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In the Supreme Court of the State of California

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, and JOHN F. SHIREY, **Petitioners,** v. ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers, **Respondents.**	Case No. S194861

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RETURN TO PETITION FOR WRIT OF MANDATE; SUPPORTING MEMORANDUM

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Pursuant to this Court's Amended Order to Show Cause issued August 17, 2011, respondents Ana Matosantos, sued in her official capacity as Director of the California Department of Finance, and John Chiang, sued in his official capacity as California State Controller,[1] hereby file this return to the Petition for Writ of Mandate filed July 15, 2011 by petitioners California Redevelopment Association, League of California Cities, City of Union City, City of San Jose, and John F. Shirey (collectively, "petitioners").

INTRODUCTION

In 1945, in an effort to rehabilitate or redevelop blighted areas and to create postwar jobs, the California Legislature passed legislation which allowed cities and counties to establish Redevelopment Agencies ("RDAs"). Over time, hundreds of RDAs were created, and they now receive billions of public dollars each year.

During the past decade, as RDA coffers grew, California struggled with massive budget deficits. When Governor Brown took office in January of 2011, California's immediate and long-term fiscal problems were immense. A $25.4 billion budget deficit existed for 2011-12 and an annual structural deficit of up to $21.5 billion was projected into the future. Making matters worse, the global economic meltdown had reduced the state's revenue base by 30 percent. Against this backdrop, the Governor and the Legislature crafted the 2011-12 budget.

The budget passed by the Legislature and signed by the Governor not only closed the fiscal year's $25.4 billion imbalance, it also reduced the

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[1] All positions and argument on the merits of the petition advanced herein are made only on behalf of respondent Ana Matosantos, Director of the California Department of Finance. Respondent John Chiang, California State Controller, does not take a position on the merits of this litigation.

structural deficit by more than $15 billion. One significant component of the 2011-12 budget was legislation that eliminated RDAs and called for their operations to be systematically wound down. Simultaneously, the Legislature created a voluntary program for cities and counties to use should they wish to continue pursuing redevelopment. Through their petition for writ of mandate, petitioners seek to have the Legislature's actions declared unconstitutional.

Petitioners claim that RDAs are protected by the California Constitution, and that the Legislature was therefore prohibited from terminating the RDA program through ABX1 26. This contention is meritless. The state constitutional provisions that limit the Legislature's powers over RDAs do not prevent a legislative repeal of the RDA program. RDAs are creatures of statute—and their existence is not guaranteed in the state Constitution—so the Legislature was free to dissolve them. Proposition 22, the initiative that underlies most of petitioners' claims, only limits legislative tampering with the stream of income flowing into and out of RDAs, not with the Legislature's power to end the RDA program entirely.

Petitioners also assert that ABX1 27, which created a new and voluntary redevelopment program, violates Proposition 22. This contention also lacks merit. Proposition 22 blocked forced shifts and transfers of funds from RDAs. ABX1 27 is wholly voluntary and does not force RDAs or cities and counties to do anything with their funds or to participate in the new voluntary alternative redevelopment program. Although petitioners complain of the "pressure" some communities might feel to opt in to ABX1 27 because of perceived benefits of a running a redevelopment program, such "pressure" is of no legal consequence. Cities and counties face a straightforward policy choice, and are free to make their own decision about what is best for their community.

STATEMENT

Since their creation in 1945 to rehabilitate "blighted areas" within the state and "create postwar employment" (Stats. 1945, ch. 1326, p. 2478, § 2), there has been tremendous growth both in the number of RDAs, and in the portion of the state's tax revenues they receive. Statewide, the amount of public funds allocated to RDAs has grown exponentially in the last 30 years, with RDAs receiving "funds amounting to fifty million dollars in 1975 and $3.5 billion in 2005." (Schouten, *Clear as Mud: Chapter 98 and California's Community Redevelopmet Law* (2007) 38 McGeorge L.Rev. 216, 217.) Currently, RDAs collect "12 percent of total statewide property taxes" amounting to $5.2 billion each year. (Legis. Analyst, Policy Brief, *Should California End Redevelopment Agencies?*, February 9, 2011, pp. 1, 9.) Thus, RDAs receive almost as much property tax revenue annually as cities (18 percent) and nearly half as much as counties (25 percent) but are not required to provide local services like police and fire protection. (*Ibid.*)

