COPY

No. S 194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

v.

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

APPLICATION FOR LEAVE TO FILE AMICUS CURIEA BRIEF PURSUANT TO C.R.C. 8.25(b)(3); AND AMICUS CURIEA BRIEF IN SUPPORT OF RESPONDENTS

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Attorney for
Municipal Officials for Redevelopment Reform
and Assembly Member Chris Norby, Amicus Curiea

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APPLICATION FOR LEAVE TO FILE AMICUS CURIES BRIEF

LATE AND PURSUANT TO C.R.C. 8.25(b)(3)

Christopher Sutton declares as follows:

1. I am an attorney at law duly licensed within the State of California. I am counsel for Municipal Officials for Redevelopment Reform (MORR) and Assembly Member Chris Norby. both proposed amicus curiea. I have personal and first hand knowledge that the facts set forth in this declaration are true and correct, and if called as a witness in this suit, I could and would testify competently under oath in the same manner as I do in this declaration.

2. In mistaken reliance on California Rule of Court 8.25(b)(3), I had planned to transmit this application and amicus brief to the Supreme Court by overnight delivery service sent by 5:00 p.m. today September 30, 2011. My clients should not be harmed by misinterpretation of the rule. In addition, the arguments made in this brief are not being made by any other party. We are arguing that Proposition 22 on the November 2010 ballot was wholly or partially invalid as containing multiple unrelated subjects, as changing fundamentally California's legislative process, and as violating the prohibition in the United States and California Constitutions against the impairment of government contracts. As such, Proposition 22 cannot be a basis to invalidate ABX1-26. Alternatively, the redevelopment provisions of Proposition 22 are so unrelated and foreign to its other predominate subject matter - - - transportation funding - - - that it is partially invalid as applied to ABX1-26. Unless leave is granted to file this amicus brief

late under C.R.C. 8.25(b)(3) these arguments may not be before the Court and the case could be decided on less than the full merits. Therefore, these parties ask to file this brief late and as delivered by U.S. Express Mail under C.R.C. 8.25(b)(3) and notwithstanding C.R.C. 8.25(b)(4).

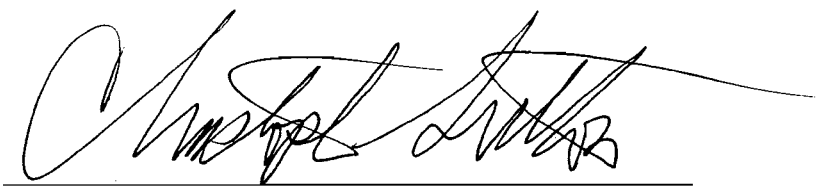
3. Municipal Officials for Redevelopment Reform ("MORR") is a statewide organization founded and managed by Assembly Member Chris Norby. It was founded in 1995 when Mr. Norby was a Fullerton City Council member. MORR has held two conferences each since that time to discuss abuses by and reform of redevelopment agencies in California. MORR seeks reforms to reduce and minimize the impact of redevelopment agency financing on other local government services such as public education, courts, law enforcement and fire protection. MORR also seeks to reduce or ameliorate the abusive eminent domain practices of redevelopment that injure the human rights of residents, property owners, churches, small businesses, and local non-profit organizations through the arbitrary and capricious taking private property and the destruction of neighborhoods for speculative real estate activities benefitting few people.

4. Assemblyman Chris Norby is an elected legislature who vote for ABX1-26 and voted against ABX1-27. His perspective as a Republican legislature voting for the Democratic-sponsored ABX1-26 is unique and will not be heard unless the Court grants leave to file this amicus brief late under C.R.C. 8.25(b)(3). Assemblyman Norby thus has a particular interest in arguing that the Legislature has the plenary power to eliminate redevelopment agencies under Article XVI section 16 of the California Constitution.

5. I am familiar with the pleadings in this case. No other party has argued that Proposition 22 on the November 2010 ballot was invalid and cannot be used as a rationale to strike down ABX1-26. Because the Court needs to hear the broadest possible range of arguments regarding the effectiveness of ABX1-26, the within arguments regarding the whole or partial invalidity of Proposition 22 would not be before the Court unless leave is grant to file this amicus curiea brief, and to file it late pursuant to C.R.C. 8.25(b)(3). This brief will therefore assist the Court in reaching a comprehensive decision on the merits of the issues before it.

