislature "may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes." And it specifically protected RDA funds by adding Article XIII, Section 25.5(a)(7), which prohibits the Legislature from requiring RDAs to pay or transfer their property tax increment, or

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[5]These transfers were upheld by the Superior Court. *See California Redevelopment Ass'n v. Genest*, No. 34-2009-80000359-CU-WM-GDS, 2010 WL 1805347, at 9-11 (Cal. Super. Ct. May 4, 2010). An appeal from this ruling is pending in the Third Appellate District as No. C064907.

restricting the use of those funds, "for the benefit of the State . . . or any jurisdiction," which in this context means "a city, county, and special district." *See* p.21, *infra*.[6]

Proposition 22 contains a "Statement of Purpose," which indicates that the measure was enacted "to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government." Prop. 22, §2.5. Moreover, Proposition 22 contains an uncodified Section 9 that describes the purpose of the measure's provisions safeguarding the RDAs' annual property tax increment. This provision first explained that RDAs have a constitutional right to this increment under Article XVI, Section 16:

> Section 16 of Article XVI of the Constitution requires that a specified portion of the taxes levied upon the taxable property in a redevelopment project each year be allocated to the redevelopment agency to repay indebtedness incurred for the purpose of eliminating blight within the redevelopment project area. Section 16 of Article XVI prohibits the Legislature from reallocating some or that entire specified portion of the taxes to the State, an agency of the State, or any other taxing jurisdiction, instead of to the redevelopment agency. (Prop. 22, §9)

The provision then told the voters that the Legislature had been "illegally circumventing" Article XVI, Section 16, by using that increment for purposes other than redevelopment projects, and that passage of Proposition 22 would eliminate these constitutional violations:

> The Legislature has been illegally circumventing Section 16 of Article XVI in recent years by requiring redevelopment

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[6]In addition to the provisions quoted in text, Proposition 22 made additional constitutional changes intended to limit the State's ability to use revenue dedicated to local governments for its own purposes. For example, Proposition 22 amended Articles XIX, XIXA and XIXB of the State Constitution to make sure that the Legislature could not use or borrow revenues from the Highway Users Tax and the sales tax on gasoline for State General Fund purposes.

> agencies to transfer a portion of those taxes for purposes other than the financing of redevelopment projects. *A purpose of the amendments made by this measure is to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, the redevelopment agency to transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction.* (*Id.* (emphasis added))

The same points were made in the ballot pamphlet. The measure's Official Title and Summary told the voters that Proposition 22 "prohibits the State from borrowing or taking funds used for . . . redevelopment." Ballot Pamp. (Nov. 2010) at 30. Similarly, the Legislative Analysis told the voters that the measure "[p]rohibits redirection of redevelopment property tax revenues" (*id.* at 31) and "prohibits the state from enacting new laws that require redevelopment agencies to shift funds to schools or other agencies." *Id.* at 34. As a result, the Legislative Analyst told the voters that measure "likely would result in increased revenue being available for redevelopment." *Id.* at 35.

As this history demonstrates, the People adopted Proposition 22—by more than 60%[7]—to safeguard local revenues generally and, in particular, to prevent future transfers of RDA tax increment funds. However, less than a year later, the Legislature has launched a frontal assault on Proposition 22 by enacting AB1X 26 and 27.

C. AB1X 26 And 27 Coerce The Payment Of Local Revenues To Benefit The State, School Districts and Special Districts By Eliminating Redevelopment Agencies If The Payments Are Not Made.[8]

There is nothing subtle about AB1X 26 and 27, or the reasons that led the Legislature to adopt them. The first bill dissolves the

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[7]*See* CALIFORNIA SECRETARY OF STATE, *Statement of Vote* (Nov. 2010) at 7.

[8]The description of AB1X 26 and 27 that follows focuses on the provisions most relevant to their facial invalidity. It therefore does not discuss the many other problems that would arise if the legislation is upheld and implemented.

RDAs; the second provides a stay of execution if specified payments are made. We shall first describe the payment statute and then describe the statute which furnishes the means by which the payments are compelled.

1. AB1X 27.

AB1X 27 creates an "Alternative Voluntary Redevelopment Program" (AB1X 27, §2), in which cities and counties can participate if they pay the legislatively established price. This program is "voluntary" in name only, since the alternative for any city or county that created an RDA is the dissolution of that agency. Plainly, then, every jurisdiction that is financially able to make the payments required by AB1X 27 will be under hydraulic pressure to do so, as the Legislature assumed when it enacted the bills.[9] Indeed, the adverse consequences for those jurisdictions without the means to make the payments required by AB1X 27 will be calamitous. Declaration of Peter J. Furman ("Furman Decl.") ¶7 (Petitioner San Jose will be unable to complete project involving 20 disadvantaged residential neighborhoods and lose benefit of $103 million investment); Declaration of Mark Evanoff ("Evanoff Decl.") ¶¶10-15 (dissolving Petitioner Union City's RDA will leave partially completed

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[9]The Assembly Floor Analysis of AB1X 27 candidly stated that "[i]t is anticipated that cities and counties with RDAs would choose to participate in the . . . [p]rogram established in this bill." ASSEMBLY BUDGET COMM., Assembly Floor Analysis of AB1X 27 at 4 (2011-12 1st Ex. Sess.), as amended June 15, 2011 ("AB1X 27 Assembly Floor Analysis"). Moreover, the Assembly Floor Analyses of both bills stated without qualification that the two bills "*will result* in $1.7 billion in additional funding as part of the 2011-12 Budget [Act]." ASSEMBLY BUDGET COMM., Assembly Floor Analysis of AB1X 26 at 9 (2011-12 1st Ex. Sess.), as amended June 15, 2011 ("AB1X 26 Assembly Floor Analysis") (emphasis added); AB1X 27 Assembly Floor Analysis at 4 (same). This prediction will come true only if every jurisdiction with an RDA elects to make its required payment. Similarly, the method by which the $1.7 billion is apportioned assumes that every city and county with an extant RDA will participate in this so-called "voluntary" program. *See* p.16, *infra*.

redevelopment project unfinished and thereby result in the waste of over $50 million in city funds); Declaration of Jim Ridenour ("Ridenour Decl.") ¶¶6-7 (dissolution of RDA will cause loss of millions of dollars in public funds and hundreds of units of affordable housing, as well as saddling city with millions of dollars in liability for RDA obligations); Declaration of Regan Candelario ("Candelario Decl.") ¶5 (RDA dissolution will prevent completion of affordable housing projects and cause city to cut services to the community and lay off employees); Shirey Decl. ¶¶24-28 (RDA dissolution will cause many redevelopment projects to be abandoned); McKenzie Decl. ¶12 (RDA dissolution will expose cities to unanticipated contractual liability and loss of the investments they have made in redevelopment projects that cannot be completed).

The Legislature was also candid in explaining its rationale for enacting this bill. Its purpose is not to "reform" redevelopment, or to augment local government finances, but instead—as with the prior transfers that led to the passage of Propositions 1A and 22—to require local entities, including the RDAs, to help the State pay its constitutional obligation to support the schools. The Legislature first asserted that because Article XVI, Section 16 of the California Constitution supposedly "delegates authority to the Legislature to establish redevelopment agencies by statute[,] [t]he Legislature retains the authority . . . to establish conditions for the continued operation of redevelopment agencies that apply to communities on a voluntary basis." AB1X 27, §1(a). The Legislature then found that "[t]he diversion of over five billion dollars . . . in property tax revenue to redevelopment agencies each year has made it increasingly difficult for the state to meet its funding obligations to the schools." *Id.* §1(b). Consequently, AB1X 27 uses the Legislature's supposed power over the "continuation of redevelopment agencies" to "provide[] a way to stabilize school funding"—a euphemism for having local government pay more of the State's school funding obligations—and "allow redevelopment agencies to continue to make investments to remediate blight and create jobs in their

communities." *Id.* §1(c). The message to local governments is simple: if you want the conceded benefits to your communities that redevelopment provides—remediating blight and creating jobs—pay up or else.

That message is contained in Section 34192, which provides that:

> [i]f a city or county that includes a redevelopment agency participates in the program established pursuant to this part and complies with all requirements and obligations contained in this part, a redevelopment agency included in that city or county shall be exempt from Part 1.8 [the portion of AB1X 26 that immediately suspends most RDA activities pending their dissolution]. . . Part 1.85 [the portion of AB1X 26 that dissolves the RDAs]. . . and any other conflicting provision of law.

The process by which these payments are calculated and made is relatively straightforward. By August 1, 2011, the State Director of Finance ("Director") must calculate the amount due during FY 2011/12 from each RDA. §34194(b)(2)(A)-(I). Each RDA's required payment is based on the average of two ratios: that RDA's share of statewide net tax increment (deducting for specified payments to taxing agencies) during FY 2008/09 and its share of statewide gross tax increment (without deducting those same payments) during the same year. *Id.* The resulting ratio is then applied to $1.7 billion to determine each RDA's share of the total payment to be made during FY 2011/12. §34194(b)(2)(D), (H), (I).

The Director must provide notice to each city and county that has an RDA of that RDA's required payment by August 1, 2011. §34194(b)(2)(J). The required payment for each city and county is the sum of the amounts determined for that jurisdiction's RDAs. §34194(b)(1).

A city or county that wishes to participate in the "voluntary" redevelopment program must adopt a non-binding resolution of intent by October 1, 2011. §34193(b). This action postpones the dissolution of its RDAs from October 1 to November 1. *Id.* Then, on or before November 1, the city or county must enact a binding ordinance that it will comply with AB1X 27, and notify the county

auditor-controller, the Director and the Controller of this enactment. §34193.1.[10] Once it does so, its RDA may continue in existence, as long as the ongoing payments required by that statute are made.

The payments required by AB1X 27 "can be funded from any available city or county funds not otherwise obligated for other uses." SENATE RULES COMM., Off. of Sen. Floor Analysis, 3d Reading Analysis of AB1X 27 at 3 (2011-12 1st Ex. Sess.), as amended June 15, 2011 ("AB1X 27 Senate Floor Analysis"); *see* §34194.1(a). However, "a city or county may enter into an agreement with the redevelopment agency in that jurisdiction, whereby the redevelopment agency will transfer a portion of its tax increment to the city or county, in an amount not to exceed the annual remittance required that year pursuant to this chapter, for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals." §34194.2. In other words, each RDA may "voluntarily" reimburse the city or county that created it for the payment that assures the RDA's continued existence, and this reimbursement must be made from the RDA's tax increment.

The required payment must be made in two installments: the first by January 15, and the second by May 15. §34194(d). The payments must be made to the county auditor. §34194(a). For FY 2011/12, the auditor must pay a tiny portion of the payment ($4 million out of $1.7 billion) to a new "Special District Allocation Fund" that goes to fire districts and transit districts. §34194.4(a)-(c). The balance goes to the county's Education Revenue Augmentation Fund (AB1X 27 Assembly Floor Analysis at 3-4; §34194(a)), the same funds that the Legislature created to receive the property transfers made beginning in the early 1990s. *See County of Los Angeles*, 23 Cal. App. 4th at 1447. These payments will "offset the state's

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[10]This deadline may be extended to December 1, 2011, under limited circumstances. §§34193(a), 34194(b)(2)(L)(ii).

Proposition 98 payment to schools." AB1X 27 Assembly Floor Analysis at 4.

The payment regime applicable in FY 2012/13 and thereafter is different in some respects from that applicable in FY 2011/12. Most notably, the total required payments will drop from $1.7 billion to $400 million. *See* §34194(c)(1)(A). Conversely, the funds received by fire districts and transit districts will increase from $4.3 million in FY 2011/12 to $60 million annually thereafter. §34194.4(a)(2). Each RDA's share of the total payment will be adjusted "based on changes in tax increment revenue for existing project areas and to exclude new debt." AB1X 27 Senate Floor Analysis at 4-5. Finally, the payments made to school districts after FY 2011/12 will not offset the State's Proposition 98 obligations. §34194.1(c).[11]

Despite these changes, one thing remains constant: the RDA's continued existence is still conditional and dependent on the making of the required payments by the relevant city or county. Section 34194(d)(2) provides that "[i]f a city or county fails to make its remittance payment . . . the county auditor-controller shall notify the Director of Finance of the failure," and the Director "may determine that the redevelopment agency in the city or county shall be subject to the requirements of [the statutes dissolving the RDAs]." In that event, "[t]he city or county shall no longer be authorized to engage in voluntary redevelopment pursuant to this part and the redevelopment agency shall become immediately subject to [the dissolution statute]." §34195(a).

2. AB1X 26.

AB1X 26 dissolves the RDAs if cities and counties do not take part in the "voluntary" redevelopment program created by AB1X 27. AB1X 26 does not take effect unless AB1X 27 also becomes effective. AB1X 26, §14. Accordingly, the Legislature did not enact the

[11]There are other changes in the required payments in FY 2012/13 and thereafter, but these changes are not relevant to the constitutional flaws in AB1X 27 and, accordingly, are not described.

dissolution statute to further some larger public purpose, but simply as a club to coerce local governments to make the payments required by AB1X 27.

AB1X 26 "eliminates redevelopment agencies" (SENATE RULES COMM., Off. of Sen. Floor Analysis, 3d Reading Analysis of AB1X 26 at 1 (2011-12 1st Ex. Sess.), as amended June 15, 2011 ("AB1X 26 Senate Floor Analysis")) in two stages.

First, starting on the statute's effective date, RDAs are subject to a host of prohibitions and restrictions. Section 34162 prohibits RDAs from selling bonds or incurring other indebtedness. Section 34163 contains a similar list of prohibited activities, including making loans, purchasing loans, entering into contracts for a wide variety of redevelopment-related purposes, modifying existing agreements, disposing of assets, acquiring real property, or accepting financial assistance from the state or federal governments. Section 34164 prohibits RDAs from taking a wide variety of actions in connection with redevelopment plans. Finally, Section 34165 prohibits RDAs from, inter alia, increasing the pay or benefits for any officer, employee or consultant, paying bonuses, or increasing the number of staff. These restrictions last until the city or county agrees to comply with AB1X 27 or October 1, 2011, whichever occurs first. §§34170(a), 34193(a).

These multiple limitations are intended "to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools." §34167(a). Moreover, the Legislature has commanded that these limitations "shall be construed as broadly as possible to support this intent and to restrict the expenditures of funds to the fullest extent possible." *Id.*

Second, on October 1, 2011, "[a]ll redevelopment agencies . . . that were in existence on the effective date of this part are hereby dissolved and shall no longer exist as a public body, corporate or

politic." §34172(a). As of that date, all authority the RDAs now exercise under the Community Redevelopment Law "is hereby withdrawn from the former redevelopment agencies." §34172(b).

Once a redevelopment agency is dissolved, AB1X 26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit. All former RDA assets are transferred to the control of "successor agencies" (§34175(b)), and these agencies must remit the unencumbered balances of RDA funds to the county auditor-controller (the "auditor") for distribution to the county, cities within the county and school districts in proportion to what each agency "would have . . . received absent redevelopment and adjusted for pass-through agreements." AB1X 26 Assembly Floor Analysis at 7-8; *see* §§34177(d), 34188. Likewise, the RDAs' remaining assets and property must be disposed of "expeditiously and in a manner aimed at maximizing value." §34177(e). The proceeds from asset sales must be given to the auditor for distribution in the same manner as the unencumbered balances. *Id.*[12] Finally, the property taxes that would have gone to the dissolved RDAs are placed in a "Redevelopment Property Tax Trust Fund." §34182(c)(1). After pass-through payment obligations, enforceable obligations of the RDAs, and administrative costs are paid, the residual amounts in the fund "shall be distributed to local agencies and school entities" (§34183(a)(4)), in the same proportion as RDA balances and assets are distributed. §34188.[13]

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[12]RDA assets that were "constructed and used for a governmental purpose may instead be transferred to the appropriate public jurisdiction pursuant to pre-existing agreement. §34181(a).

[13]"School entity" means "any entity defined as such in subdivision (f) of Section 95 of the Revenue and Taxation Code" (§34171(i)), which in turn defines that term as "school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools." REV. & TAX. CODE §95(f).

