No. S194861

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

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

Respondents.

APPLICATION OF CALIFORNIA TEACHERS ASSOCIATION TO FILE BRIEF AMICUS CURIAE IN OPPOSITION TO PETITIONERS CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.; [PROPOSED] BRIEF AMICUS CURIAE

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APPLICATION TO FILE BRIEF AMICUS CURIAE

INTRODUCTION

Pursuant to Rule 8.520(f) of the California Rules of Court, the California Teachers Association ("CTA") requests leave to file the accompanying amicus brief in opposition to petitioners California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey.

THE AMICUS CURIAE

CTA is a voluntary membership organization of over 300,000 California public school teachers, counselors, librarians, nurses and other school personnel who work in approximately 1,000 school districts across California. CTA is a non-profit organization that exists to protect and promote the well-being of its members; to improve the conditions of teaching and learning; to advance the cause of free, universal, and quality public education; to ensure that the human dignity and civil rights of all children and youth are protected; and to secure a more just, equitable, and democratic society. To fulfill this mission, CTA has worked throughout its history on issues relating to the education finance system in California. For example, CTA worked successfully to secure a law providing free public schools to California children in 1866; it won the right for all students in grades 1-8 to have free textbooks in 1911; and, in 1988, it sponsored Proposition 98, a school funding initiative passed by the voters of California to amend article XVI, section 8 of the California Constitution to provide funding stability for school districts and community college districts. Since that time, CTA has fought to enforce Proposition 98 through the budget process and, when necessary, through court actions challenging the State's interpretation and implementation of Proposition 98.

(*See CTA v. Hayes* (1992) 5 Cal.App.4th 1513; *CTA v. Gould* (1994) Sacramento Superior Ct., No. 373415; *CTA v. Schwarzenegger* (2006) Sacramento Superior Ct., No. 05CS01165.)

INTEREST OF AMICUS CURIAE

Through this lawsuit, petitioners seek to overturn ABX1 26 and ABX1 27, both of which were critical components of the State's budget package for this year and future years. If petitioners succeed in overturning these bills, they would eliminate the source of *$1.7 billion* in funding for K-12 education this year and necessitate massive mid-year cuts. This devastating loss would come on top of a 2011-12 budget package that already provides school districts with $522 *less* per pupil than they received in 2007-08.

CTA has an obvious interest in protecting its members and their students from cuts of this magnitude, particularly where, as here, the legislation that petitioners seek to overturn is fully constitutional and deserves to be upheld.

No party or counsel for a party has authored any part of this brief, nor has any person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members and its counsel of record.

NEED FOR ADDITIONAL BRIEFING

Amicus curiae respectfully submits this brief to address: (1) the fact that ABX1 26 and ABX1 27 were a response to the rampant wasteful spending that redevelopment agencies engaged in at the same time that core state services like public education were reeling from the budgetary effects of the Great Recession; (2) the fact that ABX1 26 and

ABX1 27 will greatly benefit public education and other core services like health and welfare, public parks, the judiciary, and public safety; (3) the text and legislative history of article XVI, section 16 of the California Constitution, which underscore the lawfulness of ABX1 26 and ABX1 27; and (4) additional case law and argument that support the separate nature of ABX1 26 and ABX1 27. To CTA's knowledge, no party has fully addressed these issues in any brief now before this Court.

Dated: September 29, 2011

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By: _____
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BRIEF AMICUS CURIAE

INTRODUCTION

Located just a stone's throw from the State Capitol building in Sacramento, the Dive Bar is a drinking establishment that opened to the public in early 2011. The Dive Bar has gained notoriety for two reasons: one, because there is an enormous fish tank over the top of the bar, spanning its length, in which live mermaids (and the occasional merman) swim and cavort to entertain the bar's patrons; and two, because the Dive Bar was funded in significant part by redevelopment money – public property tax increment that built a private entrepreneur's fish tank. Newspapers across the state, from the Los Angeles Times to the Sacramento Bee, berated the Legislature and Governor for allowing taxpayer funds to be spent on a mermaid bar whilst teachers and school counselors were being laid off, parks were being closed, courthouse hours were being severely curtailed, and untold citizens already harmed by the nation's failing economy were being doubly harmed by deep cuts to the State's failing social services safety net.[1]

The fact is that while the Dive Bar was celebrating its grand opening downtown, the Sacramento City Unified School District – like districts throughout the state – was putting final touches on lay-off notices

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[1] *See, e.g.*, T. Meyer cartoon, Sacramento Bee (Feb. 24, 2011), included as Exhibit A to Declaration of Brian Metzker in Support of Amicus Curiae's Request for Judicial Notice ("Metzker Decl.") (the cartoon's dollar figures were overstated and later corrected by the Dive Bar's owners to be $3.1 million in public funds); G. Skelton, *California's budget crisis a chance to rethink redevelopment funds*, Los Angeles Times (Feb. 21, 2011), Metzker Decl., Exh. B; B. Peterson, *Dive bars vs. schools*, San Diego Union-Tribune (Feb. 27, 2011), Metzker Decl., Exh. C.

to hundreds of its teachers, counselors, custodians, and secretaries.[2] One influential newspaper columnist offered the hopeful suggestion that "[m]aybe laid-off teachers can land jobs as mermaids."[3]

The public outcry was inflamed further when the nonpartisan Legislative Analyst wrote that claims made by the California Redevelopment Association, petitioner here, that eliminating redevelopment would result in massive job losses were based on a "seriously flawed" study that was not "subjected to any independent or academic scrutiny" and "vastly overstate[d] the net economic and employment effects of redevelopment agencies."[4] In fact, the Legislative Analyst concluded there is "no reliable evidence" that redevelopment "attracts businesses to the state or increases overall regional economic development."[5]

Further investigation by the State Controller revealed that the Dive Bar, while certainly unique in some respects, was far from alone in terms of questionable redevelopment projects. The Controller reported to

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[2] The layoffs are detailed in letters from Superintendent Jonathan P. Raymond to staff of the Sacramento City Unified School District, Metzker Decl., Exh. F. The Sacramento Bee reported that approximately 1,200 Sacramento-area teachers received lay-off notices in May. (D. Lambert, *Sacramento area school districts send out 1,200 final teacher lay-off notices*, Sacramento Bee (May 14, 2011), Metzker Decl., Exh. G.)

[3] G. Skelton, *supra*, Metzker Decl., Exh. B.

[4] LAO Policy Brief, The 2011-12 Budget: Should California End Redevelopment Agencies (Feb. 9, 2011), Exh. A to State Respondents' Request for Judicial Notice ("RJN"), p. 6.