RDAs receive tax dollars through a "tax increment" financing system under which property taxes generated by properties within a redevelopment project are divided between local government and the RDA. Under this system, if the properties within an RDA go up in value, whether due to redevelopment activities or reflecting economy-wide increases in property values, and therefore generate more property taxes, RDAs get to keep that portion—or increment—of taxes attributable to any increased property value. If this growth in property tax revenues were not diverted to RDAs through the increment system, counties, local fire and transportation districts, and schools would instead receive these sums. Having such a large portion of state tax proceeds in the hands of RDAs "has gradually shifted property tax revenues away from schools and other local agencies." (Legis. Analyst, Analysis of the 2011-12 Budget, *Governor's Redevelopment Proposal*, January 18, 2011, p. 1.)

In January of 2011, California faced a projected budget deficit of more than $25 billion, the largest budget shortfall in the state's history. Part of Governor Brown's proposal to balance the budget was a plan to dismantle RDAs and establish an alternative method for pursuing redevelopment goals at the local level. Citing both the scope of the budget crisis and the "significant policy shortcomings of California's redevelopment program," the Legislative Analyst's Office "agree[d] with the Governor's proposal to end" RDAs. (Legis. Analyst, Policy Brief, *supra*, *Should California End Redevelopment Agencies?*, p. 12.) Ultimately the Legislature passed, and Governor Brown signed, two new laws that abolished the RDA program while creating a new program for local governments to continue redevelopment efforts if they chose to. Those two acts are ABX1 26 and ABX1 27.

ABX1 26 eliminated RDAs, and established a process for paying their legitimate debts and winding down their affairs. As a budget trailer bill, ABX1 26 took effect immediately upon being signed by the Governor and chaptered by the Secretary of State. (Cal. Const., art. IV, § 12, subd. (e).) ABX1 26 barred RDAs from selling new bonds or incurring new debt. (Cal. Health & Saf. Code, § 34162.)[2] On October 1, 2011, RDAs will be dissolved, and "successor agencies" will take over their role. (§ 34172.)[3] The successor agencies will wind down the business of the RDAs, including making payments on existing bonds and other obligations. County auditor-controllers will then take the property tax proceeds that

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[2] All statutory references are to the Health & Safety Code, unless otherwise noted.

[3] Operation of this section, along with much of ABX1 26 and ABX1 27, was stayed by this Court's August 11 and August 17, 2011 orders.

would have been available to the RDA and place them into a Redevelopment Property Tax Fund, which is distributed to local agencies and schools after RDA obligations are paid. (§§ 34182, subd. (c)(1), 34183, subd. (a)(4).)

For those cities and counties that wish to continue pursuing redevelopment, ABX1 27, entitled "Voluntary Alternative Redevelopment Program," created a new path. To operate an alternative RDA, the community must agree to set aside a proportional share of the $1.7 billion in savings anticipated by the elimination of RDAs. (§ 34194.) The majority of these funds are placed in an Educational Revenue Augmentation Fund to be used for education; a smaller fraction is used to support local special districts, such as those offering fire protection and transit districts. (*Ibid.*) The alternative RDA may, but is not required to, reimburse the community for the payments made into these special funds. (§ 34194.2.) In 2011-12 only, the payments from the Educational Revenue Augmentation Fund are designed to offset payments to schools required by Proposition 98. (Assem. Budget Com., Concurrence in Senate Amendments analysis of Assem. Bill No. ABX1 27 (2011-2012 First Ex. Sess.) as amended June 14, 2011, p. 4.) In future fiscal years, the payments by alternative RDAs will total approximately $340 million for education and $60 million for local special districts. (§§ 34194, subd. (c)(1)(A); 34194.4, subd. (a)(2).)