ARGUMENT

I.

AB1X 26 AND 27 VIOLATE ARTICLE XIII, SECTION 25.5(a)(7) OF THE CALIFORNIA CONSTITUTION.

AB1X 26 and 27 use the threat of dissolution to compel RDAs to pay $1.7 billion in FY 2011/12 and at least $400 million annually thereafter to benefit schools, fire districts and transit districts, and (in FY 2011/12) the State. They therefore achieve an unconstitutional result—the use of RDA funds to benefit the State and other local entities—by resorting to unconstitutional means: the threat of dissolving the RDAs. They are therefore unconstitutional twice over. We shall first explain why the "voluntary" payments compelled by AB1X 27 are unconstitutional and then explain why the dissolution threatened by AB1X 26 is likewise invalid.

A. AB1X 27 Violates Article XIII, Section 25.5(a)(7)(A) Because It Requires RDAs To Use Their Tax Increment Funds For The Benefit Of The State And Other Local Jurisdictions.

Article XIII, Section 25.5(a)(7)(A) provides that the Legislature may not "[r]equire a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction . . . ." "Jurisdiction" is defined in Article XIII, Section 25.5(b)(3) as having "the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004." On that date, Section 95(b) provided in relevant part that "'[j]urisdiction' means a local agency, school district, community college district, or county superintendent of schools," and Section 95(a) in turn defined "local agency" as "a city, county, and special district."

Accordingly, Section 25.5(a)(7)(A) prevents the Legislature from requiring RDAs to pay or transfer property taxes allocated to them for the benefit of the State or any city, county or special

district. Since that is precisely what AB1X 27 does, the statute is unconstitutional.

1. The Payments Mandated By AB1X 27 Will Benefit The State, School Districts And Special Districts.

The payments mandated by AB1X 27 will benefit both the State (in FY 2011/12) and local "jurisdictions" such as school districts, fire districts and transit districts. The State will benefit in FY 2011/12 because the overwhelming majority of the required $1.7 billion payment will be used to meet the State's education funding obligation under Proposition 98. §34194.1(b). School districts, fire districts and transit districts will benefit both in FY 2011/12 and thereafter, because they will receive the payments mandated by AB1X 27. §§34194(a), 34194.1(e), 34194.4. The statute mandating these payments therefore violates Article XIII, Section 25.5(a)(7)(A) to the extent that the payments must be made with RDA tax increment funds.

2. The Payments Are "Required" Within The Meaning Of Section 25.5(a)(7)(A).

Respondents may argue that the payments prescribed by AB1X 27 do not violate Section 25.5(a)(7)(A) because they are part of an "alternative voluntary redevelopment program" (AB1X 27, §2), and are therefore not "required" within the meaning of that constitutional provision. However, local jurisdictions can continue to receive the benefits provided by redevelopment—which the findings in AB1X 27 identify as "investments to remediate blight and create jobs" (AB1X 27, §1(c))—only if they "agree" to make, and do make, the required payments. If the city or county that created the RDA does not agree to make the payments, or if the payments are not made, its RDAs will be dissolved pursuant to AB1X 26, with dire consequences. §§34194, 34195; *see* p.15, *supra*. Accordingly, these payments are no more voluntary than a bank teller's decision to hand

over the cash in his or her till when confronted with a pistol-packing robber and a note reading: "Your money or your life."

Even if the Legislature had the constitutional power to dissolve the RDAs (*but see* Part I(B), *infra*), that power could not be used to require them to make payments that otherwise would be forbidden by Section 25.5(a)(7)(A). That is because the Legislature cannot use a constitutional power to achieve an unconstitutional result. For example, in *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979) ("*SCOPE*"), a state statute attempted to control the salaries of local employees in two different ways. First, it purported to invalidate "any agreement by a local agency to pay a cost-of-living increase in excess of that granted to state employees." *Id.* at 302. Second, it "prohibited the distribution of state surplus or loan funds to any local public agency granting to its employees a cost-of-living wage or salary increase" that exceeded this limit. *Id.* After holding the first provision invalid as an impairment of contract (*id.* at 304-14), this Court went on to hold that the second provision was likewise unconstitutional:

> It is too well established to require extensive citation of authority that, while the state may impose conditions upon the granting of a privilege, . . . "constitutional power cannot be used by way of condition to attain an unconstitutional result." Thus, while the state may not have been under an obligation to distribute state funds to local agencies to assist them in resolving whatever fiscal problems were contemplated in the wake of Proposition 13, it could not require as a condition of granting those funds that the local agencies impair valid contracts to pay wage increases. (*Id.* at 319 (citation omitted))

For purposes of this argument, we assume *arguendo* that the Legislature has "the authority to dissolve redevelopment agencies by statute" and therefore has the lesser authority "to establish conditions for the continued operation of redevelopment agencies that apply to communities on a voluntary basis." AB1X 27, §1(a). But like the power to condition the receipt of state funds at issue in *SCOPE*, the "power to establish conditions on the continued operations of redevelopment agencies" cannot be used "to attain an unconstitutional

result." 23 Cal. 3d at 319. That is precisely what the Legislature did when it attempted to use its supposed power over the continued existence of the RDAs to compel them to make payments that would have been prohibited by Section 25.5(a)(7)(A) had they been commanded directly by the Legislature. "To hold otherwise would permit the Legislature to do indirectly that which it may not do directly . . . ." *St. John's Well Child & Family Ctr. v. Schwarzenegger*, 50 Cal. 4th 960, 979 n.13 (2010) (citation and internal quotation marks omitted).

3. The Payments Will Be Made Directly Or Indirectly With RDA Tax Increments.

The payments required by Section 34194 are made in the first instance by cities and counties which "may use any available funds" for that purpose. §34194.1(a). These payments nevertheless violate Section 25.5(a)(7)(A) because the Legislature knew and intended that the ultimate source of the payments would be RDA tax increment funds.

If that were not true, the provisions in AB1X 27 relating to liability for and the means of calculating these payments would make no sense. For example, under the statute the required payments need be made only by counties and cities that include an RDA. §34194(a). Moreover, the proportion that each jurisdiction must pay of the required total statewide annual payment is based upon the tax increment attributable to its RDA, not upon the funds available to the city or county. §34194(b), (c). Indeed, the Director of Finance, who calculates the amount of these payments, must "notify each city or county of the amount determined . . . *for a redevelopment agency* of that city or county." §34194(b)(1)(J) (emphasis added). Moreover, the required payment for each city and county is the sum of the amounts determined for that jurisdiction's RDAs. §34194(b)(1).

It would have been utterly irrational for the Legislature to restrict these payments to cities and counties having an RDA, and to apportion the payments according to the RDA's tax increments, had the

Legislature not believed that these funds would ultimately be the source of the required payments. In addition, the benefits received by the city or county from the required payments are all linked to the RDAs: the payments ensure the RDAs' continued existence and "are intended to . . . ensur[e] improved educational and other community services in the areas served by the redevelopment agency." §34193.2.

It is therefore logical that the cities and counties that are liable for these payments in the first instance will transfer the obligation to fund these payments to their RDAs pursuant to Section 34194.2. And it is equally logical that the RDAs—whose existence is on the line—will agree to shoulder that responsibility if they can. Moreover, in all but a handful of instances, the governing boards of the cities and counties and their RDAs are comprised of *the same people*.[14] Accordingly, the burden of making the payments required by AB1X 27 will fall on the RDAs, not the cities and counties that created them. In fact, some cities must transfer this obligation to their RDAs because they are financially incapable of making the payments themselves. *See, e.g.*, Declaration of Jean Quan ¶¶2-4; Declaration of Donna Landeros ¶3.

That is precisely what the Legislature intended. The findings in AB1X 27 reveal that the bill was passed because "[t]he diversion of over five billion dollars ($5,000,000,000) in property tax revenue *to redevelopment agencies* each year has made it increasingly difficult for the state to meet its funding obligations to the schools." AB1X 27 §1(b) (emphasis added). And, indeed, the Legislature has expressly required that, once an agreement is made between each city or county and its RDA, the reimbursement payments *must* come from the RDAs' annual property tax increments. §34194.2.

That brings these payments within the ambit of Proposition 22. That measure was enacted to prevent the payment, use or transfer of

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[14]Of the State's approximately RDAs, all but seven have governing boards that are comprised of the board of supervisors or city council that created the agency. Shirey Decl. ¶4.

RDA funds for the benefit of third parties. As the Legislative Analyst told the voters, prior initiatives such as Proposition 1A had "not eliminate[d] the state's authority to redirect local redevelopment agency revenues." Ballot Pamp. (Nov. 2010) at 30. Accordingly, under then-existing law, "the state may require redevelopment agencies to shift revenues to nearby schools. Recently, the state required redevelopment agencies to shift $2 billion of revenues to schools over two years. (This amount is roughly 15 percent of total redevelopment revenues.)" *Id.* at 33. Indeed, as we have seen, one of the findings in Proposition 22 states that the Legislature had "[t]aken local community redevelopment funds on numerous occasions and used them for unrelated purposes" (Prop. 22, §2(d)(3)), and the measure's Section 9 refers to the very same history. *See* pp.12-13, *supra*.

The analyst then went on to tell voters, in unambiguous terms, that Proposition 22 would put an end to such transfers: "This measure prohibits the state from enacting new laws that require redevelopment agencies to shift funds to schools or other agencies." Ballot Pamp. (Nov. 2010) at 34. In other words, the measure "reduces or eliminates the state's authority to . . . [r]edirect redevelopment agency property taxes to any other local government." *Id.* at 30-31; *accord id.* at 31 (stating that measure "[p]rohibits redirection of redevelopment property tax revenues"). Similarly, the title of the measure prepared by the Attorney General reads as follows: "Prohibits the State from borrowing or taking funds used for . . . redevelopment or local government projects and services." *Id.* at 30.

Both the text and legislative history of Proposition 22 therefore confirm that: (1) the voters knew that the Legislature had previously required RDAs on numerous occasions to transfer funds to schools and other local agencies; and (2) the voters enacted Proposition 22 to prevent similar transfers in the future. That constitutional provision would therefore invalidate any statute that directly required

redevelopment agencies to pay or transfer their property tax increments to ERAFs, school districts or special districts.[15]

The question this case presents, then, is whether the result should be the same when the Legislature has required the payments to come from cities and counties in the first instance, and nominally left it up to cities, counties and RDAs to determine whether these payments will be reimbursed from the RDAs' tax increments under circumstances in which it is inevitable that they will. *See* pp.24-25, *supra*. There are multiple reasons why the answer is "yes."

First, Section 25.5(a)(7)(A) prohibits the payment or transfer of RDA funds to benefit the State or other local entities regardless of whether the payments or transfers are made "directly or indirectly." It therefore is legally irrelevant whether the payments compelled by AB1X 27 are made by RDAs in the first instance, or by cities and counties that can—and will—obtain reimbursement from the RDAs.

Second, even if the language of Proposition 22 were less clear than it is, Proposition 22 requires that the "provisions of this act shall be liberally construed in order to effectuate its purposes." Prop. 22, §11. This Court should follow that command. *See, e.g., Silicon Valley Taxpayers' Ass'n v. Santa Clara County Open Space Auth.*, 44 Cal. 4th 431, 448 (2008) (enforcing command in Proposition 218 that initiative constitutional amendment be "'liberally construed to effectuate its purposes'"). That would be true even if Proposition 22 contained no such provision, because this Court is "obligated to

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[15]The Legislative Analyst has recognized that Proposition 22 prevents the transfer of RDA funds to ERAFs. The LAO's analysis of the Governor's Redevelopment Proposal states in relevant part:

> The state has periodically enacted laws requiring redevelopment agencies to give shares of the property tax increment to school districts. For example, the state required redevelopment agencies to shift $2 billion to school districts over the last two fiscal years. *Voter approval of Proposition 22 in 2010 greatly constrains the Legislature's authority to enact future revenue shifts.* (LEGISLATIVE ANALYST'S OFFICE, *Governor's Redevelopment Proposal* at 3 (Feb. 7, 2011) (emphasis added))

construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." *Id.* Moreover, the Court has emphasized that fidelity to a measure's purpose trumps a literal reading of its language. As this Court said in *Lungren v. Deukmejian*, 45 Cal. 3d 727 (1988),

> [l]iteral construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. . . . These rules apply as well to the interpretation of constitutional provisions. (*Id.* at 735 (citations omitted))

Accordingly, even if *arguendo* AB1X 27 did not fit within the literal language of Section 25.5(a)(7)(A)—which Petitioners do not concede—the Court should apply these principles and interpret Proposition 22 in a manner that furthers its purposes, rather than subverts them.[16]

Proposition 22 describes its own purpose in unmistakably clear terms: "to conclusively and completely prohibit" the State "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government . . . . Prop. 22, §2.5. That purpose will be subverted if AB1X 27 is upheld. That bill was intended to divert billions of dollars in RDA tax increment funds to schools and special districts. It therefore seizes, diverts, transfers and interferes with revenues that under current law are dedicated to funding services provided by the RDAs. Accordingly, upholding the bill would frustrate the voters' intent to "conclusively and

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[16]Indeed, the Court has interpreted many provisions of the California Constitution to further the policies contained therein, even if the Court's interpretation was not supported by the provision's literal language. *See, e.g., Prof'l Eng'rs in California Gov't v. Dep't of Transp.*, 15 Cal. 4th 543, 548 (1997) ("Decisional law interprets article VII as a restriction on the 'contracting out' of state activities or tasks to the private sector. The restriction does not arise from the express language of article VII. Rather, it emanates from an implicit necessity for protecting the policy of the organic civil service mandate against dissolution and destruction") (citations and internal quotation marks omitted).

completely prohibit State politicians in Sacramento" from legislatively interfering with local governments' use of their dedicated funds.

Similarly, Section 9 states that one of Proposition 22's purposes was "to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, the redevelopment agency to transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction." Prop. 22, §9. That purpose, too, will be frustrated if AB1X 27 is upheld, because the statute effectively compels the transfer of RDA tax increment funds to cities and counties to reimburse them for making payments that benefit the State, school districts or special districts.

Third, a liberal construction of Proposition 22 is also warranted because the measure is a remedial provision, and therefore "is to be liberally construed to effect its objectives and to suppress, not encourage, the mischief at which it was directed." *Drouet v. Superior Court*, 31 Cal. 4th 583, 611 (2003) (internal quotation marks omitted) (citing *Barela v. Superior Court*, 30 Cal. 3d 244, 251 (1981)). Consequently, what the Court of Appeal said in *Young v. Department of Fish & Game*, 124 Cal. App. 3d 257 (1981), is equally applicable here:

> This section of the constitution is remedial in character and should be given a liberal construction. . . . Although due regard will be given the language used, such an act will be construed, when its meaning is doubtful, so as to suppress the mischief at which it is directed, and to advance or extend the remedy provided, and bring within the scope of the law every case which comes clearly within its spirit and policy. (*Id.* at 271 (citation and internal quotation marks omitted))

As we have seen, there is no mystery about the "mischief" that Proposition 22 was designed to "suppress." As just discussed, the measure was enacted to "conclusively and completely" end the Legislature's ability to use tax revenue belonging to local agencies, including the annual tax increment allocated to RDAs, to benefit the State or other local entities. That is precisely what AB1X 27 does.

Accordingly, it conflicts with Proposition 22's "spirit and policy," as well as with its language and purpose, and must be declared unconstitutional for that reason, as well.

B. AB1X 26 Violates Article XIII, Section 25.5(a)(7).

Cases such as *SCOPE* stand for the proposition that the Legislature cannot use a constitutional power to achieve an unconstitutional result. But the constitutional flaws in AB1X 26 and 27 go beyond their violation of this rule. These bills are also invalid because the means they use to achieve the desired result are themselves unconstitutional.

The process of RDA dissolution set forth in AB1X 26 occurs in two stages. First, the statute imposes a host of restrictions on the RDAs when it becomes effective. Second, the RDAs are dissolved as of October 1, 2011, unless their city or county signals their intent to participate in AB1X 27's "voluntary" program. Both steps in this process are constitutionally infirm.

