

No. S194861

**IN THE SUPREME COURT OF  
THE STATE OF CALIFORNIA**

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CALIFORNIA REDEVELOPMENT ASSOCIATION, *et al.*,  
*Petitioners,*

v.

ANA MATOSANTOS, *et al.*,  
*Respondents.*

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**SUPREME COURT  
FILED**

**OCT - 3 2011**

**Frederick K. Ohlrich Clerk**

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**Deputy**

**APPLICATION FOR LEAVE TO FILE BRIEF AS *AMICUS  
CURIAE* AND *AMICUS CURIAE* BRIEF OF THE SANTA CLARA  
UNIFIED SCHOOL DISTRICT IN SUPPORT OF RESPONDENTS**

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**SANTA CLARA UNIFIED SCHOOL DISTRICT**

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**APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

Pursuant to Rule 8.520(f) of the California Rules of Court, the Santa Clara Unified School District (“District”) respectfully requests leave to file the attached *amicus curiae* brief in support of Respondents Ana Matosantos *et al.*<sup>1</sup>

The District is a local unified school district that serves approximately 15,500 students in grades K-12 and an additional 10,000 adult education students. It has 24 schools serving residents of the cities of San José, Santa Clara, Sunnyvale, and Cupertino. The District is a “basic aid” school district, and it is therefore predominantly reliant upon local property tax revenues for its operation. As a basic aid district, the District does not receive any significant state aid nor does it receive payments from the Educational Revenue Augmentation Fund.

There are two redevelopment agencies (RDAs) within the District: Petitioner City of San José’s Redevelopment Agency and the City of Santa Clara Redevelopment Agency. This year, approximately \$36 million of property tax revenue that otherwise would have gone to the District will instead be diverted to those RDAs. The District’s entire annual general fund budget is approximately \$130 million, meaning that its loss to redevelopment agencies represents nearly 30% of its total general fund

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<sup>1</sup> Pursuant to California Rule of Court 8.520(f)(4)(A), the District informs the Court that its counsel in this matter, the Office of the County Counsel of the County of Santa Clara, is also concurrently counsel to Respondents-Intervenors the County of Santa Clara and Vinod K. Sharma, Auditor-Controller of the County of Santa Clara. The Office of the County Counsel has a longstanding general legal services agreement by which it serves as general counsel for the District. This brief is filed with the approval and at the direction of the District’s Board of Education. No other person or entity other than the District or its counsel made a monetary contribution to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4)(B).

budget. Over the last decade, the District has lost over \$340 million to RDAs.

This diversion of property tax revenue has resulted in severe cuts to the District, negatively affecting the students that it serves. For example, the District has had to lay off certificated and classified staff, resulting in increased class size and reduced support, planning, and programming for students. The District eliminated its elementary music program, downsized its important adult education program, and reduced or eliminated many special programs. These reductions directly harm the students and residents that the District serves. Accordingly, the District has significant interests that are affected by this litigation.


The District respectfully submits that its participation as *amicus curiae* will assist the Court by providing the valuable and distinct perspective of a basic aid school district whose interests will be harmed if the Petition is granted. Specifically, recognizing how redevelopment tax diversions affect schools is important to understand the balanced hierarchy of policy priorities that led the Legislature to enact ABX1 26 and ABX1 27, and to understand why the bills properly evince the intent that ABX1 26 be upheld even if ABX1 27 is to be invalidated.

The District therefore urges this Court to grant this application and consider the accompanying *amicus* brief.

Dated: September 30, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ, County Counsel  
LORI E. PEGG, District General Counsel  
and Assistant County Counsel

By:   
James R. Williams  
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CLARA UNIFIED SCHOOL DISTRICT*

**BRIEF OF *AMICUS CURIAE* THE SANTA CLARA UNIFIED  
SCHOOL DISTRICT IN SUPPORT OF RESPONDENTS**

*Amicus curiae* the Santa Clara Unified School District (“District”) respectfully submits this brief in support of Respondent Ana Matosantos, State Director of Finance, and Respondents-Interveners the County of Santa Clara and Vinod K. Sharma, Auditor-Controller of the County of Santa Clara (collectively, “Respondents”).

