Case No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

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

Respondents.

AMICUS BRIEF OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, THE SOUTHERN CALIFORNIA ASSOCIATION OF NON-PROFIT HOUSING AND BETTY YEE, A MEMBER OF THE STATE BOARD OF EQUALIZATION IN SUPPORT OF PETITIONERS CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.

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I.

INTRODUCTION

The purpose of this amicus brief is to urge this Court to review and determine the constitutionality of ABX1 26 and ABX1 27 (the "Redevelopment Budget Legislation") as a tandem and inseverable enactment, as clearly intended by both its author and the Legislature that enacted it. These statutes were considered and enacted together for a single unconstitutional purpose and must fall, and fall together, because this purpose cannot be realized unless both statutes are operative. This single purpose is made expressly clear in both bills comprising the legislation.

This brief is made necessary because of the misleading and inaccurate assertion by Matosantos in the Return to Petition for Writ of Mandate and Supporting Memorandum ("Return") that "Properly considered as independent enactments, both acts pass constitutional muster." (Return at p. 8.) Matosantos's Return flatly withholds even the briefest mention of the legislative history of the Redevelopment Budget Legislation, a history that clearly undercuts Matosantos's reliance on this non-existent "independent enactment" fiction and instead attempts to pass off the Redevelopment Budget Legislation as if it were individual legislative endeavors. The undersigned amici were moved to file this brief in order to counter this misleading and inaccurate depiction of the Redevelopment Budget Legislation.

These amici agree with Petitioners' contentions as to the unconstitutionality of both statutes for the reasons stated in Petitioners' briefs. The arguments in support of that position will not be repeated in this brief, and should be deemed to be incorporated herein by this

reference. Instead, this brief will only address the argument posited by Matosantos in the Return that the Redevelopment Budget Legislation was comprised of independent enactments.

Matosantos's independent enactment fiction must be rejected for the following four reasons. First, ABX1 26 and ABX1 27 both expressly state that each cannot be effective without the other. Second, the legislative history of the Redevelopment Budget Legislation reveals the author's and the Legislature's clear intent to use ABX1 26 and ABX1 27 *in tandem* to realize $1.7 billion in RDA revenues while keeping the RDAs operative, albeit in a reduced capacity. Third, to uphold one without the other would create a result that was clearly never intended by the author of the bills or by the Legislature. Dissolution of the RDAs without the remittance alternatives was rejected by the Legislature months before the subject bills were enacted. In fact, the author of the bills assured the Legislature that there was no attempt to dissolve redevelopment agencies without offering the "voluntary" remittance program (as shown in the legislative history discussed below). Fourth, the two bills are inextricably intertwined and functionally not severable, because certain provisions of ABX1 26 refer to and rely on the provisions of ABX1 27.

Accordingly, these amici join Petitioners' request that this Court strike down both ABX1 26 and ABX1 27 as unconstitutional for the reasons stated in Petitioners' briefs. Regardless of this Court's determination regarding the constitutionality of those enactments, the bills must stand or fall together, because they are not severable.

II.

APPLICABLE LAW RELATING TO SEVERABILITY

It is the position of these amici that the provisions of ABX1 26 and ABX1 27 are not severable, therefore both enactments must fall if either is stricken as unconstitutional. To assist the Court in evaluating that position, these amici first offer the following summary of the law relating to severability.

A. General Statement of Severability Law

This Court's latest articulation of the standards for severability is found in *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821-822, where the Court stated:

> The cases prescribe three criteria for severability: the invalid provision must be grammatically, functionally, and volitionally separable.

These criteria apply whether or not the statute, ordinance, or initiative contains a clause providing for severability:

> Our cases explain the effect of such a [severability] clause. "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. ... Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder ... is complete in itself and would have been adopted by the legislative body had

the latter foreseen the partial invalidity of the statute ... or constitutes a completely operative expression of the legislative intent ... [and is not] so connected with the rest of the statute as to be inseparable." (*Santa Barbara Sch. Dist.* v. *Superior Court* (1975) 13 Cal.3d 315, 331 [118 Cal.Rptr. 637, 530 P.2d 605]; *Metromedia, Inc.* v. *City of San Diego* (1982) 32 Cal.3d 180, 190 [185 Cal.Rptr. 260, 649 P.2d 902].) (Interior quotation marks and citations omitted.)

