Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,
Plaintiff/Appellant/Petitioner,

v.

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

ANSWER TO PETITION FOR REVIEW

On Review of the Published Decision of the Court of Appeal, First District, Division One, *Weatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 20 12]
Appellate Case No. A138949

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

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INTRODUCTION

This petition for review involves an unremarkable appeal by the unsuccessful plaintiff in an action challenging the enforcement practices of the City of San Rafael and the County of Marin regarding the impoundment of vehicles under Vehicle Code § 14602.6, and resulting in a judgment affirming the dismissal of her action for lack of taxpayer standing under Code of Civil Procedure § 526(a). Petitioner's underlying action seeking declaratory and injunctive relief against the City's impoundment of vehicles pursuant to Vehicle Code § 14602.6 conceded her vehicle never was impounded, and she did not allege any belief the City ever would so impound her vehicle. Rather, petitioner asserted she had standing to pursue the matter under the taxpayer standing provisions of Code of Civil Procedure section 526a, even though she did not pay any property taxes, claiming she could not afford to buy real property in California, particularly in the County of Marin. Based upon settled, uniform authority, the appellate court correctly concluded that petitioner's payment of sales and gasoline taxes as a consumer, and her payment of fees for utility services, did not confer taxpayer standing and no equal protection rights were violated. The appellate court properly affirmed the judgment in favor of respondents.

This petition fails to present any important legal question, and Supreme Court review in this case is unnecessary to maintain statewide

harmony and uniformity of decision, as the issues raised by the instant petition are well settled and uniformly applied within the appellate court and there is no conflict with any Supreme Court precedent as petitioner erroneously claims. She erroneously asserts that "on several occasions the Court has found taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, and necessarily paid other forms of taxes, like income, sales and gasoline taxes," citing *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069 and *Arrieta v. Mahon* (1982) 31 Cal.3d 381. (Petition, pp. 4 and 5, emphasis in original.) Notably, however, neither of these cases addressed the issue of what types of taxes suffice for standing under Section 526a, and this Court made *no* finding that taxpayer standing exists as to plaintiffs who did not pay real property or business taxes as petitioner misrepresents. Appellate court authority, including the decision in this case below, uniformly requiring that a plaintiff paid or be liable to pay assessed property or business taxes to qualify for taxpayer standing, does not conflict with any Supreme Court decisions, and neither *Tobe* nor *Arrieta* provides any basis to challenge the appellate court's decision or warrants this Court's review. Petitioner improperly seeks this Court's review because she is dissatisfied with the trial court and appellate court's decisions below.

Appellate court decisions uniformly hold that payment of sales, gasoline or other consumer tax, or payment of fees, is insufficient to confer

taxpayer standing under section 526a. Petitioner fails to cite a single authority since the enactment of Section 526a in 1909 finding otherwise. Petitioner's attempt to extend taxpayer standing to anyone who has paid a sales tax or municipal service fee within a municipality's boundaries would allow virtually anyone with minimal interest in the City to bring suit challenging its policies and practices. Such an expansive reading of Section 526a is unsupported by any Supreme Court or Appellate Court authority, is inconsistent with the plain language of the statute and the Legislature's intent, is contrary to the basic tenets of standing requirements and would render Section 526a entirely superfluous and meaningless. Petitioner offers no authority to justify or warrant this Court's denouncement of longstanding taxpayer requirements and creation of new taxpayer standing requirements not encompassed in the language of section 526a. Section 526a was not intended to confer standing on virtually anyone in the State, as the enactment of the statue would be unnecessary and the Legislature would have stated as much in the 105 years since the statute was enacted. Petitioner's personal desire for a Supreme Court decision on the matter, notwithstanding numerous uniform appellate court decisions, her belief that the limitations of Section 526a are unfair to persons who do not own property in California and her dissatisfaction with the appellate court's adverse decision against her are not sufficient grounds to warrant this Court's review.

As discussed fully below, the instant petition is meritless because it neither presents a necessity to secure uniformity of decision, nor necessity to settle an important question of law. This petition should be denied.

