SUPREME COURT COPY

No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

v.

ANA MATOSANTOS, *et al.*,
Respondents.

SUPREME COURT
FILED
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Deputy

RESPONDENT COUNTY OF SANTA CLARA'S CONSOLIDATED ANSWER TO *AMICUS CURIAE* BRIEFS

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CONSOLIDATED ANSWER TO *AMICUS CURIAE* BRIEFS

Respondents the County of Santa Clara and Vinod K. Sharma, County of Santa Clara Auditor-Controller, (collectively, the "County") respectfully file this consolidated answer to the *amicus curiae* briefs filed in this action.

I. INTRODUCTION

The large number of *amicus* applications filed in this case reflects the heated public policy debate surrounding redevelopment. The *amici* generally fall into the following categories:

(1) School districts, other public agencies, and public employee organizations concerned about the adverse impacts of redevelopment property tax diversions from local government agencies;

(2) Redevelopment agencies ("RDAs"), cities and others seeking to protect RDA property tax diversions for their own use; and

(3) Public interest/advocacy groups concerned about RDA property tax diversions.

Each group provides its perspective as to whether RDAs and their associated property tax diversions are good or bad policy, and they collectively raise legitimate questions such as whether RDAs ultimately create or displace affordable housing, and whether limited property tax dollars should be spent educating schoolchildren or building a new park to rival Central Park. In an era of scarce resources, these questions divide communities between winners and losers because the allocation of property tax dollars is a zero-sum game. Fortunately, this Court is not called upon to resolve these difficult policy issues; the Legislature has already done so by enacting ABX1 26 and ABX1 27.

The focus of this litigation is not whether the Legislature made the right public policy choice, but whether it did so in a lawful manner. The

amicus briefs raise a number of new legal arguments. This brief does not attempt to respond to all of those arguments or revisit issues that have been sufficiently briefed; rather, it focuses on the following two points:

- When enacting Proposition 22, the voters did not express their intent to strip the Legislature of its fundamental powers over RDAs, and implying such intent would be contrary to longstanding rules of constitutional interpretation; and
- The Legislature has discretion to eliminate RDAs, which necessarily entails winding down their affairs. The wind-down process in ABX1 26 is orderly, logical and, most importantly, consistent with the Legislature's constitutional authority.

The County does not address several new legal theories that were raised in the brief filed by the City of Cerritos *et al.* and are the subject of a separate lawsuit recently filed in the Sacramento County Superior Court.[1] If the Court wishes to consider these new arguments, the County respectfully requests that, in light of the compressed briefing schedule, principles of fairness warrant the Court's establishment of a supplemental briefing schedule to allow the parties sufficient time to research and respond to these newly-raised issues.

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[1] The City of Cerritos *et al.* acknowledge that the purpose of their application is to "raise several constitutional grounds for invalidating ABx1 26 and 27 that have not yet been addressed by the parties." (Applic. at p. 2.)

II. ARGUMENT

A. An Analysis of Voter Intent Behind Proposition 22 Must Be Based on Recognized Principles of Constitutional Interpretation, Not Theories Proffered by Special Interests.

There apparently is no shortage of opinions about what the voters intended when they approved Proposition 22. But the rules for interpreting voter initiatives are clear:

> [i]n interpreting a voter initiative . . . , we apply the same principles that govern statutory construction. Thus, we turn first to the language of the [initiative], giving the words their ordinary meaning. The [initiative's] language must also be construed in the context of the statute as a whole and the [initiative's] overall . . . scheme. Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language. Where there is ambiguity in the language of the measure, [b]allot summaries and arguments may be considered when determining the voters' intent and understanding of a ballot measure.[2]

In addition, where the interpretation involves ascertaining the extent of restrictions or limitations on the Legislature's power, such restrictions and limitations "are to be construed strictly, and are not to be extended to include matters not covered by the language used." (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691; *see also State Personnel Board v. Department of Personnel Administration* (2005) 37 Cal.4th 512, 523.)

