Case No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

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

Respondents.

SUPREME COURT
FILED
OCT 3 - 2011
Frederick K. Ohlrich Clerk
Deputy

APPLICATION TO FILE *AMICUS CURIAE* BRIEF

[PROPOSED] BRIEF OF *AMICUS CURIAE* CALIFORNIA PROFESSIONAL FIREFIGHTERS IN SUPPORT OF RESPONDENTS

Thomas W. Hiltachk (SBN 131215)
Ashlee N. Titus (SBN 227144)
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Amicus Curiae
CALIFORNIA PROFESSIONAL FIREFIGHTERS

Case No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

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

Respondents.

APPLICATION TO FILE *AMICUS CURIAE* BRIEF

[PROPOSED] BRIEF OF *AMICUS CURIAE* CALIFORNIA PROFESSIONAL FIREFIGHTERS IN SUPPORT OF RESPONDENTS

Thomas W. Hiltachk (SBN 131215)
Ashlee N. Titus (SBN 227144)
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Amicus Curiae
CALIFORNIA PROFESSIONAL FIREFIGHTERS

Application for Permission to file *Amicus Curiae* Brief

Pursuant to Rule 8.520(f) of the California Rules of Court, California Professional Firefighters ("CPF") respectfully request leave to file the attached brief, in support of the respondents, to be considered in the above-captioned case. This application is timely made pursuant to the briefing schedule ordered by the Court.

I. California Professional Firefighters

CPF is a statewide organization representing more than 180 local firefighter organizations across California and more than 30,000 career federal, state and local California firefighters. CPF was founded over 70 years ago and its mission is to improve the lives and working conditions of career firefighters – the men and women who have made public protection their life's work. CPF furthers this mission by advocating for its members with respect to legislation impacting firefighter health and safety, retirement safeguards and employee rights.

II. Interest of California Professional Firefighters

Even during the current budget crisis, redevelopment agencies have been growing and prospering while vital public services are withering. Special districts have very limited choices to replace property tax revenues diverted from them. This is especially true of fire districts. Fire districts provide fire protection and emergency medical services to nearly half of the state's residents, including residents of more than 100 cities and nearly all of the unincorporated areas of the state's 58 counties. Over the life of the Community Redevelopment Act, fire districts have been forced to surrender billions of dollars in property tax revenues to redevelopment project areas where they are obliged to provide fire protection. The demand for fire protection and emergency medical services has ballooned in redevelopment project areas; all the while the redevelopment agencies have diverted ever

increasing portions of the fire districts' property taxes. Despite the increased demand, fire districts are reducing firefighting forces and delaying the replacement of aging equipment. A decision upholding the validity of ABX1 26 and invalidating ABX1 27 would make significant additional funds available to fire districts throughout California, enabling these districts to operate with adequate staffing and modern equipment.

III. Need for additional briefing

CPF believes that further briefing is necessary to provide detailed discussion of certain authorities and arguments that the parties have not yet addressed fully. Specifically, CPF offers an in depth historical review of Section 16 of Article XVI of the California Constitution, to provide the Court with the context it needs to properly assess the Legislature's authority over redevelopment agencies, and the impact of Proposition 22 on this authority. Further, CPF will offer a more accurate portrayal of the "ownership" of tax increment funds, contrary to the Petitioners' position that redevelopment agencies are "entitled" to such funds in perpetuity. Finally, CPF expands on the issue of severability and the independent validity of ABX1 26 and ABX1 27.

RESPECTFULLY SUBMITTED,

DATED: September 29, 2011

Thomas W. Hiltachk,
Attorney for
California Professional
Firefighters

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES **PAGE (S)**

STATUTES

STATE CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

I. INTEREST OF AMICUS

California Professional Firefighters ("CPF") is a statewide organization representing more than 180 local firefighter organizations across California and more than 30,000 career federal, state and local California firefighters. CPF was founded over 70 years ago and its mission is to improve the lives and working conditions of career firefighters – the men and women who have made public protection their life's work. CPF furthers this mission by advocating for its members with respect to legislation impacting firefighter health and safety, retirement safeguards and employee rights.

Even during the current budget crisis, redevelopment agencies have been growing and prospering while vital public services are withering. Special districts have very limited choices to replace property tax revenues diverted from them. This is especially true of fire districts. Fire districts provide fire protection and emergency medical services to nearly half of the state's residents, including residents of more than 100 cities and nearly all of the unincorporated areas of the state's 58 counties. Over the life of the Community Redevelopment Act, fire districts have been forced to surrender billions of dollars in property tax revenues to redevelopment project areas where they are obliged to provide fire protection. The demand for fire protection and emergency medical services has ballooned in redevelopment project areas; all the while the redevelopment agencies have diverted ever increasing portions of the fire districts' property taxes. Despite the increased demand, fire districts are reducing firefighting forces and delaying the replacement of aging equipment.

