No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.,
Petitioners,

v.

ANA MATOSANTOS, ET AL.,
Respondents.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDATE; DECLARATION OF T. BRENT HAWKINS IN SUPPORT OF PETITION

STEVEN L. MAYER (No. 62030)
smayer@howardrice.com
EMILY H. WOOD (No. 260382)
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
Telephone: 415/434-1600
Facsimile: 415/677-6262

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

INTRODUCTION

It is well to be clear at the outset what this case is and is not about. ABX1 26 and 27 do not dissolve the RDAs to reform redevelopment or because the Legislature has concluded that other agencies could do the job better. Accordingly, the question of whether the Legislature could abolish the RDAs to serve some such purpose, or whether RDAs have a "permanent right to exist" (County Br. 20), is not before the Court.

Instead, the question this case presents is much narrower. The Legislature enacted ABX1 26 and 27 for a single purpose: to redirect *the RDAs' money for its own benefit and that of other taxing agencies*. *See* ABX1 27, §1(b) ("[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"). Consequently, the issue this case presents is whether statutes adopted for the express purpose of diverting tax increment from RDAs violate Proposition 22, an initiative constitutional amendment that Respondent Matosantos concedes was adopted by the voters "to prevent legislative raids on RDA funds." Matosantos Br. 16.

Neither Matosantos nor the County of Santa Clara (collectively, "Opponents") address the inconsistency between the voters' intent and the Legislature's purpose in adopting ABX1 26 and 27. Instead, they baldly assert that Proposition 22 places no limits "on the Legislature's power to end the RDA program entirely." *Id.* at 2. In other words, according to Matosantos, Proposition 22 "limits how RDA funds are to be treated *while RDAs exist*; it in no way prohibits the Legislature from eliminating the RDA program it created." *Id.* at 15 (emphasis in original). Consequently, Opponents believe that Proposition 22 is like a hypothetical robbery statute that prohibits the theft of someone's money unless the victim is killed first. This makes no sense: robbery is robbery, whether the victim survives or not.

Opponents offer no reason why the voters would have enacted such a half-baked measure. Nor do they deny that the voters enacted Proposition 22 after a series of legislative raids on local tax funds, including RDA funds; that the voters were told that Proposition 22

"prohibits the State from borrowing or taking funds used for . . . redevelopment" (Ballot Pamp. (Nov. 2010) at 30) and "[p]rohibits redirection of redevelopment property tax revenues" (*id.* at 31); and that the voters required that the "provisions of this act . . . be liberally construed in order to effectuate its purposes." Prop. 22, §11.

Instead, Opponents contend that all this is irrelevant because Proposition 22 does not expressly prohibit the Legislature from dissolving the RDAs, and because limits on legislative power must be "strictly construed." But this canon of constitutional interpretation does not exist in isolation. Instead, it must be applied in conjunction with the equally important principle that constitutional amendments be interpreted to effectuate their purpose. *See* Part I(A), *infra*.

Once that principle is recognized, this is not a difficult case. ABX1 26 and 27 were enacted for the express purpose of diverting RDA tax increment to third parties, either directly by dissolving the RDAs, or indirectly by using the threat of dissolution to force RDAs to make payments that the Legislature could not compel directly under Proposition 22. Consequently, these statutes violate an initiative that concededly "limits legislative tampering with the stream of income flowing into and out of RDAs." Matosantos Br. 2. Moreover, the Legislature's attempt in ABX1 26 to use its supposed power over the existence of the RDAs to achieve a result expressly prohibited by Proposition 22 violates the well-settled rule that the Legislature cannot use a constitutional power to achieve an unconstitutional result. *See* Part I(B), *infra*.

ABX1 26 is unconstitutional even apart from its attempt to coerce the payments required by ABX1 27. The statute's attempt to seize RDA funds by eliminating the RDAs is inconsistent with both the text and the purpose of Proposition 22. *See* Part II(A), *infra*. It also conflicts with Article XVI, Section 16, as interpreted by this Court in *Marek v. Napa Community Redevelopment Agency*, 46 Cal. 3d 1070 (1988), an interpretation that was reaffirmed by the voters in Section 9 of Proposition 22. *See* Part II(B), *infra*.

That both ABX1 26 and 27 are independently unconstitutional is not surprising. Both bills divert RDA tax increment to other local

agencies. Both bills therefore undermine Proposition 22's stated purpose: "to conclusively and completely prohibit" the Legislature "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local government. Prop. 22, §2.5. The fact that one bill eliminates the RDAs and one does not is of no constitutional significance.

If the Court disagrees, and believes that ABX1 27 is substantively unconstitutional but ABX1 26 is not, it must then determine whether the latter is severable from the former. Opponents' contention that it is relies heavily on the severability clause adopted by the Legislature in ABX1 27. But a severability clause is only the beginning, and not the end, of analysis. ABX1 26 is not volitionally severable from ABX1 27, because there is overwhelming evidence that the Legislature did not pass ABX1 26 and 27 to eliminate redevelopment, which is exactly what would occur if only the former statute is upheld. This evidence consists of the Legislature's failure to eliminate the RDAs despite being asked to do so by the Governor; the assumptions made by the Legislature (reflected in both the bills themselves and the legislative history) that most if not all RDAs would survive; and the critical fact that the bills would not have passed the Legislature but for numerous explicit statements made by the President Pro Tem of the Senate and the bills' author that the bills would *not* eliminate redevelopment. *See* Part III, *infra*.

ARGUMENT

I.

ABX1 26 AND ABX1 27 ARE BOTH UNCONSTITUTIONAL BECAUSE THEY ATTEMPT TO ACHIEVE AN UNCONSTITUTIONAL RESULT.

A. Proposition 22 Must Be Liberally Construed To Accomplish Its Stated Purposes, Which Will Be Frustrated If ABX1 26 And 27 Are Upheld.

This Court has repeatedly held that it is "obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." *Silicon Valley Taxpayers' Ass'n v. Santa Clara*

County Open Space Auth., 44 Cal. 4th 431, 448 (2008); *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409, 418 (2004). Moreover, Proposition 22 must be liberally construed as a "remedial provision." Pet. Mem. 29. Petitioners contend that these principles provide the proper constitutional template for resolution of their Petition. *See id.* at 27-29, 33, 37-38.

Matosantos contends that "petitioners are employing the incorrect standard" in relying on these principles. Matosantos Br. 13. In particular, she relies on the rule that "'restrictions and limitations'" imposed by the Constitution on the Legislature "'are to be construed strictly.'" *Id.* at 14 (quoting *State Personnel Bd. v. Dep't of Personnel Admin.*, 37 Cal. 4th 512, 523 (2005) (emphases omitted)). The County makes the same argument. County Br. 13-14.

Opponents are only half right. The principle that constitutional limits on legislative power must be construed strictly is the beginning, and not the end, of analysis. In particular, where the principle requiring strict construction conflicts with a "clear constitutional mandate" (*County of Riverside v. Superior Court*, 30 Cal. 4th 278, 285 (2003)), the principle must yield.

That can occur in several ways. In the first place, *none* of the cases stating that limitations on legislative power must be "construed strictly" construe an initiative that the voters have required "be liberally construed in order to effectuate its purposes." Prop. 22, §11. In such cases, the electorate's specific command must trump the general principles of constitutional adjudication. *See Bay Area Cellular Tel. Co. v. City of Union City*, 162 Cal. App. 4th 686, 699 (2008) (refusing to construe "special taxes" strictly, as required by earlier decisions, in light of Proposition 218's command that measure be "liberally construed to effectuate its purposes"); *cf. Silicon Valley Taxpayers' Ass'n*, 44 Cal. 4th at 448 (relying on Proposition 218's requirement of liberal construction to change standard of judicial review applicable to local assessments).

Moreover, even if Proposition 22 contained no provision requiring liberal construction, the principle that limits on legislative power must

be strictly construed must be applied together with the countervailing principle that initiative measures must be interpreted to further the voters' intent. As this Court recognized in *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243 (1995), with respect to the limit on legislative power contained in Article II, Section 10(c): "Such a limitation upon the power of the Legislature must be strictly construed, *but it also must be given the effect the voters intended it to have*." *Amwest*, 11 Cal. 4th at 1255-56 (emphasis added). Accordingly, as the Court stated in *Consulting Engineers & Land Surveyors of California, Inc. v. Professional Engineers in California Government*, 42 Cal. 4th 578 (2007), "legislative choices [made] by the electorate are entitled to the same deference by the courts as enactments of the Legislature." *Id.* at 582.

The same point was made in *Shaw v. People ex rel. Chiang*, 175 Cal. App. 4th 577 (2009) (Cantil-Sakauye, J.). There, after invoking the principles that limits on legislative power must be construed strictly, and that enactment of a budget bill is a legislative function, the court stated that, "even in matters involving the state budget, 'the courts have the responsibility for determining the constitutionality of acts of the Legislature, and in doing so *to give effect to the will of the electorate which is, of course, paramount.*'" *Id.* at 596 (emphasis added; citation omitted).

The reasons why "the will of the electorate" is "paramount" appear in the Constitution itself. Article IV, Section 1 expressly states that the legislative power exercised by the Legislature is subject to the People's reserved powers of initiative and referendum: "The legislative power of this State is vested in the California Legislature . . . , but the people reserve to themselves the powers of initiative and referendum." "This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature." *Rossi v. Brown*, 9 Cal. 4th 688, 704 (1995) (citation and internal quotation marks omitted).

Both Opponents rely on *State Personnel Board v. Department of Personnel Administration*, 37 Cal. 4th 512 (2005), but that case supports Petitioners. There the defendants argued that MOUs allowing

certain state employees to challenge disciplinary actions through arbitration rather than review by the State Personnel Board ("SPB") did not conflict with the constitutional provision giving the SPB power to "review disciplinary actions" (Art. VII, §3(a)), because the provision was "permissive, [and] does not require that all disciplinary review . . . be before the Board." 37 Cal. 4th at 524. However, the Court rejected the argument. Even though Article VII, Section 3(a) does not expressly make the Board's jurisdiction to review disciplinary actions exclusive, the Court found that "[i]t would be inimical to California's constitutionally mandated merit-based system of civil service, which is administered by the State Personnel Board, to wholly divest that board of authority to review employee disciplinary actions in favor of an MOU-created review board." *Id.* at 526.

