Case No. S234148

In the SUPREME COURT OF CALIFORNIA

CALIFORNIA CANNABIS COALITION, ET AL.,
Plaintiffs and Respondents,

vs.

CITY OF UPLAND, ET AL.,
Defendants and Petitioners.

Superior Court, San Bernardino County
Case No. CIVDS1503985

Court of Appeal, Fourth District, Division Two
Case No. E063664

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CALIFORNIA TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS AND PETITIONERS

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to California Rules of Court, rule 8.520(f), the California Taxpayers Association ("CalTax") respectfully requests permission to file the attached Amicus Curiae brief in support of defendants and petitioners City of Upland, Et Al. ("Petitioners").[1]

The legal issue presented in this case—whether the proponents of a new or increased local tax may circumvent the constitutional prerequisite of obtaining voter approval by introducing the tax as an initiative rather than a resolution of the governing body—is of tremendous importance to CalTax as it is an issue that will touch virtually every taxpayer in California. It is also an issue with which CalTax has specialized expertise due to its significant historical and ongoing involvement with protecting Californians' right to vote on taxes.

Founded in 1926, CalTax is California's largest and oldest organization representing taxpayers. Established as a nonpartisan, non-

[1] Neither Petitioners nor Petitioners' counsel authored the amicus brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. (*See* Cal. Rules of Court, rule 8.520(f)(4).)

profit research and advocacy association, CalTax has a dual mission: to guard against unnecessary taxation and to promote government efficiency. CalTax represents the interests of its members, as well as the state's taxpayers at large, in the areas of state and local taxes, assessments, fees and penalties in the legislative, executive and judicial branches of government. CalTax's membership includes individuals and many businesses across all industries, ranging from small firms to Fortune 500 companies. CalTax is also involved in a variety of other activities that impact California taxpayers, including regulatory and legal developments, research, media outreach and public education.

CalTax focuses on legislative, tax agency and local government tax policy deliberations, and works with CalTax members and industry representatives to combat proposed changes that would increase the cost of doing business in California, while also supporting any changes that would have a positive impact on California taxpayers. CalTax frequently appears before legislative and administrative bodies to represent the interest of taxpayers and promote predictability and stability in the application of California's tax laws. Through its 90-year history, CalTax has drafted, sponsored and supported countless state and local ballot measures, including Proposition 218 of 1996. CalTax also frequently appears as amicus curiae in the California appellate courts to promote the fair and uniform application of California's tax laws and to provide insight on the practical significance which appellate decisions will have on California taxpayers.

Because of CalTax's relentless efforts throughout much of its existence to promote and protect Californians' right to vote on taxes, including sponsoring Proposition 26 of 2010, CalTax can provide this Court with a perspective different from that of the parties.

CalTax was at the forefront of reinstating Californians' right to vote on taxes after that right was compromised due to a loophole created in 1997 that allowed the Legislature and local governments to impose billions of dollars in additional taxes, labeled as "fees," by circumventing the voter-approval requirements of Proposition 13 and Propositions 218. CalTax's efforts in this regard included forming the Californians Against Hidden Taxes coalition. This coalition was responsible for the first major effort—placing Proposition 37 on the November 2000 ballot, which would have clarified the distinction between a regulatory fee and a tax if it had passed—to stop the surging trend of new taxes disguised as "fees" to circumvent the California Constitution's stringent requirements for approving new and increased state and local taxes.

Through its involvement with another organization—the Stop Hidden Taxes Coalition—CalTax was also involved in tracking hidden tax legislation, testifying against tax-like "fees," and alerting the public to potentially costly proposals. CalTax policy advocates frequently represented the Coalition at legislative hearings. CalTax also sponsored Proposition 26, which passed in November 2010 and properly defined a "tax," putting a halt to hidden taxes disguised as "fees." Proposition 26 is considered to be among CalTax's finest

legislative accomplishments since it provided much-needed clarity, consistency and certainty for taxpayers, and improved California's climate for both businesses and residents.