STATEMENT OF ISSUES

The issues presented by this appeal are whether this Court may drastically extend taxpayer standing to persons who have not been assessed any tax, notwithstanding the plain language of Code of Civil Procedure section 526a, clear Legislative intent and settled, uniform appellate court case authority.

STATEMENT OF FACTS

Petitioner's complaint sought declaratory and injunctive relief challenging the City's practice of imposing a 30-day impoundment of vehicles pursuant to Veh. Code § 14602.6, primarily applied to vehicles operated by drivers driving with a suspended or revoked license or without ever having had any license. (Clerk's Transcript on appeal, hereinafter "CT", 3.) Petitioner alleged that in many cases the driver whose conduct caused the impoundment was not the sole owner of the vehicle, and the 30-day impoundment resulted in loss of use of the vehicle for other owners and users of the vehicle. (Id.) Petitioner acknowledged she never had her vehicle impounded pursuant to § 14602.6, and she did not allege she was in any way affected by implementation of § 14602.6. Rather, petitioner

asserted standing to bring the action as a taxpayer under Code of Civ. Proc. 526a. (CT 2-3.) She conceded she had not paid any property taxes, but claimed she had taxpayer standing because she paid sales and gasoline tax, and water and sewage fees and other taxes routinely imposed by municipalities. (CT 1.) Petitioner acknowledged that the controlling case authority required payment of property taxes for taxpayer standing under § 526a and she conceded her claims were precluded under existing law. (CT 13.) The parties entered into a stipulation for an order and judgment of dismissal, reserving petitioner's rights of appeal. (CT 13-14.) Judgment was entered on April 22, 2013. (CT 16.) The trial court's judgment of dismissal was affirmed on appeal, and the appellate court's opinion was filed on May 22, 2014. (See *Wheatherford v. City of San Rafael* (2014) 226 Cal.App.4th 460.) The appellate court correctly found petitioner lacked taxpayer standing to challenge the City's vehicle impoundment practices, and petitioner offers no valid basis for this Court's review.

LEGAL DISCUSSION

I. THERE ARE NO GROUNDS FOR SUPREME COURT REVIEW

Review should be denied for the simple reason that the issue of what type of tax is required to secure taxpayer standing under section 526a is settled, and review is unnecessary to secure uniformity of decision or to settle an important question of law. (California Rules of Court, Rule

8.500(b).) No conflicting California Supreme Court or appellate court decisions exist regarding this issue. Indeed, the appellate court cases addressing the precise issue of the types of tax required for taxpayer standing under Section 526a consistently hold that payment, or obligation to pay, real property or business tax is required under the plain language of the statute.

That no California Supreme Court decision has been published addressing the precise issue does not show any conflict in authority. Indeed, petitioner's argument that, in the 105 years since Section 526a originally was enacted, this Court considered "dozens of taxpayer cases brought under the state" yet "never expressly said what type of taxes must be paid to qualify for standing under section 526a" is telling. It is so well settled that payment of sales and gasoline taxes or municipal fees is insufficient to qualify for taxpayer standing, and that the assessment of real property or business taxes is required, that Supreme Court review of the issue over the past 105 years has been unnecessary. The basis for taxpayer standing under section 526a is well settled, thus review is unnecessary to settle an important question of law, and there are no conflicting decisions requiring Supreme Court review to secure uniformity.

Given that there are no grounds for Supreme Court review, this petition should be denied.

II. THE PETITION IS UNSUPPORTED BY THE APPLICABLE LAW

A. THE TYPE OF TAX THAT MUST BE PAID TO QUALIFY FOR TAXPAYER STANDING UNDER SECTION 526A IS WELL SETTLED AND UNIFORMLY APPLIED

Code of Civil Procedure Section 526a provides in part that:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to ... funds, or other property of a county, town, city or city and county of the state, may be maintained ... either by a citizen resident therein ... who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid a tax thereon.

The primary purpose of section 526a is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the ordinary standing requirements. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268.) "The courts have liberally construed the standing requirement for taxpayers ... Nonetheless, a plaintiff must establish he or she is a taxpayer to invoke standing under section 526a." (*Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 873; *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1047.) The courts notably have not extended taxpayer standing to the entire citizenry, and no case has found taxpayer standing exists for persons who merely pay sales or gasoline taxes or municipal fees.