This context is offered to support CPF's interest as an Amicus in this case, but the Court is not tasked with evaluating the contributions that redevelopment agencies provide to, or the cost they impose on, California and its communities. While CPF holds an unequivocal view that

redevelopment agencies divert property tax revenues from core public services, while at the same time increasing the demand for such services, the Court need not wade into or take sides in any policy judgment. That is the Legislature's role. Instead, this case is about California's constitutional system of government and preserving the Legislature's authority to make tough choices in allocating scarce funds during challenging economic times.

II. SUMMARY

CPF submits this brief to provide the Court with evidence and analysis not thoroughly addressed in the supporting and opposing arguments thus far presented by the parties.

Principally, CPF offers a historical overview of Section 16 of Article XVI of the California Constitution, to demonstrate that the provision has never afforded redevelopment agencies any constitutional protection from acts of the Legislature. The origins and subsequent amendments to Section 16 of Article XVI establish that redevelopment agencies' very existence have always been subject to the policy judgment of the Legislature. Proposition 22 did not amend Section 16 of Article XVI, and therefore did not confer on redevelopment agencies a unique status. Notably, the Executive Directors of Petitioners (one of whom was a proponent of Proposition 22) California Redevelopment Association and the League of California Cities testified to a joint hearing of Senate committees that Proposition 22 did not prohibit the Legislature from eliminating redevelopment agencies.

CPF further notes that Petitioners' argument that that AB1X 26 violates Proposition 22 is based entirely on the notion that the legislation diverts tax increment in the hands of the redevelopment agencies to the benefit of the state or local agencies. But AB1X 26 does no such thing.

Section 16 of Article XVI only authorizes tax increment to pay indebtedness incurred for redevelopment projects, and it directs all other tax increment funds to be "paid into the funds of the respective taxing agencies as taxes on all other property are paid." AB1X 26 goes to great lengths to honor all existing indebtedness and obligations of redevelopment agencies and then follows the mandate of Section 16 of Article XVI by directing the rest of the money to be paid to the local taxing agencies whence it came. Once this framework is understood—that tax increment in excess of the indebtedness incurred for redevelopment does not belong to the redevelopment agencies—the argument of petitioners that AB1X 26 violates Section 16 of Article XVI and Proposition 22 is exposed as utterly without merit.

Finally, CPF expands on the point raised by the Attorney General and the County of Santa Clara, that ABX1 26 and ABX1 27 are separate and distinct bills, and should be considered and analyzed separately by the Court. Petitioners attempt to tie them together as an inseparable unit, but plain and deliberate language of the bills demonstrate that the Legislature clearly intended for them to operate independently upon being signed into law by the Governor. Finding that the bills are severable from each other, CPF urges the Court to uphold ABX1 26 and invalidate ABX1 27.

III. ARGUMENT

The long history of redevelopment in California demonstrates that the use of tax increment financing to fund redevelopment has always been at the pleasure of the Legislature, and remains so even after Proposition 22. The Legislature acted within its authority, constrained by Proposition 22, when it chose to eliminate redevelopment agencies through ABX1 26. ABX1 27 should have been adopted by a 2/3 vote of the Legislature pursuant to Proposition 1A, and therefore should be invalidated. Because of the carefully drafted severability clauses, ABX1 26 should be upheld and

a calendar for implementing ABX1 26 should be ordered.

A. SECTION 16 OF ARTICLE XVI OF THE CALIFORNIA CONSTITUTION DOES NOT CONFER ANY RIGHTS OR PROTECTED STATUS TO REDEVELOPMENT AGENCIES.

In 1951, the Legislature adopted by statute the substantive provisions of what became Section 19 of Article XIII of the Constitution in 1952 (Proposition 18), which bears a striking resemblance to the provision still in effect today (now Section 16 of Article XVI). (See *City of Dinuba v. County of Tulare* (2008) 41 Cal.4th 859, 866, fn. 7.) Section 16 of Article XVI was not amended by Proposition 22.[1]

1. AS ORIGINALLY ADOPTED, SECTION 16 OF ARTICLE XVI PROVIDED THE LEGISLATURE WITH A TOOL FOR FINANCING REDEVELOPMENT.

The precursor to today's Section 16 of Article XVI was drafted by the Legislature, and according to the Legislative Counsel's analysis included in the ballot pamphlet[2], Proposition 18 "would authorize the

---

[1] The constitutional amendment providing for tax increment financing has been amended three times since its original enactment in 1952. In the 1960s and 1970s, the Legislature undertook a substantial project to simplify and reorganize the Constitution. In 1962, the voters approved Proposition 16, proposed by the Legislature, removing obsolete language from Section 19 of Article XIII, ratifying the actions of the Legislature prior to the 1952 adoption of the original section. (RJN, Exh. A, excerpts from Ballot Pamphlet, November 6, 1962 general election, p. 22-23.) No other changes to Section 19 of Article XIII were made by Proposition 16. Subsequently, Proposition 8 was proposed by the Legislature and adopted by the voters in 1974, renumbering Section 19 of Article XIII to Section 16 of Article XVI. No changes were made to the text of the section. (RJN, Exh. B, excerpts from Ballot Pamphlet, November 5, 1974 general election, p. 30-31, 85.) Finally, Proposition 87 was approved in 1988, and is discussed in detail, *infra*.