1. AB1X 26's Attempt To Restrict The Use Of RDA Funds Pending Their Dissolution Violates Section 25.5(a)(7)(B).

Article XIII, Section 25.5(a)(7)(B) provides that, with irrelevant exceptions, the Legislature may not require an RDA "to use, *restrict*, or assign a particular purpose for [taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI] for the benefit of the State, any agency of the State, or any jurisdiction." (Emphasis added.) AB1X 26 violates this provision because, from the moment the statute becomes effective, it requires RDAs to restrict the use of previously obtained property taxes in a wide variety of ways for the benefit of the State and other local entities. *See* p.19, *supra*. These restrictions last until the city or county that created the RDA adopts an ordinance binding the

entity to comply with AB1X 27 or October 1, 2011, whichever occurs first. §§34170(a), 34193(a).[17]

The purpose of these restrictions is set forth in Section 34167(a): "to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that these assets and revenues that are not needed for enforceable obligations may be used by local governments to fund core governmental services . . . ." In other words, these provisions restrict the RDAs' use of their tax revenue so that this money can ultimately be used for the benefit of "local governments to fund core governmental services." Accordingly, the restrictions AB1X 26 imposes on the RDAs prior to their dissolution violate Section 25.5(a)(7)(B).[18]

2. AB1X 26's Attempt To Dissolve The RDAs Violates Section 25.5(a)(7).

The second stage in the process created by AB1X 26 is the actual dissolution of the RDAs, effective October 1. That dissolution also violates Article XIII, Section 25.5(a)(7). Accordingly, AB1X 26 is unconstitutional, both because it threatens RDAs with dissolution if they do not make the payments required by AB1X 27, and because it will in fact dissolve those agencies where the city or county that created them cannot or will not make the payments.

Section 25.5(a)(7)(A) prevents the Legislature from requiring RDAs to transfer their property tax increments to or for the benefit

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[17]Or, in theory, November 1, if the relevant city or county adopts a non-binding resolution to comply with AB1X 27, but then fails to adopt a binding ordinance. §34193(b).

[18]The same is true, *a fortiori*, of the "poison pill" provisions in Section 10 of AB1X 26 and Section 3 of AB1X 27, which prohibit RDAs from issuing new debt "[i]f a legal challenge to invalidate any provision of" AB1X 26 or 27, respectively, is successful. These provisions, too, are an unconstitutional restriction on the use by RDAs of their annual property tax increments. Moreover, they unconstitutionally punish the RDAs for a successful challenge to the Act and therefore constitute an improper penalty for the exercise of their First Amendment rights to petition the courts. In any event, these provisions are inseverable from the remainder of the bills.

of the State or other local entities. Section 25.5(a)(7)(B) prevents the Legislature from requiring RDAs to use their tax increments for the benefit of these third parties. Both provisions therefore presume the continued existence of the RDAs.

That is not all. Section 25.5(a)(7)(A) prohibits the payment or transfer of RDA tax increment funds, whether those payments or transfers are made "directly or indirectly." That language is broad enough to prohibit AB1X 26's diversion of the dissolved RDA's tax increments by the county auditors and their payment to third parties. *See* pp.20-21, *supra*. Similarly, Section 25.5(a)(7)(B) prevents the Legislature from restricting the use of the tax increment funds annually allocated to the RDAs. *See* pp.30-31, *supra*. Since dissolved redevelopment agencies can no longer use their annual allocations of property tax increment, this provision, too, prevents the Legislature from abolishing these agencies. In other words, Sections 25.5(a)(7)(A) and (B) don't just *assume* the continued viability of the RDAs, they *protect* that existence by prohibiting the Legislature from either transferring the RDAs' tax increments or limiting the uses to which those funds can be put.

Article XVI, Section 16 and Section 9 of Proposition 22 lead to the same result. As the first two sentences of Section 9 reveal, the voters who enacted Proposition 22 believed that Article XVI, Section 16 requires the annual allocation of property tax increment to the redevelopment agencies. *See* p.12, *supra*.[19] Accordingly, the measure was drafted, *inter alia*, to prohibit the Legislature from diverting these funds "after the taxes have been allocated to a redevelopment agency." *See* p.13, *supra*. However, if the RDAs are dissolved under AB1X 26, their constitutional right under Article XVI, Section 16 and Section 9 of Proposition 22 to receive the "entire

[19]This belief was well-founded: Governor Schwarzenegger told the voters the same thing in his ballot argument supporting Proposition 1A. *See* pp.10-11, *supra*. However, in light of the passage of Proposition 22, the Court need not decide whether Article XVI, Section 16 alone would have prevented the Legislature from abolishing the RDAs prior to November 2010.

specified portion" of their annual property tax increment will be eviscerated. Accordingly, a constitutional provision that prevents the Legislature from divesting the RDAs of their annual tax increment funds necessarily prevents the Legislature from abolishing these agencies.

This plain language reading of Proposition 22 furthers its stated purpose: "to conclusively and completely prohibit" the State "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government." Prop. 22, §2.5. That purpose will be subverted if the RDAs are abolished. Under current law, the RDAs' annual tax increment is "dedicated to funding services provided by local government." *Id.* By abolishing the RDAs and diverting their tax increment to other local public entities, AB1X 26 seizes, diverts, shifts, transfers, suspends or otherwise takes or interferes with revenues that under current law are dedicated to funding services provided by the RDAs.

Similarly, Section 9 reveals that Proposition 22 was intended to prevent the Legislature from using the RDAs' tax increment funds "for purposes other than the financing of redevelopment projects." *See* pp.12-13, *supra*. The People surely understood that this prohibition could make it more difficult for the State to balance its budget. But they must have believed that "the financing of redevelopment projects" by the RDAs served an important public purpose that needed to be protected against legislative encroachment, even though by declaring the RDAs' tax increment funds "off limits," the task of balancing the State's budget would be made more difficult.[20]

AB1X 26 dissolves the RDAs, stripping them of any continued legal authority, and requires that their unencumbered balances, assets and future tax increment funds be turned over to other agencies to be

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[20]The voters' judgment was not irrational. Redevelopment has played a vital role in the revitalization of many communities. *See, e.g.*, Shirey Decl. ¶¶11, 13-14; McKenzie Decl. ¶¶5, 8; Furman Decl. ¶¶2-3; Evanoff Decl. ¶¶7-9; Ridenour Decl. ¶2; Candelario Decl. ¶2.

used for other, non-redevelopment-related purposes, *See* pp.20-21, *supra*. In some jurisdictions, this will be only a club used to compel the payments required by AB1X 27. In other jurisdictions, the RDAs will actually be dissolved, because neither the relevant city or county nor the RDA itself has the funds to make the necessary payments. *See* Furman Decl. ¶¶4-6 (Petitioner San Jose); Evanoff Decl. ¶¶3-5 (Petitioner Union City); Ridenour Decl. ¶¶4-5; Candelario Decl. ¶¶3-4; McKenzie Decl. ¶11.

Permitting either scenario would subvert the purposes set forth in Section 9. A measure that prohibits the Legislature from transferring even a single dollar of the RDAs' property tax increment for the benefit of the State or other local entities necessarily prohibits the Legislature from abolishing the RDAs and transferring *all* their revenue elsewhere, to be used for non-redevelopment-related purposes. Likewise, it prohibits the Legislature from using the threat of dissolution to compel payments of tax increment funds that are themselves unconstitutional. AB1X 26, like its legislative sibling, violates Article XIII, Section 25.5(a)(7).

II.

AB1X 27 ALSO VIOLATES ARTICLE XIII, SECTIONS 24(b), 25.5(a)(1), AND 25.5(a)(3) AND ARTICLE XIIIB, SECTION 6(b)(3).

A. The Payments Compelled By AB1X 27 Violate Article XIII, Sections 25.5(a)(1) And (a)(3) To The Extent They Are Made With Property Tax Proceeds.

The payments compelled by AB1X 27 go to schools and special districts. *See* p.18, *supra*. To the extent they go to schools, they would violate Article XIII, Section 25.5(a)(1) if paid from property tax proceeds. To the extent they go to special districts, they would violate Article XIII, Section 25.5(a)(3) if paid from property tax proceeds. Hence, the Legislature cannot compel the use of property tax proceeds to make *any* of the payments required by AB1X 27.

Article XIII, Section 25.5(a)(1) provides in relevant part that the Legislature may not:

> modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004.

In other words, this provision "generally prohibits the state from shifting to schools and community college districts any share of property tax revenues allocated to local governments for any fiscal year under the laws in effect as of November 3, 2004." Ballot Pamp. (Nov. 2004) at 6.

Since November 3, 2004, when Proposition 1A was enacted, the State has refrained from changing the property tax allocation formulas to increase the share of property taxes going from cities, counties and special districts to schools. However, that will no longer be true under AB1X 27. If $1.7 billion of property tax revenue is siphoned away from cities, counties and special districts to schools, these entities will receive a lesser percentage of the property tax during this fiscal year than they would have under the law in effect on November 4, 2004. Accordingly, the Legislature could not have required that these payments be made with property tax proceeds.

The same is true for the payments made to special districts under AB1X 27. Article XIII, Section 25.5(a)(3) provides, in relevant part, that the Legislature may not "change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring." Cities, counties and special districts are all "local agencies" within the meaning of this provision.[21] Accordingly, Section 25.5(a)(3) prohibits the

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[21] "Local agency" is defined for purposes of this provision as a "city, county or special district." *See* CAL. CONST. art. XIII, (continued . . .)

Legislature from decreasing the cities' and counties' pro rata share of property taxes and increasing the property tax shares of special districts without a two-thirds vote.

AB1X 27 requires cities and counties to pay approximately $4 million in FY 2011/12 and $60 million annually thereafter to special districts. §§34194.4(a), (b). Accordingly, to the extent these payments are made from property taxes, the statute effectively changes the pro rata shares in which property taxes are allocated among these agencies. Because the statute was not passed by a two-thirds vote,[22] it violates Article XIII, Section 25.5(a)(3).

B. The Payments Compelled By AB1X 27 Violate Article XIII, Section 24(b) To The Extent They Are Made With The Proceeds Of Local Taxes Other Than The Property Tax.

As Part II(A) demonstrates, the Legislature cannot compel use of property tax proceeds to make the payments required by AB1X 27 from the cities and counties. That dooms the statute, because to the extent the payments are made by cities and counties from the proceeds of *other* local taxes, the payments violate a different provision of the Constitution: Article XIII, Section 24(b).

That section provides that "[t]he Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes." By definition, this provision does not apply to proceeds of the property tax, which is shared between cities, counties, schools and special districts, and is therefore not "imposed or levied by a local government solely for the local government's purposes." But the proceeds of all the taxes that

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(continued . . .)

§25.5(b)(2); REV. & TAX. CODE §95(a). Under this definition, an RDA is not a "local agency" for purposes of this constitutional provision.

[22]CALIFORNIA LEGISLATURE, *Assembly Daily Journal* 214 (2011-12 1st Ex. Sess. June 15, 2011)

cities and counties impose and/or levy for their own programs—such as local sales taxes, business license taxes, utility user taxes, and the like—are protected against legislative diversion by Article XIII, Section 24(b).[23]

The drafters of AB1X 27 thus faced a constitutional dilemma. They could not compel cities and counties to pay property taxes to schools and special districts because of Article XIII, Sections 25.5(a)(1) and (a)(3). Nor could they compel cities and counties to make these payments from other local taxes because of Article XIII, Section 24(b). They therefore decided not to specify any source for the required payments. As we now show, this bit of legislative silence does not save AB1X 27 from unconstitutionality.

C. The Legislature's Failure To Designate A Payment Source For The AB1X 27 Payments Does Not Excuse The Constitutional Violations.

Respondents may argue that AB1X 27 does not violate Article XIII, Section 25.5 because it does not "modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A" (Section 25.5(a)(1)) or change "the pro rata shares in which ad valorem property tax revenues are allocated among local agencies" (Section 25.5(a)(3)). Similarly, Respondents may argue that AB1X 27 does not violate either Section 25.5(a) or Section 24(b) because the statute does not specify the tax proceeds that must be used by cities and counties to make the required payments. Any such argument would exalt form over substance, and frustrate the goals the People sought to achieve in adopting Proposition 1A and Proposition 22.

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[23]This provision makes perfect sense in its historical context. Enacted in 2004, Proposition 1A placed stringent limits on the Legislature's ability to reallocate the property tax, by adding provisions like Article XIII, Section 25.5(a)(1) and (a)(3) to the California Constitution. *See* pp.35-36, *supra*. Then, in 2010, Proposition 22 was enacted to protect the proceeds of all local taxes other than the property tax.

As discussed above, both Proposition 1A and Proposition 22 were remedial provisions, and therefore must be "'liberally construed to effect [their] objectives and to suppress, not encourage, the mischief at which [they were] directed.'" *Drouet v. Superior Court*, 31 Cal. 4th 583, 611 (2003) (citation omitted). Moreover, as we have seen, there is no mystery about the "mischiefs" that Propositions 1A and 22 were enacted to end. As its Official Title and Summary reveals, Proposition 1A was enacted to "protect[] local funding for public safety, health, libraries, parks, and other locally delivered services." Ballot Pamp. (Nov. 2004) at 4. It accomplishes this result because it "[p]rohibits the State from reducing local governments' property tax proceeds" and "requires local sales tax revenues to remain with local government and be spent for local purposes." *Id.* Similarly, the Official Title of Proposition 22 told the voters in no uncertain terms that the measure "prohibits the State from . . . taking funds used for . . . local government projects and services." Ballot Pamp. (Nov. 2010) at 30. And Proposition 22's stated purpose is to "conclusively and completely prohibit" the Legislature from "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government." Prop. 22, §2.5.

A hyper-technical reading of these initiatives would frustrate, not further, the People's goals in adopting these measures. Accordingly, these initiatives must be interpreted to invalidate any attempt by the state to require local governments to use their tax proceeds for the benefit of third parties, even if the Legislature does not formally change the tax allocation percentages and leaves it up to local jurisdictions to determine which tax proceeds must be surrendered.

D. The RDA Reimbursement Provision In AB1X 27 Violates Article XIIIB, Section 6(b)(3).

There is one additional reason why AB1X 27 violates the Constitution that applies only to this fiscal year. Under that statute, the payments made to schools during this fiscal year "shall be considered allocated local proceeds of taxes for purposes of Section 8 of

Article XVI of the California Constitution" (§34194.1(b)) and, as a result, "would . . . off-set[] . . . the State's Proposition 98 payment to schools." AB1X 27 Assembly Floor Analysis at 5. Requiring local governments to shoulder part of that state responsibility constitutes a state mandate under Article XIIIB, Section 6(c). *See* CAL. CONST. art. XIIIB, §6(c) ("A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility").[24]

As discussed above, AB1X 27 contains a provision authorizing—indeed, compelling—the RDAs to reimburse the cities and counties for the payments mandated by the statute, including the payments made in FY 2011/12 that defray part of the State's educational funding obligations. *See* pp.24-25, *supra*. That provision also requires the RDAs to make this reimbursement "from a portion of [the RDAs'] tax increment." §34194.2.

Article XIIIB, Section 6 (b)(3) provides that "[a]d valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service." The RDA reimbursement scheme violates this section for FY 2011/12. Section 34194.2 requires that the RDA payments be made from ad valorem property tax revenues. Moreover, the payments will be used to reimburse cities and counties for payments they make to defray a state mandate—*i.e.*, the State's obligations to fund education pursuant to Proposition 98. That is all that is needed to violate Section 6(b)(3).[25]

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[24]The purpose of this provision, added by Proposition 1A, was to reverse the court decisions which had held that forcing local governments to pay part of the State's educational funding obligation was not a state mandate. *See* pp.8-9, *supra*.

[25]When the State imposes a mandate on local government without providing the funds to carry it out, in violation of Article XIIIB, Section 6(a), the disadvantaged local government must generally first exhaust administrative remedies. *See County of San*
(continued . . .)

III.

THIS COURT CAN AND SHOULD EXERCISE ITS ORIGINAL JURISDICTION TO HEAR THIS CASE.

