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,

vs.

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

Respondents:

APPLICATION BY THE ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF PETITIONERS CALIFORNIA REDEVELOPMENTS ASSOCIATION, ET AL.; PROPOSED AMICUS BRIEF

M. LOIS BOBAK - State Bar No. 127540
lbobak@wss-law.com
THOMAS F. NIXON – State Bar. No. 116061
WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626-7670
(714) 558-7000 - FAX (714) 835-7787

Attorneys for Amicus Curiae Association of California Cities – Orange County

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,

vs.

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

Respondents:

APPLICATION BY THE ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF PETITIONERS CALIFORNIA REDEVELOPMENTS ASSOCIATION, ET AL.; PROPOSED AMICUS BRIEF

M. LOIS BOBAK - State Bar No. 127540
lbobak@wss-law.com
THOMAS F. NIXON – State Bar. No. 116061
WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626-7670
(714) 558-7000 - FAX (714) 835-7787

Attorneys for Amicus Curiae Association of California Cities – Orange County

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.

The Association of California Cities – Orange County ("ACC-OC"), respectfully requests leave to file an amicus brief in support of Petitioners California Redevelopment Association, the League of California Cities, the City of Union City, the City of San Jose and John F. Shirey. As explained below, ACC-OC is an organization of 25 Orange County cities, the vast majority of which have community redevelopment agencies funded by local property tax revenues. ACC-OC has a significant interest in this litigation because its member agencies are at risk of either losing their community redevelopment agencies altogether or of being coerced into paying a significant and recurring fee to the state for the privilege of maintaining their community redevelopment agencies. ACC-OC advocates for important reforms to the redevelopment process, but like the Petitioners in this case, ACC-OC recognizes that community redevelopment agencies serve a vital role in creating and maintaining livable and thriving communities by revitalizing blighted areas, strengthening the community, and creating jobs.

ACC-OC agrees with the legal arguments advanced by Petitioners in their Petition for Writ of Mandate. As set forth in the attached Proposed Amicus Brief, ACC-OC also believes that the legislation challenged in the Petition violates constitutional provisions designed to protect the integrity of voter-enacted measures, such as Article II, section 10(c) of the California Constitution, which severely limits the authority of the Legislature to amend, either directly or indirectly, initiative legislation enacted by the voters.

No counsel for any party authored the Proposed Amicus Brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Indeed, the filing of this amicus brief has been done on a *pro bono* basis and without remuneration.

///

///

///

INTEREST OF AMICUS CURIA

ACC-OC was created in early 2011 to serve as a clearing house for the development and implementation of sound local and regional public policy in the Orange County area. ACC-OC currently has 25 active City members, out of a total of 34 cities in Orange County, and ACC-OC has established partnerships with a number of local regional governmental entities.

ACC-OC and its members have a significant interest in community redevelopment. Most of ACC-OC's 25-member cities have community redevelopment agencies. Those agencies are often critical in providing affordable housing for very low, low and moderate income households, for seniors, and for developmentally disabled individuals. According to the California Department of Housing and Redevelopment, redevelopment agencies have helped build and/or rehabilitate almost 79,000 affordable housing units since 1995.

Redevelopment agencies also help spark private sector investment in underserved areas of local communities. The initial community improvements made by redevelopment agencies, coupled with their commitment of funds and low cost financing, reduce the cost and risk associated with redevelopment projects, making private investment both more likely and more successful.

While recognizing the important role played by redevelopment agencies, ACC-OC also believes that important reforms are necessary in the redevelopment process. In this regard, ACC-OC has been on the forefront of engaging local communities, legislators and the public in a dialogue relating to reform. The reforms advocated by ACC-OC include heightened citizen participation and oversight, a limitation on the use of eminent domain, a prohibition on land banking that fosters land speculation, and limits on administrative costs. However, the legislation challenged in this lawsuit – AB1X 26 and AB1X 27 – do not reflect legitimate legislative attempts to reform the redevelopment process. Instead, those statutes reflect nothing but an attempt by the state Legislature to gain control over local tax revenues intended for local purposes so that the Legislature does not have to make other difficult choices to balance the state budget.

As set forth in the attached Proposed Amicus Brief, ACC-OC submits that AB1X 26 and AB1X 27 impermissibly amend constitutional provisions adopted by the voters via Proposition 22, in violation of Article II, section 10(c) of the state Constitution. That argument has not been advanced by the Petitioners in this case.

The Court's decision in this case will have a significant impact on ACC-OC and its member agencies. For this reason, ACC-OC requests leave to participate in these proceedings as an amicus party.

DATED: September 29, 2011 WOODRUFF, SPRADLIN & SMART, APC

By: M. Lois Bobak
M. LOIS BOBAK
Attorneys for Association of California Cities – Orange County

AMICUS BRIEF

1. INTRODUCTION

The initiative is one of the most powerful tools the California electorate has for directly establishing public policy. In California Common Cause v. Fair Political Practices Commission (1990) 221 Cal. App. 3d 647, 652, the court stated:

> "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them." (Citations omitted)

More recently, in Shaw v. Chiang (2009) 175 Cal. App. 4th 577, 596, the court stated:

> "Statutes and constitutional provisions adopted by the voters must be construed liberally in favor of the people's right to exercise the reserved powers of initiative and referendum. The initiative and referendum are not rights granted [to] the people, but ... power[s] reserved by them. Declaring it the duty of the courts to jealously guard this right of the people [citation], the courts have described the initiative and referendum as articulating one of the most precious rights of our democratic process [citation]. It has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it. [Citations] In fact, [t]he people's reserved power of initiative *is* greater than the power of the legislative body. The latter may not bind future Legislatures [citation], but by constitutional character and mandate, unless an initiative measure expressly provides otherwise, an initiative measure may be amended or repealed only by the electorate. Thus, through exercise of the initiative power the people *may* bind future legislative bodies other than the people themselves." (Emphasis in original; internal quotations omitted)

Consistent with language from this Court that the judiciary should "jealously guard" the voter's will, Article II, section 10(c) of the state Constitution generally requires approval of the voters to amend or repeal an initiative statute. This constitutional limitation on the Legislature's authority is designed to "protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent." (Foundation for Taxpayer and Consumer Rights v. Garamendi (2005) 132 Cal. App. 4th 1354, 1364) The power vested in the voters to decide whether the Legislature can amend or repeal initiative statutes "is absolute and includes the power to enable legislative amendment subject to conditions attached by the voters." (Amwest Surety Ins. Co. v. Wilson (1995) 11 Cal. 4th 1243, 1251)

In 2010, the California voters adopted Proposition 22, which was a reaction by the voters to the Legislature's repeated raids on tax revenues dedicated for local use, including tax revenues earmarked for local community redevelopment agencies. The stated purpose of Proposition 22, set forth in section 2.5 of the Proposition itself, was:

> " . . . to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government or funds dedicated to transportation improvement projects and services." (Exhibit A, P.2[1])

The official ballot summary of Proposition 22, prepared by the Attorney General and to identifying voter intent in enacting ballot measures (California Housing Finance Agency v. Patitucci (1978) 22 Cal.3d 171, 177), stated in part that the Proposition:

> "Prohibits the state, even during a period of severe financial hardship, from delaying the distribution of tax revenues for transportation, *redevelopment*, or local government projects and services." (Exhibit B; emphasis added)

---

[1] ACC-OC believes that both the text of Proposition 22 and the Attorney General's summary of that Proposition have been included in the record submitted by Petitioners. However, for the convenience of the Court and parties, those documents, printed from the website of the Secretary of State, are also attached as Exhibits A and B, respectively, to this brief.