ABX1 26 specified that it would take effect contingent on the enactment of ABX1 27. (ABX1 27, § 14.) But while the *enactment* of ABX1 26 was made contingent on the passage of ABX1 27, the *continuing validity* of ABX1 26 was not. ABX1 27 provides that, should its provisions be held invalid, ABX1 26 "shall continue in effect." (ABX1 27, § 4.) Thus, the Legislature directed that even if ABX1 27 is found constitutionally infirm, and ABX1 26 is not, ABX1 26 will survive.

RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE

Respondents Ana Matosantos and John Chiang[4] answer the Petition for Writ of Mandate as follows. Each numbered paragraph below answers the corresponding numbered paragraph in the petition. All allegations not expressly admitted are denied.

1. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

2. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

3. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

4. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

5. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

6. Respondent Matosantos admits that she is the Director of the California Department of Finance. Except as expressly admitted, respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies the remaining allegations.

7. Respondent Chiang admits that he is the Controller of the State of California. Except as expressly admitted, respondent has no information or belief upon the subject of this paragraph and, placing his denial on that ground, denies the remaining allegations.

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[4] Except as to paragraph 7 of the writ petition, which the Controller admits, the Controller lacks information or belief sufficient to admit or deny the allegations of the petition and on that basis denies the allegations. The Controller denies any liability for attorneys' fees or costs that may be claimed by petitioners.

8. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

9. Respondent admits that this case concerns the constitutionality of ABX1 26 and ABX1 27, and that these two acts were approved by the Governor on June 28, 2011. All other allegations are denied.

10. Denies.

11. Respondent admits that she intends to enforce ABX1 26 and ABX1 27. All other allegations are denied.

12. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

13. Denies.

14. Respondent has no information or belief upon the subject of this paragraph and, placing her denial on that ground, denies.

15. Respondent admits that petitioners are seeking a stay of ABX1 26 and ABX1 27. All other allegations are denied.

16. Respondent admits that petitioners have submitted a memorandum and declarations. To the extent petitioners allege that material facts or allegations have been incorporated by reference, respondent denies said material facts and allegations.

AFFIRMATIVE DEFENSE

The petition fails to state facts sufficient to constitute a cause of action.

PRAYER

Respondent prays that:

1. Judgment be entered in favor of respondent and against petitioners, and that petitioners take nothing by the petition.

2. Respondent be awarded costs of suit and any other relief the Court deems proper.

ARGUMENT

Petitioners analyze ABX1 26 and ABX1 27 as though they were a single legislative action. But conflating the analysis in this manner suggests a constitutional conflict with Proposition 22 where none, in fact, exists. There is no doubt that the Legislature was constrained by Proposition 22 from requiring RDAs to pay local fire and transit districts and local schools on the state's behalf. If ABX1 26 or ABX1 27 required such payments, their constitutionality could legitimately be questioned. But as petitioners now concede, "no city or county is legally required to make the AB1X 27 payments." (Petitioner's Informal Reply In Support of Petition "Pet. Inf. Reply," p. 5.) Properly considered as independent enactments, both acts pass constitutional muster.

I. THE LEGISLATURE HAD THE POWER TO TERMINATE ITS RDA PROGRAM.

The bulk of petitioners' argument focuses on perceived defects in ABX1 27. Meanwhile, they devote little discussion to ABX1 26—a distinct and independently operative act with the discrete purpose of dissolving and winding down RDAs. By petitioners' account, the Legislature demanded that cities and counties "either make the payments required in AB1X 27 or have their RDAs dissolved by AB1X 26." (Pet., p. 5.) To petitioners, "AB1X 26 was intended to be, and is, a means to an end, not an end in itself." (Pet. Inf. Reply, p. 4.)