[5] *Id.*

the Legislature and the Governor that the Palm Desert redevelopment agency, which at the end of June 2010 had a fund balance of $242 million – or $4,666 for every city resident – had allocated $16.7 million to projects intended to enhance the four-and-a-half star Desert Willow Golf Resort.[6] Thanks to the redevelopment agency, the resort will soon have a new hotel and nearly $1 million in public tax funds to use "for renovation of all 18 greens, [to] reshape greenside bunkers and fairway bunkers, install new bunker drainage improvements, bunker liners, new sand, and restoration of all lake edges."[7] The agency justified this expenditure by citing "'public improvement'" as the condition of blight being addressed.[8]

Indeed, of the 18 redevelopment agencies recently studied by the Controller, most were using property tax increment funds to pay salaries of their local city officials – like the City of San Jose, which paid 25 percent of the "salary and fringe benefits of the mayor, the 12 members of the city council, and 40 city council staff members" with redevelopment funds.[9] Yet five of those 18 redevelopment agencies failed to make or secure mandatory deposits to the State's Supplemental Educational Augmentation Fund, meaning that the State of California had to spend an additional $33.6 million in General Fund moneys just to support schools in

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[6] State Controller, Selected Redevelopment Agencies, Review Report, Analysis of Administrative, Financial, and Reporting Practices (Mar. 7, 2011), p. 14, Metzker Decl., Exh. D.

[7] *Id.*

[8] *Id.*

[9] *Id.*, p. 9.

those areas.[10] This while the State was simultaneously cutting $350 million in funding for the judicial system.[11]

Someone had to do something. ABX1 26 and ABX1 27 were enacted to rein in embarrassing redevelopment excesses like the Dive Bar and secure additional oversight into how property tax revenues are spent. Thus, while petitioners' declarations tell only one side of the story, there is another side that led the Legislature and Governor to agree that California's redevelopment system must be restructured in light of current fiscal realities. That is the reason for passage of ABX1 26 and the reason why it must be allowed to stand, even if ABX1 27 falls.

The right result here, however, and the one we urge upon the Court, is upholding *both* statutes. Nothing in Proposition 22 or any of the earlier initiatives on which petitioners rely changed the Legislature's fundamental right and duty to create, restructure, or dissolve public agencies, in the absence of explicit constitutional language to the contrary. No such language exists here.

In the sections that follow we address the important budget issues at stake, especially for education; the constitutionality of ABX1 26 and ABX1 27; and the independent validity of ABX1 26.

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[10] *Id.*, p. 6.

[11] LAO, *The Budget Package: 2011-12 California Spending Plan* (Aug. 2011), p. 59, Metzker Decl., Exh. E (hereafter "LAO Budget Report").

ARGUMENT

I.

ABX1 26 AND ABX1 27 ARE CRITICAL TO FUND EDUCATION IN 2011-12 AND BEYOND

ABX1 26 and ABX1 27 are critical components of the State's budget package for this and future years. Working in tandem, the statutes result in as much as $1.7 billion in much-needed funding for the K-12 public school system, freeing up an equivalent amount of General Fund money for health and human services programs, for the courts and the criminal justice system, and a host of other critical needs.

The road to passage of those bills was not easy. The Governor signed the 2011-12 Budget Act on June 30, 2011, and although the process was timely this year, it was hardly less contentious than under previous years of this unprecedented recession.[12] The signed budget act was actually the third one passed by the Legislature – the first, in March, was not sent to the Governor, and the second, passed earlier in June, was vetoed.[13]

The reason for the difficulty was that, despite the Draconian cuts and adjustments made over the past few years, the State yet again was

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[12] Twice already this Court has been called upon to consider extreme actions taken by the State in response to the recession. (*Prof. Engineers in Cal. Gov. v. Schwarzenegger* (2010) 50 Cal.4th 989 [concluding that later-enacted budget legislation validated Governor's furlough program for state employees]; *St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960 [upholding Governor's unprecedented use of line-item veto to replace Legislature's mid-year spending cuts with even deeper reductions].)

[13] LAO Budget Report, Metzker Decl., Exh. E, p. 5.

facing an enormous budget deficit, estimated at $25.4 billion when Governor Brown took office.[14] From the beginning of the 2011-12 budget process, the Governor had insisted that the elimination of redevelopment agencies was one key to getting the State back on sound financial footing. It was part of the Governor's January budget proposal, and he made the case for it in his State of the State speech, saying:

> In recent days, a lot has been made of the proposed elimination of redevelopment agencies. Mayors from cities both large and small have come to the capitol and pressed their case that redevelopment is different from child care, university funding or grants to the aged, disabled and blind.
>
> They base their case on the claim that redevelopment funds leverage other funds and create jobs. I certainly understand this because I saw redevelopment first hand as mayor of Oakland. But I also understand that redevelopment funds come directly from local property taxes that would otherwise pay for schools and core city and county services such as police and fire protection and care for the most vulnerable people in our society.
>
> So it is a matter of hard choices and I come down on the side of those who believe that core functions of government must be funded first. But be clear, my plan protects current projects and supports all bonded indebtedness of the redevelopment agencies.
>
> (Edmund G. Brown Jr., State of the State Address, Jan. 31, 2011 [as prepared], Metzker Decl., Exh. H.)

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[14] *Id.*

The Governor's proposal to eliminate redevelopment agencies was subject to intense public scrutiny and many legislative hearings over the late winter and spring.[15] As noted above, the press weighed in as well, hammering the Legislature to take action on redevelopment agencies that had shown little or no sensitivity to the financial condition facing the State. (*See* fn. 1.) Others warned that the total elimination of redevelopment would harm the State's economy, costing jobs in a time of high unemployment.[16] Ultimately, as often occurs in the budget process, what passed the Legislature was a compromise package that dissolved redevelopment agencies, as the Governor wanted (ABX1 26), but also provided an alternative vehicle for those local governments willing to work with their redevelopment agencies on fiscal and other reforms, as some members of the Legislature advocated (ABX1 27).

The Budget Act was built on an assumption that most existing redevelopment agencies would opt for the voluntary alternative provided by ABX1 27. If that happens, then a larger share of local property tax revenues will be allocated to school districts, easing the burden on the

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[15] *See, e.g.*, State Respondents' RJN, Exhs. A and B, which are reports prepared by the Legislative Analyst as background information for the Legislature's hearings on redevelopment reform.

[16] *See generally* State Respondents' RJN, Exh. A; *but see* fn. 4 above.