Like the defendants in *State Personnel Board*, Matosantos relies heavily on the fact that Proposition 22 does not expressly prohibit the Legislature from dissolving the RDAs. Matosantos Br. 18 ("the proposition is silent regarding the continued existence of the RDA program itself"). But neither did Article VII, Section 3(a) expressly prohibit the Legislature from approving other means of reviewing disciplinary actions against state employees if the employer and employee agreed. Nevertheless, *State Personnel Board* held unconstitutional a statute that interfered with the SPB's exclusive role of reviewing disciplinary action because it thought the statute was "inimical" to the constitution's requirement that the civil service system be governed by the merit principle. Similarly, in this case the Court should hold that a statute dissolving the RDAs and transferring all their tax increment to third parties unless they make billion dollar payments is "inimical" to a constitutional provision that Respondent Matosantos concedes was adopted "to prevent legislative raids on RDA funds." Matosantos Br. 16.[1]

---

[1]The County cites the rule that legislative deference is increased "'when the Legislature has enacted a statute with the relevant constitutional prescriptions clearly in mind.'" County Br. 14 (quoting *Pac. Legal Found. v. Brown*, 29 Cal. 3d 168, 180 (1981)). In that case, though, the Legislature: (a) provided in a preamble that nothing in the statute "shall be construed to contravene the spirit or intent of the merit

(continued . . .)

Any other result would be both bad constitutional policy, as well as bad law. Proposition 22's legislative history—which Opponents largely ignore—demonstrates that the electorate passed the measure to protect the RDAs' tax increment against diversion. *See* Pet. Mem. 10-13. To do so, the voters adopted: (1) an express prohibition on RDA fund diversion (Art. XIII, Section 25.5(a)(7)(A)); (2) an expansive statement of the measure's general purpose (Prop. 22, §2.5); (3) a specific statement of purpose directed at redevelopment (*id.* §9); and (4) a requirement that the measure "be liberally construed in order to effectuate its purposes." *Id.* §11. Having done all this, the will of the voters should not be frustrated simply because they failed before the fact to anticipate every single way in which the Legislature might attempt to divert the RDAs' tax increment. In contrast, permitting the Legislature to disregard that will and frustrate Proposition 22's stated purposes simply because the voters did not expressly prohibit the precise manner in which the Legislature would attempt to nullify that measure will breed disrespect for the Legislature, the Constitution, the initiative process and the rule of law. In *AFL-CIO v. Eu*, 36 Cal. 3d 687 (1984), this Court observed that "an ultimate decision that [a ballot] measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure." *Id.* at 697. The same result will occur if Proposition 22 is interpreted to permit legislative evasion less than a year after its adoption.

Once the primacy of the voters' intent is recognized, this case is not difficult. Neither Opponent even attempts to explain how upholding ABX1 26 and 27 would be consistent with, much less further, Proposition 22's conceded purpose of preventing "forced shifts and

---

(. . . continued)
principle in state employment, nor to limit the entitlements of state civil service employees . . . provided by Article VII of the California Constitution"; and (b) limited the reach of the statute to avoid those areas "in which a potential conflict with the merit principle of employment [contained in the Constitution] would be most likely to occur." *Pac. Legal Found.*, 29 Cal. 3d at 185 (emphasis omitted). Nothing of the sort occurred here. Indeed, neither ABX1 26 nor ABX1 27 mentions Proposition 22, much less attempts to accommodate its provisions.

transfers of funds from RDAs." Matosantos Br. 2. Similarly, neither Opponent mentions Proposition 22's stated purpose: "to conclusively and completely prohibit" the Legislature "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local government. Accordingly, because Proposition 22 must be interpreted to "effectuate[] the voters' purpose in adopting the law" (*Silicon Valley*, 44 Cal. 4th at 448), Petitioners must prevail.[2]

B. The Legislature Cannot Use The Threat Of RDA Dissolution Under ABX1 26 To Compel Payments Of Tax Increment That It Could Not Compel Directly Under Article XIII, Section 25.5(a)(7)(A).

Matosantos concedes that "the Legislature was constrained by Proposition 22 from requiring RDAs to pay local fire and transit districts and local schools on the state's behalf." Matosantos Br. 8; *accord*, *id.* at 15 (Article XIII, Section 25.5(a)(7) "bars the Legislature from enacting a statute requiring an RDA to 'pay, remit, loan or otherwise transfer' funds allocated to the RDA or to 'use, restrict, or assign' those funds to third parties") (citations omitted). The County likewise concedes that the Legislature may not require RDAs to use tax increment for purposes other than financing or refinancing "the redevelopment project." County Br. 27. Moreover, neither Opponent challenges Petitioners' assertion that the Legislature knew and intended that the ABX1 27 payments would come from RDA tax increment. *See* Pet. Mem. 24-27. Accordingly, ABX1 26 and 27 are unconstitutional, because the Legislature may not use its supposed power over RDA dissolution to accomplish indirectly what Opponents acknowledge it could not do directly.

---

[2]Matosantos cites *California School Boards Ass'n v. Brown*, 192 Cal. App. 4th 1507 (2011), for the proposition that "an unspoken intent should not be supplied by this Court." Matosantos Br. 16. Here, however, as discussed above, the voters' intent was expressed in multiple ways and would be undermined by interpreting Proposition 22 as Opponents suggest.

Matosantos contends that this doctrine is inapplicable because ABX1 26 "*terminated* the RDA program—*independently* of whatever action a locality might choose to take under ABX1 27." Matosantos Br. 8 (emphases in original); *accord*, *id.* at 21 ("The Legislature terminated the existence of RDAs as a stand-alone act, without regard to actions that cities or counties might subsequently take under ABX1 27"). However, the only support Matosantos provides for these statements is Health and Safety Code Section 34172(a)(1), which provides that RDAs in existence as of the effective date of the statute "'are hereby dissolved and shall no longer exist as a public body, corporate or politic.'" Matosantos Br. 21 (quoting §34172(a)(1)) (emphasis omitted).[3] But Section 34172(a)(1) does not become operative until October 1, 2011. §34170(a). Accordingly, if a city or county enacts a binding ordinance to comply with ABX1 27 by October 1, 2011, or a non-binding resolution by that date and a binding ordinance by November 1, and makes the payments required by ABX1 27, its RDA will *never* be dissolved under ABX1 26 and can continue all of its activities indefinitely under pre-existing law. §34193(a).

These indisputable facts are inconsistent with Matosantos' claim that ABX1 26 "*terminated* the RDA program" or "the existence of RDAs." Matosantos Br. 8, 21. Indeed, Matosantos concedes in a footnote that "the provisions of ABX1 26 apply to all local entities *that do not participate* in the VARP" established by ABX1 27. *Id.* at 9 n.5 (emphasis added). Similarly, while Matosantos claims that ABX1 27 created a "new and voluntary redevelopment program" (*id.* at 2), or a "new path" that creates an "alternative RDA" (*id.* at 5), the only "new" thing about redevelopment under ABX1 27 is the requirement that RDAs pay billions of dollars to the schools and special districts.

That requirement is precisely why ABX1 26 and 27 are unconstitutional. *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979) ("*SCOPE*"), holds that "constitu-

---

[3]Unless otherwise indicated, all statutory references are to the Health and Safety Code.

tional power cannot be used by way of condition to attain an unconstitutional result." *Id.* at 319 (citation and internal quotation marks omitted). ABX1 26 and 27 attempt to do just that, *i.e.*, use the Legislature's supposed power over RDA dissolution to compel fund transfers indirectly that Opponents concede could not be compelled directly because of Proposition 22.

The County tries to distinguish *SCOPE* on the ground that "compliance with the condition imposed by the payment statute would have forced the affected entities to engage in illegal conduct; hence, there was no lawful option." County Br. 18. Similarly, Matosantos says *SCOPE* is distinguishable because "the acts challenged by petitioners do not infringe on any contract or constitutional rights." Matosantos Br. 25. These contentions suffer from five fatal flaws.

First, it is not true that the cities and counties subject to the *SCOPE* payment statute had no "lawful option." They could have refused the state's bailout money and thereby escaped the state's unconstitutional condition. The County therefore errs in arguing that the "fundamental voluntary nature" of ABX1 27 "sets it apart from the provision at issue in *SCOPE*." County Br. 18. Similarly, Matosantos errs in arguing that ABX1 27 is valid because it is "wholly voluntary." Matosantos Br. 2. Accepting the State's bailout money in *SCOPE* was voluntary, too.

Second, in at least some cases compliance with ABX1 27 would result in the very same "illegal conduct"—*i.e.*, the infringement of constitutionally protected contract rights—at issue in *SCOPE*. There the payment statute sought to compel cities and counties to breach contracts in violation of the Contract Clause. *See* 23 Cal. 3d at 319. But the same is true in this case for those RDAs that do not have available funds to make the ABX1 27 payments; those agencies can make the payments only if they breach bond covenants and other contractual commitments. *See, e.g.*, Evanoff Decl. ¶3; Furman Decl. ¶4.

Third, even if this were not true, it is irrelevant whether the action that the Legislature seeks to require through imposition of an unconstitutional condition would be illegal if voluntarily performed by the "affected entity." The principle Petitioners invoke is that if the Legis-

lature may not achieve a particular result—let's call it "x"—directly, it may not attempt to achieve the same result indirectly. That principle binds the Legislature, not the "affected entity." Accordingly, it is irrelevant whether *the entity itself* could decide to do "x" voluntarily absent legislative interference.

For example in *County of Riverside v. Superior Court*, 30 Cal. 4th 278 (2003), the Court held that the Legislature may not compel cities and counties to let an arbitrator set salaries for public safety employees when negotiations reach impasse. *SCOPE* would likewise prevent the Legislature from attempting to achieve the same result indirectly, *e.g.*, by conditioning public safety funding on an agreement by cities and counties to surrender their salary-setting powers to arbitrators. However, neither *County of Riverside* nor *SCOPE*'s corollary rule prohibits a local entity from voluntarily letting an arbitrator determine the salaries of local employees. *See id.* at 284. Hence, whether *a local entity* can do something voluntarily has no bearing on whether *the Legislature* can attempt to compel the local entity to do the same thing by an unconstitutional condition. Accordingly, whether the statute in *SCOPE* "violated the contract rights of thousands of people" (Matosantos Br. 25) or otherwise "forced the affected entities to engage in illegal conduct" (County Br. 18) is irrelevant.

