No. S194861

SUPREME COURT COPY

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.,
*Petitioners*,

v.

ANA MATOSANTOS, ET AL.,
*Respondents*.

SUPREME COURT
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## PETITIONERS' ANSWER TO THE *AMICI* BRIEFS

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## INTRODUCTION

*Amici* have capably and eloquently described what they view as the adverse policy consequences of a decision invalidating ABX1 26 and 27. That is a proper function of briefs *amici curiae*. But the conclusion they reach—that those laws should be upheld by giving an extraordinarily crabbed interpretation of Proposition 22 (and of Article XVI, Section 16 as well)—is in the final analysis a plea for the Court to refuse to enforce the will of the electorate that adopted Proposition 22 only a short time ago in order to uphold the Legislature's attempt to address California's undoubtedly serious fiscal problems by diverting funds dedicated by the voters to redevelopment.

California's budget deficit reflects an ongoing imbalance between expenditures and revenues. In light of this deficit, some critics believe that initiatives such as Proposition 22 and Proposition 98 impose improvident restrictions on the Legislature's ability to allocate revenue where it is most needed. But others have leveled similar criticisms against Proposition 13, which made it vastly more difficult for the Legislature to increase taxes. Indeed, dire warnings of the fiscal consequences of adopting Proposition 13 were given in opposition to its enactment, and in briefs filed in this Court in the litigation that followed. As the Court observed in that case:

> Petitioners and the amici curiae who support them have mounted substantial and serious legal challenges to the provisions of article XIII A. In doing so they have expressed a commendable and sincere concern that the modifications of the California tax system which are mandated by the new article will impose intolerable financial hardships and administrative burdens in different forms and with varying intensity on public entities, programs, and services throughout California. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 248 (1978))

Nevertheless, despite these policy arguments and the severe, potentially adverse consequences predicted by those challenging Proposition 13, the Court upheld that measure, endorsing the voters' use of the initiative as "a *legislative battering ram*." *Id.* at 228 (citation and internal quotation marks omitted; emphasis in original).

Many avenues for addressing California's fiscal circumstances would be open had Proposition 13 been invalidated. Likewise, the Legislature's diversion of the RDAs' tax increment would be permissible if the Court were to accept *amici*'s tortured misconstructions of Proposition 22. But if *amici* are correct in suggesting that Proposition 22 will "ultimately produce[] grave, undesirable consequences to our governmental plan, the Legislature or the people are empowered to propose a new constitutional amendment to correct the situation." *Legislature v. Eu*, 54 Cal. 3d 492, 512 (1991) (citations omitted). But until the electorate sees fit to repeal or modify Proposition 22, courts must enforce it conscientiously, in light of its text and stated purposes. That is all Petitioners ask the Court to do in this case.

## ARGUMENT

### I.

### ABX1 26 AND ABX1 27 ARE BOTH UNCONSTITUTIONAL BECAUSE THEY ATTEMPT TO ACHIEVE AN UNCONSTITUTIONAL RESULT.

Petitioners' primary argument is that ABX1 26 and 27 are both unconstitutional because the Legislature may not use its power to regulate and, assertedly, dissolve the RDAs to accomplish indirectly what it could not do directly: keeping RDAs in existence while redirecting a substantial portion of their tax increment to other governmental bodies. *See* Pet. Mem. 21-30; Pet. Rep. Mem. 8-12. *None* of the *amici* supporting Matosantos address this argument head-on. Nor do any *amici* attempt to controvert Petitioners' showing that both bills are unconstitutional under *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979).

Instead, *amici* address the constitutionality of the bills—mostly ABX1 26—as if they were "two completely separate pieces of legislation." Brief *Amicus* Curiae of Center for Constitutional Jurisprudence, *et al.* ("CCJ Br.") 5. In fact, however, the two statutes are inextricably intertwined. Indeed, as one *amicus* candidly concedes, "what passed the Legislature was a compromise package." Brief *Amicus* Curiae of

California Teachers Association ("CTA Br.") 10. Most importantly, RDAs whose cities or counties "opt-in" under ABX1 27 are *never* dissolved under ABX1 26. *See* Pet. Rep. Mem. 9. That is exactly what the Legislature thought would happen—*i.e.*, that "most" or "all" of the RDAs would *not* be dissolved because their cities or counties would participate in the ABX1 27 program. *See id.* at 28 & n.14. CTA acknowledges that the "Budget Act was built on an assumption that most existing redevelopment agencies would opt for the voluntary alternative provided for ABX1 27." CTA Br. 10. ABX1 26 and 27 were enacted based on the same assumption. *See* Pet. Rep. Mem. 27-29.

As our prior briefs made clear, the Court therefore need not address whether the Legislature could decide that urban redevelopment is no longer necessary and dissolve all the RDAs in one fell swoop. *Id.* at 1. ABX1 26 and 27 were not intended to do that, and will not do that. Nor did the Legislature reform the redevelopment laws "to rein in embarrassing redevelopment excesses . . . and secure additional oversight into how property tax revenues are spent." CTA Br. 7. Instead, the Legislature used the *threat* of dissolution in ABX1 26 to compel the RDAs to make payments under ABX1 27 that the Legislature could not compel directly under Proposition 22, and thereby avoid compelled dissolution. Both statutes are therefore unconstitutional.

Most *amici* ignore this fundamental issue. The only *amicus* that even attempts to address it is CTA, which contends that the Legislature first dissolved all the RDAs under ABX1 26 and then, "having done so," created "newly authorized redevelopment agencies" to participate in the "new redevelopment program" created by ABX1 27. CTA Br. 31-32. Consequently, CTA maintains, these supposedly "new" RDAs are not covered by Proposition 22, which purportedly applies only to "the redevelopment agencies that the Legislature had . . . authorized to exist" when that measure was adopted. *Id.* at 32.

The premise of this argument is that the RDAs were dissolved under ABX1 26 and that "new" RDAs were thereafter created under ABX1 27. But that premise is demonstrably wrong as a matter of both

form *and* substance. If a city or county enacts a binding ordinance to comply with ABX1 27 by October 1, 2011, or a non-binding resolution by that date and a binding ordinance by November 1, and makes the payments required by ABX1 27, its RDA will *continue in full force without interruption (or dissolution)* because it will be "exempt" from the provisions of ABX1 26 that dissolve the RDAs. It will therefore be able to continue all of its activities indefinitely under pre-existing law. §§34192, 34193(a); *see* Pet. Mem. 16-17.[1] Accordingly, these RDAs will continue to exist with the same governing body, the same assets, and the same projects as they had when ABX1 26 was enacted. CTA's claim that ABX1 27 "provided an *alternative vehicle* for those local governments willing to work with their redevelopment agencies on fiscal and other reforms" (CTA Br. 10 (emphasis added)) is therefore meritless.

Consequently, ABX1 27 cannot be justified as an exercise of the Legislature's supposed power to create "new" redevelopment agencies under Article XVI, Section 16. Instead, the RDAs that opt-in to ABX1 27 are the same "undissolved redevelopment agencies" that existed when Proposition 22 was enacted and that CTA concedes are protected by that measure. *See* CTA Br. 32.

Moreover, both Proposition 22's text and legislative history undermine CTA's theory that Article XIII, Section 25.5(a)(7) applies only to RDAs in existence when the measure was passed. That provision states that the Legislature may not interfere with the tax increment allocated to "a community redevelopment agency," without specifying when that agency was created. Similarly, the voters were told that Proposition 22 "prohibits the State from borrowing or taking funds used for . . . redevelopment" (Ballot Pamp. (Nov. 2010) at 30) and "[p]rohibits redirection of redevelopment property tax revenues." *Id.* at 31. Neither these statements nor anything else in the ballot materials

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[1]Unless otherwise indicated, all statutory references are to the Health and Safety Code.

even remotely suggests that Proposition 22 applies only to RDAs that existed when the measure was adopted.

CTA also misreads the constitutional provision on which it relies. The penultimate paragraph of Article XVI, Section 16 does refer to an "alternative method of procedure" governing the financing of redevelopment projects. Art. XVI, §16. But the "alternative method of procedure" that the paragraph refers to is the tax increment financing scheme authorized by the very same section. *See id.* ("This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers"). It is Orwellian to suggest, as *amici* do,[2] that this language actually gives the Legislature power to destroy the very financing mechanism that Article XVI, Section 16 was intended to authorize and that Proposition 22 protects.

## II.

## ABX1 26 ALSO VIOLATES ARTICLE XIII, SECTION 25.5(a)(7) AND ARTICLE XVI, SECTION 16.

ABX1 26 would be invalid even if it were not a means to compel the payments required by ABX1 27. Its attempt to dissolve the RDAs for the purpose of seizing their tax increment and diverting it to schools and other local entities also violates both Article XIII, Section 25.5(a)(7) and Article XVI, Section 16.

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[2]*See* CTA Br. 31, 33; Brief of *Amicus Curiae* California Professional Firefighters ("CPF") 7-8, 12-13. The same logic precludes CTA's reliance (CTA Br. 17-18) on the provision of Article XVI, Section 16 that envisions legislative amendments to the redevelopment law. *See* Pet. Rep. Mem. 17 n.6.

### A. ABX1 26 Violates Article XIII, Section 25.5(a)(7) Because It Diverts Tax Increment That Would Have Been Allocated To The RDAs Under Article XVI, Section 16 To School Districts And Special Districts For Their Own Benefit.

#### 1. ABX1 26's Attempt To Seize The RDAs' Existing Tax Increment Is Incompatible With *Amici*'s Own Interpretation Of Proposition 22.