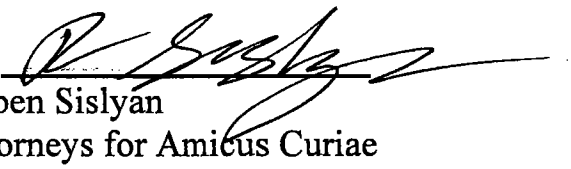
The fight here is no different from the one CalTax has put up on behalf of California taxpayers for nearly a century, especially its relatively more recent efforts to pass Proposition 26 to protect Californians' right to vote on taxes. Its extensive experience with this issue and intimate involvement with the legislation that has shaped this essential right will allow CalTax to share its unique and valuable perspective with the Court.

Counsel for CalTax have reviewed the briefs in this case and believe the Court would benefit from additional briefing regarding previous decisions that have compromised Californians' right to vote on taxes and the potentially disastrous consequences that are hinged on the Court's decision in this case.

DATED: November 2, 2016.

Respectfully submitted,

DAKESSIAN LAW, LTD.
MARDIROS H. DAKESSIAN
RUBEN SISLYAN

By: 
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I.

INTRODUCTION

The electorate's right to vote on taxes is the linchpin of taxpayer protections in California. This case concerns whether Californians may continue to hold that right. At issue is whether the voter-approval requirements of Article XIIIC of the California Constitution may be circumvented by introducing a tax as an initiative rather than a resolution of the governing body. As California's largest and oldest organization representing taxpayers, CalTax is vitally interested in the resolution of this issue, as it affects virtually every taxpayer in California.

The electorate of this state has fought hard over the past four decades to establish, affirm and reaffirm the right to vote on taxes—beginning with Proposition 13 in 1978, then Proposition 62 in 1986, followed by Proposition 218 in 1996, and finally, Proposition 26 in 2010. Of particular importance in this case is Proposition 218, which added Articles XIIIC and XIIID to the California Constitution to restrict local governments from imposing new or increased taxes without majority voter approval for general taxes and two-thirds voter approval for special taxes. (Cal. Const., art. XIIIC.)

However, with its decision in this case, the Court of Appeal has dealt a serious blow to the right of Californians to vote on local taxes and undone four decades of work securing this right. Specifically, based on a strained new definition of the word "impose"

in relation to who imposes taxes, the Court of Appeal has broken with precedent to wrongly conclude that the right to vote on local tax initiatives—compared to taxes placed on the ballot by the local governing body—is not a right guaranteed by California's Constitution. (*California Cannabis Coalition v. City of Upland*, 245 Cal.App.4th 970, 987 (2016) ["*CCC*"].) The Court of Appeal's decision allows proponents of a new tax to circumvent the Constitution's voter-approval requirement for new or increased taxes by introducing the tax as an initiative rather than a resolution of the governing body.

If the Court of Appeal's decision is not reversed, it will create a loophole so big that it will essentially result in Californians losing their right to vote on local taxes. The decision will allow local taxes to be imposed without any public vote at all. In short, the Court of Appeal's ruling will allow local governments to collude with special interest groups to raise taxes by simply gathering signatures from only ten percent of registered voters, and circumventing the constitutional requirement of obtaining majority or two-thirds voter approval. If this decision stands, it will potentially open the floodgates to allow countless new local taxes, and abuse of the initiative process may become commonplace.

This is not a scare tactic, but the reality that Californians will face if the Court of Appeal's decision in not reversed. This is exactly what happened after this Court's decision in *Sinclair Paint Co. v. State Board of Equalization*, which turned what taxpayers believed were established constitutional protections upside down, resulting in

the imposition of billions of dollars in higher taxes and more than a decade-long struggle for taxpayers to re-establish taxpayer protections with the passage of Proposition 26. (15 Cal.4th 866 (1997).) Californians already have seen the consequences that will result if the Court of Appeal's decision stands. If the decision is not reversed, history will repeat itself, and taxpayers will once again have to consider restoring constitutional taxpayer protections with another statewide proposition.