The text of Proposition 22 reflects the voters' intent to prevent the state from taking local tax revenues for its own benefit. This much is clear. Beyond this, divining voter intent is an exercise in speculation where special interests attempt to fashion whatever interpretation serves their

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[2] *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037 (internal citations and quotation marks omitted).

purposes. The fact is that Proposition 22 does not contain broad, sweeping language limiting the Legislature's power over RDAs. Rather, its provisions are narrowly-tailored to prevent the state from taking local tax revenues (including RDA revenues) for its own benefit.

If the voters had truly intended to accomplish something as far-reaching as stripping the Legislature of its fundamental authority over the continued existence of RDAs, then they certainly would have expressed this in the text of the proposition rather than remaining silent on such a crucial issue and leaving it to the courts to divine.

B. The Legislature Has Discretion to Eliminate RDAs and the Process the Legislature Chose to Wind Down Their Affairs Is Fully Consistent with Article XVI, Section 16.

As discussed at length in the County's opposition brief, the Legislature has plenary authority to create and abolish RDAs. In addition to this general authority, the California Constitution gives the Legislature discretion to allow RDAs to use tax increment financing. (*See* art. XVI, § 16 ("The Legislature may provide . . .") (emphasis added).) What the Legislature has the power to grant, it has the power to take away. (*State Personnel Board*, *supra*, 37 Cal.4th at p. 523 (Legislature may exercise any and all legislative powers unless expressly prohibited by the Constitution); *United Milk Producers of California v. Cecil* (1941) 47 Cal.App.2d 758, 764-765 ("Every legislative body may modify or abolish the acts passed by itself or its predecessors.").)

RDAs are complex entities with a variety of outstanding obligations and activities that need to be wound down upon their dissolution. It is difficult to envision a more logical, orderly and neutral process for winding down an RDA's affairs than the process set forth in ABX1 26. (*See* ABX1 26, Part 1.85, Health & Saf. Code §§ 34170-34191.)

The Association of Bay Area Governments ("ABAG") *et al.* claims that the wind-down process violates article XVI, section 16 for two reasons.[3] First, that article XVI, section 16 only allows tax increment to be given to RDAs, and that putting tax increment into a Redevelopment Property Tax Trust Fund established for each former RDA violates this requirement. This argument exalts form over substance and ignores the purpose of article XVI, section 16, which is to ensure that sufficient property tax revenues are allocated to pay an RDA's indebtedness. It also ignores the fact that RDAs are no longer going concerns.

The relevant provision of ABX1 26 is Health and Safety Code section 34172(d), which provides as follows:

> Revenues equivalent to those that would have been allocated pursuant to subdivision (b) of Section 16 of Article XVI of the California Constitution shall be allocated to the Redevelopment Property Tax Trust Fund of each successor agency for making payments on the principal of and interest on loans, and moneys advanced to or indebtedness incurred by the dissolved redevelopment agencies. Amounts in excess of those necessary to pay obligations of the former redevelopment agency shall be deemed to be property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution.

This provision is in perfect harmony with article XVI, section 16, which provides in pertinent part:

> . . . that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency . . . .

These provisions could not be more consistent.

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[3] Although the County is a member of ABAG, the County's representative did not vote in support of ABAG filing an *amicus* brief in this case.

ABAG's second argument is that, until an RDA's debts are paid in full, all property tax increment must be allocated to the RDA, not just the amount needed to satisfy the former RDA's obligations for that particular year.[4] This argument also ignores the fact that RDAs no longer exist and no longer have any authority to incur new obligations or indebtedness. (See Health & Saf. Code §§ 34161-34168; *see also* § 34172(b) (terminating all authority of RDAs under the Community Redevelopment Law).)