**I. INTRODUCTION**

The largest source of property tax revenue to redevelopment agencies (RDAs) comes from local property taxes that belong to school districts that are instead diverted to RDAs. By passing ABX1 26 and ABX1 27, the Legislature sought to remedy this imbalance by prioritizing education as a critical need in the state. Its first policy preference was to have both ABX1 26 and ABX1 27 stand, thereby eliminating RDAs and allowing redevelopment to continue on a voluntary basis *only* if partial relief could be provided to schools. But if ABX1 27 was found unconstitutional, the Legislature expressly chose a second policy: that all RDAs would be eliminated. In doing so, the Legislature understood and directed that property taxes currently diverted from other local governments, mainly schools, be returned to them.

Basic aid school districts like the District do not receive revenue-limit funding from the state; rather, their primary funding source is local property tax revenue. Even if the Court invalidates ABX1 27, the District urges the Court to uphold ABX1 26. Consistent with Article XVI, section 16, of the California Constitution, ABX1 26 requires that property tax revenue not needed to pay RDA indebtedness be returned to schools and other local governments in accordance with their established post-Proposition 13 allocations.

## II. ARGUMENT

The District generally joins in the Respondents' legal arguments. Specifically, the District urges the Court to uphold the constitutionality of ABX1 26, for the reasons set forth in Respondents' briefs and the additional points raised herein.

### A. The Legislature Directly Considered the Impacts to Schools in Setting Its Policy Priorities and in Enacting ABX1 26.

In its findings when adopting ABX1 26, the Legislature specifically addressed the impacts to schools as a reason for adopting ABX1 26:

(d) Schools have faced reductions in funding that have caused school districts to increase class size and layoff teachers, as well as make other hurtful cuts.

(e) Redevelopment agencies have expanded over the years in this state. The expansion of redevelopment agencies has increasingly shifted property taxes away from services provided to schools, counties, special districts, and cities.

(f) Redevelopment agencies take in approximately 12 percent of all of the property taxes collected across this state.

(g) It is estimated that under current law, redevelopment agencies will divert \$5 billion in property tax revenue from other taxing agencies in the 2011-12 fiscal year. . . .

ABX1 26, § 1. These express findings are a direct indication that the Legislature considered and passed ABX1 26 in part to address the severe impacts that RDAs impose upon schools. Mitigating impacts to schools was also front-and-center in the reports and materials before the Legislature.<sup>1</sup> The Court should defer to this legislative determination and ensure that, in accordance with the express severability clauses in both

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<sup>1</sup> See, e.g., CAL. LEGIS. ANALYST'S OFFICE, THE 2011-12 BUDGET: SHOULD CALIFORNIA END REDEVELOPMENT AGENCIES? 8 (Feb. 9, 2011), available at [http://www.lao.ca.gov/analysis/2011/realignment/redevelopment\\_020911.pdf](http://www.lao.ca.gov/analysis/2011/realignment/redevelopment_020911.pdf).

ABX1 26 and ABX1 27, any constitutional infirmity with respect to ABX1 27 does not harm schools and others whom the Legislature intended to protect through ABX1 26. *See Nadler v. Schwarzenegger*, 137 Cal. App. 4th 1327, 1338 (2006) (“Courts also must defer to the Legislature’s determination that facts exist to support legislation unless it is palpably arbitrary. Consequently, we must uphold the challenged legislation so long as the Legislature could rationally have determined a set of facts that support it.” (internal quotation and citations omitted)); *see also Amwest Surety Insurance Co. v. Wilson* 11 Cal. 4th 1243, 1252 (1995).

**B. The Organization and Funding of School Districts in California.**

The system of school funding in California is widely recognized as “overly complex, irrational, inequitable, and inefficient.”<sup>2</sup> Prior to Proposition 13, schools were mainly funded through local property tax revenues, controlled by and at the discretion of local boards of education.<sup>3</sup> In the wake of Proposition 13, the state began to play an increasingly important role in funding schools; state support now accounts for the vast majority of school funding statewide.<sup>4</sup> However, whether a school district receives state funding depends on the type of school district.

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<sup>2</sup> CAL. LEGIS. ANALYST’S OFFICE, OVERVIEW OF SCHOOL DISTRICT FINANCE 6 (Mar. 23, 2011), *available at* [http://www.lao.ca.gov/handouts/Education/2011/Overview\\_of\\_School\\_District\\_Finance\\_032311.pdf](http://www.lao.ca.gov/handouts/Education/2011/Overview_of_School_District_Finance_032311.pdf); *see also, e.g.*, SUSANNA LOEB ET AL., STANFORD UNIV. INST. FOR RESEARCH ON ED. POLICY & PRACTICE, GETTING DOWN TO FACTS: SCHOOL FINANCE AND GOVERNANCE IN CALIFORNIA 3 (Sept. 2007), *available at* <http://irepp.stanford.edu/documents/GDF/summary-paper-final.pdf> (describing “California’s school finance system” as “unnecessarily complex and . . . not rationally aligned to support the accountability and performance standards imposed on local educators”).

