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No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff/Appellant/Petitioner,

vs.

CITY OF SANTA RAFAEL, et al.,

Defendants/Respondents.

APPELLANT'S PETITION FOR REVIEW

On Review of the Published Decision of the Court of Appeal, First District, Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012] Appellate Case No. A138949

On Appeal from the Judgement of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding Superior Court Case No. CIV 1300112

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TO: THE HONORABLE CHIEF JUSTICE CANTIL-SAKAUYE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

PLEASE TAKE NOTICE that in accordance with Rule 8.500 of the California Rules of Court, plaintiff and appellant Cherrity Wheatherford hereby respectfully petitions the Court for review of the published opinion of the First District Court of Appeal, Division One, issued May 22, 2014 (Dondero, J., with Marguilles, Acting P.J., and Becton, J., conc.). Appellant's Petition for Rehearing or Modification of the Opinion was denied June 16, 2014. A true copy of the opinion is attached as Exhibit 1.

Review should be granted under Rule 8.500 to secure uniformity of decision and settle important issues of law concerning the proper construction and application of the taxpayer standing statute, Code of Civil Procedure section 526a (section 526a)[1], the "primary purpose" of which "is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." (*Van Atta v. Scott* (1980) 27 Cal. 3d 424, 447 (*Van Atta*).)

The important question presented for review is what type of taxes a plaintiff must pay to have standing under section 526a and, ultimately, whether plaintiff at bar and millions of other California residents like her

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Section 526a provides in pertinent part: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ...."

may be denied taxpayer standing because they do not own and cannot afford to buy real property or a business and pay taxes assessed thereon, but do pay other forms of taxes used to fund state and local government action, such as income, sales and gasoline taxes.

INTRODUCTION

Proceeding as a taxpayer pursuant to section 526a, plaintiff seeks to challenge the vehicle impoundment practices of defendants City of San Rafael (the City) and County of Marin (the County) under Vehicle Code section 14602.6, which authorizes the 30-day impoundment of vehicles operated by a person without a valid driver's license. Plaintiff is primarily concerned about the significant impact of Vehicle Code section 14602.6 on undocumented immigrants, who under the existing state of the law cannot obtain California driver's licenses and as a result frequently suffer the harsh penalty of vehicle impoundment.

Plaintiff is a 36-year-old single mother of a 19-year-old daughter. Plaintiff and her daughter are citizens and long-time residents of the City and County, where they rent a very modest 2-bedroom apartment. Plaintiff works very hard to support herself and her daughter. She also does her fair share to support state and local government. She pays income, sales and gasoline taxes, as well as other forms of taxes routinely imposed by cities, counties and the State. She does not, however, pay real property or business taxes. Like millions of other hardworking California taxpayers, plaintiff does not own and cannot afford to buy real property or start a business in this state– particularly in the Bay Area, one of the most expensive real estate markets in the United States.[2] She is not old enough to have

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[2] The Complaint expressly so alleges in its opening paragraphs dedicated to

purchased a home decades ago when prices were lower. No one in her family has died and left her real property as an inheritance. And despite her occasional $5 play, her lucky numbers have not been called in the state lottery.

Though plaintiff is poorer than many other Californians and as result does not own real property or a business, she has never felt herself a second-class citizen, less deserving or important than her wealthier neighbors who own expensive homes and run their own businesses. *Until now*. The Court of Appeal has told plaintiff that because she is not wealthy enough, or otherwise fortunate enough, to own real property or a business and pay takes assessed thereon, she lacks taxpayer standing under section 526a to challenge the legality of state and local government action.

This Court has said the "primary purpose" of section 526a "is to enable *a large body of the citizenry* to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement" and thus the statute provides "*a general citizen remedy* for controlling illegal governmental activity." (*Van Atta, supra,* 27 Cal. 3d 424, 447, italics added.) The Court of Appeal's holding says otherwise. It says taxpayer standing is available only to the much smaller subset of the citizenry which is wealthy enough, or otherwise fortunate enough, to own real property or a retail business and pay taxes assessed thereon; to the exclusion of hard-working, taxpaying citizens such as plaintiff, who pay other forms of taxes which are also used to fund government action but

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the issue of taxpayer standing. (CT 1-2.) Inexplicably, these allegations were omitted from the Court of Appeal's Opinion, and the Court of Appeal summarily denied plaintiff's petition for rehearing and modification of the Opinion asking that the allegations be included.

which the Court of Appeal considers to be unworthy of taxpayer standing under section 526a, such as income, sales and gasoline taxes.

Though section 526 was originally enacted in 1909 and this Court has considered dozens of taxpayer cases brought under the statute, the Court has never expressly said what type of taxes must be paid to qualify for standing under section 526a. But on several occasions the Court has found taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, and necessarily paid other forms of taxes, like income, sales and gasoline taxes, such as *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1081-1086 (*Tobe*), involving two homeless plaintiffs who were granted taxpayer standing to challenge the constitutionality of a no-camping ordinance, and *Arrieta v. Mahon* (1982) 31 Cal.3d 381 (*Arrieta*), brought by several former renters who had been evicted from their home and were found to have taxpayer standing to challenge the legality of the evictions.

Nonetheless, the Court of Appeal in this case elected to follow the lead of two previous appellate court cases, *Torres v. City of Yorba Linda* (4th Dist., Div. 3, 1993) 13 Cal.App.4th 1035 (*Torres*) and *Cornelius v. Los Angeles County etc. Authority* (2nd Dist., Div. 4, 1996) 49 Cal.App.4th 1761 (*Cornelius*), which did not cite *Tobe* or *Arrieta*, and which held that taxpayer standing under section 526a is limited to plaintiffs who have paid real property taxes; payment of income, sales and gasoline taxes does not suffice.

While plaintiff's complaint specifically concerns the legality of the City and County's vehicle impoundment practices, the Court of Appeal's holding applies broadly to *all* forms of government action because "[t]he issue of whether a party has standing focuses on the plaintiff, *not the issues*

he or she seeks to have determined." (Opn. at fn. 7, italics added.) The Court of Appeal's published opinion thus prohibits plaintiff and others like her from using the taxpayer standing statute to challenge *any* form of government action, no matter how unlawful and harmful it may be and no matter how unlikely it is that wealthier and more fortunate taxpayers who own homes and businesses will bring suit under section 526a to challenge the government action. Such a rule enjoys no place in taxpayer standing and should be reviewed by the Court and promptly abolished.

ISSUES PRESENTED FOR REVIEW

1. What type of taxes must a plaintiff pay, or be liable to pay, to have taxpayer standing under section 526a?

2. Did the trial court err in dismissing plaintiff's complaint for lack of taxpayer standing?

SUMMARY OF GROUNDS FOR REVIEW

In the trial court, the parties entered a stipulated appealable order and judgment of dismissal based on plaintiff's lack of taxpayer standing under existing appellate case law which found that section 526a requires proof of payment of real property taxes. (See *Torres, supra,* 13 Cal.App.4th 1035; *Cornelius, supra,* 49 Cal.App.4th 1761.) Affirming the judgment, the Court of Appeal elected to apply that restrictive rule, despite that it has never been endorsed by this Court in the **105 years** since the taxpayer standing was enacted in 1909.

