Case No. S194861

SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, et al.,

Petitioners,

v.

ANA MATOSANTOS, et al.,

Respondents.

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In An Action Originated in this Court

AMICUS CURIAE BRIEF ON BEHALF OF A COALITION OF CITIES, REDEVELOPMENT AGENCIES, AND PRIVATE PARTIES, SUPPORTING PETITIONERS AND RAISING ADDITIONAL ARGUMENTS

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Deputy

RUTAN & TUCKER, LLP
JEFFREY M. ODERMAN (SBN 63765)
DAN SLATER (SBN 139004)
MARK J. AUSTIN (SBN 208880)
BILL IHRKE (SBN 204063)
MEGAN K. GARIBALDI (SBN 268558)
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-1931
Telephone: 714-641-5100
Facsimile: 714-546-9035

Attorneys for Amici Curiae
CITY OF CERRITOS; CERRITOS REDEVELOPMENT AGENCY; CITY OF CARSON; CARSON REDEVELOPMENT AGENCY; CITY OF COMMERCE; COMMERCE COMMUNITY DEVELOPMENT COMMISSION; CITY OF CYPRESS; CYPRESS REDEVELOPMENT AGENCY; CITY OF DOWNEY; COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY; CITY OF LAKEWOOD; LAKEWOOD REDEVELOPMENT AGENCY; CITY OF PARAMOUNT; PARAMOUNT REDEVELOPMENT AGENCY; CITY OF PLACENTIA; REDEVELOPMENT AGENCY OF THE CITY OF PLACENTIA; CITY OF SANTA FE SPRINGS; COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS; CITY OF SIGNAL HILL; SIGNAL HILL REDEVELOPMENT AGENCY; CUESTA VILLAS HOUSING CORPORATION; and BRUCE W. BARROWS

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DAN SLATER (SBN 139004)
MARK J. AUSTIN (SBN 208880)
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MEGAN K. GARIBALDI (SBN 268558)
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Costa Mesa, California 92626-1931
Telephone: 714-641-5100
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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

AMICI CURIAE CITY OF CERRITOS, CERRITOS REDEVELOPMENT AGENCY, CITY OF CARSON, CARSON REDEVELOPMENT AGENCY, CITY OF COMMERCE, COMMERCE COMMUNITY DEVELOPMENT COMMISSION, CITY OF CYPRESS, CYPRESS REDEVELOPMENT AGENCY, CITY OF DOWNEY, COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, CITY OF LAKEWOOD, LAKEWOOD REDEVELOPMENT AGENCY, CITY OF PARAMOUNT, PARAMOUNT REDEVELOPMENT AGENCY, CITY OF PLACENTIA, REDEVELOPMENT AGENCY OF THE CITY OF PLACENTIA, CITY OF SANTA FE SPRINGS, COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS, CITY OF SIGNAL HILL, SIGNAL HILL REDEVELOPMENT AGENCY, CUESTA VILLAS HOUSING CORPORATION, and BRUCE W. BARROWS (hereinafter, "*Amici*") hereby submit their *amicus curiae* brief on the merits of this matter, in support of Petitioners. The primary purpose of this brief is to raise additional facial challenges to ABx1 26 and ABx1 27 that have not previously been addressed by the parties.

I.
INTEREST OF AMICUS CURIAE

Amici consist of a coalition of cities, redevelopment agencies, a private non-profit corporation, and an individual taxpayer, all of whom are vitally interested in advancing the heretofore "fundamental" State policy set forth in California's Community Redevelopment Law (Part 1, commencing with Section 33000, of Division 24 of the Health & Safety Code, hereinafter the "CRL") to "expand the supply of low-and moderate-income housing, expand employment opportunities for jobless, underemployed, and low-income persons, and [] provide an environment for the social, economic, and psychological growth and well-being of all citizens." (Health & Safety Code § 33071.) To that end, *Amici* fully support Petitioners' challenge to the constitutionality of ABx1 26 and ABx1 27.

In addition, in this brief, *Amici* seek to raise several constitutional grounds for invalidating ABx1 26 and 27 that have not yet been addressed by the parties. *Amici* believe the Court should consider and rule upon these additional issues at this time for the same reasons it issued its August 11th and August 17th stay orders and accepted this case for review in the first place—because of the immediate, significant, and widespread impact of ABx1 26 and 27 and the chaotic effect on State and local

government financing and activities that would result from a delay in determining their constitutionality.[1]

This Court has previously held that it is proper to consider arguments raised for the first time in an *amicus* brief when the issues touch upon matters of public concern and raise pure questions of law. (*See Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 709-710 (C.J. Bird, concurring); *see also id.* at p. 654-655, fn. 3 ["[w]e have held that parties may advance new theories on appeal when the issue posed is purely a question of law based on undisputed facts, and involves important questions of public policy."]; *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 219 ("*Amador Valley*").) For instance, in *Amador Valley*, which involved a challenge to Proposition 13 brought under the original jurisdiction of this Court, this Court treated all arguments and challenges raised by petitioners and *amici* equally, because the issues presented in the case were of "great public

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[1] In order to protect their right to litigate these other issues, on September 26, 2011, *Amici* filed a lawsuit in the Sacramento County Superior Court, challenging the constitutionality of ABx1 26 and 27 on various facial and as-applied grounds, including but not limited to the grounds raised in this case by Petitioners and addressed herein by *Amici*. The case is entitled *City of Cerritos, at al. v. State of California, et al.*, and is designated as Sacramento County Superior Court Case No. 34-2011-80000952. If this Court upholds the validity of ABx1 26 and 27 based on the arguments raised by Petitioners and declines to consider *Amici*'s additional grounds for challenge, *Amici* will pursue their Superior Court action but they are hopeful that will not be necessary.

importance" and required prompt resolution. (*Ibid.*) *Amici* respectfully request that the Court do the same here.

II.
SUMMARY OF *AMICI'S* ARGUMENTS

In addition to the issues raised by Petitioners, *Amici* respectfully request that this Court consider the following additional, constitutional grounds for invalidating both ABx1 26 and 27 on their face:

First, ABx1 26 violates Article XIII, section 25.5(a)(3), of the California Constitution, which prohibits the Legislature from passing a law that "change[s] for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring." ABx1 26 runs afoul of this provision because (1) after abolishing redevelopment agencies, it takes what would otherwise have been their tax increment revenues and expressly reclassifies them as general "ad valorem property taxes" belonging to "local agencies," and (2) it directs county auditor-controllers to distribute those monies to various other public and private persons and entities, with only the *remainder* going to "local agencies," thereby modifying the "pro rata shares" of "ad valorem property taxes" that such local agencies receive. Because of this modification, and because ABx1 26 was not

passed by a two-thirds majority vote (*see Amici*'s Motion for Judicial Notice ("MJN"), Exhs. 1 and 2), it violates Article XIII, section 25.5(a)(3).

Second, ABx1 26 and 27 violate Article IV, section 12(d), of the California Constitution. Subject to certain exceptions not applicable here, that constitutional provision requires bills providing for appropriations from the State's General Fund to be passed by a two-thirds vote. Once again, neither bill passed by a two-thirds margin.