As Petitioners showed in their Reply Memorandum, the rule that the Legislature may not accomplish indirectly what it cannot do directly invalidates ABX1 26. *See* Pet. Rep. Mem. 13-15. Yet none of the *amici* mention this rule, much less explain why it does not invalidate ABX1 26. Nor, of course, do they deny that ABX1 26 is intended to divert RDA tax increment to other entities such as schools and fire districts; indeed, they have appeared as *amici* in order to defend that diversion of revenue. Nor, for that matter, do they defend Matosantos' assertion that the State can constitutionally divert tax increment from redevelopment to other purposes simply by dissolving the RDAs. Accordingly, no *amicus* provides a single example where the courts have upheld such legislative gamesmanship.[3]

Instead, several *amici* offer a more nuanced defense of ABX1 26, based on what they think is a limiting construction of Proposition 22. For example, CTA asserts that Proposition 22 only "prevents the Legislature from redirecting tax increment financing revenues that are dedicated to redevelopment agencies *for existing projects*." CTA Br. 26 (emphasis added). Likewise, the Los Angeles Unified School Dis-

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[3]CTA cites three cases, which held that a different constitutional provision, enacted "to preclude the legislative and executive branches from 'raiding pension funds'" (*Bd. of Ret. v. Santa Barbara County Grand Jury*, 58 Cal. App. 4th 1105, 1193 (1997)), does not exempt pension fund boards from judicial review, grand jury investigations or general statutes applicable to all state entities relating to civil service and similar matters. *See* CTA Br. 26-28 (discussing *Westly v. California Pub. Emps.' Ret. Sys. Bd. of Admin.*, 105 Cal. App. 4th 1095 (2003), *Bd. of Ret. v. Santa Barbara County Grand Jury*, 58 Cal. App. 4th 1105 (1997), and *Singh v. Bd. of Ret. of Imperial County Emps.' Ret. Sys.*, 41 Cal. App. 4th 1180 (1996)). These cases are irrelevant, as they do not concern a situation where the Legislature attempted to do exactly what the initiative was intended to prevent.

trict ("LAUSD") claims that Proposition 22 only "prohibit[s] diversion of funds *already allocated or dedicated to redevelopment*." LAUSD Br. 20 (emphasis added). They then argue that ABX1 26 does not violate Proposition 22 because all the statute does is prevent RDAs from incurring "*additional, future debts* which debts would require *additional, future* diversion of property tax increment to RDAs." *Id.* at 17 (emphases in original).

Both the premise and the conclusion of these arguments are wrong. The premise is wrong because Proposition 22 does not distinguish between existing debt and future debt. Instead, Article XIII, Section 25.5(a)(7)(A) prevents the Legislature from diverting *all* of the property tax increment that RDAs would otherwise get under Article XVI, Section 16 "for the benefit of the State . . . or any jurisdiction," including school districts and special districts. *See* Pet. Mem. 21. This prohibition does not depend on when the debt that will be repaid with that increment was created. In other words, as CTA acknowledges, "Proposition 22 limited legislative prerogatives to shift or transfer tax increment" (CTA Br. 28), regardless of whether that increment is attributable to existing or future debt.

Nor is the limitation proposed by CTA and LAUSD supported by anything in Proposition 22's legislative history. Section 9 of Proposition 22, its findings (§2(d)(3)), and the materials that accompanied its submission to the voters all demonstrate that the voters (1) were told that the Legislature had repeatedly used redevelopment funds for non-redevelopment purposes in the past; and (2) enacted Proposition 22 to prohibit such transfers in the future. *See* Pet. Mem. 11-13; Pet. Rep. Mem. 14-15. Nothing in this legislative history indicates that the voters intended to limit the reach of this prohibition to debt or increment that existed when Proposition 22 was adopted. To the contrary, the Legislative Analyst told the voters that Proposition 22 "likely would result in *increased* resources being available for redevelopment." Ballot Pamp. (Nov. 2010) at 35 (emphasis added).[4]

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[4]Proposition 22's text and the numerous mentions of
(continued . . . )

*Amici*'s conclusion is also wrong. Even if Proposition 22 applied only to existing debt, ABX1 26 would still be unconstitutional. That is because it does precisely what these *amici* concede cannot be done under Proposition 22—*i.e.*, it diverts tax revenues that have been "already allocated or dedicated to redevelopment" or "dedicated to redevelopment agencies for existing projects."

There can be no dispute about the relevant facts. CTA concedes that during FY 2011-12, the RDAs would receive $5.2 billion in property tax increment were it not for ABX1 26. CTA Br. 12 n.20. Obviously, none of this increment is attributable to "additional, future debt" incurred by the RDAs after ABX1 26 was adopted. Consequently, all this increment must necessarily be attributable to *existing* debt. Accordingly, *the entire $5.2 billion in tax increment due during FY 2011-12 has been already "dedicated to redevelopment agencies for existing projects"* or *"allocated or dedicated for redevelopment."* Indeed, if that were not so, the money would not be allocated to the RDAs pursuant to Article XVI, Section 16(b) in order "to pay the principal of and interest on loans, moneys advanced to, or indebtedness . . . incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project."

It is undisputed that ABX1 26 attempts to divert at least $1.9 billion of the total $5.2 billion in tax increment that would otherwise be paid to the RDAs under Article XVI, Section 16 to the schools and other local taxing entities. *See* CTA Br. 12 n.20 (total tax increment of $5.2 billion less pass-through payments of $1.1 billion and debt service of $2.2 billion). The conclusion is inescapable: ABX1 26 diverts tax revenues that "have been already allocated or dedicated to redevelopment" or "dedicated to redevelopment agencies for existing projects"

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redevelopment in the Ballot Pamphlet also refute LAUSD's claim that protecting redevelopment funding was an incidental, and not terribly important, goal of the voters. *See* LAUSD Br. 18-20. They are also inconsistent with *amici*'s contention that Petitioners want the Court to accomplish a result that the voters "knew nothing about." CTA Br. 29-30; LAUSD Br. 18.

and therefore violates a constitutional provision that *amici* concede prohibits the diversion of such revenue. *Amici's* arguments therefore fail on the indisputable facts.

*Amici's* defense of ABX1 26 is also wrong legally because it fails to acknowledge the full scope of the RDAs' entitlement to existing tax increment under Article XVI, Section 16. That increment, which even *amici* concede is protected by Article XIII, Section 25.5(a)(7), consists of the "taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI." Art. XIII, §25.5(a)(7)(A). Consequently, Article XIII, Section 25.5(a)(7)(A) incorporates the method of allocating tax increment prescribed by Article XVI, Section 16. Accordingly, the numerous respects in which ABX1 26 diverts existing tax increment that the RDAs would otherwise receive under Article XVI, Section 16 are also necessarily violations of Article XIII, Section 25.5(a)(7)(A).

For example, *Marek v. Napa Community Redevelopment Agency*, 46 Cal. 3d 1070 (1988), construed the "indebtedness" covered by Article XVI, Section 16 "to include all redevelopment agency obligations, whether pursuant to an executory contract, a performed contract or to repay principal and interest on bonds or loans." *Id.* at 1082. In contrast, ABX1 26 limits the use of tax increment to a narrower set of "enforceable obligations." *See, e.g.*, §34171(d)(1)(E) (allows oversight board to exclude contracts it believes violate "public policy" from "enforceable obligations"); §34171(d)(2) (excludes most agreements between RDA and city or county that created it from definition of "enforceable obligations). As a result of these exclusions, successor agencies under ABX1 26 will receive less tax increment to pay existing "enforceable obligations" than their predecessor RDAs would have received under Article XVI, Section 16, and the difference is diverted in violation of Article XIII, Section 25.5(a)(7)(A).

This difference is not academic. "Redevelopment can take a long time, and the rises in assessed valuation that generate significant increment revenue may not commence until a substantial amount of redevelopment has occurred, perhaps many years into the project."

*County of Santa Clara v. Redevelopment Agency*, 18 Cal. App. 4th 1008, 1014-15 (1993). Accordingly, it is common for cities to loan funds to their RDAs to cover their expenses in the early years of a project. Under Article XVI, Section 16, the RDA would receive the tax increment necessary to repay these loans, because they constitute "indebtedness" covered by that constitutional provision. In contrast, under ABX1 26, most of these loans would not qualify as "enforceable obligations." §34171(d)(2). As a result, the successor agency would not receive the tax increment necessary to pay back these loans, as it would under Article XVI, Section 16, and they will not be repaid.

LAUSD therefore errs in claiming that "nothing in ABX1 26 restricts, suspends, or otherwise interferes with the ability of redevelopment agencies to make full payment of *all* indebtedness they have incurred." LAUSD Br. 6 (emphasis added). It likewise errs in contending that the RDAs' existing debts "will be honored" under ABX1 26 (*id.* at 17) because the statute operates "without disturbing the payment of existing indebtedness." *Id.* at 20. Similarly, another *amicus* errs in asserting that "ABX1 26 and its enabling legislation provide for payment of all existing fiscal obligations." Affordable Housing Advocates Br. 12.

That is not the only way in which ABX1 26 gives the RDAs less tax increment than they would have received under Article XVI, Section 16. Under that provision, tax increment financing does not end until all of the RDA's indebtedness has been paid. *See* Art. XVI, §16(b) ("When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, *then* all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid") (emphasis added); *see Redevelopment Agency v. County of San Bernardino*, 21 Cal. 3d 255, 266 (1978) ("allocation of tax revenues for redevelopment pursuant to article XVI" ends "once the redevelopment debts have been repaid"). As a result, under the Constitution "a redevelopment agency is entitled to *all* tax increment funds as they become available *until its 'loans, advances and indebted-*

*ness, if any, and interest thereon have been paid.*'" *Marek*, 46 Cal. 3d at 1082 (citation omitted; emphasis added).[5]

This conclusion is entirely consistent with the statutes cited by LAUSD that describe the preparation of the RDAs' annual statements of indebtedness. LAUSD Br. 16. Under these statutes, the "indebtedness" used to calculate how much tax increment an RDA receives is based on "*the total amount* of principal and interest remaining to be paid for each loan, advance, or indebtedness." §33675(c)(1)(A)(iv) (emphasis added). Moreover, the Court in *Marek* expressly held, citing both Article XVI, Section 16 and the relevant statutes, that "it is not the purpose of the statement-of-indebtedness procedure to permit other tax entities to share in tax increment revenues at any time before the agency's total indebtedness has been paid or the amount in its 'special fund' is sufficient to pay its total indebtedness." 46 Cal. 3d at 1087. Indeed, the Court stated that refusing to give the RDAs "available tax increment revenues" would "disrupt the orderly scheme of redevelopment financing in California." *Id.*[6]

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[5]Notably, LAUSD fails to cite *Marek*, much less respond to Petitioners' showing that the payment scheme contained in ABX1 26 is incompatible with the tax increment financing methodology protected by that decision. *See* Pet. Rep. Mem. 22-23.

