

Civil No. S194861

SUPREME COURT COPY
IN THE SUPREME COURT OF CALIFORNIA

California Redevelopment Association, et al.
Petitioners,

v.

Ana Matosantos, et al.
Respondents.

SUPREME COURT
FILED

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**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND
AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS
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**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN
SUPPORT OF PETITIONERS**

Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court, the Public Interest Law Project, the Western Center on Law & Poverty, California Rural Legal Assistance, Public Counsel and Legal Services of Northern California submit this application to file an *amici curiae* brief in support of petitioners. This application is timely made pursuant to the Court's order dated August 11, 2011, as modified on August 17.

Amici Curiae

Amici curiae are California non-profit organizations that represent lower income clients, many of whom have benefited substantially over many years from the provisions of California Redevelopment Law requiring local redevelopment agencies to finance and produce housing affordable to lower income families.

The Public Interest Law Project. The Public Interest Law Project is a California non-profit corporation providing litigation support and other assistance to local legal services offices throughout California on issues related to housing, public benefits, civil rights and community redevelopment. The Project sponsors the **California Affordable Housing Law Project (CAHLP)**. For more than twenty years, CAHLP has provided assistance to local programs on a wide range of housing issues, but concentrates primarily on redevelopment, land use and fair housing matters. It provides assistance to local legal services programs regarding implementation and enforcement of redevelopment plans and statutes obligating local jurisdictions to increase, improve and preserve affordable housing.

California Rural Legal Assistance, Inc. California Rural Legal Assistance, Inc. (CRLA) was created in 1966 as a statewide not-for-profit law firm to provide legal representation to rural low-income tenants, farmworkers and other rural poor throughout California. CRLA has enabled thousands of low income people and farmworkers to have access to justice in the civil legal system in California in substantive areas including housing and civil rights. Enforcement of their fundamental rights to decent, affordable housing and fair access to housing is a priority for all of CRLA's 21 field offices throughout the State. CRLA clients face some of the worst housing conditions imaginable, living in canyons, under porches, in garages, in their vehicles and in dwellings that lack the most basic amenities of heat, hot water, functional plumbing and electricity, potable water and structural integrity. They are in dire need of the lower income housing that redevelopment funds provide.

Legal Services of Northern California. Founded in 1956, Legal Services of Northern California (LSNC) is a non-profit organization that provides no-cost civil legal services and representation to low-income persons in 23 northern California counties. Redevelopment law-related enforcement and advocacy on behalf of its clients in need of affordable housing has been a central part of LSNC's work for nearly 25 years.

Public Counsel. Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel specializes in delivering pro bono legal services to low-income communities -- advancing equal justice under law by delivering services to indigent and underrepresented children, adults, and families throughout Los Angeles County, ensuring that other community-based organizations serving this population have legal support, and mobilizing the *pro bono* resources of attorneys, law students

and other professionals. Public Counsel annually delivers over \$88 million of free assistance to low-income clients in underserved areas and addresses systemic poverty and civil rights issues through impact litigation and policy advocacy.

Western Center on Law and Poverty. The Western Center on Law and Poverty, founded in 1967, is California’s oldest and largest support center for the State’s neighborhood legal services programs. One of the Western Center’s major priorities is enforcement of affordable housing laws. The Western Center was a primary sponsor of the 1976 legislation requiring redevelopment agencies to set aside 20% of their tax increment funds for affordable housing.

The Interests of Amici Curiae

Amici are non-profit providers of legal services to lower income and indigent persons in California that work on behalf of their clients to implement and enforce the requirements of California Redevelopment Law (“CRL”). (Health and Safety Code § 33000 *et seq.* ¹) The CRL requires that 20% of the “tax increment” funds allocated for local redevelopment pursuant to Article XVI, Section 16 of the California Constitution be deposited into a Low and Moderate Income Housing Fund to be used to increase, improve and preserve the supply of housing in redevelopment areas that is affordable to low and moderate income households. The CRL also mandates that communities produce and replace affordable housing in those areas. (§ 33413.) *Amici* have extensive experience representing clients and organizations throughout California in efforts to ensure compliance with these affordable housing obligations and to preserve and create housing opportunities for lower income residents of redevelopment

¹ All statutory citations are to the California Health & Safety Code unless otherwise indicated.

areas. The knowledge and perspective brought by *amici* will be valuable to the Court's consideration of the merits of this petition.

There are more than 400 jurisdictions in the State subject to the affordable housing requirements of the CRL, provisions that are in widespread use to address the chronic lack of sufficient affordable housing in California. *Amici's* experience provides them with a unique perspective on the nature, broad purpose and practical effect of these laws.

Amici's immediate interest derives from AB1X 27's provision that the funds remitted by a local government to the county auditor as a condition of continuing redevelopment for the 2011-12 fiscal year may be contributed from the Low and Moderate Income Housing Fund portion of the tax increment funds of surviving redevelopment agencies. (§ 34194.3.) The legislation also does not preclude reimbursement of remittances in succeeding years from the Low and Moderate Income Housing Fund. (§ 34194.2) The diversion of these funds is illegal and will substantially impede the ability of agencies to produce and replace lower income housing in the communities that generated the tax increment.

Amici's Proposed Further Briefing

Amici have reviewed the briefs of the parties and are thoroughly familiar with the issues raised in this case. *Amici's* experience and expertise in the field will assist the Court in determining the constitutional validity of AB1X 26 and AB1X 27 in the context of Articles XVI and Article XIII of the California Constitution, as the latter was amended by Proposition 22 (2010).