Third, ABx1 26 and 27 violate Article IV, section 8(c)(1), of the California Constitution, which provides that bills enacted in a special session of the Legislature do not become effective until the 91st day after adjournment of the special session. Because ABx1 26 and 27 were made immediately effective, and yet do not qualify for any of the exceptions to the 91-day rule of Article IV, section 8(c)(1), they violate this provision. Moreover, because of the heavy reliance on specific deadlines in the challenged bills, this is not a violation that can be cured by a mere extension of the "effective date," for any such extension would require a dramatic re-drafting of the bills, which is not a proper judicial function.

Fourth, ABx1 26 and 27 both violate the "single-subject rule" enshrined in Article IV, section 9, of the California Constitution. Based on that rule, it is well-established that a budget bill cannot be utilized to *"'substantively amend[] and change existing statute law.'"* (*California*

Labor Federation, AFL-CIO v. Occupational Safety and Health Standards Board (1992) 5 Cal.App.4th 985, 991 [holding that budget bill violates single-subject rule when it (1) provides for appropriations, which is its sole purpose and subject, and (2) attempts to change existing law] [quoting *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1199] [alteration in original]; *see also California School Boards Assn. v. Brown* (2011) 192 Cal.App.4th 1507, 1525 ["'Budget bills that substantively change existing law violate the single-subject rule'"] [quoting *San Joaquin Helicopters v. Department of Forestry* (2003) 110 Cal.App.4th 1549, 1558].) Because ABx1 26 and 27 both (1) contain appropriations (which, according to the State, make them "budget related"), and (2) purport to make permanent and sweeping changes to the CRL, they are void under Article IV, section 9, and the *California Labor Federation, AFL-CIO* case.

Fifth, ABx1 26 and 27 each violate Article IV, section 3(b), of the California Constitution. According to that provision, "[o]n extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session," but when so assembled the Legislature "has power to legislate *only* on subjects specified in the proclamation." (Emph. added.) Here, Governor Brown's proclamation calling the Legislature into the 2011-2012 First Extraordinary Session (at which ABx1 26 and 27 were enacted) limited the scope of the session to legislation needed to

address the State's pending deficit and the fiscal year 2011-2012 budget. (*See* MJN, Exh. 4.) As will be explained below, the nominal appropriations in ABx1 26 and 27 are unrelated to the State budget, and the other provisions of these bills go far beyond the scope of the Governor's proclamation. As such, the Legislature exceeded the scope of its constitutional authority in enacting those bills in the extraordinary session.

Sixth, ABx1 26 and 27 violate Article IV, section 12(c)(4), of the California Constitution. Under that provision, subject to certain exceptions not relevant here, until the budget bill itself has been enacted, the "Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted." ABx1 26 and 27—each of which contains an appropriation—were presented to the Governor at 4:15 p.m. on June 28, 2011 (Complete Bill History, ABx1 26 and ABx1 27), but the budget bill itself was not presented to the Governor until later that night (Complete Bill History, SB 87). As such, ABx1 26 and 27 violate this constitutional provision.

III.
FACTUAL AND POLICY BACKGROUND

A. Redevelopment Agencies Provide Significant Financial Benefits to their Communities and to Other Local Taxing Agencies.

The institution of redevelopment has been enshrined in the California Constitution since 1952, when California's voters adopted Article XVI, section 16 (originally numbered as Article XIII, section 19). (*See* Historical Notes, West's Ann. Constitution of the State of California (1996 ed.), CAL. CONST., art. XVI, § 16.) Under that provision, the voters authorized the system of tax increment financing, pursuant to which a portion of local property taxes is distributed to redevelopment agencies to "pay principal of and interest on loans, monies advanced to, or indebtedness. . . incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." (CAL. CONST., art. XVI, § 16(b); *see also* Health & Saf. Code § 33670(b); *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070.)

While the legal and historical significance of Article XVI, § 16, and Proposition 22 (by which California's voters very recently reaffirmed their desire to protect redevelopment agencies' tax revenues) are fully addressed in Petitioners' briefs, *Amici* wish to make one point at the outset regarding the *financial* significance of these provisions that has not previously been addressed. Contrary to the implicit inference in the State's brief that redevelopment agencies do nothing more than "siphon

off" property tax revenues that could otherwise be allocated to public schools and other "core governmental services," the very premise of redevelopment is that it stems the decline of slum conditions, *produces* additional tax revenues, and is, in the end, self-supporting.

In this regard, redevelopment agencies are only permitted to function in "blighted" areas that are characterized by such illustrative conditions such as "buildings in which it is unsafe or unhealthy for persons to live or work," "depreciated or stagnant property values or impaired investments," "abandoned buildings," "residential overcrowding," and "high crime rate[s]." (Health & Safety Code §§ 33030-33031.) When a redevelopment agency receives tax increment revenues, it is *required* under Article XVI, section 16, as well as the CRL, to reinvest those funds *back* into those blighted areas to reduce or eliminate those conditions. (CAL. CONST., art. XVI, § 16(b); Health & Saf. Code § 33670(b).)

Like the "rising tide that raises all boats," this reinvestment stimulates development and revitalization of redevelopment project areas, increases property values, promotes employment (which in turn generates additional tax revenues), provides desperately needed affordable housing, increases local business activity, and, as a result, redounds to the benefit of the community, its citizens, and all other local taxing agencies in the

area. (*See, e.g.*, Health & Safety Code §§ 33035-33037, 33039, and 33070-33071.)

While *Amici* recognize that these are policy issues that do not directly factor into the legal points raised herein, they feel that redevelopment's historical contributions to the State economy need to be pointed out in order to counter the themes in the State's brief that, unless ABx1 26 and 27 are upheld, the State's fiscal mess will only get worse, and redevelopment will continue to simply "take money away" from more "worthy" agencies.

B. The Governor Called the 2011-2012 First Extraordinary Session of the Legislature for the Sole Purpose of Addressing the Then-Looming Deficit and the Budget for Fiscal Year 2011-2012.