Fourth, the County says that *SCOPE* is distinguishable because eliminating the RDAs is purportedly "firmly within the Legislature's province." *Id.* Even if this were true (which it is not, *see* Part II, *infra*), it would not distinguish *SCOPE*. It was equally "within the Legislature's province" to determine who shall receive state funds and under what conditions. Yet *SCOPE* held that this constitutional power "cannot be used by way of condition to attain an unconstitutional result." 23 Cal. 3d at 319 (citation and internal quotation marks omitted). The same logic applies here.

Fifth, and finally, the County says this case is different from *SCOPE* because it involves two bills rather than one. *See* County Br. 17. But surely *SCOPE* would have reached the same result had the Legislature passed one bill granting state bailout money to local entities

and the other making the first bill inapplicable to counties and cities that failed to abrogate their employment contracts. This argument elevates form over substance.

Matosantos' argument that the Legislature has done no more than force local governments to "make difficult policy choices" (Matosantos Br. 26) is therefore meritless. ABX1 26 and 27 violate Proposition 22 because the payment of RDA funds may not be mandated by the Legislature, either directly (as Matosantos admits) or indirectly by the threat of RDA dissolution (as *SCOPE* holds). This is not a "difficult policy choice"; it is an unconstitutional one. "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).[4]

II.

ABX1 26 IS UNCONSTITUTIONAL FOR REASONS OTHER THAN ITS ATTEMPT TO COMPEL PAYMENTS UNDER ABX1 27.

Opponents' primary argument in support of ABX1 26 is that "RDAs are creatures of statute . . . so the Legislature was free to dissolve them." Matosantos Br. 2; County Br. 25 ("What the Legislature has discretion to establish, it has the discretion to take away"). But this argument ignores one critical fact: the Constitution changed in the sixty years between creation of the RDAs and the Legislature's attempt

---

[4]As Petitioners demonstrated in Part II of their prior memorandum, the payments compelled by ABX1 26 would violate several provisions of the Constitution pertaining to the allocation and use of property taxes and other local taxes even if the payments were made by cities and counties without RDA reimbursement. Pet. Mem. 34-38. Matosantos' response to these contentions consists entirely of assertions that Petitioners anticipated and rebutted. Accordingly, no further argument is necessary as to these contentions. Nor has Matosantos challenged Petitioners' contention that the provision in ABX1 27 permitting the RDAs to reimburse cities and counties for the "voluntary" payments is unconstitutional for FY 2011-12 because it uses property taxes for the payment of a state mandate. *Id.* at 38-39.

to dissolve them. As a result of those changes, ABX1 26 would be invalid even if it were not a means to compel the payments required by ABX1 27. Although arguably neither Article XIII, Section 25.5(a)(7)(A) nor Article XVI, Section 16 prevents the Legislature from dissolving the RDAs for other reasons, it cannot do so for the sole purpose of grabbing "approximately $1.1 billion annually for local services." Matosantos Br. 27.

A. ABX1 26's Attempt To Seize The RDAs' Tax Increment By Eliminating The RDAs Is Incompatible With The Text Of Article XIII, Section 25.5(a)(7), Its Purpose, And Its Legislative History.

The rule that the Legislature may not accomplish indirectly what it cannot accomplish directly invalidates ABX1 26 alone, just as it invalidates the two bills together. As discussed above, Matosantos concedes that Article XIII, Section 25.5(a)(7) prohibits the Legislature from directly compelling RDAs to transfer their tax increment to third parties. *See* p.8, *supra*. Yet, she says, "[n]othing in [Section 25.5(a)] in any way restricts, or limits, the Legislature's ability to amend or repeal the statutes that created RDAs in the first instance." Matosantos Br. 15.

This contention conflicts with the text, purpose and legislative history of Article XIII, Section 25.5(a)(7). A constitutional provision prohibiting the Legislature from requiring "a community redevelopment agency . . . to pay . . . or otherwise transfer" the tax increment "allocated to the agency pursuant to Section 16 of Article XVI" necessarily presumes—and therefore protects—the continued existence of both the RDAs and their annual allocation of tax increment. Permitting the Legislature to dissolve the RDAs for the explicit purpose of diverting the very tax increment protected by Article XIII, Section 25.5(a)(7) would make that constitutional provision a nullity. That is reason enough to reject it, because "the Legislature . . . may not nullify a constitutional provision." *Rost v. Mun. Court*, 184 Cal. App. 2d 507, 513 (1960).

Moreover, Section 25.5(a)(7)(A) prohibits the payment or transfer of RDA tax increment funds regardless of whether those payments or

transfers are made "directly or indirectly." That language is broad enough to prohibit ABX1 26's diversion of the dissolved RDA's tax increments to the county auditors and their payment to third parties. Petitioners made this point in their Opening Memorandum. Pet. Mem. 32. Yet Opponents do not mention this language, much less explain how their position can be squared with Section 25.5(a)(7)'s prohibition of "indirect" RDA fund transfers.

ABX1 26 also undermines Proposition 22's purposes. To begin with, as discussed above, Matosantos agrees that Proposition 22 was adopted "to prevent legislative raids on RDA funds." Matosantos Br. 16. That purpose would obviously be frustrated by letting the Legislature dissolve the RDAs for no reason *other* than to seize their money. For that reason, a provision that prohibits "legislative raids on RDA funds" necessarily prevents the diversion of all such funds through the stratagem of RDA dissolution.

Moreover, dissolving the RDAs also frustrates Proposition 22's broader purpose, which is not limited to RDA funds. The measure's "Statement of Purpose" states that Proposition 22 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 (emphasis added). The "revenues dedicated to funding services provided by local government" include the property tax increments allocated to the RDAs *whether the RDAs exist or not.* Accordingly, Matosantos' contention that Proposition 22 only "limits how RDA funds are to be treated *while RDAs exist*" is meritless. Matosantos Br. 15 (emphasis in original). Indeed, Matosantos offers no reason why the voters would have adopted such a truncated provision.

Finally, Opponents' claim that Proposition 22 permits the State to divert RDA funds by dissolving the RDAs is contradicted by multiple statements in Proposition 22's legislative history. For example, 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. No voter could have read this statement and believed that the Legislature could eliminate the RDAs for the specific purpose of seizing *all* the "funds used for . . . redevelopment" without violating Proposition 22. Nor could any voter have believed that dissolving all the RDAs for that purpose, and giving their revenue to other local agencies, was compatible with the Legislative Analyst's statement that Proposition 22 "[p]rohibits redirection of redevelopment property tax revenues." *Id.* at 31. Indeed, the Legislative Analyst told the voters that Proposition 22 "likely would result in increased resources being available for redevelopment" (*id.* at 35), an outcome which—to say the least—is antithetical to the Legislature's attempt to eliminate the RDAs in ABX1 26.

Only a few days ago, the State told investors in an Official Statement that "Proposition 22 . . . prohibits the state from enacting new laws that redirect property tax revenues that would otherwise flow to RDAs to other purposes such as school funding." Petitioners' Motion for Judicial Notice ("Pet. MJN"), Ex. 1 at A-114. Petitioners couldn't have said it better themselves. That is precisely why the Legislature's attempt to dissolve the RDAs for the sole purpose of redirecting their tax increment is inconsistent with the text, purpose and legislative history of Article XIII, Section 25.5(a)(7).

B. The RDAs' Receipt Of Annual Property Tax Increment Is Also Protected By Article XVI, Section 16 And Section 9 Of Proposition 22.

1. The RDAs' Receipt Of Annual Property Tax Increment Is Protected By Article XVI, Section 16.

Opponents correctly point out that the RDAs were first created by the Community Redevelopment Act in 1945, which in 1951 was renamed the Community Redevelopment Law ("CRL"). But they fail to recognize that the CRL is no ordinary statute. As this Court recognized in *City of Dinuba v. County of Tulare*, 41 Cal. 4th 859 (2007), the CRL, after being "first adopted in 1951," was "made part of the

California Constitution in 1952 as section 19 of article XIII, since renumbered as article XVI, section 16." *Id.* at 866 n.7.[5]

All parties agree that Article XVI, Section 16 provides constitutional authorization for tax increment financing. That is because the tax allocation provisions of Section 16 begin with the words: "The Legislature may provide that any redevelopment plan may contain a provision that the taxes . . . levied upon the taxable property in a redevelopment project each year . . . shall be divided as follows: . . . ." The next subsections describe that division. The first (Art. XVI, §16(a)) addresses the allocation of pre-appreciation property taxes (*i.e.*, the non-increment). Then, Article XVI, Section 16(b) provides that the increment "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness . . . incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." The same provision then describes how the tax increment shall be distributed after the redevelopment project is over:

> When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

Matosantos relies heavily on the fact that Article XVI, Section 16 is permissive. Matosantos Br. 18. However, the very last sentence of Article XVI, Section 16 provides that "[t]he Legislature *shall* enact those laws as may be necessary to enforce the provisions of this section." (Emphasis added). Accordingly, whether the Legislature could have refused to adopt legislation implementing Article XVI, Section 16 is doubtful. However, that issue need not be addressed, because the Legislature did adopt laws mirroring that constitutional provision and

---

[5]Matosantos cites *Pacific States Enterprises, Inc. v. City of Coachella*, 13 Cal. App. 4th 1414 (1993), for the proposition that RDAs "exist by virtue of state law." Matosantos Br. 10. But "state law" includes the State Constitution, as well as state statutes.

authorizing the allocation of tax increment financing as described therein. §33670.

Accordingly, the issue before the Court is not whether Article XVI, Section 16 is "permissive." Instead, the issue is whether, having authorized RDAs to include the constitutionally prescribed scheme of tax increment financing in their redevelopment plans, the Legislature may *alter* that scheme *with respect to existing plans and indebtedness*, so that the existing RDAs are dissolved, and tax increments that have already been pledged as security for their "indebtedness" may be diverted to other purposes.[6]

No decision directly answers this question because the Legislature has never before tried to alter the tax increment financing provisions of the CRL in a way that conflicts with Article XVI, Section 16. But *Marek v. Napa Community Redevelopment Agency*, 46 Cal. 3d 1070 (1988), strongly suggests that the Legislature has no such power. In

---

[6]This is also a different question than whether the Legislature may amend the CRL (as it has done) to narrow the definition of "blight" or impose limits on the issuance of bonds by RDAs or the maximum duration of redevelopment plans. Such amendments do not violate Article XVI, Section 16 because that constitutional provision says nothing about blight, bond issuance or the content of redevelopment plans other than their incorporation of tax increment financing. The County therefore errs in claiming that Petitioners' argument leads to the conclusion that "Propositions 1A and 22 prohibit the Legislature from enacting or amending the [CRL] . . . that has any effect on RDA revenues." County Br. 25. Similarly, because Article XVI, Section 16 does not prohibit the Legislature from amending most of the CRL, Matosantos' reliance on the language in that constitutional provision envisioning CRL amendments is misplaced. *See* Matosantos Br. 11.