[2] *White v. Davis* (1975) 13 Cal.3d 757, 775, FN 11 ["California decision

Legislature to provide for the inclusion in a redevelopment plan of a provision for the division of taxes collected in a project as follows: to each public agency levying taxes, an amount equal to that which would be produced on an application of the agency's tax rate to the assessed value of the property prior to the redevelopment; the excess to a special fund of the redevelopment agency to pay the interest and principal on any debts incurred by the agency in financing or refinancing the project." (RJN, Exh. C, excerpts from Ballot Pamphlet, November 4, 1952 general election, p. 19.) Reacting to litigation nationwide challenging community redevelopment, the Legislature pursued the constitutional amendment to remove "one potential for legal challenges in California" to the use of tax increment financing for blight clearance. [¶] Moreover, the 1952 constitutional provision clearly made the subject of tax allocation for redevelopment projects a matter of general statewide concern..." (81 Ops.Cal.Atty.Gen. 45, Op. No. 97-906, January 16, 1998.)

The argument in favor (no argument was submitted against Proposition 18) explained that Proposition 18 "is in effect an enabling act to give the Legislature authority to enact legislation which will provide for the handling of the proceeds of taxes levied upon property in a redevelopment project. It is permissive in character and can become effective in practice only by acts of the Legislature and the local governing body, the City Council or Board of Supervisors...[¶] The constitutional amendment makes possible what is called permissive legislation. In other words, no city or

---

[sic] have long recognized the propriety of resorting to such election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people. (See, e.g., *Carter v. Com. on Qualifications, etc.* (1939) 14 Cal.2d 179, 185, 93 P.2d 140; *Beneficial Loan Society Ltd. v. Haight* (1932) 215 Cal. 506, 515, 11 P.2d 857; *Story v. Richardson* (1921) 186 Cal. 162, 165-166, 198 P. 1057; *In re Quinn* (1973) 35 Cal.App.3d 473, 483-486, 110 Cal.Rptr. 881.)"].

county having a redevelopment agency need take advantage of its provisions unless they so desire." (*Id.*)

2. SUBSTANTIVE AMENDMENTS TO SECTION 16 OF ARTICLE XVI RESTRICTED FUNDS AVAILABLE TO REDEVELOPMENT AGENCIES.

By 1988, it was apparent that redevelopment agencies were complicating the finances of local governments. Proposition 87 was proposed by the Legislature and placed before the voters in 1988 to limit the flow of certain property tax increases into the coffers of redevelopment agencies. In the official Title and Summary, the Attorney General explained the situation as follows:

> Presently, if a taxing agency increases the tax rate for revenue to repay its bonded indebtedness for the acquisition or improvement of real property, a portion of the revenues raised for this purpose is allocated to redevelopment agencies having property affected by the rate increase. The revenues received by the redevelopment agency don't have to be applied to repayment of the bonded indebtedness. This measure authorizes the Legislature to require all revenues produced by the rate increase go to the taxing agency for purpose of the repayment of its bonded indebtedness.

(RJN, Exh. D, excerpts from Ballot Pamphlet, November 8, 1988 general election, p. 40.) In the ballot pamphlet, the Legislative Analyst further explained the impact of Proposition 87:

> This constitutional amendment authorizes the Legislature to prohibit redevelopment agencies from receiving any of the property tax revenue raised by increased property tax rates imposed by local governments to make payments on their bonds...
>
> By itself, this measure has no fiscal effect because it merely authorizes the Legislature to implement its provisions.

(*Id.*) Proposition 87 was approved by the voters and is the version of Section 16 of Article XVI now in effect. It made some minor grammatical

changes, and added subdivision (c), permitting the Legislature, in its discretion, to cut redevelopment agencies out of sharing in a "tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property…[by] that taxing agency." (Cal. Const., art. XVI, § 16(c).)

3. SECTION 16 OF ARTICLE XVI HAS NEVER PROVIDED REDEVELOPMENT AGENCIES WITH ANY RIGHTS.

What this historical survey reveals is that Section 16 of Article XVI has never conferred any rights on redevelopment agencies. The original adoption was merely an "enabling act" for future "permissive legislation" to "authorize the Legislature to provide" for a particular division of taxes. Each iteration of the section was drafted by the Legislature to provide the Legislature with specific tools for financing redevelopment activities in the State. The section has never been self executing. It has always required subsequent acts by the Legislature through the adoption of statutes, and further acts by a local governing body in approving a redevelopment plan which must set forth, among other components, a method of financing that *may* include tax increment funds. (See, e.g., Cal.Const.Art. XVI, § 16 ["All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended…"; "The Legislature may provide that any redevelopment plan may contain a provision that the taxes…" (underlining added)].) Notably, Section 16 of Article XVI states, "This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers." After abolishing redevelopment agencies with ABX1 26, the Legislature

availed itself of the discretion granted by Section 16 of Article XVI by approving ABX1 27, an "alternative method of procedure governing" the subject of financing redevelopment activities.