Id. at p. 821.[1]

B. Severability rejected—"functionality" requirement not met.

In *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, this Court rejected severance because it would not have met the "functionality" requirement. The case involved an ordinance with a broad ban on billboards, intended by the city to eliminate unsightly and distracting billboards. The ordinance had a severability clause, and the Court recited the general rule stated in *Calfarm*, *supra*. The Court noted that severance was "mechanically possible" but "it is doubtful whether the purpose of the original ordinance is served by a truncated

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[1] This standard is substantially the same as the standard adopted by the federal courts. "The standard for determining the severability of an unconstitutional provision is well established: 'Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.' [Citations.]" *Alaska Airlines, Inc. v. Brock* (1986) 480 U.S. 678, 684, 107 S.Ct. 1476, 94 L.Ed.2d 661.

version . . .." *Id.* at p. 190. The Court concluded that limiting the prohibition to the validated portions of the ordinance "would be inconsistent with the language and original intent of the ordinance, and therefore rejected the proposed construction or severance." *Id.* at p. 191.

Similarly, in *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach* (1993) 14 Cal.App.4th 312, the court held that portions of the city's parade permit ordinance were unconstitutional, while other provisions were valid. The court held that the ordinance was not severable and therefore was invalid. As the court explained, "In short, the trial court's invalidation of section 5.60.030(C) has removed the hub from Chapter 5.60's wheel, and without it the spokes cannot stand. In these circumstances of verbal and functional inseverability, the City's general severability clause cannot save the ordinance." *Id.* at p. 327.

C. Severability rejected—"functionality" and "volitional" requirements not met.

In *Barlow v. Davis* (1999) 72 Cal.App.4th 1258, at issue was Public Contract Code section 10115.5, which was intended to improve the position of certain minorities in the procurement of public contracts. The statute required statewide numerical "participation goals" for the designated groups, and required state departments to report each year on the level of participation in awarded contracts. *Id.* at p. 1261-1262. The statute's participation goals and good faith requirements were found unconstitutional in *Monterey Mechanical Co. v. Wilson* (9th Cir. 1997) 125 F.3d 702, 714-715. In subsequent state

court proceedings, the statute's supporters urged the court to continue the reporting requirement. The statute had a severability clause, and the court stated the usual *Calfarm* rules about its application.

The court found that section 10115.5 met the "grammatical" component of the three-part test, however the court held that the provision was not functionally and volitionally separable, stating,

> The remaining [validated] portions must constitute an independent operative expression of legislative intent, unaided by the invalidated provisions. They cannot be rendered vague by the absence of the invalidated provisions or be inextricably connected to them by policy considerations. . . . 'The remainder must '"constitute a completely operative expression of the legislative intent . . .."' [Citation.] The part to be severed must not be part of a partially invalid but unitary whole. [citation.]" (Id. at p. 1265-1266.) "When the main purpose of a statute is defeated by the unconstitutionality of part of the act, the whole act is invalid. [Citations.]
>
> *Barlow v. Davis*, *supra*, 72 Cal.App.4th at 1266.

D. Severability rejected—would "destroy statutory scheme."

In *Dillon v. Municipal Court for Monterey-Carmel Judicial Dist.* (1971) 4 Cal.3d 860, this Court rejected severance because it would "destroy[] the statutory scheme." As the court held, "The test of severability is whether the invalid parts of the statute can be severed from the otherwise valid parts without destroying the statutory scheme,

or the utility of the remaining provisions. [Citations.]" "Since the statutory scheme here established would be destroyed if subdivision (a) were permitted to stand, we hold that it cannot be severed, and the entire ordinance must be considered unconstitutional." *Id.* at p. 872.

E. Severability rejected—provisions inseparable.

In *In re Portnoy* (1942) 21 Cal.2d 237, this Court rejected severance because the subject provisions were "so inseparably connected that it is impossible to sustain any part of the section after the invalidation of the part in conflict with the provisions of the Penal Code." "Nothing less than a complete rewriting of this section could make it consistent with the provisions of the Penal Code and accomplish its true function as supplementary legislation," so the provisions were not severable. *Id.* at p. 242.

F. Severability rejected—provisions "inextricably intertwined."

In *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, the court considered an appeal from a writ of mandate that precluded the city from enforcing an in lieu fee provision of a partially invalidated affordable housing ordinance. The ordinance had a severability clause, about which the court recited the general rules stated in *Calfarm*. In response to the city's contention that the valid portion of its Plan's in lieu fee provision should be severed from any invalid portion of the Plan's affordable housing requirements, the court held that "The severability clause does not apply, however, because, for the reasons previously stated, the in lieu fee provision is inextricably intertwined with the invalid portion of the Plan's affordable housing requirements. Severing the invalid in lieu fee

provision from the invalid affordable housing requirements would serve no useful purpose." *Id.* at p. 1412.