Matosantos also claims that "RDA life spans are limited by statute." *Id.* at 11. Not so. As the County recognizes, "redevelopment plans and debt financing" are time-limited (County Br. 19; §33333.2(a)(1)), but redevelopment *agencies* are not. Matosantos is therefore wrong on what she says is a "pivotal point." Matosantos Br. 11.

Finally, the County notes that Article XVI, Section 16 "is predicated upon the goal of winding down redevelopment . . . as soon [as] conditions of urban blight have been eradicated." County Br. 5. But this does not give the Legislature authorization to wind down redevelopment *before* that time. Indeed, it suggests just the opposite.

Marek, a county auditor contended that the "indebtedness" referred to in Article XVI, Section 16(b) was limited to amounts due and payable during the coming year. But the Court rejected this position. It first held, quoting both Article XVI, Section 16 and the CRL, that

> "indebtedness" was meant to include all redevelopment agency obligations, whether pursuant to an executory contract, a performed contract or to repay principal and interest on bonds or loans. To insure its ability to perform its obligations, a redevelopment agency is entitled to all tax increment funds as they become available, until its "loans, advances and indebtedness, if any, and interest thereon have been paid . . . ." (*Id.* at 1082)

It then held that *both* "the financial scheme prescribed in the California Constitution" and the CRL required that RDAs, and not county auditors, have control over these funds:

> The financial scheme prescribed in the California Constitution and the [CRL] . . . likewise compels acceptance of the Agency's interpretation of "indebtedness." Article XVI, section 16, and section 33670, subdivision (b) dictate that tax increment revenues '*shall be allocated to* and when collected *shall be paid into a special fund of the redevelopment agency*' to pay its indebtedness. . . . The very notion of a "special fund of the redevelopment agency" plainly implies that the agency itself will control the utilization of tax increment funds and militates against the notion of a process budgetarily controlled by county auditors." (*Id.* at 1083 (emphasis added by Court))

Accordingly, "the Auditor's notion that available tax increment funds not needed for expenditure in the upcoming fiscal year are to be distributed to other tax entities is wholly incorrect." *Id.*

What ABX1 26 tries to do is far more incompatible with the tax increment allocation scheme prescribed by Article XVI, Section 16 than what the County auditor unconstitutionally tried to do in *Marek*. Unlike the Legislature, the County auditor did not try to abolish the RDAs, sell their assets, or divest the RDAs of all their property tax increment in excess of that needed to pay a limited set of "enforceable obligations" during each six-month period. Instead, he sought only to distribute "the tax increment funds not needed for expenditure in the upcoming fiscal year . . . to other tax entities." *Id.* If this limited intru-

sion into RDA fiscal affairs violated Article XVI, Section 16, as the Court held in *Marek*, *a fortiori* the same is true of ABX1 26.

It is true that the *Marek* Court was not faced with a conflict between Article XVI, Section 16 and a statute enacted by the Legislature. But, as discussed above, the Court's opinion nevertheless repeatedly relies on both Article XVI, Section 16 and the CRL. *See* pp.18-19, *supra*. Fairly read, then, *Marek* holds that the tax increment structure authorized by the constitution cannot be changed *for existing* "*indebtedness*" once it has been authorized by the Legislature and incorporated in a redevelopment plan.

Moreover, this interpretation of *Marek* is consistent with *Redevelopment Agency v. County of San Bernardino*, 21 Cal. 3d 255 (1978). There the Court considered what happens when property in a redevelopment project becomes public property and therefore immune from taxation. The trial court "placed the entire loss of revenue on the redevelopment agency." *Id.* at 261. But this Court held that doing so could create a situation "in which the redevelopment agency . . . would receive no income from taxes, and therefore may have no means to pay off loans, assessments, indebtedness and interest." *Id.* at 264. And the Court went on to say that "[i]t is unreasonable to assume that either the Legislature *or the people* intended such a result." *Id.* at 264-65 (citation and internal quotation marks omitted; emphasis added).

Matosantos does not cite either *Marek* or *Redevelopment Agency*. Instead, she cites two cases which purportedly stand for the proposition "that article XVI, section 16 gave the Legislature the authority to amend the redevelopment statutes to alter taxation practices with respect to RDAs." Matosantos Br. 18. In fact, those cases stand for a much narrower proposition: that Article XVI, "'[S]ection 16 . . . does not prevent the Legislature from altering the levying and collection of taxation on redevelopment project property in a manner consistent with which it alters the levying and collection of taxation on other property.'" *Cmty. Redevelopment Agency v. County of Los Angeles*, 89 Cal. App. 4th 719, 729 (2001) (quoting from and endorsing *Arcadia Redevelopment Agency v. Ikemoto*, 16 Cal. App. 4th 444, 452 (1993)).

Consequently, these cases hold that Article XVI, Section 16 permits the Legislature to change the levying and collecting of property taxes "as long as it acts with an even hand." *Cmty. Redevelopment Agency*, 89 Cal. App. 4th at 730. But that principle does not save ABX1 26, which neither applies to "the levying and collecting of property taxes" nor operates "with an even hand."

2. Proposition 22, Section 9 Confirms This Interpretation Of Article XVI, Section 16.

The constitutional history described above forms the backdrop for Section 9 of Proposition 22, another portion of that initiative which requires the invalidation of ABX1 26. The first two sentences of Section 9 state that Article XVI, Section 16 "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" *and* "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 County acknowledges that these sentences mean what they say, but argues that they misinterpret Article XVI, Section 16. County Br. 24 n.23. Matosantos likewise asserts that Petitioners' reliance on these two sentences is a "flawed predicate" to their argument. Matosantos Br. 17. Opponents err. The voters' interpretation of a constitutional provision they previously adopted is "entitled to due consideration" and "may properly be used in determining" the meaning of Article XVI, Section 16, particularly when the interpretation of that provision adopted by the voters in Section 9 of Proposition 22 reaffirmed the holding in *Marek*. *See Hunt v. Superior Court*, 21 Cal. 4th 984, 1007-08 (1999).[7]

---

[7]Although no case seems to have construed the voters' interpretation of a constitutional provision they previously adopted, the Court has held that "the Legislature's expressed views on the prior import of its (continued . . .)

Moreover, Opponents ignore the relationship between the first two sentences of Section 9 and the last sentence, which states that Proposition 22 was intended "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 . . . ." Prop. 22, §9. Matosantos says these sentences confirm that Proposition 22 only prevents "the state from requiring RDAs to transfer funds to the state or to third parties . . . 'after the taxes have been allocated to a redevelopment agency.'" Matosantos Br. 18. But she has wrenched this language from its context. These sentences do show that Proposition 22 was intended to protect RDA tax increments *after* allocation. But the first two sentences of Section 9 likewise show that Article XVI, Section 16 and Section 9 protect RDA tax increments *before* allocation.

So interpreted, Section 9 forms a coherent whole. In contrast, under Opponents' interpretation, Section 9 would provide only a half-measure of protection that could easily be evaded, as the Legislature tried to do in enacting ABX1 26.[8]

(. . . continued)
statutes are entitled to due consideration, and we cannot disregard them." *Hunt*, 21 Cal. 4th at 1007-08 (citation and internal quotation marks omitted). The same rule should apply here. *See Silicon Valley Taxpayers' Ass'n*, 44 Cal. 4th at 444 ("The principles of constitutional interpretation are similar to those governing statutory construction") (citation and internal quotation marks omitted).

[8]Because there is no inconsistency between Article XVI, Section 16 and Proposition 22, the County's argument that the latter could not have repealed the former by implication is meritless. County Br. 23-24. Nor, for that matter, do Petitioners contend that Proposition 22 "fundamentally alter[ed] the nature of RDAs or the [CRL]." *Id.* at 24. Instead, Proposition 22 merely enhanced the constitutional stature of the pre-existing system, by specifically protecting RDA tax increment against diversion.

3. ABX1 26 Is Inconsistent With The Tax Increment Allocation Structure Authorized By Article XVI, Section 16 And Reaffirmed In Section 9 Of Proposition 22.

ABX1 26 is inconsistent in multiple respects with the tax increment allocation structure authorized by Article XVI, Section 16 and reaffirmed in Section 9 of Proposition 22.

First, Article XVI, Section 16(b) provides that the tax revenue increment from a redevelopment plan area "shall be allocated to, and when collected shall be paid into a special fund of the redevelopment agency." Moreover, as *Marek* recognized, "[t]he very notion of a 'special fund of the redevelopment agency' plainly implies that the agency itself will control the utilization of tax increment funds." 46 Cal. 3d at 1083. Yet ABX1 26 dissolves the RDAs, thereby eliminating their "special funds," and allocates future RDA property tax increments to county auditors for distribution to other taxing agencies. §34182(c).

Second, Article XVI, Section 16 requires that the tax increment can only be used by the RDAs "to pay the principal of and interest on loans, moneys advanced to, or indebtedness . . . to finance or refinance, in whole or in part, the redevelopment project," and *Marek* construed the "indebtedness" covered by Section 16 broadly. *See* 46 Cal. 3d at 1082. Indeed, even the County concedes that Article XVI, Section 16 "restricts the use of property tax increment diverted [to] RDAs 'to finance or refinance . . . the redevelopment project.'" County Br. 27. ABX1 26 is both too narrow and too broad to fit within this restriction. On the one hand, it limits the use of tax increment to "enforceable obligations"—a narrower set of obligations than the "indebtedness" encompassed by Article XVI, Section 16 and defined in *Marek*. *See, e.g.*, §34171(d)(1)(E) (allows oversight board to exclude contracts it believes violate "public policy" from "enforceable obligations"); §34171(d)(2) (excludes most agreements between RDA and city or county that created it from definition of "enforceable obligations). On the other hand, ABX1 26 requires that tax increment not used to pay these "enforceable obligations" be diverted to schools and other local taxing entities for purposes that have nothing to do with redevelopment.