<sup>3</sup> *See* LOEB ET AL., *supra* note 2, at 3.

<sup>4</sup> *See, e.g.*, THOMAS TIMAR, STANFORD UNIV. INST. FOR RESEARCH ON ED. POLICY & PRACTICE, HOW CALIFORNIA FUNDS K-12 EDUCATION 4 (Sept.



With regard to state funding, there are two kinds of school districts in California: revenue-limit districts and basic aid districts. Revenue-limit districts are heavily supported by subventions of state funds based on state formulae tied mainly to enrollment and attendance. After direct property tax revenue, the largest source of non-state payments to these districts is the Educational Revenue Augmentation Fund (ERAF) of each county, which is primarily funded by a share of the property tax revenues of counties with additional contributions by cities, special districts, and other local agencies. ERAF provides funding to replace monies that the state would otherwise be obligated to provide to revenue-limit districts. Thus, when there is a diversion of tax increment to RDAs, revenue-limit districts are somewhat protected because the state is obligated to backfill any losses. This is the primary reason why the state general fund is adversely affected by the diversion of local property tax revenue to RDAs.

Basic aid districts,<sup>5</sup> by contrast, rely almost entirely on local property tax revenues. They do not receive any significant state payments; likewise, they do not receive funds from the ERAF.<sup>6</sup> These districts mainly rise and fall on their own property tax revenue streams.

**C. Redevelopment Diversions Harm All School Districts.**

Both revenue-limit and basic aid school districts suffer greatly from the diversion of property tax revenue to RDAs. This is necessarily the case

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2006), *available at* <http://irepp.stanford.edu/documents/GDF/STUDIES/02-Timar/2-Timar%283-07%29.pdf> (describing how, “on average, schools receive[] 67 percent of their funding from the state”).

<sup>5</sup> The term “basic aid” comes from the fact that these districts receive only the “basic” funding from the state that is required by the State Constitution. *See* CAL. CONST. art. IX, § 6 (requiring a \$120 per pupil state contribution, totaling not less than \$2,400 per school district). This amount is currently met by counting “categorical” funding, which is restricted in use.

<sup>6</sup> *See* Rev. & Tax. Code § 97.2(d)(2).

because, statewide, nearly half of all property tax revenues are allocated to school districts and educational entities.<sup>7</sup> That means that revenues intended for schools are the largest source of revenue for RDAs. In Santa Clara County, for example, of the nearly \$300 million that is diverted every year to RDAs, over \$150 million comes from revenues intended for educational entities, including school districts and community colleges.

As explained above, with respect to revenue-limit districts, the state backfills the bulk of losses to RDAs. Nevertheless, even revenue-limit districts suffer in at least two ways: First, they are dependent on the state general fund's ability to backfill the lost amounts. Increased amounts that the state must pay to schools to offset RDA property tax diversions directly decrease the state's general fund dollars available for other needed non-revenue-limit-based educational services. Second, several revenue-limit school districts would actually be basic aid districts but for the local property tax revenues they lose to RDAs. These revenue-limit districts lose the additional funding stream associated with having their own dedicated local property tax revenues. But for the diversion of property tax revenue to RDAs, many more school districts would become basic aid districts thereby relieving the burdens on the state and other taxing agencies.

Hardest hit by RDA diversions, basic aid districts rely almost exclusively on their local property tax revenues and they receive no significant state support. This means that every dollar a basic aid district loses to RDAs results in a direct dollar reduction to a basic aid district's general fund and the quantity and quality of educational programs it can provide to its students.

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<sup>7</sup> See CAL. SEN. LOCAL GOV'T COMM., WINDING DOWN: PREPARING FOR THE END OF OLDER REDEVELOPMENT PROJECTS 6 (Feb. 20, 2008) (informational hearing summary report and briefing paper).

**D. Redevelopment Diversions Severely Harm the Santa Clara Unified School District.**

The District is a basic aid school district, and approximately 75% of its general fund revenues come from local property taxes. Because of this reliance on local property taxes for its own funding, the District is particularly harmed by the diversion of its property tax revenues to RDAs. The District serves approximately 15,500 students in grades K-12 and an additional 10,000 adult education students in 24 schools. It serves residents of the cities of San José, Santa Clara, Sunnyvale, and Cupertino. The District neither receives any significant state aid nor does it receive ERAF payments.