In this brief, CalTax first discusses the judicial and legislative authorities that support the conclusion that Article XIIIC applies to taxes proposed by initiative with the same force as it applies to taxes proposed by the local governing body. CalTax also discusses the potentially far-reaching consequences that likely will result if the Court of Appeal's ruling is not reversed. The Court's decision in this case will either save Californians' right to vote on local taxes or effectively put an end to that fundamental right. This brief represents California taxpayers' petition to save their right to vote on taxes.

II.
ARGUMENT

A. The Constitution's Voter-Approval Requirement Applies To All New Taxes, Including Those Proposed By Initiative

The main issue in this case is whether the California Constitution's taxpayer protections under Article XIIIC apply only to

new taxes proposed by the governing body (*i.e.*, city council) or all new taxes, including those proposed by initiative. Under California law, Article XIIIC applies to all new taxes whether proposed by the governing body or by initiative for several reasons. *First*, the well-settled presumption that statutory and constitutional limits on the power of local government apply equally to local initiatives supports the conclusion that Article XIIIC applies to new taxes introduced by initiative. *Second*, the plain language of Article XIIIC indicates that it applies to all taxes, including those proposed by initiative. *Third*, the theory of plaintiffs and respondents California Cannabis Coalition, Et Al. ("Respondents"), on which the Court of Appeal's decision is based, confuses "impose" with "propose," leading to the absurd result reached by the Court of Appeal. *Fourth*, any inconsistencies between Article XIIIC, section 2(b) of the California Constitution and Elections Code section 9214(b) must be resolved in favor of the constitutional provisions.

1. The Initiative Power Is Limited

In pertinent part, Article XIIIC, section 2(b) provides as follows:

> "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. ... The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body." (Cal. Const., art. XIIIC, § 2(b).)

Based on this text, a local governing body proposing a new general tax must submit the tax for voter approval at a regularly scheduled general election for members of the governing body. The dispute here is over the applicability of the voting requirement under Article XIIIC, section 2(b) to general taxes proposed by initiative.

The well-settled presumption that statutory and constitutional limits on the power of local government apply equally to local initiatives supports a finding that the voting requirement for taxes under Article XIIIC, section 2(b) applies to general taxes, whether proposed by the electorate via initiative or the local governing body. The people's right to legislate by initiative is "generally co-extensive with the legislative power of the local governing body." (*DeVita v. County of Napa*, 9 Cal.4th 763, 775 (1995).) This principle of co-extensive power cuts both ways. While it is presumed that powers delegated by the State to local governments may be exercised by local voters (*DeVita*, 9 Cal.4th at 786), it is similarly presumed that limits on the power of government apply to both the governing body and the voters (*See Mission Springs Water Dist. v. Verjil*, 218 Cal.App.4th 892, 920 (2013) ["[I]f the state Legislature has restricted the legislative power of a local governing body, that restriction applies equally to the local electorate's power of initiative."]). Thus, state law limitations on the local governing body are presumed applicable to the voters "absent ***clear indications*** to the contrary." (*DeVita*, 9 Cal.4th at 786 [emphasis added].)

In the instant case, it is undisputed that the state law limits on the election date and voter approval of the imposition of new and increased taxes apply to the governing body. Under this Court's holding in *DeVita*, absent "clear indications" to the contrary, the same limits also must apply to the initiative power of the voters. The only indicator identified by the Court of Appeal in this case was silence. (*CCC*, 245 Cal.App.4th at 984.) However, silence is not a "clear indication" in either direction. In fact, Article XIIIC is *not* silent, but contains "clear indication" that it must apply to all taxes, including those proposed by initiative, as discussed in more detail below.

2. The Plain Language Of Article XIIIC Indicates That It Applies To All Taxes, Including Those Proposed By Initiative

To overcome the presumption that the initiative power is subject to the same limits placed on the local government, courts look at the applicable statutory or constitutional language to determine whether there is intent to exclude voter initiatives. A "paramount" factor of well-settled rules of construction is the terminology employed in referring to the entity. General terms such as "local government" or "public agency" are extremely weak indicators of intent to exclude voter initiatives. In the middle of the scale, but still weak, terms include "legislative body" or "governing body." The strongest indicator of intent to exclude voter initiatives is specific terminology such as "city council" or "board of supervisors." (*DeVita*, 9 Cal.4th at 776; *Totten v. Ventura County Bd. of Supervisors*, 139 Cal.App.4th 826, 834 (2006).)