Each RDA now has a finite amount of debt. Under these circumstances, it was entirely within the Legislature's authority and consistent with article XVI, section 16 to require that "[a]mounts in excess of those necessary to pay obligations of the former redevelopment agency shall be deemed to be property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution." (Health & Saf. Code § 34172(d).)[5]

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[4] For example, if an RDA issues bonds with a 30-year repayment schedule, annual debt service payments of $1 million, and total (cumulative) debt service over the 30-year period of $30 million, ABAG argues that article XVI, section 16 requires all annual tax increment to be allocated to the RDA's debt service fund, even if the annual tax increment greatly exceeds the annual debt service. In other words, if the annual property tax increment is $10 million, ABAG asserts that all $10 million must be allocated to the RDA's debt service fund, not just the $1 million that is needed to pay that year's debt service. While this may be a permissible interpretation of article XVI, section 16, it is not the only choice afforded the Legislature by article XVI, section 16.

[5] The brief filed by the Public Interest Law Project *et al.* appears to assert that the tax increment scheme authorized by the Legislature pursuant to article XVI, section 16 must be maintained until all redevelopment plans are fully implemented; *i.e.*, that ABX1 26 could not and did not, in fact, terminate redevelopment activity. (Brief of The Public Interest Law Project, *et al.*, at pp. 24-28.) There is nothing in article XVI, section 16 to support this assertion. Article XVI, section 16(c) specifies that tax increment may only be used "to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed

Nor does *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070 support ABAG's assertions. *Marek* involved a dispute between an RDA and a county auditor over whether a development agreement constituted "indebtedness" justifying the allocation of tax increment to the RDA. The Court found that it did, citing the need for RDAs to have flexibility in their operations. (*Id.* at p. 1087.) The Court relied heavily on the Legislature's intent as expressed in the Community Redevelopment Law in reaching its conclusion. (*Id.* at pp. 1082-1087.)

But the need for RDAs to have flexibility to incur additional debt was obviated when the Legislature chose to dissolve RDAs pursuant to ABX1 26. There is nothing in *Marek* (or any other case) to suggest that the Constitution constrains the Legislature's authority over RDAs. If the Legislature decides to put an end to RDAs and halt all further redevelopment activity, which is well within its constitutional authority, then the only lawful reason to continue tax increment diversions is to pay off existing RDA debts. So long as sufficient revenues are allocated to pay those debts as they come due – which is precisely what ABX1 26 ensures – then distribution of any additional property tax revenues to the other local taxing agencies each year is fully consistent with article XVI, section 16.

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or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." Upon its enactment, ABX1 26 terminated all authority to engage in redevelopment activity. (*See* Health & Saf. Code § 34172(b) ("All authority to transact business or exercise powers previously granted under the Community Redevelopment Law [citation] is hereby withdrawn from the former redevelopment agencies.").) A successor agency does not step into the former RDA's shoes with respect to all of the former RDA's powers under the Community Redevelopment Law. Those powers were terminated by Health and Safety Code section 34172(b), and the Legislature has given successor agencies very limited authority to pay off existing RDA debts and wind down RDA affairs. (*See* Health & Saf. Code §§ 34177-34178.7.)

Although the Legislature's action in dissolving RDAs and requiring redevelopment activities to be wound down pursuant to ABX1 26 does not violate article XVI, section 16 or Proposition 22, the property tax shifts authorized by ABX1 27 are unconstitutional. After sufficient property tax revenues are allocated to repay existing RDA debts, then article XVI, section 16 and Article XIII, section 25.5 require that those property tax revenues be returned to the affected taxing agencies in accordance with their normal allocations.

C. There Are Other Ways To Achieve The Alleged Benefits of Redevelopment Without RDAs.

The *amici* parties that are aligned with RDAs cite a litany of horribles that could occur if ABX1 26 is upheld and redevelopment as we know it goes away. This is not a foregone conclusion. There are a variety of ways that the projects cited in their briefs can be achieved without allowing RDAs to unilaterally divert scarce property tax revenues from schools and other public agencies.