[6]This is true, for numerous reasons, including the following:

(1) As the Court held in *Marek*, the "indebtedness" payable out of tax increment includes contractual agreements such as disposition and development agreements or owner participation agreements. These agreements frequently commit the RDA to do things that facilitate redevelopment, including remediating contaminated sites, constructing public improvements, or acquiring multiple properties to be consolidated into a developable site. The costs the RDA incurs under these agreements can be much higher than the amount of increment that the RDA receives in a single year. Accordingly, the RDA must accumulate funds over a period of time to fulfill these obligations, as the Napa Community Redevelopment Agency did in *Marek*, particularly in a time like the present when property values (and thus tax increment) have been declining.

(2) RDAs often obtain short term financing in the early stages of a redevelopment project in order to commence redevelopment activities. These "bond anticipation notes" are short term, interest-only debt

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This tax increment allocation methodology, which *Marek* held was "prescribed in the California Constitution" (46 Cal. 3d at 1083), is quite different than the "pay only when due" scheme rejected in *Marek* and embodied in ABX1 26. *See* Pet. Rep. Mem. 22-23. While RDAs would continue to receive their entire allotment of tax increment under Article XVI, Section 16 until all their "indebtedness" has been paid, ABX1 26 gives significant portions of the dissolved RDAs' tax increment to other entities to be used for non-redevelopment-related purposes starting in FY 2011-12, long before complete repayment of the "indebtedness" covered by Section 16. §34183(a) (taxing entities receive all property tax increment in excess of amounts necessary to pay RDA obligations over the next six months and other costs); *accord*, §34177(d). The Legislature has tried to avoid the strictures of Article XVI, Section 16 and *Marek* by providing that all existing RDA indebtedness "shall be deemed extinguished and paid" when ABX1 26 becomes effective. §34174(a). However, Petitioners have explained why this ruse is impermissible under *Rider v. County of San Diego*, 1 Cal. 4th 1 (1991), and none of the *amici* have argued otherwise. *See* Pet. Rep. Mem. 23-24.

Under ABX1 26, the successor agencies to the dissolved RDAs will get less money—and get it later—than their predecessor RDAs

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issued with the expectation that the RDA will pay off the notes when it issues bonds. Accordingly, the amount due under these notes is typically more than the amount of tax increment that the agency would receive in a single fiscal year.

(3) RDAs also enter into other loans that include balloon payments at the end of the term. Such loans are made with the expectation that the RDA is able to accumulate tax increment to pay the debt at the end of its term. Again, these loans often call for payment of more than the amount of tax increment that the RDA will receive in a single year.

(4) Finally, RDAs have bonds outstanding with maturities that extend beyond the time when the agency will reach the limitation on the amount of tax increment that may be allocated to the RDA under Sections 33333.4(a)(1) and (g)(1). In such a case, the agency must either retire bonds early or establish a sinking fund to pay debt service after the limit is reached. In either case, the RDA must be able to stockpile tax increment from one year to the next.

would have been entitled to under Article XVI, Section 16. Indeed, as discussed above, during FY 2011-12 the successor agencies will receive only $2.2 billion to pay "enforceable obligations" as opposed to the $5.2 billion the dissolved RDAs would have received under Article XVI, Section 16. The diversion of the tax increment that represents the difference between what the RDAs would have received under Article XVI, Section 16 and what the successor agencies will receive under ABX1 26 violates Article XIII, Section 25.5(a)(7)(A), which even CTA admits "limited legislative prerogatives to shift or transfer tax increment." CTA Br. 28. Because this is as true for existing debt as it is for future debt, *amici*'s principal defense of ABX1 26 falls short.

### 2. *Amici* Mischaracterize The Impact Of ABX1 26.

In addition to the unavailing defense of ABX1 26 just discussed, *amici* offer a series of arguments that are based on inaccurate characterizations of ABX1 26, misleading descriptions of irrelevant statements made by Proposition 22's proponents, and distortions of Petitioners' actual arguments. We shall address these contentions in this and the next two sections of this Memorandum.

*Amici*'s descriptions of ABX1 26 mischaracterize a piranha as if it were a guppy. For example, *amicus* California Professional Firefighters ("CPF") contends that ABX1 26 "goes to great lengths to honor all existing indebtedness and obligations of redevelopment agencies and *then* follows the mandate of Section 16 of Article XVI by directing the rest of the money to be paid to the local taxing agencies whence it came." CPF Br. 3 (emphasis added). Similarly, it says that ABX1 26 would "restore the natural distribution of property tax funds, *after* making payments on indebtedness incurred by the dissolved redevelopment agencies." *Id.* at 16 (emphasis added). Next, it claims that, "under ABX1 26, tax increment will be passed to successor agencies *until* all indebtedness is erased." *Id.* at 17 (emphasis added). Finally, it asserts that ABX1 26 does not "use, restrict, or assign a particular purpose" for RDA tax increment "*prior* to providing for full payment

of each [RDA's] enforceable obligations." *Id.* at 19 (emphasis added; internal quotation marks omitted).

All four of these statements imply that no tax increment is diverted to the taxing agencies "until all indebtedness is erased." However, as discussed above, under ABX1 26, RDA tax increment is diverted to third parties long before existing RDA indebtedness is repaid. *See* pp.12-13, *supra*. CPF's descriptions of ABX1 26 are therefore inaccurate.[7]

Similarly, LAUSD contends that ABX1 26 is constitutional because it merely "prevents RDAs from incurring new obligations while ensuring that existing obligations will be paid." LAUSD Br. 17. This anodyne description of ABX1 26 is both irrelevant and untrue, for at least five reasons.

*First*, this claim is legally irrelevant. Unlike Article XVI, Section 16, Article XIII, Section 25.5(a)(7)(A) does not protect RDA creditors. Instead, it protects the RDAs' receipt of tax increment. Whether RDA creditors or obligations are paid is therefore constitutionally irrelevant under Article XIII, Section 25.5(a)(7). What matters is whether the RDAs' full share of increment under Article XVI, Section 16 is diverted to non-redevelopment-related uses.

*Second*, even if it were relevant, LAUSD's assurance that the RDAs' "existing obligations will be paid" under ABX1 26 is not true. As discussed above, the "enforceable obligations" supposedly protected by ABX1 26 do not include all the "indebtedness" safeguarded by Article XVI, Section 16. *See* p.9, *supra*. As a result, the RDAs will

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[7]CPF cites Section 34172(d) to support its description of ABX1 26. CPF Br. 16. But that statute simply gives tax increment to the successor agencies to pay "enforceable obligations." In contrast, Section 34183(a) establishes the priority and the timing of these payments, and provides that the taxing agencies will receive tax increment long before the dissolved RDAs' indebtedness is fully paid. *See* pp.12-13, *supra*. Even if there were a conflict between the two statues, Section 34183 would prevail, because it applies "[n]otwithstanding any other law." §34183(a).

not receive all the increment they need to pay all of their "existing obligations." *See* pp.9-10, *supra*.

*Third*, LAUSD's unfounded optimism about repayment of existing RDA obligations also overlooks the fact that ABX1 26 does not provide RDA creditors with the same security interests that RDAs were able to provide under Article XVI, Section 16. Under that constitutional provision, tax increment could be, and was, "irrevocably pledged for the payment of the principal of and interest on [the RDA's] loans, advances or indebtedness." Art. XVI, §16; *see Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 239 (1978) ("Redevelopment bonds are secured by a pledge of so-called 'tax increment' revenues generated by increases in the assessed value of the redeveloped property"). Moreover, that increment was placed in a "special fund" controlled by the RDAs, created under Article XVI, Section 16 for repayment. *See Marek*, 46 Cal. 3d at 1083 ("The very notion of a 'special fund of the redevelopment agency' plainly implies that the agency itself will control the utilization of tax increment funds and militates against the notion of a process budgetarily controlled by county auditors"). The drafters of the Constitution therefore recognized that "a pledge of increment revenue is essential to the issuance of redevelopment bonds." *County of Santa Clara*, 18 Cal. App. 4th at 1015.

That is not what RDA creditors will get under ABX1 26. Far from maintaining a "special fund" maintained by the RDA that is pledged for repayment, ABX1 26 dissolves the RDAs, and declares that "all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid." §34174(a). Similarly, while it states that "pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored" (§34175(a)), it does *not* give bondholders a pledge, or first lien, in the property tax increment funds that would have gone to the now-dissolved RDAs. Instead, these obligations are entitled only to second priority, after pass-throughs. §34183(a)(2). This changes existing law, which gives RDA creditors a lien and security interest in the RDAs' collateral.

§33641.5(b). Moreover, instead of being placed in an RDA's "special fund" for payment of indebtedness, as was true under Article XVI, Section 16, the tax increment that would have gone to the dissolved RDAs will be placed under ABX1 26 in a fund controlled by the county auditor that is used for multiple purposes, and whose payment priorities are subject to change should the Legislature decide to amend Section 34183. And if the tax increment is insufficient to pay an RDA's "enforceable obligations," the county treasurer "*may*"—but is *not required to*—loan the necessary funds to the county auditor. §34183(c).