4. *MAREK* DOES NOT RECOGNIZE ANY CONSTITUTIONAL IMPEDIMENT TO THE LEGISLATURE'S AUTHORITY OVER REDEVELOPMENT AGENCIES.

In the reply memorandum, Petitioners rely heavily on *Marek v. Napa Community Redevelopment Agency*, (1988) 46 Cal.3d 1070, for the proposition that Section 16 of Article XVI bestows redevelopment agencies with a constitutional right to tax increment funds. (Pet. Reply at p. 24.) *Marek* does not even come close to making such a statement.

Marek merely dealt with the definition of "indebtedness" and can be cited for the proposition that redevelopment agencies are not entitled to tax increment funds beyond their obligation s under redevelopment contracts. (*Marek*, *supra*, 46 Cal.3d at p. 1080.) Petitioner admits that the *Marek* Court was not faced with a conflict between Article XVI, Section 16 and a statute enacted by the Legislature (Pet. Reply at p. 18); significantly, *Marek* involved a county auditor acting contrary to the statutory scheme developed by the Legislature. (*Marek*, *supra*, 46 Cal.3d at p. 1080.) In every mention but one, the Court's discussion of Article XVI, Section 16 was paired with a reference to one or more statutes – the Court never analyzes Article XVI, Section 16 standing alone.[3] Contrary to Petitioner's assertion, the Court

[3] See *Id.* at p. 1073: "The plan was to be financed in substantial part by tax increment financing as authorized by article XVI, section 16 and by section 33670 which was enacted by the Legislature to implement the constitutional provision."; p. 1080: "Semantically, the question presented is the meaning of the term 'indebtedness' as used in article XVI, section 16, and in section 33670 [] and section 33675, [] and related provisions of the

never held that the Legislature could not alter the tax increment structure. (See Pet. Reply at pp. 17, 18.) Petitioner takes one statement out of its full context, claiming that "*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.*'" (Pet. Reply at p. 23, emphasis added by Petitioner.) The *Marek* Court actually stated:

> Since redevelopment agencies are *statutorily* empowered to enter into binding contracts to complete redevelopment projects, the term 'indebtedness' must be interpreted in a way that will enable those agencies to perform their contractual obligations...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...' (Art. XVI, § 16; § 33670 [].)

(*Marek*, *supra*, 46 Cal.3d at p. 1082, emphasis added.) The Court's statement of the RDA's entitlement was solely based on its *statutory* empowerment – conferred by the Legislature – not by operation of Article XVI, Section 16 standing alone. The *Marek* Court never stated that Article XVI, Section 16 in any way constrained the Legislature.

5. PROPOSITION 22 DID NOT CHANGE THE CONSTITUTIONAL SCHEME SET FORTH IN SECTION 16 OF ARTICLE XVI.

Proposition 22, adopted by the voters in 2010, did not amend Section

---

redevelopment law."; p. 1083: "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."; p. 1087: "We conclude that 'indebtedness,' as it is used in article XVI, section 16 and sections 33670 and 33675, includes redevelopment agencies' executory financial obligations under redevelopment contracts."

16 of Article XVI. Proposition 22, among other things, amended Section 25.5 of Article XIII, by adding paragraph (7) to subdivision (a) which states that the Legislature shall not:

> Require a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (i) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of the Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008, or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost.

As can be seen from the discussion of the history of Section 16 of Article XVI, *supra*, that provision, standing alone, does not "allocate" taxes to redevelopment agencies. Section 16 of Article XVI only empowers *the Legislature* to make tax increment financing available to redevelopment agencies by adopting statutes, which of course can be changed by the Legislature. (See *People v. Superior Court* (1996) 13 Cal.4th 497, 518 [where a "power is statutory, the Legislature may eliminate it"].) Section 16 of Article XVI does not *entitle* redevelopment agencies to tax increment funds in perpetuity. (See *Glendale Redevelopment Agency v. County of Los Angeles* (2010) 184 Cal.App.4th 1388, 1394 ["Importantly, an agency is entitled to the increment only in the amount of its indebtedness, less available revenue. (§ 33675, subd. (g).) Any tax increment in excess of that amount is distributed as base year taxes are distributed. (§ 33670, subd. (b).)"].)