But the truth is otherwise. ABX1 26 did not make a contingent threat to dissolve all RDAs, as petitioners suggest. Rather, the measure *terminated* the RDA program – *independently* of whatever action a locality might choose to take under ABX1 27. And the payments contemplated by ABX1 27 are not designed to return RDAs to a non-dissolved status; they are part of an optional new Voluntary Alternative Redevelopment Program ("VARP"), under which cities and counties may pursue redevelopment

efforts going forward. ABX1 26 cannot reasonably be characterized as a "means" to ensure participation in VARP, as petitioners suggest. As noted earlier, ABX1 26 would continue in effect even if ABX1 27 were annulled. (ABX1 27, § 4.)[5]

A. Applicable principles.

When considering acts of the Legislature, courts must presume that a statute is valid "unless its unconstitutionality clearly, positively, and unmistakably appears." (*People v. Falsetta* (1999) 21 Cal.4th 903, 913.) This deference and the presumption of validity afforded all legislative acts arise because the California Legislature "may exercise any and all legislative powers which are not expressly . . . denied to it by the [California] Constitution." (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) "In other words, [courts] do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited." (*Ibid.*) Any "restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used." (*Ibid.*) Thus, "[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Ibid.*)

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[5] In addition, the provisions of ABX1 26 apply to all local entities that do not participate in the VARP, as explained in the Senate Floor Analysis of ABX1 26: "To the extent a community elects not to participate in the voluntary alternative program, this bill would direct the property tax otherwise available to the RDAs: (1) to continue 'pass-through payments' to schools and other local governments; (2) to fund outstanding RDA-related debt and administration; and (3) to schools and other local taxes agencies." (Sen. Rules Com., Off. of Floor Analyses, 3d reading analysis of Assem. Bill No. ABX1 26 (2011-2012 First Ex. Sess.) as amended June 14, 2011, pp. 1-2.)

These core principles are not platitudes to be brushed aside; they establish the high burden petitioners must meet to obtain relief. And applying these principles here, it is evident that petitioners have not shown that the Legislature exceeded its authority, or violated the Constitution, by dissolving RDAs or by offering cities and counties a new method for pursuing redevelopment.

B. RDAs were created by the Legislature.

RDAs are, at best, statutorily created subdivisions of the state. (See *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 279 ["Only the state is sovereign and, in a broad sense, all local governments, districts, and the like are subdivisions of the state"].)[6] Petitioners concede, as they must, that RDAs are "organized and existing under the California Community Redevelopment Law (Health & Safety Code, §§ 33000 *et seq.*) . . . ." (Declaration of John F. Shirey in Support of Petition for Writ of Mandate ("Shirey Decl."), ¶ 4; see also *Pacific States Enters., Inc. v. City of Coachella* (1993) 13 Cal.App.4th 1414, 1424-1425 ["Redevelopment agencies are governmental entities which exist by virtue of state law and are separate and distinct from the communities in which they exist"]; 11 Miller & Starr, *Cal. Real Estate* (3d ed. 2001) § 30B:2 ["The redevelopment agency is solely a creature of state statute, exercising powers delegated to it by the state legislature in matters of state concern, and the scope of its authority is, therefore, defined and limited by the Community Redevelopment Law"].)

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[6] For example, in California, cities "are mere creatures of the state and exist only at the state's sufferance." (*Board of Supervisors of Sacramento County v. Local Agency Formation Comm'n* (1992) 3 Cal.4th 903, 914

The Constitution expressly recognizes the Legislature's authority to amend the law creating RDAs. (See Cal. Const., art. XVI, § 16 [establishing taxation rules for property "in a redevelopment project established under the Community Redevelopment Law as now existing *or hereafter amended*..."] (emphasis supplied).) And unlike cities or counties, which exist in perpetuity, RDA lifespans are limited by statute. (See, e.g., § 33333.2, subd. (a)(1) [a redevelopment plan using tax increment funding may incur indebtedness for a period not to exceed 20 years from the date of plan adoption, with possible extension to a maximum of 30 years].) This is a pivotal point because, as explained in the next section, as entities created (and whose lifespan is limited) by statute, RDAs may be dissolved by statute.