G. Brief Summary of Severability Law

Thus, the applicable rules relating to severability require that this Court consider whether any remaining validated portions of an enactment (1) would function independently of the invalid portions, and (2) would serve the original legislative intent relating to the subject enactments. ABX1 26 and ABX1 27 fail both of those tests, as will be discussed below.

III.

THE PROVISIONS IN ABX1 26 AND ABX1 27 EXPRESSLY STATE THAT EACH CANNOT BE EFFECTIVE WITHOUT THE OTHER.

Remarkably Matosantos argues in the Return that "But the truth is otherwise. ABX1 26 did not make a *contingent* threat to dissolve all RDAs, as petitioners suggest." (Return, p. 8; emphasis added.) This supposed "truth" proffered by Matosantos is revealed to be false by the very words of ABX1 26 itself, which provides:

> Sec. 14. This act shall take effect *contingent* on the enactment of Assembly Bill 27 of the 2011-2012 First Extraordinary Session or Senate Bill 15 of the 2011-2012 First Extraordinary Session *and only if* the enacted bill adds Part 1.9 (commencing with Section 34192) to Division 24 of the Health and Safety Code.
>
> (Emphasis added.)

Similarly, ABX1 27 also provides for its contingent enactment in section 34192.5(a):

> This part shall be operative only if Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) are enacted and operative at the time the act adding this part takes effect.[2]

In its Return, Matosantos argues that this Court should simply ignore the contingent enactment of ABX1 26 and ABX1 27, because "these were independent statutes, and the invalidation of one would have no effect on the other." (Return, p. 29.)

The Court should reject that argument for two reasons. First, while ABX1 27 does contain a severability clause at Section 4, it also includes an internal non-severability clause, which provides at Section 5 that, "If Section 2 of this act, or the application thereof, is held invalid in a court of competent jurisdiction, the remaining provisions of this act *are not severable and shall not be given, or otherwise have, any force or effect.*" (Emphasis added.) The result of the Section 5 non-severability clause is that if ABX1 27 is stricken as unconstitutional, then its Section 4 severability clause is also stricken because all provisions of ABX1 27 are non-severable pursuant to Section 5.

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[2] The fact that ABX1 27 also requires that the provisions of ABX1 26 are "operative" refutes the State's argument that simply "enacting" the two bills was sufficient to meet the contingency language of the bills. *Shaw v. Chiang* (2009) 175 Cal.App.4th 577, 600 (in interpreting a statute, court gives significance to every word and attempts to avoid an interpretation that makes any part superfluous or meaningless).

Second, the law is clear that the legislative intent regarding severability prevails over the express statutory provisions. As the court stated in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles, supra,* 175 Cal.App.4th at 1412,

> "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. ... Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder ... is complete in itself *and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute* ... or constitutes a *completely operative expression of the legislative intent* ... and is not so connected with the rest of the statute as to be inseparable." (*Santa Barbara Sch. Dist. V. Superior Court* (1975) 13 Cal.3d 315, 331 [118 Cal.Rptr. 637, 530 P.2d 605]; *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 190 [185 Cal.Rptr. 260, 649 P.2d 902].) (Interior quotation marks and citations omitted.)" (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821 [258 Cal.Rptr.161, 771 P.2d 1247].)
>
> (Emphasis added.)

Matosantos's error in asserting that ABX1 26 and ABX1 27 can be considered independently is evidenced by the legislative history relating to the Legislature's *concurrent* consideration and enactment of ABX1 26 and ABX1 27. The Legislature's clear intent was to employ

a carrot and stick scheme against the RDAs to realize $1.7 billion in RDA revenues while keeping the RDAs operative, albeit in a reduced capacity. ABX1 26 provided the "stick" to force the payments from the RDAs by threatening their immediate elimination, and ABX1 27 provided the "carrot" that permitted the RDAs to continue to exist if they made the required payments.