Here, Article XIIIC, section 2(b), in defining the limitations on the imposition of local taxes, uses the term "local government," which is the weakest terminology to show intent to exclude voter initiatives. In a different context, Section 2(b) uses the term "*governing body* of the local government,"[2] further illuminating the voters' intent that the taxpayer protections should apply equally to all taxes, regardless of who proposes them. Specifically, Section 2(b) provides:

> "No ***local government*** may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. ... The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the ***governing body of the local government***, except in cases of emergency declared by a unanimous vote of the ***governing body***." (Cal. Const., art. XIIIC, § 2(b) [emphasis added].)

The section's specific use of "local government" to describe the limitation and, in contrast, "governing body" to describe something else, is "clear indication" that the drafters of the section understood the distinction between the broad term "local government" and the narrow term "governing body." Use of the broader term "local government" in defining the limitation demonstrates the voters' intent for the limitation to apply to taxes proposed by initiative.

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[2] (emphasis added.)

This conclusion is also consistent with the broad definition of "local government" under Article XIIIC, which provides that "'Local government' means any county, city, city and county, including charter city or county, any special district, or any other local or regional governmental entity." (Cal. Const., art. XIIIC, § 1(b).). In contrast, the Legislature defines "governing body" as "the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a special district." (Gov. Code § 53232(a).)[3]

Based on the discussion above, the Court of Appeal erred in holding that the election date and voter-approval requirements under Article XIIIC, section 2 do not apply to voter initiatives.

3. The Respondents' Theory, On Which The Court Of Appeal's Decision Is Based, Confuses "Impose" With "Propose"

Article XIIIC uses the word "impose," not "propose." The two are not the same. Merriam-Webster.Com defines the transitive verb "propose" as "to set forth for acceptance or rejection."[4] The same

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[3] Article XIIIC does not contain its own definition of "governing body" and the definition provided herein is provided under the "Proposition 218 Omnibus Implementation Act," contained within Part 1 of Division 2 of Title 5 of the Government Code, under the heading "Powers and Duties Common to Cities, Counties, and Other Agencies."

[4] Marriam-Webster.Com, http://www.merriam webster.com/dictionary/propose (last visited Oct. 25, 2016).

authority defines the transitive verb "impose" as "to establish or apply by authority *<impose a tax> <impose new restrictions> <impose penalties>*."[5] Similarly, Black's Law Dictionary defines "impose" as "[t]o levy or exact (a tax or duty)."[6]

While a tax may be *proposed*—or "set forth for acceptance or rejection"—by either the City Council via resolution or by the voters via initiative, there is no distinction between taxes "*imposed* by local government" and taxes "*imposed* by voters." This distinction is impossible because under California's constitutional plan (*i.e.*, Article XIIIC), local government cannot *impose*—or "levy"—taxes without voter approval, which means that *all taxes* are imposed by the voters. (*See Santa Clara County Local Transp. Auth. v. Guardino*, 11 Cal.4th 220, 240 (1995) ["It is apparent that if a tax is not deemed 'imposed'—which in this context means enacted—'unless and until' it is 'approved' by the voters, the approval is a precondition to such enactment."].) Considering this crucial distinction between "propose" and "impose," the Court of Appeal erred in finding that Article XIIIC is inapplicable to the electorate because, by its own terms, it applies only to taxes "***imposed*** by local government." (*CCC*, 245 Cal.App.4th at 974, 983, 984.)

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[5] Marriam-Webster.Com, http://www.merriam webster.com/dictionary/impose (last visited Oct. 25, 2016).
[6] Black's Law Dictionary (10th ed. 2014).