There are two RDAs within the District: Petitioner City of San José's Redevelopment Agency and the City of Santa Clara Redevelopment Agency. This year alone, the diversion of property tax revenue to those RDAs will directly cost the District approximately \$36 million in tax revenue (of which \$25 million is diverted to San José's RDA). The District's entire annual general fund budget is approximately \$130 million, meaning that the losses to RDAs represent nearly 30% of the District's total general fund budget each year. Over the last decade, the District has lost over \$340 million to RDAs, equal to over 2.5 years of the District's general fund during that time period.

This diversion of property tax revenues has resulted in severe cuts to the District, negatively affecting the students that it serves. For example, in part because of money that is lost to RDAs, the District has had to lay off certificated and classified teachers and staff. Due to funding shortages, the District has made a variety of severe cut to its programs, including:

- Increasing K-3 class sizes by 50% (from 20:1 to 30:1)
- Reducing funding for instructional materials, such as textbooks
- Eliminating the elementary music program
- Eliminating preparation time for elementary school teachers

- Eliminating the Gifted and Talented Education Program
- Eliminating art and music block grants
- Increasing math and reading class sizes
- Eliminating the Science Fair
- Eliminating the Community Based English Tutoring Program
- Reducing funding for school improvement programs
- Reducing funding for Peer Assistant Review and teacher professional development support
- Eliminating summer school for elementary schools and reducing summer school for middle and high schools
- Reducing funding for beginning teacher salary assistance
- Reducing funding in the regional occupation program (vocational education)
- Reducing library clerks at elementary schools
- Reducing athletic programs for high schools
- Limiting the Independence Network for adult disability students
- Reducing funding for English as a Second Language adult students
- Reducing the Adult High School Diploma program
- Reducing career and vocational programs for adult students
- Reducing support for the co-op preschool program
- Raising fees for all adult education classes

These reductions directly harm the students and residents that the District serves. If the District was to reclaim the property taxes that are presently diverted to RDAs, it could restore some of these critical programs.

**E. This Court Should Honor the Legislature’s Express Hierarchy of Policy Priorities and Article XVI, section 16, by Upholding ABX1 26 and Returning Diverted Property Taxes to the District and Other Schools and Local Governments.**

The Court should honor the legislative policy of restoring funding to schools that is expressed in the plain language of ABX1 26. The underlying policy and the provisions of ABX1 26 are consistent with Article XVI, section 16 of the Constitution, which requires that diverted increment be returned to the District and other schools and local governments in accordance with their normal property tax allocations. As this Court has repeatedly noted: “It is a settled principle in California law that [w]hen statutory language is thus clear and unambiguous there is no

need for construction, and courts should not indulge in it.” *In re Lance W.*, 37 Cal. 3d 873, 886 (1985) (quoting *In re Waters of Long Valley Creek Stream System*, 25 Cal. 3d 339, 348 (1979) (internal quotation and citation omitted)). “Rather than interpret a statutory provision based upon an assumption about the Legislature’s intent, courts must analyze a statute’s plain language, and may look to the legislative history underlying a statute’s enactment only if the plain language is ambiguous.” *Olson v. Automobile Club of Southern California*, 42 Cal. 4th 1142, 1151 (2008) (citation omitted).<sup>8</sup>

The plain language of ABX1 26 and ABX1 27 is dispositive evidence of the Legislature’s hierarchy of policy preferences. Its first choice, demonstrated directly by the passage of both ABX1 26, which eliminates all RDAs, and ABX1 27, which allows redevelopment only pursuant to a new voluntary program, shows that the Legislature exercised its policy prerogative to provide that if redevelopment is to continue at all, it should do so *only* if there is some mitigation provided for adverse impacts to schools.

However, both the structure and language of ABX1 26 and ABX1 27 indicate that the Legislature contemplated that the voluntary redevelopment program in ABX1 27 might be subjected to constitutional challenges, and that some part of it might not withstand such scrutiny. In such event, the Legislature left no doubt as to its intentions.

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<sup>8</sup> See also *Green v. State*, 42 Cal. 4th 254, 260 (2007) (“The statute’s plain meaning controls the court’s interpretation unless its words are ambiguous. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent.”).