This Court has often exercised its original jurisdiction under Article VI, Section 10 where "[t]he issues . . . presented are of great public importance and should be resolved promptly." *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 219 (1978); *accord Legislature v. Eu*, 54 Cal. 3d 492 (1991). That is true here. AB1X 26 threatens to eliminate almost 400 RDAs located in every corner of California. AB1X 27 uses this threat to extort almost two billion dollars in this year alone from the RDAs to ERAFs, school districts and special districts, in patent violation of a constitutional provision enacted less than a year ago. Accordingly, resolution of the issues presented will have a major impact on both the State's budget and that of hundreds of local jurisdictions.

Moreover, the need for prompt resolution is urgent. By November 1, 2011, each city and county must adopt a binding resolution to make the AB1X 27 payments for the RDAs in its jurisdiction. §34193.1. The first payment is due on January 15, 2012. §34194(d). Accordingly, the validity of AB1X 26 and 27 needs to be decided sufficiently before January 15, 2012, so that both the State and local governments will know whether the payments required by the latter statute are due. Only this Court can render an authoritative decision by that time.[26]

(continued . . .)

Diego v. State, 15 Cal. 4th 68, 89 (1997); *County of Contra Costa v. State*, 177 Cal. App. 3d 62, 73-77 (1986). But where the State unconstitutionally uses property tax revenue to fund a state mandate, there is no administrative remedy to exhaust.

[26]While Proposition 22 provides a reimbursement remedy in the event the Legislature passes a statute that violates Section 24 or 25.5 of Article XIII (*see* CAL. CONST. art. XIX, §2), the possibility of future reimbursement will not help RDAs that are dissolved under AB1X 26. Nor will it avoid the dissipations of assets and employees, and the interruption of projects, caused by the payments (continued . . .)

Petitioners respectfully suggest that, because of the January 15, 2012 payment, this case be resolved prior to December 20, 2011. A prompt decision is also needed because, until the constitutionality of AB1X 26 and 27 are resolved, RDAs will be unable to issue bonds even if they elect to make the AB1X 27 payments. That is because these agencies will not be able to obtain a "clean" opinion from bond counsel until the constitutionality of AB1X 26 and 27 is resolved. Declaration of Charles F. Adams ¶¶4-6.

This Court has original jurisdiction of this case notwithstanding Section 34168(a). That statute provides: "Notwithstanding any other law, any action contesting the validity of this part or Part 1.85 (commencing with Section 34170) . . . shall be brought in the Superior Court of the County of Sacramento." This statute refers only to "actions." However, "[p]etitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings" (*Pub. Defenders' Org. v. County of Riverside*, 106 Cal. App. 4th 1403, 1409 (2003), and not "actions."[27] Accordingly, a statute referring to "actions" does not encompass petitions for writs of mandate. Moreover, "an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." *County of San Diego*, 15 Cal. 4th at 87 (citation and internal quotation marks omitted). Accordingly, this Court should interpret Section 34168 according to its plain language.

In addition, "[a]n established rule of statutory construction requires [the Court] to construe statutes to avoid 'constitutional infirmities.'" *Myers v. Philip Morris Co.*, 28 Cal. 4th 828, 846 (2002) (citation omitted). That rule applies to this case. Where the Constitution provides for the Court's original jurisdiction, the Legislature cannot "limit or extend" that jurisdiction "in the absence of

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(continued . . .)

required by AB1X 27. *See* Shirey Decl. ¶28.

[27]Indeed, the portions of the Code of Civil Procedure addressing petitions for writ of mandate appear in Part 3, which deals with "special proceedings of a civil nature," rather than Part 2, which deals with "civil actions." *See* CODE CIV. PROC. §§1084-1097.

some special constitutional authorization." *Pac. Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 647 (1913); *Great W. Power Co. v. Pillsbury*, 170 Cal. 180, 183 (1915). No such constitutional authorization exists here. Accordingly, Section 34168 does not, and constitutionally could not, restrict the Court's original jurisdiction to hear this case.

IV.

THE COURT SHOULD STAY IMPLEMENTATION OF AB1X 26 AND 27 PENDING ITS DECISION.

The Court has granted temporary stays in similar cases to preserve the status quo and prevent irreparable injury. For example, in *Legislature v. Eu*, 54 Cal. 3d 492 (1991), the Legislature brought a petition for writ of mandate challenging Proposition 140. *Id.* at 500. The Court issued a temporary stay pending review based on the claim that "the offices of Legislative Analyst and Auditor General would be jeopardized unless a stay were granted." *Id.* at 508. In this case, of course, it is not just two offices in Sacramento that would be jeopardized if AB1X 26 and 27 go into effect, but almost 400 redevelopment agencies throughout the State.

The need for a stay is particularly urgent with respect to those RDAs that will not be able to make the payments required by AB1X 27. Under AB1X 26, these agencies will be dissolved on October 1, 2011, if their city or county does not pass a non-binding resolution to comply with AB1X 27; on November 1, 2011, if their city or county does not pass a binding ordinance to comply, or soon after January 15, 2012, if the first installment of the required payment is not made. But whatever the trigger date is, the RDAs will be dissolved. Once dissolution occurs, the RDAs lose all legal authority to act; their unencumbered fund balances will be turned over to county auditors; their assets will be plundered and their taxes diverted. *See* pp.20-21, *supra*. In that event, an eventual holding that AB1X 26 and 27 are invalid would be a Pyrrhic victory, because it would be difficult if not impossible to reconstitute the RDAs, their

assets, and their projects once the RDAs are dissolved. *See* Shirey Decl. ¶¶28-32; McKenzie Decl. ¶¶14-16; Evanoff Decl. ¶16 (Petitioner Union City); Ridenour Decl. ¶¶6-7; Candelario Decl. ¶5; Declaration of Toby Ross ¶9.

Petitioners believe that they have demonstrated a probability of success in showing that AB1X 26 and 27 are unconstitutional *in toto*, and that all provisions of both bills should therefore be stayed *pendente lite*. If, however, the Court believes that some provisions of both statutes should take effect temporarily to preserve the status quo, and prevent RDAs from incurring new debt that would reduce the assets available to local entities and schools in the event RDAs are dissolved, Petitioners suggest the following.

First, there should be no stay of Part 1.8 of AB1X 26, except for the following: (a) Sections 34162, 34163, 34164 and 34165 should be stayed to the extent that any of the actions listed therein are necessary to implement an "enforceable obligation," as that term is defined in Section 34167(d), that existed on the effective date of AB1X 26 (June 28, 2011)); (b) Section 34167.5 should be stayed to prevent the invalidation of previous asset transfers until this case is resolved; (c) Section 34169(g), (h), and (i) should be stayed because there is no reason why enforceable obligation schedules and recognized obligation payment schedules should be prepared in the next couple of months if the dissolution statute is stayed and/or AB1X 26 is eventually held unconstitutional; (d) Section 34169.5 should be stayed because that provision dissolves agencies when the payments required by AB1X 27 have not been made; and (e) all provisions should be stayed to the extent they prohibit RDAs from continuing to finance the listed activities with funds obtained through grants provided for a specific purpose.

Second, all of Part 1.85 of AB1X 26 should be stayed, except for Section 34176(a), which would permit affordable housing activities to continue in cities and counties that do not expect their RDA to survive if AB1X 26 is found valid. *See* Furman Decl. ¶8.

Third, all of AB1X 27 should be stayed, except for the following: (a) Section 34192, 34192.5, 34193, 34193.1, 34193.3, which would permit cities and counties to opt into AB1X 27, thereby avoiding dissolution and allowing their RDAs to enter into valid and binding indebtedness and obligations and undertake other redevelopment activities free from the prohibitions contained in AB1X 26; (b) Section 34194(b)(2), which would permit the Director of Finance to calculate the payments due under AB1X 27 for FY 2011-12; and (c) Section 34194.2, which permits agreements between cities, counties and their RDAs to make the payments if AB1X 27 is eventually upheld.

If the Court believes that there is some likelihood that AB1X 26 and 27 may be upheld, the foregoing suggestions will maintain the status quo pending the outcome of this case. They prevent the dissolution of RDAs under AB1X 26 and the making of payments under AB1X 27 while preventing RDAs from taking on new obligations unless they have opted into continuing existence through the non-stayed portions of AB1X 27. Consequently, unless the Court stays the two statutes *in toto*, it should enter the stay outlined above.

Petitioners respectfully request the Court to issue a stay by August 15, 2011. Cities that cannot make the AB1X 27 payments must decide by September 1 whether to become their RDA's successor agency (§34173(d)(1)) and prepare for the dissolution that will occur on October 1. Issuance of a stay by August 15 will prevent these cities from wasting scarce public resources in beginning to implement a dissolution statute that should be stayed while this case is being resolved. *See* Shirey Decl. ¶33; McKenzie Decl. ¶17; Evanoff Decl. ¶16; Ridenour Decl. ¶8; Candelario Decl. ¶6.

CONCLUSION

The Petition for Writ of Mandate should be granted ordering Respondents to refrain from enforcing AB1X 26 and 27. A temporary stay should issue by August 15, 2011, ordering Respondents to refrain from enforcing these statutes until the Court decides this case.

DATED: July 18, 2011.

Respectfully,

STEVEN L. MAYER
EMILY H. WOOD
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

By Steven Mayer/ehw
STEVEN L. MAYER

Attorneys for Petitioners

W03 071811-112080007/PB10/1653303/F

CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.204(c) and 8.486(a)(6)

Pursuant to California Rules of Court 8.204(c) and 8.486(a)(6), and in reliance upon the word count feature of the software used, I certify that the attached Petition for Writ of Mandate and supporting Memorandum contains 13,998 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

DATED: July 18, 2011.

EMILY H. WOOD

W03 071811-112080007/PB10/1653303/F

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF CHARLES F. ADAMS IN SUPPORT OF PETITION FOR WRIT OF MANDATE

STEVEN L. MAYER (No. 62030)
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EMILY H. WOOD (No. 260382)
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Attorneys for Petitioners

I, Charles F. Adams, hereby declare:

1. I am an attorney at Jones Hall, A Professional Law Corporation and, as such, represent a number of redevelopment agencies in the State of California as bond counsel. Since January 1, 2011, the firm has acted as bond counsel on approximately 30 individual issues of tax allocation bonds by redevelopment agencies. By virtue of my experience, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. By its terms, AB1X 26 has eliminated the legal authority of redevelopment agencies to issue tax allocation bonds or other forms of indebtedness.

3. A number of our redevelopment agency clients have expressed an intention that the related city council adopt an ordinance under AB1X 27 for the purpose of complying with the provisions thereof relating to the alternative voluntary redevelopment program, and to make the voluntary payments specified therein. By the terms of AB1X 27, the enactment of such an ordinance would permit the redevelopment agency to continue to exist and exercise its powers under the Community Redevelopment Law, including the power to issue bonds and other forms of indebtedness.

4. Notwithstanding the foregoing provisions of AB1X 27, we have advised our redevelopment agency clients that we cannot provide an approving legal opinion on any issue of bonds even if the alternative voluntary redevelopment program provisions are followed, because Section 4 of AB1X 27 provides that the provisions of AB1X 26 shall continue in effect if the alternative voluntary redevelopment program provisions set forth in AB1X 27 are held invalid. Our concern is that if AB1X 27 is declared invalid following the enactment of an ordinance as provided therein, the provisions of AB1X 26 would become effective and retroactively eliminate the legal authority for the redevelopment agency to issue its bonds.

5. In consequence of the foregoing, we believe that redevelopment agencies in California will not be able to issue bonds or

incur any other form of indebtedness until the validity of both AB1X 26 and AB1X 27 have been determined.

6. We have conferred with attorneys in other bond counsel firms in California and believe that our views as expressed in this Declaration are shared by such other firms.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 13th day of July, 2011, at San Francisco, California.

Charles F. Adams

CHARLES F. ADAMS

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF REGAN CANDELARIO IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Regan Candelario, hereby declare:

1. I am the Executive Director of the Guadalupe Community Redevelopment Agency (the "Agency"). I have held this position since January 4, 2010. By virtue of my position and experience at the Agency, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. The Agency plays a vital role in the operation of the City of Guadalupe (the "City"), and is involved in multiple redevelopment projects that benefit the community. These projects include: (1) funding a masonry rehabilitation program for 23 of the City's commercial buildings; and (2) remediating and developing a Brownfield site. In addition, the Agency is currently involved in three affordable housing projects, including a senior housing project, an infill housing program, and a Habitat for Humanity affordable housing project. These projects are all in the planning phase and thus will be terminated if the Agency is dissolved.

3. The Agency has determined that AB1X 27 would require a $343,338 payment for FY 2011/12, and a payment of $81,491 for FY 2012/13. The Agency will be unable to make these payments because it only has $19,000 discretionary dollars for FY 2011/12. All of the remaining Agency revenue is required for either the repayment of $18 million in bond and loan debts or repayment of the Affordable Housing loans that were used to make the mandatory SERAF payment over the past two fiscal years. Repayment of the Affordable Housing loans cannot be delayed because the Agency is required to repay these funds within five years. If the Agency deviates from its current repayment schedule, it will risk breaching this five-year repayment term. While the Agency was able to utilize its Affordable Housing dollars to make the earlier payments, the Affordable Housing fund is depleted and cannot be used as a source of funds for the payment required by AB1X 27.

4. In addition, the City cannot make the payment under AB1X 27 on behalf of the Agency. The City's budget has been running a

deficit for the past few fiscal years and the City cannot afford any additional expenditures, let alone one of the magnitude required by AB1X 27.

5. Because neither the City nor the Agency can make the payment required by AB1X 27, unless the Court issues a stay the Agency would be forced to dissolve under AB1X 26 on October 1, 2011 and immediately halt all ongoing operations. The harm caused by this dissolution will persist even if the bills are subsequently declared invalid. For example:

- The cost of having to prepare to close the Agency by October 1, 2011 would be approximately $50,000. This calculation involves the cost and expense of having to review and evaluate the status of existing contracts and obligations, reassign staff to complete the tasks associated with winding down the Agency, set a schedule to meet the requirements of AB1X 26, including setting City Council/Agency meeting dates and agenda deadlines, and formally evaluating whether the City should serve as a successor agency to the Agency.
- If the Agency is dissolved, the projects described above would not be able to proceed and assets would be sold, including land on which the Agency has been planning the above-mentioned affordable housing projects. If AB1X 26/27 were subsequently invalidated, it would be difficult, if not impossible, to re-assemble the Agency's assets, which would greatly impair the Agency's future redevelopment efforts.
- Upon the Agency's dissolution, the City would be forced to take over approximately $870,000 of the Agency's obligations (i.e., the amount of the current annual Agency debt payments and Affordable Housing repayments). Having to take over these expenses would force the City to cut services to the community and layoff employees. Even if the bills are ultimately invalidated, the harm to the City

and the community at large would have already occurred.

6. Petitioners are requesting that the Court issue a stay on the legislation by August 15, 2011. Unless AB1X 26/27 are stayed, the City must decide by September 1, 2011 whether to serve as the successor agency for the Agency. To make this determination and prepare for the Agency's October 1, 2011 dissolution, the City would be forced to incur significant staff time and resources, which it is not in a position to provide. Due to previous fiscal austerity measures, the City had to institute furlough days for City staff, which result in shorter workweeks without a corresponding reduction in workload. If no stay is issued, the City would need to add this additional workload to its already overworked employees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 14th day of July, 2011, at Guadalupe, California.

REGAN M. CANDELARIO

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF MARK EVANOFF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Mark Evanoff, hereby declare:

1. I am the Redevelopment Agency Manager for the City of Union City (the "City"). I have served in this position since 2000. By virtue of my position and experience at the City, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. This declaration sets forth the following conclusions: (1) because neither the City nor the Community Redevelopment Agency of the City of Union City (the "Agency") can make the payment required by AB1X 27, the Agency will be forced to dissolve under AB1X 26; (2) the Agency's dissolution will have serious adverse consequences for an important, long-term regional transit project known as the Station District Project; (3) significant resources have been invested in the Station District Project to date, which will be lost if the Agency is forced to dissolve under AB1X 26; and (4) a stay is needed by August 15, 2011 to minimize the harm that would occur if the Agency is dissolved and AB1X 26/27 are later invalidated.