Notwithstanding the plain mandate of Proposition 22, in June 2011, the Legislature enacted two related statutes that result in a massive shift of local tax revenues. AB1X 26 abolishes all community redevelopment agencies. AB1X 26 also transfers the local tax revenues that would otherwise have been allocated to redevelopment agencies to other local agencies, on behalf of the state, as a replacement for monies that would otherwise come from the state General Fund. AB1X 27 allows cities and counties to avoid the harsh result of AB1X 26 by essentially buying back their redevelopment agencies by collectively paying $1.7 billion dollars this year and $400 million every year thereafter.

AB1X 26 and AB1X 27 indirectly amend Proposition 22 by requiring the transfer to the state of local taxes imposed for a local purpose. Yet, in the rush to enact a set of spending proposals in light of potentially losing their pay for a delinquent budget, the Legislature did not seek or obtain the consent of the voters. AB1X 26 and AB1X 27 therefore violate Article II, section 10(c) of the California Constitution, and are invalid.

2. THE COURTS MUST JEALOUSLY GUARD THE PEOPLE'S INITIATIVE POWER

In California, "all political power is inherent in the people." (Cal. Const., Art. II, sec. 1) Article I, section 3 of the California Constitution gives the people "the right to instruct their representatives," and Article 2, section 8(a) codifies the people's power to enact statutes and constitutional amendments through the initiative process. The power of the initiative is not a right *granted to* the people, but instead, is one *reserved by* them. (Shaw v. People ex rel. Chiang, supra, 175 Cal. App. 4th 577, 596; emphasis in original) Article II, section 10(d) of the Constitution states, in relevant part, that:

> "The Legislature may amend or repeal . . . an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."

As noted above, in Amwest Surety Ins. Co. v. Wilson, supra, 11 Cal. 4th 1243, 1251, the Court held that the electorate's power to decide whether the Legislature may amend or repeal initiative statutes "is absolute." In People v. Kelly (2010) 47 Cal. 4th

1008, 1025, this Court noted that "[t]he purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to 'protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.'" (Citing Proposition 103 Enforcement Project v. Quackenbush (1998) 64 Cal. App. 4th 1473, 1484) The Court stated that "courts have a duty to 'jealously guard' the people's initiative power", and must therefore "apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process 'be not improperly annulled' by a legislative body." (Citing, DeVita v. County of Napa (1995) 9 Cal. 4th 763, 776)

In Shaw v. Chiang, supra, 175 Cal. App. 4th 577, 596, the court stated that "Any doubts should be resolved in favor of the initiative and referendum power, and amendments which may conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislatively enacted ordinances, where the original initiative does not provide otherwise."

3. AB1X 26 AND 1X 27 UNCONSTITUTIONALLY ABROGATE PROPOSITION 22

Through Proposition 22, the voters added several new provisions to the California Constitution. In new Article XIII, section 24(b), the voters prohibited the state Legislature from reallocating, borrowing or otherwise using any taxes imposed by a local government for local governmental purposes to the state or any other entity. Among other things, new section 25.5(a)(7) of Article XIII, prohibits the Legislature from requiring community redevelopment agencies to pay or otherwise transfer, *directly or indirectly*, tax revenues allocated to such agencies pursuant to section 16 of Article XVI to or for the benefit of the state or any other jurisdiction.

The general principles that govern interpretation of a statute enacted by the Legislature apply also to an initiative measure enacted by the voters. (Arias v. Superior Court (2009) 46 Cal. 4th 969, 978, citing Robert L. v. Superior Court (2003) 30 Cal. 4th 894, 900) The court's primary task is to ascertain the intent of the electorate so as effectuate that intent. (Id. at 978-979, citing Professional Engineers in California

Government v. Kempton (2007) 40 Cal. 4th 1016, 1037)

There can be no question about the intent of the voters in enacting Proposition 22 – the voters stated their intent in plain, unequivocal language. For example, in section 2(a) of Proposition 22, the voters stated, in part, that:

> "California voters have repeatedly and overwhelmingly voted to restrict state politicians in Sacramento from taking revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services."

And section 2(b) states that:

> "By taking these actions, voters have acknowledged the critical importance of preventing State raids of revenues dedicated to funding vital local government services and transportation improvement projects and services."

In sections (c) and (d) of section 2, the voters expressed their frustration that, despite prior attempts by the voters to stop the practice, state politicians continued to take local tax revenues to balance the state budget. The voters said that "Despite the fact that voters have repeatedly passed measures to prevent the State from taking these revenues . . . state politicians in Sacramento have seized and borrowed billions of dollars in local government and transportation funds," including:

> "(3) Taken local community redevelopment funds on numerous occasions and used them for unrelated purposes."

Section 2(f) of Proposition 22 states that:

> "State politicians in Sacramento have continued to ignore the will of the voters, and current law provides no penalties when state politicians take or borrow these dedicated funds."

To prevent the continuing raids on local tax revenues for use by the state Legislature to balance the state budget, the voters expressed their intent to:

> " . . . conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding

services provided by local government or funds dedicated to transportation improvement projects and services." (Proposition 22, section 2.5)

This Court must protect the expressed will of the voters, and must uphold their efforts to preserve local tax revenues allocated for local purposes, including tax revenues allocated to community redevelopment agencies. (Amwest, supra, 11 Cal. 4th at pp. 1257, 1259 [the courts must give full effect to the initiative's specific language, as well as its major and fundamental purposes]; Gardner v. Schwarzenegger (2009) 178 Cal. App. 4th 1366, 1374)

The fact that the Legislature did not specifically amend or repeal any particular part of Proposition 22 when it adopted AB1X 26 and AB1X 27 is irrelevant. The Court must look at the practical effect of what the Legislature did, not simply the words it used to accomplish its objective.

It is well established that an "amendment" includes any change to the scope or effect of an existing statute, whether by addition, omission, or substitution, and whether by an act purporting to amend, repeal, revise, or supplement, or by an act wholly independent and original in form. (Proposition 103 Enforcement Project v. Quackenbush (1998) 64 Cal. App. 4th 1473, 1486) In People v. Superior Court (Pearson) (2010) 48 Cal. 4th 564, 571, this Court recently reaffirmed that, for purposes of Article II, section 10(c) of the California Constitution, "an amendment includes a legislative act that changes an existing initiative statute by taking away from it," regardless of the form of that legislative act.

In re Estate of Claeyssens (2008) 161 Cal. App. 4th 465, provides a good example of an impermissible Legislative attempt to change or modify a voter-enacted statute without actually amending any portion of the initiative itself. That case involved Proposition 6, a 1982 voter-approved initiative that prohibited inheritance taxes in California. Like Proposition 22, Proposition 6 did not provide for legislative amendment or repeal without voter approval.

In 2004 the Legislature passed Assembly Bill 1759, which enacted a graduated probate court user fee based on the value of the estate. The trustee of an estate required to pay the new "fee" filed a legal challenge, arguing that the new fee was nothing but a prohibited estate tax in disguise. The trustee argued that because no voter approval had been sought, the fee adopted by the Legislature violated Article II, section 10(c) of the state Constitution.