The Court of Appeal summarily dismissed the decisions of this Court finding taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, such as *Tobe, supra,* 9 Cal.4th 1069, 1081-1086, involving two homeless plaintiffs, and *Arrieta v. Mahon, supra,* 31 Cal.3d 381, brought by several renters who had been evicted from their

apartments, and the dozens of other decisions of this Court which granted taxpayer standing and reached the substantive merits of the plaintiff's claims without considering the specific type of taxes the plaintiff had paid, such as *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061 (*O'Connell*)– which, like this case, involved a challenge to local vehicle seizure practices, and was prosecuted successfully on its merits by plaintiff's counsel at bar. (And see *Samples v. Brown* (1st Dist., Div. 2, 2007) 146 Cal.App.4th 787 [constitutional challenge to Vehicle Code section 14602.6 brought by plaintiff's counsel at bar on behalf of a taxpayer who did not allege or prove payment of real property or business taxes].) The Court of Appeal said those decisions are of no consequence because this Court did not *expressly* consider and decide the question of what type of taxes qualify for taxpayer standing under section 526a. But the Court's many decisions granting taxpayer standing suggest the Court has *impliedly* answered the question in favor of affording taxpayer standing to those who have paid *any* tax imposed by state or local government, not simply those who have paid real property and business taxes.

The Court of Appeal rejected plaintiff's claim that limiting taxpayer standing to payment of real property and business taxes constitutes wealth-based discrimination in violation of due process and equal protection guarantees. (See *Serrano v. Priest* (1971) 5 Cal.3d 584 (*Serrano*) [wealth-based restriction of a fundamental constitutional right is subject to strict scrutiny and requires proof of a compelling state interest which justifies the disparate treatment of individuals based on wealth].) The Court of Appeal said plaintiff's equal protection "premise is flawed" because a real property and business tax requirement does not "to afford standing only to a select sub-group of the most wealthy Californians who are fortunate enough to

own real property in this state and pay taxes thereon. While it is true that persons with limited financial resources will find it difficult to purchase homes in today's market, it does not follow that home ownership correlates with an individual's wealth. Many wealthy people do not own homes, preferring instead to rent. Additionally, it is not a given that all lower income people are renters, as they may have purchased a home many years ago when their incomes were higher or may have inherited their homes from family members." (Fn. omitted.)

This reasoning is highly-offensive and unbefitting empathetic jurists. The appellate justices failed to appreciate the obvious fact that wealthy people may *choose* to own or rent, whereas poor people are *forced* to rent; and few of the poor are fortunate enough to have purchased homes decades ago when prices were lower or to have inherited property from family members. Limiting taxpayer standing to those who own real property or a retail business thus has an inherently discriminatory effect on the poor. All who are wealthy may gain taxpayer standing by electing to buy a home or start a retail business. Few who are poor have that option– plaintiff, for one, certainly does not. The Court of Appeal's failure to recognize this plain reality invokes Marie Antoinette– "*Qu'ils mangent de la brioche.*" "*If they are hungry, let them eat cake.*" Or, as applied here, if they are hungry for taxpayer standing, let them buy a home and start a business. "There is no equality in a law prohibiting both rich and poor from sleeping under the bridges of Paris." (*Gebert v. Patterson* (1st Dist., Div. 4, 1986) 186 Cal.App.3d 868, 876, internal citation omitted.) And there is no equality between rich and poor in a law affording taxpayer standing only to those taxpayers who own real property or a business.

The Court of Appeal's misguided treatment of the wealth-based

discrimination claim is magnified by its citation of *Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 434, for the proposition that no such discrimination is found here because "[w]ealth generally confers benefits, and does not require the special protections afforded to suspect classes." *Jensen* was referring to those who *have* wealth, not those who *lack* wealth. Limiting section 526a to those taxpayers who own real property and businesses and pay taxes thereon, does not confer a benefit on plaintiff and other taxpayers like her who are *not* wealthy enough to own real property and a business. Instead, it impermissibly denies them the same broad standing rights as are afforded wealthier taxpayers.

The Court of Appeal brushed passed *Serrano, supra,* 5 Cal.3d 584, in which this Court held that wealth-based discrimination is subject to strict scrutiny if it impacts a fundamental right– in that case, the right to a quality public education. The Court of Appeal said: "*Serrano* is inapposite because it does not purport to identify persons who cannot afford to own real property as a protected class. Thus, the rational basis test applies." *Serrano* cannot be read so narrowly. It is premised on the common sense notion that due process and equal protection guarantees will not tolerate the state's denial of a fundamental right based on lack of wealth– be it the poor school district in which one lives, as was the case in *Serrano*, or the apartment one is forced to rent because they cannot afford to buy a home, as is true here.

The fundamental right at issue here, which the Court of Appeal wholly ignored, is the "[t]he right of access to the courts[;] an aspect of the First Amendment right to petition the government for redress of grievances." (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 647; and see *Jersey v. John Muir Medical Center* (2002) 97 Cal.App.4th 814, 118 Cal.Rptr.2d 807, 812-813.) "The [United States

Supreme Court] traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, ... as plaintiffs attempting to redress grievances." (*Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 429.) Denying plaintiff and others like her the right to petition the court under the broad standing available under section 526a, simply because they are not wealthy enough to own real property or a business, denies them access to the court just the same as does a filing fee which they cannot afford to pay. Due process and equal protection principles demand the waiver of filing fees for those who cannot afford to pay them. (*Boddie v. Connecticut* (1971) 401 U.S. 371; *Earl v. Sup. Ct.* (1978) 6 Cal.3d 109.) The same principles prohibit denial of taxpayer standing based on one's inability to afford to buy a home or business. Fundamental constitutional tenants mandate that justice be accorded the rich and poor alike. (See *Griffin v. Illinois* (1956) 351 U.S. 12 [76 S.Ct. 585, 100 L.Ed. 891, 55 A.L.R.2d 1055].) The Court should not tolerate a rule which bases taxpayer standing on the size of the taxpayer's pocket.

In closing, the Court of Appeal reasoned that plaintiff's voice need not be heard by the court through a complaint brought under the taxpayer standing statute because there are probably plenty of like-minded home owners available to bring suit under section 526a to challenge the City and County's vehicle impound practices, and there are also aggrieved vehicle owners who have direct standing to sue. The Court of Appeal thereby overlooked this Court's decision in *Van Atta, supra,* 27 Cal. 3d 424, 447-450, expressly reaffirming the rule that taxpayer standing may not be denied on grounds that others with standing can bring suit on their own. And it is also dead wrong to presume that wealthier taxpayers, who generally own homes and businesses, will bring the same passion to the vehicle

impoundment debate as do poorer taxpayers such as plaintiff, who appreciate the hardship caused by the loss of a vehicle for 30-days because they own but one car, not several as do most wealthier folk.

The Court of Appeal also failed to appreciate that its taxpayer standing rule is not limited to vehicle seizure cases but applies broadly to *all* types of challenges to illegal government action. There are many causes which the poor are known to champion with more sincerity and vigor than the wealthy, such as rent control, challenges to unlawful evictions, and the plight of the homeless. (See, e.g., *Tobe, supra,* 9 Cal.4th 1069, and *Arrieta v. Mahon, supra,* 31 Cal.3d 381 [each finding taxpayer standing].) If the poor are divested of taxpayer standing, those causes will not be pursued with the same passion, if at all, and the unique perspectives of the poor litigants who champion them will not be heard. Our justice system will suffer immensely if we deny taxpayer standing to hard-working, taxpaying, citizen residents of local municipalities, like plaintiff, who are willing to stand up in court against the government and demand its compliance with the law, but are not wealthy enough, or otherwise fortunate enough, to own real property or their own business.