General Fund to meet the Proposition 98 guarantee.[17] In this manner, *ABX1 26 and ABX1 27 together provide $1.7 billion in funding for K-12 education in 2011-12.*[18] This frees up the General Fund for other state expenditures, such as health and human services, higher education, the judicial system, and other general government needs. After the first year, less money goes to schools, but importantly that later money is provided in addition to the schools' Proposition 98 guaranteed school funding. Thus *starting in fiscal year 2012-13, ABX1 26 and ABX1 27 together provide $340 million annually to K-12 schools, on top of their Proposition 98*

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[17] Local property taxes are a key component of school funding. Under Tests 2 and 3 of Proposition 98, schools are entitled to receive each year the total sum they received in the prior year from the General Fund and the proceeds of local property taxes, as adjusted for various growth factors. (Cal. Const., art. XVI, § 8(b)(2) & (3).) Because it is the total sum at stake at issue under Proposition 98, the Legislature has leeway to change the mix of General Fund revenues and local property taxes provided to schools to meet the constitutional minimum funding guarantee. (*See, e.g.*, Ed. Code, §§ 41204(b)(2) & 41204.1.) If schools receive more in local property tax proceeds, then the State can provide less from the General Fund, freeing up money for other state needs.

Under Test 1 of Proposition 98, which is only rarely in effect, schools are entitled to receive the same percentage of General Fund revenues as they did in 1986-87. (Cal. Const., art. XVI, § 8(b)(1).) In a Test 1 situation, there is no offset between local property tax revenues and General Fund appropriations; rather, schools receive the set percentage of General Fund money and also their allocation of local property tax revenues. Providing additional local property tax revenues in a Test 1 situation results in additional funding for schools rather than relief for the General Fund. Test 1 is only rarely in effect, however.

[18] The Assembly bill analysis for ABX1 27 states that all but $4 million of the $1.7 billion would go to the Education Revenue Augmentation Fund to offset the State's Proposition 98 obligation to schools. (Assembly Floor Analysis, ABX1 27 (Jun. 15, 2011), Metzker Decl., Exh. I.)

guarantee.[19] That is no small amount to a public school system that has frozen new textbook adoptions since 2009 due to a lack of funding. (Stats. 2009, 4th Ex. Sess., ch. 2, §§ 28, 29.)

Should the Court strike down ABX1 27 as unconstitutional, however, ABX1 26 still provides significant financial support for schools. The most recent published estimate from the State is that starting in fiscal year 2011-12, ABX1 26 standing alone would provide an additional $1.1 billion annually in funding for schools, freeing up an equivalent amount for other General Fund expenditures.[20]

Both ABX1 26 and ABX1 27 acknowledge their importance to school funding. The findings and declarations of ABX1 26 note that "[s]chools have faced reductions in funding that have caused school districts to increase class size and lay off teachers, as well as make other hurtful cuts" while "[t]he expansion of redevelopment agencies has increasingly shifted property taxes away from services provided to schools . . . ." (ABX1 26, § 1(d) & (e).) ABX1 27 similarly finds that "[t]he diversion of over five billion dollars ($5,000,000,000) in property tax

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[19] *Id.*

[20] State Respondents' RJN, Exh. C, p. A-15. Notwithstanding petitioner's claims to the contrary (Pets.' Reply Br. at p. 29, fn. 16), the $1.1 billion figure is fully supported by the February 2011 Legislative Analyst report. (State Respondents' RJN, Exh. A, fig. 2 and pp. 9-10.) If redevelopment agencies are dissolved this year, and the tax increment revenue of $5.2 billion less debt service ($2.2 billion) and passthrough payments ($1.1 billion) is distributed in the same manner as currently occurs with property taxes (counties 21 percent, cities 12 percent, special districts 10 percent and schools 57 percent), the result would be an additional $1.1 billion in property tax revenues for schools.

revenue to redevelopment agencies each year has made it increasingly difficult for the state to meet its funding obligations to the schools." (ABX1 27, § 1(b).) Under ABX1 26, once redevelopment agencies are dissolved, property taxes will be allocated "to make the funds available for cities, counties, special districts, and school and community college districts." (ABX1 26, § 1(j)(3).) Under ABX1 27, the establishment of a voluntary alternative to current redevelopment "provides a way to stabilize school funding in communities . . . ." (ABX1 27, § 1(c).) Either way, ABX1 26 and ABX1 27 protect schools from even deeper cuts in 2011-12 and future years.

This funding support is critical to the State's public school system. Beginning in 2011-12, the schools no longer have the federal American Recovery and Reinvestment Act funding that has been helping backfill state cuts.[21] The State has instituted so many deferrals of basic school funding that the first $10 billion in 2012-13 school funds will pay for services already provided in 2011-12.[22] Little headway has been made in restoring the $11 billion in outstanding "maintenance factor" that

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[21] LAO Budget Report, Metzker Decl., Exh. E, p. 20, figure 3.

[22] *Id.*, p. 19.

resulted from the reduced funding provided schools in 2008-09.[23] (Ed. Code, § 41207.2.)

If both ABX1 26 and ABX1 27 fall, then the State's budget for 2011-12 will face a mid-year hole of $1.7 billion. Mid-year cuts are especially damaging, because little time is left to achieve the necessary savings, meaning that the cuts must go even deeper. Those deep cuts will fall on the State's already beleaguered public schools, needy citizens, public universities, courts, and other essential services.[24]

These cuts would fall hardest on the K-12 public school system, which accounts for over 40 percent of General Fund spending. The 2011-12 budget package adopted by the Legislature and Governor already provides school districts with $522 *less* per pupil than they received *in 2007-08*.[25] If the revenue projections used for that budget fail to materialize, then automatic triggers could result in cutting the school year by an additional seven days, and eliminating home-to-school

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[23] "Maintenance factor" is the difference between the amount of funding schools are entitled to under Proposition 98, and what they actually receive in a year in which the constitutional minimum funding guarantee is suspended by the Legislature pursuant to article XVI, section 8(h) of the California Constitution, or in which the constitutional minimum is calculated under Test 3, operative in recessionary years pursuant to section 8(b)(3) of article XVI.

[24] For example, a recent study showed that enrollment in Medi-Cal has increased by 12.5 percent in recent years, while state funding for the program has been cut by $2.7 billion. (California Budget Project, Recent Cuts to the Medi-Cal Program Have Impaired Access to Services (Jun. 10, 2011), available on-line at http://www.cbp.org/pdfs/2011/110610_Medi-Cal_cuts.pdf.)

[25] LAO Budget Report, Metzker Decl., Exh. E, p. 20.

transportation.[26] Add to that mid-year cuts, and the schoolhouse doors will close even sooner.