The state – through the Attorney General's office – argued that the Legislature did not violate the prohibition in Article II, section 10(c) because the Legislature did not purport to amend Proposition 6, but merely enacted an entirely new statute which provided for a new fee. The court rejected that argument, stating:

> "This myopic view is tantamount to the 'transparent evasion' condemned by the California Supreme Court over 100 years ago. 'A statute which adds to or takes away from an existing statute is considered an amendment.'" (116 Cal. App. 4th at 470)

The court continued:

> "In determining whether a particular action constitutes an amendment, we keep in mind that '[i]t is "'the duty of the courts to jealously guard [the people's initiative and referendum power]'.... '[It] has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled.' . . . Any doubts should be resolved in favor of the initiative and referendum power, and amendments that may conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislatively enacted ordinance, where the original initiative does not provide otherwise." (Id. at 470-471, citations omitted)

The court concluded that the fee was an unconstitutional attempt by the Legislature to do indirectly what it could not do directly – amend Proposition 6 without a vote of the people:

"Fixed filing fees are entirely appropriate. But the imposition of the instant fee based on the appraised value of an estate is unprecedented and violates Proposition 6 and the California Constitution, article II, section 10, subdivision (c). Calling a $74,642.52 filing fee a "court user fee" does not change the analysis. As reflected in the Proposition 6 ballot arguments, Revenue and Taxation Code section 13301 was "carefully written to withstand challenges in the courts and to block legislative shenanigans to reimpose the [estate or inheritance] tax under another name...." This language echoes the words of our Supreme Court 100 years ago in *Fatjo v. Pfister*, *supra*, 117 Cal. 83, 48 P. 1012. 'To call it a fee is a transparent evasion" of Proposition 6.'" (Id. at 473)

A similar conclusion was reached by this Court in People v. Kelly, supra, 47 Cal. 4th 1008. In that case, the Court considered whether an attempt by the Legislature to quantify the amount of medical marijuana that a qualified patient may possess violated the voter enacted Compassionate Use Act ("CUA"), which provides that a person may possess that amount of medical marijuana "reasonably related to the patient's current medical needs." (47 Cal. 4th at 1013) The Court noted that the Legislature did not specifically purport to amend the CUA. (Id. at 1014) Nevertheless, the Court concluded that the challenged action by the Legislature violated the prohibition in Article II, section 10(c) because the statute adopted by the Legislature had the effect of amending the CUA. The Court stated:

". . . we conclude that section 11362.77, by imposing quantity limitations upon 'qualified patients' and 'primary caregivers,' amends the CUA. Under the CUA as adopted by Proposition 215, these individuals are not subject to any specific limits and do not require a physician's recommendation in order to exceed any such limits; instead they may possess an amount of medical marijuana reasonably necessary for their, or their charges', personal medical needs. By extending the reach of section 11362.77's quantity limitations beyond those persons who voluntarily register under the MMP and obtain an

identification card that provides protection against arrest—and by additionally restricting the rights of all 'qualified patients' and 'primary caregivers' who fall under the CUA—the challenged language of section 11362.77 effectuates a change in the CUA that takes away from rights granted by the initiative statute." (47 Cal. 4th at 1043)

The Court continued:

"In this sense, section 11362.77's quantity limitations conflict with—and thereby substantially restrict—the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. In that respect, section 11362.77 improperly amends the CUA in violation of the California Constitution." (Id.)

AB1X 26 and AB1X 27 reflect an unconstitutional attempt by the Legislature to circumvent the will of the voters. Although the Legislature did not state that it was amending any of the constitutional provisions added by Proposition 22, that is exactly what the Legislature did. The Legislature essentially gutted Article XIII, section 25.5(a) by abolishing community redevelopment agencies so that the state could keep the locally generated tax revenues allocated to those agencies under Article XVI, section 16 of the California Constitution. The Legislature also thwarted the purpose of Article XIII, section 24(b) by forcing any city or county wishing to keep its community redevelopment agency to pay a significant ransom to the state – i.e., to transfer local tax revenues intended for local purposes, to the state. Article II, section 10(c) of the state Constitution does not permit the Legislature to take such action.

The Legislature clearly intended AB1X 26 and AB1X 27 solely as a revenue raising device, and not a mechanism for reforming the redevelopment process. Such result is evident from the structure of these statutes, as one abolishes these agencies, only to re-breathe life into them upon a local agency's agreement to pay a recurring fee to permit continued existence. The Legislature obviously intended that AB1X 26 and AB1X 27 operate together – by its very terms, AB1X 26 was not to become effective

unless AB1X 27 was also adopted. Read together, the statutes appear to be a clear attempt by the Legislature to force local governments to forfeit redevelopment funds to the state, in direct contravention of Proposition 22, for no reason other than to provide additional local funds to fill in a gap in the state budget. In Shaw v. Chiang, supra, 174 Cal. App. 4th 577, 611, the court made it clear that "Constitutional restrictions cannot be ignored based on budgetary convenience."

If the Legislature had been interested in reform, rather than resolving the state budget crisis on the backs of local government, the Legislature could have considered reforms such as those advocated by ACC-OC. ACC-OC supports reforms that would add more public oversight to the redevelopment process in the form of citizen oversight committees, focus eminent domain on genuine public projects (as opposed to providing property for private development projects), preclude land banking that fosters land speculation, and cap the administrative expenses of redevelopment agencies. But ACC-OC does not support the use of the threat of the wholesale abolition of community redevelopment agencies as a revenue raising device, in direct contravention of the will of the voters.

4. CONCLUSION

Proposition 22 does not give any authority to the Legislature to amend the constitutional provisions at issue in this case. Neither does any other provision of state law. Thus, any attempt by the Legislature to add to or take away from the provisions of Proposition 22 required voter approval. The Legislature did not seek or obtain the consent of the voters before enacting AB1X 26 or AB1X 27. Those statutes are therefore unconstitutional, and cannot be enforced.

DATED: September 29, 2011 WOODRUFF, SPRADLIN & SMART, APC

By: M. Lois Bobak
M. LOIS BOBAK
Attorneys for Association of California Cities – Orange County

CERTIFICATE OF WORD COUNT

The text of the brief, including footnotes, consists of 3,238 words as counted by the Microsoft Word 2007 word processing program used to generate the brief.

DATED: September 29, 2011 WOODRUFF, SPRADLIN & SMART, APC

By: M. Lois Bobak
M. LOIS BOBAK
Attorneys for Association of California Cities – Orange County

management practices and providing continuity of funding for urban river parkways when allocating grant funds pursuant to this section. The department shall give highest priority for grants to urban river parkways that benefit the most underserved communities.

5088.2. The department shall provide grants to local agencies operating units of the state park system to assist in the operation and maintenance of those units. The department shall first grant available funds to local agencies operating units of the state park system that, prior to the implementation of this chapter, charged entry or parking fees on vehicles, and shall allocate any remaining funds, on a prorated basis, to local agencies to assist in the operation and maintenance of state park units managed by local agencies, based on the average annual operating expenses of those units over the three previous years, as certified by the chief financial officer of that local agency. Of the funds provided in subdivision (a) of Section 5088, an amount equal to 5 percent of the amount deposited in the fund shall be available for appropriation for the purposes of this section. The department shall develop guidelines for the implementation of this section.