C. Barring a constitutional provision to the contrary, all legislative acts may be undone by the Legislature.

In ABX1 26, the Legislature found: "Redevelopment agencies were created by statute and can therefore be dissolved by statute." (ABX1 26, § 1, ¶ (h).) This is a correct statement of law. As explained above, the Legislature may exercise any and all legislative powers that are not expressly or by necessary implication denied to it by the constitution. (*Valdes v. Cory* (1983) 139 Cal.App.3d 773, 780.) A corollary rule holds that when a power, right, or entity is created by legislative action, it can subsequently be repealed by the Legislature. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 518 [where a "power is statutory, the Legislature may eliminate it"]; *In re Watkinson's Estate* (1923) 191 Cal. 591, 595 [rights not "safeguarded or secured *in futuro* by any provision of our Constitution" are "subject to legislative control, and are creatures of legislative will" and "the Legislature has the power to take [them] away"]; 13 Cal. Jur. 3d, Constitutional Law, § 386 ["the legislature has the power to take away by statute that which has been given by statute except when to do

so would obviously amount to the impairment of a vested right"]; see, e.g., *Broadmoor Police Prot. Dist. v. San Mateo Local Agency Formation Comm'n* (1994) 26 Cal.App.4th 304, 311 [state can alter or abolish municipal corporations].)

The Legislature's power to create, alter, and, ultimately eliminate RDAs is underscored by its frequent amendments and reforms of the California Community Redevelopment Law. "Throughout its history, the legislature has reined in the redevelopment establishment whenever the cynical use of redevelopment as a financial tool has gotten out of hand." (Fulton & Shigley, *Guide to California Planning* (3d ed. 2005) 260.) In the last three decades, the Legislature has responded to critics of RDA activities "by enacting various reforms" including "a comprehensive redevelopment reform measure" in 1994. (*Hesperia Citizens for Responsible Dev. v. City of Hesperia* (2007) 151 Cal.App.4th 653, 661.) Constitutional challenges to these reforms have been unsuccessful. (See, e.g., *Glendale Redev. Agency v. County of Los Angeles* (2010) 184 Cal.App.4th 1388, 1403 [collecting cases which provide that "the Legislature may, constitutionally, charge costs against the tax increment and thus diminish an agency's receipt of the tax increment"].)[7]

The legislative prerogative to dissolve what it once created is well established. Over time, the Legislature has acted again and again to remove or eliminate boards, agencies, and even cities that it created. For example,

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[7] In contrast, the Legislature may not dissolve entities or offices of constitutional origin. (See, e.g., Cal. Const., art. XI, § 1, subd. (a) [county boundaries may not be changed by Legislature without election in county]; *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 756 [because the Superintendent of Public Instruction "is a constitutional officer" his "office cannot be extinguished by the Legislature"].)

1972, the Legislature disincorporated the City of Hornitos (Stats.1972, ch. 650, p. 1209), which had been established by statute in 1869.[8]

Viewed in this context, the Legislature's dissolution of its RDA program in ABX1 26 is unremarkable. Absent some constitutional safeguard, the California Community Redevelopment Law falls within the scope of legislative creations that can be undone by legislation.

D. There are no constitutional provisions immunizing RDAs from legislative dissolution.

Petitioners concede that in the absence of a constitutional "mandate," the Legislature has the "general power" to "abolish agencies it has previously created." (Pet. Inf. Reply, p. 7.) Accordingly, petitioners must demonstrate where a mandate protecting RDAs from legislative dissolution appears in the Constitution. Petitioners argue that there are provisions in the Constitution that implicitly "presume the continued existence of RDAs," thus making their dissolution unconstitutional. (Pet., p. 32.) Specifically, petitioners contend that two provisions added to the Constitution by Proposition 22 (article XIII, § 25.5, subds. (a)(7)(A) & (a)(7)(B)), along with Proposition 22's uncodified section 9 and article XVI, section 16, preclude the dissolution of RDAs. (Pet., pp. 31-34.) None of these provisions prevent legislative repeal of the RDA program.