Proposition 22 did not make redevelopment agencies "super agencies" immune from alteration or elimination by the Legislature.[4] There

[4] Petitioners argue (Pet. Reply at p. 13) that Proposition 22, by "prohibiting the Legislature from requiring 'a community redevelopment agency… to pay… or otherwise transfer" tax increment funds "necessarily presumes—

is simply no support for that view in the text of Proposition 22 or any of the ballot materials prepared by the Attorney General, Legislative Analyst, the proponents or authors of arguments in favor of Proposition 22. In fact, the Executive Directors of Petitioners League of California Cities and California Redevelopment Association testified on September 22, 2010 before a joint informational hearing of the Senate Committee on Transportation and Housing and Senate Committee on Local Government, held pursuant to Section 9034 of the Elections Code in connection with Proposition 22, and both stated unequivocally that Proposition 22 did not remove the Legislature's authority to eliminate redevelopment agencies.[5] The following discussion took place at that joint hearing:

> (01:46:42) Sen. Ducheny: Could we say, there shall be no more [redevelopment agencies]? ...it's over, from here on out, property tax shall be divided as it should be under Prop 13...

---

and therefore protects—the continued existence of both the RDAs and their annual allocation of tax increment." But the voters were not told Proposition 22 would protect RDAs from dissolution or guarantee continued payment of tax increment beyond project obligations. To have included such a provision explicitly might have created serious legal issues relating to the single subject rule. (Cal. Const., art. II, § 8(d); *Senate v. Jones* (1999) 21 Cal.4th 1142.) Further, a measure interpreted as creating a new, separate constitutional body immune from meaningful legislative oversight would raise questions about it being a constitutional revision, which cannot be enacted by initiative. (Cal. Const., art. XVIII; *Raven v. Deukmejian* (1990) 52 Cal.3d 336.) Quite apart from the political risks of such an overreach, these legal risks would explain why Proposition 22 should not be given such an expansive interpretation.

[5] Chris McKenzie was a proponent of Proposition 22. (RJN, Exh. E, Letter dated October 26, 2009 submitting proposed initiative and requesting that the Attorney General prepare Title and Summary.) His testimony to the Senate Joint Hearing was *clearly and prominently communicated* to members of the State Senate and publicly broadcast on CalChannel, and were *made prior to voter approval* of Proposition 22. (See *C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 932.)

...
(01:46:55) Marianne O'Malley, Legislative Analyst's Office: I don't think it limits the Legislature's authority to say, for example, there's a moratorium on all new redevelopment projects.
(01:47:09) Sen. Lowenthal: Do you agree?
(01:47:10) Chris McKenzie, Executive Director of League of California Cities: We agree entirely. There's a slight restriction in the Legislature's power to change the passthrough requirements. It totally protects the affordable housing requirements you have put in place. We believe it retains everything else that gives you authority under the Redevelopment Act, which Article 16 gave you, which is unaffected by this. The only purpose of this provision...is to make it clear that redevelopment revenues are to be used for redevelopment and not for other purposes.
...
(01:51:50) John Shirey, Executive Director of California Redevelopment Association: I agree with everything Marianne told you. She's absolutely right about the interpretation of Prop 22 and what Mr. McKenzie told you. It doesn't do anything to change your ability to change the law governing redevelopment agencies in California, and you do it pretty regularly.

(RJN, Exh. F, at <http://www.calchannel.com/channel/viewvideo/1760>.) In light of the testimony set forth above, it is disingenuous for the Petitioners and proponents of Proposition 22 to argue to this Court that Proposition 22 prohibits the Legislature from eliminating redevelopment agencies.

To the extent the Legislature chooses to allow redevelopment agencies to continue to exist and continues to offer tax increment financing in accordance with Section 16 of Article XVI, the Legislature is bound by the limits imposed on Proposition 22. However, Proposition 22 did not remove the Legislature's authority to eliminate tax increment financing as a tool nor its authority to eliminate redevelopment agencies altogether, and Section 16 of Article XVI preserves the Legislature's discretion to adopt

"an alternative method of procedure governing" the financing of redevelopment activities. The validity of ABX1 26 and ABX1 27 in light of Proposition 22 will be discussed *infra*.

B. ABX1 26 AND ABX1 27 ARE SEPARATE AND DISTINCT BILLS AND SHOULD BE EVALUATED SEPARATELY ON THEIR OWN MERITS.

CPF urges the Court to consider ABX1 26 and ABX1 27 as separate pieces of legislation, with separate legal and fiscal consequences upon implementation. ABX1 26 could and should be upheld even if the Court invalidates ABX1 27.

1. COURT SHOULD HONOR THE PLAIN MEANING OF THE SEVERABILITY PROVISIONS.

The double-joining and severability provisions of the bills make it clear that the Legislature intended for ABX1 26 and ABX1 27 to be evaluated separately on their own merits. Each bill contained different "double-joining" language – ABX1 26 takes effect only upon the enactment of ABX1 27 while ABX1 27 takes effect upon both the enactment and operability of ABX1 26.[6] The difference in the severability clauses is also illuminating – while ABX1 27 is not internally severable and requires that ABX1 26 be operative, ABX1 26 is fully internally severable should any of

[6] Section 14 of ABX1 26 states: "This act shall take effect contingent on the enactment of Assembly Bill 27 of the 2011–12 First Extraordinary Session or Senate Bill 15 of in the 2011–12 First Extraordinary Session and only if the enacted bill adds Part 1.9 (commencing with Section 34192) to Division 24 of the Health and Safety Code." (emphasis added.) Section 34192.5(a) added to the Health and Safety Code by Section 2 of ABX1 27 states: "This part shall be operative only if Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) are enacted and operative at the time the act adding this part takes effect." (emphasis added.)

its provisions be stricken by a court, and doesn't depend on the operability of ABX1 27.[7] These differences were the result of legislative compromise, not inartful drafting, and the Court should honor that compromise.