6. No person or entity, nor any other party or counsel to this proceeding, has offered to me or to my clients any thing of value, nor made any pledge of money, to fund the preparation of this amicus brief. No other party or counsel in this proceeding has participated or assisted in the preparation and submission of this amicus brief.

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



Christopher Sutton, attorney for
Municipal Officials for Redevelopment Reform,
and **Assembly Member Chris Norby**

AMICUS CURIEA BRIEF

1. INTRODUCTION

ABX1-26 was one of two bills related to redevelopment before the court in this proceeding. These parties take no position on ABX1-27, the other redevelopment bill. Because Proposition 22 on the November 2010 ballot is a central theme of the petitioners, the validity of Proposition 22 must be addressed by the Court in this proceeding. To the extent that Proposition 22 is wholly or partially unenforceable it effects the merits of petitioners' claims. If Proposition 22 violates the California Constitution's amendment procedure in Article XVIII or violates the impairment of government contracts prohibition in the California and United States Constitutions, that proposition may not be relied upon by petitioners or this Court to determine the validity or enforceability of ABX1-26. Since Proposition 22 is invalid, at least in respect to the redevelopment issues before the Court, it may not be relied upon, and the Legislature and Governor property approved ABX1-26 as Stats. 2011, 1st Extraordinary Session 2011-2012, chapter 5.

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2. ABX1-26 IS VALID AS WITHIN THE LEGISLATURE'S PLENARY POWER OVER REDEVELOPMENT AGENCIES

Article XVI section 16 of the California Constitution (formerly Article XIII section 19) grant plenary power to theLegislature and Governor to enact statutes creating, governing, or eliminating redevelopment agencies as locally-operated state agencies.

Marek v. Napa Community Redevelopment Agency, (1988) 46 Cal.3d 1070, at 1083-1087. ABX1-26 is squarely within that constitutional power. As arms of the state, redevelopment agencies are no different than any other state government or department. **In Re Redevelopment Plan for Bunker Hill (1964) 61 Cal.2d 21, at 52-53, 61-62, and 72-75. Arcadia Redevelopment Agency v. Ikemoto (1993) 16 Cal.App.4th 444, at 452-454.**

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3. ABX1-26 MAY NOT BE INVALIDATED UNDER PROPOSITION 22 BECAUSE THAT PROPOSITION IS AN INVALID MEASURE AND HAS NO EFFECT ON THE LEGISLATURE'S POWER OVER BUDGETS AND REDEVELOPMNENT AGENCIES

Proposition 22 was an initiative constitutional change adopted by the voters at the November 2010 general election. Almost all of its terms and the ballot arguments in its favor addressed transportation funding. It was entitled in its Section 1 as "Local Taxpayer, Public Safety, and Transportation Action of 2010." It was not sold as a redevelopment financing measure. Buried in its lengthy and complex text are provisions related to redevelopment financing, and these are wholly unrelated to the transportation theme of Proposition 22. The highly technical text addressing redevelopment issues were obscured by the more easily understood provisions related to transportation financing. It is an improper multi-subject initiative measure violating Article XVIII section 1 of the California Constitution.

In addition, the terms of Proposition 22 fundamentally change the form of government in California by seeking to deprive the Legislature and Governor control over redevelopment

agencies, which are state agencies. Proposition 22 seeks to elevate redevelopment agencies to autonomous forms of state government largely immune to legislative oversight. This is a fundamental change in California's form of government whereby the Legislature and Governor create, control, and direct state agencies. As a fundamental change in the form of state government, Proposition 22 violated Article XVIII section 2 of the California Constitution, requiring a "constitutional convention" after one is proposed by two-thirds vote of each house of the Legislature and called for by majority vote of the voters. Proposition 22 was not proposed via a constitutional convention and is therefore invalid. **Amador Valley Joint Union High School District v. State Board of Education (1978) 22 Cal.3d 208, at 221-223.**

In addition, Proposition 22 purported to retro-actively partially repeal the state budget bills for the 2009-2010 and 2010-2011. As such, it is a facially invalid impairment of thousands of vendor and employment contracts already perform after the retro-activity dates in Proposition 22 going back to January 1, 2009.