Amici will address Article XVI, Section 16 and Proposition 22's amendments to Section 25.5 of Article XIII. Section 16 prohibits diversion of "tax increment" funds to other taxing entities until all indebtedness of redevelopment project areas is paid. Proposition 22 prohibits the Legislature from enacting statutes that would require a community

redevelopment agency to transfer, use, restrict or assign a particular purpose to tax monies allocated to the agency for the benefit of the State or other jurisdiction. AB1X 26 and 27 effectively require redevelopment agencies to divert tax increment funds for these illegal purposes.

Statement Required by Rule 8.520(f)(4)

No party or counsel for a party authored the proposed brief in whole or in part.² No person or entity other than *amici curiae* made a contribution intended to fund the preparation or submission of the brief.

Conclusion

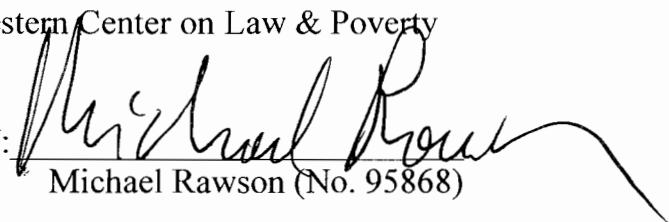
Amici curiae respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: September 30, 2011

Respectfully submitted,

California Affordable Housing Law
Project of The Public Interest Law
Project
California Rural Legal Assistance, Inc.
Legal Services of Northern California
Public Counsel
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BY:



Michael Rawson (No. 95868)

² Lead counsel for the petitioners, Steven L. Mayer, serves on the Board of Directors of amicus Western Center on Law and Poverty. Neither Mr. Mayer nor any Western Center Board member played a role in the decision of the Western Center to participate as an *amicus curiae* in this case.

AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The severe State budget deficit in a time of great recession undeniably calls for extraordinary action to maintain a working and effective state government that provides basic services in the face of reduced revenue. Though the urge to bend the existing limits of the State Constitution may seem justified in the face of such an insurmountable task, heightened vigilance by the judiciary is critical to preserving the rule of law and protecting the rights of California communities and families in desperate need of decent affordable housing. The enactment of AB1X 26 and 27 amounts to just such an overreach of the Constitution, and this Court should strike them down.

AB1X 26 and 27 were adopted by legislators in the final throes of the State budget crisis in a desperate attempt to cobble together a balanced budget. The bills were enacted as a package by the Legislature with the intent of redistributing to the State and other taxing entities the property tax “increment” allocated to finance implementation of redevelopment plans pursuant to Article XVI, Section 16 of the California Constitution as implemented by § 33670. However, the diversion of tax increment funds from redevelopment agencies to so-called successor agencies or to the State or other taxing jurisdictions prior to full payment of all redevelopment indebtedness violates both Article XVI and Article XIII, Section 25.5 (as amended by Proposition 22 in 2010) of the California Constitution.

Article XVI, Section 16 granted the Legislature the authority to allow local governments to adopt redevelopment plans requiring that a portion of local property taxes be dedicated to financing redevelopment in blighted areas. (CAL. CONST. art. XVI, §16.) More than 700 such plans have been adopted throughout the State, and Section 16(b) only permits

redirection of the tax increment generated by these plans to other taxing entities after all indebtedness of a redevelopment project has been paid. (*Ibid.*) AB1X 26 and 27 both permit diversion of tax increment before the full retirement of redevelopment debt.

Article XIII, Section 25.5(a)(7) further forbids the Legislature from requiring redevelopment agencies to expend or transfer tax increment funds, or to restrict their use for benefit of the State or other jurisdictions. (CAL. CONST. art. XIII, § 25.5(a)(7).) There are only two exceptions to this proscription, but the transfers required or authorized by AB1X 26 and 27 qualify under neither one.

Finally, Articles XVI and XIII presume the existence of redevelopment agencies and the Legislature's purported dissolution and reprieve of redevelopment agencies under AB1X 27, or revival as successor agencies under AB1X 26, is ineffective and without legal purpose.

II. SUPPLEMENTAL FACTUAL AND LEGAL BACKGROUND

The Legislature has declared that

[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian . . . is a priority of the highest order.

(Gov't Code § 65580(a); *see also* Gov't Code §§ 65589.4(g), 65589(d), 65589.5(g) and 65589.7(f).) The State, however, faces a crisis in housing affordability of staggering proportions, affecting the social and economic well-being of all Californians. Redevelopment represents California's single largest and most sustained effort to address the State's chronic shortage of affordable housing for lower income households. Since 1976 the Legislature has established and strengthened a legal framework to ensure the funding and development of affordable housing in blighted communities throughout the State. The results have been substantial,

improving the lives of thousands of families and providing thousands of jobs.

A. California Endures An Affordable Housing Crisis With Serious Impacts On The State's Social And Economic Health.

California remains mired in a chronic housing crisis. It ranks in the top four of the least affordable rental markets in America. (J. Center for Housing Studies of Harvard Univ., *America's Rental Housing: Meeting Challenges, Building on Opportunities* (2011) p.33.³) Despite the economic downturn, rents continue to rise with five of the ten most expensive rental markets in the nation in California. (Public Policy Inst. of Cal., *California Housing: Planning for a Better Future* (June 2011) p. 3.⁴)

Measured against the standard measure of affordability—that a household should not spend more than 30 percent of its income on housing—nearly half of all California households are overpaying for housing. (U.S. Census Bur., American Community Survey (2009).⁵) A minimum wage worker would need to work 131 hours per week—the equivalent of working more than three full time minimum wage jobs—to afford fair market rent. (The Nat. Low Income Housing Coalition, *Out of Reach 2011* (June 2011) p. 29.⁶) California's homeownership rate is the

³ Available at:
<http://www.jchs.harvard.edu/publications/rental/rh11_americas_rental_housing/AmericasRentalHousing-2011-bw.pdf>.