Higher education will suffer as well, including the University of California and California State University systems, whose state funding fell another 18 percent this year.[27] Annual state support for Hastings College of the Law, threatened with closure in recent years, is down another 17 percent, to only $6.9 million[28] – this while the four-and-a-half star Desert Willow Golf Resort is looking forward to its $16.7 million upgrade. If ABX1 26 and ABX1 27 are struck down and the Palm Desert redevelopment agency is allowed to conduct business as usual, it is not hard to imagine Hastings having to close its doors even as the new golf resort hotel is opening its doors.

II.

THE LEGISLATURE HAS UNENCUMBERED DISCRETION TO END OR REVISE THE RDA PROGRAM

There is no question that the Legislature has the power to reorganize or abolish the agencies that it creates unless the Constitution provides otherwise. Even petitioners concede that point. (Informal Reply in Support of Petition for Writ of Mandate and Application for Temporary Stay ["Pets.' Informal Reply Br."] at 7.) The question is whether the Constitution in any way protects the existence of redevelopment agencies from dissolution or reorganization by the Legislature.

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[26] *Id.*, p. 4.

[27] *Id.*, p. 27.

[28] *Id.*, p. 27, fig. 6.

The answer is no. Article XVI, section 16 of the Constitution expressly recognizes the Legislature's discretion to amend the Community Redevelopment Law, and to provide redevelopment agencies with tax increment financing or some alternative form of financing. Proposition 22 did not eliminate that discretion.

A. Article XVI, Section 16 Does Not Limit The Legislature's Discretion To End The RDA Program

Article XVI, section 16 was added to the Constitution when the voters approved Proposition 18 in 1952. By that time, the Legislature had already enacted the Community Redevelopment Act,[29] but redevelopment advocates wanted to amend the Constitution to authorize the use of tax increment financing for redevelopment projects. As the ballot pamphlet materials explained, Proposition 18 was "in effect an enabling act to give the Legislature authority to enact legislation which will provide for the handling of the proceeds of taxes levied upon property in a redevelopment project." (Ballot Pamp., Gen. Elec. (Nov. 4, 1952) argument in favor of Prop. 18, p. 20, emphasis added, Metzker Decl., Exh. J.)

More to the point, nothing in the measure subtracted from the authority the Legislature already had over redevelopment agencies.[30] To

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[29] Stats. 1945, ch. 1326, as amended by Stats. 1951, ch. 710, § 33000 et seq. (renamed the Community Redevelopment Law).

[30] For purposes of this litigation, the current version of article XVI, section 16 is in all material respects the same as the version approved by the voters in 1952, which was located at article XIII, section 19. For the Court's convenience, the 1952 version of the provision is included in the ballot pamphlet materials that appear at Exhibit J to the Metzker

(continued . . .)

the contrary, the section opens with a sentence that affirms the Legislature's authority to amend the Community Redevelopment Law in the future, without imposing any limits on the scope of those amendments. Specifically, that first sentence provides that the measure applies to those properties that are within a redevelopment project as defined by "the Community Redevelopment Law as now existing *or hereafter amended.*" (Cal. Const., art. XVI, § 16, emphasis added.)

The second paragraph of section 16 grants the Legislature discretion to authorize tax increment financing for redevelopment projects:

> *The Legislature may provide* that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation . . . shall be divided as follows . . .
>
> (Cal. Const., art. XVI, § 16, emphasis added.)

By using the word "may" rather than "shall" in this provision, the voters left it to the Legislature to decide whether to implement tax increment financing. This is clear under the ordinary rules of statutory construction, because the word "may" is construed to be permissive. (*Woolls v. Superior Ct.* (2005) 127 Cal.App.4th 197, 208 ["Generally speaking, "the word 'may' is permissive – you can do it if you want, but you aren't being forced to."]; Gov. Code, § 14.) It is also clear from the ballot

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(. . . continued)
Declaration, while the current version is set forth in Exhibit K to the Metzker Declaration.

pamphlet materials, which told voters that "[t]his constitutional amendment . . . *is permissive in character and can become effective in practice only by acts of the Legislature* and the local governing body, the City Council or Board of Supervisors." (Metzker Decl., Exh. J, Argument in Favor, p. 20, emphasis added.)

Finally, section 16 reiterates that it does not mandate the use of tax increment financing, and then further specifies that it does not limit the Legislature's choice to tax increment financing only. It states:

> This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.
>
> (Cal. Const., art. XVI, § 16.)

To summarize, three things are clear from this constitutional language: (1) the Legislature retains the discretion to amend the Community Redevelopment Law; (2) the Legislature retains the discretion to authorize tax increment financing for redevelopment projects (or not); and (3) the Legislature retains the discretion to enact laws that offer alternatives to tax increment financing for redevelopment projects.

Petitioners concede much of this. They agree that "Article XVI, Section 16 does not prohibit the Legislature from amending most of the" Community Redevelopment Law. (Reply Memorandum in Support of Petition for Writ of Mandate ["Pets.' Reply Br."] at 17, fn. 6.) Moreover, they do not seriously dispute that section 16 "is 'permissive.'"[31]

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[31] Petitioners suggest that article XVI, section 16 may not be entirely permissive because it provides that "'[t]he Legislature *shall* enact those (continued . . .)

(Pets.' Reply Br. at 17.) But petitioners do try to claw back that discretion by arguing that the Legislature's discretion over redevelopment agencies existed only for a brief moment in time. According to this theory, once the Legislature authorized tax increment financing, it lost the ability to "*alter* that scheme *with respect to existing plans and indebtedness*." (Pets.' Reply Br. at 16-17, emphasis in original.)

There is literally no support for this theory. Petitioners do not point to any language in the provision itself, because it does not even come close to suggesting that tax increment financing would become a permanent, unalterable feature of redevelopment law once enacted. Nor do petitioners cite anything in the ballot pamphlet materials, which did not notify voters that a single enactment by the Legislature in the 1950s would force Californians to live with tax increment financing in perpetuity. (*See generally* Metzker Decl., Exh. J.)

In fact, petitioners should know that their theory is invalid because the Second District Court of Appeal flatly rejected it nearly two decades ago in *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444. That case involved a challenge by redevelopment agencies to the validity of section 97 of the Revenue and Taxation Code, which allowed counties to offset state funding cuts to county programs by

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(. . . continued)
laws as may be necessary to enforce the provisions of this section.'" (Pets.' Reply Br. at 16, emphasis in original.) Petitioners focus on the word "shall" while ignoring the fact that this statement requires the Legislature to enact only those laws that it deems necessary (*i.e.,* those laws that "may be necessary") to enforce the provision. Thus the Legislature would have complied with the provision by declining to authorize tax increment financing, if it decided that tax increment financing was not necessary.

recovering the costs for administering property taxes from local agencies, including redevelopment agencies. (16 Cal.App.4th at 449-450.) The redevelopment agencies argued that section 97 was unconstitutional because article XVI, section 16 "protects their funding from impermissible reduction of redevelopment agencies' mandated payments." (*Id.* at 451.) But the Court disagreed. It concluded instead that article XVI, section 16 "is permissive" and so "does not prevent the Legislature from altering the levying and collection of taxation on redevelopment project property." (*Id.* at 452.) Accordingly, the Court rejected the precise argument petitioners advance here because it concluded that the Legislature retained the discretion to alter the tax increment financing scheme with respect to existing plans and indebtedness. (*Compare id. with* Pets.' Reply Br. at 17.)