5089. For the purposes of this chapter, eligible expenditures for wildlife conservation include direct expenditures and grants for operation, management, development, restoration, maintenance, law enforcement and public safety, interpretation, costs to provide appropriate public access, and other costs necessary for the protection and management of natural resources and wildlife, including scientific monitoring and analysis required for adaptive management.

5090. Funds provided pursuant to this chapter, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

SEC. 2. Section 10751.5 is added to the Revenue and Taxation Code, to read:

10751.5. (a) Except as provided in subdivision (b), in addition to the license fee imposed pursuant to Section 10751, for licenses and renewals on or after January 1, 2011, there shall also be imposed an annual surcharge, to be called the State Parks Access Pass, in the amount of eighteen dollars ($18) on each vehicle subject to the license fee imposed by that section. All revenues from the surcharge shall be deposited into the State Parks and Wildlife Conservation Trust Fund pursuant to subdivision (a) of Section 5081 of the Public Resources Code.

(b) The surcharge established in subdivision (a) shall not apply to the following vehicles:

(1) Vehicles subject to the Commercial Vehicle Registration Act (Section 4000.6 of the Vehicle Code).

(2) Trailers subject to Section 5014.1 of the Vehicle Code.

(3) Trailer coaches as defined by Section 635 of the Vehicle Code.

PROPOSITION 22

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, amends and renumbers, repeals, and adds sections to the California Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. Title.

This act shall be known and may be cited as the "Local Taxpayer, Public Safety, and Transportation Protection Act of 2010."

Section 2. Findings and Declarations.

The people of the State of California find and declare that:

(a) In order to maintain local control over local taxpayer funds and protect vital services like local fire protection and 9-1-1 emergency response, law enforcement, emergency room care, public transit, and transportation improvements, California voters have repeatedly and overwhelmingly voted to restrict state politicians in Sacramento from taking revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services.

(b) By taking these actions, voters have acknowledged the critical importance of preventing State raids of revenues dedicated to funding vital local government services and transportation improvement projects and services.

(c) Despite the fact that voters have repeatedly passed measures to prevent the State from taking these revenues dedicated to funding local government services and transportation improvement projects and services, state politicians in Sacramento have seized and borrowed billions of dollars in local government and transportation funds.

(d) In recent years, state politicians in Sacramento have specifically:

(1) Borrowed billions of dollars in local property tax revenues that would otherwise be used to fund local police, fire and paramedic response, and other vital local services;

(2) Sought to take and borrow billions of dollars in gas tax revenues that voters have dedicated to on-going transportation projects and tried to use them for non-transportation purposes;

(3) Taken local community redevelopment funds on numerous occasions and used them for unrelated purposes;

(4) Taken billions of dollars from local public transit like bus, shuttle, light-rail, and regional commuter rail, and used these funds for unrelated state purposes.

(e) The continued raiding and borrowing of revenues dedicated to funding local government services and dedicated to funding transportation improvement projects can cause severe consequences, such as layoffs of police, fire and paramedic first responders, fire station closures, healthcare cutbacks, delays in road safety improvements, public transit fare increases, and cutbacks in public transit services.

(f) State politicians in Sacramento have continued to ignore the will of the voters, and current law provides no penalties when state politicians take or borrow these dedicated funds.

(g) It is hereby resolved, that with approval of this ballot initiative, state politicians in Sacramento shall be prohibited from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with tax revenues dedicated to

funding local government services or dedicated to transportation improvement projects and services.

Section 2.5. Statement of Purpose.

The purpose of this measure is to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government or funds dedicated to transportation improvement projects and services.

Section 3. Section 24 of Article XIII of the California Constitution is amended to read:

(a) The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.

(b) The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes.

(c) Money appropriated from state funds to a local government for its local purposes may be used as provided by law.

(d) Money subvened to a local government under Section 25 may be used for state or local purposes.

Section 4. Section 25.5 of Article XIII of the California Constitution is amended to read:

SEC. 25.5. (a) On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:

(1) (A) Except as otherwise provided in subparagraph (B), modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. For purposes of this subparagraph, "percentage" does not include any property tax revenues referenced in paragraph (2).

(B) ~~Beginning with the 2008–09~~ *In the 2009–10* fiscal year *only,* and except as otherwise provided in subparagraph (C), subparagraph (A) may be suspended for a *that* fiscal year if all of the following conditions are met:

(i) The Governor issues a proclamation that declares that, due to a severe state fiscal hardship, the suspension of subparagraph (A) is necessary.

(ii) The Legislature enacts an urgency statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, that contains a suspension of subparagraph (A) for that fiscal year and does not contain any other provision.

(iii) No later than the effective date of the statute described in clause (ii), a statute is enacted that provides for the full repayment to local agencies of the total amount of revenue losses, including interest as provided by law, resulting from the modification of ad valorem property tax revenue allocations to local agencies. This full repayment shall be made not later than the end of the third fiscal year immediately following the fiscal year to which the modification applies.

~~(C) (i) Subparagraph (A) shall not be suspended for more than two fiscal years during any period of 10 consecutive fiscal years, which period begins with the first fiscal year for which subparagraph (A) is suspended.~~

~~(ii) Subparagraph (A) shall not be suspended during any fiscal year if the full repayment required by a statute enacted in accordance with clause (iii) of subparagraph (B) has not yet been completed.~~

~~(iii) Subparagraph (A) shall not be suspended during any fiscal year if the amount that was required to be paid to cities, counties, and cities and counties under Section 10754.11 of the Revenue and Taxation Code, as that section read on November 3, 2004, has not been paid in full prior to the effective date of the statute providing for that suspension as described in clause (ii) of subparagraph (B).~~

~~(iv)~~ *(C)* A suspension of subparagraph (A) shall not result in a total ad valorem property tax revenue loss to all local agencies within a county that exceeds 8 percent of the total amount of ad valorem property tax revenues that were allocated among all local agencies within that county for the fiscal year immediately preceding the fiscal year for which subparagraph (A) is suspended.

(2) (A) Except as otherwise provided in subparagraphs (B) and (C), restrict the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley-Burns Uniform Local Sales and Use Tax Law set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, as that law read on November 3, 2004. The restriction imposed by this subparagraph also applies to the entitlement of a city, county, or city and county to the change in tax rate resulting from the end of the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004.

(B) The Legislature may change by statute the method of distributing the revenues derived under a use tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law to allow the State to participate in an interstate compact or to comply with federal law.

(C) The Legislature may authorize by statute two or more specifically identified local agencies within a county, with the approval of the governing body of each of those agencies, to enter into a contract to exchange allocations of ad valorem property tax revenues for revenues derived from a tax rate imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The exchange under this subparagraph of revenues derived from a tax rate imposed under that law shall not require voter approval for the continued imposition of any portion of an existing tax rate from which those revenues are derived.

(3) Except as otherwise provided in subparagraph (C) of paragraph (2), change 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. *The Legislature shall not change the pro rata shares of ad valorem property tax pursuant to this paragraph, nor change the allocation of the revenues described in Section 15 of Article XI, to reimburse a local government when the Legislature or any state agency mandates a new program or higher level of service on that local government.*

(4) Extend beyond the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004, the suspension of the authority, set forth in that section on that date, of a city, county, or city and county to impose a sales and use tax rate under the Bradley-Burns Uniform Local Sales and Use Tax Law.