⁴ Accessed Sept. 23, 2011 at:
<http://www.ppic.org/content/pubs/report/R_611JK2R.pdf>.

⁵ Accessed Sept. 27, 2011 at:
<http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S2503&-s_name=ACS_2009_1YR_G00_&-CONTEXT=st&-tree_id=309&-redoLog=false&-geo_id=04000US06&-format=&-_lang=en>.

⁶ Accessed Sept. 23, 2011 at:
<<http://www.nlihc.org/oor/oor2011/oor2011pub.pdf>>.

second lowest in the nation, with Californians needing close to 200 percent of the median household income to purchase a median-priced home. (Cal. Budget Project, *Locked Out 2008: The Housing Boom and Beyond* (February 2008) pp. 10, 29.⁷)

The glaring truth is that incomes for the poorest Californians have not kept pace with rising costs of market rate housing. Forty-three percent of California households make less than \$50,000 per year,⁸ and 14 percent of Californians live below the poverty line.⁹ (U.S. Census Bur., American Community Survey (2009), *supra*.) Californians living on fixed-incomes face an even more daunting affordability gap. Recipients of Supplemental Security Income, for example, can only afford to spend \$254 per month on housing. (*Out of Reach 2011, supra*, p. 29.)

Thousands of California families struggle daily to balance the cost of housing with that of other basic necessities, such as food, clothing, healthcare, transportation, and childcare. (See American Community Survey (2009), *supra*.¹⁰) More than one million housing units in California

⁷ Accessed Sept. 23, 2011 at:
<http://www.cbp.org/pdfs/2008/080212_LockedoutReport.pdf>.

⁸ Accessed Sept. 27, 2011 at:
<http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S2503&-ds_name=ACS_2009_1YR_G00_-CONTEXT=st&-tree_id=309&-redoLog=false&-geo_id=04000US06&-format=&-_lang=en>.

⁹ Accessed Sept. 27, 2011 at:
<http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S1701&-ds_name=ACS_2009_1YR_G00_-CONTEXT=st&-tree_id=309&-redoLog=false&-geo_id=04000US06&-format=&-_lang=en>

¹⁰ Accessed Sept. 27, 2011 at:
<http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S2503&-

are overcrowded, causing serious health, safety and quality of life conditions. (See *Locked Out 2008: The Housing Boom and Beyond, supra*, p. 5.) Many Californians, therefore, face limited choices about where to live, often settling for lower-priced housing located away from job centers, resulting in long commutes, increased traffic congestion and pollution, and contributing to greater employee turnover and general decline in productivity. (Center for Workforce Preparation, U.S. Chamber of Commerce & J. Center for Housing Studies of Harvard Univ., *Strengthening Our Workforce and Our Communities Through Housing Solutions* (2005) pp. 7-12.¹¹) Making matters worse, after spending the largest portion of their incomes on housing, low income renters unable to invest in savings or education continue to face barriers to moving up the economic ladder. (*America's Rental Housing: Meeting Challenges, Building on Opportunities, supra*, p. 5.)

The gravest consequence of California's housing crisis by far is seen in the faces of the tens of thousands of individuals, children and families living on our streets. Our State's lack of affordable housing – cited as a leading cause of homelessness¹²– has given us the dubious distinction of leading the nation in numbers of people and families that are homeless. (Nat. Alliance to End Homelessness, *State by State Data on Homelessness*

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¹¹ Accessed Sept. 23, 2011 at:
<http://www.jchs.harvard.edu/publications/markets/wh05-1_workforce_housing_report.pdf>.

¹² U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger & Homelessness in America's Cities* (Dec. 2008).<http://www.usmayors.org/pressreleases/documents/hungerhomelessnessreport_121208.pdf> [as of Sept. 23, 2011] p. 19).

(2009).¹³) Nearly 160,000 are homeless in California, using emergency rooms, shelters, jails and our streets as regrettable substitutes for stable, permanent homes. (*Ibid.*)

California's dire affordable housing shortage also acts as a significant barrier to California's economic growth – as housing prices increase employment growth decreases. (Ritashree Chakrabarti & Junfu Zhang, *Unaffordable Housing and Local Employment Growth* (2010) p. 25.¹⁴) Employers need a stable supply of affordable housing to attract and retain workers, but find it lacking in this State. (The Center for Housing Policy, *The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development: A Review of the Literature* (Jan. 2011) p.1¹⁵; *Strengthening Our Workforce and Our Communities Through Housing Solutions, supra*, p. 7.)

B. California Redevelopment Law Currently Ensures Dedicated Funding and Mandatory Production Of Affordable Housing, Playing A Central Role In The State's Effort To Meet Its Affordable Housing Needs And Fulfill The State Housing Goal.

The Legislature has declared that “the provision of housing is itself a fundamental purpose of the [CRL] and that a generally inadequate statewide supply of decent, safe, and sanitary housing affordable to persons and families of low or moderate income . . . threatens the accomplishment of the primary purposes of the [CRL]” (§ 33334.6(a).) Accordingly,

¹³ Accessed Sept. 22, 2011] at: <<http://www.endhomelessness.org/content/article/detail/2797>>

¹⁴ Accessed Sept. 23, 2011 at: <<http://www.bos.frb.org/economic/neppc/wp/2010/neppcwp103.pdf>>

¹⁵ Accessed Sept. 23, 2011 at: <<http://www.nhc.org/media/files/Housing-and-Economic-Development-Report-2011.pdf>>

as we now discuss, the CRL requires adequate funding, production, and preservation of affordable housing in redevelopment project areas.