Further, a distinction cannot be drawn between taxes "*imposed* by local government" and taxes "*imposed* by voters" because an act by the voters via initiative constitutes an exercise of the same legislative power that is available to elected officials. In other words, the voters are acting as legislators of the local government. In this regard, the Elections Code provides that when voters pass an initiative, it is an ordinance "enacted by [the] city." (Elec. Code § 9200.) Consistent with this, this Court has held that the initiative power is "the authority to *directly* propose and adopt" statutes and ordinances (*Perry v. Brown*, 52 Cal.4th 1116, 1140 (2011)) and voters acting by initiative are exercising "legislative authority" (*Id.* at 1156). Similarly, the *Widders v. Furchtenicht* court has held "[t]he initiative process 'is not a public opinion poll. It is a method of enacting legislation[.]'" (167 Cal.App.4th 769, 782 (2008).)

Lastly, this Court has held that taxes collected by government are "imposed" by government. (*Howard Jarvis Taxpayers Assn. v. City of La Habra*, 25 Cal.4th 809, 823-24 (2001).) This holding is in direct conflict with the Court of Appeal's holding in this case that taxes imposed by initiative are not taxes imposed by local government. Further, in *Howard Jarvis*, this court also held that taxes are imposed every time the tax is collected (*Id.*), making moot the Court of Appeal's distinction between taxes originally proposed by resolution of the City Council or by voter initiative.

For the reasons discussed above, there is no merit to Respondents' theory, adopted by the Court of Appeal, that taxes imposed by the voters are not "imposed by local government."

4. Any Inconsistencies Between Article XIIIC, Section 2(b) Of The California Constitution And California Elections Code Section 9214(b) Must Be Resolved In Favor Of The Constitutional Provisions

Section 9214 of the Elections Code provides, in pertinent part, the following:

> "If the initiative petition is signed by not less than 15 percent of the voters of the city ..., and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the legislative body shall do one of the following:
>
> (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented.
>
> (b) Immediately order a special election, to be held pursuant to subdivision (a) of Section 1405, at which the ordinance, without alteration, shall be submitted to a vote of the voters of the city.
>
> (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b)."

Respondents argue that the general election requirement of Article XIIIC, section 2 does not apply to voter-proposed taxes because Elections Code section 9214(b) requires a special election for such voter-proposed initiatives. (Respondents' Answering Brief on the Merits at 36.) There are two problems with this argument. First, "[t]he California Constitution is 'the supreme law of our state'[,]" (*California Logistics, Inc. v. State*, 161 Cal.App.4th 242, 250 (2008)) and if a statute truly conflicts with the Constitution, then the statute must yield. Second, the rule of construction that "when a general and particular provision are inconsistent, the latter is paramount to the former," codified under section 1859 of the Code of Civil Procedure, also dictates that the general provision under Elections Code section 9214 regarding the general procedures for voter initiatives must yield to the specific provision under Article XIIIC, section 2, which requires voter approval for all taxes.

B. The Court Of Appeal's Decision, If Upheld, Will Effectively Put An End To The Constitution's Guarantee Of The Electorate's Right To Vote On Taxes

The California electorate has affirmed and reaffirmed its right to vote on taxes time and time again over the past four decades. The Court of Appeal's decision in this case undercuts such right.

1. The Court Of Appeal's Broad Holding Essentially Renders The Voter-Approval Requirement Under Article XIIIC, Section 2 Void

Although the dispute in this case is over the timing of an election to vote on taxes (*i.e.*, whether the tax at issue should be voted on at a special election under Elections Code section 9214 or during a general election for city council candidates as required under Article XIIIC, section 2(b)), the Court of Appeal's holding that Article XIIIC does not apply to taxes imposed by initiative (*CCC*, 245 Cal.App.4th at 984) is extremely broad and has potentially far-reaching consequences, well beyond just the election timing in this case. The Court of Appeal did not limit its decision to the proper election date, nor could it logically do so. Rather, it ruled broadly that taxes "imposed by initiative" are exempt from the rules otherwise applicable to local government. The opinion sometimes describes this as an exemption from "Article 13C, section 2" (*Id.* at 983) and sometimes as an exemption from all of "Article 13C" (*Id.* at 984).