The Court need not take Petitioners' word for the fact that the repayment provisions of ABX1 26 are a less than adequate substitute for the tax increment financing methodology authorized by Article XVI, Section 16 and successfully used by RDAs for six decades. On August 31, 2011, Moody's Investors Service ("Moody's") announced that it had placed on review for possible downgrade all of its rated California tax allocation bonds because of the "substantial uncertainty over the future of redevelopment agencies in California and the tax allocation bonds that they issue" created by ABX1 26 and 27.[8] In particular, Moody's said that

> [i]f left unchanged, [ABX1 26] would be significantly negative for bond holder credit . . . . [¶] More specifically, . . . [ABX1 26] does not require segregation and tracking of revenues pledged to individual tax allocation bonds. It also changes the flow of funds that are allocated to bond debt service. These developments would severely diminish the bonds' credit quality. If implemented as currently written, this legislation could result in multi-notch downgrades on bonds of the dissolved redevelopment agencies. (Petitioners' Supplemental Motion For Judicial Notice ("Pet. Supp. MJN"), Ex. 1 at 1)[9]

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[8]A copy of this report is Exhibit 1 to Petitioners' Supplemental Motion for Judicial Notice.

[9]Petitioners do not contend that the issue of whether ABX1 26 impairs existing contracts is either ripe for decision or properly presented in a facial challenge such as this brought by the RDAs. *See Amador Valley*, 22 Cal. 3d at 239-42. But these concerns are relevant in light of the repeated assurances by *amici* that ABX1 26 "ensur[es] (continued . . . )

In other words, a neutral, expert observer has recognized that the protections supposedly granted by ABX1 26 to RDA creditors are not the same as those provided by Article XVI, Section 16. Far from "ensuring that existing obligations will be paid" (LAUSD Br. 17), ABX1 26 creates myriad uncertainties that the drafters of Article XVI, Section 16 sought to forestall by adopting the tax increment scheme set forth therein.

*Fourth*, LAUSD's attempt to distinguish between existing and new debt assumes that ABX1 26 may constitutionally prohibit the RDAs from issuing "additional, future debt." However, Article XIII, Section 25.5(a)(7)(B) prohibits the Legislature from restricting the RDAs' use of tax increment if the restriction has been imposed to benefit the State or other local entities. Accordingly, the Legislature may not impose restrictions on RDA activities—including restricting the issuance of new debt—*if* doing so is intended to provide a fiscal benefit to third parties. *See* Pet. Rep. Mem. 24-25. That is precisely what ABX1 26 does. *See* Pet. Mem. 30-31. None of the *amici* address this point.[10]

*Fifth*, and finally, it is not true that ABX1 26 only prohibits the RDAs from incurring "*additional, future debts* [that] would require *additional, future* diversion of property tax indebtedness." LAUSD Br. 17 (emphases in original); *see also* CTA Br. 26 (Proposition 22 does not prevent Legislature prohibiting RDAs "from committing more funds to new projects"). To the contrary, ABX1 26 prohibits the *renewal* of existing contracts even if *no* new debt is created. For example, an agency that has leased a property it owns cannot renew the lease, even on the same terms, because renewing leases is specifically prohibited by Section 34163(c)(1). Likewise, an agency that has acquired and remediated a previously contaminated property using funds received from prior indebtedness is now prohibited by Section

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( . . . continued)
that existing obligations will be paid." LAUSD Br. 17.

[10]As discussed in detail below, this limitation does *not* restrict the Legislature from imposing limits on the issuance of new debt for other purposes, such as to prevent the abuses described by CTA in its brief. *See* p.22, *infra*.

34163(d) from disposing of that property to achieve its intended redevelopment. These restrictions violate Proposition 22, a point that none of the *amici* address. *See* Pet. Mem. 30-31. Accordingly, even if *arguendo* the Legislature had the power to prohibit RDAs from incurring new "indebtedness" (*but see* p.17, *supra*), ABX1 26 sweeps far more broadly and is invalid for that reason, as well.

### 3. *Amici*'s Reliance On Statements Made By Proposition 22's Proponents Is Misplaced.

In an effort to square ABX1 26 with Proposition 22, CPF claims that the Executive Directors of Petitioner League of California Cities (Chris McKenzie) and Petitioner California Redevelopment Association (John Shirey) "stated unequivocally" at a pre-election Senate hearing devoted to Proposition 22 "that Proposition 22 did not remove the Legislature's authority to eliminate redevelopment agencies." CPF Br. 11; *accord*, *id.* at 2 (Proposition 22's proponents "testified . . . that Proposition 22 did not prohibit the Legislature from eliminating redevelopment agencies").

These claims are false. As the colloquy quoted at CPF 12 shows, Mr. McKenzie merely said that he agreed with a representative from the Legislative Analyst's Office that the Legislature could impose "a moratorium on all new redevelopment projects." CPF Br. 12. However, whether the Legislature could impose a moratorium—"a temporary or interim" prohibition—on new redevelopment projects is quite different from whether it can permanently dissolve the RDAs for the purpose of diverting their tax increment elsewhere. *See Beck Dev. Co. v. S. Pac. Transp. Co.*, 44 Cal. App. 4th 1160, 1187 (1996) ("A moratorium is by its nature an interim or temporary measure which contemplates future resolution or performance of issues and matters held temporarily in abeyance"). Similarly, all Mr. Shirey said was that the Legislature had the ability under Proposition 22 "to change the law governing redevelopment agencies in California," as it had done "pretty regularly" prior to that time. CPF Br. 12. This, too, is consistent with Petitioners' current position. *See* Pet. Rep. Mem. 17 n.6.

CTA makes a less sweeping claim, citing Mr. McKenzie's statement at the same hearing that Proposition 22 did not affect the Legislature's authority under Article XVI, Section 16. CTA Br. 23-24. But he never said what that authority was, much less that it would authorize the Legislature to do what it has done in ABX1 26 and 27.

Accordingly, none of these statements constitutes an admission that the Legislature could eliminate the RDAs to seize their funds and divert their revenue to schools and fire districts. In fact, Mr. McKenzie stated concisely that Proposition 22 was intended "to make it clear that redevelopment revenues are to be used for redevelopment and not for other purposes" (CPF Br. 12)—a goal that is obviously frustrated by ABX1 26.

In all events, the statements cited by these *amici* are legally irrelevant. Although the decisions are not uniform (*see Rossi v. Brown*, 9 Cal. 4th 688, 700 n.7 (1995)), the Court has recently confirmed that "[t]he opinion of drafters or of legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters' intent." *Greene v. Marin County Flood Control & Water Conservation Dist.*, 49 Cal. 4th 277, 294 n.6 (2010) (citation and internal quotation marks omitted). Since *amici* have failed to show that the statements they cite were made to more than a handful of voters, the statements are irrelevant to prove what Proposition 22 means.[11]

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[11]CTA cites nothing to support its reliance on the statements by Mr. McKenzie and Mr. Shirey. CPF cites *C-Y Development Co. v. City of Redlands*, 137 Cal. App. 3d 926 (1982). CPF Br. 11 n.5. That case holds that statements by legislators concerning their intent in drafting a statute may be relevant "where the drafters' views were clearly and prominently communicated to the legislators at the time the measure was being considered for enactment, on the theory that there was reason to believe that the other legislators were influenced in their view of the bill by the drafters' communicated views." 137 Cal. App. 3d at 932. Accordingly, the case supports *Petitioners*' reliance on statements made by legislators during the floor debates on ABX1 26 and 27 (to which CPF ironically objects). But it does not support *amici*'s reliance on statements made by Proposition 22's proponents, where *amici* have provided no evidence that the statements were communicated to a

(continued . . . )

### 4. Petitioners Do Not Contend That Proposition 22 Made The RDAs Immortal Or Immune From Legislative Direction.

*Amici*'s final effort to square ABX1 26 with Proposition 22 consists of rebutting a series of straw man arguments that Petitioners have never made. Contrary to *amici*'s claims, Petitioners have never contended that Proposition 22 "immunize[s] redevelopment agencies from legislative oversight" (CTA Br. 26), "provide[s] redevelopment agencies with the right to exist in perpetuity" (*id.*), or "grant[s] redevelopment agencies a perpetual right to exist" (LAUSD Br. 18) or the right "to fund new projects in perpetuity." *Id.* at 19-20. Nor do Petitioners contend that Proposition 22 made the RDAs "'super agencies' immune from alteration or elimination by the Legislature." CPF Br. 10. Indeed, Petitioners attacked the County of Santa Clara's reliance on similar straw arguments on the very first page of their reply memorandum. *See* Pet. Rep. Mem. 1 ("whether RDAs have a 'permanent right to exist' is not before the Court") (citation omitted).[12]

Instead, Petitioners' claim is far more modest. As discussed above, Article XIII, Section 25.5(a)(7)(A) protects the annual tax increment allocated to the RDAs under Article XVI, Section 16 against diversion to the state or other local entities for their own benefit. The latter limitation is important—and utterly ignored by *amici*. Fairly read, it restricts the Legislature from diverting redevelopment funds to other agencies *only if* those agencies use those funds for purposes other than redevelopment. In other words, Article XIII, Section 25.5(a)(7)(A) protects redevelopment *funds*, not redevelopment *agencies*—which is exactly what Mr. McKenzie told the Legislature (*see* p.19, *supra*) and what the ballot pamphlet told the voters. *See* Ballot Pamp. (Nov. 2010)

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(. . . continued)
significant number of voters.