Eight years later, redevelopment agencies sued over a different statute that allowed county auditors to attribute administrative and overhead costs to various agencies, including redevelopment agencies. (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 721.) Once again, the redevelopment agencies argued that any statute that infringed on a redevelopment agency's revenue calculation violated section 16. Once again, the Second District rejected the claim, noting that the *Arcadia* Court had already determined that article XVI, section 16 does not protect a redevelopment agency's tax revenue receipts by "rendering it mandatory." (*Id.* at 729-730.)

Petitioners try to dismiss the relevance of *Arcadia* and *Community Redevelopment Agency of LA* while relying on *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, and *Redevelopment Agency of City of San Bernardino v. County of*

San Bernardino (1978) 21 Cal.3d 255.[32] But *Arcadia* and *Community Redevelopment Agency of Los Angeles* are directly relevant to the issue in this case because they address the scope of legislative authority under article XVI, section 16. *Marek* and *Redevelopment Agency of San Bernardino*, by contrast, have nothing to do with the limits on legislative power over redevelopment agencies.

Marek considered a dispute between a county auditor and a redevelopment agency over which agency was entitled to receive certain tax increment financing under the Community Redevelopment Law and article XVI, section 16. At issue was how soon a redevelopment agency creates "indebtedness" that entitles it to receive tax increment revenue from the county auditor – when the agency commits to making expenditures for redevelopment purposes, or when the agency actually makes those expenditures. (46 Cal.3d at 1079-1080.) The Court concluded that "[t]he purposes of the Community Redevelopment Law, together with the structure and processes it creates, support the broad interpretation of 'indebtedness' advanced" by the redevelopment agency. (*Id.* at 1082.) The Court also concluded, as petitioners point out, that the Community Redevelopment Law together with article XVI, section 16 "militate[ ]

[32] We note that petitioners did not cite *Marek* or *Redevelopment Agency of City of San Bernardino* in their moving papers, nor did they advance an argument about the scope of article XVI, section 16 in their initial memorandum. Having held this argument, and raised the issue for the first time on reply, petitioners have waived the argument. (*See Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4 [points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before].)

against the notion of a process budgetarily controlled by county auditors." (*Id.* at 1083.)

Petitioners try to leverage this holding into a broad pronouncement that article XVI, section 16 imposes the same limitations on the Legislature that it imposes on county auditors. (Pets.' Reply Br. at 18.) This is nonsense. The Court did not impose – or even consider – any such broadly encompassing rule. In fact, both of the quotes that petitioners highlight from the case analyze the meaning of "indebtedness" in *both* article XVI, section 16 *and* related statutory enactments. (*Compare* 46 Cal.3d at 1082, 1083 *with* Pets.' Reply Br. at 18.) It is therefore impossible to know what duties, if any, the Court thought article XVI, section 16 imposed on the Legislature.

The same is true of the second case petitioners try to rely upon. *Redevelopment Agency of City of San Bernardino v. County of San Bernardino* (1978) 21 Cal.3d 255 considered a dispute between a redevelopment agency and a county assessor over which entity should lose tax revenues when property within a redevelopment becomes public property that is exempt from property taxes. Like in *Marek*, the Court merely applied the Constitution and existing statutory enactments to determine which agency had the superior right to tax increment financing. (*Id.* at 262-267.) The case said nothing at all about whether redevelopment agencies could assert analogous rights against the State.

B. Proposition 22 Does Not Limit The Legislature's Discretion To End The RDA Program

Because article XVI, section 16 did not deprive the Legislature of its power to abolish redevelopment agencies, petitioners'

attack on ABX1 26 fails unless Proposition 22 eliminated that power. But Proposition 22 did nothing of the kind.

1. Petitioner League of California Cities previously testified that Proposition 22 does not limit the Legislature's discretion to end the RDA Program

Before petitioner League of California Cities told this Court that Proposition 22 eliminated the Legislature's power to end new redevelopment projects in California, the League told the Legislature that Proposition 22 would not even *limit* the Legislature's authority in that regard. This admission, made prior to the passage of Proposition 22 in response to concerns about the pending measure, is telling.

On September 22, 2010, prior to the November election at which Proposition 22 would appear on the ballot, the Senate Committee on Transportation and Housing and the Senate Committee on Local Government held a Joint Informational Hearing on Proposition 22. At that hearing, Senator Alan Lowenthal asked the Director of the General Government section of the Legislative Analyst's Office, Marianne O'Malley, whether the LAO believed that Proposition 22 would limit the Legislature's authority to impose a prospective moratorium on all redevelopment projects. (Metzker Decl., Exh. L, p. 3.) Ms. O'Malley responded that she did not "believe [Proposition 22] affects that [authority]." (*Id.*) Senator Lowenthal asked the Executive Director of the League of California Cities, Chris McKenzie, whether he agreed, and Mr. McKenzie responded "We agree entirely." (*Id.*) He went on:

> There's a slight restriction [in Proposition 22] in the Legislature's power to change the pass-through requirements. It totally protects the affordable housing requirements that you've put in place. *We believe it retains everything else*

> *that is your authority under the Redevelopment Act, which article 16 gave you and which is unaffected by this.* The only purpose of this provision . . . is to make it clear that redevelopment revenues are to be used for redevelopment, and not for other purposes.
>
> (Metzker Decl., Exh. L, p. 3, emphasis added.)

A review of the plain language of Proposition 22 demonstrates that the League was as right then as they are wrong now.

2. Proposition 22 did not expressly limit the Legislature's discretion to end the RDA Program

Of course, if the drafters of Proposition 22 had wished to eliminate the Legislature's authority to dissolve redevelopment agencies, they could have said so. For example, they could have amended article XVI, section 16 to restrict the Legislature's authority to amend the Community Redevelopment Law, or eliminated the Legislature's discretion to authorize tax increment financing, or eliminated the Legislature's discretion to authorize alternative procedures governing redevelopment projects. Yet Proposition 22 did none of these things, despite the fact that the courts had held that article XVI, section 16 permitted the Legislature to amend the laws that authorized tax increment financing. That is powerful evidence of the voters' intent to leave that law intact. (*People v. Hallner* (1954) 43 Cal.2d 715, 719 ["Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it."].)