Review should be granted to determine what type of taxes a plaintiff must pay to qualify for taxpayer standing under section 526a, and, ultimately, whether plaintiff and others like her shall be denied taxpayer standing because they cannot afford to buy real property and start a business and pay taxes assessed thereon.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff filed a complaint for declaratory and injunctive relief on January 9, 2013. (CT 1-12.) The complaint challenges the City and County's enforcement of Vehicle Code section 14602.6, authorizing 30-day

impoundment of a motor vehicle operated by a person with a suspended or revoked driver's license. Plaintiff claims the enforcement practices are contrary to the statute's terms and violate procedural due process guarantees. Plaintiff concedes she has not suffered the impoundment of a vehicle. She claims standing as a taxpayer under section 526a. She alleges that she has paid income, sales and gasoline taxes, and water, sewage fees, and other standard fees and taxes imposed by the City, County and State, but has not paid real property taxes because she does not own and cannot afford to buy real property in California. (CT 1-2.)

Recognizing that plaintiff's claim of taxpayer standing was barred in the trial court by the Court of Appeal decisions in *Torres, supra,* 13 Cal.App.4th 1035, and *Cornelius, supra*, 49 Cal.App.4th 1761, requiring proof of payment of real property taxes, the parties stipulated to entry of a judgment of dismissal which reserved plaintiff's right of appeal. The judgment was entered on April 22, 2013. (CT 13-15.) Plaintiff timely filed a Notice of Appeal on June 11, 2013. (CT 21.)

On appeal, plaintiff argued that *Torres* and *Cornelius* were wrongly decided and section 526a should be interpreted to provide taxpayer standing to a plaintiff who has paid *any* type of tax imposed by state or local government, including income, sales and gasoline taxes, as well as real property taxes. Plaintiff claimed that limiting section 526a to payment of real property taxes would constitute wealth-based discrimination in violation of due process and equal protection guarantees.

In response, the City and County countered each of these arguments. They also added *Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Co. Assn. of Governments* (2nd Dist., Div. 6, 2008) 167 Cal.App.4th 1229 (*Santa Barbara Co.*) to the mix for the first

time. Citing *Cornelius* and *Torres* with approval, the court in *Santa Barbara Co.* found the plaintiff in that case had taxpayer standing under section 526a because he had paid sales taxes assessed on his business– the retail sale of T-shirts. *Santa Barbara Co.* reasoned that a business owners who has paid sales tax satisfies the requirements of section 526a because the sale tax is assessed directly on the business owner; whereas sales taxes paid by consumers do not satisfy section 526a because sales taxes are technically assessed on the retailer, not the consumer, though as practical matter retailers simply pass the tax on to consumers who pay it at the time of purchase. (167 Cal.App.4th at p. 1236.) The City and County thus argued that taxpayer standing is satisfied by payment of *either* real property or business taxes; and because plaintiff at bar has not paid either of those taxes, she lacks taxpayer standing.

In reply, plaintiff argued that section 526a should not be limited to payment of real property and business taxes, but should also include payment of *any* other type of tax assessed by state and local government, including income, sales and gasoline taxes. Plaintiff noted the express allegation in her complaint that she down not own and cannot afford to buy real property. She added that she also does not own and cannot afford to start her own business. She claimed that limiting section 526a to payment of real property and business taxes would constitute wealth-based discrimination and violate due process and equal protection guarantees

The Court of Appeal issued a published opinion on May 22, 2014, affirming the judgment of dismissal based on plaintiff's lack of taxpayer standing. (Ex. 1 hereto.) The Court of Appeal elected to follow *Torres,* , *Cornelius,* and *Santa Barbara Co.* and accordingly found that section 526 requires proof of payment of real property or business taxes; payment of

income, sales and gasoline taxes do not suffice.

The Court of Appeal acknowledged that this Court has found taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, such as *Tobe, supra,* 9 Cal.4th 1069, 1081-1086, involving two homeless plaintiffs, and *Arrieta v. Mahon, supra,* 31 Cal.3d 381, brought by several former renters who had been evicted from their apartments, and that the Court has issued dozens of other decisions which granted taxpayer standing to the plaintiff without consideration of the specific type of taxes the plaintiff had paid. The Court of Appeal said those decisions are not precedent because this Court did not expressly consider and decide the question of what type of taxes qualify for taxpayer standing under section 526a.

The Court of Appeal rejected plaintiff's claim that limiting taxpayer standing to payment of real property and business taxes would constitute wealth-based discrimination in violation of due process and equal protection guarantees. The court said, in sum, that plaintiff's "premise is flawed" because there are some rich people who do not own homes or business and some poor people who do, so a real property and business tax requirement does not limit standing only to a select sub-group of the most wealthy Californians. The court also said that lack of home ownership has never been identified as a suspect class, so the taxpayer limitation is subject to the rational basis test. The court found a rational basis exists for limiting section 526a to real property and business taxpayers because payment of such taxes vest the taxpayer with"a sufficiently personal interest in the illegal expenditure of funds by county officials to become dedicated

adversaries." (*Blair, supra*, 5 Cal.3d at p. 270.)[3]

In closing, the Court of Appeal reasoned that recognition of plaintiff's taxpayer status based on payment of income, sales and gasoline taxes was unnecessary because the City and County's vehicle impoundment practices can be challenged by aggrieved vehicle owners with direct standing to sue, and by other taxpayers who have paid real property and business taxes and thus have standing under section 526a based on the rule applied by the Court of Appeal.[4]

Plaintiff timely filed a petition for rehearing or modification of the Court of Appeal Opinion. Plaintiff asked the appellate court to modify the opinion to expressly state that plaintiff's complaint alleges she does not

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The Court said the exact same thing in *Van Atta, supra,* 27 Cal. 3d 424, 447-450, without identifying the type of taxes the plaintiffs had paid. So, too, in several dozen other decisions of this Court and the Court of Appeal. So it is difficult to see how the quote from *Blair* can be said to limited to payment of real property and business taxes, as the Court of Appeal found.