Petitioners' citation to Legislative floor debates on the bills is inapposite.[8] Legislators were well informed of the consequences of adopting the bills. The Senate and Assembly floor analyses both referenced the double-joining language and severability clauses contained in the bills.[9] The Senate floor analysis of ABX1 27 was especially clear:

---

[7] Section 12 of ABX1 26 provides: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end, the provisions of this act are severable." Section 5 of ABX1 27 provides: "The provisions of Section 2 of this act are distinct and severable from the provisions of Part 1.8 (commencing with 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code [referencing ABX1 26] and those provisions shall continue in effect if any of the provisions of this act are held invalid." Further, Section 6 of ABX1 27 provides: "If Section 2 of this act, or the application thereof, is held invalid in a court of competent jurisdiction, the remaining provisions of this act are not severable and shall not be given, or otherwise have, any force or effect."

[8] See *Ex Parte F. B. Goodrich* (1911) 160 Cal. 410, 416-417 ["But it still remains true, as it always has, that there can be no intent in a statute not expressed in its words, and there can be no intent upon the part of the framers of such a statute which does not find expression in their words. (citation omitted) It still remains true that even legislative debates are not appropriate sources of information from which to discover the meaning of the language of the statute. (citations omitted.) And it still remains true that even the testimony or opinions of individual members of the legislative body are not admissible for the purpose of showing what in fact was intended or meant by an act. (citations omitted.)"].

[9] See RJN, Exh. G, Assembly Floor Analysis of ABX1 26 ["This bill would not become effective unless the second bill also becomes effective."]; Assembly Floor Analysis of ABX1 27 ["The first bill would not become effective unless this bill also becomes effective"]; Senate Floor Analysis of ABX1 26 ["This bill has a contingent-enactment clause such that this bill would not become effective unless the other bill also becomes effective"].

> 9. Severability and contingent enactment. Specifies that most of the provisions of this bill are non-severable to the other provisions, such that if one provision is found invalid, then the other specified provisions are also found invalid. Specifies that the provisions of this act are severable with the provisions of the first bill that eliminates redevelopment. So if provisions of this bill are found invalid, the provisions of the first bill could remain in effect. Provisions of the other RDA bill specify it is enacted only if this bill is enacted.

Each and every member of the Legislature knew the consequences of their votes in favor of these bills.

2. ABX1 26 IS VALID.

As this brief discussed in detail *supra*, Proposition 22 did not amend or in any way elevate the Constitutional scheme for financing redevelopment activities provided for in Section 16 of Article XVI. Thus, Section 16 of Article XVI is not an impediment to the Legislature wholly ending redevelopment as it has existed, pursuant to the dissolution plan adopted by ABX1 26.

i. ABX1 26 HAS SIGNIFICANT FISCAL IMPACTS FOR LOCAL AGENCIES.

Separate from the Voluntary Alternative Redevelopment Program ("VARP") set forth in ABX1 27, the significant fiscal consequences of ABX1 26 standing alone should not be overlooked. When the Governor first proposed the elimination of redevelopment agencies in January 2010 (without any VARP-type component), the Legislative Analyst cited the Governor's budget assuming that tax increment revenues from dissolved redevelopment areas would be approximately $5.2 billion for fiscal year 2011-2012. (RJN, Exh. H, Legislative Analyst Policy Brief, *The 2011-2012 Budget: Should California End Redevelopment Agencies?*, February

9, 2011, p. 9.) The Governor's original proposal called for $1.7 billion of the tax increment revenues to be distributed to trial courts and Medi-Cal (this provision was not included in ABX1 26), $2.2 billion toward redevelopment debt, with the remaining funds being distributed pursuant to existing law applicable to ad valorem property taxes: $690 million to counties, $150 million to cities, $180 million to special districts, and $290 million to K-12 schools. (*Id.*) This adds up to more than $1.3 billion dollars returned to these local agencies upon the dissolution of redevelopment agencies and repayment of their indebtedness.