Alternatively, they could have established redevelopment agencies as constitutional agencies that are beyond the power of the

Legislature to abolish. The Constitution provides plenty of examples of how to accomplish that result. In *State Bd. of Ed. v. Honig* (1993) 13 Cal.App.4th 720, 756, for example, the Court concluded that "the Superintendent [of Public Instruction] is a constitutional officer whose office cannot be extinguished by the Legislature" based on the following constitutional provision:

> A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election.
>
> (Cal. Const., art. IX, § 2.)

More recently, the voters established the California Institute for Regenerative Medicine as a constitutional agency when they approved Proposition 71 in 2004. (Cal. Const., art. XXXV, § 1 ["There is hereby established the California Institute for Regenerative Medicine."].) They also established the Citizens Redistricting Commission as a constitutional agency when they approved Proposition 11 in 2008. (Cal. Const., art. XXI, § 2 ["The Citizens Redistricting Commission . . . shall be created no later than December 31 in 2010, and in each year ending in the number zero thereafter."].)

Despite the availability of these examples, the drafters of Proposition 22 included nothing like this language in their measure. Without such language, they can not be credited with accomplishing that result.

3. Proposition 22 did not implicitly limit the Legislature's discretion to end the RDA Program

Without any express provisions to point to, petitioners are left to draw inferences and rely on presumptions. But the text of Proposition 22 simply does not give petitioners enough to work with.

Proposition 22 prevents the Legislature from redirecting tax increment financing revenues that are dedicated to redevelopment agencies for existing projects. In other words, if revenues have been pledged for use on a particular project, Proposition 22 prohibits the Legislature from using them or redirecting them for other purposes. It does not do more than that. Specifically, it does not immunize redevelopment agencies from legislative oversight. It does not prevent the Legislature from acting prospectively to prevent redevelopment agencies from committing more funds to new projects. And it does not provide redevelopment agencies with the right to exist in perpetuity.

That presents a problem for petitioners, because to win this claim, petitioners must prove that depriving the Legislature of power over an agency's funds is the same as giving an agency the right to exist indefinitely, so that it can be confidently inferred that voters wanted to give redevelopment agencies the latter when they gave them the former.

The courts have been here before, confronting similar claims under a similar initiative approved by the voters in a similar context. In 1992, the voters approved Proposition 162 as a response to "actions by the Governor and Legislature to balance the state budget by limiting or delaying the state's employer contributions" to the California Public Employees' Retirement System ("CalPERS"). (*Westly v. Cal. Public Employees' Retirement System Bd. of Admin.* (2003) 105 Cal.App.4th 1095,

1100.) Proposition 162 amended the Constitution to provide that "[n]otwithstanding any other provisions of law," the boards of public employees' pension or retirement systems "shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system . . . ." (Cal. Const., art. XVI, § 17.) Voters were told that the measure would "'stop politicians from raiding the pensions of . . . public employees'" in order to "balance their budgets." (*Westly v. Cal. Public Employees' Retirement System Bd. of Admin.*, *supra*, 105 Cal.App.4th at 1111, quoting Proposition 162 ballot pamphlet materials.)

CalPERS and local retirement boards responded by asserting sweeping new powers. That led to a series of legal challenges questioning how broadly broad powers can legitimately be pushed. In case after case, the courts answered by saying that even constitutional powers can be pushed no further than the express terms of a measure allow.

The first case under Proposition 162 considered whether the measure gave the Board of the Imperial County Employees' Retirement System plenary authority to determine whether public employees are qualified to receive benefits. (*Singh v. Bd. of Retirement of the Imperial County Employees' Retirement System* (1996) 41 Cal.App.4th 1180, 1189.) In other words, the Board argued that Proposition 162 insulated its determinations from judicial review in the vast majority of cases. The Court rejected the Board's argument, because, even though it was arguably "*possible* to read" Proposition 162 as the Board urged, "[n]othing whatsoever in the history or surrounding circumstances of this enactment suggests that it was intended to abrogate established rules of judicial review." (*Id.* at 1191, 1192, emphasis in original.)

The next case was *Bd. of Retirement of Santa Barbara County Employees' Retirement System v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, which considered whether Proposition 162 immunized the Board of the Santa Barbara County Employees' Retirement System from a grand jury investigation into whether the board promptly considered disability applications. (58 Cal.App.4th at 1192.) Relying on *Singh*, and finding no reference to judicial functions like grand jury investigations in Proposition 162, the Court rejected the claim. (*Id.* at 1193.)

Most recently, the court in *Westly v. Cal. Public Employees' Retirement System Bd. of Admin.*, *supra*, 105 Cal.App.4th 1095, considered whether the "plenary authority" the voters had granted CalPERS over "the administration of the system" gave CalPERS the authority to exempt its employees from civil service and to issue salaries and payments to its employees in excess of statutory limits, among other things. (*Id.* at 1099.) CalPERS argued that the plenary authority over the "administration of the system" surely included personnel matters, but the Court disagreed. The Court observed that the initiative measure expressly referred to the management of CalPERS' assets, but said "nothing about the remuneration of the Board or its employees" or "the compensation of the Board or the Board's employees." (*Id.* at 1110, 1112.) The Court concluded that voters intended CalPERS' plenary authority to extend only over those matters that had been described in the constitutional language. (*Id.* at 1112-1113.)

The same analysis applies here. Proposition 22 limited legislative prerogatives to shift or transfer tax increment, but left untouched all of the other powers the Legislature has over redevelopment agencies. It should be interpreted to go only so far as its terms permit.

The principle is an important one because it cannot be assumed that the voters intended to go any further than that. If Proposition 22 had in fact freed redevelopment agencies from the meaningful State oversight that had governed them for years, the voters should have been put on notice. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540-541 [voters must be given notice if an initiative is to be treated as an amendment to city's general plan; implied amendments are disfavored].) "[T]he voters should get what they enacted, not more and not less." (*Hodges v. Superior Ct.* (1999) 21 Cal.4th 109, 114.)

Petitioners insist that the voters would have granted redevelopment agencies the perpetual existence petitioners want them to have. Yet it is impossible to know what the voters would have done if faced with a measure that would not only have given redevelopment agencies virtually unfettered control over a large and ever-growing share of their property tax revenue, but also would have extended that control in perpetuity. Presumably some voters still would have voted yes. But some of them may have voted no, deeming that final step to be a step too far. Would the change in initiative language have been sufficient to pull support for the measure below 50 percent? We cannot know the answer to that question here today, but we do know the legal consequence of that uncertainty. The Court cannot adopt a construction that the voters knew nothing about.[33] (*Woo v. Superior Ct.* (2000) 83 Cal.App.4th 967, 977

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[33] This rule applies with particular force here, where the voters may have actually been affirmatively misled by one of the measure's proponents, who publicly assured the California Senate weeks before the vote that

(continued . . .)