Regardless of how the decision is viewed, this ruling essentially renders Article XIIIC—which not only includes the election date requirement but also the general requirement of voter approval of new taxes—inoperative. Exempting taxes proposed by initiative from the constitutional requirements under Article XIIIC allows any proponent of a new tax—including the city council—to make an end-run around the taxpayers' constitutional right to vote on the tax simply by proposing it in the form of an initiative. This creates a loophole in the law.

This disastrous result is not difficult to see. The loophole allows the imposition of a new tax without voter approval, contrary to

the right to vote guaranteed by the Constitution under Article XIIIC, section 2. Specifically, a City looking to impose a new tax or increase an existing tax can do so by simply partnering with a special interest. A special interest group would collect signatures from merely ten percent of the City's registered voters (Elec. Code section 9215) on an initiative proposing the tax, and completely ignore the voter-approval process required under Article XIIIC, section 2. Under Elections Code section 9215, once enough signatures are collected (and the Registrar of Voters has verified them), the City Council can adopt the initiative without ever putting it up for voter approval. Specifically, Elections Code section 9215 provides the following options following the collection of signatures from only ten percent of the City's registered voters:

> "[T]he legislative body shall do one of the following:
> (a) Adopt the ordinance, without alteration [or]
> (b) Submit the ordinance, without alteration, to the voters."

The City Council can choose option (a) and adopt the tax increase itself, in lieu of holding an election. Thus, the City Council is allowed to impose a new or increased tax with only support from ten percent of registered voters. This is in stark contrast to the the constitutional requirement under Article XIIIC, section 2, which requires majority voter approval for general taxes and two-thirds voter approval for special taxes. (Cal. Const., art. XIIIC, § 2(b) & (d).)

This loophole is further highlighted by the example provided in Petitioners' Petition for Review ("Petition") in this case, in

which the City of Bell is allowed to easily double the utility tax in order to give City employees a generous raise by simply garnering support from only ten percent of registered voters (many of whom are city employees who will directly benefit from the tax increase in the form of generous raises) and thus evading the voter-approval requirement. (Petition at 6.)

As demonstrated in this example, if the Court of Appeal's decision is not reversed regarding the application of Article XIIIC to taxes proposed by initiative, local governments may pass new taxes with ease, and without voter accountability. It is not difficult to see that the Court of Appeal's decision, if upheld, will open the floodgates to a myriad of new local taxes across the state.

2. Historical Evidence Demonstrates That The Court Of Appeal's Decision, If Not Overturned, May Result In A Flurry of New Taxes Enacted Without Voter Approval

The disastrous consequences of the Court of Appeal's decision are more than just theory. In California, we have precedent for how quickly governments work to exploit any infirmity in taxpayer protections. Consider the surge in the imposition of billions of dollars in hidden taxes that ensued after this Court's decision in *Sinclair Paint, supra.* Specifically, this Court's ruling in *Sinclair Paint* that a "fee" approved by a majority vote of the Legislature and imposed on manufacturers of products containing lead was not an illegally approved tax paved the way for the Legislature and local governments

to impose billions of dollars in hidden taxes, which were labeled as "fees" to circumvent the voter-approval requirements of Proposition 13 and Proposition 218.

Proposition 13, which added Article XIIIA to the state Constitution in 1978, in pertinent part, restricts state tax changes by requiring approval by two-thirds of all members of the Legislature for tax increases. Article XIIIA, section 4 imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Sinclair Paint involved "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, enacted by the Legislature in 1991 as the "Childhood Lead Poisoning Prevention Act of 1991" ("Act") by a simple majority vote. These "fees" funded evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. (15 Cal.4th at 870-71.)

The question before this Court was whether these "fees" were really taxes required to be enacted by a two-thirds vote of the Legislature, as required under Article XIIIA, section 3 of the California Constitution. The Court concluded that the charges were "fees," not taxes, because the Legislature imposed the "fees" to mitigate the actual

or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the "fees" bore a reasonable relationship to those adverse effects. (*Id.* at 871.)