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The Court of Appeal failed to cross-check this presumption against the existing published cases concerning the vehicle impoundment statute, Vehicle Code section 14602.6. Had it done so it would have appreciated that plaintiff's counsel at bar prosecuted all but one of those cases, and he did so equally on behalf of vehicle owners with direct standing and taxpayers who were afforded standing under section 526a despite not having claimed to have paid real property or business taxes. (See *Smith v. Santa Rosa Police Department* (1st Dist., Div. 3, 2002) 97 Cal.App.4th 546 [action by a vehicle owner]; *Samples v. Brown* (1st Dist., Div. 2, 2007) 146 Cal.App.4th 787 [action by a taxpayer]; *Alviso v. Sonoma County Sheriff's Dept.* (1st Dist., Div. 2, 2010) 186 Cal.App.4th 198 [action by a vehicle owner and taxpayer].) The remaining case was a wrongful death action brought by the heirs of a victim of a vehicle collision. (*CHP v. Sup. Ct.* (3rd Dist. 2008) 162 Cal.App.4th 1144.) This precedential history hardly suggests there is no need for taxpayer challenges by people like plaintiff at bar.

own and cannot afford to buy real property in California. In light of the omission of this critical allegation, plaintiff also asked the Court of Appeal to reconsider its assessment of the wealth-based discrimination claim. And, plaintiff asked the Court of Appeal to consider a recent appellate decision published after the close of briefing, *Sipple v. City of Hayward* (2nd Dist., Div. 2, April, 8, 2014) – Cal.App.4th – , B242893 (*Sipple*). *Sipple* held that a telephone company which standing to pursue recovery of a tax payment made to the City of Hayward, though the tax had technically been assessed on the company's users, not the company, which had merely collected the tax from the users by listing the tax on their telephone bills. Plaintiff argued that section 526a should be similarly construed to grant taxpayer standing based on her payment of income, sales and gasoline taxes.

The Court of Appeal summarily denied the petition for rehearing and modification of the opinion by order issued June 16, 2014. The decision of the Court of Appeal was final on June 21, 2014. This petition for review timely follows in accordance with Rule 8.500.

ARGUMENT

I.

REVIEW SHOULD BE GRANTED TO SETTLE THE IMPORTANT QUESTION OF WHAT TYPE OF TAXES A PLAINTIFF MUST PAY, OR BE LIABLE TO PAY, TO HAVE TAXPAYER STANDING UNDER SECTION 526a

In the 105 years since section 526a was originally enacted in 1909, this Court has considered several dozen taxpayer cases, including many in which taxpayer standing was afforded to the plaintiff. Yet the Court has never expressly said what type of taxes the plaintiff must pay to qualify for standing under section 526a.

In *Blair, supra*, 5 Cal.3d 258, the plaintiffs offered proof of payment of real property taxes (*id.*, p. 265, fn. 2), which the Court found adequate to establish taxpayer standing under section 526a. (See *id*, pp. 267-270 and 285-286, fn. 21.) So, too, in *Serrano v. Priest, supra*, 5 Cal.3d 584, 618, presenting a taxpayer challenge to the State's method of funding public schools. In each of those cases, however, the Court did not state that payment of real property tax is the *only* way to satisfy section 526a. That question was not before the Court, and any suggestion that the Court implicitly held that real property tax payment *is* required by section 526a is readily defeated by subsequent decisions of the Court in which taxpayer standing was found for plaintiffs who did *not* own real property and plainly paid no real property taxes. (See, e.g., *Arrieta v. Mahon supra,* 31 Cal.3d 381, 384-387 [taxpayer plaintiff was a former renter who had been wrongfully evicted from her apartment]; *Tobe, supra*, 9 Cal.4th 1069, 1081-1083, 1085-1086 [2 homeless plaintiffs found to have taxpayer standing].)

The Court also did not pass on the issue in *Van Atta*, where the plaintiffs were simply described as "taxpayers" (see *Van Atta, supra*, 27 Cal.3d at pp. 433 & 447-450), nor in *White v. Davis, supra*, 13 Cal.3d 757, where the plaintiff was said to be "a professor of history at the University of California at Los Angeles and a resident taxpayer of the City of Los Angeles[.]" (*Id.*, p. 762; and see *id.*, pp. 762-765 [describing the plaintiff as a "taxpayer" and finding he had standing under section 526a].) Similar language is found in every other taxpayer standing case to reach the Court since section 526a was enacted in 1909, all of which appear to contain generic references to "taxpayers," "resident taxpayers" and "citizen taxpayers," without mention, much less substantive discussion of the specific type of taxes the plaintiffs had paid to deserve taxpayer standing.

(See, e.g., *Wirin v. Parker, supra,* 48 Cal.2d at 891 [the section 526a plaintiff was "a resident citizen taxpayer of the City of Los Angeles"]; *Lundberg v. County of Alameda* (1956) 46 Cal.2d 644, 647 [the plaintiff found to have standing under section 526a was described only as "a citizen resident of defendant county and a taxpayer therein"]; *C.R. Drake v. City of Los Angeles* (1952) 38 Cal.2d 872, 873 ["The plaintiffs as taxpayers of the city of Los Angeles commenced this action under section 526a"]; *Simpson v. City of Los Angeles* (1953) 40 Cal.2d 271, 276 ["the plaintiffs are resident citizens and taxpayers of the city and [allege] that enforcement of the [challenged] ordinance will result in unlawful expenditures of municipal funds. As such taxpayers, they are entitled to sue to prevent the alleged illegal expenditures. (Code Civ. Proc., 526a ....)"]; *Regents of University of California v. Superior Court* (*Karst*) (1970) 3 Cal.3d 529, 533, 542 ["Karst ... [and others] ... filed [this] taxpayers' action," which was properly venued in Los Angeles County where defendants were located, rather than in another county where the plaintiffs lived, because "[s]uch an action rests not upon the payment of taxes by the taxpayer, but upon the alleged illegal expenditure of such monies by the defending public entity"]; *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335 [repeatedly describing the plaintiffs simply as "taxpayers"]; *Love v. Keays* (1971) 6 Cal.3d 339, 343 ["Plaintiffs, residents and taxpayers of Los Angeles County, brought this action under section 526a ...."]; *Harman v. City and County of San Francisco, supra,* 7 Cal.3d 150 [describing the case as a "taxpayer suit" brought under section 526a by a San Francisco "taxpayer"]; *Adams v. DMV* (1974) 11 Cal.3d 146, 151 ["Petitioner Pineda joins in this action as a taxpayer challenging the constitutionality of the expenditure of public funds in enforcement of the garageman's lien law. (See Code Civ. Proc.,

§526a[.])"]; *Stanson v. Mott* (1976) 17 Cal.3d 206, 209, 223 [describing the action as a "taxpayer suit" under section 526a]; *Folsom v. Butte County Assn. of Govts.* (1982) 32 Cal.3d 668, 671-672 and fn. 2 ["Plaintiffs are resident taxpayers of Butte County" who "asserted standing under section 526a"]; *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 91 ["[T]he plaintiffs asserted standing as taxpayers under ... section 526a. ... [P]laintiffs have standing as taxpayers to challenge the legality of the [defendant] school district's actions"]; *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1137 ["the taxpayer plaintiff" did not have standing to sue under section 526a because he had not proven the challenged government conduct at issue resulted in the illegal waste or expenditure of taxpayer funds]; *Harbor v. Deukmejiian* (1987) 43 Cal.3d 1078, 1083 at fn. 4 ["The individual petitioners filed [suit] both in their individual capacities as AFDC recipients and as taxpayers under section 526a"]; *Williams v. Garcetti* (1993) 5 Cal.4th 561, 566-567 and fn. 2 [noting that in the proceedings before the Supreme Court the governmental defendants did not challenge the Court of Appeal's finding that the "taxpayer" plaintiffs had standing under section 526a]; *Sands v. Morongo Unified School Dist.* (1991) 53 Cal.3d 863, 869 ["Plaintiffs Jim Sands and Jean Bertolette are taxpayers residing within the [School] District. ... They proceeded under ... section 526a, which authorizes taxpayers' actions against local public entities to enjoin the unlawful expenditure of public funds."]; *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1205 ["Plaintiff filed a taxpayer's suit (Code Civ. Proc., § 526a) ...."]; *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 856 ["plaintiff Lorraine Loder, a taxpayer, instituted the present taxpayer's suit to enjoin further expenditure of public funds relating to the drug testing program. (See Code Civ. Proc., § 526a.)"];