1. Low and Moderate Income Housing Fund.

Upon a local government's adoption of a redevelopment project area, redevelopment agencies are authorized by Article XVI, Section 16 of the California Constitution as implemented by the CRL to receive much of the "tax increment" that results from increased property values for the life of a redevelopment plan. (See J. Coomes, T. Hawkins, G. R. Famiza, I. Yang, and E. Walsh, *Redevelopment in California*, 4th ed. at 231-236 (Solano Press, May 2009); § 33670.) A portion of that tax increment is shared with counties, school districts, and other taxing entities. (*Id.* at 236-41.) As a general rule, redevelopment agencies also have been required since 1976 to set aside at least 20% of the gross tax increment they receive into a Low and Moderate Income Housing Fund ("Housing Fund"). (§§ 33334.2, 33334.3(a).) Interest earned on the Housing Fund, along with repayments of any loans, advances, or grants from the fund must be deposited into the Housing Fund. (§ 33334.3(b).)

The Housing Fund must be used to increase, preserve, and improve the supply of low and moderate income housing. (§§ 33334.2, 33334.3, 33334.6, 33334.10, 33487.) Absent a statutory exception, the Housing Fund must be used within the agency's jurisdiction. (§ 33334.3(c).) The funds also must generally be used for affordable housing within the project area that generated the tax increment. (§§ 33334.2(g), 33487(b).) Permissible uses of the Housing Fund include acquisition, construction, and rehabilitation that will increase, preserve, or replace affordable housing units. (§§ 33334.2(e), (f); *Craig v. City of Poway* (1994) 28 Cal. App. 4th 319, 326; *Lancaster Redevelopment Agency v. Dibley* (1993) 20 Cal. App. 4th 1656, 1662 (improvements must directly improve lower income housing).) Expenditures from the Housing Fund also must address the

community's housing needs for lower income families and seniors. (§ 33334.4; *see also* § 33333.10 (requiring "extended" project areas to target Housing Funds to extremely low income households).)

2. Affordable Housing Production And Replacement Of Lower Income Dwellings.

The CRL also promotes its commitment to increase and preserve affordable housing opportunities through its housing production and replacement requirements. (*See* § 33413.) At least 15% of housing developed in a redevelopment area must be affordable to low and moderate income households (30% of the units are developed by the redevelopment agency.)¹⁶ (§ 33413(b).) The production obligation is calculated based on all residential development in a project area and redevelopment agencies must meet any outstanding obligation for that project area every ten years. (§§ 33413(b)(3)-(4).) An Agency also can meet the production obligation outside of the project area that generated the obligation by doubling the number of units it produces. (§ 33413(b)(2)(A).)

The "replacement" requirement protects the community from the loss of lower income dwellings by requiring redevelopment agencies to ensure "one for one" replacement of units that house lower income families if such units are removed or destroyed as a result of redevelopment. (§ 33413(a); *Price v. City of Stockton* (E.D. Cal. 2005) 394 F. Supp. 2d 1256, 1263.) Agencies also must adopt replacement housing and relocation assistance plans before any lower income residents may be displaced or

¹⁶ The affordable housing production requirement applies to all post-1975 project areas, areas added to project areas by amendment after January 1, 1976, merged project areas, and pre-1976 plans that have extended their redevelopment plans. (*See* § 33413(b); *see also* Goldfarb & Lipman, LLP, *A Legal Guide to California Redevelopment* (3d ed. 2006), p. 369.)

their homes removed or destroyed. (§§ 33411 (relocation assistance plan), 33413.5 (replacement housing plan).) Units must be replaced within four years from the date of removal and must be affordable at the same or lower income levels as the households displaced. (§ 33413(a); *Price*, 394 F. Supp. 2d at 1263.)

3. Long-Term Affordability of Lower Income Housing.

The CRL ensures a long-term return on the investment of tax increment dollars in affordable housing by requiring that agency-assisted dwellings remain affordable. All dwelling units assisted with Housing Funds and all units counted toward an agency's production and replacement obligations must remain affordable to, and be occupied by, lower income households at the applicable affordability level (extremely low, very low, low, or moderate) for the longest feasible time. (§§ 33334.3(f); 33413(c).) Rental units must remain affordable for at least 55 years and most owner-occupied units for at least 45 years. (§§ 33334.3(f)(1)(A), (B).) These affordability restrictions are recorded and run with the land. (§ 33334.3(f)(2), (7).) The affordability covenants are enforceable by the agency, community, affected residents, or applicants and others against original and subsequent owners.

The affordable housing provisions of the CRL therefore mandate redevelopment agencies to assist in the development and preservation of housing that is affordable to low and moderate income families. Affordable housing developments located within one of California's 700 redevelopment project areas have access to critical resources from the redevelopment agency's Housing Fund. The agency's stringent production and replacement obligations create an incentive for communities to support affordable developments in all redevelopment project areas.