[because ballot pamphlet did not put voters on notice of "adverse consequences" that would result if term limit measure were construed to include council members' prior terms, court "cannot adopt a construction that would require that result"].)

4. Section 9 of Proposition 22 does not limit the Legislature's discretion to end the RDA Program

Petitioners try to extract far too much from section 9 of Proposition 22, which gives them nothing more in this context than already provided by the codified portions of Proposition 22.

This is apparent from the language of section 9. The first and second sentences of section 9 refer to an alleged requirement in article XVI, section 16 to allocate a specified portion of taxes from "a redevelopment project each year" to the redevelopment agency, and an alleged prohibition on reallocating those taxes to any entity other than "the redevelopment agency." The third sentence proclaims that the Legislature has been violating these requirements "in recent years," while the final sentence notes that Proposition 22 intends "to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, the redevelopment agency to transfer" any portion of those taxes to other entities.

Section 9 is wrong about the requirements of article XVI, section 16, but that hardly matters here. All parties appear to agree on at least one point: the codified portions of Proposition 22 restrict the

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(. . . continued)
Proposition 22 was limited in scope, and preserved almost all legislative power over redevelopment agencies. (*See* section B(1) above.)

Legislature's ability to control the tax increment financing that redevelopment agencies are entitled to receive under the statutory enactments in place at the time that Proposition 22 was enacted. Because section 9's plain language is limited to situations "*after* the taxes have been allocated to a redevelopment agency," it does not push the application of article XVI, section 16 any further than the codified portions of Proposition 22 already push the law.

C. Neither Article XVI, Section 16 Nor Proposition 22 Limits The Legislature's Discretion To Revise The RDA Program

For all of the reasons described above, and in the briefs of respondents State and Santa Clara County, the Legislature acted well within its authority when it dissolved all redevelopment agencies. Having done so, the Legislature then acted well within its authority to authorize a new redevelopment program through ABX1 27.

We begin again with article XVI, section 16 by reiterating that in enacting that measure, the voters preserved the Legislature's discretion to authorize tax increment financing, or not. (Art. XVI, § 16, second paragraph.) The voters also preserved the Legislature's authority to enact "any other law or laws relating to" redevelopment, including "an alternative method of procedure governing" redevelopment other than tax increment financing. (Art. XVI, § 16, second to last paragraph.) By enacting ABX1 27, the Legislature simply exercised that discretion, which Proposition 22 did not take away.

Considered in context, Proposition 22 cannot be construed as petitioners urge without leading to the kinds of truly absurd results that this Court previously has taken great pains to avoid. (*See, e.g., Horwich v. Superior Ct.* (1999) 21 Cal.4th 272, 280 ["Principles of statutory

construction . . . counsel that we should avoid an interpretation that leads to anomalous or absurd consequences."].) If petitioners lose their argument over ABX1 26, as they should, then the next question facing this Court is the constitutionality of ABX1 27. On that point, petitioners argue that ABX1 27 is not constitutional because it violates Proposition 22's prohibition on requiring redevelopment agencies to pay or otherwise transfer tax increment financing for the benefit of public schools, and the prohibition on requiring redevelopment agencies to use tax increment financing for the benefit of public schools. (*See*, *e.g.*, Pets.' Reply Br., pp. 13-14, 24-25.) Although that application of Proposition 22 might make sense in a different context – perhaps where ABX1 27 had been enacted as a stand-alone measure that applied to undissolved redevelopment agencies – it makes no sense here.

Under petitioners' argument Proposition 22 would permit tax increment financing if and only if it is utilized by those redevelopment agencies that were authorized by the laws in place in 2010 – the same redevelopment agencies that squandered scarce public dollars on Dive Bars and golf resorts while school children sat in larger and larger classes in schools with fewer teachers and librarians. A better reading of Proposition 22 is that it imposed restrictions on the tax increment used by the redevelopment agencies that the Legislature had at that time authorized to exist. Now that those redevelopment agencies are dissolved, tax increment revenue can be made available to newly authorized redevelopment agencies, under different terms set by the Legislature.

D. The Standards That Govern This Case Require ABX1 26 And ABX1 27 To Be Upheld

All parties – even petitioners – appear to agree that the issues in this case must be resolved in light of the storied principle that "constitutional limits on legislative power must be construed strictly." (*See, e.g.*, Pets.' Reply Br. at 4.) But petitioners go on to insist that bedrock principle is trumped by the rule requiring voter-approved initiatives to "be liberally construed in order to effectuate [their] purposes," and the rule that interprets measures to further the voters' intent. (*Id.* at 4, 5.)

The problem for petitioners is that Proposition 22's purpose does not extend nearly far enough to help them in this litigation. Proposition 22 was enacted to "prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" tax increment revenues. (Ballot Pamp., Gen. Elec. (Nov. 2, 2010) Text of Prop. 22, p. 100.) The measure does not include one word – not one single word – about eliminating, or even restricting, any other element of control that the Legislature has over redevelopment agencies, including the ultimate control to eliminate such agencies and simultaneously revive them to conform with "an alternative method of procedure." (Cal. Const., art. XVI, § 16.) Thus, petitioners' standards do not advance their case here, where the question is not whether voters can do something, but whether they did do it; where the issue is not how to apply a remedial statute, but which remedy the voters intended to apply.

There is yet another presumption that clearly applies here, which petitioners do not address, but that is particularly useful in light of the confusion they sow over the intent behind Proposition 22. "It is a

'bedrock principle that courts are exceedingly reluctant to declare legislation unconstitutional. . . . 'All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their [un]constitutionality clearly, positively and unmistakably appears.'" (*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 817, quoting *Personal Watercraft Coalition v. Bd. of Supervisors* (2002) 100 Cal.App.4th 129, 137 and *Lockheed Aircraft Corp. v. Superior Ct.* (1946) 28 Cal.2d 481, 484.) Both ABX1 26 and ABX1 27 should be upheld under this principle, together with the principle that strictly construes limitations on legislative power, in the absence of even a modest degree of certainty over the breadth of Proposition 22.

III.

ABX1 26 STANDS ON ITS OWN EVEN IF ABX1 27 IS INVALIDATED

Petitioners would have this Court believe that ABX1 26 and ABX1 27 are united and inseparable, even though they were separately enacted and explicitly state that they stand on their own. The fact that some members of the Legislature described the two bills as part of a compromise in no way changes the plain language of ABX1 27, which reads:

> SEC. 4. The provisions of Section 2 of this act are distinct and severable from the provisions of Part 1.8 (commencing with 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code and

those provisions shall continue in effect if any of the provisions of this act are held invalid.