1. The Plain Language Of Section 526a Establishes That Payment Of Sales And Gasoline Taxes And Municipal Fees Are Insufficient To Support Taxpayer Standing

In analyzing statutory construction, it is well settled that the Court will give the language of the statute "its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.' [Citation.] If, however, the statutory language is ambiguous, "we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." [Citation.] Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. [Citation.] Any interpretation that would lead to absurd consequences is to be avoided. [Citation.]" (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227 (internal citations omitted); *see also Mejia v. Reed* (2003) 31 Cal.4th 657, 663; *Klein v. United States of America* (2010) 50 Cal.4th 68, 80.)

The first step of statutory construction is for courts to give the words of the statute "a plain and commonsense meaning." (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 577.) Section 526a provides that "a citizen resident" within the jurisdiction of the city who is "assessed for and is liable to pay" a tax, or who "has paid a tax therein" within one year before the action is commenced has taxpayer standing to challenge an illegal

public expenditure. The meaning of the term "assessed" means more than simply reimbursing a retailer for its payment of sales or gasoline taxes, as it requires that the tax be imposed on a person who is legally bound to pay it. An "assessment" is defined as "Official valuation of property for purposes of taxation." [Emphasis added.] (Black's Law Dictionary, 9th Ed. 2009; *see also Abrams v. City and County of San Francsico* (1941) 48 Cal.App.2d 1, 6 and *Flinn v. Zerbe* (1919) 40 Cal.App. 294, 296.[1])

The ordinary definition of the term "assessed" thus requires both valuation of property and imposition of a tax based on the property value. California's property tax statutory scheme illustrates that this is the intended definition of the term "assessed." Local governments primarily are supported by the general property tax on real property and tangible personal property; such "tax is imposed by the local subdivision (county or

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[1] *See also,* Report of the Senate Interim Committee on State and Local Taxation, 1953 Regular Session, January 1953, Part Four, *A Legal History of Property Taxation in California,* Div. III, Assessment and Equalization of Property.

> Broadly speaking, an assessment is the process of officially listing and valuing property. (*Ferris v. Cooper* (1858) 10 Cal.589, 633.) As said in 51 Am. Jur. 615:
>
> "While strictly speaking, the 'assessment' of a tax is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district, the word as commonly employed refers to the processes of listing the persons, property, etc., to be taxed, and the valuation of the property." (Id., at p. 11.)

city or both) in which the property is located. (9 Witkin, B.E., Summary of California Law, (10th ed. 2009) *Taxation*, at p. 164, § 114.)[2]

Further, "Taxes assessed ... are liens on the property assessed. Taxes upon personal property are liens upon the owners' real property..." and the liens may be enforced by a sale of the real property or an action to foreclose the liens. (Cal. Govt. Code §§ 43001 and 43003.) The term "assessed" as it specifically relates to city taxes plainly refers to real or personal property. It does not refer to gasoline or sales tax.

The plain language of Section 526a confers taxpayer standing only upon individuals who have had a tax *assessed* against them. The appellate court correctly found "the statute gives standing to two classes of persons who have been assessed for taxes: (1) those who are liable to pay an assessed tax but who have not yet paid, and (2) those who paid an assessed tax within one year before the filing of the lawsuit." (*Wheatherford,* 226 Cal.App.4th at 466.) The meaning of the term "assessed" is unambiguous and cannot be construed to mean payment of sales or gasoline taxes, especially since such taxes are levied upon the vendor of goods, not the

[2] Use of the term "assessed" in other statutes likewise makes clear the term applies to taxation of real and personal property. Govt. Code § 43000 provides that "By ordinance the city legislative body shall provide a system for the assessment, levy and collection of city taxes." For purposes of city taxes, assessed value is defined as a specified percentage of the full value of the property. (Cal. Govt. Code § 43004.5.) *See also,* Cal. Const. Art. XIII, § 1, and Rev. & Tax Code § 201, all property is taxable and must be taxed in proportion to its full value unless exempted; 9 Witkin, Summary of California Law, at p. 253, § 163.)

consumer, and are administered and collected by the State Board of Equalization, not the local governmental entity against which standing is sought. (*See e.g.,* Rev. & Tax Code §§ 6051, 7051, *et seq.,* 7361.) Petitioner provides no legal basis to disregard the Legislature's particular use of the term "assessed", or to redefine the term to mean the mere payment of sales or gasoline taxes by anyone passing through the boundaries of a public entity.[3]

The plain language of the statute is clear that payment of sales or gasoline taxes or municipal fees is insufficient to confer taxpayer standing, thus this Court's review is unnecessary.