Soon after the Court's decision, the Legislature and local governments began to impose billions of dollars in hidden taxes labelled as "fees" to circumvent the stringent requirements of Proposition 13 and Proposition 218 for new taxes. Within a few short years, Californians were hit with various hidden taxes in the form of majority-vote "fee" measures and bills, circumventing the public vote requirement. The new hidden taxes did not discriminate, and targeted virtually every taxpayer. Hidden tax proposals were directed at practically every industry, including: banking, beverages, chemicals, energy, gaming, health care and pharmaceuticals, shipping, real estate, retail sales, tobacco and alcohol, telecommunication, technology and transportation. The Legislature left no stone unturned, and proposed hidden taxes on diapers, bicycles, prescription drugs, bottled water, phone bills, grocery bags, electric bills, batteries, recorded documents, computers, gaming tables, soft drinks, long-term care facilities, shipping containers, heath care programs and cars.

After major efforts to stop this trend of hitting California taxpayers with hidden taxes failed, including the statewide ballot proposal of Proposition 37 by CalTax and members of the business community, California experienced an explosion in hidden taxes disguised as "fees." (David R. Doerr, California's Tax Machine 366-67 (David Kline, 2nd ed. 2008).) Once the Legislature understood how

easy it would be to raise taxes by relying on the *Sinclair Paint* decision, over 50 hidden tax proposals—as summarized in Table 1 below—were introduced during the 2003-2004 session.

TABLE 1

Legislative Proposals to Impose Hidden Taxes

2003-2004 Legislative Session

	Bill		Bill		Bill
1	AB 83	19	AB 1500	37	SB 506
2	AB 99	20	AB 1546	38	SB 511
3	AB 151	21	AB 1688	39	SB 533
4	AB 204	22	AB 1699	40	SB 557
5	AB 216	23	AB 1764	41	SB 676
6	AB 302	24	AB 1906	42	SB 709
7	AB 372	25	AB 2847	43	SB 981
8	AB 574	26	AB 2880	44	SB 1049
9	AB 578	27	AB 3011	45	SB 1078
10	AB 586	28	ABX1 10	46	SB 1168
11	AB 698	29	SB 2	47	SB 1180
12	AB 854	30	SB 20	48	SB 1397
13	AB 923	31	SB 108	49	SB 1656
14	AB 998	32	SB 50	50	SB 1701
15	AB 1063	33	SB 204	51	SBX1 4
16	AB 1226	34	SB 288	52	SBX1 5
17	AB 1239	35	SB 413	53	SBX1 6
18	AB 1396	36	SB 421		

This is in stark contrast to the mere ten bills introduced during the 1999-2000 session and the 16 bills introduced during the 2001-2002 session, which are summarized in Table 2 below.

TABLE 2

Legislative Proposals to Impose Hidden Taxes

1999-2000 Legislative Session				2001-2002 Legislative Session			
	Bill		**Bill**		**Bill**		**Bill**
1	AB 38	6	AB 1043	1	AB 712	9	SB 928
2	AB 177	7	AB 1211	2	AB 1058	10	SB 1417
3	AB 306	8	AB 2837	3	AB 1172	11	SB 1520
4	AB 748	9	SB 913	4	AB 1493	12	SB 1523
5	AB 1002	10	SB 935	5	AB 2682	13	SB 1661
				6	AB 2744	14	SB 1700
				7	AB XX2	15	SB 1994
				8	SB 248	16	SB 1X

Opponents of these hidden taxes formed the Stop Hidden Taxes Coalition in 2005 (managed by CalTax), which played a major role in tracking these hidden taxes, testifying against tax-like "fees," and alerting the public to potentially costly proposals. The Coalition's efforts were somewhat effective, as the introduction and enactment of hidden taxes decreased from the high-water mark for this type of legislation during the 2003-2004 session. Still, there were 35 such bills proposed during the 2007-2008 session and 41 during the 2009-2010 session, as summarized in Table 3 below.