On January 11, 2011, Governor Brown issued a "Fiscal Emergency Proclamation" (hereinafter, the "Proclamation") pursuant to Article IV, section 10(f), of the California Constitution, declaring a fiscal emergency for the 2011-2012 fiscal year and calling the Legislature into the 2011-2012 First Extraordinary Session to address that emergency. (MJN, Exh. 4.) In the Proclamation, the Governor identified the specific fiscal emergency to be "the projected budget imbalance for Fiscal Year 2010-11, which is causing budgetary and cash deficits in Fiscal Year 2011-2012." (*Ibid.*)

C. **The Legislature Adopted ABx1 26 and ABx1 27 By Simple Majority Vote, Purportedly as "Trailer Bills" to the State's Fiscal Year 2011-2012 Budget.**

During the ensuing "First Extraordinary Session" called by Governor Brown, the California Legislature, on June 15, 2011, passed ABx1 26 and ABx1 27, purportedly as "trailer bills" to SB 87, the budget bill for the 2011-2012 fiscal year (hereinafter, the "Budget Bill"). (MJN, Exhs. 1, 2, and 3.)[2] The bills passed by a narrow margin. In the State Senate, they received the minimum 21-vote "simple majority" that according to the State was all that was necessary for the bills' passage. (MJN, Exhs. 1 and 2.) On June 28, 2011, at 4:15 p.m., these two "budget trailer bills" were enrolled and sent to Governor Brown for signature. (*Ibid.*) Although by name (and by law) these bills should have "trailed" the budget bill, it was not until later that day, at 9:45 p.m., that the Budget Bill itself (SB 87) was sent to the Governor for signature. (MJN, Exh. 3.) Governor Brown signed all three of these bills on June 28, 2011, although the available legislative history does not indicate whether he signed ABx1 26 and/or 27 *before* SB 87, the Budget Bill, arrived on his desk. (MJN, Exhs. 1, 2, and 3.) According to their terms, ABx1 26 and 27 became effective immediately upon being signed. (ABx1 26, § 16; ABx1 27, § 8.)

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[2] *Amici*'s MJN Exhibits 1, 2, and 3 are the on-line bill histories for ABx1 26, ABx1 27, and SB 87, respectively. They were obtained from the California Legislature's official website.

The State's asserted authority for adopting ABx1 26 and 27 as budget "trailer bills" was that each of the bills contains an "appropriation" that is purportedly "related to" the Budget Bill. (ABx1 26, § 16; ABx1 27, § 8, SB 87, § 39.) In this regard, both ABx1 26 and 27 do, in fact, call for a nominal appropriation of $500,000 to the Director of Finance (Defendant Ana J. Matosantos). (ABx1 26, § 11; ABx1 27, § 6.) However, according to the bills themselves, these appropriations serve no purpose other than to fund the very activities mandated by those bills. (ABx1 26, § 11 ["The sum of five hundred thousand dollars ($500,000) is hereby appropriated to the Department of Finance from the General Fund . . . *for administrative costs associated with this act.*"] [emph. added]; ABx1 27, § 6 [The sum of five hundred thousand dollars ($500,000) is hereby appropriated to the Department of Finance from the General Fund *for costs to comply with this Act.*"] [emph. added].)

Meanwhile, even the *substance* of ABx1 26 and 27 amounts to long-term legislative changes that are not reasonably related to the State's budget for the 2011-2012 fiscal year. Thus, for all intents and purposes, ABx1 26 and 27—including the appropriations contained therein—consist of stand-alone legislation that bears no constitutionally-permitted relation to the Budget Bill.

D. ABx1 26 and 27 Make Fundamental, Long-Term, Substantive Changes to the CRL that Do Not Relate in Any Meaningful Way to the State's 2011-2012 Budget.

By their terms, ABx1 26 and 27 make sweeping changes to the CRL and other statutes. A summary of these changes—as particularly relevant to the arguments made herein—is provided below.

1. ABx1 26.

ABx1 26 constitutes, in effect, a repeal of the CRL, and mandates a winding down of every redevelopment agency in the State. The bill *immediately* suspends the authority of all redevelopment agencies in the State to take any further actions to initiate new redevelopment plans or programs, as well as their authority to implement existing plans or programs beyond the performance of very limited, existing "enforceable obligations." (Health & Safety Code §§ 34161-34167 and 34169.)

Within sixty days after the bill purportedly became effective, or by August 27, 2011, each redevelopment agency in the State was required to adopt an Enforceable Obligation Payment Schedule ("EOPS"), setting forth prescribed information concerning its "enforceable obligations," and to transmit the EOPS to the applicable county auditor-controller, the State Controller, and the Department of Finance. (*Id.*, § 34169(g).) In addition, by September 30, 2011, each agency was further required to prepare a preliminary draft of its initial Recognized Obligation Payment Schedule ("ROPS") and submit it to its "successor agency." (*Id.*, § 34169(h).) On

or before September 1, 2011, any host city or county *not* wishing to act as the "successor agency" to its soon-to-be-dissolved redevelopment agency was required to adopt a resolution to that effect, and to notify the local county auditor-controller of that election. (*Id.*, § 34173(d)(1).)

As of October 1, 2011, ABx1 26 purports to dissolve all redevelopment agencies in California and "withdraw" all power of redevelopment agencies "to transact business or exercise powers previously granted under the [CRL]." (Health & Safety Code §§ 34170(a), 34172(a), (b).) All of the former redevelopment agency's property and assets automatically are transferred to its successor agency. (*Id.*, § 34175(b).) The successor agency, in turn, must pay the former agency's (narrowly defined) "enforceable obligations," and must dispose of the agency's assets and properties under the supervision and direction of an "oversight board," then remit the proceeds and unencumbered agency funds to the county auditor-controller. (*Id.*, §§ 34177, 34179-34181.)

In this regard, ABx1 26 imposes various obligations upon county auditor-controllers relating to the distribution of a former redevelopment agency's assets, and the tax increment monies "that would have been allocated to [the] redevelopment agency . . . had the redevelopment agency not been dissolved. . . ." (Health & Safety Code §§ 34182-34188, in particular § 34182(c)(1).) Amongst other obligations, each auditor-

controller must annually determine the amount of tax increment revenue that each dissolved redevelopment agency would have received pursuant to Article XVI, section 16, of the California Constitution, and Health & Safety Code § 33670(b), and must place all such revenues into a "Redevelopment Property Tax Trust Fund" ("Trust Fund") specific to each dissolved agency. (Health & Safety Code §§ 34170.5(a), 34182(c).)

Under new Health & Safety Code § 34182, all of the tax increment monies that would have gone to a dissolved agency, but are instead placed in the Trust Fund, are "deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution and are available for allocation and distribution in accordance with the provisions of the act adding this part." (*Ibid.*)

The auditor-controller must then administer each Trust Fund in the manner set forth in ABx1 26. (*Id.* at § 34182(c).) Specifically, each county auditor-controller is required to distribute the monies in each agency's Trust Fund in the following order: (1) first, to reimburse the auditor-controller for the administrative costs incurred by the auditor-controller under ABx1 26[3]; (2) next, to make pass-through payments to

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[3] The administrative obligations of county auditor-controllers under AB1x 26 include, but are not limited to, (1) conducting an audit of each redevelopment agency, (2) determining the amount of property taxes that would have gone to each dissolved redevelopment agency, (3) administering the Redevelopment Property Tax Trust Funds, and (4) providing various periodic reports and notices to the Director of Finance

taxing agencies that would have been entitled to them had the redevelopment agency not been dissolved; (3) next, to pay for the former redevelopment agency's "enforceable obligations"; (4) next, to pay for the administrative expenses of the successor agency in carrying out its obligations under ABx1 26; and (5) finally, to the local school districts and other taxing agencies per their normal pro rata shares of property taxes. (Health & Saf. Code §§ 34182(e), 34183, 34188.)