B. THE APPELLATE COURTS UNIFORMLY HOLD THAT ASSESSED PROPERTY OR BUSINESS TAXES ARE REQUIRED FOR TAXPAYER STANDING

Given the Legislature's use of the term "assessed" in conferring taxpayer standing under section 526a, appellate court case authority uniformly holds that payment of sales and gasoline tax is insufficient to

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[3] The payment of fees likewise cannot support taxpayer standing under Section 526a. Fees and taxes are distinctly different, and the payment of fees for garbage, sewer and other municipal services is insufficient to confer taxpayer standing. The essence of a tax is to raise revenue for general governmental purposes and is compulsory. By contrast, fees are voluntary and intended to compensate for services or benefits provided. (*Northwest Energetic Services, LLC v. California Franchise Tax Board* (2008) 159 Cal.App.4th 841, 854, citing *Sinclair Paint Co. v. State Bd. Of Equalization* (1997) 15 Cal.4th 866, 874.) A fee is the consideration voluntarily given in return for the service provided. (*Cornelius v. Los Angeles Co. Metro. Transp. Auth.* (1996) 49 Cal.App.4th 1761, 1777, fn. 6.)

support standing under section 526a. Sales and gasoline taxes are imposed upon businesses, not consumers. A sales tax "is not a property tax on the buyer, but an excise or privilege tax on the retail seller, based on the gross receipts of retail sales of tangible personal property in California." (9 Witkin, Summary of California Law, at p. 497, § 344; *see also* Rev. & Tax Code 6051.) The retail sales tax "is an excise tax on the privilege of operating retail mercantile enterprises ..." (*Roth Drug, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 739; *see also, Xerox Corp. v. County of Orange* (1977) 66 Cal.App.3d 746, 756.) The sales tax law thus imposes a tax on the retailer, and "does not impose the tax on the consumer." (*Roth Drug, Inc. v. Johnson,* 13 Cal.App.2d at 736; Sales Use and Tax Law, Rev. & Tax. Code § 6001, *et seq.*)[4]

Gasoline taxes likewise are imposed against retailers, vendors, and distributors, but not consumers. (See Rev. & Tax. Code §§ 7360, *et seq.*, 8733; *see also, Standard Oil Co. v. Johnson* (1938) 10 Cal.2d 758, 767-768; Rev. & Tax. Code §§ 7351 [fuel tax is imposed on the distributor] and 8733 [fuel tax is debt owed by vendor]; *People v. Sonleitner* (1960) 185 Cal.App.2d 350, 366 [intent of gas tax law is to levy tax upon distributor of gasoline who can recapture the money from consumer].)

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[4] See also, Stats. 1978, Chapter 1211, § 19, *see also 9* Witkin, Summary of California Law, at p. 498, § 344.)

Sales and gasoline taxes are levied against a *retailer,* and are insufficient to confer taxpayer standing under § 526a to an individual *consumer.* Appellate court cases uniformly have held that sales taxes are levied against the retailer, not the consumer, thus a consumer's payment of sales tax is an insufficient basis for §526a standing.

In *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, plaintiffs, who were neither city residents nor city property tax payers, did not qualify for taxpayer standing under § 526a. Plaintiffs sought to challenge the City's proposed amended redevelopment project and claimed that they could not afford to live in the City, but were interested in moving there. They argued their payment of sales tax on the purchase of a few items in the City within the one year before filing the action sufficed to confer taxpayer standing. The court rejected their argument and reiterated that, "Contrary to plaintiffs' analysis, a sales tax is a levy imposed on the retailer, not the consumer." (*Id.* at 1047, *citing* Rev. & Tax. Code § 6051 *and Western Lithograph Co. v. State Board of Equalization* (1938) 11 Cal.2d 156, 162.) The retailer, in turn, may or may not choose to pass on the burden to the consumer. (*Torres*, 13 Cal.App.4th at 1047.) The Court concluded that while the price of goods purchased in the city was increased by the amount of the sales tax, "the tax was imposed on the person who sold the goods to them," thus § 526a did not confer taxpayer standing on plaintiffs. (*Id.* at 1048.)