(5) Reduce, during any period in which the rate authority suspension described in paragraph (4) is operative, the payments to a city, county, or city and county that are required

EXHIBIT A

by Section 97.68 of the Revenue and Taxation Code, as that section read on November 3, 2004.

(6) Restrict the authority of a local entity to impose a transactions and use tax rate in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), or change the method for distributing revenues derived under a transaction and use tax rate imposed under that law, as it read on November 3, 2004.

(7) Require a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (i) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of the Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008, or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost.

(b) For purposes of this section, the following definitions apply:

(1) "Ad valorem property tax revenues" means all revenues derived from the tax collected by a county under subdivision (a) of Section 1 of Article XIII A, regardless of any of this revenue being otherwise classified by statute.

(2) "Local agency" has the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004.

(3) "Jurisdiction" has the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004.

Section 5. Section 1 is added to Article XIX of the California Constitution, to read:

SECTION 1. The Legislature shall not borrow revenue from the Highway Users Tax Account, or its successor, and shall not use these revenues for purposes, or in ways, other than those specifically permitted by this article.

Section 5.1. Section 1 of Article XIX of the California Constitution is amended and renumbered to read:

~~SECTION 1.~~ *SEC. 2.* Revenues from taxes imposed by the State on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be *deposited into the Highway Users Tax Account (Section 2100 of the Streets and Highways Code) or its successor, which is hereby declared to be a trust fund, and shall be allocated monthly in accordance with Section 4, and shall be* used *solely* for the following purposes:

(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services.

Section 5.2. Section 2 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 2.~~ *SEC. 3.* Revenues from fees and taxes imposed by the State upon vehicles or their use or operation, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The state administration and enforcement of laws regulating the use, operation, or registration of vehicles used upon the public streets and highways of this State, including the enforcement of traffic and vehicle laws by state agencies and the mitigation of the environmental effects of motor vehicle operation due to air and sound emissions.

(b) The purposes specified in Section ~~1~~ + *2* of this article.

Section 5.3. Section 3 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 3.~~ *SEC. 4. (a) Except as provided in subdivision (b),* ~~The~~ *the* ~~Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this article in a manner which ensures the continuance of existing~~ statutory ~~allocation~~ formulas *in effect on June 30, 2009, which allocate the revenues described in Section 2 to* ~~for~~ cities, counties, and areas of the State~~,~~ *shall remain in effect.*

(b) The Legislature shall not modify the statutory allocations in effect on June 30, 2009, unless and until *both of the following have occurred:*

(1) The Legislature ~~it~~ determines *in accordance with this subdivision* that another basis for an equitable, geographical, and jurisdictional distribution exists~~; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the State shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area~~. Any future statutory revisions shall *(A)* provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population*; and (B) be* consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan*;*

(2) The process described in subdivision (c) has been completed.

(c) The Legislature shall not modify the statutory allocation pursuant to subdivision (b) until all of the following have occurred:

(1) The California Transportation Commission has held no less than four public hearings in different parts of the State to receive public input about the local and regional goals for ground transportation in that part of the State;

(2) The California Transportation Commission has published a report describing the input received at the public hearings and how the modification to the statutory allocation is consistent with the orderly achievement of local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan; and

(3) Ninety days have passed since the publication of the report by the California Transportation Commission.

(d) A statute enacted by the Legislature modifying the statutory allocations must be by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision.

(e) The revenues allocated by statute to cities, counties, and areas of the State pursuant to this article may be used solely by the entity to which they are allocated, and solely for the purposes described in Sections 2, 5, or 6 of this article.

(f) The Legislature may not take any action which permanently or temporarily does any of the following: (1) changes the status of the Highway Users Tax Account as a trust fund; (2) borrows, diverts, or appropriates these revenues for purposes other than those described in subdivision (e); or (3) delays, defers, suspends, or otherwise interrupts the payment, allocation, distribution, disbursal, or transfer of revenues from taxes described in Section 2 to cities, counties, and areas of the State pursuant to the procedures in effect on June 30, 2009.

Section 5.4. Section 4 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 4.~~ *SEC. 5.* Revenues allocated pursuant to Section ~~3~~ *4* may not be expended for the purposes specified in subdivision (b) of Section ~~1~~ *2*, except for research and planning, until such use is approved by a majority of the votes cast on the proposition authorizing such use of such revenues in an election held throughout the county or counties, or a specified area of a county or counties, within which the revenues are to be expended. The Legislature may authorize the revenues approved for allocation or expenditure under this section to be pledged or used for the payment of principal and interest on voter-approved bonds issued for the purposes specified in subdivision (b) of Section ~~1~~ *2*.

Section 5.5. Section 5 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 5.~~ *SEC. 6. (a)* ~~The Legislature may authorize up~~ *Up* to 25 percent of the revenues ~~available for expenditure by any city or county, or by the State,~~ *allocated to the State pursuant to Section 4* for the purposes specified in subdivision (a) of Section ~~1~~ *2* of this article ~~to~~ *may* be pledged or used *by the State, upon approval by the voters and appropriation by the Legislature,* for the payment of principal and interest on voter-approved bonds *for such purposes* issued *by the State on and after November 2, 2010* ~~for such purposes~~.

(b) Up to 25 percent of the revenues allocated to any city or county pursuant to Section 4 for the purposes specified in subdivision (a) of Section 2 of this article may be pledged or used only by any city or county for the payment of principal and interest on voter-approved bonds issued by that city or county for such purposes.

Section 5.6. Section 6 of Article XIX of the California Constitution is repealed.

~~SEC. 6. The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:~~

~~(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.~~

~~(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:~~

~~(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.~~

~~(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.~~

~~(c) Nothing in this section prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this article. Any loan authorized as described by this subdivision shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it was borrowed, not later than four years after the date on which the loan was made.~~

Section 5.7. Section 7 is added to Article XIX of the California Constitution, to read:

SEC. 7. If the Legislature reduces or repeals the taxes described in Section 2 and adopts an alternative source of revenue to replace the moneys derived from those taxes, the replacement revenue shall be deposited into the Highway Users Tax Account, dedicated to the purposes listed in Section 2, and allocated to cities, counties, and areas of the State pursuant to Section 4. All other provisions of this article shall apply to any revenues adopted by the Legislature to replace the moneys derived from the taxes described in Section 2.

Section 5.8. Section 7 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 7.~~ *SEC. 8.* This article shall not affect or apply to fees or taxes imposed pursuant to the Sales and Use Tax Law or the Vehicle License Fee Law, and all amendments and additions now or hereafter made to such statutes.

Section 5.9. Section 8 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 8.~~ *SEC. 9.* Notwithstanding Sections ~~1 and~~ 2 *and 3* of this article, any real property acquired by the expenditure of the designated tax revenues by an entity other than the State for the purposes authorized in those sections, but no longer required for such purposes, may be used for local public park and recreational purposes.

Section 5.10. Section 9 of Article XIX of the California Constitution is amended and renumbered to read:

~~SEC. 9.~~ *SEC. 10.* Notwithstanding any other provision of this Constitution, the Legislature, by statute, with respect to surplus state property acquired by the expenditure of tax revenues designated in Sections ~~1 and~~ 2 *and 3* and located in the coastal zone, may authorize the transfer of such property, for a consideration at least equal to the acquisition cost paid by the ~~state~~ *State* to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

As used in this section, "coastal zone" means "coastal zone" as defined by Section 30103 of the Public Resources Code as such zone is described on January 1, 1977.