Petitioners insist that the provisions of Proposition 22 be "liberally construed." (Pet., p. 22.) They also suggest that, as a "remedial provision," Proposition 22 be given a "liberal construction." (Pet., p. 29.) But petitioners are employing the incorrect standard. As a limitation on the Legislature's authority, Proposition 22 must be *strictly* construed:

[8] All told, seventeen cities have been disincorporated in California's history. (Knox & Hutchinson, *Municipal Disincorporation in California* (2009) 32 Cal. Bar Assn. J. of Pub. L. 1, 3.)

> Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In other words, we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited. Secondly, all intendments favor the exercise of the Legislature's plenary authority: If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. *Such restrictions and limitations imposed by the Constitution 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*, *supra*, 5 Cal.3d at p. 691; accord, *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.)

(*State Personnel Bd. v. Department of Personnel Admin.* (2005) 37 Cal.4th 512, 523 (internal quotations and citations omitted) (emphasis supplied).) Only upon a finding of "a clear constitutional mandate" may a court overturn a legislative act as *ultra vires*. (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284–285.) No such mandate exists here.

1. RDA dissolution is not barred by section 25.5, subdivisions (a)(7)(A) or (a)(7)(B).

Petitioners correctly note that article XIII, section 25.5, subdivision (a)(7)(A) prohibits the state from requiring an RDA "to pay, remit, loan, or otherwise transfer, directly or indirectly" income allocated to the RDA to or for the benefit of the state, and that subdivision (a)(7)(B) prohibits the state from requiring an RDA to "use, restrict or assign" its income for the benefit of the state. (Pet., p. 31-32.) That much is not in dispute. In petitioners' view, however, both of these provisions "*a fortiori*" "presume the continued existence of the RDAs," and "prevent[] the Legislature from

abolishing these agencies." (Pet., pp. 6, 32.) This is where the parties diverge.

The search for restrictions or limitations on the elimination of RDAs in sections 25.5(a)(7)(A) and (B) is futile. The plain language of those subdivisions only bars the Legislature from enacting a statute requiring an RDA to "pay, remit, loan or otherwise transfer" funds allocated to the RDA (§ 25.5, subd. (a)(7)(A)), or to "use, restrict, or assign" those funds to third parties (§ 25.5, subd. (a)(7)(B)). These restrictions are explicitly directed at preventing the Legislature from forcing an RDA to make payments or transfers, but section 25.5 is otherwise silent on RDAs. Nothing in those subdivisions in any way restricts, or limits, the Legislature's ability to amend or repeal the statutes that created RDAs in the first instance.

Had the voters intended Proposition 22 to place such a profound limitation on the Legislature's power, as petitioners assert they did, the voters would have had to express it in a clearer and more direct fashion. Indeed, the section petitioners rely upon enumerates a list of items that "the Legislature shall not enact a statute to do," and dissolution of RDAs is not among the prohibitions. (See art. XIII, § 25.5(a).) Had the drafters of Proposition 22 wanted to include a protection for the California Community Redevelopment Law, they could easily have prohibited its repeal. Manifestly, it is not for this Court to supply matters omitted by the drafters of the proposition. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [in construing a statute a court's role is "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted"].) At most, section 25.5(a) limits how RDA funds are to be treated *while RDAs exist*; it in no way prohibits the Legislature from eliminating the RDA program it created.

In *California School Boards Association v. Brown* (2011) 192 Cal.App.4th 1507, the court rejected an effort, similar to that of petitioners here, to imply a term not found in the text of a proposition. In that case, the petitioners argued that Proposition 1A impliedly restricted the Governor's power to use the line-item veto to reduce an appropriation for a state mandated program when it said "the *Legislature* shall either" appropriate fully or suspend a mandate. (*Id.* at p. 1522.) The petitioners maintained that the use of the term "Legislature" necessarily prevented the Governor from eliminating funding for mandated programs with a line-item veto. The Court of Appeal found no support for that argument in the ballot materials:

> As the ballot pamphlet argument thrice refers to the key language as limiting the power of "the state," not "the Legislature," and the ballot pamphlet argument *nowhere* suggests that the language would allow the Legislature to act in derogation of the constitutional provisions regarding the Governor's power of veto, we conclude that the voters did not intend the term "the Legislature" to mean the Legislature acting exclusively.