If the monies initially provided to pay for a former agency's enforceable obligations are deemed insufficient to cover them, money is first taken from the "excess" property taxes that would otherwise go to the local agencies (Category 5 in the above list), and then from the monies that would otherwise be used to cover the administrative expenses of the successor agency (Category 4). (*Id.* at § 34183(b).).

2. <u>ABx1 27.</u>

ABx1 27 establishes a program under which the sponsoring community of a redevelopment agency may avoid the dissolution of its agency and lift the suspension on the actions of that agency by "agreeing" to make certain annual payments (referred to in ABx1 27 as "remittances") to the local county auditor-controller. (Health & Safety Code § 34193(a), (b).)

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and the State Controller's Office. (Health & Safety Code §§ 34182-34188.)

The amount of remittances a sponsoring community must pay is determined on a yearly basis under formulas set forth in new Section 34194 of the Health & Safety Code. For the 2011-2012 fiscal year, the applicable formula is designed to redistribute a total of $1.7 billion in property tax revenue if every agency in California participates in the program. Each agency's "share" of this $1.7 billion consists of the average of the following two numbers: (1) the agency's share of statewide *gross* tax increment, and (2) the agency's share of statewide *net* tax increment (consisting of the agency's gross tax increment minus certain pass-through payments and debt service payments). (Health & Safety Code § 34194(b).)

For the 2012-2013 fiscal year, and every fiscal year thereafter, the applicable formula is designed to redistribute approximately $400 million in property tax revenue each year if every agency in California participates in the program. Each agency's "share" of this $400 million is determined by multiplying the agency's 2011-2012 remittance obligation by a ratio of $400 million over $1.7 billion (which comes out to 23.52%), and then multiplying that number by a second fraction that takes into account adjustments to each agency's debt obligations, adjustments to the property tax shares allocable to local school entities, and other factors. (Health & Safety Code § 34194(c).)

Monies used to make remittance payments are nominally required to come from a participating agency's sponsoring community (*i.e.*, the city or county that formed the agency). (Health & Safety Code § 34194.1(a).) However, each sponsoring community may enter into an agreement with its respective agency, whereby the agency transfers to its sponsoring community a portion of its tax increment "in an amount not to exceed the annual remittance required that year," "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals." (*Id.* at § 34194.2.) Since ABx1 27 provides no supplemental source of funding to enable communities to make these supposedly "voluntary" payments, and given the dismal state of local government financing (due in no small measure to the State's repeated raids of local funding over the past several years), as a practical matter these provisions were intended by the Legislature to ensure that the redevelopment agencies themselves (as opposed to their host communities) would ultimately pay the remittances required under ABx1 27.

Upon receipt of these remittance payments, county auditor-controllers are required to distribute them as specified in Health & Safety Code sections 34194.1 and 34194.4. Under Section 34194.1, a portion of the payments is distributed to local school entities through the local county Educational Revenue Augmentation Fund ("ERAF"). (Health &

Safety Code § 34194.1(d).) Under Section 34194.4, a separate portion of the payments, for the 2012-2013 fiscal year and beyond, is distributed to transit districts and to other special districts providing fire protection services, through a newly created fund called a "Special District Allocation Fund." (*Id.* at § 34194.4.)

For fiscal year 2011-2012 *only*, the portion of the payments allocated and paid to school districts, county offices of education, charter schools, and community colleges is counted against the State's Proposition 98 funding obligation to those entities. (Health & Safety Code § 34194.1(b).) However, there is no such credit for similar payments received by those educational entities in subsequent fiscal years. (Health & Safety Code § 34194.1(c).) *Thus, the provisions of ABx1 27 that apply beyond fiscal year 2011-2012 do not relate in any meaningful respect to, and have no effect whatsoever on, either the current State budget or any possible future State budget.*

If a sponsoring community that agreed to participate in the voluntary remittance program fails to make the required remittance payments under ABx1 27, its redevelopment agency is immediately suspended and dissolved under ABx1 26. (Health & Safety Code § 34195(a).)

IV.
ARGUMENT

The ensuing sections of this brief set forth various independent grounds for invalidating ABx1 26 and/or ABx1 27 that have not previously been raised by Petitioners.

A. ABx1 26 Violates Article XIII, Section 25.5(a)(3), of the California Constitution Because it Alters Local Agencies' Pro Rata Shares of Property Tax Revenues and Was Not Passed by a Two-Thirds Vote.

ABx1 26 violates Article XIII, section 25.5(a)(3), of the California Constitution. That provision prohibits the State from passing a law that "change[s] for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring." ABx1 26 violates this provision because (1) after abolishing redevelopment agencies, it takes what would otherwise have been their tax increment revenues and expressly reclassifies them as general "ad valorem property taxes" belonging to "local agencies," and (2) it directs county auditor-controllers to distribute those monies to various other public and private persons and entities, with only the *remainder* going to "local agencies," thereby modifying the "pro rata shares" of "ad valorem property taxes" that such local agencies receive.

By way of background, under Section 25.5(b)(1), "ad valorem property tax revenues" are defined as "all revenues derived from the tax collected by a county under subdivision (a) of Section 1 of Article XIIIA, regardless of any of this revenue being otherwise classified by statute." Meanwhile, under Section 25.5(b)(2), the term "local agency" is defined as "a city, county, and special district"—*i.e.*, *not* a redevelopment agency.[4] Thus, although redevelopment agencies have, for the past approximately 60 years, received a portion of "ad valorem property tax revenues" generated from redevelopment project areas in the form of "tax increment" revenues (CAL. CONST., art. XVI, § 16; Health & Saf. Code § 33670(b); *Craig v. City of Poway* (1994) 28 Cal.App.4th 319, 325), because such agencies are not "local agencies" under Section 25.5, their revenues have *never* been part of the "ad valorem property tax revenues . . . *allocated among local agencies in a county*" under Section 25.5, subdivision (a)(3).

Against that backdrop, ABx1 26 changes the method for distribution of "ad valorem property taxes" amongst "local agencies,"

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[4] *See* Revenue & Taxation Code § 95(a). Redevelopment agencies are not "special districts" within the meaning of this provision. Under Section 95(m), the term "special district" specifically "does not include any agency that is not authorized by statute to levy a property tax rate." Redevelopment agencies have no power to levy property taxes. (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106 ["Redevelopment agencies are not empowered by law to levy property taxes"]; *Craig v. City of Poway* (1994) 28 Cal.App.4th 319, 325.)

inconsistent with the requirements of Article XIII, section 25.5(a)(3). As expected, under ABx1 26, the money that would have been allocated to a redevelopment agency as "tax increment" if it had not been dissolved is "deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIIIA of the California Constitution . . . ." (Health & Safety Code § 34182(c).) So far, so good.