[12]Similarly, Petitioners do not contend that the RDAs are "constitutional agencies." Accordingly, the fact that Proposition 22 does not contain language similar to initiatives establishing such agencies is irrelevant. *See* CTA Br. 24-25. Nor did Proposition 22 change the provisions of existing law that impose time limits on redevelopment plans. §§33333.2, 33333.6.

at 30 (Official Title and Summary told voters that Proposition 22 "prohibits the State from borrowing or taking funds used for . . . redevelopment"); *id.* at 31 (Legislative Analysis told voters that Proposition 22 "[p]rohibits redirection of redevelopment property tax revenues"). Accordingly, if the Legislature concluded that the functions now being served by the RDAs could be better served by new agencies, it arguably could dissolve the RDAs and give their existing tax increment to these new entities, *as long as the funds were used for redevelopment-related purposes.* Article XIII, Section 25.5(a)(7)(A) therefore does not guarantee the RDAs a "perpetual right to exist."

Even if the Legislature did not create new agencies to take the place of the RDAs, they still would not have "perpetual existence" (CTA Br. 29), a right to "continued payment of tax increment beyond project obligations" (CPF Br. 11 n.4), or "a vested, dedicated right to all incremental growth in property taxes within a redevelopment area." LAUSD Br. 16. As we have seen, the revenue that Section 25.5(a)(7)(A) protects against diversion for non-redevelopment-related purposes consists of all tax increment allocated to the RDAs under Article XVI, Section 16. *See* p.7, *supra*. Moreover, under Article XVI, Section 16, the RDAs are entitled to receive this increment annually until *all* indebtedness has been repaid. *See* pp.10-11, *supra*. Consequently, the RDAs may be dissolved *for any reason once their indebtedness has been repaid and they have no more entitlement to tax increment.* But until that time, the RDAs are entitled to their full annual allocation of tax increment under Article XVI, Section 16, and that allocation is protected against diversion for purposes other than redevelopment by Article XIII, Section 25.5(a)(7)(A), regardless of whether that diversion is compelled "directly or indirectly."[13]

LAUSD contends that this reasoning is contradictory because Petitioners "cannot simultaneously concede that the state has the authority to dissolve redevelopment and claim that any such dissolution would

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[13]None of the *amici* discuss the "directly or indirectly" language in Article XIII, Section 25.5(a)(7)(A).

implicitly violate the Constitution because a fiscal benefit would redound to the state and local governmental agencies." LAUSD Br. 15. This argument rests on linguistic sleight-of-hand. Petitioners have never said that the Legislature could "eliminate redevelopment"; instead, they have said only that the Legislature might *arguably* be able to "dissolve the RDAs to reform redevelopment or because [it] has concluded that other agencies could do the job better." Pet. Rep. Mem. 1. In other words, Proposition 22 imposes no limit on diversions of tax increment to serve redevelopment, but prohibits such diversions for other purposes. There is nothing inconsistent about that.

Nor, of course, does Proposition 22 prevent the Legislature from taking steps that would minimize the creation of tax increment in the future. If the Legislature wants to tighten the definition of "blight" as it has done in the past, or prohibit RDAs from developing projects that include Dive Bars, Desert Willow Golf Resorts or ballparks, it is free to do so. Similarly, it could limit the RDAs' ability to issue new debt, as long as the restriction is not imposed for the fiscal benefit of third parties. *See* p.17, *supra*. But what the Legislature can't do—and what it did in passing ABX1 26—is decide that schools and fire districts are more important than redevelopment and divert the RDAs' tax increment accordingly.

Petitioners acknowledge that the State faces an extraordinary and unprecedented fiscal crisis, which has led to painful cuts in education and social services. But the voters who enacted Proposition 22 were told in the measure's Official Title and Summary that its provisions would "[p]rohibit[] the State, *even during a period of severe fiscal hardship*, from *delaying* the distribution of tax revenues for . . . redevelopment, or local government projects and services." Ballot Pamp. (Nov. 2010) at 30 (emphasis added). The Ballot Label said the same thing. Pet. Supp. MJN, Ex. 2. *A fortiori*, Proposition 22 prevents the State from permanently *diverting* tax revenue dedicated to redevelopment under the California Constitution as a response to this fiscal crisis.

### B. The RDAs' Receipt Of Annual Property Tax Increment Is Also Protected By Article XVI, Section 16 And Section 9 Of Proposition 22.

Because Article XIII, Section 25.5(a)(7)(A) protects the tax increment that RDAs annually receive under Article XVI, Section 16 against diversion for non-redevelopment-related purposes, the Court need not decide whether ABX1 26 independently violates the latter provision. Should the Court nevertheless reach the issue, however, it should hold that ABX1 26 conflicts with Article XVI, Section 16 and Section 9 of Proposition 22 because these provisions guarantee the RDAs' annual allocation of tax increment that Article XIII, Section 25.5(a)(7)(A) protects against diversion.

Because these constitutional provisions are so inter-related, much of the foregoing discussion of Article XIII, Section 25.5(a)(7)(A) relates as well to Article XVI, Section 16. *See* pp.9-12, *supra*. Accordingly, we shall focus on *amici*'s attempts to show that there is no conflict between that constitutional provision and ABX1 26.

*First*, CTA says "[t]here is literally no support" for Petitioners' assertion that Article XVI, Section 16 prohibits the Legislature from altering the tax increment scheme set forth therein "with respect to existing plans and indebtedness." CTA Br. 19 (citation, internal quotation marks and emphasis omitted). CTA is wrong. Article XVI, Section 16 provides that, once the Legislature has authorized tax increment financing and once its provisions are incorporated in a redevelopment plan, the resulting tax increment "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 to finance or refinance, in whole or in part, the redevelopment project." In addition, it provides that the tax increment may be "irrevocably pledged for the payment of the principal of and interest on [the RDA's] loans, advances or indebtedness." Art. XVI, §16.

CTA ignores these provisions, but they undermine its interpretation of Article XVI, Section 16. The voters would not have amended the constitution to provide a detailed mechanism for the repayment of

indebtedness based on tax increment if that mechanism could be changed for existing debt *even though it was already incorporated in a redevelopment plan.* In particular, the voters would not have provided for the irrevocable pledge of tax increment to secure indebtedness, as they did in Article XVI, Section 16, had they intended that the Legislature could decide in the future to eliminate the RDAs and send the pledged tax increment elsewhere. After all, as this Court recognized in *Redevelopment Agency v. County of San Bernardino*, 21 Cal. 3d 255 (1978), "a redevelopment agency will be unable to sell its bonds if purchasers cannot depend on the agency's having a source of revenue from which to meet its obligations." *Id.* at 264-65.

If CTA were correct, and Article XVI, Section 16 left the Legislature totally free to divert RDA tax increment attributable to existing plans and projects—even though that revenue had already been irrevocably pledged pursuant to that constitutional provision—the Legislature could have eliminated RDAs altogether, and made *no* provision for fulfillment of their existing obligations, without violating Article XVI, Section 16. If that were true, the whole structure of tax increment financing, which was intended to facilitate redevelopment by providing bondholders a secure source of repayment, would be ineffective. "It is unreasonable to assume that either the Legislature *or the people* intended such a result." *Redevelopment Agency*, 21 Cal. 3d at 265 (citation and internal quotation marks omitted; emphasis added).

*Second*, CPF challenges Petitioners' reliance on *Marek*, contending that the "Court's statement of the RDA's entitlement [to tax increment] was solely based on its *statutory* empowerment—conferred by the Legislature—not by operation of Article XVI, Section 16 standing alone." CPF Br. 9 (emphasis in original). But Petitioners have never contended that *Marek* construed Article XVI, Section 16 "standing alone." Instead, they correctly told the Court that *Marek* "repeatedly relies on *both* Article XVI, Section 16 and the CRL." Pet. Rep. Mem. 19 (emphasis added).

CTA concedes as much. *See* CTA Br. 22 ("both of the quotes that petitioners highlight from [*Marek*] analyze the meaning of

'indebtedness' in *both* article XVI, section 16 *and* related statutory enactments") (emphases in original). However, this does not mean, as CTA claims, that "it is impossible to know what duties, if any, the Court thought article XVI, section 16 imposed on the Legislature." *Id.* Instead, since *Marek* concededly relied on *both* Article XVI, Section 16 *and* the statutes passed by the Legislature to implement that provision, its holdings rest on two distinct grounds. In such cases, *each* holding is precedential, and neither is dicta. *See S. California Chapter of Associated Builders & Contractors, Inc., Joint Apprenticeship Comm. v. California Apprenticeship Council*, 4 Cal. 4th 422, 431 n.3 (1992) ("where two independent reasons are given for a decision, neither one is to be considered mere *dictum*, since there is no more reason for calling one ground the real basis of the decision than the other. The ruling on both grounds is the judgment of the court and is of equal validity") (citation and internal quotation marks omitted).

Indeed, it is difficult to read *Marek* any other way. At the outset of the Court's "discussion" of the issues raised in the case, it stated that "the question presented is the meaning of the term 'indebtedness' *as used in article XVI, section 16*, and in sections 33670 . . . and section 33675." 46 Cal. 3d at 1080 (emphasis added). Similarly, the Court's summary of its holding at the end of its opinion likewise referred to the Constitution: "We conclude that 'indebtedness,' *as it is used in article XVI, section 16* and sections 33670 and 33675, includes redevelopment agencies' executory financial obligations under redevelopment contracts. Such indebtedness entitles those agencies to payment of available tax increment revenues by the local county auditor." *Id.* at 1087 (emphasis added). Accordingly, the bookends of the Court's opinion reflect its holding that the Constitution—and not just the statutes—requires county auditors to pay "available tax increment revenues" to the RDAs until their indebtedness is repaid.