C. The Impact Of Redevelopment On California's Affordable Housing Need Is Significant.

Adequate financing is vital to developing the below market rate housing needed to achieve the statewide housing goal. The Legislature accordingly has determined that redevelopment funding for affordable housing is “of statewide benefit and of particular benefit and assistance to all local governmental agencies...” (§ 33334.6(a).) The mandatory set aside of 20% of redevelopment funds for affordable housing constitutes the largest source of affordable housing funding in California, second only to the federal government. (Cal. Redevelopment Assn., *Frequently Asked Questions About Redevelopment in California* p. 3.¹⁷) With more than 400 redevelopment agencies in California administering approximately 700 redevelopment project areas, approximately \$1 billion is currently generated on an annual basis for the development, improvement and preservation of affordable housing in these communities. California State Controller, *Community Redevelopment Agencies Annual Report for Fiscal Year 2008-09* at xix-xx (25th ed. 2009).¹⁸

Redevelopment agencies have significantly bridged the gap between housing costs and household incomes. Since 1993 redevelopment funds have helped to build and/or rehabilitate more than 98,000 affordable homes for low and moderate income households, including chronically homeless people, families, veterans and seniors. (Declaration of John F. Shirey in Support of Petition for Writ of Mandate, ¶ 13.) Without this funding, new affordable housing production will be crippled, and upwards of \$1 billion per year for affordable housing will disappear. Just one year's loss of this

¹⁷ Accessed Sept. 22, 2011 at:
<<http://www.calredevelop.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=266>>

¹⁸ Accessed at: http://www.sco.ca.gov/ard/_locrep_redevelop.

funding would jeopardize the development, rehabilitation, preservation and other financial assistance to over 17,500 affordable units (Cal. Dept. of Hous. And Comm. Dev., *Annual Redevelopment Report on Housing Funds and Housing Activities During Fiscal Year 2009-10*, p. 6, Table 1B (May 5, 2011)¹⁹) and more than 5,000 jobs, in an economy that cannot afford to sacrifice either. (Housing California, *Proposal for Redevelopment Clean-up Legislation: Repaying Housing Funds* (Aug. 31 2011)²⁰; see also Cal. Housing Partnership Corporation, *Redevelopment Fund for Low Moderate Affordable Housing: Pipeline Data* (Mar. 4, 2011).²¹)

Redevelopment affordable housing funds also are critical to generating additional investment in our State. In fact, the housing set-aside fund has leveraged billions in needed outside funding for California. (See, e.g., La Shelle Dozier, Testimony to Senate Committee on Governance and Finance (Feb. 9, 2011) p. 3²²; e.g. CRA/LA, *Active Projects Currently Under Construction (2011)* [Investment of \$52.1 million of affordable housing funds helped leverage \$902.7 million in outside funding].²³) Loss of the State's largest source of funds to develop affordable housing would

¹⁹ Accessed at: http://housing.hcd.ca.gov/hpd/rda/09-10/exec_memo_fy09-10.pdf.

²⁰ Accessed Sept. 22, 2011 at: <http://www.housingca.org/site/DocServer/Budget_Fact_Sheet_May_24_education.pdf?docID=781>

²¹ Accessed Sept. 23, 2011 at: <<http://library.constantcontact.com/download/get/file/1101248905934-124/RDASurveyAnalysis030411.pdf>>

²² Accessed Sept. 23, 2011 at: <http://www.shra.org/Portals/0/pdf/Redevelopment_CommunityRevitalization/ExecutiveDirectorSenateTestimony.pdf>

²³ Accessed Sept. 23, 2011 at: <http://www.crala.org/internet-site/upload/active_projects_overview.pdf>

be disastrous for the lower income families without affordable housing and for the State's economy.

III. ARGUMENT

A. The Diversion Of Tax Increment Funds Required By AB1X 26 And 27 Violates Article XVI, Section 16 And Article XIII, Section 25.5(A)(7)(B) Of The California Constitution.

AB1X 26 and 27 were adopted as a package by the Legislature—a package designed to redistribute to the State and other taxing entities the property tax “increment” allocated to finance implementation of redevelopment plans pursuant to Article XVI, Section 16 of the California Constitution as implemented by §33670. The required diversion of tax increment funds away from redevelopment agencies to so-called successor agencies or to the State or other jurisdictions violates Article XVI and Article XIII, Section 25.5 (as amended by Proposition 22 of 2010).

1. Diversion To Other Taxing Entities Is Not Permitted Prior To Full Payment Of Loans And Indebtedness. (Art. XVI, § 16(b))

Article XVI, Section 16 established the authority of the Legislature to authorize local redevelopment *plans* to include terms requiring that a portion of the property taxes levied on properties in a redevelopment area be allocated to a special redevelopment fund. Section 16 states:

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon a taxable property in a redevelopment project...shall be divided as follows: [setting forth the formula for allocating this tax increment to redevelopment agencies in subdivisions (a), (b) and (c)].

Section 16(b) specifically provides that the tax increment earmarked for redevelopment:

shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project....

The redevelopment plans are validated and recorded and include the constitutionally protected tax increment financing mechanism. (§§ 33500, 33501, 33373.). Section 16 expressly authorizes funding of the implementation of redevelopment plans through tax increment financing, but it does *not* permit reversion of tax increment funds to any other entities until *all* indebtedness of the redevelopment project area has been paid:

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

(CAL. CONST. art. XVI, §16(b), *emphasis added*.) AB1X 26 and 27 quite transparently attempt to avoid this constitutional limitation.

Through the charade of the purported dissolution/revival/reincarnation of redevelopment agencies (*see* § B, *infra*), AB1X 26 and 27 require or authorize the following premature reallocation of tax increment in violation of Article XVI, Section 16:

- Remittance to the county auditor-controller for redistribution to other taxing entities any tax increment not needed to make *a payment* on enforceable obligations *in any fiscal year*, including any unencumbered balance in the Low and Moderate Income Housing Fund. (§ 34177(d) and § 34188 (*emphasis added*).)
- Annual payments to local agencies and school districts of tax increment funds not needed for *annual* payments on indebtedness,

local agency pass-through payments or payments on *annual* indebtedness or administrative costs of “successor” agencies. (§§ 34183(a)(4) and 34187 (*emphasis added*)).