Howard Jarvis Taxpayers Assn. v. City of La Habra (2001) 25 Cal.4th 809 [while the issue of taxpayer standing was not before it, the Supreme Court noted the plaintiffs had claimed taxpayer standing under section 526a based on a complaint describing the plaintiffs only as "citizens, voters and taxpayers of the City of La Habra"]; *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061 ["Plaintiff Kendra O'Connell filed this taxpayer action (Code Civ. Proc, § 526a) ...."]; *Vasquez v. State* (2008) 45 Cal.4th 243, 248-249 [noting that in the underlying litigation on the merits of Vasquez's claims, from which the attorney's fee issue before the Supreme Court arose, "Vasquez [had] ... asserted standing as a taxpayer to prevent the waste of state property (Code Civ. Proc., § 526a)"].)

A. *Torres.*

It appears the first case to address the specific type of tax which one must pay to have taxpayer standing under section 526a is the Fourth District decision in *Torres, supra,* 13 Cal.App.4th 1035, issued in 1993. In *Torres*, the plaintiffs filed a taxpayer action challenging the validity of a proposed redevelopment project by the City of Yorba Linda. The plaintiffs did not reside or own real property in Yorba Linda. Rather, the complaint "allege[d] both plaintiffs currently live in Anaheim. Plaintiffs are interested in moving to Yorba Linda if they could find decent, safe, sanitary and affordable housing. Each plaintiff paid a sales tax to the City of Yorba Linda within one year before filing the action." (*Torres, supra,* 13 Cal.App.4th at p. 1039.)

In rejecting the plaintiff's claim of taxpayer standing, the Fourth District Court of Appeal looked to the language of section 526a which provides standing to one "who is *assessed* for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein."

(Italics added.) The appellate court read this as requiring proof of payment of tax assessed directly on the plaintiff seeking to invoke section 526a. The court found the non-resident plaintiffs lacked standing because they had paid only sales tax, which is *technically* assessed against the retailer, not the consumer– though as a practical matter the retailer simply passes the sales tax on to the consumer, who pays it at the time of purchase. (*Id.*, pp. 1047-1048.)[5]

B. *Tobe.*

Just 2 years later after *Torres* was decided, and without mentioning that case, this Court issued its opinion in *Tobe, supra*, 9 Cal.4th 1069, and found that two homeless plaintiffs– who plainly had not paid real property or businesses taxes– had taxpayer standing under section 526a to challenge the constitutionality of a no-camping ordinance. (*Id.*, pp. 1081-1083, 1085-1086; and see *id.*, p. 1117 (Mosk, J., diss.) [agreeing with the majority that the plaintiffs had taxpayer standing under section 526a].)

C. *Cornelius.*

Just 1 year after *Tobe*, and, inexplicably, without mentioning that

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Curiously, earlier in its opinion, addressing the plaintiffs' standing under section 863, authorizing a validation action in certain circumstances, the *Torres* court said: "Torres owns property in the county and pays taxes on it" by making "monthly payments to her father who uses the money to pay the mortgage and property tax bills. ... We consider the fact that Torres is a record owner of the property, and consequently liable to pay the property tax levy, sufficient to support her claim to be a taxpayer. The method by which she satisfied her tax obligation is not controlling. Thus, defendants' analogies to a tenant paying rent to a landlord and a customer making a purchase in a retail store are inapposite." (13 Cal.App.4th at 1041 and fn. 4.) Torres' status as a *property* tax payer is absent from the court's subsequent discussion of the plaintiffs' taxpayer standing, which considered only their payment of *sales* tax. (*Id.*, pp. 1047-1048.)

case, the Second District Court of Appeal issued its opinion in *Cornelius, supra,* 49 Cal.App.4th 1761, holding that property tax payment is the *only* tax which satisfies section 526a. The Court of Appeal agreed with *Torres* that payment of sales tax is not adequate for taxpayer standing. It also rejected payment of gasoline and income taxes as grounds for standing under section 526a. It concluded by stating: "Any further extension of the concept of taxpayer standing must come from our state Supreme Court." (49 Cal.App.4th at p. 1779, fn. omitted.)

D. *Connerly.*

In *Connerly, supra,* 92 Cal.App. 4th 16, decided in 2003, the Third District Court of Appeal criticized *Cornelius*' reasoning and distinguished its holding as factually inapposite. (Id., pp. 29-31.) But having so found, the *Connerly* court failed to describe the specific type of taxes which Connerly had paid, referring to him only as a "taxpayer," and did not expressly address *Cornelius*' finding that proof of property tax payment is required by section 526a, and payment of gasoline, sales and income taxes does not suffice.[6]

E. Subsequent decisions have failed to address the question of the type of taxes which satisfy section 526a.

Subsequent decisions of the Court of Appeal and this Court have continued the century-old trend of referring to the plaintiffs simply as

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At the time of the *Connerly* decision, Ward Connerly was a well-paid member of the UC Board of Regents and a highly sought-after public speaker, who likely owned both a home and a business and paid taxes thereon. The *Connerly* decision, however, says nothing of the sort and does not identify the nature of the taxes paid by Connerly to secure standing under section 526a.

"taxpayers," "resident taxpayers," and "citizen taxpayers," without describing the specific taxes paid by the plaintiffs, including several vehicle impoundment and forfeiture case brought by plaintiff's counsel at bar on behalf of taxpayers who did not allege or prove payment of real property or business taxes. (See, e.g. *O'Connell, supra,* 41 Cal.4th 1061 [the prevailing plaintiff "filed this taxpayer action (Code Civ. Proc, § 526a) against the City of Stockton and its city attorney" challenging the validity of the city's vehicle forfeiture ordinance][7]; *Samples, supra,* 146 Cal.App.4th 787 [The plaintiff, who prevailed in the trial court but lost on the merits on appeal to Division 2 of this Court, "filed th[e] action pursuant to section 526a ... as a tax-paying 'citizen interested in the government's compliance with constitutional requirements.' She did not allege, nor has she ever argued, that the [vehicle impoundment] statutes she challenges were applied to her or that she or any other individual has suffered any damages."].)