However, ABx1 26 *then* obligates county-auditor controllers to place those property tax revenues into a "Redevelopment Property Tax Trust Fund" specific to each former redevelopment agency (Health & Safety Code §§ 34170.5(b), 34182(c)) and to distribute the funds *to various public and private entities*, *in the following order*: (1) first, to pay/reimburse the auditor-controller's costs in performing its obligations under ABx1 26 (which are not insubstantial)[5]; (2) next, to make pass-through payments to taxing agencies that would have been entitled to them had the redevelopment agency not been dissolved; (3) next, to pay for the former redevelopment agency's "enforceable obligations"; (4)

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[5] As noted above, county auditor-controller has several statutory obligations that will collectively result in substantial administrative costs, including (1) conducting an audit of each redevelopment agency, (2) determining the amount of property taxes that would have gone to each dissolved redevelopment agency, (3) administering the Redevelopment Property Tax Trust Fund for each dissolved redevelopment agency, and (4) providing various periodic reports and notices to the Director of Finance and the State Controller's Office. (Health & Safety Code §§ 34182-34188.)

next, to pay for the administrative expenses of successor agencies in performing *their* obligations under ABx1 26; *and (5) finally, if and to the extent any funds remain, to the local school districts and taxing agencies per their normal pro rata entitlements to property taxes.* (Health & Saf. Code §§ 34182(e), 34183, 34188.)

In other words, under ABx1 26, "local agencies" are entitled to the additional "ad valorem property tax revenues" *only* to the extent there are any such revenues "left over" after available property tax revenues are first applied to the other four *higher priority purposes* identified in the bill. By virtue of this priority scheme, the reallocation of ad valorem property tax revenues in ABx1 26 *necessarily* results in local agencies receiving *less* than their constitutional entitlement. The fact that they might receive more property tax revenues in absolute dollar terms than they would have received absent ABx1 26 (assuming there are any property tax dollars left in an auditor-controller's Redevelopment Property Tax Trust Fund after the other four "higher priority" payments are made) is irrelevant: Article XIII, Section 25.5(a)(3) clearly guarantees them their pro rata or *percentage* shares based on the *total* amount of property tax revenues generated, not simply a floor on the absolute dollar amount of such revenues based on what they received prior to adoption of ABx1 26.[6]

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[6] The State may argue that the administrative fees paid to county auditor controllers and "successor agencies" should not be considered in

Accordingly, because ABx1 26 was not passed by a two-thirds majority vote of the Legislature (MJN, Exhs. 1 and 2), it violates Article XIII, section 25.5(a)(3) of the California Constitution and is void.[7]

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determining whether ABx1 26 "changes" the allocation of property taxes among local agencies within the meaning of Article XIII, section 25.5(a)(3). Such an argument would likely be based on such cases as *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444 and *Community Redevelopment Agency v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 729-730, which held that a county's deduction of property-tax administration fees under former Revenue & Taxation Code section 97.5 (currently section 95.3) from the gross tax increment revenues allocated to redevelopment agencies under Article XVI, section 16, was permissible.

These cases are inapplicable here for several reasons. First, *they predate the enactment of Article XIII, section 25.5(a)(3)—the provision at issue in this case—which constitutionally limited the State's authority to change the pro rata shares of local property taxes*. Thus, needless to say, those cases do not address this constitutional provision. Second, the rationale of those decisions was that the Legislature had the authority to require the redevelopment agency to pay its "fair share" of a county's property-tax administrative costs, "as long as [the county] acts with an even hand." (*See Community Redevelopment Agency v. County of Los Angeles, supra,* 16 Cal.App.4th at 729-730.) Here, ABx1 26 does *not* act with an even hand, for it imposes nothing on redevelopment agencies (which, of course, will be dissolved under this scenario), but instead imposes on the "local agencies" (which are constitutionally entitled to receive their proportionate share of property tax revenues) the *entire* financial burden of administering a complicated and long-term rubric of audits, reports, and successor-agency activities relating to the administration of the former redevelopment agency's property and assets, payment of its "enforceable obligations," etc.—activities that, in total, range far beyond the minor administrative costs involved in collecting and allocating property tax revenues. Finally, even *if* the administrative-cost payments under ABx1 26 (specifically, the first and fourth payment priorities in Health & Safety Code §§ 34183 and 34188) could be ignored, the other two payment priorities (pass-through payments and enforceable obligations) are alone sufficient to trigger a violation of Article XIII, section 25.5(a)(3).

[7] It is noteworthy that one respondent in this case—the County of Santa

B. <u>ABx1 26 and 27 Violate Article IV, section 12(d), of the California Constitution, Which Requires that Bills Providing for Appropriations From the State's General Fund Be Passed by a Two-Thirds Vote.</u>

ABx1 26 and 27 violate Article IV, section 12(d), of the California Constitution. Subject to certain exceptions not applicable here, that constitutional provision requires bills providing for appropriations from the State's General Fund to be passed by a two-thirds vote. As noted above, neither ABx1 26 nor ABx1 27 were passed by a two-thirds margin.

The State will argue the Legislature did not violate this provision because it passed ABx1 26 and 27 as "trailer bills" in conjunction with its adoption of the State budget, pursuant to Proposition 25. Passed by the California voters in November of 2010, Proposition 25 amended Article IV, sections 12, subsections (d) and (e)(1), to allow the Legislature to pass by a simple majority vote, and to make immediately effective, (1) the budget bill itself, and (2) "other bills providing for appropriations related to the budget bill." (CAL. CONST., art. IV, § 12(d), (e)(1), Historical Notes, 2010 Legislation.) According to the ballot materials that

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Clara—has admitted in its brief that the re-allocation of general property taxes under the challenged bills will result in a violation of Article XIII, section 25.5(a)(3). (Respondent County of Santa Clara's Return by Answer to Petition for Writ of Mandate; Memorandum of Points and Authorities in Support of Return, pp. 27-29.) Although the County targets only certain provisions of ABx1 *27*, and does not challenge the constitutionality of ABx1 *26*, there is no reason the logic advanced by the County would not apply to the State's mandatory "skimming-off-the-top" distribution under ABx1 26 as well.

accompanied Proposition 25, the sole purpose of that measure was to ensure that the budget—and only the budget—would be adopted in a timely fashion, and that Californians would be spared from the harms that can ensue from long delays in the budget process. (*Ibid.*)

Contrary to the State's argument, however, neither ABx1 26 nor ABx1 27 fall within the ambit of Proposition 25, for neither of the bills constitutes (1) "the budget bill" itself, nor, under any rational analysis, (2) "other bills providing for appropriations *related to* the budget bill." (Emph. added.) With respect to the latter issue, while each bill does contain a nominal appropriation of $500,000 to the Director of Finance, *the sole purpose of these appropriations (according to the bills themselves) is to fund only the activities mandated by those bills themselves, and nothing more*. (ABx1 26, § 11; ABx1 27, § 6.) As such, to call those *appropriations* "budget related" would stretch the meaning of Proposition 25 beyond all reason. If such a subterfuge were allowed, the State could adopt *any* appropriations bill by simple majority vote simply by (1) including in the bill a nominal appropriation that has nothing to do with the State budget and (2) declaring that the bill "relates to" the budget.