In *Cornelius v. Los Angeles Co. Metro Transp. Auth.* (1996) 49 Cal.App.4th 1761, a non-resident engineer employed by a subcontractor that had its bid on a project rejected by the county's transportation authority challenged the constitutionality of an affirmative action program for awarding contracts. He admittedly did not own real property or pay real property taxes in the county, but claimed he was entitled to taxpayer standing because he had paid sales and gasoline taxes and public transportation fares. The Court specifically defined the issue before it as "what type of tax the plaintiff must pay in order to have standing under Code of Civil Procedure section 526a." (*Id.* at 1775.) The court acknowledged that other cases had found payment of real property taxes was sufficient to confer taxpayer standing, but no case had found payment of property taxes was necessary to obtain standing under § 526a. (*Id.*)

Reviewing the language of section 526a, the court concluded the statute's use of the phrase "assessed" was "consistent with ad valorem property taxes, be that on real property or personal property." (*Id.*) The court rejected the argument that payment of sales taxes and gasoline taxes sufficed to confer taxpayer standing, and found the claim that payment of transportation fares conferred standing "borderline frivolous." (*Id.* at 1777-1778 and fn. 6.) The court held the plaintiff did not have taxpayer standing because (1) he did not pay any property taxes directly to the county; (2) the sales and gasoline taxes he paid were taxes imposed on the retailer, not the

consumer; and (3) payment of state income taxes were insufficient to confer standing to bring suit against a county agency. (*Id.* at 1775-1780.)

In *Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Co. Assn. of Governments* (2008) 167 Cal.App.4th 1229, the Court found a *county retailer* who paid sales taxes on the sale of T-shirts sufficiently established standing under § 526a because it "established liability to pay a tax assessed by Santa Barbara County." (*Id.* at 1236.) As the party directly assessed the sales tax, the retailer could properly challenge a local county taxing measure. The Court explained that, "Even if a merchant passes the tax on to the consumer ... a sales tax is considered a tax on the retailer." (*Id., citing Cornelius, supra,* 49 Cal.App.4th at 1777-1778.) Accordingly, a county retailer who actually remits a sales tax levied upon the goods he vends may assert taxpayer standing, but the customer to whom the retailer may or may not pass on the tax burden may not.

In *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, Reynolds challenged the City's operation of a reservoir and its use of Napa County sales tax revenues, claiming he had taxpayer standing under Section 526a because he paid sales tax as a consumer buying retail products in the County. (*Id.* at 867, 871.) The appellate court found Reynolds lacked standing because he failed to show he was a taxpayer within the meaning of Section 526a, and again reiterated that "payment of sales tax, as a consumer buying retail products in Napa County, is insufficient because sales tax is

imposed on the retailer, not the consumer." (*Id.* at 872.) The payment of sales tax was again held insufficient to invoke taxpayer standing under section 526a.

The appellate court's decision in the instant case likewise found the payment of sales tax (and service fees) did not fall within the statutory language of an "assessed" tax and was insufficient to confer taxpayer standing under Section 526a. (*Wheatherford*, 226 Cal.App.4th at 466.)