TABLE 3								
Legislative Proposals to Impose Hidden Taxes								
2007-2008 Legislative Session					2009-2010 Legislative Session			
	Bill			Bill		Bill			Bill
1	AB 8		22	AB 2829	1	AB 6		22	AB 2139
2	AB 239		23	AB 2870	2	AB 68		23	AB 2348
3	AB 258		24	AB 2967	3	AB 73		24	AB 2398
4	AB 444		25	SB 24	4	AB 87		25	SB 10
5	AB 493		26	SB 34	5	AB 121		26	SB 25
6	AB 558		27	SB 240	6	AB 186		27	SB 42
7	AB 837		28	SB 348	7	AB 286		28	SB 406
8	AB 860		29	SB 445	8	AB 436		29	SB 565
9	AB 878		30	SB 578	9	AB 856		30	SB 603
10	AB 1168		31	SB 613	10	AB 1071		31	SB 635
11	AB 1470		32	SB 974	11	AB 1141		32	SB 662
12	AB 1543		33	SB 1617	12	AB 1145		33	SB 676
13	AB 1590		34	SB 1646	13	AB 1173		34	SB 736
14	AB 2058		35	SB 1731	14	AB 1212		35	SB 810
15	AB 2088				15	AB 1280		36	SB 1071
16	AB 2231				16	AB 1383		37	SB 1157
17	AB 2388				17	AB 1404		38	SB 1222
18	AB 2522				18	AB 1405		39	SB 1305
19	AB 2558				19	AB 1547		40	SB 1445
20	AB 2638				20	AB 1694		41	SBX8 6
21	AB 2744				21	AB 1770			

The solution to this problem came with the passage of Proposition 26 in 2010, which expanded the definition of "tax" so that more proposals, including hidden "fees," would require approval by two-thirds of the Legislature or by local voters. The purpose of Proposition 26 was to effectively overturn *Sinclair Paint* by requiring state mitigation fees to be approved by a two-thirds vote of the Legislature, and local mitigation fees to be submitted to a vote of the public.

Thirteen years and billions of dollars in taxes later, California taxpayers finally were able to put an end to the spread of hidden taxes which were enacted after *Sinclair Paint*. The same consequence awaits here if the Court of Appeal's decision is not reversed—only worse. While the decision in *Sinclair Paint* allowed the lead "fee" legislation to be passed by a **majority vote** of the Legislature, the Court of Appeal's decision in this case allows for new and increased local taxes to be approved by a **mere ten percent** of the voters. This will lead to even higher taxes than the legislation proposed following the ruling in *Sinclair Paint*.

After decades of taxpayer advocacy secured the right to vote on taxes, Californians cannot afford to have this bedrock of our democracy swept away by an appellate decision based on novel and misguided theories. If the Court of Appeal's decision is allowed to stand, it is likely that similar taxes will be imposed throughout the state without any voter approval. Fortunately, this Court is in the position to

correct the errant lower decision, and in the process, preserve the right to vote on taxes. The Court of Appeal's decision must be reversed.

III.
CONCLUSION

For the reasons set forth herein and in Petitioners' briefs, the Court should overrule the decision of the Court of Appeal that taxes proposed by initiative may circumvent the voter-approval requirements of Article XIIIC, section 2 of the California Constitution.

DATED: November 2, 2016.

Respectfully submitted,

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WORD COUNT CERTIFICATION

I certify, pursuant to Rule 8.204(c) of the California Rules of Court, that this brief, including footnotes, but excluding the caption pages, tables, signatures, and this certification, as measured by the word count of the computer program used to prepare this brief, contains 5,039 words.

DATED: November 2, 2016.

By: _____
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DAKESSIAN LAW, LTD., 455 S. Figueroa St., Suite 2210, Los Angeles, CA 90071. On November 2, 2016, I served the following document(s) by the method indicated below:

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CALIFORNIA TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS AND PETITIONERS

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under the practice, it would be deposited with the U.S. Postage Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 2, 2016, at Los Angeles, California.

Kimberly Nielsen

SERVICE LIST

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Supreme Court of California
Case No. S234148

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