Moreover, even if one delves into the *substance* of ABx1 26 and 27, they still cannot be deemed "related to" the budget bill under Proposition 25. To begin with, the true subject matter of these bills is a complete overhaul of existing redevelopment law, not the 2011-2012

"budget bill." Furthermore, even if this overhaul of the CRL were to have an impact on the State budget in the 2011-2012 fiscal year, ABx1 26 and 27 go *far beyond* that issue because (1) they dictate the re-allocation of local property tax revenues *for all time*, and (2) with respect to ABx1 27, except for a single provision that gives the State a credit against its Proposition 98 obligations for the 2011-2012 fiscal year, it neither raises State revenues nor alters State appropriations in any future fiscal year. Put simply, when the vast majority of a bill's effects take place in future fiscal years and have little or nothing to do with the State budget in those years, it cannot truly be said to be "related to" a particular "budget bill" under Proposition 25.

The State's overly broad interpretation of the "related to" requirement under Proposition 25 should be foreclosed by this Court's reasoning in *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078 ("*Harbor*"). In *Harbor*, the Legislature passed a budget "trailer bill" (Senate Bill No. 1379) that "contain[ed] 71 sections" that "amend[ed], repeal[ed], or add[ed] approximately 150 sections contained in more than 20 codes and legislative acts." (43 Cal.3d. at pp. 1082-1083, 1097.) The title of the bill described the measure as "relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof to take effect immediately." (*Id.* at p. 1097.) The State "characterize[d] the measure as a 'trailer bill' which 'trails' the budget bill and is closely related to it,"

noting that "[b]oth bills follow the same legislative path, and are reviewed by the same legislative committees on the same time schedule." (*Ibid.*)

This Court held in *Harbor* that the multiple subjects and provisions within Senate Bill 1379 itself violated the single-subject rule. (*Harbor*, *supra*, 43 Cal.3d at pp. 1109-1100.) In response, the petitioners in the case argued that all of the scattered provisions in the trailer bill fell within the general subject of "fiscal affairs," and that the bill was therefore part of the same "subject" as the budget bill itself. (*Id.* at p. 1100.) This Court rejected that argument, holding that the subject of "fiscal affairs" was far too broad, and that accepting the argument *would allow the Legislature to include virtually any subject as part of a budget "trailer bill,"* thereby "read[ing] the single subject rule out of the Constitution." (*Id.* at p. 1100-1101.) The Court stated as follows:

> Petitioners suggest that the subject of Bill 1379 is "fiscal affairs," as stated in its title, and that its object is "to make statutory adjustments which relate to the ongoing allocation of state funds appropriated annually in the budget bill, within the state programs so funded." . . . .
>
> We understand this somewhat cryptic analysis to mean that the goal of Bill 1379 is to reflect matters encompassed in the budget bill, and that . . . its provisions are conducive to that goal and therefore in compliance with the single subject rule.
>
> Our unanimous determination in *Brosnahan, supra*, 32 Cal.3d 236, that a bill which encompasses matters of *"excessive generality"* violates the purpose and intent of the single subject rule is applicable to this assertion. "Fiscal affairs" as the subject of Bill 1379 and "statutory adjustments" to the budget as its object suffer from the same defect. They are too broad in scope if, as petitioners appear to claim, they encompass any substantive measure which has an effect on the budget. *The number and scope of topics*

> *germane to "fiscal affairs" in this sense is virtually unlimited. If petitioners' position were accepted, a substantial portion of the many thousand statutes adopted during each legislative session could be included in a single measure even though their provisions had no relationship to one another or to any single object except that they would have some effect on the state's expenditures as reflected in the budget bill.* This would effectively read the single subject rule out of the Constitution.

(*Ibid.* [emphasis added])

In other words, the parties in *Harbor* were unable to save the budget trailer bill at issue in that case from a violation of the single-subject rule simply because it broadly related to "fiscal affairs" and therefore fell within the same subject as the "budget bill." Similarly, here, the State should not be able to claim—in response to an argument that ABx1 26 and 27 violated Article IV, section 12(d)—that they qualify as "related to the budget bill" under Proposition 25 simply because they contain appropriations, or because they otherwise have some alleged impact on the budget. As this Court observed in *Harbor*, under such reasoning, there would be absolutely no limit to the types and degree of changes that could be made to substantive law as part of the streamlined budget process, in direct contradiction of this Court's application of the single-subject rule.

Because the result advanced by the State would not be consistent with the limited purposes of Proposition 25 (which was simply to speed-up the budget process) or this Court's reasoning in *Harbor*, this Court should more narrowly construe the "related to" requirement of Proposition

25 (*i.e.*, Article IV, section 12(e)(1)), should find that neither ABx1 26 nor ABx1 27 meet that requirement, and should hold both bills invalid for containing appropriations that were not approved by a two-thirds vote of the Legislature, as required by Article IV, section 12(d).

C. <u>ABx1 26 and 27 violate Article IV, section 8(c)(1), of the California Constitution.</u>

ABx1 26 and ABx1 27 also violate Article IV, section 8(c)(1) of the California Constitution, which provides that bills enacted in a special session of the Legislature do not become effective until the 91st day after adjournment of the special session. Because ABx1 26 and 27 were made immediately effective (ABx1 26, § 16; ABx1 27, § 8), and yet do not qualify for any of the exceptions to this 91-day rule, they violate this provision.

As with the above issue regarding the two-thirds vote for an appropriation bill, the State will argue that it was allowed to make ABx1 26 and 27 immediately effective under Article IV, sections 12(d) and (e)(1), which provides an exception to the 91-day requirement for the "budget bill," and for "other bills providing for appropriations relating to the budget bill." As explained above in Section IV.B, however, that exception does *not* apply here because ABx1 26 and 27 do not contain

appropriations that are "related to" the "budget bill" within the meaning of Proposition 25.[8]

Due to the various deadlines and time constraints imposed by ABx1 26 and 27 in the initial 90 days after their effectiveness, this is not a violation that can simply be "cured" by declaring a new "effective date" for these bills. Indeed, many of the most important dates and deadlines imposed by ABx1 26 and 27 have already come and gone. (*See, e.g.*, Health & Safety Code §§ 34161-34167 and 34169 [immediate suspension of redevelopment agency powers], 34169(g) [redevelopment agency preparation and submittal of EOPS to various entities for review], 34169(h) [redevelopment agency preparation and submittal of preliminary draft ROPS], 34173(d)(1) [sponsoring community's deadline to opt out as successor agency], 34194 [Department of Finance calculation of community remittance payments and appeal process relating thereto], and 34193(b) and 34193.1 [community's deadline to "opt in" under ABx1 27 "Voluntary" Alternative Redevelopment Program to keep its redevelopment agency alive].) Meanwhile, all future deadlines (many of

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[8] The only other types of bills that become immediately effective are (1) "urgency statutes," and (2) "statutes providing for tax levies or appropriations for the usual current expenses of the State." (CAL. CONST., art. IV, § 8(c)(3).) ABx1 26 and 27 were not passed as either of those types of bills. (MJN, Exhs. 1 and 2 [expressly noting that ABx1 26 and 27 are "non-urgency"].)

which are described in Section III.D of this brief) depend for their implementation on the timely completion of these prior tasks.