These cases directly addressing the issue of what type of tax must be paid to obtain taxpayer standing make clear that the payment of, or obligation to pay, taxes assessed directly against the plaintiff is a fundamental requirement of "taxpayer" status, and the payment of sales or gasoline consumer taxes are insufficient. Appellate court case authorities uniformly hold payment of sales or other consumer taxes is insufficient to acquire taxpayer standing, and uniformly require that property or business taxes be assessed against the plaintiff for taxpayer standing under section 526a to attach. Petitioner fails to cite a single case deviating from these requirements.[5] Appellate court decisions addressing the issue of what type

[5] Petitioner's reliance on *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349 as somehow supporting her claim that she should be afforded taxpayer standing is misplaced, as that case is inapposite. *Sipple* did not involve issues of taxpayer standing under Section 526a. *Sipple* presented "unique circumstances", and the court there held New Cingular, an internet service provider, had standing to seek tax refunds on behalf of its customers because it was directly involved in overcharging its customers internet access taxes and paid those taxes to the defendant public entities; it had a

of tax is required for Section 526a taxpayer standing are uniform in their requirements, and this Court's review of the issue is unwarranted.

C. APPELLATE COURT AUTHORITY DOES NOT CONFLICT WITH ANY SUPREME COURT AUTHORITY

Petitioner erroneously asserts the appellate court decisions requiring an "assessed" tax for standing under Section 526a conflict with the decisions of this Court, and she misrepresents that "[this] Court has found taxpayer standing on the part of plaintiffs who plainly had not paid real property or business taxes, and necessarily paid other forms of taxes, like income, sales and gasoline taxes," citing *Tobe v. City of Santa Ana* (1995) 13 Cal.App.4th 1069 and *Arrieta v. Mahon* (1982) 31 Cal.3d 281. (Petition, pp. 4 and 5, underline in original.) Neither of these cases addressed the issue of the type of tax necessary to invoke taxpayer standing, or hold that payment of income, sales or gasoline tax is a sufficient basis for Section 526a standing.

In *Tobe,* the plaintiffs were "homeless persons and taxpayers" and persons who had been charged with violating the challenged city ordinance

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direct interest in seeking the refunds from the entities because it was sued by its customers for the improper charges and settled the case by agreeing to obtain the tax refunds from the entities and refund its customers; and no refunds would be retained by New Cingular. (*Id.* at 361-362.) Indeed, even if the case had involved taxpayer standing issues under Section 526a, which it did not, *Sipple* in no way supports petitioner's claims that she should be afforded taxpayer standing based on payment of sales tax, because internet access taxes actually were assessed against New Cingular and paid by New Cingular. (*Id.*)

banning camping and storage of personal property in public areas. (*Tobe*, 9 Cal.4th 1081-1082.) This Court found plaintiffs had standing to bring the action as taxpayers under section 526, noting that "Most of the plaintiffs have been cited and fined for violations of the ordinance, and most are taxpayers." (*Id.* at 1119.) The decision did not address the issue of what taxes plaintiffs had paid to obtain such standing. Petitioner's assertion that, because two of the plaintiffs were homeless, the Court must have granted taxpayer standing to them irrespective of whether they were assessed or paid property taxes, is entirely unsupported by this Court's opinion. The decision included no such discussion at all of what taxes were paid by which plaintiffs, and it did not foreclose the myriad possibilities that the homeless persons had paid an assessed tax within the year before commencing the action, or that they were liable to pay an assessed tax on some sort of property in the city. Indeed, the basis for standing in *Tobe* was not limited solely to taxpayer standing because some of the plaintiffs had sustained actual injury by having the ordinance enforced against them. (*Id.* at 1082, 1119.) That the plaintiffs were homeless, in and of itself, does not support the inferential leap that payment of assessed taxes is not required for standing under section 526a.

In *Arrieta v. Mahon* (1982) 31 Cal.3d 281, plaintiffs were a group of tenants who brought a section 526a taxpayer action challenging the county marshal's policy of evicting all occupants when enforcing a writ of

execution after an unlawful detainer judgment, regardless of whether or not the occupants were named in the writ. (*Id.* at 385.) This Court concluded the plaintiffs had standing to bring the suit under section 526a, however, it did not address or specify what taxes the plaintiffs had paid or been assessed to qualify for taxpayer standing.

Neither of these cases addressed the issue of what types of taxes must be paid for taxpayer standing under section 526a to apply, and they do not support petitioner's claim that the cases show that payment of *any* type of tax, including sales and gasoline taxes, suffices for taxpayer standing. (*People v. Knoller* (2007) 41 Cal.4th 139, 154-155, "It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. An opinion is not authority for propositions not considered.")