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4. PROPOSITION 22 IS INVALID

BECAUSE IT CONTAINS MULTIPLE UNRELATED SUBJECTS

Proposition 22 is a grab bag of unrelated provisions related to transportation, gasoline taxes, vehicle license fees, local government, state budgeting, redevelopment, property taxes, and many more. This jumble of confusion is an improper amendment to the state constitution. Proposition 22 violates the single subject rule in Article XVIII section 1 of the California Constitution and is therefore facially void for all purposes. Proposition 22 cannot be used as a basis to invalidate ABX1-26 as argued by petitioners.

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5. PROPOSITION 22 IS INVALID BECAUSE IT IS A FUNDAMENTAL CHANGE IN THE MANNER OF CALIFORNIA GOVERNMENT THAT MAY BE ACCOMPLISHED ONLY BY A REVISION FOLLOWING A CONSTITUTIONAL CONVENTION

Proposition 22 fundamentally alters the budget and legislative process in California. A wide range of decisions involving taxes, appropriations, and inter-government authority are repealed or placed in strict and inflexible limits. This is an end to representative government and a new style of state government where formulas and prohibitions dictate policies both in the future and retro-actively. Proposition 22 is a revision, not an amendment. It may only be considered and proposed via a constitutional convention under Article XVIII Section 2 of the California Constitution. It was no. It is wholly and facially invalid.

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6. PROPOSITION 22 IS INVALID AS AN IMPAIRMENT OF PRE-EXISTING GOVERNMENT CONTRACTS

Within the lengthy Section 4 of Proposition 22 are provisions retro-active to July 1, 2009. This text retro-actively banned the Legislature from re-allocating redevelopment funds even though those allocations and expenditures had already occurred and were relied on by various public and private entities. This was, in effect, a retro-active repeal of portions of the 2009-2010 state budget bill over a year after its enactment, and over four months after the end of that fiscal year on June 20, 2010. Proposition 22 was on the ballot in November 2010. It did this by adding a new subdivision (7) to Article XII section 25.5(a) of the state constitution. In the

same Section 4 it also retro-actively banned certain statutory changes after January 1, 2008.

Portions of Section 5.3 of Proposition 22 are retro-active to June 30, 2009, and thus also sought to retro-actively alter or repeal portions of the 2009-2010 state budge law.

Portions of Section 6 of Proposition 22 are retro-active to different dates, both to June 30 and July 31, 2000, seeking to impact past appropriations and contracts with vendors and local government entities.

Section 12 of Proposition 22 bolding imposes the following blanket repeal of statutes back to October 21, 2009:

> "Any statute passed by he Legislature between October 21, 2009 and the effective date of this measure, that would have been prohibited if this measure were in effect on the date it was enacted, is hereby repealed."

This impacts innumerable laws and appropriations that were not specifically called out by bill or chapter number. Potentially thousands of state employees, grant recipients, and vendors were paid salaries or for goods and services in a manner that was retroactively rendered invalid or illegal. These many retro-active provisions on their face were intended to wipe our payments for thousands of contracts which had already been performed by innocent third parties. These retro-active provisions of Proposition 22 are inseparable from its terms and interwoven throughout its text. A core goal of Proposition 22 was the impairment of contracts in violation of California Constitution Article I, Section 9, clause 3, and United States Constitution Article One, Section 10, paragraph 1, clause 5.

Proposition 22 is a retroactive monster that both hamstrings the state budget process by potentially harms thousands of innocent contracting parties. It is a classic impairment of contract writ large, and is invalid as a reason to strike down any legislation, including ABX1-26.

Allied Structural Steel v. Spannaus (1978) 438 U.S. 234, at 240; Sonoma County Organization of Public Employees v. Sonoma County (1979) 23 Cal3d 296, at xxxx; Valdes v. Cory (1983) 139 Cal.App.3d 773, at xxx.

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7. IF NOT WHOLLY INVALID, PROPOSITION 22 IS PARTIALLY INVALID AS TO THE REDEVELOPMENT FINANCING ISSUES AT STAKE IN THIS LITIGATION

Redevelopment financing issues are before the Court in this proceeding. The Court may limit its review of Proposition 22 and determine that only the redevelopment financing text in Proposition 22 is invalid as either an improper unrelated subject or as a fundamental change in California's government that may only be accomplished by a constitutional convention. The redevelopment provisions of Proposition 22 are few and far between in the eight paged measure. They appear toward the end of Section 4 and by implication elsewhere. The Court may deem that the redevelopment provisions of Proposition 22 invalid and severable. ABX1-26 may be affirmed on this limited basis of construing Proposition 22.