Since *Cornelius*' publication in 1996, just one year after this Court's decision in *Tobe* affording taxpayer standing to two homeless plaintiffs without mentioning the type of taxes they had paid, it appears there are only three (3) cases decided in the context of section 526a which contain mention of the specific type of taxes paid by the plaintiffs. In each instance, the case passingly mentions payment of real property taxes without addressing the legal consequence of such payment to the issue of taxpayer

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[7] In the underlying decision of the Third District Court of Appeal in favor of taxpayer-plaintiff, *O'Connell v. City of Stockton*, formerly at (2005) 27 Cal.Rptr.3d 696 (depublished on grant of review), the Court of Appeal concluded that O'Connell had taxpayer standing under section 526a to enjoin the ongoing enforcement of the challenged ordinance. (*Id.*, p. 703.) On review, this Court did not address the issue of standing. (*O'Connell, supra*, 41 Cal.4th 1061.)

standing. (See *Chiatello, supra*, 189 Cal.App.4th 472, 477 [passingly noting the plaintiff had identified himself as "a resident of the City [of San Francisco] who owns real property located within the City and pays property taxes"]; *County of Santa Clara v. Superior Court (Naymark)* (6th Dist. 2009) 171 Cal.App.4th 119, 124-125 and fns. 1-5 [noting the issues were not before it, the appellate court stated the trial court had sustained demurrers filed by various city and county defendant on grounds that the plaintiffs lacked taxpayer standing in those specific jurisdictions, and the plaintiffs had responded by filing an amended complaint stating they had paid property taxes in those jurisdictions]; *Kaatz v. City of Seaside* (6th Dist. 2006) 143 Cal.App.4th 13, 49 Cal.Rptr.3d 95, 98 [passingly mentioning the taxpayer plaintiffs "resided in the City [of Seaside] and had paid real property taxes to the City"].)

Curious as it seems, given the importance of section 526a and the frequency with which taxpayer standing arises in published decisions of this Court, the specific type of tax payment required for standing under section 526a has never been considered by the Court in the 105 years of the statute's existence. And so we are here.

F. Review should be issued to settle this important issue of law.

The Court of Appeal opinion in this case leaves much to be desired and does not convincingly resolve the question of the specific type of taxes which must be paid to qualify for taxpayer standing under section 526a. The Court of Appeal gave short-shrift to the intent of the statute– "to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement" (*Van Atta, supra,* 27 Cal. 3d 424, 447)– and the constitutional

implications of limiting standing under section 526a to those who have paid real property and business taxes. The proper interpretation and application of section 526a, and the proper analysis and outcome of the wealth-based discrimination claim, deserve consideration by the Court on grant of review.

Under Rule 8.500, the Court should grant review to settle the important questions of what type of taxes a plaintiff must pay to have taxpayer standing under section 526a, and whether limiting the reach of the statute to payment of real property and business taxes would render the statute unconstitutional as violative of due process and equal protection guarantees based on wealth-based discrimination.

CONCLUSION

Based on the foregoing, the Court should grant review in accordance with Rule 8.500 to consider plaintiff's right to bring suit under the taxpayer standing statute, section 526a.

Date: June 23, 2014 By: _____

Mark T. Clausen,
Attorney for Plaintiff/Appellant/Petitioner
Cherrity Wheatherford

CERTIFICATE OF WORD COUNT

I, Mark T. Clausen, do hereby certify that the word count for this brief is 6,231 words as determined by WordPerfect software. All margins are set at 1.5 inches and line spacing is set at 1.5, with the exception of blocked text.

_____

Mark T. Clausen

CHERRITY WHEATHERFORD, Plaintiff and Appellant,

v.

CITY OF SAN RAFAEL et al., Defendants and Respondents.

No. A138949.

Court of Appeals of California, First District, Division One.

Filed May 22, 2014.

Mark T. Clausen, Counsel for Plaintiff and Appellant.

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CERTIFIED FOR PUBLICATION

DONDERO, J.

Plaintiff Cherrity Wheatherford filed a complaint challenging the enforcement practices of defendants the City of San Rafael and the County of Marin with respect to the impoundment of vehicles. She claimed she had standing to bring the action as a resident taxpayer. However, she conceded that she had not paid any property taxes. The trial court entered a stipulated judgment of dismissal. We agree with existing appellate decisions that hold payment of an assessed property tax is required in order for a party to have standing to pursue a taxpayer action. Accordingly, we affirm the judgment.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 9, 2013, plaintiff filed a complaint for declaratory and injunctive relief. In the complaint, she alleged she had taxpayer standing under Code of Civil Procedure section 526a (section 526a) because she had paid sales tax, gasoline tax, and water and sewage fees in the City of San Rafael and the County of Marin. She admitted she had not paid property taxes, but asserted she nevertheless had standing under *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069 (*Tobe*). The complaint challenges the defendants' policies and practices related to the impoundment of vehicles under Vehicle Code section 14602.6.[1]

On April 22, 2013, the trial court filed a stipulated order and judgment of dismissal. In the order, plaintiff admitted appellate courts have twice held that payment of property taxes is required for taxpayer standing under section 526a. (See *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035 (*Torres*); *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal.App.4th 1761 (*Cornelius*).) She also conceded her argument that the property tax requirement is an unconstitutional wealth-

based classification is precluded under *Torres, supra,* 13 Cal.App.4th 1035, 1048, fn. 7. She now challenges *Cornelius* and *Torres* in this appeal.

DISCUSSION

I. *Standard of Review*

Interpretation of a statute presents questions of law for the court to decide, and is reviewed de novo. (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794; *Fredenburg v. City of Fremont* (2004) 119 Cal.App.4th 408, 419; Evid. Code, § 310, subd. (a).) Plaintiff raises issues regarding the interpretation and application of section 526a and whether it may be read in a manner to afford her taxpayer standing. The de novo standard of review, therefore, applies in this case.

II. *Taxpayer Standing Under Section 526a*

Section 526a provides, in relevant part: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein . . . *who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.*" (Italics added.) The fundamental purpose of this statute is to "`enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement.'" (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268 (*Blair*).)

In *Torres, supra,* the Fourth District Court of Appeal held that proof of payment of real property tax is required by section 526a; payment of sales tax will not suffice. (13 Cal.App.4th 1035, 1046-1047.) The plaintiffs in *Torres* had filed a taxpayer action challenging the validity of a proposed redevelopment project by the City of Yorba Linda. The plaintiffs did not reside or own real property in that city. Rather, the complaint alleged both plaintiffs currently lived in Anaheim, but were interested in moving to Yorba Linda if they could find decent, safe, sanitary and affordable housing. Each plaintiff paid a *sales tax* to the City of Yorba Linda within one year before filing the action. (*Id.* at p. 1039.) In rejecting the plaintiffs' claim of taxpayer standing, the appellate court looked to the language of section 526a granting standing to one "who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax therein." The court read this language as requiring proof of payment of an assessed tax. The court found the nonresident plaintiffs lacked standing because they had paid only sales tax, which is technically assessed against the retailer, not the consumer, though as a practical matter the retailer simply passes the sales tax on to the consumer, who pays it at the time of purchase. (*Id.* at pp. 1047-1048.)[2]

Two years later, our Supreme Court decided *Tobe, supra,* holding, in part, that two taxpayer plaintiffs who were homeless—and thus necessarily did not pay real property taxes—had taxpayer standing under section 526a. (9 Cal.4th 1069, 1086.) In *Tobe,* the plaintiffs, some of whom were homeless,

brought an action to bar the enforcement of a Santa Ana ordinance that banned camping and storage of personal effects in public areas throughout the city. (*Id.* at pp. 1081-1082.) In the course of reaching its decision, the Court held that regardless of whether the plaintiffs had a beneficial interest in the writ action, they did have standing to bring the petition as section 526a taxpayers. (*Id.* at p. 1086.) There is no indication, however, that the Court considered the issue of what taxes plaintiffs had paid to enjoy this standing.[3] The main focus of the case was geared toward separate constitutional concerns. As plaintiff acknowledges, cases are not precedent for issues not considered and decided. (*Camarillo v. Vaage* (2003) 105 Cal.App.4th 552, 565.)[4]