Notwithstanding petitioner's attempt to conjure an unsettled issue to obtain this Court's review, the decisions within this Court are not in conflict. In *Blair v. Pitchess* (1971) 5 Cal.3d 258, plaintiffs were residents of the county who all had been assessed and paid real property taxes, and thus had standing under section 526a to bring suit against county officials. (*Id.* at 269.) Likewise, in *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, a non-resident who owned property and paid property taxes within the city had standing to bring a taxpayer action against the City under section 526a. In *Van Atta v. Scott* (1980) 27 Cal.3d 424, the Court

noted the plaintiffs had taxpayer standing under section 526a even though others directly affected by the challenged governmental action also had standing. (*Id.* at 447-449.) None of these cases addressed the type of tax that must be paid, and none found that payment of sales or other tax unrelated to an assessed tax sufficed to confer standing. Petitioner fails to cite any decision by this Court that conflicts with appellate court decisions, or with another decision by this Court.

That this Court has not directly addressed the issue of the type of tax that must be paid to confer standing under section 526a in the 105 years since the statute was enacted is not a basis for Supreme Court review, particularly given that appellate court authority on the issue is clear and uniformly applied. Petitioner's personal desire for this Court to issue an opinion on the matter simply because none currently exists is not a proper basis for review.

D. REVIEW IS UNNECESSARY TO SETTLE ANY IMPORTANT ISSUE OF LAW

As the authorities discussed above and cited in petitioner's Petition demonstrate, the issue of the type of tax that must be paid or assessed is well settled, and it is clearly established that mere payment of sales,

gasoline or municipal fees are insufficient to confer taxpayer standing under section 526a.[6]

Further, petitioner's attempt to create an issue warranting review by suggesting that section 526a violates equal protection principles and is subject to strict scrutiny, is meritless. It is well established that, in evaluating equal protection claims, the Court "must decide, first, whether (state legislation) operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. ... If not, the (legislative) scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination." [Emphasis added.] (*Maher v. Roe* (1977) 432 U.S. 464, 470.)

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[6] Petitioner also improperly claimed for the first time in her appeal that she should be afforded taxpayer standing based on her payment of income taxes. (*Bank of America, N.A. v. Roberts* (2013) 217 Cal.App.4th 1386, 1399.) *Cornelius, supra*, addressed the precise issue of whether income taxes sufficed to confer standing under section 526a, and made clear that the payment of income tax did not support taxpayer standing. The relationship between income taxes paid and the policy being contested was tangential; permitting taxpayer standing based on payment of state income taxes could lead "to a legal challenge by any resident in any of our state's 58 counties" and "sound public policy [does not] permit the haphazard initiation of lawsuits against local public agencies"; and it is unnecessary to further the purposes underlying § 526a. (*Cornelius*, 49 Cal.App.4th at 1778-1779.) Petitioner fails to cite any authority permitting section 526a standing based on payment of income taxes.

Limiting taxpayer standing under section 526a to persons who have paid or are liable to pay an assessed tax involves no discrimination against a suspect class. The U.S. Supreme Court specifically stated it "has never held that financial need alone identifies a suspect class for purposes of equal protection analysis." (*Id.* at 471.) In *Maher,* plaintiffs claimed a welfare department policy excluding nontherapeutic abortions from a state welfare program that subsidized medical expenses incident to pregnancy violated equal protection rights. The Supreme Court disagreed and explained,

> An indigent [person] does not come within the limited category of disadvantaged classes so recognized by our cases. Nor does the fact that the impact of the regulation falls upon those who cannot pay lead to a different conclusion. In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis. (*Maher*, 432 U.S. at 470-471.)

Consequently, petitioner's claim that she cannot afford to purchase real property in California, or that she has limited financial resources, does not implicate any suspect class, and limiting taxpayer standing to persons who paid or are liable to pay an assessed tax does not discriminate against any suspect class or require strict scrutiny of section 526a. "The Constitution does not provide judicial remedies for every social and economic ill." (*Lindsey v. Normet* (1972) 405 U.S. 56, 74.)