Third, *Marek* recognizes that under Article XVI, Section 16 "a redevelopment agency is entitled to all tax increment funds as they become available *until its 'loans, advances and indebtedness, if any, and interest thereon have been paid.*'" 46 Cal. 3d at 1082 (citation omitted; emphasis added). In contrast, ABX1 26 eliminates the RDAs and gives their tax increment to the other taxing agencies long before the "indebtedness" covered by Section 16 has been fully repaid. §34183(a) (taxing entities receive all property tax increment in excess of amounts necessary to pay RDA obligations over the next six months and other costs).

ABX1 26 attempts to avoid this contradiction by providing that, once the RDAs are dissolved, "any property taxes that would have been allocated to redevelopment agencies will no longer be deemed tax increment" (ABX1 26, §1(i)), and "all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid." §34174(a). However, in *Rider v. County of San Diego*, 1 Cal. 4th 1 (1991), the Court rejected a similar attempt by the Legislature to circumvent a constitutional restriction by calling a tail a leg. In that case, the Legislature attempted to circumvent the constitutional limits on "special taxes" by labeling a tax as a "general tax." But this Court rejected the attempt, stating that the "nomenclature is of minor importance in light of the realities underlying [the tax's] adoption and its probable object and effect." *Id.* at 15.

This same principle requires invalidation of ABX1 26. The Legislature's attempt to redefine "tax increment" to exclude the funds that otherwise would have gone to the dissolved RDAs has no purpose and effect other than to circumvent the limits imposed by Article XVI, Section 16. Likewise, the "repayment" authorized by Section 34174(a) is purely nominal, has no economic effect, and is concededly "[s]olely for purposes of Section 16 of Article XVI of the California Constitution." §34174(a). Indeed, the very same statute provides that changing the label on these obligations does not "absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations." *Id.* Just as "[l]egislative attempts to circumvent

constitutional restrictions by renaming a tax have been struck down" (*Jordan v. Dep't of Motor Vehicles*, 75 Cal. App. 4th 449, 465 (1999)), the Court should reject the Legislature's attempt to redefine "tax increment" and eliminate as "paid" indebtedness that must otherwise be satisfied by property taxes allocated to the RDAs pursuant to Article XVI, Section 16.

For these reasons, Article XVI, Section 16, as interpreted in *Marek* and Section 9 of Proposition 22, gives the RDAs a constitutional right to the tax increment annually collected on property in a redevelopment area. ABX1 26 purports to eliminate that right, and is therefore unconstitutional.[9]

C. The "Suspension" Provisions Of ABX1 26 Are Also Invalid.

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 [the tax increment allocated to the RDAs] for the benefit of the State, any agency of the State, or any jurisdiction." (Emphasis added.) Matosantos contends that the pre-dissolution suspension restrictions contained in ABX1 26 do not violate this provision because they are "statutory restrictions on the power of RDAs," and not specifically "directed at the use of tax increment." Matosantos Br. 20. Here, as elsewhere, she has elevated form over

---

[9]This conclusion does not violate the "separation of powers" rule, as the County erroneously contends. County Br. 20-21. That rule does not make the state budget process immune from judicial scrutiny. *See, e.g., Harbor v. Deukmejian*, 43 Cal. 3d 1078, 1095-1101 (1987) (budget trailer bill violated single subject rule). Consequently, the cases cited by the County limit the courts' ability to compel legislative appropriations or similar remedies, not their ability to find budget-related litigation unconstitutional. *See Butt v. State*, 4 Cal. 4th 668, 698-704 (1992) (court could not compel use of funds validly appropriated for other purposes to pay for state takeover of Richmond schools); *California Sch. Bds. Ass'n v. State*, 192 Cal. App. 4th 770, 802 (2011) (court could not order state to pay claimed mandate); *County of San Diego v. State*, 164 Cal. App. 4th 580, 598-99 (2008) (same).

substance. "Local redevelopment agencies have no power to tax, and instead are funded by 'tax increment revenue.'" *City of Cerritos v. Cerritos Taxpayers Ass'n*, 183 Cal. App. 4th 1417, 1424 (2010) (citation omitted). Accordingly, any restriction on what RDAs can do necessarily restricts how they can use tax increment. Accordingly, any such restriction violates Article XIII, Section 25.5(a)(7)(B) *if* it is imposed "for the benefit of the State, any agency of the State, or any jurisdiction."

This limitation is important. It permits the Legislature to restrict RDA activities—such as narrowing the definition of "blight" or limiting the amount of bonds they can issue—as long as the limit is not imposed "for the benefit of the State, any agency of the State, or any jurisdiction." Moreover, given the purpose of Proposition 22, only *fiscal* benefits should be proscribed. In other words, Section 25.5(a)(7)(B) prevents the Legislature from restricting RDA activities only if the limit is intended to provide a fiscal benefit to third parties.

That is precisely what the Legislature has done in Part 1.8. Matosantos contends that the purpose of these restrictions is "to preserve RDA assets so that the bond obligations and legitimate debts of the RDA could be paid." Matosantos Br. 20. But the statute itself says that the purpose of these restrictions is "to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that these assets and revenues that are not needed to pay for enforceable obligations *may be used by local governments* to fund core governmental services." §34167(a) (emphasis added). That is why these restrictions violate Article XIII, Section 25.5(a)(7)(B).[10]

---

[10]Matosantos also errs in asserting that Section 25.5(a)(7)(B) is inapplicable because the Part 1.8 restrictions do not apply "during dissolution." Matosantos Br. 20. In fact, they apply *before* dissolution. §§34170(a), 34193(a).

III.

ABX1 26 IS INSEVERABLE FROM ABX1 27.

If the Court finds, contrary to the contentions made in Parts I and II, that ABX1 26 is neither unconstitutional as a means to compel the payments required by ABX1 27 nor independently unconstitutional, it must then address whether it is severable from ABX1 27. For the reasons that follow, it is not.

The severability arguments made by Matosantos and the County rely heavily on the severability clause in ABX1 27, the only clause that specifically addresses what happens to ABX1 26 if ABX1 27 is invalidated. Matosantos Br. 29 (quoting ABX1 27, §4); County Br. 16 (same).[11] Assuming *arguendo* that this clause takes effect if the rest of ABX1 27 is invalid,[12] even Matosantos admits that such a clause is "'not conclusive.'" Matosantos Br. 29 (quoting *Calfarm Ins. Co. v. Deukmejian*, 48 Cal. 3d 805, 821 (1989)). In fact, "[t]he cases prescribe three criteria for severability: the invalid provision must be grammatically, functionally, and volitionally separable." *Calfarm*, 48 Cal. 3d at 821.[13]

---

[11]In contrast, the severability clause in ABX1 26 addresses what happens if part of that statute (in particular, the dissolution provisions) are held invalid. ABX1 26, §12. Contrary to the County's argument, it does not specifically address the converse situation, *i.e.*, if the suspension but not the dissolution provisions are held invalid. *See* County Br. 26.

[12]Section 5 of ABX1 27 provides that if the operative part of the bill (Part 2) is declared invalid, "the remaining provisions of this act are not severable and shall not be given, or otherwise have, any force or effect." ABX1 27, §5. These "remaining provisions" include Section 4 of ABX1 27, the severability clause on which Opponents rely.

[13]The County argues that the "mechanical test" for severability does not apply where the Legislature has enacted two bills rather than one. County Br. 15. But the Legislature obviously thought otherwise, since it adopted a severability clause. In all event, whether ABX1 26 and 27 are "mechanically severable" does not answer the question of whether they are volitionally severable.

The County also asserts that ABX1 26 and 27 are mechanically severable because "[e]ach bill is its own act and complete in itself." (continued . . .)

Neither Opponent applies this three-part test—in particular, neither addresses whether ABX1 26 "would have been adopted by the legislative body had [it] foreseen the . . . invalidation [of ABX1 27]." *People's Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316, 332 (1986) (citation, internal quotation marks and emphasis omitted); *Gerken v. Fair Political Practices Comm'n*, 6 Cal. 4th 707, 714-15 (1993) (test is whether the severed portions would have been adopted "in the absence of the invalid portions") (citation, internal quotation marks and emphasis omitted). But that issue is dispositive, because there is overwhelming evidence that the Legislature would *not* have adopted ABX1 26 and eliminated the RDAs had it known that ABX1 27 was invalid.

First, and foremost, the Legislature was asked to eliminate the RDAs by the Governor *and declined to do so*. As the County admits, in January 2011, the Governor proposed "to completely eliminate RDAs." County Br. 10; *see* A.B. 101, 2011-12 Reg. Sess. (Cal. 2011). This proposal was endorsed by the Legislative Analyst. Matosantos Br. 4; LEGISLATIVE ANALYST'S OFFICE, *Should California End Redevelopment Agencies*? at 12 (Feb. 9, 2011). Yet the Legislature did not pass this bill. Instead, it adopted what the County correctly describes as a "compromise . . . through the enactment of two bills" (County Br. 10) that let the RDAs survive if they made the requisite payments under ABX1 27. In light of this "compromise," the Court cannot presume that the Legislature would have wanted to accomplish the very result it refused to adopt despite the Governor's recommendation.

Second, the payment scheme contained in ABX1 27 assumes that every city and county with an extant RDA would participate in the "voluntary" redevelopment program. Under that scheme, each RDA's required payment is based on the average of two ratios: that RDA's

---

(. . . continued)
County Br. 16. Not so. For example, the severability clause on which the County relies to preserve ABX1 26 appears in ABX1 27. Conversely, part of ABX1 26 expressly exempts RDAs operating under ABX1 27. §34189(a). And, of course, ABX1 26 did not become effective unless ABX1 27 did. ABX1 26, §14.