I.

NEITHER THE AGENCY NOR THE CITY CAN MAKE THE PAYMENT REQUIRED BY AB1X 27.

A. The Agency Cannot Make The Payment Required By AB1X 27.

3. To maintain its existence pursuant to AB1X 27, the California Redevelopment Agency has calculated that the Agency will need to pay approximately $7.6 million during FY 2011/12 and $1.8 million during FY 2012/13 to schools and special districts. The Agency does not have sufficient funds available to make these payments. The Agency will receive approximately $400,000 in property tax increment in FY 2011/12 after debt service and pass-throughs to other agencies. The Agency's debt obligation for FY 2011/12 is approximately $7.1 million, and increases over time (e.g., the debt service for FY 2012/13 is approximately $7.9 million, and

$7.7 million for FY 2013/14). The Agency also will receive approximately $1.2 million of housing tax increment in FY 2011/12, about $450,000 of which is contractually obligated to various housing projects.

4. Moreover, the Agency does not have any reserve funds from which it could make this payment. The Agency's funds are depleted due to previously paying: (1) $9.32 million in SERAF payments; (2) $24.7 million of tax increment and bond funds for the construction of 155 affordable housing units; and (3) $56 million in land and infrastructure investments for the Station District Project.

B. The City Cannot Make The Payment Required By AB1X 27.

5. The payment required by AB1X 27 for FY 2011/12 represents approximately twenty percent (20%) of the City's entire General Fund budget. The City does not have any realistic source of revenue to make the payment required by AB1X 27 to keep the Agency in existence. The City's General Fund has been reduced by seven percent (7%) since FY 2006/07. The reduction of the City's General Fund would have been greater had not Union City voters approved in 2004 and renewed in 2008 a special parcel tax to fund police and fire services, and a sales tax in 2010 to fund general operations. City employees have taken a 4.5% wage reduction and have not received a cost of living adjustment for five years. The City would be forced to cut important local services, such as public safety, in order to gather sufficient funds for the payment required by AB1X 27.[1]

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[1]If the City were to appeal to the Department of Finance to reduce the assessment, and if the Department of Finance were to reduce the combined assessment for FY 2011/12 and FY 2012/13 to $7 million, the City might be able to make the payment. However it would be necessary to lay off employees to generate sufficient funds, and additional staff who are managing Agency projects would be laid off as those projects were completed.

II.

DISSOLUTION OF THE AGENCY WILL RESULT IN DIRE IMPACTS ON AN IMPORTANT, LONG-TERM REGIONAL TRANSIT PROJECT.

6. If the City cannot opt-in to the supposedly "voluntary" redevelopment program established by AB1X 27, or if the City opts in but neither the City nor the Agency makes the required payment, the Agency will be dissolved under AB1X 26. Dissolution will have dire consequences for the Station District Project, a project of vital importance to the City's future.

A. The Development Of The Station District Plan.

7. The City has a long-term interest in redeveloping vacant and industrial lands surrounding its BART Station. This interest began in the 1980s and resulted in the formation of the Agency to fund infrastructure and the creation of a specific plan for this 440-acre area.

8. From 1999 to 2000, the City developed the Station District Plan, which envisioned a joint BART and train station for multiple rail lines with access to Sacramento, Stockton, San Jose, the west bay, and BART. The Station District Plan also envisioned a new downtown with planned housing, office and commercial development, a pedestrian passage, and a roadway connection to the future State Route 84, later renamed the East West Connector. The Station District Plan would remediate and incorporate presently contaminated land back into the area, attract new businesses and reverse chronic blight in the far western side of Union City.

B. The Agency Has Invested Significant Time And Funds Into Developing And Implementing The Station District Plan.

9. The Agency has invested significant time and public funds in developing and implementing the Station District Plan. From 2000 to 2011, the Agency began "BART Phase 1," which included improving BART access, expanding passenger capacity and improving passenger circulation within the BART Station. The

Agency incurred $1.5 million in planning and related costs, as well as $14.3 million for various BART Phase 1 projects, such as: (1) completing the design and construction drawings for BART Phase 1; (2) reconfiguring the BART parking area to improve pedestrian, bus and bicycle access; (3) expanding the passenger capacity and circulation on the south bound platform; (4) installing a new glass façade and extensive landscaping (no landscaping existed before) on the west side of the BART station; (5) creating 16 bus bays with rain shelters for passengers, including solar collectors on top of the shelters that power the BART Station; (6) acquiring property and constructing "Station Way," a new access point to the BART Station for pedestrians, bicycles and buses; and (7) completing 35% of its construction drawings for BART Phase 2, discussed below.

C. The Station District Project Will Remain Unfinished If The Agency Is Dissolved.

10. The City and Agency have already begun planning for BART Phase 2, which is scheduled to begin construction in the fall of 2011. BART Phase 2 will facilitate the development of vacant lands to the east of the station for residential and commercial use by providing a direct, less than one-quarter mile pedestrian access route to the BART station and the other intermodal transit providers, and creating the planned joint rail station. However, neither BART Phase 2 nor the Station District Project will be able to proceed if the Agency is eliminated by AB1X 26, as a result of the inability of the Agency or the City to make the payments required by AB1X 27.

11. First, the Agency would not be able to enter into the necessary contracts or meet its BART Phase 2 obligations if the Agency is dissolved under AB1X 26:

- The Agency and BART entered into a Cooperative Agreement to fund and construct BART Phase 2 on March 1, 2011. Under this Cooperative Agreement, the Agency is required to secure all funding to construct BART Phase 2, which the Agency will be unable to do if it is

dissolved.

- The California Department of Housing and Community Development ("HCD"), the City, and the Agency are finalizing a contract that will formally release grant funds for the construction of BART Phase 2. However, this contract will not be able to be executed, and construction will be unable to commence, if the Agency is dissolved.

12. Second, the Agency's dissolution will eliminate planned projects that are key to the overall success of the Station District Project. For example:

- If Agency funds are confiscated, and the Agency cannot solicit grants and private investment because the Agency is dissolved, then no funds would be available to build the joint rail station for Capitol Corridor, ACE and Dumbarton Rail, which is a key part of the Station District Project.
- A planned pedestrian bridge over the Niles Subdivision railroad tracks, linking future job centers with BART could not be constructed. Without the bridge, future job center employees would have to walk more than a mile to get to BART and the opportunity to provide 7,000 jobs, and 4,000 housing units within safe walking distance to BART and other rail lines will be eliminated. With the bridge, the walk would be reduced to ¼ mile.
- If Agency-owned land is ordered to be sold under the dissolution process of AB1X 26, the planned East West Connector may never be built and a necessary access point into the Station District would be lost.

13. Third, the City and Agency have already received grants to assist with the Station District Plan and BART Phase 2, which would need to be returned if the Agency is dissolved:

- In 2008, the Agency and private developers were awarded a $7.6 million Proposition 1C Transit Oriented Development ("TOD") Grant from HCD to construct side streets, a pedestrian promenade, a plaza and a greenway. The grant

conditions include strict requirements to begin the first phase of construction within five years of the award date and to complete construction within nine years of the award date. This project is dependent on Agency land, which would be sold if the Agency is dissolved. If the Agency is unable to complete this project, it will breach the terms of the TOD grant and be required to return the $7.6 million.

- In 2009, the Agency and private developers were awarded a $15 million Proposition 1C Infill Infrastructure Grant ("IIG") from HCD. The Agency has an obligation to deliver 155 affordable units and 189 market-rate units, built at a density of 75 units per acre, by July 1, 2017 or return the $15 million IIG grant. AB1X 26 may require the sale of all Agency properties as part of the dissolution process. If these units are not constructed according to the grant terms, the Agency (or the City, if the Agency is dissolved) would be obligated to return the $15 million IIG grant to the HCD.

14. Although AB1X 26 allows for the continued performance of certain "enforceable obligations" by a successor agency if a redevelopment agency is dissolved, the drafters of AB1X 26 did not allow for the fact that redevelopment projects, such as the Station District Project, often consist of a series of numerous ongoing and inter-related contracts. While not all of these contracts will have been executed at any given moment in the middle of the project, and thus qualify as "enforceable obligations" under AB1X 26, they can all be necessary for the success of the project as a unified whole. Dissolution of the Agency would leave the Station District unfinished, and the primary goal of creating a new residential/business district through access to a joint rail station will not occur.

15. The Agency believes that $56.2 million of the City's and Agency's investments and $77.2 million in leveraged grants will be wasted if the Agency is dissolved. All of the work related to BART Phase 1 was intended to put in place the necessary infrastructure to

create successful new housing and job centers. While many of the investments may benefit BART, these investments will not benefit the City unless the future redevelopment projects are completed.

III.

A STAY IS REQUIRED TO PREVENT THE IRREPARABLE INJURY THAT WILL BE CAUSED BY AGENCY DISSOLUTION UNDER AB1X 26.

16. Petitioners are requesting that the Court issue a stay of AB1X 26/27 by August 15, 2011 in order to avoid having to take any steps toward dissolution until this case is resolved. If the Agency is forced to begin the dissolution process or is dissolved during the pendency of this lawsuit, the City and the Agency will suffer harm that cannot be remediated even if the statutes are later declared unconstitutional.

- Compliance with the AB1X 26/27 would require significant staff time, such as to prepare Agenda packets, track intra-City decisions, and prepare the required financial reports. However, existing staff already are at full capacity and would be unable to undertake all of the administrative tasks required by AB1X 26/27. Additional attorney time also would be needed to ensure full compliance with all of the provisions of AB1X 26/27. Finally, coordinating the activities of the Oversight Board would require another City Clerk position because the current clerk does not have the resources to handle this additional workload. However, the City does not have the funds to hire additional staff.
- If the Agency is dissolved, its land and assets would be sold. However, the Agency must maintain ownership of the property it owns on the east side of the BART Station so that this property can be used to construct the housing required by the IIG grant. If AB1X 26/27 were subsequently invalidated, the Agency might not be able to recover this land or locate and purchase an alternative site in time to comply with the terms of these grants.

- As indicated above, the Agency has been awarded grant funds for BART Phase 2, and is still in the process of finalizing the contract with HCD that will formally release these funds. If the Agency cannot finalize its contract with HCD, the Agency will lose these grant funds even if AB1X 26/27 are ultimately invalidated.
- If the City is required to repay the grant funds while waiting for a decision in this matter, it will need to reduce its budget by approximately 50%, which would result in massive layoffs. If the bills are subsequently invalidated, it may be impossible for the City and Agency to recover the wealth of knowledge and experience as these employees might have been hired by other agencies or organizations.
- BART is scheduled to begin construction on BART Phase 2 in the fall of 2011, based on the Agency's agreement to provide funding for the planned construction. If the Agency is dissolved, it will be in breach of this agreement because it will not be able to provide the required funds.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of July, 2011, in Union City, California.

Mark Evanoff

MARK EVANOFF

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF PETER J. FURMAN IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Peter J. Furman, hereby declare:

1. I am the Chief of Staff for Mayor Chuck Reed of the City of San Jose ("City"). I have served in this position since January 2007. By virtue of my position and experience at the City, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. Redevelopment is historically significant to the City. Since the creation of the Redevelopment Agency of the City of San Jose ("Agency") in 1957, twenty-one redevelopment plans have been locally created and adopted to eliminate blight and revitalize the City's most needy neighborhoods. Since 1977, the Agency has invested $3.2 billion throughout its project areas as follows in approximate amounts: (1) $2 billion on recreating the Downtown, which included constructing the Convention Center, HP Pavilion Arena, Guadalupe River Park, hotels, museums, office buildings, parking garages, theaters, retail spaces and public schools; (2) $231 million in public infrastructure, land assembly, façade improvements and parking improvements in neighborhood business areas; (3) $103 million in public infrastructure, community centers, housing assistance and parks in residential neighborhoods; (4) $302 million in public infrastructure and assistance to manufacturing and other businesses in industrial projects areas; and (5) $607 million in affordable housing projects. Moreover, these investments have generated significant returns. The $3.2 billion that the Agency has invested in its core services is estimated to have generated approximately $21.4 billion in increased assessed property values in the project areas.

3. Since its inception, the Agency has financed or otherwise created over 21,700 affordable rental and homeownership units. Over 1,070 new homebuyers have attained homeownership. Over 6,000 homes and apartments have benefitted from rehabilitation loans and grants. This new construction and substantial rehabilitation activity has supported approximately 19,500 construction and related jobs, and currently supports approximately 4,800 permanent jobs in

the community.

4. The City estimates that its AB1X 27 payment would be between $42.9 million and $53 million for FY 2011/12, and between $10.6 and $13 million each year thereafter. The Agency lacks sufficient funds to make these payments. The FY 2011/12 payment represents more than 220% of the Agency's funds available for capital projects for that fiscal year. The Agency has existing Tax Allocation Bond and other debt, including: (1) a $156.4 million payment in FY 2011/12 on Agency-issued bonds; (2) a $25 million payment in FY 2011/12 on debt secured by the City, such as for the downtown Convention Center, 4th Street parking garage, prior ERAF payments and HUD Section 108 loans; (3) payments on unsecured City-Agency loans and obligations, such as for prior SERAF payments and traffic mitigation; (4) unpaid pass-through payments to the County of Santa Clara; and (5) Agency payments/reimbursements to the City's General Fund, such as for lease and overhead reimbursement and payments for support services provided to the Agency by City staff. The Agency does not have sufficient funds to pay all of these outstanding obligations and make the payment required by AB1X 27. If the Agency opts to make the AB1X 27 payment in lieu of any of the above-listed obligations, the Agency may be subject to lawsuits and damages for breach of contract.

5. Moreover, the Agency does not have any reserves from which it can obtain funds for the payment required by AB1X 27. Between FY 2009/10 and FY 2011/12, the Agency's tax increment revenues decreased by approximately 11%. In addition, the Agency has paid approximately $136.4 million in State-mandated payments since FY 2002/03, which drained all of the Agency's reserves and resulted in a number of the above-listed loan obligations.

6. The City also does not have any realistic source of revenue to make the payment required by AB1X 27 to keep its Agency in existence. The City's adopted FY 2011/12 budget is 17.9% lower than its actual General Fund expenditures in FY 2007/08 due to

declining revenues and increasing costs. As a result of the decline in revenues and increasing costs, the City has had to reduce City services and eliminated approximately 1,600 positions City-wide during this time frame. For FY 2011/12, the City was required to reduce expenses by approximately $115 million and laid off 140 City employees, including 65 police officers. The City cannot manage any additional financial burdens on its budget.

7. The City and Agency will experience significant harm if AB1X 26/27 are allowed to go into effect during the pendency of this litigation because the Agency will be dissolved under AB1X 26. Specifically, the Agency has been planning a variety of projects that will be terminated or substantially delayed if the Agency is eliminated. For example:

- The Agency has invested $103 million in its Strong Neighborhoods Initiative (SNI) Redevelopment Project Area, which encompasses 20 of the most disadvantaged residential neighborhoods in the City. The inability to finance those projects in the future will cause irreparable harm to struggling neighborhoods, allow blight to continue and negate the Agency's prior investments in these areas. If the Agency is dissolved, this Initiative will not be able to proceed, and redevelopment funds designated to combat blight will be eliminated. Even if AB1X 26/27 were subsequently invalidated, each month that blight is allowed to continue further harms these residential neighborhoods.
- The Agency has been planning a key infrastructure project to redesign and construct flood control improvements. The Agency has already invested $27 million in a pump station for this project, but additional improvements are necessary for the protection of the industrial properties in this redevelopment project area. If the Agency is dissolved, it will not be able to fund the additional projects that are needed to complete the flood control improvements, which will leave the industrial properties in the project area at risk.

- The Agency has been planning to widen key interchange roads with Highway 101. The improvements are necessary to prepare for future commercial development in the region. The Agency and City have entered into a cooperation agreement in which the Agency is scheduled to contribute $37 million to the project, without which the project could not be completed. If the Agency is dissolved, it will be unable to fund this project, and any delay to the project will delay the City's ability to attract new businesses to the region and develop new tax bases.