Recognizing its Achilles' heel, Matosantos attempts to side-step the issue by asserting that the exercise of determining whether the Legislature would have enacted ABX1 26 alone is "not necessary." (Return, p. 29.)[3] Matosantos then asserts, without any supporting legislative history (because there is none), that "[e]ven if ABX1 27 is not upheld, ABX1 26 winds down the affairs of RDAs in a manner that protects property rights and the public fisc while achieving substantial budgetary savings, an obvious goal of the Legislature." (Return at p. 30.)

In fact, the legislative history demonstrates just the opposite – ABX1 26 and ABX1 27 were offered to the legislators as a package deal, and there was no legislative intent to eliminate RDAs pursuant to ABX1 26 without the payment provisions of ABX1 27. Nor is there any evidence of a "budget solution" flowing from the enactment of ABX1 26 alone, as will be further discussed below.

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[3] Not only is the exercise necessary under applicable case law, but the result is not open to speculation. The Legislature was given this very choice when the Governor presented his budget and the Legislature voted on but did not pass the Governor's bill to dissolve RDAs.

IV.

THE LEGISLATURE INTENDED TO USE ABX1 26 AND ABX 127 *IN TANDEM* TO EXTRACT $1.7 BILLION IN RDA REVENUES.

A. The proceedings in the Legislature conclusively demonstrate that ABX1 26 and ABX1 27 were enacted to realize $1.7 billion in RDA revenues while keeping the RDAs operative, albeit in a reduced capacity.

In the Assembly on June 15, 2011, Assembly Member Blumenfield, the sponsor of the subject bills, explained that the two enactments created a single statutory process, stating,

> [W]e have two trailer bills in a redevelopment package, SB 14X1, which is the RDA phase-out, uh, and the creation of an RDA alternative program. I'm going to present both of them together *since they really work hand in hand*. . . .
>
> *Both of these bills* before us today provide an opportunity for RDAs *to continue their redevelopment activities* under local control through participation in alternative redevelopment programs and make voluntary payments to help our schools. . . .
>
> *State support for redevelopment*, although at – at a lesser amount than is currently the case *would continue*.
>
> . . . I ask for your aye vote, uh, on both of these measures, but first on AB 26.

Pet. MJN, Ex. 3, p. 2, l. 15 – p. 4, l. 13 (emphasis added).[4]

When Assembly Member Hagman asked Assembly Member Blumenfield whether the two bills were "double-joined in any way," Assembly Member Blumenfield responded,

> *[I]t's contingent enactment. . . . [Y]ou can't have one without the other. . . .*
>
> Pet. MJN, Ex. 3, p. 4, ll. 22 – 24 (emphasis added).

Assembly Member Blumenfield then continued,

> Turn your attention to page 55 of the [ABX1 26] bill, section 14. ... [I]t says quite clearly this act shall take effect contingent on the enactment of Assembly Bill 27 of the 2011-2012 year.
>
> Pet. MJN, Ex. 3, p. 6, ll. 14 – 17

Having fielded numerous questions on how both bills were presented as a package, Assembly Member Blumenfield made the following admonition prior to the commencement of voting:

> I want to reiterate since there's been a lot of questions about it. The bill clearly states this act shall take effect contingent upon the enactment of Assembly Bill 27. So the – *the two are directly linked. You cannot have one without the other.*
>
> Pet. MJN, Ex. 3, p. 18, ll. 10 – 14 (emphasis added).

Therefore, the author of the subject legislation clearly represented before the Assembly vote that the two bills together would

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[4] Petitioners' Motion for Judicial Notice filed on September 23, 2011, is identified as "Pet. MJN".

serve the single purpose of raising money for this fiscal year's budget – and ABX1 26 was not intended to act as a stand-alone bill to eliminate redevelopment agencies, as argued by Matosantos in the Return.

Similarly, in the Senate on June 15, 2011, Senator Leno introduced the proposed legislation as follows,

> *This bill and the next bill together* make up two thirds of a three step proposal *as an alternative to the Governor's earlier proposal to eliminate RDAs in California.* So this bill, the first one, AB 26 is the elimination part of it. The second bill we'll talk about in a moment. It has to do with the going forward of development in California and reforms that we will make to the current system. So what this bill specifically does is eliminates, as I said, the RDAs *in the case where a community chooses not to participate in the alternative RDA program, which will be established in the next bill.*
>
> Pet. MJN, Ex. 2, p. 2, ll. 11-22 (emphasis added).