One year after *Tobe* was decided, the Second District Court of Appeal cited *Torres* as stating the correct rule and held that proof of payment of real property tax is required by section 526a; payment of sales, gasoline, and income taxes will not suffice. (*Cornelius, supra,* 49 Cal.App.4th 1761 at pp. 1777-1776.) In *Cornelius,* a nonresident plaintiff brought suit against the Los Angeles County Metropolitan Transportation Authority (MTA) challenging an affirmative action program it had implemented as a required condition of receiving federal funds. The plaintiff did not reside in the county of Los Angeles or own real property therein. Rather, he worked for a company in Hollywood that had allegedly lost out on a bid in that county due to an affirmative action program. (*Id.* at pp. 1765, 1774.) He claimed he had the right to sue based on his payment of sales and gasoline taxes within the county, as well as his payment of income taxes to the state. (*Id.* at p. 1774.) In rejecting the claim of taxpayer standing, the appellate court first found that real property taxes are assessed on the property owner directly and therefore satisfy the language of section 526a. As the plaintiff had not paid real property taxes, he could not claim taxpayer standing on that basis. (*Id.* at pp. 1775-1776.) *Cornelius* does not mention the *Tobe* opinion.

Below, the parties agreed that under the rule of stare decisis, the trial court here was constrained to follow *Cornelius* because it squarely addresses the issue of property tax payment and it post-dates the Supreme Court's decision in *Tobe.* On appeal, plaintiff asks us to reject *Cornelius* and *Torres* in favor of *Tobe* and other cases that have, according to her, construed section 526a broadly "to achieve its remedial purpose." She asks us to hold that payment of *any* form of tax suffices for standing under section 526a.

III. *Plaintiff Lacks Standing*

A. *Plain Language of Section 526a*

Plaintiff claims the plain language of section 526a reveals that payment of any tax is sufficient to confer taxpayer standing, including payment of fees for services such as water and sewage.[5] As noted above, that section allows a "citizen resident" to bring a lawsuit if the individual "is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . ." Plaintiff first claims the statute is written in the disjunctive, asserting the word "or" separates persons who have been assessed for and are liable to pay a tax from those who have merely "paid a tax" in the relevant jurisdiction. As to the latter class of taxpayers, she asserts an

assessment is not required. While she claims the "overall meaning" of the statute "is made difficult by the manner in which the words are parsed and separated by commas," in reality it is her own interpretation that is strained. Plainly, the word "or" is intended to provide an alternative to the clause "is liable to pay." Thus, the statute gives standing to two classes of persons who have been assessed for taxes: (1) those who are liable to pay an assessed tax but who have not yet paid, and (2) those who paid an assessed tax within one year before the filing of the lawsuit. Unlike plaintiff, we see nothing in this interpretation that would lead to any "absurd results."

B. *Legislative Intent*

Plaintiff asserts legislative intent supports her broad interpretation of section 526a. The statute was enacted in 1909, and plaintiff does not direct our attention to any actual legislative history. Instead, she points to appellate decisions that have described the statute as providing "a general citizen remedy for controlling illegal governmental activity" (*White v. Davis* (1975) 13 Cal.3d 757, 763), designed to "enable a large body of the citizenry to challenge governmental action" (*Blair, supra*, 5 Cal.3d 258, 267-268) and providing a broad basis of relief. (See *Van Atta v. Scott* (1980) 27 Cal.3d 424, 447-448.)

Courts need not rely on legislative intent when a statute is clear on its face. (*Greb v. Diamond Internat. Corp.* (2013) 56 Cal.4th 243, 256.) In any event, plaintiff's contentions are not persuasive. Her argument is based on her view that the "legislative intent of section 526a would be undermined if the statute is interpreted to afford standing only to a select sub-group of the most wealthy Californians who are fortunate enough to own real property in this state and pay taxes thereon."[6] While it is true that persons with limited financial resources will find it difficult to purchase homes in today's market, it does not follow that home ownership correlates with an individual's wealth. Many wealthy people do not own homes, preferring instead to rent. Additionally, it is not a given that all lower income people are renters, as they may have purchased a home many years ago when their incomes were higher or may have inherited their homes from family members. Thus, plaintiff's premise is flawed.

C. *Constitutionality*

Plaintiff uses a similar argument to suggest section 526a violates principles of equal protection. She asserts an interpretation of the statute that requires a litigant to have paid assessed property taxes in order to have standing to sue creates a "wealth-based classification," thereby raising constitutional concerns subject to strict scrutiny. Again, the correlation between wealth and home ownership is not as clear as plaintiff suggests. Further, as she acknowledges, the equal protection argument was rejected by the court of appeal in *Torres*. In *Torres,* the appellate court stated in a footnote: "Plaintiffs also claim that denying standing to them under [section] 526a violates their constitutional right to equal protection of the law. The argument is without merit. The case law clearly establishes plaintiffs are not similarly situated with others determined to have standing under these circumstances." (*Torres, supra,* 13 Cal.App.4th at p. 1048, fn. 7.) Here, plaintiff asserts she is similarly situated to other taxpayers who pay all of the same taxes as she does, but who also happen

to pay property taxes. For purposes of this appeal, we assume, without deciding, that plaintiff is similarly situated to taxpayers who have been accorded standing under section 526a.

The equal protection clause "`compel[s] recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.'" (*Darces v. Woods* (1984) 35 Cal.3d 871, 885.) A state cannot "deny to any person within its jurisdiction the equal protection of the laws" under the Fourteenth Amendment of the federal Constitution. (U.S. Const., 14th Amend., § 1.) Similarly, the state Constitution provides that a person may not be "denied equal protection of the laws." (Cal. Const., art. I, § 7.)

Plaintiff argues that a strict scrutiny constitutional analysis applies. We disagree. "Classifications that disadvantage a `suspect class' or impinge upon the exercise of a `fundamental right' are subject to strict scrutiny; this requires the state to demonstrate that its classification `has been precisely tailored to serve a compelling governmental interest.' [Citations.]" (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 434, fn. omitted (*Jensen*).) To the extent plaintiff claims section 526a creates a distinction based on wealth, we note courts have held that classifications based on wealth do not merit strict scrutiny. In *Jensen,* the court of appeal stated: "Suspect classifications include race, gender, national origin, and alienage. Wealth generally confers benefits, and does not require the special protections afforded to suspect classes." (178 Cal.App.4th 426 at p. 434 [wealthy taxpayers unsuccessfully maintained wealth is a suspect classification and the tax imposed by Proposition 63 affects only "`the class of "wealthy" persons.'"]; see also *Maher v. Roe* (1977) 432 U.S. 464, 471 ["[T]his Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis. [Citations]".)

Plaintiff relies on *Serrano v. Priest* (1971) 5 Cal.3d 584 (*Serrano*), in which the Supreme Court struck down a public school financing system based on local real property assessed valuations, concluding an educational system that produces disparities of opportunity based upon district wealth violates principles of equal protection. (*Id.* at pp. 598-600.) In *Serrano,* the Court afforded constitutional protection to students from poor districts because state law diminished that group's fundamental right to an education equal to that of wealthy districts. The Court held that the method of financing schools through ad valorem property taxes was violative of equal protection as it discriminated on the basis of wealth. (*Id.* at pp. 614-615.) Thus, the issue was that the financing system itself *created* an inequality affecting a fundamental right, not that poor people are, as such, members of a protected class.