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. §34194(b)(2)(A)-(I). 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 same procedure is repeated in future years, except that each RDA share is based on a total payment of $400 million rather than $1.7 billion. §34194(c)(1)(A).) Notably, no agency's share of the $1.7 billion payment is increased by the failure of other RDAs to "opt-in" to ABX1 27, as it would have been had the Legislature believed that many agencies would do so. Accordingly, the Legislature must have believed, as the Assembly Floor Analysis of ABX1 27 stated, that every city and county with an RDA would participate in the ABX1 27 "voluntary" program. ABX1 27 Assembly Floor Analysis at 4 ("[i]t is anticipated that cities and counties with RDAs would choose to participate in the . . . [p]rogram established in this bill").[14]

Third, 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]." ABX1 26 Assembly Floor Analysis at 9 (emphasis added); ABX1 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 under ABX1 27, so that *none* would be dissolved under ABX1 26. The $1.7 billion figure was also used in the Senate Floor Analysis of the Budget Bill. *See* SENATE RULES COMM., Off. of Sen. Floor Analysis, Senate Floor Analysis of S.B. 87 at 9 (2011-12 Reg. Sess.), as amended June 28, 2011. Similarly, statements made during the floor debates on the bills indicate that the Legislature enacted these bills because it

---

[14]In contrast, the Senate Floor Analysis projected that "most" cities and counties would "opt-in" under ABX1 27. ABX1 27 Senate Floor Analysis at 1. Even if the Legislature believed this, that is a far cry from eliminating *all* the RDAs under ABX1 26 in the absence of ABX1 27.

believed that the entire $1.7 billion payment would be made. Pet. MJN, Ex. 2 at 21:23-22:1 ("to fail to pass this legislation today . . . would mean a $1.7 billion hole in our budget") (President Pro Tem Steinberg); *id* at 37:23-25 ("the two bills together will be $1.7 billion of our total budget solutions") (Sen. Leno).[15]

Moreover, the two bills were scored for budget purposes as a single package. ABX1 26 Senate Floor Analysis at 1; ABX1 27 Assembly Floor Analysis at 4; ABX1 26 Assembly Floor Analysis at 9. In contrast, the Legislature neither asked for nor received an estimate of the fiscal impact of passing ABX1 26 alone.[16]

Last, and certainly not least, statements from the floor debates demonstrate that the Legislature did not "pass[] ABX1 26 and 27 as independent measures," as Matosantos contends. Matosantos Br. 30. Instead, it viewed the bills as a "two bill package" that would "mend [redevelopment], not end it." For example, after opponents of the bills argued in the Senate debate that the bills would "eliminate redevelopment" Pet. MJN, Ex. 2 at 8:22 (Senator Wright); *id.* at 13:24 (Sen. Padilla), the President Pro Tem of the Senate responded by saying that "this is a two-bill package . . . . [E]limination is not a risk standing alone. You have to read the two bills together." *Id.* at 17:22-23, 18:1-

---

[15]Transcripts of the Senate and Assembly floor debates on ABX1 26 and 27 are Exhibits 2 and 3, respectively, to Petitioners' Motion for Judicial Notice, filed simultaneously with this reply memorandum.

[16]There is no factual basis for Matosantos' claim that the $1.7 billion reflected payments under both ABX1 26 and 27. Matosantos Br. 23-24. To be sure, she contends that ABX1 26 alone would produce $1.1 billion. *Id.* But all this assertion proves is that the anticipated payments under ABX1 26 are less than the payments compelled by its statutory sibling. Accordingly, only if all or a vast majority of the RDAs opted into ABX1 27 would the $1.7 billion anticipated by the Legislature be realized. Moreover, the evidence she cites to support the $1.1 billion figure is: (a) based on an analysis of the Governor's proposal, which the Legislature never adopted; and (b) based on a conclusory statement in a preliminary official statement, which cannot be judicially noticed for the truth of the matter stated. *See* Petitioners' Opposition to Motion for Judicial Notice at 2.

3.[17] Moreover, he repeated these statements again and again. *Id.* at 18:13-16 ("[W]hen you look at the two-bill package, what we've essentially said . . . is that redevelopment should, in fact, continue; but it will have fewer resources than it has today"); *id.* at 19:5-7 ("[T]his [bill] is the fair and right choice because it does not in fact eliminate redevelopment but it reduces its size"). As a result of these assurances, one Senator, who said that he "believe[d] in redevelopment" and was not sure how he was going to vote until he heard these and other statements from the President Pro Tem, stated that he would vote for the bill because "we will protect redevelopment by voting yes." *Id.* at 30:2, 31:11-12 (Sen. Lowenthal). Another Senator likewise said that she "did not know how I was going to vote" and voted yes because of Senator Steinberg's "commitment to mend [redevelopment], not end it." *Id.* at 31:17, 32:14 (Sen. Hancock). Since ABX1 26 passed the Senate with a bare majority (STATE OF CALIFORNIA, LEGISLATIVE COUNSEL, *Official California Legislative Information*, http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_26_vote_20110615_0314pm_sen_floor.html)), the statements by the President Pro Tem which convinced several undecided Senators that the bills would *not* eliminate redevelopment were critical to its passage.

Similar statements were made when the bills were considered by the Assembly. For example, the author of these bills, Assemblyman Blumenfield, stated that he would "present both of [the bills] together, since they really work hand in hand." Pet. MJN, Ex. 3 at 2:18-19. He also stated that the bills are "not an assault on redevelopment [but] fixes a flawed funding mechanism." *Id.* at 3:1-2. And he said that "[b]oth of these bills together provide an opportunity for RDAs to con-

---

[17]Senator Steinberg was specifically referencing the portion of ABX1 26 that made its validity dependent on whether ABX1 27 became effective. Pet. MJN, Ex. 2 at 17:22-18:3. While Matosantos tries to distinguish this provision from the severability clause in ABX1 27 (Matosantos Br. 5), which was never mentioned in the floor debates, neither Opponent has explained why the Legislature would have wanted ABX1 26 to continue in effect if ABX1 27 were declared invalid by a court, but not if it had been vetoed by the Governor.

tinue their redevelopment activities" through participation in the ABX1 27 program. *Id.* at 3:8-10. In other words, "[s]tate support for redevelopment, although at a lesser amount than is currently the case, would continue." *Id.* at 4:3-5.

This legislative history confirms what the demise of AB 101 indicates: the Legislature did not intend to eliminate the RDAs, and therefore would not have enacted ABX1 26 by itself. As a result, that bill is not volitionally severable from ABX1 27.

IV.

THE STATUTORY DEADLINES SHOULD BE EXTENDED IF THE BILLS ARE UPHELD.

Both Opponents agree that, if the Court upholds the bills, the statutory dates for compliance should be adjusted as a result of the stay. Matosantos Br. 30-31; County Br. 29-30. Petitioners agree. As Matosantos recognizes, by the time the Court decides this case, many compliance dates will have passed and others may be imminent. *See* Matosantos Br. 30-31.[18] Petitioners also agree that the new deadlines should run from the day the decision in this case becomes final.

Opponents propose various extensions based on the amount of administrative work that they claim would be required to meet those deadlines. But they provide no basis for evaluating the amount of work that may be required to meet each deadline. For example, Matosantos asserts that ten days is sufficient for cities and counties both to enact the ordinance required to opt-in to ABX1 27 and to make the payments required by the latter statute. But these steps take considerable effort. *See, e.g.*, Evanoff Decl. ¶16. Moreover, Matosantos fails to recognize that many city councils meet only twice a month, agendas for public meeting take time to prepare, and quorums are not always available.

---

[18]The same will be true if ABX1 27 is invalidated but ABX1 26 is upheld. *See, e.g.*, §34173(d)(1) (Sept. 1, 2011 deadline for city or county electing not to serve as a successor agency). Accordingly, the County's contention that RDAs should be dissolved "immediately" if ABX1 26 is upheld is also unrealistic. County Br. 29.

See Declaration of T. Brent Hawkins in Support of Petition for Writ of Mandate ¶6. Consequently, the ten-day notice period suggested by Matosantos for many crucial decisions is wholly unrealistic, particularly if this Court reaches a decision near the holidays. *Id.* at ¶¶6, 8(a).

CRA's proposed deadlines, and the reasons therefor, are described in the Hawkins Declaration submitted herewith and Exhibit A attached thereto. Petitioners respectfully request that this Court adopt these deadlines if both ABX1 26 and 27 are upheld.

CONCLUSION

The Petition for Writ of Mandate should be granted ordering Respondents to refrain from enforcing ABX1 26 and 27.[19]

DATED: September 23, 2011.

Respectfully,

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

By _____
STEVEN L. MAYER
Attorneys for Petitioners

[19]The County's Return to the Petition raises a number of procedural defenses. County Br. 3-4. Since they have not been briefed, they have been abandoned. *Uzyel v. Kadisha*, 188 Cal. App. 4th 866, 888 n.12 (2010).

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 Reply Memorandum in Support of Petition for Writ of Mandate contains 10,989 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

DATED: September 23, 2011.

STEVEN L. MAYER

W03 092311-112080007/PB6/1658112/F

No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.,
Petitioners,

v.

ANA MATOSANTOS, ET AL.,
Respondents.

DECLARATION OF T. BRENT HAWKINS IN SUPPORT OF PETITION

STEVEN L. MAYER (No. 62030)
smayer@howardrice.com
EMILY H. WOOD (No. 260382)
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
Telephone: 415/434-1600
Facsimile: 415/677-6262

Attorneys for Petitioners

I, T. Brent Hawkins, declare and state as follows:

1. I am a partner in the law firm of Best, Best and Krieger, LLP, and serve as General Counsel to the California Redevelopment Association ("CRA"). I have limited my practice to redevelopment and municipal law for over thirty years, representing numerous redevelopment agencies throughout the State of California and in other western states. I am familiar with the operations of redevelopment agencies in California and the practical constraints and statutory limitations on their operations. I have personal knowledge of the following matters and could competently testify thereto if called upon to do so in a court of law.

2. In its order of August 17, 2011, the Court asked the parties to address the following questions: "Assuming solely for the sake of argument that the court's decision upholds both statutes and dissolves the existing stay, what effect would the stay have on the statutory dates for compliance, including those for enactment of an ordinance (Health & Saf. Code, §34193, subd. (a)) and payment of the remittance amount (*id.*, §34194, subd. (d))? If it becomes necessary to postpone the statutory compliance dates, what should the new dates be?"[1]

3. In response to these questions, CRA proposes the extensions of statutory dates set forth in Exhibit A to this declaration. Exhibit A also describes the original due dates under ABX1 26-27 and the proposed due dates suggested by Respondent Matosantos and Intervener County of Santa Clara ("County"). The reasons why CRA proposes the deadlines set forth in Exhibit A are contained in this declaration, which discusses the deadlines more or less in chronological order.

4. CRA agrees with Matosantos and the County that time extensions should run from the date that the Court's opinion becomes final.

5. In formulating CRA's proposed deadlines, I have been

---

[1]Unless otherwise specified, all statutory references are to the Health and Safety Code.

mindful of the Court's stated intent that "that Assembly Bills No. 26 X1 and 27 X1 will, if upheld, be implemented with as little delay as possible." I agree that no purpose is served by undue delay. However, for largely practical reasons, I believe the deadlines suggested by Respondent, with which Intervener largely concurs, are too short.