The carefully-crafted and unambiguous severability clauses<sup>9</sup> in ABX1 26 and ABX1 27 demonstrate the Legislature's second policy choice: if *any* part of the voluntary program set forth in ABX1 27 was unconstitutional, all RDAs should nonetheless be eliminated pursuant to ABX1 26. This is the only conclusion that can be drawn from the plain meaning of the severability clauses in ABX1 26 and ABX1 27, and it is true regardless of whether the severability clauses themselves are valid.<sup>10</sup> Rather than adopting ABX1 26 as a means to an end, with ABX1 27 being the alleged goal, the Legislature desired to conclusively implement one of two separate but interrelated policy priorities to aid schools, as described above. To ascertain this intent, the Court need not look beyond the plain text of the bills.

This policy hierarchy makes perfect sense in light of Article XVI, section 16. In exercising its power to eliminate RDAs altogether, the Legislature provided a statutory mechanism (ABX1 26) to implement the following command from Article XVI, section 16:

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).

ABX1 26 applies this provision by carefully winding down RDAs such that their indebtedness is paid off and funding is restored to the schools and local governments whose tax revenues had previously been diverted to

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<sup>9</sup> ABX1 26 and ABX1 27 are expressly severable from each other. *See* ABX1 26, § 12; ABX1 27, § 4. The provisions of ABX1 26 are also expressly severable from one another, while ABX1 27 contains an express non-severability clause. *Compare* ABX1 26, § 12 *with* ABX1 27, § 5.

<sup>10</sup> The District also specifically joins Respondents' arguments regarding the legal operation of the severability clauses in ABX1 26 and ABX1 27.

RDAs while the Legislature chose, in its discretion, to allow them to receive tax increment to pay for redevelopment projects. The Court should honor this plan by upholding ABX1 26 and allowing the diverted property tax revenues to be returned to the District and other schools and local governments as indebtedness is paid off, as is contemplated by Article XVI, section 16.


## VI. CONCLUSION

ABX1 26 is a valid exercise of the Legislature's power. And the plain language of the bills – both ABX1 26 and ABX1 27 – is the final and conclusive evidence of the Legislature's intent that, if there was any infirmity with the voluntary payment program in ABX1 27, ABX1 26 should nonetheless survive and property tax revenues diverted to RDAs should be restored to their rightful recipients. This is a lawful and proper expression of the Legislature's exercise of its authority to eliminate redevelopment independent of any voluntary payment scheme, and it requires no further interpretation beyond the plain text of the bills. Accordingly, this Court should uphold ABX1 26.

Dated: September 30, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ, County Counsel  
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and Assistant County Counsel

By:   
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*Attorneys for Amicus Curiae SANTA  
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CERTIFICATE OF COMPLIANCE

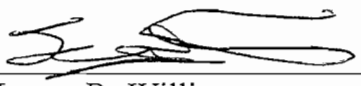
Pursuant to Rule 8.504 and 8.204 of the California Rules of Court, I certify that this **APPLICATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* and *AMICUS CURIAE* BRIEF OF THE SANTA CLARA UNIFIED SCHOOL DISTRICT IN SUPPORT OF RESPONDENTS**, has been prepared using one-and-a-half-spaced, 13-point Times New Roman typeface. In reliance upon the word count feature in our Microsoft Word 2007 software, I certify that the word count for this brief and application, including the signature lines following the brief's conclusion, is 3,479.

Dated: September 30, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ, County Counsel  
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and Assistant County Counsel

By: \_\_\_\_\_

  
James R. Williams  
Deputy County Counsel

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CLARA UNIFIED SCHOOL DISTRICT*



SUPREME COURT, STATE OF CALIFORNIA  
PROOF OF SERVICE BY MAIL

*California Redevelopment Association, et al. v. Matosantos, et al.*

Case No. S194861

I, Michele C. Wright, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding, East Wing, 9<sup>th</sup> Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. On **September 30, 2011**, I served a copy of **APPLICATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND *AMICUS CURIAE* BRIEF OF THE SANTA CLARA UNIFIED SCHOOL DISTRICT IN SUPPORT OF RESPONDENTS** by electronic mail and by placing said copy in an envelope addressed to:

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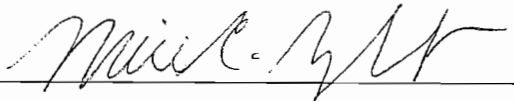
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*County of Santa Clara*

which envelope was then sealed, with postage fully prepaid thereon, on **September 30, 2011**, and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **September 30, 2011**, at San Jose, California.

  
Michele C. Wright