Section 6. Section 1 of Article XIX A of the California Constitution is amended to read:

SECTION 1. *(a) The Legislature shall not borrow revenues from the Public Transportation Account, or any successor account, and shall not use these revenues for purposes, or in ways, other than those specifically permitted by this article.*

EXHIBIT A

(b) The ~~funds in the~~ Public Transportation Account in the State Transportation Fund, or any successor ~~to that~~ account, *is a trust fund. The Legislature may not change the status of the Public Transportation Account as a trust fund. Funds in the Public Transportation Account may not be loaned or otherwise transferred to the General Fund or any other fund or account in the State Treasury.* ~~may be loaned to the General Fund only if one of the following conditions is imposed:~~

(c) All revenues specified in paragraphs (1) through (3), inclusive, of subdivision (a) of Section 7102 of the Revenue and Taxation Code, as that section read on June 1, 2001, shall be deposited no less than quarterly into the Public Transportation Account (Section 99310 of the Public Utilities Code), or its successor. The Legislature may not take any action which temporarily or permanently diverts or appropriates these revenues for purposes other than those described in subdivision (d), or delays, defers, suspends, or otherwise interrupts the quarterly deposit of these funds into the Public Transportation Account.

(d) Funds in the Public Transportation Account may only be used for transportation planning and mass transportation purposes. The revenues described in subdivision (c) are hereby continuously appropriated to the Controller without regard to fiscal years for allocation as follows:

(1) Fifty percent pursuant to subdivisions (a) through (f), inclusive, of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(2) Twenty-five percent pursuant to subdivision (b) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

(3) Twenty-five percent pursuant to subdivision (c) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

~~(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.~~

~~(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:~~

~~(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.~~

~~(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.~~

(e) For purposes of paragraph (1) of subdivision (d), "transportation planning" means only the purposes described in subdivisions (c) through (f), inclusive, of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(f) For purposes of this article, "mass transportation," "public transit," and "mass transit" have the same meaning as "public transportation." "Public transportation" means:

(1) (A) Surface transportation service provided to the general public, complementary paratransit service provided to persons with disabilities as required by 42 U.S.C. 12143, or similar transportation provided to people with disabilities or the elderly; (B) operated by bus, rail, ferry, or other conveyance on a fixed route, demand response, or otherwise regularly available basis; (C) generally for which a fare is charged; and (D) provided by any transit district, included transit district, municipal operator, included municipal operator, eligible municipal operator, or transit development board, as those terms were defined in Article 1 of Chapter 4 of Part 11 of Division 10 of the Public Utilities Code on January 1, 2009, a joint powers authority formed to provide mass transportation services, an agency described in subdivision (f) of Section 15975 of the Government Code, as that section read on January 1, 2009, any recipient of funds under Sections 99260, 99260.7, 99275, or subdivision (c) of Section 99400 of the Public Utilities Code, as those sections read on January 1, 2009, or a consolidated agency as defined in Section 132353.1 of the Public Utilities Code, as that section read on January 1, 2009.

(2) Surface transportation service provided by the Department of Transportation pursuant to subdivision (a) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(3) Public transit capital improvement projects, including those identified in subdivision (b) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

Section 6.1. Section 2 of Article XIX A of the California Constitution is amended to read:

SEC. 2. (a) As used in this section, a "local transportation fund" is a fund created under Section 29530 of the Government Code, or any successor to that statute.

(b) All local transportation funds are hereby designated trust funds. *The Legislature may not change the status of local transportation funds as trust funds.*

(c) A local transportation fund that has been created pursuant to law may not be abolished.

(d) Money in a local transportation fund shall be allocated only *by the local government that created the fund, and only* for the purposes authorized under Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code and Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code, as those provisions existed on October 1, 1997. Neither the county nor the Legislature may authorize the expenditure of money in a local transportation fund for purposes other than those specified in this subdivision.

(e) This section constitutes the sole method of allocating, distributing, and using the revenues in a local transportation fund. The purposes described in subdivision (d) are the sole purposes for which the revenues in a local transportation fund may be used. The Legislature may not enact a statute or take any other action which, permanently or temporarily, does any of the following:

(1) Transfers, diverts, or appropriates the revenues in a local transportation fund for any other purpose than those described in subdivision (d);

(2) Authorizes the expenditures of the revenue in a local transportation fund for any other purpose than those described in subdivision (d);

(3) Borrows or loans the revenues in a local transportation fund, regardless of whether these revenues remain in the Retail Sales Tax Fund in the State Treasury or are transferred to another fund or account.

(f) The percentage of the tax imposed pursuant to Section 7202 of the Revenue and Taxation Code allocated to local transportation funds shall not be reduced below the percentage that was transmitted to such funds during the 2008 calendar year. Revenues allocated to local transportation funds shall be transmitted in accordance with Section 7204 of the Revenue and Taxation Code and deposited into local transportation funds in accordance with Section 29530 of the Government Code, as those sections read on June 30, 2009.

EXHIBIT A

Section 7.0. Section 1 is added to Article XIX B of the California Constitution, to read:

SECTION 1. The Legislature shall not borrow revenues from the Transportation Investment Fund, or its successor, and shall not use these revenues for purposes, or in ways, other than those specifically permitted by this article.

Section 7.1. Section 1 of Article XIX B of the California Constitution is amended and renumbered to read:

~~SECTION 1.~~ *SEC. 2.* (a) For the 2003–04 fiscal year and each fiscal year thereafter, all ~~moneys~~ *revenues* that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, *as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code)*, ~~and that are deposited in the General Fund of the State pursuant to that law,~~ shall be ~~transferred to~~ *deposited into* the Transportation Investment Fund *or its successor*, which is hereby created in the State Treasury *and which is hereby declared to be a trust fund. The Legislature may not change the status of the Transportation Investment Fund as a trust fund.*

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on March 6, 2002.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation. *Moneys appropriated for public transit and mass transportation shall be allocated as follows: (i) Twenty-five percent pursuant to subdivision (b) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009; (ii) Twenty-five percent pursuant to subdivision (c) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009; and (iii) Fifty percent for the purposes of subdivisions (a) and (b) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.*

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

(c) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund *are hereby continuously appropriated to the Controller without regard to fiscal years, which* shall be allocated~~, upon appropriation by the Legislature,~~ as follows:

(A) Twenty percent of the moneys for the purposes set forth in subparagraph (A) of paragraph (2) of subdivision (b).

(B) Forty percent of the moneys for the purposes set forth in subparagraph (B) of paragraph (2) of subdivision (b).

(C) Twenty percent of the moneys for the purposes set forth in subparagraph (C) of paragraph (2) of subdivision (b).

(D) Twenty percent of the moneys for the purposes set forth in subparagraph (D) of paragraph (2) of subdivision (b).