Not surprisingly, the key passage in the Court's opinion says precisely the same thing. The first part of this passage holds, quoting *both* Article XVI, Section 16 and the CRL, that

> "indebtedness" was meant to include all redevelopment agency obligations, whether pursuant to an executory contract, a

> performed contract or to repay principal and interest on bonds or loans. To insure its ability to perform its obligations, a redevelopment agency is entitled to all tax increment funds as they become available, until its "loans, advances and indebtedness, if any, and interest thereon have been paid . . . ." (*Id.* at 1082)

The Court then went on to state in the immediately following paragraph that *both* "the financial scheme prescribed in the California Constitution" *and* the Community Redevelopment Law ("CRL") required that RDAs, and not county auditors, have control over these funds:

> The financial scheme prescribed in the California Constitution and the [CRL] . . . likewise compels acceptance of the Agency's interpretation of "indebtedness." Article XVI, section 16, and section 33670, subdivision (b) dictate that tax increment revenues "*shall be allocated to* and when collected *shall be paid into a special fund of the redevelopment agency*" to pay its indebtedness. . . . The very notion of a "special fund of the redevelopment agency" plainly implies that the agency itself will control the utilization of tax increment funds and militates against the notion of a process budgetarily controlled by county auditors." (*Id.* at 1083 (emphases in original))

*Marek*'s rejection of the county auditor's position that "available tax increment funds not needed for expenditure in the upcoming fiscal year are to be distributed to other tax entities" (*id.*) was therefore based on *both* the Constitution and the CRL. Accordingly, *Marek* requires the invalidation of legislation that imposes a "pay only when due" scheme that is even more incompatible with Article XVI, Section 16 than the solitary effort of a single county auditor in *Marek*. *See* Pet. Rep. Mem. 18-19.

For these reasons, *Marek* squarely holds that the RDAs have a constitutional right under Article XVI, Section 16 to their annual allocation of tax increment until all indebtedness has been paid. But even if this proposition were more debatable than it is, the debate was ended when the voters enacted Proposition 22. That is because the first sentence of Section 9 provides that "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." While CPF and CTA say that sentence is incorrect (CPF Br. 17 n.10; CTA Br. 30), no *amicus* rebuts the proposition, set forth in Petitioners' Reply Memorandum, that the voters' interpretation of a constitutional provision they previously enacted is entitled to "due consideration." Pet. Rep. Mem. 20 & n.7.

*Third*, CTA contends that *Community Redevelopment Agency v. County of Los Angeles*, 89 Cal. App. 4th 719 (2001), and *Arcadia Redevelopment Agency v. Ikemoto*, 16 Cal. App. 4th 444 (1993), hold that under Article XVI, Section 16 the Legislature has "discretion to alter the tax increment financing scheme with respect to existing plans and indebtedness." CTA Br. 20; *accord*, *id.* at 24 (these cases "permitted the Legislature to amend the laws that authorized tax increment financing"). However, both decisions rely on the first paragraph of Article XVI, Section 16, which provides that "[a]ll property in a redevelopment project . . . shall be taxed in proportion to its value . . . and those taxes . . . shall be levied and collected as other taxes are levied and collected by the respective taxing agencies." As a result, these cases stand for a much narrower proposition than that asserted by CTA: that Article XVI, "[S]ection 16 . . . 'does not prevent the Legislature from altering the levying and collection of taxation on redevelopment project property in a manner consistent with which it alters the levying and collection of taxation on other property.'" *Cmty. Redevelopment Agency*, 89 Cal. App. 4th at 729 (quoting from and endorsing *Arcadia Redevelopment Agency*, 16 Cal. App. 4th at 452). In other words, these cases permit the Legislature to change the levying and collecting of property taxes "as long as it acts with an even hand." *Cmty. Redevelopment Agency*, 89 Cal. App. 4th at 730.

Neither the first paragraph of Article XVI, Section 16 nor the rule upholding even-handed changes to the levying and collection of taxes applies to ABX1 26, Unlike the statutes upheld in these two cases, ABX1 26 does not relate to "the levying and collecting of property taxes." Nor, of course, does it operate "with an even hand." These cases are therefore inapposite.

*Fourth*, CPF relies on the 1988 amendment to Section 16, which it says was enacted by the voters "to limit the flow of certain property tax increases into the coffers of redevelopment agencies." CPF Br. 6. That amendment provided that the RDAs would not share in the property tax increment created by increases in the property tax rate necessary for other agencies to "repay bonded indebtedness [incurred] for the acquisition or improvement of real property." *See id.* (quoting Ballot Pamp. (Nov. 1988) at 40); Art. XVI, §16(c).

CPF claims that this constitutional history demonstrates "that Section 16 of Article XVI has never conferred any rights on redevelopment agencies." CPF Br. 7. In fact, considered together with *Community Redevelopment Agency v. County of Los Angeles*, 89 Cal. App. 4th 719 (2001), and *Arcadia Redevelopment Agency v. Ikemoto*, 16 Cal. App. 4th 444 (1993), this constitutional amendment proves just the opposite. When the Legislature wants to change the levying and collection of property taxes in a way that operates even-handedly with respect to all taxing entities, it can do so without violating Article XVI, Section 16. But when it wants to change the way that tax increment is allocated *after* levying and collection, and to do so in a manner that disadvantages the RDAs, a constitutional amendment is necessary. That is as true now as it was in 1988.[14]

## III.

## ABX1 26 IS INSEVERABLE FROM ABX1 27.

If the Court finds, contrary to the contentions made in Parts I and II, that ABX1 26 is neither unconstitutional as a means to compel the

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[14]Finally, CTA contends in a footnote that Petitioners have waived any contention that ABX1 26 violates Article XVI, Section 16. CTA Br. 21 n.32. Not so. Petitioners alleged that the two bills violated Article XVI, Section 16 in their Petition (Pet. 1-2 (¶10)), and contended in their initial Memorandum that "if the RDAs are dissolved under AB1X 26, their constitutional right *under Article XVI, Section 16* and Section 9 of Proposition 22 to receive the 'entire specified portion' of their annual property tax increment will be eviscerated." Pet. Mem. 32-33 (emphasis added). There has been no waiver.

payments required by ABX1 27 nor independently unconstitutional under Article XIII, Section 25.5(a)(7) and Article XIII, Section 16, it must then address whether ABX1 26 is severable from ABX1 27.

### A. The Severability Clause In ABX1 27 Is Not Conclusive.

*Amici*'s contention that ABX1 26 is severable relies heavily on the severability clause contained in Section 4 of ABX1 27. Indeed, they contend that that clause conclusively resolves the severability issue, without any need to apply the three-part test set forth in *Calfarm Insurance Co. v. Deukmejian*, 48 Cal. 3d 805 (1989). *See, e.g.*, CTA Br. 35; CCJ Br. 6-7. But that clause is only the beginning, and not the end, of severability analysis.

As the Court held in *Bacon Service Corp. v. Huss*, 199 Cal. 21 (1926), a severability clause cannot be an "inexorable command, for it is a judicial question in each case whether the good may stand notwithstanding the bad." *Id.* at 34. Accordingly, as Matosantos has conceded, the severability clause in ABX1 27 is "not conclusive." Matosantos Br. 29 (quoting *Calfarm Ins. Co*, 48 Cal. 3d at 822).

Giving conclusive effect to Section 4 of ABX1 27 would also be inappropriate because that statute is far from "an unambiguous statement of [the Legislature's] intent that ABX1 26 should continue in effect regardless of the validity of ABX1 27." CTA Br. 37 (emphasis omitted). Section 4 of ABX1 27 is contradicted by Section 5 of the very same statute, which provides that if the operative part of ABX1 27 (Part 2) is declared invalid, "the remaining provisions of this act are not severable and shall not be given, or otherwise have, any force or effect." ABX1 27, §5. These "remaining provisions" include Section 4, the severability clause on which *amici* rely. The obvious contradiction between Section 4 and Section 5 dispels their contention that ABX1 27 contains "carefully drafted severability clauses" (CPF Br. 3) that conclusively determine legislative intent.[15]

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[15]CCJ contends that Section 4 of ABX1 27 provides "clearer evidence of [legislative] intent" than the legislative history cited by Petitioners even if it is invalid under Section 5. CCJ Br. 7. So does the (continued . . . )

Nor does any *amicus* address the contradiction between Section 4 of ABX1 27 and Section 14 of ABX1 26, which provides that ABX1 26 "shall take effect contingent on the enactment of" ABX1 27 "and only if the enacted bill adds Part 1.9 . . . to Division 24 of the Health and Safety Code." No *amicus* hazards an explanation of why the Legislature would have wanted to make ABX1 26 contingent on ABX1 27's enactment, but not on its validity. Moreover, a statute that is unconstitutional on its face is inoperative. *See Kopp v. Fair Political Practices Comm'n*, 11 Cal. 4th 607, 623 (1995). Accordingly, once the Court holds that ABX1 27 is unconstitutional, then that bill could not have added Part 1.9 to the Health and Safety Code, and ABX1 26 never became effective.[16]

### B. ABX1 26 And 27 Are Closely Related, Not "Completely Separate."

*Amici* also err in contending that severability analysis does not apply because ABX1 26 and 27 are "two completely separate pieces of legislation." CCJ Br. 5. Instead, as CTA concedes, "what passed the Legislature was a compromise *package*." CTA Br. 10 (emphasis added). Accordingly, the two statutes work together to achieve a single

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( . . . continued)
Santa Clara Unified School District ("SCUSD"). SCUSD Br. 9 & n.9. But neither *amicus* offers any support for its claim that invalid legislation can achieve indirectly what it cannot achieve directly.

[16]Given the circumstances of their passage, it is hardly surprising that the severability clauses in ABX1 26 and 27 are internally inconsistent in multiple respects. These bills were introduced in the Legislature only one day before they were passed. The previous versions of the bills were simply placeholders. CALIFORNIA LEGISLATURE, *Assembly Weekly History* 25 (2011-12 1st Ex. Sess. Sept. 15, 2011); A.B. X1 26, 2011-12 1st Ex. Sess. (Cal. 2011) (as introduced by Assembly Member Blumenfeld, May 19, 2011); A.B. X1 27, 2011-12 1st Ex. Sess. (Cal. 2011) (as introduced by Assembly Member Blumenfeld, May 19, 2011). Moreover, both bills were passed on June 15, 2011, and five other bills were approved by both Houses on the same day. *See* CALIFORNIA LEGISLATURE, *Assembly Daily Journal* 209-15 (2011-12 1st Ex. Sess. June 15, 2011) (A.B.1X 22, 23, 26, 27, 28, 29, and S.B. 85).

result: the diversion of $1.7 billion from the RDAs to schools and special districts.