Any doubt in this regard was removed by the comments of Senate President Pro Tem Steinberg, who stated in the same Senate proceedings on June 15, 2011:

> Remember members, *this is a two-bill package.* If the governor were to sign this bill, the elimination bill and not sign the subsequent bill, which recreates redevelopment, uh, the first bill, this bill will not go into effect.
>
> *So elimination is not a – a risk standing alone.*
>
> *You have to read the two bills together.*

> Pet. MJN, Ex. 2, p. 17, ll. 22 – p. 18, l. 3 (emphasis added).

Senate President Pro Tem Steinberg went on to state at that same proceeding:

> And when you look at the two-bill package what we've essentially said here to simplify it is that *redevelopment should in fact continue*, but it will have fewer resources than it has today.
>
> . . . And we're being asked to make a choice here and I think that this is the fair and right choice, because *it does not in fact eliminate redevelopment*, but it reduces its size.
>
> Pet. MJN, Ex. 2, p. 18, ll. 13 – p. 19, l. 7 (emphasis added).

Even the Senate discussion relating to ABX1 27 clearly demonstrates that the Legislature intended that the two bills be concurrently enacted. As Senator Leno stated in the June 15, 2011 Senate proceedings,

> This is the bill that allows us to vote for the previous bill, because it will create the alternative ongoing RDA program with reforms to which communities can opt in and continue their redevelopment programs. And again, the two bills together will be $1.7 billion of our total budget solutions.
>
> Pet. MJN, Ex. 2, p. 37, ll. 18-24.

These assurances played an important part in the passage of the subject bills, because it secured two votes that were crucial for their passage – Sen. Lowenthal ("we will protect redevelopment with this

vote") and Sen. Hancock (voted yes because of Sen. Steinberg's "commitment to mend [redevelopment], not end it.") Pet. MJN, Ex. 2, p. 30, l. 2 and p. 32, l. 14, respectively.

Therefore, the proceedings in both the Assembly and the Senate conclusively disprove Matosantos's patently inaccurate claim in its Return – that ABX1 26 was intended by the Legislature to act as a stand-alone bill to immediately eliminate redevelopment agencies (Return at p. 8).

In fact, the Legislature refused passage of the Governor's (and LAO's) proposal in that regard. (Matosantos MJN, Ex. B; LA/CRA MJN, Exs. 1 and 2.)[5] Instead, the two bills were intended "to be read together" as "a two-bill package" and "directly linked" to provide a single solution to assist in solving the budget deficit. "You cannot have one without the other" as stated twice by the author Assembly Member Blumenfield.

Because the Legislature enacted each bill contingent on the enactment of the other, and clearly intended to *not* eliminate redevelopment (as argued by Matosantos in the Return), but instead to permit redevelopment to continue on a reduced scale, this Court should follow that legislative intent and consider the two bills as a single enactment in determining their legality. The legislative history demonstrates that the Legislature never intended that the two bills would be severable.

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[5] The Motion for Judicial Notice filed concurrently herewith is identified as "LA/CRA MJN."

B. The two bills were enacted in a special session relating to the State's fiscal emergency, thus further evidencing a unitary intent to salvage the State's general fund budget hole without terminating the RDAs.

It is also beyond any serious dispute that the two bills were enacted in a special session relating to the State's fiscal emergency, thus further evidencing the Legislature's single purpose in concurrent enactment of ABX1 26 and ABX1 27.

ABX1 26 Sections 15 and 16 and ABX1 27 Sections 7 and 8 contain the following identical provisions,

> This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.
>
> This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

Further, the Final Action Report of the Senate Budget and Fiscal Review Committee dated July 22, 2011 (LA/CRA MJN, Ex. 3) reflects that the enactment of ABX1 26 and ABX1 27 resulted in the contribution of $1.7 billion toward the State's Proposition 98 funding obligation to schools. In Subcommittee No. 1 report relating to Education, the Senate Committee explained its budgetary allocation to Education pursuant to Proposition 98. That report states:

> **Offset for New RDA Related Local Revenues.** Provides a decrease of **$1.7 billion** to reflect new local remittances for K-12 local education agencies related to redevelopment agency (RDAs) pursuant to provisions of the education budget trailer bill (SB 70) and another RDA budget trailer bill (AB X1 27). These statutory provisions assure that there is no change in the combined amount of Proposition 98 funding that would otherwise be provided to K-12 without these local revenues. In effect, their provisions require that new local funds be used to offset state General Fund support of Proposition 98 through a rebenching of the Test 1 factor.
>
> LA/CRA MJN, Ex. 3, pp. 1-1, 2.