In the event ABx1 26 and 27 are found invalid based solely on a violation of this 91-day requirement, *Amici* respectfully submit that this Court should not try to "pick up the pieces" by establishing a new "effective date," for such an effort would require this Court to completely re-write ABx1 26 and 27 to supply new statutory dates and deadlines, thereby enforcing a law that the Legislature did not write. Because such a task is well outside the province of the judiciary, the bills should instead simply be struck down in total. (*See People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 330, fn. 15 [holding that "a court may not rewrite a statute to save its constitutionality," and that "[a] court has no power to produce 'a judicially reformed statute,' one which is made constitutional only 'by inserting qualifications and exceptions in the statutory language, . . .'"] [quoting *In re Blaney* (1947) 30 Cal.2d 643, 655].)

D. ABx1 26 and 27 Violate the "Single Subject Rule" Set Forth in Article IV, Section 9, of the California Constitution Because They Include Both Appropriations and Major Substantive Revisions to the Community Redevelopment Law.

ABx1 26 and 27 also violate the "single-subject rule" enshrined in Article IV, section 9, of the California Constitution. Based on that rule, it is well-established that a budget bill cannot be utilized to "'substantively

amend[] and change existing statute law.'" (*California Labor Federation, supra*, 5 Cal.App.4th at p. 991 [holding that budget bill violates single-subject rule when it (1) provides for appropriations, which is its sole purpose and subject, and (2) attempts to change existing law] [quoting *Planned Parenthood, supra*, 173 Cal.App.3d at p. 1199] [alteration in original]; *see also California School Boards Assn. v. Brown* (2011) 192 Cal.App.4th 1507, 1525 ["'Budget bills that substantively change existing law violate the single-subject rule'"] [quoting *San Joaquin Helicopters, supra*, 110 Cal.App.4th at p. 1558].)

In *California Labor Federation*, the California Court of Appeal struck down provisions of the 1990 and 1991 budget acts because, in addition to appropriating funds for the State budget, they also purported to limit the attorney-fee awards available under Code of Civil Procedure 1021.5, thereby violating single-subject rule. (*California Labor Federation, supra*, 5 Cal.App.4th at pp. 988-989, 991, 995-996.) In reaching this conclusion, the Court held that, when it comes to a budget bill, "*[i]ts 'subject' is the appropriation of funds for government operations*, and it cannot constitutionally be employed to expand a state agency's authority, or to 'substantively amend[] and change existing statute law.'" (*Id.* at p. 991 [quoting *Planned Parenthood, supra*, 173 Cal.App.3d at p. 1199, which invalidated, under the single-subject rule, a

"rider" to the budget bill that amended a provision of the Welfare and Institutions Code relating to funds for family planning programs].)

Here, the items that purportedly tie ABx1 26 and 27 to the Budget Bill for the 2011-2012 fiscal are the *appropriations* contained in each of those "trailer bills." Indeed, ABx1 26 and 27 are expressly identified in the Budget Bill as proving for appropriations that are "related to" the Budget Bill (SB, § 39), and it is only because of these nominal appropriations that the State even argues that the two trailer bills qualify under Proposition 25 as "other bills providing for appropriations related to the budget bill." (CAL. CONST., art. IV, § 12(d), (e)(1).)

Under *California Labor Federation*, however, these appropriations constitute *one subject*—namely, "appropriations relating to the budget," as claimed by the State. Because, in addition to those appropriations, ABx1 26 and 27 also purport to make permanent, sweeping, and long-term changes to existing statutory law under the CRL, they violate the single-subject rule, and are invalid.

Moreover, as with the other issues addressed above, it is no response to this argument to claim that the bills are validated by Proposition 25. As noted previously, the purpose of Proposition 25 was simply to streamline the passage of the budget bill (*see* CAL. CONST., art. IV, § 12, Historical Notes, 2010 Legislation), not to allow the State to

make an end-run around the single-subject rule by making substantial amendments to existing law as part of the budget process.

E. ABx1 26 and 27 Violate Article IV, section 3(b), of the California Constitution Because They Address Subjects that Do Not Fall Within the Purview of the Governor's Proclamation.

ABx1 26 and 27 also violate Article IV, section 3(b), of the California Constitution. According to that provision, "[o]n extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session," but when so assembled the Legislature "has power to legislate *only* on subjects specified in the proclamation." (Emph. added.)

Here, the "Fiscal Emergency Proclamation" by which Governor Brown called the Legislature into the 2011-2012 First Extraordinary Session stated that the session was called to address "the projected budget imbalance for Fiscal Year 2010-2011, which is causing budgetary and cash deficits in Fiscal Year 2011-12." (MJN, Exh. 4.) Based on this limited scope, the only subject on which the Legislature had the power to legislate in the special session was the projected budget imbalances in the then-pending 2010-2011 fiscal year and the then-upcoming 2011-2012 fiscal year.

Meanwhile, it did *not* have the power to enact a permanent and substantive overhaul of the entire CRL—one that effectively repeals that

law (under ABx1 26), then creates (under ABx1 27) a long-term forced-payment scheme that extends *far beyond the end of the 2011-2012 fiscal year*, yet provides *no* relief to the State in those future years at all. (*See, e.g., 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."]; *see also People v. Curry* (1900) 130 Cal. 82, 90.)[9]

Amici recognize that, in the two most recent cases applying Article IV, section 3(b), *Sturgeon v. County of L.A.* (2010) 191 Cal.App.4th 344 and *Martin*, *supra*, 20 Cal.2d 28, the courts upheld the enactments in question. However, those cases are distinguishable because the proclamations in question there expressly touched upon the subject matters addressed in the legislation, and because the challenges were less about whether the legislature exceeded the scope of the proclamations and more about whether the legislation had the *effect* that was envisioned by the proclamation, which it was not a judicial function to determine. (*Sturgeon*, *supra*, 191 Cal.App.4th at pp. 348, 349, 350-352 [where

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[9] Governor Brown called the special session of the Legislature pursuant to Article IV, section 10(f), of the California Constitution. However, that section is necessarily limited by the constraints of Article IV, section 3(b), which applies to all "special sessions" called by the Governor "by proclamation."

purpose of special session was to "address the economy, including but not limited to efforts to stimulate California's economy, create and retain jobs, and streamline the operations of state and local governments," Legislature could pass law impacting county-provided benefits to superior court judges because the proclamation expressly mentioned "streamlin[ing] the operations of state and local governments"; according to the court, "*whether the legislation in fact streamlined those operations is not of concern to us*: the Governor's proclamation gave the Legislature the power to legislate in the area of state and local government operations"] [emphasis added]; *Martin*, *supra*, 20 Cal.2d at pp. 28, [where purpose of proclamation was "[t]o consider and act upon legislation augmenting the appropriation for the operation, maintenance and organization of the State Guard . . . and amending [various sections] of the Military and Veterans Code, with respect to pay, privileges, allowances, and rights for the State Guard," the "reorganization" of the State Guard was a proper subject of the legislative session].)

For *Sturgeon* and *Martin* to be applicable here, the Proclamation at issue would have at have at least mentioned "redevelopment," which it did not.