While Petitioners portray ABX1 26 as a "diversion" of property tax revenues (see, e.g., Pet. Reply at pp. 1, 2, 13, 14), it is more accurate to portray the tax increment given to RDAs as a diversion of property tax revenues since RDAs take money that would otherwise flow to local agencies, schools and special districts such as fire districts. (*Redevelopment Agency of the City of Long Beach v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 71 ["All taxable property within the area to be redeveloped is subject to ad valorem property taxes. The properties lying within a redevelopment area have a certain assessed value as of the date a redevelopment plan ordinance is adopted. A local taxing agency, such as a city or county, continued in future years to receive property taxes on the redevelopment area properties, but may only claim the taxes allocable to the base year value. If the taxable properties within the redevelopment area increase in value after the base year, the taxes on the increment of value over and above the base year value are assigned to a special fund for the redevelopment agency."].) ABX1 26 would eliminate the diversion and restore the natural distribution of property tax funds, after making payments on indebtedness incurred by the dissolved redevelopment agencies. (ABX1 26, adding Health & Safety Code § 34172(d).) Pursuant to ABX1 26, none of this money flows to the state – it is not a Legislative grab of money

belonging to RDAs – the money is restored to local agencies according to formulas existing in the State Constitution and implementing statutes. (*Id.*; see also Rev. & Tax. Code § 95, et seq.)

ii. ABX1 26 IS CONSISTENT WITH UNCODIFIED SECTION 9 OF PROPOSITION 22.

To the extent Section 9 of Proposition 22 is a correct statement of the law, ABX1 26 is consistent with its terms.[10] ABX1 26 respects the "portion of taxes" sufficient "to repay indebtedness incurred for the purpose of eliminating blight." (Proposition 22, uncodified § 9.) ABX1 26 does not "reallocate[] 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." (*Id.*) Instead, under ABX1 26, tax increment will be passed to successor agencies until all indebtedness is erased, and "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." (Art. XVI, § 16(b); See also § 34172(d) added by Part 1.85 of ABX1 26 ["Revenues equivalent to those that would have been allocated pursuant to subdivision (b) of Section 16 of Article XVI of the California Constitution shall be allocated to the Redevelopment Property Tax Trust Fund of each successor agency for making payments on the principal of and interest on loans, and moneys advanced to or indebtedness incurred by the dissolved redevelopment agencies. Amounts in excess of those necessary to pay obligations of the former redevelopment agency shall be deemed to be property tax revenues

[10] CPF concurs with Respondent County of Santa Clara that Section 9 of Proposition 22 "erroneously asserts that article XVI, section 16 requires the Legislature to allocate a certain portion of property tax increment to RDAs." (Resp. Santa Clara Return, fn. 23.)

within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution."].) By respecting the enforceable obligations of redevelopment agencies as well as the terms of Section 16 of Article XVI of the Constitution, ABX1 26 in no way offends Section 9 of Proposition 22.

iii. ABX1 26 IS CONSISTENT WITH THE CODIFIED PROVISION OF PROPOSITION 22.

Proposition 22 added paragraph (7) to subdivision (a) of Section 25.5 of Article XIII. This provision states that "the Legislature shall not enact a statute to...(7) Require a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (i) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of the Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008, or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost." (emphasis added.)

ABX1 26 is completely consistent with the Legislature's power provided by Section 16 of Article XVI, as modified by Proposition 22, because it preserves all funds "allocated to the agency" pursuant to Section 16 of Article XVI for purposes of paying the indebtedness of redevelopment agencies, and returns "all moneys thereafter received from taxes upon the taxable property in the redevelopment project" (taxes not

needed to pay indebtedness) to the "respective taxing agencies as taxes on all other property are paid." (Quoting Art. XIII, § 25.5(a)(7) and Art. XVI, § 16(b).) ABX1 26 does not "use, restrict, or assign a particular purpose for such taxes" prior to providing for full payment of each redevelopment agency's enforceable obligations, and then it only returns the remaining taxes to local agencies, as required. Petitioners correctly highlight (see Pet. Reply at pp. 1-2) that the voters were told in the Title and Summary of Proposition 22 that the measure "prohibits the state from borrowing or taking funds used for... redevelopment..." (RJN, Exh. I, Ballot Pamphlet, November 2, 2010 general election, p. 30.) ABX1 26 does not borrow or take any funds used or obligated for redevelopment, as it completely eliminates the ongoing existence of redevelopment agencies.

iv. ABX1 26 IS CONSISTENT WITH PROPOSITION 22'S STATEMENT OF INTENT.

Contrary to Petitioners' contention, ABX1 26 is consistent with Proposition 22's statement of purpose: "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.) Assuming arguendo that redevelopment is a "service," all AB1X 26 does is to fulfill all current redevelopment obligations and return the rest of the tax increment to local governments for the services that have been starved by the burgeoning growth of redevelopment tax increment over the last 20 years.

3. ABX1 27 VIOLATES PROPOSITION 1A.

We agree with Petitioners and Respondent County of Santa Clara

that ABX1 27 is constitutionally problematic. However, the defect isn't in the voluntary payments scheme, but rather the failure of the Legislature to adopt ABX1 27 with 2/3s of the Legislators voting in favor of the bill.

While Proposition 22 amended Section 25.5 of Article XIII in 2010, Proposition 1A added Section 25.5 to the Constitution in 2004. The provision relevant to this matter is paragraph (3) of subdivision (a) of Section 25.5, which provides:

> ...the Legislature shall not enact a statute to... change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring.