Similarly, Subcommittee No. 4 on State Administration and General Government Final Action Report also identified ABX1 26 and ABX1 27 as contributing to the State's budget, stating:

> Approved trailer bill language (ABX1 26 and ABX1 27) to eliminate existing redevelopment agencies and to create an alternative program to continue redevelopment in those communities that opt to participate. To opt-in to the alternative program, the community that sponsors the redevelopment agency (either a city or county), has to agree to make a community remittance to support schools, fire special districts, and transit special districts as applicable. The redevelopment agency can direct additional funds to the city or county to mitigate for the community remittance. State General Fund relief of $1.7

billion is generated in 2011-12 from the reduced State Proposition 98 funding obligation. Ongoing funding of about $400 million will benefit schools and special districts. Redevelopment agencies will continue to receive a state subsidy, but at a reduced level due to the State's fiscal condition.

LA/CRA MJN, Ex. 3, p. 4-20.

Similarly, the Assembly's Report of the 2011-2012 Budget Plan stated,

> The proposal will also result in state budget year savings of $1.7 billion, and ongoing amounts thereafter. The intent of the budget package is to offer an attractive alternative to communities so that there will be very few agency eliminations.
>
> LA/CRA MJN, Ex. 4, p. 23.

Thus, it is clear that the sole purpose of enacting ABX1 26 and ABX1 27 was to assist in balancing the State budget by providing $1.7 billion in financial support for the State's Proposition 98 funding obligation to the schools – and not to abolish redevelopment agencies, as argued by Matosantos. This financial support would accrue only if every redevelopment agency opts in under ABX1 27.

Furthermore, ABX1 26, standing alone, does not provide any direct financial benefit to the State. It only provides for the immediate suspension of redevelopment activities in Part 1.8 and the later elimination of redevelopment agencies in Part 1.85. ABX1 26 does not

make any findings relating to its fiscal impact, nor could it reasonably do so.[6] The elimination of redevelopment agencies may at some unspecified time in the future provide a financial benefit to the State, but in the short run all redevelopment tax increment would be paid to meet the existing financial obligations of the redevelopment agencies, including pass-through payments and bond payments.

Because there are no legislative findings in ABX1 26 or legislative discussions in the legislative history of ABX1 26 or ABX1 27, analyzing the immediate financial benefit to the State under ABX1 26 alone, ABX1 26 could not have been enacted at a special legislative session relating to the State's fiscal emergency. California Constitution Article IV, Section 3(b); *Martin v. Riley* (1942) 20 Cal.2d 28, 39 ("The duty of the Legislature in special session to confine itself to the subject matter of the call is of course mandatory. It has no power to legislate on any subject not specified in the proclamation.").

Further, regarding the immediate financial benefit to the State of ABX1 26, Senator Huff stated in the June 15, 2011 proceedings:

> Isn't it always about the money? There is a belief that because of Prop. 22 we can't take their money as we've

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[6] Matosantos's argument in the Return that ABX1 26 alone provides for a $1.1 billion benefit to the State should be rejected by the Court. That argument is based on the LAO report recommending that redevelopment agencies be immediately eliminated, as proposed by the Governor and rejected by the Legislature. That report does not analyze the effect of a stand-alone ABX1 26. Further, the legislative history never evidences any intent to recapture $1.1 billion (as opposed to $1.7 billion) from the RDAs to close the budget deficit.

done in the past. So we'll just kill it instead[7] and then if they voluntarily want to reconstitute themselves in some Frankenstein-type of redevelopment agency then there will be money flowing again for a redirected cause. But the State's going to score, they believe, $1.7 billion. The money's not there, folks. That money's already been siphoned off in past budgets.

Pet. MJN, Ex. 2, p. 24, ll. 6-15.

Therefore, absent any express finding by the Legislature of the financial benefit to the State of the stand-alone enactment of ABX1 26 - which finding was not made, because the Legislature never intended such a stand-alone enactment, as discussed above - Matosantos's argument relating to its financial benefit to the State should be rejected.

The only immediate ascertainable financial benefit to this year's State Budget is through ABX1 27 and its "voluntary" payments[8] of $1.7 billion in this fiscal year and $400 million next fiscal year.