Many jurisdictions that do not have RDAs find ways to maintain and expand their vital infrastructure, fund affordable housing, and work with the military to reuse and revitalize former military bases. In fact, the County of Santa Clara is doing all of these things without an RDA, without diverting property tax revenues from school districts or other public agencies, all amidst several years of severe budget cuts and layoffs and the loss of approximately $90 million each year to RDAs. The County also sought and obtained voter approval to issue $900 million in general obligation bonds to fund seismic retrofits to the County's public hospital and to establish a new medical clinic in downtown San José to serve unmet needs for medical services.

Nor does the end of RDAs necessarily mean an end to tax increment financing. Existing law authorizes cities and counties to create

"infrastructure financing districts" to finance a wide variety of public improvements, including highways and interchanges, sewage treatment and water reclamation works, water supply and treatment works, flood control and drainage works, schools, libraries, parks, parking facilities, open space, and seismic retrofit and rehabilitation of public facilities. (Gov. Code § 53395 *et seq.*) These districts may even use tax increment financing to fund their projects. However, unlike with redevelopment, the voters within the jurisdiction must approve the infrastructure district's formation and financing plan (*id.* at § 53395.20), and each public agency whose property tax revenues would be diverted to the district must approve the financing plan before tax increment financing may be used (*id.* at § 53395.19). Projects that are worthwhile and would increase the property tax base would likely garner support from the voters and other taxing agencies.

The Legislature chose to enact the Community Redevelopment Law more than 60 years ago. Many redevelopment areas have existed for more than 30 years, and scant blight remains in many of those areas.[6] The Legislature has now decided that it is time for significant change, and this change took the form of ABX1 26 and ABX1 27.

III. CONCLUSION

The Legislature acted well within its authority in dissolving RDAs with ABX1 26. However, the "compromise" embodied in ABX1 27 runs afoul of article XVI, section 16 and article XIII, section 25.5 of the California Constitution because it does not return tax increment revenues to the proper recipients and illegally alters the pro rata property tax allocations

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[6] *See, e.g.*, Brief of Long Beach Central, West and North Project Area Committees at pp. 6-7, which describes the West Long Beach redevelopment project area. This redevelopment area has been in existence for 36 years. Even though it consists of 1,368 acres, only 350 acres (26%) are being redeveloped, and this acreage is "slowly experiencing a transition from residential to industrial use."

among local agencies. For these reasons, the County respectfully requests that the Court uphold ABX1 26 and invalidate ABX1 27.

Dated: October 6, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504 and 8.204 of the California Rules of Court, I certify that this **CONSOLIDATED ANSWER TO *AMICUS CURIAE* BRIEFS** has been prepared using one-and-a-half-spaced, 13-point Times New Roman typeface. In reliance upon the word count feature in our Microsoft Word 2010 software, I certify that the word count for this brief and application, including the signature lines following the brief's conclusion, is 2,839.

Dated: October 6, 2011

Respectfully submitted,

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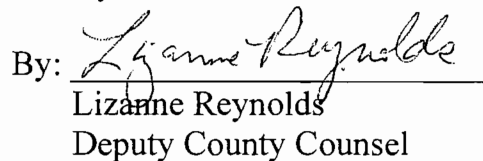
By: 

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SUPREME COURT, STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

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

I, Linda Ramos, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. On **October 7, 2011**, I served a copy of **RESPONDENT COUNTY OF SANTA CLARA'S CONSOLIDATED ANSWER TO *AMICUS CURIAE* BRIEFS** by placing said copy in an envelope addressed to:

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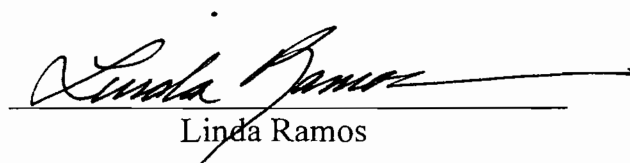
which envelope was then sealed, with postage fully prepaid thereon, on **October 7, 2011** and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **October 7, 2011** at San Jose, California.



Linda Ramos