Of course, the State will argue that the bills fall within the ambit of the Governor's Proclamation because they have some impact on the State budget. That argument is too broad, however, and runs afoul of this

Court's reasoning in *Harbor*, as discussed above in Section IV.B of this brief. As noted in *Harbor*, there is virtually no end to the list of subjects that could conceivably be described as having a fiscal or budgetary impact. As such, allowing "things that might affect the budget" to define the scope of issues on which the Legislature may legislate in special session would effectively read Article IV, section 3(b) out of the Constitution.

Even if ABx1 26 and 27 did have some impact on the State budget, however, that would not save them, for the Proclamation *is limited to the 2011-2012 fiscal year*, and ABx1 26 and 27 have effects stretching *far beyond that fiscal year*, dictating the re-allocation of local property tax revenues *for all time*. Moreover, with respect to ABx1 27 in particular, except for a single provision that gives the State a credit against its Proposition 98 obligations for the 2011-2012 fiscal year, it neither raises State revenues nor alters State appropriations in any future fiscal year. Thus, the vast majority of the impact from ABx1 27 not only does *not* occur in the 2011-2012 fiscal year, but does not even impact the State budget at all in future years.

Because ABx1 26 and 27 address subjects and time periods that fall well outside the Governor's Proclamation for the 2011-2012 First Extraordinary Session, they exceeded the authority of the Legislature and are invalid under Article IV, section 3(b), of the California Constitution.

F. ABx1 26 and 27 Violate Article IV, section 12(c)(4), of the California Constitution, Because They Were Presented to the Governor Before the Budget Bill.

Finally, ABx1 26 and 27 are also invalid because they were passed and sent to the Governor in violation of Article IV, section 12(c)(4), of the California Constitution. Under that provision, subject to certain limited exceptions not relevant here, until the budget bill itself has been enacted, the "Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted." The purpose of this rule is self-evident: to ensure that the State fiscal "tail does not wag the dog" by allowing the Legislature to have the Governor consider and potentially approve isolated "budget" appropriations without being in a position to consider their overall impact on the budget as a whole.

ABx1 26 and 27—each of which is a bill "appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted"—were presented to the Governor at 4:15 p.m. on June 28, 2011. (Complete Bill History, ABx1 26 and ABx1 27.) Instead of "trailing" the budget bill, however, they preceded it, as the budget bill was not presented until 9:45 p.m. that day. (Complete Bill History, SB 87.) While it is unclear from the available legislative history in this case whether the Governor actually signed ABx1 26 and 27 before he considered and signed the Budget Bill, the only way to effectively enforce the sound

fiscal policy underlying the provisions of Article IV, section 12(c)(4), is to *invalidate* ABx1 26 and 27 because of the unequivocal constitutional violation that occurred.

If the bills are not stricken in light of this violation, will the Legislature be permitted to submit budget "trailer bills" one week before the budget itself is submitted? One month? Six months? Will the courts be required to ask the Governor to indicate whether he considered the budget bill or the "trailer" bill first, or whether it would have made a difference to his decision to sign the bills? Rather than require the courts to grapple with such questions, the Constitution provides a simple, "bright line" test, which should be followed here to invalidate ABx1 26 and 27.

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/ / /

V.
CONCLUSION

For the foregoing reasons, and the reasons ably articulated by Petitioners in their briefs previously filed in this action, *Amici* submit that this Court should declare ABx1 26 and ABx1 27 to be unconstitutional and invalid.

Dated: September 29, 2011

Respectfully submitted

RUTAN & TUCKER, LLP
JEFFREY M. ODERMAN
DAN SLATER
MARK J. AUSTIN
BILL IHRKE
MEGAN K. GARIBALDI

By: ______________________
Mark J. Austin
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

(California Rules of Court, Rule 8.204)

I certify that pursuant to California Rules of Court, Rule 8.204, that the foregoing Amicus Curiae Brief on Behalf of a Coalition of Cities, Redevelopment Agencies, and Private Parties, Supporting Petitioners and Raising Additional Arguments is proportionally spaced, has a typeface of 13 points or more and contains 9,435 words, as calculated by the word-processing system used to prepare the brief, which was MSWord, version 2007.

Dated: September 29, 2011

RUTAN & TUCKER, LLP

By: ______________________
Mark J. Austin
Attorneys for Amici Curiae

PROOF OF SERVICE BY MAIL AND E-MAIL

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

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On September 30, 2011, I served on the interested parties in said action the within:

AMICUS CURIAE BRIEF ON BEHALF OF A COALITION OF CITIES, REDEVELOPMENT AGENCIES, AND PRIVATE PARTIES, SUPPORTING PETITIONERS AND RAISING ADDITIONAL ARGUMENTS

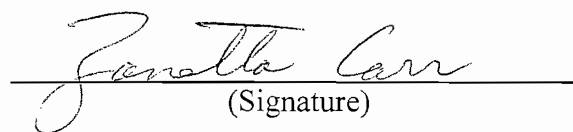
by placing a true copy thereof in a sealed envelopes addressed as stated on the attached Service List. In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice I deposited such envelopes in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelopes were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I also emailed a copy of the above-referenced document by transmitting a true copy of the foregoing document to the e-mail addresses set forth as stated on the attached Service List.

Executed on September 30, 2011, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Zanetta Carr
(Type or print name)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California Supreme Court Case No. S194861

Steven L. Mayer, Esq. Howard Rice Nemerovski Canady Falk & Rabkin Three Embarcadero Center, 7th Floor San Francisco, CA 94111-4024 Telephone: (415) 434-1600 Email: smayer@howardrice.com	Attorneys for Petitioners California Redevelopment Association; John F. Shirey; League of California Cities; City of San Jose; City of Union City
Ross Charles Moody, Esq. Office of the Attorney General State of California 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-3658 Telephone: (415) 703-1985	Attorneys for Respondent Ana Matosantos, Department of Finance; John Chiang, Office of the State Controller
Jennifer K. Rockwell, Esq. California Department of Finance 915 L St. State Capitol, Room 1145 Sacramento, CA 95814 Telephone: (916) 324-4856	Attorneys for Respondent Ana Matosantos, Department of Finance; John Chiang, Office of the State Controller
Claude F. Kolm, Esq. Brian E. Washington, Esq. Office of the County Counsel County of Alameda 1221 Oak St., Suite 450 Oakland, CA 94612 Telephone: (510) 272-6700	Attorneys for Respondent Patrick O'Connell, Auditor-Controller of the County of Alameda
Lizanne Reynolds, Esq. Office of the County Counsel County of San Jose 70 W. Hedding St., 9th Floor, East Wing San Jose, CA 95110-1768 Telephone: (408) 299-5900 Email: Lizanne.Reynolds@cco.sccgov.org	Attorneys for County of Santa Clara; Vinod K. Sharma
Brian E. Washington Alameda County Counsel's Office 1221 Oak Street, Room 450 Oakland, CA 94612-4296 Telephone: (510) 272-6700	Attorneys for Alameda County

Richard J. Chivaro
Chief Counsel
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5872

Telephone: (916) 445-2636

Attorneys for State Controller's Office

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