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8. IF NOT WHOLLY OR PARTIALLY INVALID, PROPOSITION 22 MAY BE NARROWLY CONSTRUED TO ALLOW THE LEGISLATURE TO ADOPT ABX1-26

To the extent the Court chooses not address the validity or constitutionality of Proposition 22, it may construe it narrowly to not touch the Legislature's power to enact ABX1-26, and thereby affirm the effectiveness of ABX2-26.

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9. CONCLUSION:

ABX1-26 IS A VALID EXERCISE OF PLENARY LEGISLATIVE POWER OVER REDEVELOPMENT AGENCIES

Based on the foregoing Amicus Curies respectfully suggest that ABX1-26 is valid exercise of plenary legislative power to create or eliminate redevelopment agencies, and Proposition 22 has no effect on the Legislature's power to control redevelopment.

Dated: September 30, 2011 **Law Office of Christopher Sutton**

By _____

Christopher Sutton, attorney for
Municipal Officials for Redevelopment Reform,
and **Assembly Member Chris Norby**

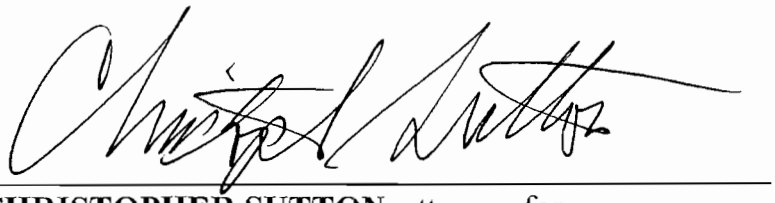
CERTIFICATE OF WORD COUNT COMPLIANCE

CALIFORNIA REDEVELOPMENT ASSOCIATION, etc.
v. ANA MATOSANTOS, etc.
California Supreme Court case number S194861

1. I am an attorney at law duly licensed within the State of California. I am counsel for Municipal Officials for Redevelopment Reform (MORR) and Assembly Member Chris Norby. both amicus curiea. I have personal and first hand knowledge that the facts set forth in this declaration are true and correct, and if called as a witness in this suit, I could and would testify competently under oath in the same manner as I do in this declaration.

2. The within Amicus Curiea Brief was produced using a commercially available computer software programs known as WordPrefect Office. This program contains a feature which counts all words in a document. When I activated this program feature and directed it to count the words in this brief, it determined that the brief contained 3,256 words. This is less than the maximum words provided for in the applicable California Rule of Court.

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



CHRISTOPHER SUTTON, attorney for
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and **Assembly Member Chris Norby**

PROOF OF EMAIL SERVICE

CALIFORNIA REDEVELOPMENT ASSOCIATION, etc.
v. ANA MATOSANTOS, etc.
California Supreme Court, Case Number S194861
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I am over the age 18 years and am not a party to this lawsuit. I am employed by an attorney in this lawsuit with an address and telephone of 586 La Loma Road, Pasadena, California 91105-2443 and (626) 683-2500, respectively.

On **September 30, 2011**, I served true copies of the attached document to be filed in this lawsuit entitled **"APPLICATION FOR LEAVE TO FILE AMICUS CURIEA BRIEF LATE AND PURSUANT TO C.R.C. 8.25(b)(3); AND AMICUS CURIEA BRIEF IN SUPPORT OF RESPONDENTS"** by placing duplicate copies of the document within envelopes addressed to all the attorneys and parties of record in this lawsuit bearing U.S. postage prepaid for first class delivery, and then deposited the envelopes into a depository of the United States Postal Service at Pasadena, California. These envelopes were addressed for delivery to the following persons:

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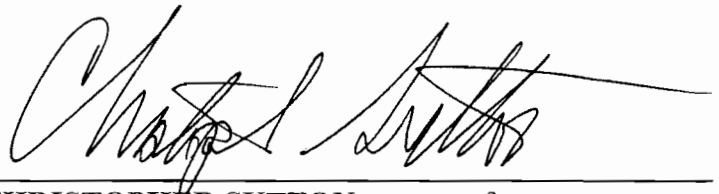
Email Service
The entire document and this proof of service was also transmitted electronically by email to the addresses of each person listed above to the email address shown beneath their name, and this was complete before 5:00 pm today, September 30, 2011.

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



CHRISTOPHER SUTTON, attorney for
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and **Assembly Member Chris Norby**