Petitioner also cites no authority showing any fundamental right to sue every public entity to challenge expenditure of public monies, irrespective of any ties to the entity or concrete interest in the outcome of the litigation. Her reliance on *Serrano v. Priest* (1971) 5 Cal.3d 584 is misplaced, as that case involved the right to education in the public schools, which is recognized as a fundamental right. As the appellate court below noted, that case involved plaintiffs who were indigent, not persons who cannot afford to own real property in California, and the public school financing system itself inequitably affected a fundamental right. (*Wheatherford*, 226 Cal.App.4th at 468; *Serrano*, 5 Cal.3d at 589, 597-598.) Limiting taxpayer standing under section 526a to persons who paid or are liable to pay an assessed tax does not implicate any suspect class or affect a fundamental right. Strict scrutiny thus is inapplicable.

Rather, section 526a is evaluated under the rational basis test, which requires that a statute "should be sustained if [the court] find[s] that its classification is rationally related to achievement of a legitimate state purpose." (*Western & Southern Life Ins. Co. v. State Bd. of Equalization* (1981) 451 U.S. 648, 657.) As the U.S. Supreme Court has made clear:

> [R]ational-basis review in equal protection analysis "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. ..." Nor does it authorize "the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. ... For these reasons, a classification neither

> involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. ... Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. ... Further, a legislature that creates these categories need not "actually articulate at any time the purpose or rationale supporting its classification..." Instead, a classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." ...
>
> A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. ... A statute is presumed constitutional, ... and "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it," ... whether or not the basis has a foundation in the record. ... A classification does not fail rational-basis review because it "'is not made with mathematical nicety or because in practice it results in some inequality.'" [Internal citations omitted.]

(*Heller*, 509 U.S. at 319-321; *see also, D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 17, the burden of demonstrating the invalidity of a challenged classification "rests squarely upon *the party who assails it.*")

The limitation of taxpayer standing under section 526a to persons who paid or are liable to pay an assessed tax is rationally related to general standing requirements. It is well established that a fundamental principle of standing is that the plaintiff "must be beneficially interested in the controversy ... This right must be concrete and actual and must not be conjectural or hypothetical." (*Sipple*, 225 Cal.App.4th at 359.) "[T]axpayers have a sufficiently personal interest in the illegal expenditure

of funds by [public] officials to become dedicated adversaries. ... an action meeting the requirements of section 526a thereby presents a true case or controversy." (*Blair*, 5 Cal.3d at 270.) Taxpayers who pay property tax, business tax or are assessed a tax within the jurisdiction are sufficiently interested in the expenditure of public funds in the jurisdiction to become dedicated adversaries. Limiting taxpayer standing to payment or liability for an assessed property or business tax thus is rationally related to general standing requirements and does not violate equal protection.

The law regarding petitioner's claim to taxpayer standing based upon payment of sales or gasoline tax is well settled, and review is unnecessary to settle any important issue of law.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for review and respondent should be awarded its costs incurred in answering this petition.

Dated: August 13, 2014

BERTRAND, FOX & ELLIOT

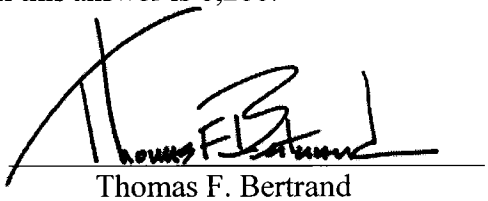
By: _____

Thomas F. Bertrand
Richard W. Osman
Attorneys for Defendants/Respondent
CITY OF SAN RAFAEL

CERTIFICATE OF WORD COUNT
(California Rules of Court, Rule 8.504(d))

In compliance with California Rules of Court, Rule 8.504(d), I certify that the number of words in this answer is 6,286.

Dated: August 13, 2014



Thomas F. Bertrand

PROOF OF SERVICE

I, John O'Rourke, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 2749 Hyde Street, San Francisco, California 94109. On the date indicated below true copies of the attached document (Answer to Petition for Review) were placed in a sealed envelope, postage prepaid, and deposited in the United States Mail, address as follows:

Clerk of the California Supreme Court
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102

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(Via E-Filing Only)

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Trial Court

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 13th day of August, 2014.

John O'Rourke