- Agreements between a city or county and their surviving redevelopment agency to transfer tax increment to pay the remittance the city or county must pay the county auditor-controller as a condition of the survival of the redevelopment agency. (§34194.2.)

This ruse of extinguishing and allowing voluntary resurrection of local redevelopment agencies cannot cure the constitutional infirmities. Section 16 prohibits diversion of tax increment funds to other taxing entities until all indebtedness is retired rather than the installment payment owed for a particular year. This Court declared in *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070 that:

[t]o insure its ability to perform its obligations, a redevelopment agency is entitled to *all tax increment funds as they become available*, until its “loans, advances and indebtedness, if any, and interest thereon have been paid.”

(*Id.* at 1082, *emphasis added*.) “[T]he . . . notion that available tax increment funds not needed for expenditure in the upcoming fiscal year are to be distributed to other taxing entities is wholly incorrect.” (*Id.* at 1083.)

AB1X 26, therefore, is antithetical to the letter and the purpose of Article XVI, section 16. As petitioners explain, even if dissolution of redevelopment agencies was permissible under Article XVI (and it is not, *see* § B, *infra*), a facially valid legislative act may not be used to attain an unconstitutional result. (Petitioners’ Reply Brief In Support of Petition for Writ of Mandate at 10.)

2. The Legislation Illegally Requires Direct And Indirect Transfers of Tax Increment To Other Taxing Entities For The Benefit Of The State And Other Taxing Entities. (Art. XIII, § 25.5(a)(7)(A))

Proposition 22 amended Article XIII, Section 25.5 of the California Constitution to provide, in part, that the Legislature may not:

(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....or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost.

(CAL. CONST. art. XIII, §25.5(a)(7).) AB1X 26 and 27, however, require transfers to local taxing entities and school districts, directly and indirectly, all for the benefit of other jurisdictions and the State and for purposes not permitted by the two exceptions.

AB1X 26, as explained above, violates Article XVI, Section 16, by forbidding the expenditure of tax increment funds for anything but payment of existing indebtedness and requiring transfer of the balance to the county auditor for the benefit of other agencies. (§§ 34172, 34173 and 34177.) This prohibition similarly violates Article XIII, § 25.5(7) because under the guise of dissolving redevelopment agencies it essentially permits transfer and use of redevelopment tax increment funds in violation of Section 25.5(a)(7).

AB1X 27 continues AB1X 26's illegal transfers and restrictions on use for all surviving redevelopment agencies. It directs the county auditor-controller to deposit the remittance from cities and counties on which redevelopment agency survival is conditioned into a Special District Allocation Fund for the benefit of special districts and the county Education Revenue Augmentation Fund (ERAF) (§34194, §34194.1(e) and §34194.4.), and it *allows the redevelopment agency to reimburse the city or county for the remittances with redevelopment tax increment funds.* (§ 39174.2, *supra.*) The ERAF provides funds to school districts that the State must otherwise provide pursuant to Proposition 98. (*Los Angeles Unified Sch. Dist. v. County of Los Angeles* (2010) 181 Cal.App.4th 414, 420.)

Respondent Matosantos argues that the allocation and use of redevelopment tax increment funds for these purposes is not required and therefore not a violation of Section 25.5(a)(7.) (Matosantos Return on Petition for Writ at 24.) Petitioners show and the legislation reveals by its terms, however, that the remittance extracted from the local government (§ 34194) and corollary authority for reimbursement to the city or county by the redevelopment agency with tax increment (§ 34194.2) is voluntary in name only. Far from volitional, the remittance/reimbursement is coerced by the mandatory consequence of the failure to remit: the dissolution of the redevelopment agency. As the Legislature stated, “[a] city or county’s agreement to remit revenues to school entities and special districts under this part is a precondition to continue redevelopment pursuant to this part.” (§ 34193.2(a).)

3. The Legislation Illegally Compels Use Of Tax Increment Funds For Purposes Not Falling Within The Exceptions of Art. XIII, § 25.5(a)(7)(B).

Proposition 22 provides only two exceptions to Section 25.5(a)(7)(B)'s bar on the Legislature authorizing or requiring use of redevelopment tax increment funds for the benefit of the State or other jurisdictions:

- 1) It expressly authorized the "pass-through" payment of tax increment to special districts already required by §§ 33607.5 and 33607.7 and other statutes (CAL. CONST. art. XIII, §25.5(a)(7)(B)(i));
- 2) It allows transfer and use "for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost." (CAL. CONST. art. XIII, §25.5(a)(7)(B)(ii).)

The enumerated pass-through statutes provide for distribution of set percentages of tax increment funds to local taxing entities. The statutes were intended to put an end to the negotiated agreements between redevelopment agencies and taxing entities that often resulted from disputes regarding the legitimacy of the findings of blight required to designate a redevelopment project area. (Stats. 1995 ch. 141, § 1 (AB 1424).) AB1X 26 duly incorporates these pass-through requirements (AB1X 26, 2011-12, 1st Ex. Sess., §4 and §5 (Cal. 2011)), but beyond these constitutionally authorized transfers, the Legislature may not allow the use of tax increment funds by other taxing entities unless limited to purposes related to affordable housing.