Because of this, the two parts of the "package" are joined at the hip in multiple respects. Most obviously, ABX1 26 does not apply to those RDAs whose cities and counties opt in to ABX1 27. ABX1 26 therefore contains numerous references to ABX1 27. *See, e.g.*, §34172(a)(2) (community with dissolved RDAs may create new entity under ABX1 27 once dissolved RDA's obligations are paid); §34189 (CRL inapplicable to RDAs operating under ABX1 27). Conversely, ABX1 27 contains numerous references to ABX1 26. *See, e.g.*, §34193(a) (agencies that enact ordinance opting-in to ABX1 27 exempt from ABX1 26); §34193(b) (agencies that don't enact opt-in ordinances covered by ABX1 26); §34194.5 (city/county cannot create new agency if former agency was dissolved under ABX1 26 until all prior debts and enforceable obligations are retired, the required ordinance is adopted, and the required remittances are paid). Moreover, both statutes contain provisions describing what happens when an RDA moves from the ABX1 27 regime to dissolution under ABX1 26. §§34178.7, 34188.8, 34191(a) (all in ABX1 26); §34195(a) (in ABX1 27). Indeed, the severability provision that *amici* rely on to preserve ABX1 26 appears in ABX1 27. In light of the inextricably intertwined nature of the two statutes, whether ABX1 26 and 27 are characterized as a single "package" (CTA Br. 10) or two "single bill[s]" (*id.* at 37) is irrelevant: traditional severability analysis is appropriate—as the Legislature itself recognized in drafting a severability clause.

### C. ABX1 26 Is Not Functionally Severable.

For the reasons discussed above, the Court must look beyond the severability clause in ABX1 27 to determine whether ABX1 26 is "grammatically, functionally, and volitionally separable." *Calfarm*, 48 Cal. 3d at 821. As we now show in this and the following section, ABX1 26 does not pass the last two of these tests.

*Amici* assert that ABX1 26 "exists independent of ABX1 27" and is therefore functionally severable. CCJ Br. 5. But this ignores the fact

that ABX1 26 will function completely differently when joined with ABX1 27 than it would on its own. The Legislature expected that most or all of the RDAs would continue operating under ABX1 27. *See* Pet. Mem. 14 n.9. Accordingly, it could not have expected ABX1 26 to affect more than a handful of agencies. In contrast, if ABX1 26 were left to stand without ABX1 27, *all* the RDAs would be dissolved because *none* would be able to opt in under the latter statute. Accordingly, the provisions of ABX1 26 cannot "stand on their own, *unaided by the invalid provisions*" of ABX1 27 (*People's Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316, 332 (1986) (emphasis added)), when the effect of severing ABX1 26 from ABX1 27 is to give the former statute a vastly more sweeping effect than the Legislature expected it to have.

ABX1 26 is also functionally inseverable for a second reason. As *amicus* Community Redevelopment Agency of the City of Los Angeles ("LA/CRA") has explained, ABX1 26 authorizes the creation of truly new RDAs under ABX1 27 once the existing RDAs are dissolved and their debts are paid off. §34172(a)(2); *see* LA/CRA Br. 23-24. That portion of ABX1 26 will necessarily be inoperable if ABX1 27 is declared invalid. Likewise, ABX1 26 contains provisions that address what happens when RDAs first opt-in to ABX1 27 and then stop making the necessary payments. §§34178.7, 34188.8, 34191(a). These provisions, too, will never take effect if ABX1 27 is invalid. Accordingly, invalidation of ABX1 27 "would . . . affect the function or operation of the remaining provisions" of ABX1 26, and the latter is therefore not functionally severable. *Legislature v. Eu*, 54 Cal. 3d 492, 535 (1991).

### D. ABX1 26 Is Not Volitionally Severable.

As Petitioners' Reply Memorandum demonstrated, there is overwhelming evidence that the Legislature would not have enacted ABX1 26 by itself, had it known that ABX1 27 was invalid. This evidence, most of which is undisputed, includes the Legislature's refusal to dissolve the RDAs despite a gubernatorial request; its assumption that

most or all of the RDAs would opt-in to ABX1 27; its analysis of the fiscal impact of the two bills together coupled with its failure to analyze the impact of ABX1 26 alone; and—last but not least—the numerous statements made during the legislative debates that ABX1 26 and 27 constituted a "two bill package" that would "mend [redevelopment], not end it"—statements that were *indispensable* to enactment of the two bills. *See* Pet. Rep. Mem. 27-31.

Because none of the *amici* directly address the issue of volitional severability, we need not repeat these arguments. However, we shall respond to what they do say about legislative intent.

*First*, CPF challenges Petitioners' reliance on the statements made in the floor debates, citing a century-old case for the proposition that "'legislative debates are not appropriate sources of information from which to discover the meaning of the language of a statute.'" CPF Br. 14 n.8 (quoting *Ex parte F.B. Goodrich*, 160 Cal. 410, 416-17 (1911)). However, in the hundred years since that decision, both this Court and the Courts of Appeal have relied on floor debates and statements for just that purpose. *See, e.g.*, *People v. Cogswell*, 48 Cal. 4th 467, 478 (2010) ("As the author of that legislation explained to his fellow senators: 'The purpose of [section 1219(b)] is not only to protect victims of sexual assault from further victimization . . . .' (Sen. Floor Statement by Sen. Dan McCorquodale on Sen. Bill No. 1678, May 1, 1984.) Enactment of section 1219(b) reflects the Legislature's view that sexual assault victims generally should not be jailed for refusing to testify against the assailant"); *Ailanto Props., Inc. v. City of Half Moon Bay*, 142 Cal. App. 4th 572, 589 (2006); *Branciforte Heights, LLC v. City Of Santa Cruz*, 138 Cal. App. 4th 914, 937-38 (2006). Moreover, Petitioners are not citing the floor debate as a guide to interpreting ABX1 26, but instead to answer the quite different question of whether the Legislature would have enacted that statute if it had known that ABX1 27 was invalid. And as to *that* issue, the cases hold uniformly that the statutory text is not conclusive. *See* Pet. Rep. Mem. 26.[17]

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[17]In all events, CPF's suggestion that the meaning of legislation can (continued . . . )

In contrast to CPF, CTA admits that "some individual legislators were uncomfortable with eliminating redevelopment agencies altogether." CTA Br. 36. But its disparaging reference to "isolated statements of individual legislators" (*id.*) does not controvert Petitioners' showing that the votes of these "individual legislators" were *essential* to passage of ABX1 26, which cleared the Senate with no votes to spare. Similarly, CTA ignores the undisputed fact that these legislators would not have voted for ABX1 26 but for multiple assurances from the President Pro Tem of the Senate that the bills would "not in fact eliminate redevelopment but . . . reduce[] its size." Petitioners' Motion for Judicial Notice ("Pet. MJN"), Ex. 2 at 19:5-7; *see* Pet. Rep. Mem. 29-31.

Moreover, CTA's acknowledgement that "some individual legislators were uncomfortable with eliminating redevelopment agencies altogether" (CTA Br. 36) seriously understates the case in another respect: it ignores the many statements made by the President Pro Tem and the bills' author about the relationship between the two bills. For example, the President Pro Tem told his colleagues that "when you look at the two-bill package, what we've essentially said . . . is that redevelopment should, in fact, continue; but it will have fewer resources than it has today." Pet. MJN, Ex. 2 at 18:13-16. Similarly, Assemblyman Blumenfield, stated that he would "present both of [the bills] together, since they really work hand in hand." Pet. MJN, Ex. 3 at 2:18-19. In contrast, there is not a single statement anywhere in the legislative record that even remotely suggests that the Legislature would have wanted to eliminate all the RDAs, and do away with redevelopment completely, by enacting ABX1 26 alone.

Finally, CTA is tone-deaf to the consequences that ignoring the numerous statements made by the President Pro Tem and the author of the bills would have on the Legislature's ability to function. While

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( . . . continued)
be divined only from the words of a statute must be taken with a grain of salt, in light of its heavy reliance on the words of Petitioners' Executive Directors as a guide for interpreting Proposition 22. *See* pp.18-19 & n.11, *supra*.

legislators may be presumed to know that contents of the legislation they approve, in the real world in which legislators operate, that presumption is a fiction. *See* DAN WALTERS, *Fiona Ma's Words Echo Book on California Capital*, SACRAMENTO BEE, Oct. 3, 2011, http://sacbee.com/2011/10/03/v-print/3954911/dan-walters-fiona-mas-words-echo.html. Accordingly, legislators must be able to rely on assurances made by their elected leaders and the bills' authors as to what bills will and won't do—particularly for complex, interrelated bills that were introduced in the Legislature only a day before passage. A ruling that such assurances are of no consequence, and trumped by complex severability provisions buried deep within lengthy bills that were never discussed during the legislative debates, will erode trust between Members of the Legislature and make legislative consensus even more difficult to reach than it already is. That is not a result that this Court should advance.