8. Petitioners are requesting that the Court issue a stay on the legislation by August 15, 2011, in order to avoid having to prepare for the dissolution required by AB1X 26 unless and until the bill is upheld as constitutional. If the Agency is forced to undertake the dissolution process, the City and Agency will need to complete a number of steps, including preparation of an inclusive list of its existing enforceable obligations for adoption by its Board of Directors before August 29, 2011 and completion of all steps to prepare for the necessary Board meetings. If the Court decides not to stay the entirety of both bills, the City requests that the transfer of housing activities to the City on October 1, 2011 pursuant to AB1X 26 be allowed to occur without delay. The City is currently a funding source for several affordable housing projects that are in their final stages of receiving allocation for tax exempt multifamily housing bonds and/or tax credit financing approvals with mandatory closing deadlines prior to December 30, 2011.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of July, 2011, in San Jose, California.

PETER J. FURMAN

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF DONNA LANDEROS IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Donna Landeros, hereby declare:

1. I am the Executive Director of the Brentwood Redevelopment Agency (the "Agency"). I have held this position since 2005. By virtue of my position and experience at the Agency, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. This declaration sets forth the following conclusions: (1) although AB1X 27 requires a payment from the cities and counties to obtain an exemption from the provisions of AB1X 26, the City of Brentwood (the "City") cannot make this payment and must look to the Agency to provide these funds; (2) the Agency can only make the payment required by AB1X 27 by relying on affordable housing and other funds and cuts to important redevelopment projects; and (3) a decision on the merits is respectfully requested by December 20, 2011 to avoid having to prepare for the January 15, 2012 payment deadline if the bills are invalidated and to minimize the blight caused by delays in moving forward with important redevelopment projects.

I.

THE CITY CANNOT MAKE THE PAYMENT REQUIRED BY AB1X 27 AND MUST LOOK TO ITS AGENCY FOR THE PAYMENT.

3. The California Redevelopment Association estimates that the City's AB1X 27 payment would be approximately $2.8 million in FY 2011/12, and $657,408 in FY 2012/13. The City does not have sufficient funds to make the payments required by AB1X 27. The City recently has faced significant budget stresses due to the current economic climate, including a 30% reduction in property tax revenues over the past few years and a dramatic decline in development that has significantly impacted Brentwood. Because of these economic stresses, the City already has made extremely difficult decisions over the past three years in order to maintain a balanced budget, such as reducing its staff levels by over 13%, reducing pension benefits for new non-safety personnel and

requiring non-safety personnel to increase their pension contributions. The additional expense of the FY 2011/12 payment and subsequent annual payments required by AB1X 27 would force the City to make further budget cuts in city services and staffing, which would include layoffs of public safety officers, impede the City's ability to prevent the incursion of blight into neighborhoods and severely impair the delivery of core services to the community. This the City will not and cannot do.

II.

THE AGENCY CAN ONLY MAKE THE AB1X 27 PAYMENT BY IMMEDIATELY HARMING AFFORDABLE HOUSING AND IMPORTANT REDEVELOPMENT PROJECTS.

4. In order for the Agency to make the payment required by AB1X 27 while also staying current on its annual bond payments, the Agency will be required to identify funds from a range of sources, such as using tax increment revenue from its Low-Mod Housing Fund and eliminating key redevelopment projects. The Agency cannot make the AB1X 27 payment without these other sources because a significant portion of the Agency's revenue is tied up in bond and debt obligations. Specifically, in 2009, the Agency and the City issued bonds to construct several capital improvements, and the Agency is contractually obligated to pay its proportional share on these bonds. The Agency's total debt service in connection with these obligations is more than $30 million. Thus, the Agency cannot rely on its tax increment funds, which are committed to repaying the Agency's debt service, to make the AB1X 27 payment for FY 2011/12.

5. In addition to using all available funds from various sources, the Agency also would be required to eliminate future Agency-funded projects to make the AB1X 27 payment. This would result in a significant negative economic and social impact on the community. For example:

- The Agency could not afford to remediate contaminated

parcels in the downtown area and, consequently, these properties would continue to sit polluted and vacant, unable to be developed.

- The Agency could not develop a future retail/parking structure, which has been a long-standing goal to aid the revitalization of its historic downtown.
- The Agency could not undertake the removal of a century-old, vacant, dilapidated single-room occupancy motel, which is detracting from the vitality of the community.
- Smaller projects such as continuing façade programs and restaurant incentive programs would also be eliminated.

6. Elimination of these projects is necessary to make the AB1X 27 payments because the Agency cannot rely on any reserve funds to make these payments. The Agency provided approximately $34.6 million of tax increment funding over the past four years in connection with various infrastructure projects, which constituted most of the Agency's tax increment reserves. Consequently, the remaining reserves are insufficient to make the payments.

7. AB1X 27 affects not only FY 2011/12, but also the Agency's ability to resume its redevelopment activities and planned projects in future years. The Agency will have almost no funds for future redevelopment projects between the burden of ongoing payments required by AB1X 27, repayment of any loans made for the AB1X 27 payment in FY 2011/12, and the Agency's bond payments.

III.

A PROMPT DECISION ON THIS MATTER IS NECESSARY TO ALLOW THE AGENCY TO MAKE THE NECESSARY BUDGET DECISIONS REGARDING CURRENT AND FUTURE PROJECTS AND STAFFING.

8. Even if the City passed a binding resolution in the near future to avoid the restrictions of AB1X 26, the Agency will need to immediately implement cuts to projects, services and staffing levels, in addition to using the tax increment revenue from its Low-Mod

Housing Fund and borrowing funds from various sources, to accumulate funds for the FY 2011/12 payment required by AB1X 27. The City and the Agency respectfully request that the Court rule on the merits of this petition by December 20, 2011 in order to minimize the impact of these bills and reduce the blight that will occur from stalled redevelopment projects.

9. For example, one of the Agency's most anticipated projects, known as the Brentwood Boulevard Corridor, is predicated on $28 million in future redevelopment tax increment funding and will be disrupted due to a lack of funds. The City and the Agency have been in the planning process for this key project since 1994. CalTrans will soon relinquish control of State Highway 4, also known as Brentwood Boulevard, in the summer of 2011 as it accepts control of the relocated State Route 4 Bypass (the "Bypass"). The Bypass will supplant Brentwood Boulevard as a prime location for highway commercial, light industrial and strip center uses. The City will be responsible for all future improvements to, and the maintenance of, Brentwood Boulevard, which has been the primary entry point into Brentwood and its historic Downtown. For each month that AB1X 26/27 are still in effect after Brentwood Boulevard is transitioned to the City, the City and Agency will be unable to start integrating this former industrial corridor into its commercial/downtown community and—during this extended period of uncertainty—projects will remain unfunded, property owners along Brentwood Boulevard will be tempted to accept marginal uses and refrain from expenditures on maintenance or upgrading their property, property values will decrease and cause a commercial exodus and blight will increase.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 14 day of July, 2011, at Brentwood, California.

Donna Landeros

DONNA LANDEROS

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF CHRIS McKENZIE IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Chris McKenzie, hereby declare:

1. I am the Executive Director of the League of California Cities (the "League"), one of the Petitioners in this case. I have held this position since 1999. By virtue of my position and experience at the League, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. The League is a non-profit association of 462 California cities that was founded in 1898 for the purpose of coordinating and advocating for the common interests of California cities. The League's current mission is to protect and expand local control for cities through education and advocacy, and thereby enhance the quality of life for all Californians. The League collaborates with a range of public and private groups to improve the quality of city government, and protect city revenues and local control. The League also publishes information about innovative programs and services provided by cities to promote the widespread adoption of best practices. The League's Board of Directors currently has 51 members, who represent a range of cities from every region of the state.

3. Cities and their redevelopment agencies are inextricably intertwined in most California cities. In fact, a redevelopment agency may not transact any business or exercise any power unless and until the city council declares that there is a need for such an agency to function in the community. The redevelopment plan, adopted by the agency as its guiding planning document, must be consistent with the city's general plan. This ensures that projects undertaken by the redevelopment agency will be consistent with the city's land use, housing, circulation and other fundamental policies.

4. Cities and redevelopment agencies also are financially intertwined. Most cities establish redevelopment revolving funds that provide financial support to their agencies for acquisition of real property by the agencies, clearance of project areas for redevelopment, and payment of incidental expenses related to the redevelopment plans. Redevelopment agencies then repay these funds to the cities with their portion of future tax increment distributions.

5. Cities partner with their redevelopment agencies to achieve a number of goals. For example, redevelopment funds are often used to remove blight and revitalize downtown areas, build public infrastructure, attract new businesses and revenue sources, improve public transportation, clean up environmentally contaminated properties, support infill housing and commercial development, and facilitate the development of property that otherwise may not be able to attract private developers. Indeed, redevelopment is the principal tool through which cities encourage new construction in urban core areas as an alternative to urban sprawl.

6. To eliminate blight redevelopment agencies are given a broad array of powers. For example:

- The redevelopment of blighted areas is a public use and purpose for which private property may be acquired by eminent domain. Redevelopment agencies use eminent domain for this purpose to take private property from one private owner for redevelopment by another private party. These agencies can therefore use their power of eminent domain to acquire and assemble a developable area in order to eliminate blight.
- The Polanco Redevelopment Act, available only in redevelopment project areas, allows a redevelopment agency to order parties responsible for the toxic contamination of property in the project area to perform the necessary clean-up. If the responsible party does not comply with the order, the redevelopment agency can perform the clean-up and recover its costs from the party responsible for the contamination.

7. In addition, California Redevelopment Law requires a redevelopment agency to set aside 20% of its tax increment funds to fund the rehabilitation and construction of affordable housing for very-low, low- and moderate-income households. This funding source for affordable housing is only available to redevelopment agencies.

8. Cities and redevelopment agencies have established important contractual and financial relationships to accomplish the various goals set forth in Paragraph 5, above, and undertake key projects that cities

alone may not be able to tackle. For example:

- Some cities include urban areas with challenging redevelopment needs—e.g., toxic spills. Cities cannot attract private developers to undertake these projects alone, and rely on their redevelopment agencies to form public/private partnerships to support such redevelopment.
- Cities are required by the state housing element laws to plan for housing that accommodates all economic segments of their communities. In most California cities, the most affordable housing (for very-low income families) requires government funding. Therefore the obligation of a redevelopment agency to deposit 20% of its tax increment into an affordable housing fund creates a critical funding source for achieving local housing goals. Because of the scarcity of other public and private funding for affordable housing (particularly in recent years), nonprofit housing developers often can only undertake such housing projects with support from local redevelopment agencies. Without redevelopment agencies, cities will struggle to attract developers willing to build affordable housing.

9. Joint financing arrangements in which the financial burden of these projects are shared between cities and redevelopment agencies are common. Cities and redevelopment agencies often participate in the following types of agreements:

- The agency agrees to contribute tax increment funds and the city agrees to contribute general funds to jointly finance a redevelopment project;
- The city agrees to issue certificates of participation, lease-revenue bonds or other debt, repayable with redevelopment agency tax increment, in order to take advantage of the city's easier (and less expensive) access to the credit markets;
- The city contributes an asset—such as a parcel of real property—to the site that the redevelopment agency is amassing for future lease or sale to a private developer.

10. Cities, counties and redevelopment agencies will suffer

significant and immediate harm if AB1X 26 and AB1X 27 (jointly the "Redevelopment Bills") take effect. AB1X 27 requires that cities and counties make specified payments to maintain their redevelopment agencies. In 2004, the League was a sponsor of Proposition 1A, which added section 25.5 to Article XIII of the California Constitution to prohibit the Legislature from using city property taxes for State purposes. In 2010, the League was a sponsor of Proposition 22 which added amendments to Article XIII, section 24 of the California Constitution to prohibit the Legislature from requiring cities to use other city taxes for State purposes. During FY 2011/12, these payments would total $1.7 billion if each city with a redevelopment agency made the payment. Cities are then authorized under AB1X 27 to obtain reimbursement for this payment from their redevelopment agencies.

11. Many cities will not be able to make the required payment under AB1X 27 to keep their respective redevelopment agencies in existence, even with reimbursement from their RDAs. Some cities are already facing a budget shortfall for FY 2011/12, requiring unprecedented reductions in expenditures, including front line public safety and other employees. In order to make such payments, cities would be required to cut current funding to city programs and/or services. However, some cities have limited flexibility in their budgets due to restricted funds (e.g., funds may only be used for a specific purpose, such as delivering water to residents), or are required to provide funding of services at certain levels (e.g., local ordinances or agreements that require a city to retain a minimum number of police officers or, for example, four firefighters per fire engine, a standard of the National Fire Protection Association).

12. Redevelopment agencies in those cities and counties that are unable to make the required payment under AB1X 27 will be dissolved under the provisions of AB1X 26, the dissolution statute. The loss of the redevelopment agencies will have significant and serious consequences:

- As set forth above, cities have entered into substantial financial arrangements with their redevelopment agencies. If local governments do not make the payment required by AB1X 27,

the cities will be subject to AB1X 26, which invalidates such contracts. As a result, cities will lose substantial amounts of money upon which they depend for the city services funded by their general funds. Losing these funds will result in immediate cuts to city services. Initially, this will include administrative and direct line staff providing direct services to the redevelopment agency. In some cities in which redevelopment funds are used to finance special police and other services in redevelopment areas that are still blighted, this could lead to a loss of police and other positions as well.

- Cities may be exposed to unanticipated contractual liability arising from development or financial agreements undertaken by their redevelopment agencies. These obligations and any potential liabilities would fall on cities as the "successor" to the dissolved redevelopment agency, even though the city may not have the necessary resources to meet these obligations. For example, an agency may accept grant funds to complete a redevelopment project within a certain time frame. The project then may not be completed by the required date in the grant agreement because the redevelopment agency has been dissolved under AB1X 26. The city may be obligated to repay the grant because the conditions under which the grant was awarded were breached, but the city may lack the funds to do so.
- Cities would lose the monetary and non-monetary investments that they have made into redevelopment projects that will no longer be completed and/or undertaken because most cities do not have the resources to undertake these projects using solely city revenue. For example, cities often provide real estate to their redevelopment agencies at below market rates. The cities later benefit by receiving increased property taxes from these parcels once the agencies have completed redevelopment of the properties. If the agencies are dissolved under AB1X 26 before the parcels are redeveloped, the Oversight Boards assigned to

manage the agencies' assets may then sell the real estate and divert the funds to entities other than the cities that originally provided the properties.

13. Cities that make the required payment under AB1X 27 with city or redevelopment agency funds to prevent dissolution of their respective redevelopment agencies also will suffer harm. The funds to make this payment must be diverted from important redevelopment projects to which these funds have already been allocated. These projects will be unable to proceed and will result in immediate harm to the communities, such as job losses, delayed or cancelled construction and/or project development contracts, and a failure to meet grant or other funding commitments.

14. Even if AB1X 26 and AB1X 27 are later invalidated, cities will experience immediate and irreparable harm if they are not stayed during the pendency of this litigation. For example:

- Cities that cannot make the payment under AB1X 27 may have agency assets distributed and/or sold to third parties under AB1X 26 without any means of recapturing those assets if these laws are later found invalid.
- Regardless of whether the cities can make the payments under AB1X 27, implementation of the bills will result in immediate job losses. Cities that use funds from their redevelopment agencies to make the payments will be forced to divert these funds from other redevelopment projects—projects that would be eliminated or significantly delayed. Individuals who are employed in connection with these eliminated and delayed projects would lose their jobs. Cities that cannot make the payments would see all redevelopment-related jobs lost. Again, it would be difficult—if not impossible—to reconstitute these jobs and the expertise they require if AB1X 26 and 27 are later invalidated.

15. As a result, the need for a stay is particularly urgent with respect to those cities that will not be able to make the payments required by AB1X 27 and cannot obtain the funds from its

redevelopment agency.