The authority and requirements for use set in place by AB1X 26 and 27, though, do not fall within the affordable housing exception. AB1X 26 allows distribution of all tax increment not needed for *annual* payments of redevelopment indebtedness to other taxing entities. (§ 34177, § 34183, and § 34188.) AB1X 27 similarly fails to limit to affordable housing

purposes the use of the tax increment funds it indirectly requires remitted to other taxing entities pursuant to a reimbursement agreement between the city or county and the surviving redevelopment agency. (See § 34194.2)

The Legislature stated its intent this way:

The community remittances that are made under this part are intended to benefit the community by ensuring improved educational and other community services in the areas served by the redevelopment agency.

(§ 34193.2.) These purposes are far broader than the limited exceptions authorized by Section 25.5(a)(7) and are therefore unconstitutional.

B. The State's Focus On The Legislature's Purported Authority To Dissolve Redevelopment Agencies Is Misplaced And In Error.

Respondent Matosantos rests her opposition on the Legislature's assumption that Article XVI, Section 16 gives it the authority to dissolve redevelopment agencies, paying scant attention to that provision's dedication of tax increment funds to financing the redevelopment set out in local redevelopment plans. The uncodified Section 1 of AB1X 27 proclaims that:

Section 16 of Article XVI of the California Constitution delegates authority to the Legislature to establish redevelopment agencies by statute. The Legislature retains the authority to dissolve redevelopment agencies by statute or to establish conditions for the continued operation of redevelopment agencies that apply to communities on a voluntary basis.

(AB1X 27, 2011-2012 1st Ex. Sess., ch 6, §1(a) (Cal. 2011).) Article XVI, Section 16, however, provides no express authority to establish or extinguish redevelopment agencies. Section 16, in fact, presumes the existence of a local redevelopment entity and assigns it a critical role in

implementing the tax increment method of financing local redevelopment plans.

1. AB1X 26 Does Not Dissolve Existing Redevelopment Plans, And Article XVI, Section 16 Dedicates Tax Increment To Their Implementation.

The parties' analyses depend in part, as they must, on the interpretation of the meaning of the legislation and the applicable provisions of the California Constitution. A comprehensive analysis also must consider what the legislation does not require. AB1X 26 dissolves no redevelopment plans or redevelopment project areas. Redevelopment plans are adopted by the local legislative body, not the redevelopment agency. (§§ 33132, 33133, 33339, 33339.5, 33380, 33381, 33601; *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 36.) And it is the plans that Article XVI, Section 16 authorizes to provide for the entitlement to tax increment financing. The redevelopment plan, as such, is the charter for redevelopment in redevelopment project areas, including for expenditure of the tax increment funds allocated for redevelopment pursuant to Article XVI, Section 16. (*See Redevelopment in California, supra* at 35.)

Section 16 provides for the allocation of tax increment for the clear purpose of carrying out the redevelopment plans. The elimination of redevelopment *agencies*, even if such could be accomplished by the provisions of AB1X 26, does not and could not remove that constitutional dedication. Matosantos' point that the language in Section 16 is permissive misses the point. The language permitted the Legislature to authorize local governments to include tax increment financing in redevelopment plans, and the Legislature did so. The cities and counties then exercised the authority granted and have adopted more than 700 plans that contain provisions allocating tax increment for redevelopment. Nothing in Article

XVI, Section 16 gives the Legislature permission to retroactively withdraw that authority embedded in the existing plans.

2. AB1X 26 Does Not Effectively Dissolve Redevelopment Agencies.

The State apparently assumes that with the purported dissolution of redevelopment agencies, all redevelopment activity ceases except that necessary to fulfill the agency's existing "enforceable obligations" as defined in AB1X 26. (Matosantos Return to Petition, pp 8-20.) That outcome, as discussed above, is inconsistent with the mandate of Article XVI, Section 16 that the tax increment allocation must remain dedicated for redevelopment purposes until all indebtedness is fully extinguished. Regardless of the legislation's stated intent, AB1X 26 did not in actuality dissolve redevelopment agencies; instead, it simply changed the name of the Legislature's intended target.

All AB1X 26 really does is require the community to establish an *alter-ego* to the redevelopment agency—a "successor" redevelopment agency, which ostensibly holds the same powers and obligations as the purportedly dissolved redevelopment agency with respect to performing existing enforceable obligations. (See §§ 34172, 34173, 34174, 34175 and 34177.) This is an unnecessary fiction, which does not and cannot accomplish its underlying illegal purpose—the avoidance of the limits of Article XVI, Section 16 and Article XIII, Section 25.5(a)(7) on the allocation and use of tax increment funds.

AB1X 26 attempts to skirt the proscriptions of Article XVI by at once acknowledging Section 16's mandate that tax increment funds are allocated exclusively for the payment of debt incurred pursuing redevelopment and summarily declaring that debt extinguished:

Solely for the purposes of Section 16 of Article XVI of the California Constitution, commencing on the effective date of

this part, all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid....

(§ 34174(a).) Voila—the restrictions of Section 16 on use of tax increment funds are rendered moot because the indebtedness to which they are pledged is dissolved by legislative fiat. This is a naked attempt to sidestep the clear parameters of Section 16. It is unconstitutional. Indeed, the Legislature tacitly acknowledges the constitutional and logical problems it has created in the very next clause of § 34174(a), magically reviving the dissolved debt and transferring it to successor redevelopment agencies:

provided, however, that nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations....

(Ibid.)