~~(d) (1) Except as otherwise provided by paragraph (2), the transfer of revenues from the General Fund of the State to the Transportation Investment Fund pursuant to subdivision (a) may be suspended, in whole or in part, for a fiscal year if all of the following conditions are met:~~

~~(A) The Governor issues a proclamation that declares that, due to a severe state fiscal hardship, the suspension of the transfer of revenues required by subdivision (a) is necessary.~~

~~(B) The Legislature enacts by statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, a suspension for that fiscal year of the transfer of revenues required by subdivision (a) and the bill does not contain any other unrelated provision.~~

~~(C) No later than the effective date of the statute described in subparagraph (B), a separate statute is enacted that provides for the full repayment to the Transportation Investment Fund of the total amount of revenue that was not transferred to that fund as a result of the suspension, including interest as provided by law. This full repayment shall be made not later than the end of the third fiscal year immediately following the fiscal year to which the suspension applies.~~

~~(2) (A) The transfer required by subdivision (a) shall not be suspended for more than two fiscal years during any period of 10 consecutive fiscal years, which period begins with the first fiscal year commencing on or after July 1, 2007, for which the transfer required by subdivision (a) is suspended.~~

~~(B) The transfer required by subdivision (a) shall not be suspended during any fiscal year if a full repayment required by a statute enacted in accordance with subparagraph (C) of paragraph (1) has not yet been completed.~~

~~(e)~~ *(d)* The Legislature may *not* enact a statute that modifies the percentage shares set forth in subdivision (c) ~~by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision and that the moneys described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivision (b).~~ *until all of the following have occurred:*

(1) The California Transportation Commission has held no less than four public hearings in different parts of the State to receive public input about the need for public transit, mass transportation, transportation capital improvement projects, and street and highway maintenance;

(2) The California Transportation Commission has published a report describing the input received at the public hearings and how the modification to the statutory allocation is consistent with the orderly achievement of local, regional and statewide goals for public transit, mass transportation, transportation capital improvements, and street and highway maintenance in a manner that is consistent with local general plans, regional transportation plans, and the California Transportation Plan;

(3) Ninety days have passed since the publication of the report by the California Transportation Commission.

(4) The statute enacted by the Legislature pursuant to this subdivision must be by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision and that the revenues described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivision (b).

~~(f)~~ *(e)* (1) An amount equivalent to the total amount of

EXHIBIT A

revenues that were not transferred from the General Fund of the State to the Transportation Investment Fund, as of July 1, 2007, because of a suspension of transfer of revenues pursuant to this section as it read on January 1, 2006, but excluding the amount to be paid to the Transportation Deferred Investment Fund pursuant to Section 63048.65 of the Government Code, shall be transferred from the General Fund to the Transportation Investment Fund no later than June 30, 2016. Until this total amount has been transferred, the amount of transfer payments to be made in each fiscal year shall not be less than one-tenth of the total amount required to be transferred by June 30, 2016. The transferred revenues shall be allocated solely for the purposes set forth in this section as if they had been received in the absence of a suspension of transfer of revenues.

(2) The Legislature may provide by statute for the issuance of bonds by the state or local agencies, as applicable, that are secured by the minimum transfer payments required by paragraph (1). Proceeds from the sale of those bonds shall be allocated solely for the purposes set forth in this section as if they were revenues subject to allocation pursuant to paragraph (2) of subdivision (b).

(f) This section constitutes the sole method of allocating, distributing, and using the revenues described in subdivision (a). The purposes described in paragraph (2) of subdivision (b) are the sole purposes for which the revenues described in subdivision (a) may be used. The Legislature may not enact a statute or take any other action which, permanently or temporarily, does any of the following:

(1) Transfers, diverts, or appropriates the revenues described in subdivision (a) for any other purposes than those described in paragraph (2) of subdivision (b);

(2) Authorizes the expenditures of the revenues described in subdivision (a) for any other purposes than those described in paragraph (2) of subdivision (b) or;

(3) Borrows or loans the revenues described in subdivision (a), regardless of whether these revenues remain in the Transportation Investment Fund or are transferred to another fund or account such as the Public Transportation Account, a trust fund in the State Transportation Fund.

(g) For purposes of this article, "mass transportation," "public transit" and "mass transit" have the same meanings as "public transportation." "Public transportation" means:

(1) (A) Surface transportation service provided to the general public, complementary paratransit service provided to persons with disabilities as required by 42 U.S.C. 12143, or similar transportation provided to people with disabilities or the elderly; (B) operated by bus, rail, ferry, or other conveyance on a fixed route, demand response, or otherwise regularly available basis; (C) generally for which a fare is charged; and (D) provided by any transit district, included transit district, municipal operator, included municipal operator, eligible municipal operator, or transit development board, as those terms were defined in Article 1 of Chapter 4 of Part 11 of Division 10 of the Public Utilities Code on January 1, 2009, a joint powers authority formed to provide mass transportation services, an agency described in subdivision (f) of Section 15975 of the Government Code, as that section read on January 1, 2009, any recipient of funds under Sections 99260, 99260.7, 99275, or subdivision (c) of Section 99400 of the Public Utilities Code, as those sections read on January 1, 2009, or a consolidated agency as defined in Section 132353.1 of the Public Utilities Code, as that section read on January 1, 2009.

(2) Surface transportation service provided by the Department of Transportation pursuant to subdivision (a) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(3) Public transit capital improvement projects, including those identified in subdivision (b) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(h) If the Legislature reduces or repeals the taxes described in subdivision (a) and adopts an alternative source of revenue to replace the moneys derived from those taxes, the replacement revenue shall be deposited into the Transportation Investment Fund, dedicated to the purposes listed in paragraph (2) of subdivision (b), and allocated pursuant to subdivision (c). All other provisions of this article shall apply to any revenues adopted by the Legislature to replace the moneys derived from the taxes described in subdivision (a).

Section 8. Article XIX C is added to the California Constitution, to read:

Article XIX C

SECTION 1. If any challenge to invalidate an action that violates Article XIX, XIX A, or XIX B is successful either by way of a final judgment, settlement, or resolution by administrative or legislative action, there is hereby continuously appropriated from the General Fund to the Controller, without regard to fiscal years, that amount of revenue necessary to restore the fund or account from which the revenues were unlawfully taken or diverted to its financial status had the unlawful action not been taken.

SEC. 2. If any challenge to invalidate an action that violates Section 24 or Section 25.5 of Article XIII is successful either by way of a final judgment, settlement, or resolution by administrative or legislative action, there is hereby continuously appropriated from the General Fund to the local government an amount of revenue equal to the amount of revenue unlawfully taken or diverted.

SEC. 3. Interest calculated at the Pooled Money Investment Fund rate from the date or dates the revenues were unlawfully taken or diverted shall accrue to the amounts required to be restored pursuant to this section. Within 30 days from the date a challenge is successful, the Controller shall make the transfer required by the continuous appropriation and issue a notice to the parties that the transfer has been completed.

SEC. 4. If in any challenge brought pursuant to this section a restraining order or preliminary injunction is issued, the plaintiffs or petitioners shall not be required to post a bond obligating the plaintiffs or petitioners to indemnify the government defendants or the State of California for any damage the restraining order or preliminary injunction may cause.

Section 9.

Section 16 of Article XVI of the Constitution requires that a specified portion of the taxes levied upon the taxable property in a redevelopment project each year be allocated to the redevelopment agency to repay indebtedness incurred for the purpose of eliminating blight within the redevelopment project area. Section 16 of Article XVI prohibits the Legislature from reallocating some or that entire specified portion of the taxes to the State, an agency of the State, or any other taxing jurisdiction, instead of to the redevelopment agency. The Legislature has been illegally circumventing Section 16 of Article XVI in recent years by requiring redevelopment agencies to transfer a portion of those taxes for purposes other than the financing of redevelopment projects. A purpose of the amendments made by this measure is to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, the redevelopment agency to transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction.