The voluntary payments required by ABX1 27, which may be derived from ad valorem and/or property tax increment funds, are directed solely toward fire and transit districts. (ABX1 27, adding Health & Safety Code §§ 34194.1, 34194.2, 34194.4(c).) Such districts are "local agencies" in a county. (Cal.Const., art. XIII, § 25.5(b)(2) ["Local agency" has the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004.]; Rev. & Tax. Code § 95 [(a) "Local agency" means a city, county, and special district; (m) "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries.]) Because ABX1 27 doesn't distribute the VARP payments to all local agencies in a county, but only to fire and transit districts, it *changes the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county*, and yet it was not approved by 2/3s of the Legislators in both houses. (RJN, Exh. J, Senate and Assembly Floor Votes of ABX1 27 at <www.leginfo.ca.gov>.)

The Governor's original redevelopment proposal (contained in AB

101 and SB 77) was tagged as a 2/3 vote bill due to its exclusion of "enterprise special districts" from sharing in tax increment funds distributed upon dissolution of redevelopment agencies, resulting in a *change in the pro rata shares* of the allocation of ad valorem property tax revenue. (RJN, Exh. K, AB 101 (2010), Legislative Council's Digest.)

CPF was an outspoken supporter of Proposition 1A, to protect existing local tax dollars from being taken by the State. While CPF supports the intention of the Legislature to make additional funds available to fire districts through ABX1 27 because fire districts have been disproportionately burdened by the growth of redevelopment project areas demanding increased emergency service, it cannot however endorse the Legislature's failure to abide by the 2/3 vote requirement imposed by Proposition 1A.

IV. CONCLUSION

Section 16 of Article XVI does not entitle redevelopment agencies to continued existence, and Proposition 22 did not remove the Legislature's authority to eliminate them. ABX1 26 is valid because it does not transfer any tax increment which redevelopment agencies are entitled to pursuant to Section 16 of Article XVI and fully provides for payment of existing indebtedness and other enforceable obligations of those agencies. Because ABX1 26 and ABX1 27 are severable from each other, ABX1 26 should be upheld and ordered implemented, and ABX1 27 should be invalidated because it was not approved by 2/3 of the Legislators of each house.

RESPECTFULLY SUBMITTED,

DATED: September 29, 2011

Thomas W. Hiltachk,
Attorney for
California Professional
Firefighters

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

Pursuant to rule 8.204(c) and 8.486(a)(6), I certify that the foregoing brief is one-and-a-half spaced and is printed in 13-point Times New Roman font. In reliance upon the word count feature of Microsoft Word, I certify that the attached [PROPOSED] BRIEF OF *AMICUS CURIAE* CALIFORNIA PROFESSIONAL FIREFIGHTERS IN SUPPORT OF RESPONDENTS contains 6,544 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.468(a)(6).

RESPECTFULLY SUBMITTED,

DATED: September 29, 2011

Thomas W. Hiltachk,
Attorney for
California Professional
Firefighters

CERTIFICATE OF SERVICE

I, Shannon Diaz, 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 455 Capitol Mall, Suite 600, Sacramento, California 95814.

On September 29, 2011, I served the following document(s) described as:

- **APPLICATION TO FILE *AMICUS CURIAE* BRIEF**
- **[PROPOSED] BRIEF OF *AMICUS CURIAE* CALIFORNIA PROFESSIONAL FIREFIGHTERS IN SUPPORT OF RESPONDENTS**

on the following party(ies) in said action:

Steven L. Mayer
Emily H. Wood
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation
Three Embarcardero Center, 7th Floor
San Francisco, CA 94111-4024
Tel: (415) 434-1600
Fax: (415) 677-6262
Email: smayer@howardrice.com

Attorney for Petitioners
CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.

MIGUEL MARQUEZ
County Counsel
ORRY P. KORB
Assistant County Counsel
LIZANNE REYNOLDS
Deputy County Counsel
OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, 9th Floor
San Jose, CA 95110
Tel: (408) 299-5900
Fax: (408) 292-7240
Email: lizanne.reynolds@cco.sccgov.org

Attorney for Respondents
VINOD SHARMA, auditor-controller of the County of Santa Clara, and the COUNTY OF SANTA CLARA

KAMALA HARRIS
Attorney General of California
MANUEL M. MEDEIROS
State Solicitor General
DOUGLAS WOODS
Senior Assistant Attorney General
PETER A. KRAUSE
Supervising Deputy Attorney General
ROSS C. MOODY
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Tel: (415) 703-1376
Fax: (415) 703-1234
Email: Ross.Moody@doj.ca.gov

Attorneys for Respondents
ANA MATOSANTOS,
Director of the California
Department of Finance, JOHN
CHIANG, State Controller of
California

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

X **BY FEDERAL EXPRESS MAIL:** By placing said documents(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States mail, VIA FEDERAL EXPRESS MAIL SERVICE, in Sacramento, California, addressed to said party(ies).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2011 at Sacramento, California.

Shannon Diaz
SHANNON DIAZ