6. This is particularly true with respect to the numerous deadlines that Respondent suggests be extended for only ten days after finality. While Matosantos claims that these deadlines allow "ample time for local entities to act" (Matosantos Br. 32), ten days does not account for the numerous practical and legal restraints on the ability of governing bodies of cities, counties and RDAs to act quickly. It is noteworthy that Matosantos does not mention, much less analyze, these restraints, and instead relies only on her conclusory assertion that ten days is sufficient. These restraints include the following:

(a) A number of the deadlines contained in ABX1 26 and 27, such as the decision to opt-in to ABX1 27, require the passage of an ordinance or resolution by the RDAs' sponsoring legislative bodies. These actions must be taken at public meetings under the Brown Act.

(b) RDAs and their sponsoring legislative bodies typically hold regular public meetings twice each month, usually on a designated weekday two weeks apart. Agendas for these meetings, including staff reports, draft resolutions and ordinances, are generally prepared a week or more in advance so that members of the legislative body will have sufficient time to review these documents and think about the decisions they are being asked to make. In addition, Government Code Section 54954.2 requires cities, counties and RDAs to post an agenda containing each item of business to be transacted or discussed at a meeting at least seventy-two hours before the meeting.

(c) Ordinances enacted by a local legislative body typically require two readings to be effective (with the exception of urgency ordinances). In general law cities, the readings must be no closer than five days apart. GOV'T CODE §36934. The common

practice is to read ordinances at consecutive regular meetings, two weeks apart. Moreover, the necessary quorums to conduct public meetings are not always available, particularly over the holidays.

7. The first statutory deadline that the stay affected was September 1, 2011, the date by which the legislative bodies that authorized the creation of the RDA can decline to assume the role of the RDA's successor agency. §34173(d)(1). Matosantos proposed that this deadline be reset at ten days after finality. However, this does not provide sufficient time for legislative bodies to carefully analyze the decision, let alone pass the required resolution if they elect not to serve as the successor agency. To permit staff to carefully evaluate the risks and benefits of this choice, set it for an agenda before the legislative body and permit the legislative body adequate time to consider the decision, CRA proposes that the deadline be extended to thirty days after the opinion becomes final.

8. For similar reasons, Matosantos' proposed deadline of ten days after finality is too short for the decisions and actions that ABX1 26 and 27 required be made or taken by October 1, 2011.

(a) In particular, Matosantos' ten-day proposal does not permit sufficient time for local legislative bodies that have not already done so (1) to analyze whether to dissolve their RDAs or adopt a resolution of intent and an ordinance "opting in" to ABX1 27 and (2) if they do decide to adopt an "opt in" resolution and ordinance, to set them on an agenda and have the requisite number of readings. For the reasons set forth in Paragraph 6 above, that deadline should be extended to thirty days after finality.

(b) The same thirty-day deadline should apply to the creation of successor agencies to wind down the affairs of such RDAs (§34173); the creation of Redevelopment Property Tax Trust Funds ("RPTTF") to distribute funds originally going to dissolved RDAs (§34170.5(b)); and the transmittal of all assets of dissolved RDAs to the successor agencies. §34175(b). All these actions are set in motion by the decision of the relevant local legislative body not to opt-in to ABX1 27.

(c) Continuing RDAs must file a statement of indebtedness by October 1, 2011. §33675(b); *see* §34194(c)(2)(A). Extending this deadline to sixty days after finality is crucial for the RDA to have sufficient notice and time, once the relevant local entity decides that the RDA will not dissolve (which itself will take thirty days), to do the following: (1) approve an agreement for the reimbursement of the RDA sponsor's ABX1 27 payments for Fiscal Year 2011-12 and beyond pursuant to Section 34194.2; (2) incur other indebtedness that an opting-in RDA could have incurred but for the stay; and (3) include that agreement and such other incurred indebtedness on its statement of indebtedness without incurring an additional charge for new debt. Alternatively, the Court should permit any agreement pursuant to Section 34194.2 and other indebtedness entered into or incurred prior to sixty days after finality to be included *nunc pro tunc* in the October 2011, statement of indebtedness.

9. Matosantos failed to address a number of other statutory due dates of October 1, 2011. For purposes of consistency, the thirty-day extension that applies to the decisions and actions described in Paragraph 8(a) and (b) should also apply to the following:

(a) The first date on which the entity assuming the housing functions formerly performed by the dissolved RDA may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law as set forth in Sections 33000, *et seq.* (§34176(c));

(b) The date from which the successor agency under ABX1 26 makes payments from an enforceable obligation payment schedule until a Recognized Obligation Payment Schedule ("ROPS") becomes operative (§34177(a)(1)); and

(c) The date from which the county auditor makes calculations required by Section 97.4 of the Revenue and Taxation Code based on the amount each former RDA deposits into the RPTTF (REV. & TAX. CODE §97.401).

10. Matosantos requests only a ten-day extension of the statu-

tory November 1, 2011 deadline for local entities to adopt final ordinances opting into ABX1 27. §34193(b). In contrast, CRA believes that this deadline should be extended to thirty days after the decision becomes final, regardless of whether the city or county has enacted a non-binding resolution of intent under Section 34193(a). As indicated above, thirty days provides sufficient time for a city or county to decide whether to opt into ABX1 27 and to adopt the necessary resolution and ordinance. This deadline should apply regardless of whether there has been an appeal of the payment amount to the Department of Finance, because that process was not stayed by the Court's August 17, 2011 order, and will presumably have been completed by the statutory deadline of October 15, 2011, well before the time that the Court is likely to decide this case. (As previously noted, communities that have previously adopted opt-in ordinances should not have to re-adopt those ordinances.)

11. The following deadlines, also due on November 1, 2011, should be extended to sixty days from finality for the reasons set forth below:

(a) For RDAs that will be dissolved, the deadline for preparation by the county auditor of estimates of amounts to be allocated and distributed from the RPTTF to the entities receiving the distributions and the Department of Finance. §34182(c)(3). This deadline is thirty days after the thirty-day deadline for deciding whether to opt-in to ABX1 27 or dissolve the RDA pursuant to ABX1 26;

(b) For cities or counties that opt-in to ABX1 27, the deadline for notifying the county auditor, the State of California Controller, and the Department of Finance that the city or county has agreed to opt-in (§34193.1);

(c) Cities or counties that opt-in to ABX1 27 may enter into an agreement with their RDAs whereby the RDA will transfer tax increment to the city or county in an amount not to exceed the annual remittance payment required for that year. §34194.2. As noted above, these RDAs should be permitted to list this agreement

on their 2011 statement of indebtedness without triggering additional payment to schools for "new" debt. §§34194(c)(2)(A), 34194.2. For that reason, and for the reasons set forth in Paragraph 8(c) above, the beginning of the period for recognizing new debt set forth in the RDAs' statements of indebtedness for purposes of remittances due under ABX1 27 in future years, which is set at November 1, 2011, under Section 34194(c)(2)(A), should be extended to sixty days after the decision becomes final.

12. Matosantos proposes that the November 1, 2011 deadline for preparing the draft of the ROPS (§34177 (*l*)(2)(A)), be extended to forty days after the decision becomes final (thirty days from Matosantos' proposed deadline for cities and counties to decide whether to opt-in to ABX1 27). Petitioners agree that extending this deadline for an additional thirty days from the deadlines by which legislative bodies must decide whether to opt-in to ABX1 27 is appropriate. However, as set forth above, local legislative bodies will need thirty days to decide whether to opt-in to ABX1 27, not the ten-day extension Matosantos proposes. Consequently, a sixty-day extension—in line with the other November 1, 2011 deadlines—is necessary to provide sufficient time for successor agencies to prepare ROPS.

13. Similarly, Matosantos proposes that the December 1, 2011 deadline under Section 34183(b) for successor agencies to report if the amount available is insufficient to meet the ROPS be extended to sixty days from the date successor agencies are appointed—a total of seventy days. However, as set forth above, local legislative bodies will need thirty days, not ten, in which to decide whether to opt-in to ABX1 27. Consequently, a ninety-day extension is needed (thirty days plus the sixty days recognized by Matosantos).

14. CRA proposes that the December 15, 2011 deadlines for the following three actions be extended to ninety days after finality in order to provide the entities sufficient time to review, approve and deliver the ROPS (Matosantos proposes a eighty-five-day extension of these deadlines—a negligible difference):

(a) External auditor review of ROPS (§34177 (*l*)(2)(A));

(b) Oversight board of successor agency approval of ROPS (§34177(*l*)(2)(B)); and

(c) Delivery of the ROPS to the Department of Finance, the State Controller and the county auditor (§34177 (*l*)(3)).

15. With respect to the January 1, 2012 deadlines contained in ABX1 26 and 27:

(a) CRA proposes that the forwarding of the names of the oversight board chairperson and membership to the Department of Finance, which must occur by January 1, 2012 (§34179(a)), occur within sixty days of finality. This will expedite establishing the oversight board. There is no reason to extend the deadline to 100 days of finality, as Matosantos suggests.

(b) CRA also proposes that the date the ROPS becomes operative and only the payments listed on the ROPS can be paid, now set at January 1, 2012 (§34177(a)(3)), be extended to 120 days after finality. This will provide for an orderly transition of financial obligations.

(c) The same 120-day finality rule should also apply to the January 1, 2012 beginning of the County auditor's obligation to remit to the taxing entities, in accordance with the Revenue and Taxation Code, all property tax revenues that were associated with the payment of a recognized obligation in the ROPS that is paid off or retired. §34187.

16. January 15, 2012, is the statutory deadline by which one-half of the total annual remittance amount due under ABX1 27 must be made for FY 2011-12. §34194 (d). Matosantos proposes that the payment be due within ten days after finality. This is surely insufficient time to transfer almost two billion dollars, from hundreds of agencies. Moreover, no such payment should be due before the relevant entities have decided whether to opt-in to ABX1. CRA therefore proposes that the payments be made forty-five days after finality. This will provide sufficient time for the cities and counties to make the "opt-in" decision and to arrange for the mechanics of

payment if the decision is made to opt-in.

17. CRA proposes that the trigger date for the Governor's power to fill oversight board vacancies, which is now January 15, 2012 (§34179(b)), be extended to seventy-five days after finality. This establishes the same relationship to the forwarding of names of the oversight board's chairperson and membership to the Department of Finance that exists under current law, which likewise provides fifteen days from the submission of the names to the Department of Finance to the Governor's filling of vacancies.