(*California School Boards Ass'n v. Brown*, *supra*, 192 Cal.App.4th at p. 1524 (original emphasis).)

Similarly, the text of Proposition 22, as well as the ballot arguments, reliably show that the voters intended only to prevent legislative raids on RDA funds. The same materials, however, are silent on the Legislature's ability to terminate the RDA program entirely. As in *California School Boards Association*, an unspoken intent should not be supplied by this Court.

2. RDA dissolution is not barred by uncodified section 9 of Proposition 22 or section 16 of article XVI.

Petitioners also rely upon uncodified section 9 of Proposition 22 and its reference to section 16 of article XVI of the Constitution as a basis for finding ABX1 26 to be *ultra vires.*[9] According to petitioners, "the first two sentences of Section 9" reveal that voters who approved Proposition 22 "believed that Article XVI, Section 16 requires the annual allocation of property tax increment to the redevelopment agencies." (Pet., p. 32.) Therefore, petitioners reason, one purpose of Proposition 22 was to "prohibit the Legislature from diverting these funds 'after the taxes have been allocated to a redevelopment agency.'" (Pet. at p. 32, quoting section 9.) On this flawed predicate, petitioners conclude that "a constitutional

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[9] Section 9 of Proposition 22 provides:

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

provision that prevents the Legislature from divesting RDAs of their annual tax increment necessarily prevents the Legislature from abolishing these agencies." (Pet., p. 33.)

Petitioners' conclusion must be rejected. The language of Proposition 22 makes it clear that the initiative was directed solely at preventing the state from requiring RDAs to transfer funds to the state or to third parties on behalf of the state "after the taxes have been allocated to a redevelopment agency." (Proposition 22, § 9.) On this point, Proposition 22 is unambiguous. Meanwhile, the proposition is silent regarding the continuing existence of the RDA program itself. As noted above, "[a]bsent ambiguity, [courts] 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." (*Lesher Commc'ns, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543 (citation omitted).)

It is important to recognize that at the time of Proposition 22's adoption, another constitutional provision, article XVI, section 16, expressly recognized the Legislature's power over the statute that created RDAs. Section 16 provides taxation rules for property held by RDAs. The terms of section 16 are permissive: the "Legislature *may provide*" for RDAs to use tax increment financing "in a redevelopment project established under the Community Redevelopment Law as now existing *or hereafter amended*...." (Cal. Const., art. XVI, § 16 (emphasis supplied).) Significantly, both *Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 729-730, and *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 452, recognized that article XVI, section 16 gave the Legislature the authority to amend the redevelopment statutes to alter taxation practices with respect to RDAs. Yet Proposition 22 left article XVI, section 16 untouched.

Petitioners bear the burden to show a clear constitutional mandate limiting legislative authority to abolish the RDA program. (*County of Riverside v. Superior Court*, *supra*, 30 Cal.4th at pp. 284–285.) They have not done so. The Legislature's actions here—well within its plenary legislative power—should accordingly be upheld. (*Methodist Hosp. of Sacramento v. Saylor*, *supra*, 5 Cal.3d at p. 691 [the Legislature may exercise any and all legislative powers that are not expressly or by necessary implication denied to it by the Constitution].)

3. The Legislature was not barred from restricting RDA powers during the dissolution process by section 25.5(a)(7)(B).

Petitioners observe that section 25.5(a)(7)(B) provides that "the Legislature may not require an RDA 'to use, *restrict*, or assign a particular purpose for [taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI] for the benefit of the State, any agency of the State, or any jurisdiction.'" (Pet., p. 30 (original emphasis).) Petitioners assert that because Chapter 24, Part 1.8 of ABX1 26 "freezes" RDAs and blocks them from undertaking transactions from the date of its effectiveness through the time that the RDAs are wound down, the freeze provisions "restrict the RDAs' use of their tax revenue" in violation of section 25.5(a)(7)(B). (Pet., p. 31.) Petitioners also maintain that ABX1 26's stated goal "to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that these assets and revenues that are not needed for enforceable obligations may be used by local governments to fund core governmental purposes" is merely an improper attempt to use RDA tax revenue for the benefit of non-RDA governmental entities in violation of section 25.5(a)(7)(B). (Pet., p. 31.)