16. The reimbursement provision of Proposition 22 does not alleviate the urgent need for a stay. The possibility of reimbursement in the future does nothing for those cities and RDAs that cannot make the payments required by AB1X 27 and thus face dissolution under AB1X 26. They will still lose the income, jobs, assets and redevelopment opportunities caused by the short-term dismantling of agencies and the stoppage of projects. Many redevelopment agencies that can make the payments will also lose jobs and redevelopment opportunities because so much of their assets are required to make the payments.

17. The League respectfully requests that the Court issue this stay as soon as possible, but no later than August 15, 2011. For those cities whose agencies will be dissolved, those cities have until September 1, 2011 to decide whether to take over as "successor agencies" to the redevelopment agencies. Consequently, a decision on the stay by August 15, 2011 will give cities an opportunity to make a reasoned decision prior to the September 1, 2011 deadline.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12 th day of July, 2011, in Sacramento, California.

Chris McKenzie

CHRIS MCKENZIE

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF JEAN QUAN IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Jean Quan, hereby declare:

1. I am the Mayor of the City of Oakland (the "City"). I have held this position since January 2011. By virtue of my position and experience at the City, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. Although AB1X 27 provides that payments under that statute will be made by cities and counties, the City is unable to do so and must look to the Redevelopment Agency of the City of Oakland (the "Agency") for these payments. The City has calculated that it will be required by AB1X 27 to make a $40 million payment for FY 2011/12, and payments of nearly $10 million in FY 2012/13 and thereafter, as annually adjusted. The City cannot make these payments because the City is already grappling with a $58 million deficit in FY 2011/12, and an anticipated $76 million deficit in FY 2012/13. Moreover, the City is required to deposit $45.6 million (as of July 2011) into the Police and Fire Retirement System for retiree benefits. Finally, local voter mandates and negotiated agreements with municipal unions require the City to set-aside a significant proportion of the City's budget for mandated library programming, Children and Youth programming and minimum Fire and Police staffing. The City could not make the payments required by AB1X 27 without violating these negotiated agreements and spending requirements set by voter initiative.

3. The Agency has almost no operating reserves with which to make the payment required by AB1X 27 because the reserves were drained to make a $40 million SERAF payment in FY 2009/10 and an $8.4 million SERAF payment in FY 2010/2011.

4. The Agency can make the AB1X 27 payment by utilizing its current property tax increment and all of its remaining reserves, and eliminating approximately three-fourths of the Agency's staff funded by redevelopment dollars. However, to do so would severely disrupt ongoing and future redevelopment projects because the Agency would have no funds or staff with which to complete these

projects.

5. A number of important redevelopment projects would be harmed if the Agency needed to accumulate funds to make the January 15, 2012 payment. For that reason, the City and the Agency request that the Court rule on the merits of this petition by December 20, 2011. For example:

- The Agency is in the process of redeveloping the Oakland Army Base property. To complete the Army's conveyance to the Agency, the Agency must meet certain remediation and reinvestment obligations for the site. If the Agency cannot meet these obligations because it lacks sufficient funds because of the AB1X 27 payment, the Agency would be in default of the Army's conveyance obligations. The Army could attempt to reclaim the property. Losing this property would be disastrous for the community because this redevelopment project is a key component in supporting the Port of Oakland's plans to double its import and export capacity by 2020. This would have a tremendously positive impact on the local, regional, State and National economies. The project is expected to attract up to $200 million in federal funding, $242 million in State Trades Corridor Improvement Funds and $225 million in private investments, as well as generate 3,000 jobs in the near-term and up to 12,000 jobs in the long-term. Moreover, this project would enable the Port to double its capacity and would generate up to $1.3 billion in tax proceeds for the State and local governments.
- The Broadway/Valdez Area is one of the last remaining blighted and under utilized areas in and around Downtown Oakland. The City and the Agency have completed plans and a major retail strategy assessment, and have acquired property in the area. The Agency may not have the resources to construct the planned mixed-use neighborhood center if it has to make the January 15, 2012 payment.

- The Coliseum mixed-use, transit-based regional employment center forms the core of the East Oakland renewal effort to expand opportunities to attract business due to its proximity to the Oakland International Airport and BART Station. The Agency may no longer be able to fund this project if it has to make the January 15, 2012 payment.
- Foreclosure proceedings are authorized for five parcels in West Oakland. If the Agency does not pay the County back-property taxes, property taxes and code enforcement liens will continue to accrue with penalties and the property will be put up for public bid. These properties are critical to the transit-oriented development that has been ongoing at the West Oakland BART Station, but the Agency may not have the resources to make the necessary payments on this property if it has to make the January 15, 2012 payment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 14th day of July, 2011, at Oakland, California.

JEAN QUAN

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF JIM RIDENOUR IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Jim Ridenour, hereby declare:

1. I am the Mayor of the City of Modesto (the "City"). I have held this position since 2003. By virtue of my position and experience at the City, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. The Modesto Redevelopment Agency (the "Agency") is primarily focused on redevelopment in the downtown area and extending up Scenic Drive/Paradise Road, one of the main roads through the City's downtown. Redevelopment has been critical to the revitalization of downtown Modesto, which has included construction of the Modesto Centre Plaza, two public parking garages and the Tenth Street Place City-County Building. Two other critical projects that have benefited the downtown redevelopment area are the Doubletree Hotel and the Gallo Centre for the Performing Arts. In addition, the mandatory 20% set aside housing fund has been used to develop more than 300 affordable housing units.

3. The Agency and City are closely linked. The City Council members serve as Agency Board members. In addition, the City and Agency have operated under an informal arrangement in which the City staff provide administration and project management services to the Agency and are compensated through a "service credit" arrangement, in which the Agency pays the City for the time spent by City staff on Agency matters. The Agency's FY 2011/12 budget contains approximately $325,000 in service credits for City staff services. The validity of this arrangement is uncertain under AB1X 26 and the Agency may be left without any staff.

4. The California Redevelopment Association estimates that the City's payment required by AB1X 27 would be approximately $1,827,314 for FY 2011/12, and approximately $429,956 in FY 2012/13. The Agency does not have sufficient funds to make these payments. The Agency must pay approximately $3,124,000 annually for debt service and loan repayments, and approximately

$1,179,000 is budgeted for statutory or contractual pass-throughs. Moreover, project tax increment revenue for the last three years has been in decline. For example, tax increment projections for FY 2011/12 reflect a 4% decline from the actual income in FY 2010/11. Finally, the Agency has no reserves from which it could pull these funds. The SERAF payments from the last two fiscal years totaled approximately $2.4 million and required the Agency to borrow from its housing set-aside fund. The SERAF payments, together with the loan repayment, the debt service and the pass through obligations leave no funds left for project development, let alone a payment of nearly $2 million under AB1X 27.

5. In addition, the City's general fund does not have the excess reserves to make the $1.8 million payment on behalf of the Agency. In order to maintain its required reserves, the City has had to make significant expenditure reductions over the last several years. For example, in FY 2010/11, budget reductions amounted to $12 million and in FY 2011/12 the budget was reduced by an additional $5.4 million. Many of the City's expenditure reductions have come from a regrettable but necessary reduction in City staff. Over the last three years, the City has eliminated over 177 positions, including 37 layoffs. The remaining staff have experienced a significant increase in their workload due to these layoffs and staff reductions because there has been no corresponding decrease in workload.

6. The Agency is currently working on a variety of projects that will be eliminated if the Agency is dissolved because neither the City nor the Agency can make the payments required by AB1X 27. The elimination of these projects would result in a serious negative impact on the community that will not be ameliorated even if AB1X 26/27 are ultimately invalidated. For example:

- The Agency has already invested many years of work and $1.9 million on the Kansas/Woodland Business Park, which would be lost if the project is abandoned due to a lack of redevelopment funds. In addition, this project had the

potential to create approximately 800 new jobs from new businesses that would be attracted to the area, especially since the City does not have many available business park sites that can adequately serve the needs of the business community. If the Agency is dissolved and the project abandoned, it would be difficult if not impossible to revive it if AB1X 26/27 are later invalidated.

- Three affordable housing projects, which were scheduled to complete 135 affordable housing units, would no longer be constructed if the Agency is dissolved. If these properties are sold as a result of the Agency's dissolution, these projects would probably not be built even if AB1X 26/27 are later invalidated.

7. The City also will experience significant harm if AB1X 26/27 are allowed to go into effect during the pendency of this litigation. For example, if the Agency is dissolved, the City will immediately be faced with approximately $325,000 in additional staff salary expenses, as detailed above. The City also will be forced to take over the Agency's $1,952,810 lease obligation for the 9th Street Garage because the City has contractual obligations with surrounding businesses to provide this parking. Finally, the City would be required to fund the Agency's annual payment of $1,148,839 on the Agency's and City's joint bond obligations. The total annual impact on the City's General Fund will be approximately $3,751,649. There are simply no other sources of money from which to assume these additional financial obligations. The City will have no choice but to pay it out of the General Fund, which means that additional staff positions will need to be cut. Unfortunately, such layoffs will inevitably mean a reduction in Police and Fire positions because most of the other departments have already been reduced to near skeletal levels. Public Safety positions make up 70% of the City's General Fund budget, and the City Council has worked very hard to maintain as many public safety officers as possible to best protect the health and safety of the

citizens. However, sparing police and firefighters from significant staffing reductions will no longer be an option if the General Fund has to absorb these additional costs.

8. Petitioners are requesting that the Court issue a stay on the legislation by August 15, 2011, in order to avoid having to take any steps toward the dissolution required by AB1X 26 unless and until the bill is upheld as constitutional. If the Agency is forced to begin the dissolution process, the City will need to take a number of steps. First, the City Council will need to decide whether to serve as the successor agency to the Redevelopment Agency by or before September 1, 2011. Second, the Agency must prepare a complete list of its existing enforceable obligations. These include debt service payments on bonds, existing contracts and agreements. The City anticipates that there will be a number of other steps as well once the oversight board is created. All of these steps will take time to evaluate and execute.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 12th day of July, 2011, at Modesto, California.

JIM RIDENOUR

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

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Respondents.

DECLARATION OF TOBY ROSS IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, Toby Ross, hereby declare:

1. I am the City Manager of the City of West Sacramento (the "City"). I have served in this position since 2002. By virtue of my position and experience at the City, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. The City is located in Yolo County directly across the Sacramento River from the State Capitol. The City was for many years a portion of unincorporated Yolo County, deriving much of its economic vitality from travel-related land uses along the main road between the San Francisco Bay Area and Sacramento. When US Highway 50 bypassed the historic travel route (along today's West Capitol Avenue) in 1954, the City's travel-oriented businesses began to suffer, and the City entered a period of prolonged economic decline that lasted for decades.

3. In 1986, the Yolo County Board of Supervisors adopted the West Sacramento Redevelopment Project Area in an attempt to arrest the blighted conditions that had developed during this period, which included deteriorated public improvements, substandard housing, obsolete buildings, and incompatible land uses. The current Redevelopment Project Area encompasses 5,416 acres or approximately 46 percent of the incorporated land in the City. The West Sacramento City Council serves as the West Sacramento Redevelopment Agency's (the "Agency") governing board, though the City and Agency are separate legal entities. The Agency obtains staff services from the City pursuant to a cooperation agreement.

4. Since 1987, the Agency has invested over $130 million in the community, supporting a variety of infrastructure and development projects benefiting community residents. Infrastructure, in some cases dating to the early 20th century or before, has been replaced, streets have been paved, streetlights repaired and parks constructed. Redevelopment has attracted new businesses to the City, providing jobs and retail choices for residents. Crime is down—according to the FBI's Uniform Crime Statistics,

between 1988 and 2009, property crimes declined by 71 percent, and violent crime by 80 percent. Property values in the redevelopment area have increased by over 340 percent between 1987 and 2011, from $535 million to $2.9 billion.

5. Key projects that the Agency has helped finance and/or implement include:

- Production of 1,170 affordable housing units (695 of which serve very-low income households) through investment of over $25 million in Housing Set-Aside funds and the leveraging of over $14 million in outside funding.
- Revival of the West Sacramento Riverfront, with miles of river trails, new riverfront parks, and other public improvements along the former industrial waterfront.
- Construction of important infrastructure projects, including road widening and railroad grade separation, streetscape improvements, bridge construction, sewer line replacement and water line construction.
- Construction of community facilities, including a community center, transit center, police department headquarters, and a fire station.

6. The Agency is currently working on a variety of projects that appear to be in jeopardy if the Agency is dissolved under AB1X 26. These projects include, but are not limited to:

- Completion of a $51 million infrastructure redevelopment plan, currently underway, to install key "backbone" infrastructure, such as water and sewer lines, to serve a new high-density urban neighborhood. Some of the projects within this plan, such as the water tank project to provide water storage for the district, are just beginning to solicit construction bids.
- Implementation of the Phase II West Capitol Avenue Streetscape project, which would create a more pedestrian-friendly and handicap-accessible corridor for City residents. This design for this $12 million project is complete and will

be ready to bid in the fall of 2011.

- Implementation of the Downtown/Riverfront Streetcar, a $70 million project that would connect West Sacramento to Downtown Sacramento via a streetcar system. The project is currently in the planning and study phase, and the Agency anticipated utilizing approximately $7 million in tax increment funds as the required match to help secure Federal and/or State grants for this project.

7. The California Redevelopment Association estimates that the City's payment required by AB1X 27 would be approximately $6.5 million for FY 2011/12. Beginning in FY 2012/13, annual payments would be approximately $1.5 million and adjusted annually. The Agency does not appear to have sufficient funds available to make the payment required by AB1X 27, even if the Agency borrowed approximately $2.2 million from its Low-Mod Housing Fund. In FY 2011/12, the Agency must pay approximately $11,857,043 in debt and loan obligations, and approximately $5,132,206 is budgeted for statutory or contractual pass-throughs. Moreover, the AB1X 27 payments would be required at a time when tax increment revenues are consistently decreasing due to falling property values. The decreased tax increment revenue is expected to continue through the next two fiscal years. The Agency does not have any reserve funds with which to make the AB1X 27 payments because the reserves were used to make the prior SERAF payments in FY 2009/10 and FY 2010/11.

8. The City also does not have any realistic source of revenue with which to make the payment required by AB1X 27. The City has experienced a substantial revenue reduction in the general fund due to flat or declining property tax revenues and minimal revenues from building fees due to low construction activity. In the last two budget cycles, the City has made painful cuts, including reducing its staff by more than 20%. Since FY 2008/09, the overall budget has been reduced by $12 million, an 11% reduction. Consequently, the City has no surplus funds available to make any additional

payments. Based on current projections of flat or declining property tax revenue, it also appears unlikely that the City would be able to help with any future payments required by AB1X 27.

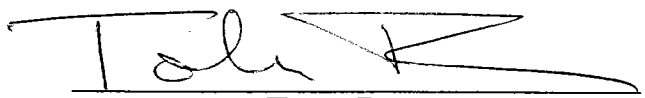
9. The Agency will experience significant harm if AB1X 26/27 are allowed to go into effect during the pendency of this litigation because the Agency will likely be dissolved under AB1X 26. This harm will persist even if the bills are subsequently declared invalid. For example:

- If the Agency is dissolved, the above-referenced projects would likely not be able to proceed, and assets would be sold. If AB1X 26/27 were subsequently invalidated, the Agency may not be able to re-assemble the Agency's assets, which would greatly impair the City's future redevelopment efforts. Many of these projects are part of a $23 million Proposition 1C Grant, which may need to be repaid if the projects cannot be completed according to the grant specifications.
- The dissolution of the Agency would likely result in lay-offs as the City would not be able to replace the approximately $3.6 million provided by the Agency to the City for the Agency's operations. If AB1X 26/27 were subsequently invalidated, the Agency might not be able to re-establish the institutional and professional knowledge of the current staff.
- Local developers also will lose their investments in planned redevelopment projects if the Agency is dissolved and its assets sold. Many of these private parties have expended considerable sums to conduct due diligence on anticipated projects, including expenditures on architectural plans, engineering drawings, and environmental assessments. Without a public sector partner, these private developers will likely abandon their efforts, with a loss of private investment dollars. Loss of these private investments will result in a concomitant loss of future tax increment revenue that otherwise would have been generated.