EXHIBIT A

Section 10. Continuous Appropriations.

The provisions of Sections 6, 6.1, 7, 7.1, and 8 of this act that require a continuous appropriation to the Controller without regard to fiscal year are intended to be "appropriations made by law" within the meaning of Section 7 of Article XVI of the California Constitution.

Section 11. Liberal Construction.

The provisions of this act shall be liberally construed in order to effectuate its purposes.

Section 12. Conflicting Statutes.

Any statute passed by the 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.

Section 13. Conflicting Ballot Measures.

In the event that this measure and another measure or measures relating to the direction or redirection of revenues dedicated to funding services provided by local governments or transportation projects or services, or both, appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

Section 14. Severability.

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application.

PROPOSITION 23

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

California Jobs Initiative

SECTION 1. STATEMENT OF FINDINGS

(a) In 2006, the Legislature and Governor enacted a sweeping environmental law, AB 32. While protecting the environment is of utmost importance, we must balance such regulation with the ability to maintain jobs and protect our economy.

(b) At the time the bill was signed, the unemployment rate in California was 4.8 percent. California's unemployment rate has since skyrocketed to more than 12 percent.

(c) Numerous economic studies predict that complying with AB 32 will cost Californians billions of dollars with massive increases in the price of gasoline, electricity, food and water, further punishing California consumers and households.

(d) California businesses cannot drive our economic recovery and create the jobs we need when faced with billions of dollars in new regulations and added costs; and

(e) California families being hit with job losses, pay cuts and furloughs cannot afford to pay the increased prices that will be passed onto them as a result of this legislation right now.

SEC. 2. STATEMENT OF PURPOSE

The people desire to temporarily suspend the operation and implementation of AB 32 until the state's unemployment rate returns to the levels that existed at the time of its adoption.

SEC. 3. Division 25.6 (commencing with Section 38600) is added to the Health and Safety Code, to read:

DIVISION 25.6. SUSPENSION OF AB 32

38600. (a) From and after the effective date of this division, Division 25.5 (commencing with Section 38500) of the Health and Safety Code is suspended until such time as the unemployment rate in California is 5.5 percent or less for four consecutive calendar quarters.

(b) While suspended, no state agency shall propose, promulgate, or adopt any regulation implementing Division 25.5 (commencing with Section 38500) and any regulation adopted prior to the effective date of this division shall be void and unenforceable until such time as the suspension is lifted.

PROPOSITION 24

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and repeals sections of the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This act shall be known as the "Repeal Corporate Tax Loopholes Act."

SEC. 2. Findings and Declarations

The people of the State of California find and declare that:

1. The State of California is in the midst of the worst financial crisis since the Great Depression. State revenues have plummeted, millions of Californians have lost their jobs, and hundreds of thousands of California homes have been lost in foreclosure sales. Projections suggest it could be many years before the state and its citizens recover.

2. To cope with the fiscal crisis, in 2008 and 2009 the Legislature and Governor raised taxes paid by the people of this state: the personal income tax, the state sales tax, and vehicle license fees. Yet at the same time they passed three special corporate tax breaks that give large corporations nearly $2 billion a year in state revenues.

3. No public hearings were held and no public notice was given before these corporate tax breaks were passed by the Legislature and signed into law by the Governor.

4. Corporations get these tax breaks without any requirements to create new jobs or to stop shipping current jobs overseas.

5. These loopholes benefit the biggest of corporations with gross incomes of over $1 billion. One study estimates that 80 percent of the benefits from the first loophole will go to just 0.1 percent of all California corporations. Similarly, estimates are that 87 percent of the benefits from one tax break will go to just 229 companies, each of which has gross income over $1 billion.

6. At the same time it created these corporate loopholes, the Legislature and Governor enacted $31 billion in cuts to the state budget—decimating funding for public schools and colleges, eliminating health care services to our neediest citizens, closing

EXHIBIT A

Official Voter Information Guide

Election Results

PROPOSITION 22

PROHIBITS THE STATE FROM BORROWING OR TAKING FUNDS USED FOR TRANSPORTATION, REDEVELOPMENT, OR LOCAL GOVERNMENT PROJECTS AND SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.

Official Title and Summary
Prepared by the Attorney General

PROHIBITS THE STATE FROM BORROWING OR TAKING FUNDS USED FOR TRANSPORTATION, REDEVELOPMENT, OR LOCAL GOVERNMENT PROJECTS AND SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Prohibits the State, even during a period of severe fiscal hardship, from delaying the distribution of tax revenues for transportation, redevelopment, or local government projects and services.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

Due to restrictions on state authority over fuel and property taxes, the state would have to take alternative actions—probably in the range of $1 billion to several billion dollars annually. This would result in both:

- Reductions in General Fund program spending and/or increases in state revenues of those amounts.
- Comparable increases in funding for state and local transportation programs and local redevelopment.

EXHIBIT B

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action; I am employed by WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard, Suite 1200, Costa Mesa, California 92626.

On September 29, 2011, I served the foregoing document(s) described as **APPLICATION BY THE ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF PETITIONERS CALIFORNIA REDEVELOPMENTS ASSOCIATION, ET AL.; PROPOSED AMICUS BRIEF** by placing true copies thereof enclosed in sealed envelope(s), as follows:

☒ **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN & SMART for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.

☐ **(BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for collection following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for collection and delivery to a courier authorized by OVERNITE EXPRESS to receive said documents, with delivery fees provided for. I am readily familiar with the practices of WOODRUFF, SPRADLIN & SMART for collection and processing of documents for overnight delivery, and said envelope(s) will be deposited for receipt by OVERNITE EXPRESS on said date in the ordinary course of business.

☐ **(PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the addressee(s).

☑ **(STATE)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 29, 2011 at Costa Mesa, California.

Laura F. Perez

CALIFORNIA REDEVELOPMENT ASSOCIATION, et al. V. ANA MATOSANTOS, ETC., et al.

CASE NO. S194861

ATTACHED SERVICE LIST

Steven L. Mayer Howard Rice Nemerovski Canady Falk & Rabkin Three Embarcadero Center, 7th Fl. San Francisco, CA 94111	Attorneys for Petitioners California Redevelopment Association, City of San Jose, City of Union City, League of California Cities, John F. Shirey
Ross Charles Moody Office of the Attorney General 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102	Attorney for Respondent Ana Matosantos
Jennifer K. Rockwell Department of Finance 915 L Street State Capitol, Rm. 1145 Sacramento, CA 95814	Attorney for Respondent Ana Matosantos
Ross Charles Moody Office of the Attorney General 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102	Attorney for Respondent John Chiang
Richard John Chivaro Office of the State Controller 300 Capitol Mall, Suite 1850 Sacramento, CA 95814	Attorney for Respondent John Chiang
Claude F. Kolm Office of the County Counsel 1221 Oak St., Suite 450 Oakland, CA 94612	Attorney for Respondent Patrick O'Connell
Brian E. Washington Office of the County Counsel 1221 Oak St., Suite 450 Oakland, CA 94612	Attorney for Respondent Patrick O'Connell
Lizanne Reynolds Office of the County Counsel 70 W. Hedding St., 9th Fl. East San Jose, CA 95110	Attorney for Non-Title Respondents County of Santa Clara and Vinod K. Sharma