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[7] It has been commented that Matosanto's position is that the State may not be permitted to steal money from the redevelopment agencies due to Prop. 22, but it is permitted to kill them – therefore, it is the State's position that murder is a defense to theft. However, murder is not a defense to theft. (*People v. Navarette* (2003) 30 Cal.4th 458, 499, 133 Cal.Rptr.2d 89 [". . . one can certainly rob a living person by killing that person and then taking his or her property."].)

[8] Senator Wright, in describing the nature of the ABX1 27 payments, stated as follows, "So here we're saying to the redevelopment agency, if you don't give me all the money that I want I'm going to shut you down. Now, in South Central L.A. we call that extortion. Now I'm not sure what you call it in Sacramento, but in South Central that's

Moreover, the legislative history relating to the enactment of the subject acts irrefutably states that the sole purpose of the two acts was the collection of the "voluntary" payments under ABX1 27. The Bill Analysis relating to ABX1 26 prepared for the Senate Rules Committee states:

> This bill is one of two budget trailer bills on redevelopment. This bill eliminates redevelopment agencies (RDAs) and specifies a process for the orderly wind-down of RDA activities. The other bill (either SB 15X or AB 27X) would create an alternative voluntary redevelopment program. This bill has a contingent-enactment clause such that this bill would not become effective unless the other bill also becomes effective. A $1.7 billion State General Fund solution is scored from the two bills.
>
> *It is anticipated that most cities and counties that created an existing RDA will elect to participate in the alternative voluntary redevelopment program.*
>
> LA/CRA MJN, Ex 5, p. 1 (emphasis added).

In this regard, the Assembly stated an even stronger conclusion regarding possible agency participation:

> It is anticipated that cities and counties with RDAs would choose to participate in al alternative redevelopment program as set forth in SB 15 X1 and AB 27 X1.

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extortion. If you don't give me your money then I shoot you in the head. That's extortion, plain and simple." Pet. MJN, Ex. 2, p. 4, ll. 1-8.

LA/CRA MJN, Ex. 6, p. 8

Therefore, the Legislature recognized that the two enactments had but a single purpose – the extraction of the "voluntary" of $1.7 billion from the redevelopment agencies to assist in balancing this fiscal year's State Budget.

Accordingly, because ABX1 26 and ABX1 27 were adopted pursuant to a fiscal emergency, only the combined acts can serve to address that fiscal emergency. The two acts should be treated by this Court as a single enactment, and they should fall together.

V.

IF EITHER BILL IS DEEMED UNCONSTITUTIONAL, THE COURT MUST ANNUL BOTH BILLS, BECAUSE THEY ARE INEXTRICABLY INTERTWINED.

Apparently recognizing the thin reed on which ABX1 27 is constructed, Matosantos argues that this Court may reject ABX1 27 and uphold ABX1 26. (Return at p. 9.) That suggestion should be rejected by the Court, because ABX1 26, standing alone, cannot achieve the clear legislative purpose behind its enactment – to realize $1.7 billion in RDA revenues while keeping the RDAs operative, albeit in a reduced capacity.

Moreover, if ABX1 27 is stricken as unconstitutional for the reasons stated in Petitioners' briefs, then ABX1 26 must also be stricken because certain provisions of ABX1 27 are incorporated in ABX1 26 and cannot be severed without doing violence to its remaining provisions. Section 34172(a) of ABX1 26 dissolves all existing redevelopment agencies. However, section 34172(b) goes on to provide:

> a community in which the agency has been dissolved and the successor entity has paid off all of the former agency's enforceable obligations may create a new agency pursuant to Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050) or Part 1.7 (commencing with Section 34100), *subject to the tax increment provisions contained in Chapter 3.5 (commencing with Section 34194.5) of Part 1.9 (commencing with Section 34192).* (Emphasis added.)

Section 34172(b) therefore provides that once all debt and other obligations of an existing redevelopment agency are paid, then the community may create a new redevelopment under existing law, provided that the new redevelopment agency makes the "voluntary" payments under Part 1.9.

However, if Part 1.9 (ABX1 27) is stricken as unconstitutional, then the "voluntary" payments required under section 34172(b) to create a new redevelopment agency are not ascertainable and a significant portion of the statutory scheme of ABX1 26 collapses.[9]

As noted above, the long-standing law relating to severability requires that the severed portion "is not so connected with the rest of the status as to be inseparable." *Santa Barbara School District v.*

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[9] Similar references to Part 1.9 are found elsewhere in Parts 1.8 and 1.85. See, sections 34178.7, 34188.8, 34189, and 34191. Those provisions also demonstrate in varying degrees that severance would impermissibly result in the existence of statutes with irrelevant and untraceable statutory references.