- The legislation will have an immediate impact on the Agency and City's planned grant applications for State and Federal funding that have identified redevelopment tax increment as the local match, including the City's application for the Downtown/Riverfront Streetcar and the Phase II West Capitol Avenue Streetscape projects discussed above. It is possible that the loss of tax revenue would also impact grants previously awarded, such as the Proposition 1C Grant, which would potentially magnify the fiscal impact of this legislation.

10. Petitioners are requesting that the Court issue a stay on the legislation by August 15, 2011 in order to avoid having to take any steps toward dissolution, as required by AB1X 26. If the Agency is forced to begin the dissolution, this process would involve assessing the current staffing levels and workload, developing an enforceable obligation payment schedule, determining whether the City will serve as the successor entity, re-assigning and eliminating staff as appropriate and initiating the activities of a successor agency, the initial step of which would need to begin by August 15, 2011. The cost associated with preparing for Agency dissolution would include the City's staff time, the City Attorney's staff time and the separation costs for laid-off staff.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14 th day of July, 2011, in West Sacramento, California.



TOBY ROSS

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

DECLARATION OF JOHN F. SHIREY IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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Attorneys for Petitioners

I, John F. Shirey, declare and state as follows:

1. I am the Executive Director of the California Redevelopment Association ("CRA"), one of the Petitioners in this case. I have held this position continuously since July 18, 2002. Prior to joining the CRA, I held positions as City Manager of the City of Cincinnati, Ohio, Assistant City Manager of the City of Long Beach, California, Assistant Chief Administrative Officer of the County of Los Angeles and Assistant Executive Director of the Community Development Commission of the County of Los Angeles. I have been involved professionally in community development and redevelopment for over 30 years. By virtue of my position and experience at the CRA, I have personal knowledge of the facts set forth below. If called upon to testify to these facts, I could and would do so competently.

2. The CRA is a California non-profit corporation. Its members consist of California redevelopment agencies and related entities. Currently, the CRA has 361 California redevelopment agency members. The CRA also has associate members, who are individuals and businesses with an interest in community redevelopment such as law firms, consulting firms, engineering firms and planning firms. The CRA currently has 270 associate members.

3. The CRA's mission includes legal and legislative advocacy on behalf of its members and professional education and development. The CRA sponsors and conducts numerous conferences and seminars for redevelopment professionals each year. The CRA also publishes and disseminates a variety of books, pamphlets and other publications dealing with issues concerning redevelopment, economic development and community development.

4. There are currently 425 redevelopment agencies in California, organized and existing under the California Community Redevelopment Law (Health & Safety Code §33000 *et seq.*), 399 of which are active. (Unless otherwise noted, all subsequent statutory

references are to the Health and Safety Code.) Of these, all but seven have governing boards that are comprised of the board of supervisors or city council that created the agency.

5. Redevelopment agencies are charged with eliminating blight within defined geographic areas referred to as "redevelopment project areas." Redevelopment project areas are created by ordinance of the legislative body (city council or county board of supervisors) adopting a redevelopment plan upon a finding that the area is characterized by conditions of blight. §§33365, 33367(d). The plan is then executed by the city or county's redevelopment agency. There are currently 749 redevelopment project areas in California.

6. Redevelopment agencies are granted unique powers to carry out a redevelopment plan. These powers include the power to acquire privately owned property and dispose of it for public and private redevelopment (§§33391, 33430), demolish improvements (§33420), prepare building sites for private redevelopment (§33421) and construct public improvements and facilities (§33445).

7. Redevelopment agencies must rely upon cooperation with the private sector to carry out their statutory purpose of eliminating blight. Although they have the ability to acquire and dispose of property and prepare building sites, agencies must rely on private owners, businesses and developers to construct new or rehabilitate existing residential, commercial, industrial and other structures. §33440. To carry out redevelopment, redevelopment agencies enter into negotiated contracts with property owners, businesses, developers and other governmental agencies.

8. Redevelopment agencies do not levy a property tax, but are authorized to finance their activities through a unique financing mechanism referred to as "tax increment financing." Tax increment financing was approved by the voters in 1952 when they enacted a constitutional amendment now found at Article XVI, Section 16 of the California Constitution. Redevelopment agencies are authorized to incur indebtedness to carry out their redevelopment projects and

to pledge for repayment of that indebtedness the property taxes levied by taxing agencies on the increases in assessed value in the redevelopment project area occurring after the redevelopment plan is adopted ("tax increment").

9. Relying on the authority of Article XVI, Section 16 and Health & Safety Code Section 33670, redevelopment agencies have issued different kinds of indebtedness to finance redevelopment activity. These include bonds (§33630) and loans from developers and other governmental agencies. Currently, redevelopment agencies have approximately $20.6 billion in bonded indebtedness outstanding for which tax increment has been pledged. Total redevelopment agency indebtedness is approximately $87.5 billion.

10. Redevelopment agencies also rely on tax increment to perform obligations undertaken in legally enforceable agreements with developers, property owners and other public agencies. Such obligations can include acquisition of property, construction of public improvements and remediation of contaminated soil.

11. The Community Redevelopment Law has been widely used by cities throughout California and has been the primary instrument for transforming blighted downtowns, contaminated industrial sites and decommissioned military bases. It has also been used in countless residential neighborhoods to provide rehabilitation loans and grants, improve obsolete and deteriorating public infrastructure and finance the construction of new single family and multifamily housing.

12. Redevelopment agencies typically have only a small fraction of their tax increment revenue available for discretionary purposes or payments mandated by statutes such as AB1X 27. The largest portion of this revenue—42%—goes toward bond service and other required debt payments. Twenty-two percent is directed immediately to schools, counties and other government entities which levy property taxes. Another 20% is mandated by law to be spent for affordable housing. §§33334.2, 33334.6. Consequently, the remaining portion of tax increment revenue that represents

discretionary income is 16%. (These numbers represent statewide averages; comparable percentages will vary for individual agencies.)

13. As a result of the statutory mandate that twenty percent of a redevelopment agency's revenues be expended on affordable housing, redevelopment agencies are the largest financers of affordable housing in the State of California after the Federal government. Over 98,000 units of affordable housing have been constructed or rehabilitated by redevelopment agencies since 1993.

14. Some of the better known redevelopment projects in California include the Bunker Hill project in downtown Los Angeles, Horton Plaza and the Gaslamp Quarter in downtown San Diego, and Yerba Buena Gardens in downtown San Francisco. The transformation of these formerly blighted areas would not have been possible without the tools provided by the Community Redevelopment Law and, in particular, the ability to leverage private financing with tax increment revenue.

15. In 2008 the Legislature enacted AB 1389. This bill required redevelopment agencies to pay during FY 2008/09 the greater of five percent of their respective tax increment revenues or $350 million into Educational Revenue Augmentation Funds, and reduced State obligations to fund education by an equivalent amount. §33685. Any redevelopment agency that failed to make its payment would essentially cease to function except to repay previously incurred indebtedness. §33686(e).

16. The CRA filed a petition for writ of mandate challenging the constitutionality of AB 1389 on the ground that it violated Article XVI, Section 16, which requires that tax increment be paid into a special fund of the redevelopment agency and used to repay indebtedness incurred by the redevelopment agency to carry out the redevelopment project. The Superior Court for the County of Sacramento granted the CRA's petition, invalidating AB 1389 on the ground that AB 1389 conflicted with Article XVI, Section 16 of the California Constitution. *See California Redevelopment Ass'n v.*

Genest, 2009 WL 2844387. The Court granted the CRA's petition before AB 1389 impacted any redevelopment agencies.

17. In 2009, the Legislature responded to this ruling by enacting ABX4 26, which required redevelopment agencies to deposit $2.05 billion over two years into a Supplemental Educational Revenue Augmentation Fund ("SERAF") to again reduce the State's obligation to fund education. Agencies were required to deposit $1.7 billion in fiscal year 2009-10 and $350 million in fiscal year 2010-11. §§33690, 33690.5. This bill did not contain a dissolution provision.

18. On October 20, 2009, the CRA filed a petition for writ of mandate challenging ABX4 26 on the ground that it violated Article XVI, Section 16 and other provisions of the State and Federal Constitutions. The Superior Court denied this petition on May 4, 2010 (*see California Redevelopment Ass'n v. Genest*, 2010 WL 1805347), and the case is currently on appeal.

19. On May 10, 2010, redevelopment agencies submitted their pro rata share of the $1.7 billion to county auditors, as required by ABX4 26. Nine redevelopment agencies were unable to make their SERAF payment because of insufficient funds. The amount of these unpaid SERAF payments is $41,021,627.

20. As a result of these decisions, the CRA decided in 2010 to support the efforts of the League of California Cities and others to bring an initiative constitutional amendment before the voters of California that would once and for all prohibit the Legislature from redirecting tax increment for non-redevelopment purposes. This effort culminated in the passage of Proposition 22 by the voters in November, 2010.

21. Unless they are stayed by this Court, AB1X 26 and AB1X 27 will cause irreparable injury to CRA and its members.

22. AB1X 27 allows cities and counties to maintain their redevelopment agencies only if they make specified "voluntary" payments to school districts and special districts. During FY 2011/12, these payments total $1.7 billion. In 2009-2010, some

redevelopment agencies could not make their required SERAF payments. See para. 19, *supra*. Now, however, their situation is even worse, due to the large payments made in FY 2009/10 and 2010/11, and decreased revenues from lower property taxes due to declining property values during the recession. As a consequence, many redevelopment agencies will be unable to fund the required payments.

23. To be sure the payments required by AB1X 27 are to be made in the first instance by cities and counties. But cities and counties will look to their redevelopment agencies to defray these payments, as AB1X 27 specifically authorizes. §34194.2. That is because the payments are calculated on the basis of each RDA's share of total RDA net tax increment and property taxes, and cities' and counties' general funds have been impacted by the same drop in property tax revenues that afflicts redevelopment agencies. *See* §34194(b).

24. Even if cities and counties, and their RDAs, can make the initial payments required by AB1X 27, they must also make ongoing payments to generate an approximate $400 million for each subsequent fiscal year. If any city and county misses any of these payments, it will no longer be authorized to engage in redevelopment and be subject to the provisions of AB1X 26, the dissolution statute. That statute provides in part that:

(a) Effective immediately, redevelopment agencies will be prohibited from entering into contracts, including contracts with attorneys, or expending funds necessary to contest the constitutionality of AB1X 26 and AB1X 27. They will also be unable to defend themselves from claims of creditors and other contracting parties that their rights have been violated by the new legislation. §34163(b).

(b) Effective October 1, 2011, redevelopment agencies will be dissolved, making it impossible for them to commence or maintain an action challenging the constitutionality of AB1X 26 and AB1X 27, or to defend themselves from actions of creditors,

developers, property owners and other contracting parties claiming their rights have been violated. §§34170, 34172. Contractual obligations that agencies will be prevented from performing include conveying property and making loans.

(c) At the same time, AB1X 26 materially weakens the security of bondholders and other redevelopment agency creditors by:

- Abolishing the pledged source of repayment for bonds, which has a priority of lien. Prior to AB1X 26, bondholders possessed a pledged and prioritized interest in a geographic-specific income stream. AB1X 26 replaces the abolished pledge with a "commitment," which may be subject to future legislative modification;
- Creating a Redevelopment Property Tax Trust Fund that does not actually establish a trust relationship to protect bondholders; and
- Creating a structure in which successor agencies will have all of the collected property taxes comingled in the Redevelopment Property Tax Trust Fund, which would likely violate covenants contained in bond indentures requiring segregation of project area revenues.

25. The elimination of these repayment securities and violation of bond covenants, as well as the dissolution of agencies themselves, may cause bondholders and rating agencies to view these bonds as less valuable because there would no longer be a specific repayment pledge regarding a specific project area, but rather a statutory commitment to pay from a comingled pool of property tax revenues. The elimination of these repayment securities also would eliminate bondholders' attachment remedies.

26. Under AB1X 26, many development projects in the planning and early development stages will have to be abandoned because the statute would prohibit any continuing involvement in the project by the redevelopment agency or the successor agency without the consent of a separate oversight board. The oversight

board's interests are different from, and in many cases opposed to, those of the sponsoring community. Oversight Boards are comprised of seven members, only one of which is appointed by the community that established the redevelopment project. §34179. The remaining members are appointed by other governmental agencies such as the County Board of Supervisors and educational agencies such as the County Superintendent of Education. *Id.* These members may not be interested in completing planned redevelopment projects, but may instead seek to maximize the value of redevelopment agency assets for the benefit of the agencies that appointed them. For example, the land held by a redevelopment agency for an affordable housing project could be sold at significantly below its potential market value as a housing project. Or, the Oversight Board's interest may be to maximize the value of the land by terminating the affordable housing project commitment and selling the land for a use that will command the highest land value.

27. Because of the confusion and uncertainty created by AB1X 26, redevelopment agencies will lose skilled employees whose services are essential to carrying out adopted redevelopment plans.

28. If AB1X 26 and AB1X 27 are permitted go into effect and subsequently declared unconstitutional, it will create enormous confusion and waste of public resources. Cities and counties that are able to make the payments required by AB1X 27 will have paid significant amounts to schools and special districts that they may not be able to recover. The reimbursement provision of Proposition 22 does not alleviate this urgent need for a stay. The possibility of reimbursement in the future does nothing for those cities and RDAs that cannot make the payments required by AB1X 27 and thus face dissolution under AB1X 26. They will still lose the income, jobs, assets and redevelopment opportunities caused by the short-term dismantling of agencies and the stoppage of projects. Most redevelopment agencies that can make the payments will also lose jobs and redevelopment opportunities because so much of their

assets are required to make the payments. Contracts, bonds and other obligations will have been assigned to successor agencies. The completion of vital public projects will be seriously compromised. The status of redevelopment projects will be in a state of uncertainty that will create confusion for agencies, developers, property owners and creditors, resulting in delay, litigation and increased costs.

29. For example, some redevelopment agency contracts may have provisions preventing assignment without all parties' consent. Developers may not agree to contract with the successor agency and instead opt to void their contracts.

30. AB1X 26 contains no provision for re-establishing redevelopment agencies or re-assigning contracts, bonds and other obligations in the event the statute is invalidated.

31. The passage of ABX1 26/27 has thrown redevelopment agencies into a state of great uncertainty and confusion. Agencies are uncertain what they can and cannot do to implement adopted redevelopment projects. They also are uncertain how much money will be available to fund their activities in the future. Property owners, developers and investors in redevelopment agency bonds and other obligations are similarly uncertain and confused as to whether their projects may be eliminated. Until the constitutionality of AB1X 26/27 is finally determined, this uncertainty and confusion will continue and frustrate the progress of public and private development activities that are vital to the future health, safety and welfare of California and its communities. Consequently, the CRA believes that a prompt decision is necessary to resolve these uncertainties.

32. The need for a stay is particularly urgent with respect to those RDAs that will not be able to make the payments required by AB1X 27. Unless a stay is issued, the RDAs in those jurisdictions will be dissolved on October 1, 2011, and it would be difficult—if not impossible—to reconstitute these agencies and their functions if AB1X 26 and 27 are eventually invalidated.

33. The CRA respectfully requests that the Court issue this stay

as soon as possible, but no later than August 15, 2011. For those agencies that will be dissolved, cities have until September 1, 2011 to decide whether to take over as "successor agencies" to the redevelopment agencies. Consequently, a decision on the stay by August 15, 2011 will give cities and counties an opportunity to make a reasoned decision prior to the September 1, 2011 deadline.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as witness I could testify competently to the foregoing.

Executed this 13th day of July, 2011, at Sacramento, California.

JOHN F. SHIREY

PROOF OF SERVICE

I, Myrna M. DaCunha, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On July 18, 2011, I served the following document(s) described as:

PETITION FOR WRIT OF MANDATE; APPLICATION FOR TEMPORARY STAY; AND SUPPORTING MEMORANDUM AND DECLARATIONS

¨ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

¨ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

¨ by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.

¨ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☒ I served the documents described above on the parties listed below by causing them to be delivered by hand to the person(s) at the address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on July 18, 2011.

Myrna M. DaCunha

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