The Legislature could have achieved the identical (but illegal) purpose and result—winding down the redevelopment agency activities and redirecting tax increment funds to the ERAF and special districts—without invoking the fiction of dissolving redevelopment agencies and creating new ones. Instead it took pains to require designation or establishment of a new “successor” agency seemingly assuming that it could limit the access of the new agency to tax increments without running afoul of the State Constitution. Perhaps it recognized that balancing the state budget is not a constitutionally legitimate use of tax increment financing under Article XVI, Section 16, but hoped that simply by authorizing the transfer of the funds from redevelopment agencies to newly authorized agencies it could extricate the monies from their constitutionally protected status. Constitutional restrictions on the use of taxpayers’ money, however, may not be avoided simply by laundering funds through a shell agency.

3. Article XVI, Section 16, Like Proposition 22, Presumes The Existence Of Redevelopment Agencies And Provides No Authority To Dissolve Them.

Article XVI, Section 16 clearly presumed the existence of redevelopment agencies or some local implementing body. The presumption, as Petitioners explain, was based on the fact that redevelopment agencies or other agencies with similar redevelopment authority had already been established at the time the predecessor to Article XVI, Section 16 was adopted. (Petitioners' Memorandum in Support of Petition for Writ at 16.) Indeed, the presumption of some local body with the authority to implement the redevelopment plans adopted by cities and counties seems essential because otherwise the tax increment financing mechanism could not be implemented as mandated by Article XVI. This Court in *Marek* stated that Section 16 "implies that the agency itself will control utilization of tax increment funds...." (46 Cal.3d at 1083.) The language of Section 16 likewise implies that there must be a local agency, however denominated, to receive and expend the funds in order to implement the redevelopment plans. Whether the entity is called a redevelopment agency or is the local governmental body itself is ultimately not important to the underlying purpose of the constitutional provision.

This presumption is similar to the presumption described by Petitioners in Proposition 22 (2010). Amending Article XIII, section 25.5 of the California Constitution to add subdivision (a)(7), the proposition reinforced the proscription against tampering with the tax increment monies allocated to redevelopment agencies to implement local redevelopment plans, expressly forbidding the Legislature from requiring redevelopment agencies to remit or restrict use of tax increment monies "allocated to the

agency pursuant to Section 16 of Article XVI.” (CAL. CONST. art. XIII, §25.5(a)(7).)

Only the local legislative body is authorized to dissolve a redevelopment agency and then only in limited circumstances. Each of those circumstances relates to the very purpose of Article XVI, Section 16—the implementation of redevelopment plans and the full payment of all indebtedness. (§§ 33140, 33141 and 33333.8.) The local legislative body is permitted to dissolve a redevelopment agency only if no need for the agency exists. (§ 33140.) If an agency has no outstanding financial or legal obligations only then may the local legislative body deactivate the agency. (§ 33141.) Significantly, the legislative body may not dissolve an agency until the agency has fully complied with all of its affordable housing obligations, financial or otherwise. (§ 33333.8.)

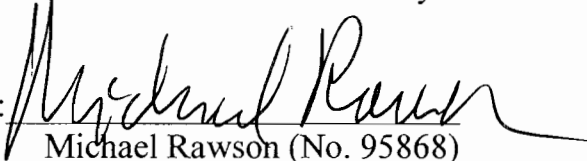
IV. CONCLUSION

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

Dated: September 30, 2011

Respectfully submitted,

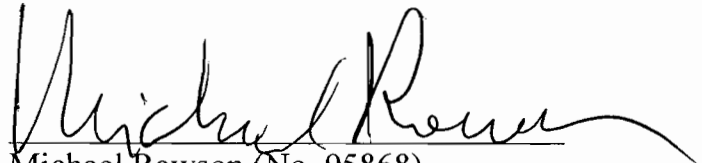
California Affordable Housing Law
Project of The Public Interest Law
Project
California Rural Legal Assistance, Inc.
Legal Services of Northern California
Public Counsel
Western Center on Law & Poverty

BY: 
Michael Rawson (No. 95868)

**CERTIFICATION OF COMPLIANCE WITH CALIFORNIA
RULES OF COURT 8.204(c) AND 8.486(a)(6)**

Pursuant to California Rules of Court, Rule 8.204(c) and 8.486(a)(6), I hereby certify that the attached Application to File Amici Curiae Brief and Brief of Amici Curaie was prepared in Microsoft Word using one and one-half spaced 13 point Times New Roman typeface. According to the word count feature of Microsoft Word, the application and brief contain 6,957 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

DATED: September 30, 2011


Michael Rawson (No. 95868)

PROOF OF SERVICE

California Redevelopment Association, et al. v. Ana Matosantos, et al.
California Supreme Court Case No. S194861

I declare that I am a resident of the State of California and over the age of eighteen (18) years and not a party to the within-entitled action. My business address is 449 15th Street, Suite 301, Oakland, CA 94610.

On September 30, 2011, I served the following document(s):

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND
AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS CALIFORNIA
REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA
CITIES, CITY OF UNION CITY, CITY OF SAN JOSE,
AND JOHN F. SHIREY**

- BY U.S. MAIL** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.
- BY OVERNIGHT DELIVERY** by placing the documents(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- BY FACSIMILE** by transmitting via facsimile the document(s) listed above from facsimile number (510) 891-9727 to the facsimile number(s) set forth below on this date before 5:00 p.m. pursuant to the Court's instructions. The facsimile transmission of the foregoing document was reported as complete and without error.
- BY ELECTRONIC SERVICE** by transmitting via email the document(s) listed above in PDF format to the email address(es) set forth below on this date before 5:00 p.m.

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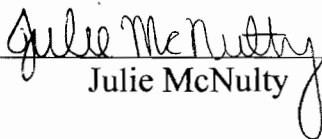
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California on September 30, 2011.



Julie McNulty

Proof of Service