We also note the cases cited in *Serrano* relate to unconstitutional treatment of indigents, not discrimination against persons who may not have enough money to buy a house. (*Serrano, supra,* 5 Cal.3d at pp. 597-598; see, e.g., *Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663 [poll tax]; *Tate v. Short* (1971) 401 U.S. 395 [indigent defendant cannot be sent to jail for inability to pay a fine imposed for traffic violations]; *Douglas v. California* (1963) 372 U.S. 353 [indigent defendant has a right to counsel on appeal]; *Smith v. Bennett* (1961) 365 U.S. 708 [indigent defendant has a right to petition for habeas corpus despite his inability to pay a filing fee].) *Serrano* is inapposite because it does not purport to identify persons who cannot afford to own real property as a protected class.

Thus, the rational basis test applies. A statute "should be sustained if we find that its classification is rationally related to achievement of a legitimate state purpose." (*Western & Southern Life Ins. Co. v.*

State Bd. of Equalization (1981) 451 U.S. 648, 657.) "In a rational basis analysis, any conceivable state purpose or policy may be considered by the courts. [Citations.] The state `has no obligation to produce evidence to sustain the rationality of a statutory classification,' which `"may be based on rational speculation unsupported by evidence or empirical data."' [Citation.] The party challenging the constitutionality of a state law must `"negative every conceivable basis which might support it."' [Citation.] `A classification does not fail rational-basis review because it "`is not made with mathematical nicety or because in practice it results in some inequality.'"' [Citation.] The burden of demonstrating the invalidity of a challenged classification `rests squarely upon the party who assails it.' [Citation.]" (*Jensen, supra,* 178 Cal.App.4th at p. 436, italics omitted.)

Here, plaintiff does not contend section 526a serves no conceivable state purpose. She merely argues that the statute, as construed under *Torres* and *Cornelius,* discriminates against some taxpayers on account of the fact that they do not pay property taxes. Courts have noted that it is not irrational to limit standing in taxpayer lawsuits. For example, the court in *Cornelius* stated it did not believe "it would be sound public policy to permit the haphazard initiation of lawsuits against local public agencies based only on the payment of state income taxes." (*Cornelius, supra,* 49 Cal.App.4th 1761 at pp. 1778-1779.) We also see a rational purpose in limiting taxpayer standing to persons who pay property tax in the jurisdiction corresponding to the public entity defendant. Individuals who have directly paid a tax to the government have obtained "a sufficiently personal interest in the illegal expenditure of funds by county officials to become dedicated adversaries." (*Blair, supra,* 5 Cal.3d at p. 270.) Additionally, given the apparent widespread nature of defendants' vehicle impoundment practices, this is not a case in which taxpayer standing must be construed liberally to allow a challenge to governmental action which would otherwise go unchallenged because of the stricter requirement of standing imposed by case law. (See *Blair, supra,* 5 Cal.3d at pp. 267-268.) Presumably there are many individuals whose vehicles have been impounded by defendants, and who therefore can fulfill the case law requirement of actual injury.[7] Alternatively, there are many homeowners who pay taxes directly to defendants and who have standing to raise the claims plaintiff seeks to pursue. We thus agree with defendants that plaintiff lacks standing to bring the instant action.

DISPOSITION

The judgment is affirmed.

Margulies, Acting P.J. and Becton, J.,[*] concurs.

[1] Vehicle Code section 14602.6, subdivision (a)(1) provides, in part: "Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person. . . . A vehicle so impounded shall be impounded for 30 days."

[2] Division Five of this appellate district recently endorsed the holding of *Torres* in *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 872-873.

[3] Similarly, in *Arrieta v. Mahon* (1982) 31 Cal.3d 381, plaintiffs were a group of tenants who brought a section 526a taxpayer's action to challenge the county marshal's policy of evicting all occupants when enforcing a writ of execution after an unlawful detainer judgment, regardless of whether the occupants were actually named in the writ. (*Id.* at p. 385.) The Court concluded the plaintiffs had standing to bring the suit under section 526a. (*Id.* at p. 387.) However, as in *Tobe,* the Court did not discuss the issue of what specific taxes plaintiffs had paid that served to grant them standing.

[4] Plaintiff's opening brief discusses many other cases that suffer from this same flaw. We need not address them here.

[5] Fees and taxes are not the same. (See *Northwest Energetic Services, LLC v. California Franchise Tax Board* (2008) 159 Cal.App.4th 841, 854 [fees, unlike taxes, are not compulsory and are intended to compensate for services or benefits provided by the government].)

[6] Standing under section 526a is not limited to real property owners. (See *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments* (2008) 167 Cal.App.4th 1229, 1236, holding that a retailer that paid sales taxes in the jurisdiction sufficiently established standing under section 526a because it "established liability to pay a tax assessed by Santa Barbara County." Here, defendants note section 526a applies to individuals and business owners on whom a governmental entity directly assesses a tax. Such individuals would include, but would not necessarily consist solely of, real property owners.

[7] "`The issue of whether a party has standing focuses on the plaintiff, not the issues he or she seeks to have determined.' [Citation.] `A person who invokes the judicial process lacks standing if he, or those whom he properly represents, "does not have a real interest in the ultimate adjudication because [he] has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented." [Citation.]' [Citations.] `California decisions . . . generally require a plaintiff to have a personal interest in the litigation's outcome.' [Citation.]" (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1001.)

[*] Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE

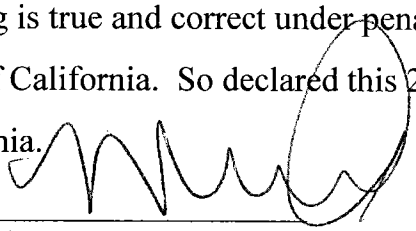
I, Mark T. Clausen, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 769 Carr Avenue, Santa Rosa, California, 95404. On the date indicated below true copies of the attached document (Appellant's Petition for Review)– were placed in a sealed envelope, postage prepaid, and deposited in the United States Mail, address as follows:

Clerk of the California Supreme Court Earl Warren Building 350 McAllister Street San Francisco, CA 94102 (1 original & 8 copies; and 1 PDF E-filed copy to follow on assignment of a case number)	
Clerk of the Court of Appeal, Div. 1 Earl Warren Building 350 McAllister Street San Francisco, CA 94102 (Via E-Filing Only)	Court of Appeal
Richard W. Osman Bertrand, Fox & Elliot 2749 Hyde Street San Francisco, California 94109	Attorney for Defendant and Respondent City of San Rafael
Renee G. Brewer, Deputy County Counsel Office of Marin County Counsel 3501 Civic Center Drive, Suite 275 San Rafael, CA 94903	Attorneys for Defendant and Respondent County of Marin
Marin County Superior Court POB 4988 San Rafael, CA 94913	Trial Court

Cherrity Weatherford — Plaintiff and Appellant
(BY HAND DELIVERY)

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 26th day of June 2014 in Santa Rosa, California.



Mark T. Clausen