(ABX1 27, § 4.)[34]

Petitioners analyze this clear statement of intent in ABX1 27 as a traditional severability clause even though it addresses a completely separate statute. Like other cases involving severability, petitioners' cases all involved a single initiative measure in which the severability clause was intended to ensure at least some portion of the measure went into effect even if other portions were declared invalid by the courts. (Pets.' Reply Br. at 26-27, citing *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805 [Proposition 103]; *People's Advocate, Inc. v. Superior Ct.* (1986) 181 Cal.App.3d 316 [Proposition 24]; *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707 [Proposition 73].) That is the usual way a severability clause is used, although it can also be used to consider whether other sections of a single statute survive if part of it falls. (*See, e.g., In re Blaney* (1947) 30 Cal.2d 643, 655 ["[I]n considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. This is possible and proper where the language of the statute is mechanically severable, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words."].)

Here, by contrast, the Legislature included a survivability clause in ABX1 27 only because ABX1 26 would not go into effect unless ABX1 27 also was enacted into law. The Legislature wanted to expressly

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[34] The provisions cited are those enacted by ABX1 26.

state its intention that the joining of those two measures at the outset did *not* mean they were joined forever once signed into law by the Governor.

It is ironic that petitioners clothe their severability argument in the words of legislative intent, when their evidence of that intent relies on isolated statements of individual legislators to contradict the unambiguous language of the statute itself, though the plain language is the strongest and best indicator of legislative intent. "In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]" (*Hunt v. Superior Ct.* (1999) 21 Cal.4th 984, 1000; *see also Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30, quoting *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 ["'We have frequently stated . . . that the statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation. [Citations.]'"])

Certainly some individual legislators were uncomfortable with eliminating redevelopment agencies altogether, while others insisted that be the case. Some members wanted an alternative redevelopment scheme, while others wanted no more redevelopment agency authority. The Governor wanted the elimination of redevelopment agencies, but he also wanted passage of a timely budget bill. These various camps agreed on two bills that gave each a part of what they wanted, and required each to accede to a part of what they didn't want, while leaving it up to the courts to determine if any portion of either bill was invalid. But – and this is the

key – *they did not put the compromise in a single bill and they included an explicit and unambiguous statement of their intent that ABX1 26 should continue in effect regardless of the validity of ABX1 27.*

Had the Legislature truly intended the provisions of ABX1 26 and ABX1 27 to stand only as co-joined twins, it certainly knew how to do that. For example, the 2009-10 budget compromise included an agreement to set certain Proposition 98 calculations, revert certain education funds, establish a payment schedule for funds owed to the schools, and adjust general purpose funding to certain school districts. Each one of those provisions was politically dependent on the others, but legally severable. To ensure that the agreement would stand as it had been negotiated, regardless of any legal challenges to a particular portion of the agreement, the Legislature packaged it in a single bill, with the following severability clause:

> SEC. 7. It is the intent of the Legislature to simultaneously enact each and every section of this act, and every part thereof. If any section or part of this act is for any reason held unconstitutional, unenforceable, or otherwise invalid, the entire act shall become inoperative provided, however, that if Section 2 is held invalid in whole or in part but Section 3 remains valid in whole, the remainder of the act, excluding Section 2 and including Section 3, shall remain in effect; or if Section 3 is held invalid in whole or in part but Section 2 remains valid in whole, the remainder of the act,

> excluding Section 3 and including Section 2, shall remain in effect.
>
> (Stats. 2009, 4th Ex. Sess., ch. 3, § 7.)[35]

Nor is it surprising that the Legislature and Governor chose to "score" the bills for fiscal impact as though both would be enacted. In his traditional summary of the enacted budget issued in August of this year, the Legislative Analyst had no difficulty explaining how the two bills have independent financial benefits to the public schools, regardless of how many localities opt to use the ABX1 27 process or instead allow their redevelopment agency to lapse:

> ***Effect on State Education Spending.*** These bills [ABX1 26 and ABX1 27] provide additional funds to K-12 schools – *either* increased property revenues (in cases where the redevelopment agency is eliminated) *or* remittance payments (in cases where a city or county elects to make these payments). In both cases, the additional funds offset state-required education spending for one year: 2011-12. Specifically, the additional funds are counted as local property tax revenues in 2011-12 and included in the calculation of the Proposition 98 minimum guarantee. Beginning in 2012-13, however, the property tax revenues and remittance payments are excluded from the

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[35] *See also* Cal. Veh. Code, § 11205(f) ("If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991-92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.").

> Proposition 98 calculation and do not offset state-required education spending.
>
> (LAO Budget Report, Metzker Decl., Exh. E, p. 71, emphasis added.)

Thus the $1.7 billion revenue estimate for 2011-12 does indeed appear to be based on estimates of payments under both ABX1 26 and ABX1 27, contrary to petitioners' assertion. (Pets.' Reply Br. at 29, fn. 16.)

Petitioners insist that ABX1 26 and ABX1 27 are only about shifting funds from local entities to the State, but the truth is far more complicated, as the history of the debate readily demonstrates. ABX1 26 works independently to dissolve the current redevelopment structure, and to at least some players in this process – including the Governor, who is a former mayor himself and whose signature on both bills was essential – that is a laudable goal. It also works with ABX1 27 to provide critical relief this year to a budget stretched too thin, but even without ABX1 27, ABX1 26 allows the current flawed system to lapse and sends future property tax revenues back to more pressing local needs. A new system can be structured in its place. Thus the so-called severability clause of ABX1 27 is intended to and does mean exactly what it says, which is that regardless of how the bills were enacted, ABX1 26 stands on its own.

CONCLUSION

Mermaids and golf resorts do not tell the full story of redevelopment, but neither do petitioners. This policy debate was thoroughly vetted and conclusively answered by the Legislature and Governor in ABX1 26 and ABX1 27. That answer should not be undone

by this Court, in the middle of the fiscal year, absent the type of clear constitutional mandate that is nowhere to be found in Proposition 22.

Dated: September 29, 2011

Respectfully submitted,

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BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 9,595 words as counted by the Microsoft Word 2010 word processing program used to generate the brief.

Dated: September 29, 2011

Karen Getman

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On September 30, 2011, I served a true copy of the following document(s):

Application of California Teachers Association to File Brief Amicus Curiae in Opposition to Petitioners California Redevelopment Association, et al.; [Proposed] Brief Amicus Curiae

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 30, 2011, in San Leandro, California.

Michael Narciso

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