18. Matosantos proposes that certain actions that must occur by January 16, 2012, be extended to 120 days after finality. These proposed dates are problematic because they are based on an extension of the October 1, 2011 dates to only ten days after finality. Petitioners propose a 136–day extension in order for these deadlines to be consistent with the other statutory deadlines they propose. However, the deadlines should not be later than June 1, 2012, so that these actions can be performed within FY 2011-12:

(a) That county auditors distribute pass-through payments from RPTTFs (§34185); and

(b) That county auditors distribute amounts for ROPS and administration to successor agencies (§34183 (a)(2) and (a)(3)).

19. Matosantos proposes that the requirement that county auditor notify the Department of Finance of any failures to make the payments required by ABX1 27, which has a current deadline of February 14, 2012 (§34194(d)(2)), be extended to twenty days after finality. This timeframe is based on Respondents' proposal that the payments be made within ten days after finality. Since CRA proposes that the payments be made within forty-five days of finality, it believes that this deadline should be extended to fifty-five days after finality, to have the same ten-day period that the statute provides between the payment deadline and the notification deadline.

20. Intervener County of Santa Clara requests a six-month extension for the requirement that county auditors complete agreed-

upon procedures audits of each dissolved RDA in the county, which has a current deadline of March 1, 2012. §34182(a)(1). CRA agrees that a 180-day extension is adequate, and would be consistent with the other statutory deadlines proposed by Petitioners. Similarly, CRA agrees with the County's request that the deadline for county auditors to provide the State Controller's office with a copy of these audits (§34182(b)) be extended from March 15, 2012, to seven months after finality.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of September, 2011, at San Francisco, California.

T. BRENT HAWKINS

AB 1X 26					
Action #	**Section (Health & Safety Code, unless stated otherwise)**	**Action**	**Due Date**	**Petitioners' Adjusted Due Dates***	**Respondent's Adjusted Due Dates***
1	34169(g)	RDAs adopt Enforceable Obligation Payment Schedule (**EOPS**) within 60 days of effective date of AB 1X 26	8/27/2011	not affected by stay	
2	34169(h)	RDAs prepare preliminary draft of initial Recognized Obligation Payment Schedule (**ROPS**)	9/30/2011	not affected by stay	
3	34173(d)(1)	Community creating the RDA electing not to serve as successor agency (**SA**) must file resolution to that effect with county auditor-controller (**CAC**)	9/1/2011	30 days	10 days
4	34170(a); 34172(a)(1)	RDAs are dissolved and SA's are designated unless Action # 30 occurs	10/1/2011	30 days	10 days
5	34173	SAs created to wind down affairs of RDAs that did not opt-in to the Alternative Voluntary Redevelopment Program (**Program**)	10/1/2011	30 days	10 days
6	34175(b)	All assets and properties of former RDAs are transferred to the control of the SAs	10/1/2011	30 days	10 days
7	34176(c)	Entity assuming housing functions may act pursuant to the Community Redevelopment Law	10/1/2011	30 days	
8	34177(a)(1)	Until ROPS becomes operative on 1/1/12, SAs make payments from the EOPS	10/1/2011	30 days	
9	34170.5(b)	Creation of Redevelopment Property Tax Trust Fund (**Tax Fund**)	10/1/2011	30 days	10 days
10	Revenue and Taxation Code Section 97.401	Beginning October 1, 2011, the CACs shall make calculations for ERAF payments based on the amount deposited by each former RDA into the Tax Fund	10/1/2011	30 days	
11	34177(l)(2)(A)	SAs prepare draft ROPS covering 1/1/12-6/30/12	11/1/2011	60 days	40 days
12	34182(c)(3)	CACs prepare estimates of property tax revenues to be distributed from the Tax Fund to the entities receiving distributions and DOF [1 of 2 dates]	11/1/2011	60 days	
13	34183(b)	SAs will report to the CACs if the total amount available from the Tax Fund and other funds are insufficient to meet the requirements of Section 34183(a)(1)-(3) [1 of 2 dates]	12/1/2011	90 days	70 days
14	34177(l)(2)(A)	ROPS prepared by SAs are reviewed and certified by external auditors	12/15/2011	90 days	85 days
15	34177(l)(2)(B)	Oversight board (**OB**) approves ROPS	12/15/2011	90 days	85 days
16	34177(l)(2)(C); 34177(l)(3)	ROPS submitted to CACs, Controller and Department of Finance (**DOF**), and posted on SAs' websites	12/15/2011	90 days	85 days
17	34177(a)(3)	ROPS becomes operative and SAs make payments only from it; Statement of Indebtedness is no longer prepared	1/1/2012	120 days	100 days
18	34187	Commencing on 1/1/12, when a recognized obligation in the ROPS is paid off or retired, the CACs shall remit to the taxing entities all property tax revenues associated with the payment of that recognized obligation	1/1/2012	120 days	
19	34179(a)	OB shall notify DOF of its chairperson and membership	1/1/2012	60 days	100 days
20	34179(b)	Governor appoints individuals to fill open OB positions	1/15/2012	75 days	100 days
21	34183(a)	CACs allocate Tax Fund as follows: (1) any amounts due to other taxing agencies in statutory pass through payments or under existing pass through agreements; (2) to each SA to make payments in ROPS; (3) to each SA to pay administrative costs; (4) any remaining funds to other taxing entities within the jurisdiction [1 of 2 dates]	1/16/2012	136 days, but not later than June 1, 2012	120 days
22	34185	CAC shall transfer from Tax Fund to the Redevelopment Obligation Retirement Fund of each SA, property tax revenues equal to that specified in the ROPS	1/16/2012	136 days, but not later than June 1, 2012	120 days
23	34182(a)(1)	CACs conduct procedures audit of each RDA	3/1/2012	180 days	180 days
24	34182(b)	CACs provide Controller copies of all audits performed	3/15/2012	210 days	210 days

AB 1X 27					
Action #	**Section (Health & Safety Code, unless stated otherwise)**	**Obligation**	**Due Date**	**Petitioners' Adjusted Due Dates***	**Respondent's Adjusted Due Dates***
25	34194(b)(2)(J)	DOF notifies each city or county of the amount of the community remittance (**CR**) for that city or county	8/1/2011	not affected by stay	
26	34194(b)(2)(L)(i)	City or county may appeal the CR amount determined by DOF	8/15/2011	not affected by stay	
27	34194(b)(2)(L)(ii)	If CR amount appealed, DOF shall notify each city or county and CAC of its decision on the appeal, which may be extended to 10/15/11, in which case the city or county may adopt the ordinance by 12/1/11	9/15/2011	not affected by stay	
28	34193(b)	Community creating RDA adopts resolution of intent to adopt ordinance electing to comply with the Program if it has not already adopted the ordinance	10/1/2011	30 days	10 days
29	34194(c)(2)(a)	Community participating in the Program files statement of indebtedness to avoid additional payment of CR	10/1/2011	60 days	10 days
30	34193(a), (b)	Community creating RDA adopts ordinance electing to comply with the Program	11/1/2011	30 days	10 days
31	34193.1	Community participating in the Program notifies CAC, Controller and DOF of adoption of ordinance	11/1/2011	60 days	
32	34194.2	City or County, if it chooses to continue redevelopment pursuant to AB1X 27, may enter an agreement with its RDA whereby the RDA will transfer tax increment to the City/County in an amount not to exceed the annual CR. If a City/County and its RDA enters into this agreement effective for Fiscal Year 2011-12, such obligation shall be deemed included in the October 1, 2011 statement of indebtedness required to be filed by the RDA.	on or after Action # 30 occurs	60 days	
33	34194(c)(2)(a)	Start period for recognizing new debt for purposes of remittances due under the Program	11/1/2011	60 days	10 days
34	34194(b)(2)(L)(ii)	Local entities must adopt final ordinances or resolutions opting in to the Program if an extension is granted by the DOF	12/1/2011	30 days	10 days
35	34194(d)	1/2 of CR amount paid by the city or county [1 of 2 dates]	1/15/2012	45 days	10 days
36	34914(d)(2)	If Action # 35 is not taken, CACs shall notify DOF of failure to make payment	2/14/2012	55 days	20 days

*Petitioners' and Respondent's Adjusted Due Dates are the number of days from the date the Supreme Court's decision in this matter becomes final.

PROOF OF SERVICE

I, Myrna M. Da Cunha, 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 September 23, 2011, I served the following document(s) described as:

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDATE; DECLARATION OF T. BRENT HAWKINS IN SUPPORT OF PETITION

☐ BY FACSIMILE: 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 U.S. MAIL: 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 ELECTRONIC MAIL: 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 FEDERAL EXPRESS:** 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.

☐ BY MESSENGER: 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.

Jennifer K. Rockwell, Esq.
Chief Counsel
Department of Finance
State Capitol, Room 1145
915 "L" Street
Sacramento, CA 95814

Phone: (916) 445-4142
Fax: (916) 323-0060

Attorneys for Respondent Ana Matosantos, Director of Finance

Richard R. Karlson, Esq.
Interim County Counsel
Brian E. Washington, Esq.
Assistant County Counsel
Claude F. Kolm, Esq.
Deputy County Counsel
State of California
Office of the Alameda County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612

Phone: (510) 272-6700
Fax: (510) 272-5020

Attorneys for Respondent Patrick O'Connell, Auditor-Controller, County of Alameda

Miguel Marquez
County Counsel
Orry P. Korb
Assistant County Counsel
Lizanne Reynolds
Deputy County Counsel
James R. Williams
Deputy County Counsel
Office of the County Counsel
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110

Phone: (408) 299-5900
Fax: (408) 292-7240

Attorneys for Vinod K. Sharma, Auditor-Controller of the County of Santa Clara and the County of Santa Clara

Richard J. Chivaro, Esq.
Office of the State Controller
State of California
Legal Department
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

Phone: (916) 445-2636
Fax: (916) 322-1220

Attorneys for Respondent John Chiang, California State Controller

Kamala D. Harris, Esq.
Attorney General
Ross C. Moody, Esq.
Deputy
Office of the Attorney General
State of California
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102

Phone:: (415) 703-1376
Fax : (415) 703-1234

Attorneys for Respondents Ana Matosantos, Director of Finance and John Chiang, California State Controller

I am readily familiar with the practice for collection and processing of documents for delivery by overnight service by Federal Express of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility in an envelope or package designated by Federal Express fully prepaid the same day as the day of collection in the ordinary course of business.

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 September 23, 2011.

Myrna Da Cunha