Superior Court (1975) 13 Cal.3d 315, 331 , quoted with approval in *Calfarm Insurance Company v. Deukmejian, supra,* 48 Cal.3d at p. 821; *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles, supra,* 175 Cal.App.4th at 1412 (provisions are not severable if they are "inextricably intertwined.").

In this case, if ABX1 26 is severed from ABX1 27 as urged by Matosantos, the redevelopment agencies would be denied a major benefit afforded them under ABX1 26. That enactment provides that communities may create new redevelopment agencies pursuant to existing law if they agree to make the payments required under ABX1 27. However, if ABX1 27 is stricken as unconstitutional, then the payments under that enactment are no longer available to communities that pay off all existing redevelopment agency indebtedness and want to create a new redevelopment agency.

Therefore, the striking down of ABX1 27 while upholding ABX1 26 would not be workable, and would deny major benefits to the communities affected by ABX1 26 because it would deny communities with existing redevelopment agencies the ability to create a new redevelopment agency, as expressly permitted by section 34172(b), which is part of ABX1 26. *Dillon v. Municipal Court, supra,* 4 Cal.3d at 872 (provisions are not severable if it would destroy the statutory scheme).

Accordingly, the provisions of ABX1 26 and ABX1 27 are inextricably intertwined and cannot be severed. Therefore, the two enactments must fall together.

VI.

CONCLUSION

The primary purpose of this amicus brief is to urge this Court to consider and review ABX1 26 and ABX1 27 as a single, unconstitutional enactment. They clearly were considered as a single enactment by the Legislature, and the legislative history demonstrates that ABX1 26 never would have been approved by the Legislature as a stand-alone enactment. In fact, the Governor had previously proposed the abolition of redevelopment agencies as part of his budget strategy, but that proposal was rejected by the Legislature and the ABX1 26/27 proposal was adopted in its stead. This Court should not put the State in the very position rejected by the Legislature by striking down ABX1 27, while upholding any portion of ABX1 26.

Further, the sole purpose of the enactment of ABX1 26 and ABX1 27 was to secure the "voluntary" payment of $1.7 billion from redevelopment agencies through the opt-in provisions of ABX1 27 while keeping the RDAs operative, albeit in a reduced capacity. After the passage of Proposition 22, the only way the Legislature could scheme to get that money from the redevelopment agencies was to dress it up as a "voluntary" payment to avoid the death provisions of ABX1 26. Therefore, ABX1 26 and ABX1 27 should be viewed by this Court as a single statutory construct that falls as a single statutory construct.

Moreover, the provisions of ABX1 27 are essential to certain rights provided to the redevelopment agencies under ABX1 26 – once all the existing debt of a redevelopment agency is paid in full, a community may create a new redevelopment agency under existing

law, provided that it makes the payments required by ABX1 27. Striking down ABX1 27, while upholding ABX1 26, would deny that opportunity to communities that have existing redevelopment agencies in derogation of the very provisions of ABX1 26. The two enactments are inextricably intertwined and their provisions simply cannot be severed.

For each of the above reasons, ABX1 26 and ABX1 27 should be reviewed by this Court as a non-severable enactment, and both bills should be found to be unconstitutional for the reasons stated in Petitioners' briefs. Regardless of this Court's determination regarding their constitutionality, the two enactments should stand or fall together, because they are not severable.

Dated: September 29, 2011

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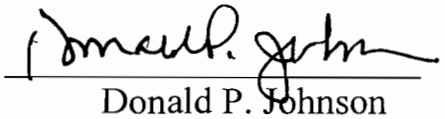
CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court Rule 8.204(c) and 8.486(a)(6), and in reliance upon the word count feature of the software used, I certify that the attached Amicus Brief in Support of Petitioners California Redevelopment Agency, et al., contains 6,547 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

Dated: September 29, 2011



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PROOF OF SERVICE – CIVIL

California Redevelopment Association, et al., vs. Matosantos, etc., et al.
California Supreme Court Case No. S194861

I, **Margaret Tovar**, declare that: At the time of service I was over the age of 18 years and not a party to the within action. My business address is 515 South Figueroa Street, Suite 1850, Los Angeles, California 90071-3301. On **September 29, 2011**, I served the following document(s):

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Margaret Tovar