*Second*, CTA acknowledges that "[t]he Budget Act was built on an assumption that most existing redevelopment agencies would opt for the voluntary alternative provided by ABX1 27." CTA Br. 10. Indeed, as the materials compiled by *amicus* LA/CRA demonstrate, the Legislature actually *decreased* the amount it would otherwise have spent on education by $1.7 billion because it expected that amount to be generated by ABX1 26 and 27. *See* LA/CRA Br. 18; LA/CRA MJN, Ex. 3 at 1-1, 2. However, the general fund will only receive a $1.7 billion benefit from the bills if all or nearly all RDAs participate in ABX1 27 and thereby escape dissolution under ABX1 26.[18]

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[18]CTA asserts that the $1.7 billion figure includes "estimates of payments under both ABX1 26 and 27." CTA Br. 39. This claim is based on an excerpt from the LAO's after-the-fact analysis of the FY 2011-12 budget, which stated that elimination of the RDAs under ABX1 26 would provide an unspecified amount of "additional funds" to the schools. *Id.* at 38. However, this analysis was not before the Legislature when ABX1 26 and 27 were enacted. What *was* before the Legislature, in both its analysis of the two bills and its analysis of the budget, exclusively presumed that the state would receive $1.7 billion from *both* bills—a prediction that could come true only if all or nearly all of the RDAs opted in to ABX1 27. *See* Pet. Rep. Mem. 27-28. In (continued . . . )

It is therefore indisputable that severing ABX1 26 from 27 would drastically expand the reach of the former statute far beyond what the Legislature intended. In such circumstances, where the invalid portion of a statute limits the scope of the valid portion, the courts have found the statute as a whole inseparable. For example, in *Dillon v. Municipal Court*, 4 Cal. 3d 860 (1971), a city enacted an ordinance that "prohibit[ed] parades or civic demonstrations . . . without first obtaining a permit from the City." *Id.* at 863. After holding the permitting provisions invalid for lack of standards (*id.* at 870-71), the Court considered the city's claim that the ordinance's prohibition on parades and demonstrations could be severed from the invalid permit provisions. The Court rejected severability, finding that it would invalidly turn a licensing ordinance into a complete prohibition:

> To sever subdivision (a) from the invalid remainder of the ordinance would effectively ban all parades in Seaside. Such a result clearly contravenes the intention of the City of Seaside, which passed this section to provide a method of licensing, not prohibiting demonstrations. (*Id.* at 872 (emphasis omitted))

*Dillon* involved a criminal statute, but the same logic applies to statutes in other contexts. For example, two Courts of Appeal have considered severability in the context of a tax statute that permitted corporations "to deduct a portion of the dividends they received from another corporation when those dividends were included in the payer's measure of California franchise, income or alternative minimum tax." *River Garden Ret. Home v. Franchise Tax Bd.*, 186 Cal. App. 4th 922, 931-32 (2010). After the statute was held unconstitutional under the Commerce Clause because it discriminated against out-of-state corporations (*Farmer Bros. Co. v. Franchise Tax Bd.*, 108 Cal. App. 4th 976 (2003)), several taxpayers contended that the offending portion of the statute, which limited deductions to dividends paid by California corpo-

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( . . . continued)
short, none of the *amici* have countered Petitioners' showing that the Legislature never considered the fiscal impact of ABX1 26 alone, in contrast to its laser-like consideration of the fiscal impact of the two bills together.

rations, should be severed to permit a taxpayer to claim a deduction received from either an in-state or an out-of-state corporation. But the courts refused to do so: "To excise the language imposing this limitation . . . would impart a purpose to the statute that is quite different from the one enacted by the Legislature." *River Garden Ret. Home*, 186 Cal. App. 4th at 936; *Abbott Labs. v. Franchise Tax Bd.*, 175 Cal. App. 4th 1346, 1359 (2009).

The logic that led the courts to reject severability in these cases applies to this case as well. As the floor debates demonstrate, the Legislature did not pass ABX1 26 and 27 to eliminate redevelopment, as the Governor had unsuccessfully urged it to do. Indeed, the bills passed the Legislature only after the bills' author and the President Pro Tem repeatedly assured legislators whose votes were needed for enactment that it would do no such thing. *See* Pet. Rep. Mem. 29-31. Instead, the Legislature enacted ABX1 26 and 27 to permit redevelopment to continue, albeit with "fewer resources," if the payments required by the latter statute were made. Pet. MJN, Ex. 2 at 18:16.

Given this record, it is highly unlikely that ABX1 26 "would likely have been adopted" as a stand-alone statute by the Legislature. *See Calfarm*, 48 Cal. 3d at 822. That is because adopting ABX1 26 by itself would dissolve *all* the RDAs, rather than just a few, which is exactly what the Legislature had previously refused to do. Nor can it be said that ABX1 26 "would likely have been adopted" had the Legislature known that its provision permitting cities and counties to establish *new* RDAs once existing debts had been repaid would similarly be inoperative.

Even if the record were less clear than it is, the Court should let the Legislature itself determine whether Petitioners' analysis of legislative intent is correct. If the Court finds ABX1 27 invalid, upholds ABX1 26 and finds it to be inseverable from ABX1 27, the path will be clear for the Legislature to pass a stand-alone dissolution bill if, contrary to all indications, it really wants to bring about the unconditional dissolution of all RDAs. *That* would be a reliable—indeed, an infallible—indication of legislative intent. After all, the Legislature faced

with this hypothetical bill will be the same Legislature that enacted ABX1 26 facing the same budget crisis. Under these circumstances, then, a finding of inseverability invites, rather than precludes, further legislative action.

But that will not be true if the Court reaches the opposite result. If the Court holds that the two bills are severable, but misreads the Legislature's intent, Petitioners will have no recourse. The RDAs will be eliminated, and their assets dissipated, even if that is not a result that the Legislature would have chosen *ab initio*. In short, holding the two statutes inseverable will respect the legislative process—and the views expressed by those legislators who voted for ABX1 26 and saw it enacted only because they were told that it would *not* eliminate redevelopment.

## IV.

## *AMICI*'S REMAINING CONTENTIONS ARE MERITLESS.

The foregoing sections of this Memorandum address the principal contentions made by *amici*. But the rest of their claims are equally meritless.

*First*, many of the *amici* seem to think that they have some legal or moral claim to the tax increment revenue that now goes to the RDAs. For example, CPF refers to "the natural distribution of property tax funds." CPF Br. 16. Similarly, the Santa Clara Unified School District refers to property taxes that "belong to school districts that are instead diverted to RDAs." SCUSD Br. 1. Of course, the existing system of property tax allocation is the result of constitution and statute, rather than nature. Moreover, the claim that these revenues somehow belong to schools and other entities ignores the fact that RDAs only receive the tax *increment—i.e.*, the difference between the value prior to redevelopment and the increased value afterwards. Art. XVI, §16. In addition, RDAs do not receive all the increment, but only "that amount necessary to pay the costs of redevelopment." *Redevelopment Agency*, 21 Cal. 3d at 266. There is nothing unfair about that.

*Second*, CTA contends that invalidating ABX1 26 and 27 would deprive the schools of $1.7 billion in the middle of the fiscal year. CTA Br. 14-15, 39-40. This is incorrect. As CTA elsewhere acknowledges, the $1.7 billion provided to the schools by the two bills replaced money that the State was obligated to provide under Proposition 98. *See id.* at 8. Accordingly, the State would be obligated to replace these funds if the bills are invalidated. The schools will lose no money.

*Third,* one brief filed by two *amici* contends that Proposition 22 violated the single-subject rule because it affected local funds used for several different purposes. Municipal Officials for Redevelopment Reform ("MORR") Brief 6. This claim is frivolous. Proposition 22 addressed a single subject—the allocation of taxes and fees that flow to local governments—with a single purpose—to limit the Legislature's power over those funds. It is far less wide-ranging than Proposition 13 or the Political Reform Act, both of which were upheld by the Court against single-subject challenges. *Fair Political Practices Comm'n v. Superior Court*, 25 Cal. 3d 33, 37-43 (1979); *Amador Valley*, 22 Cal. 3d at 229-32.

*Fourth*, the same *amici* contend that Proposition 22 was a revision of the Constitution, rather than an amendment. MORR Br. 7. However, Proposition 22 did not "*make a fundamental change in the nature of the governmental plan or framework established by the Constitution.*" *Strauss v. Horton*, 46 Cal. 4th 364, 443 (2009) (emphasis in original). Again, Proposition 22 is far more modest than Propositions 13 or 140, which the Court upheld against a similar challenge. *See Legislature v. Eu*, 54 Cal. 3d at 506-12; *Amador Valley*, 22 Cal. 3d at 221-29.

*Fifth*, the same *amici* contend that Proposition 22 unlawfully affected pre-existing legislation. MORR Br. 7-9. This claim is irrelevant, because ABX1 26 and 27 were enacted after Proposition 22 was approved by the voters.

*Sixth*, LAUSD complains that the Legislature has repeatedly short-changed the schools by circumventing Proposition 98. LAUSD Br. 7 ("the Proposition 98 'guarantee' is regularly circumvented through budgetary schemes that delay, and in some cases permanently diminish,

the funding actually provided to schools"); *see generally id.* at 7-9. True or not, that is no reason for the Court to endorse the Legislature's attempt to circumvent Proposition 22.

## CONCLUSION

The Petition for Writ of Mandate should be granted.

DATED: October 7, 2011.

Respectfully,

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## CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.204(c) and 8.486(a)(6)

Pursuant to California Rules of Court 8.204(c) and 8.486(a)(6), and in reliance upon the word count feature of the software used, I certify that the attached Petitioners' Answer To The *Amici* Briefs contains 13,703 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

DATED: October 7, 2011.

STEVEN L. MAYER

W03 100711-112080007/PB10/1660174/F

## PROOF OF SERVICE

I, Tracey L. Douglas, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On October 7, 2011, I served the following document(s) described as:

**PETITIONER'S ANSWER TO THE *AMICI* BRIEFS**

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☐ **BY ELECTRONIC MAIL:** by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.

☐ **BY FEDERAL EXPRESS:** by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☐ **BY MESSENGER:** I served the documents described above on the parties listed below by causing them to be delivered by hand to the person(s) at the address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on October 7, 2011.

Tracey L. Douglas