The restrictions in Chapter 24, Part 1.8 of ABX1 26 are not directed at the use of tax increment by RDAs. Rather, they are statutory restrictions on the power of RDAs calculated to maintain the status quo pending final dissolution. The first statute in Part 1.8 makes this point expressly. (See § 34161 ["on the effective date of this part, no agency shall incur new or expand existing monetary or legal obligations except as provided in this part."]. As creatures of statute, RDAs powers are statutory, and subject to restriction by the Legislature. (*Hesperia Citizens for Responsible Dev. v. City of Hesperia*, *supra*, 151 Cal.App.4th at p. 661 [recognizing legislative authority to alter Community Redevelopment Law].) Hence, the Legislature's limitations on the authority of RDAs to incur new obligations does not run afoul of section 25.5(a)(7)(B).

And contrary to petitioners' assertions, the restrictions in section 25.5(a)(7)(B) do not speak to how RDA funds are to be treated during dissolution; they address how RDA funds are treated during an RDA's operational phase. Under the California Community Redevelopment Law, when a redevelopment project ends, "the county auditor distributes all of the revenues that formerly were considered 'tax increment revenues' [of the RDA] to local agencies in the area." (Legis. Analyst, Policy Brief, *supra*, *Should California End Redevelopment Agencies?*, p. 4.) Proposition 22 did not alter or amend this procedure, or even mention it. It could hardly be unlawful for the Legislature to restrict RDA financial transactions to ensure the orderly wind-down of RDA affairs and to preserve RDA assets so that the bond obligations and legitimate debts of the RDA could be paid. Indeed, had it failed to provide for this, the state could be accused of unconstitutionally impairing contracts. (See *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 559 [retroactive alteration of the contract rights of state bondholders may constitute an impermissible impairment of contract].)

II. THE LEGISLATURE WAS WITHIN ITS AUTHORITY TO CREATE A VOLUNTARY REDEVELOPMENT PROGRAM AND TO SET THE TERMS AND CONDITIONS FOR PARTICIPATION.

Just as the Legislature was free to use its plenary legislative authority to eliminate the RDA program it once created, the Legislature had authority to establish a new type of redevelopment program, as it did in ABX1 27. None of petitioners' arguments appear to dispute that core principle. Instead, petitioners' challenge to ABX1 27 rests on the false and irrelevant premise that ABX1 26 was intended solely as an inducement for local governments to participate in the VARP.

A. ABX1 27 is an act separate and distinct from ABX1 26.

Petitioners maintain that the Legislature made a "threat" to dissolve RDAs in ABX1 26, and then "compelled" payments of RDA funds in violation of Proposition 22 to permit the RDAs to continue to exist in ABX1 27. (Pet., pp. 21, 24-26.) This is incorrect. The Legislature terminated the existence of RDAs as a stand-alone act, without regard to actions that cities or counties might subsequently take under ABX1 27:

> All redevelopment agencies and redevelopment agency components of community development agencies created under Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) that were in existence on the effective date of this part *are hereby dissolved and shall no longer exist as a public body, corporate or politic.*

(ABX1 26, ch. 2, § 34172, subd. (a)(1) (emphasis supplied).)

Having eliminated RDAs and set up a protocol for winding up their affairs, the Legislature then offered cities and counties that wanted to continue to pursue redevelopment goals an alternative and voluntary means

of doing so.[10] The VARP provides an opportunity for local government entities that were willing to share some of their revenues with local schools, fire districts, and transportation districts to revive their redevelopment programs in a manner more consistent with new policy objectives and fiscal realities. Local entities that choose not to participate in the VARP are not penalized; their RDAs will be wound down through specified means. But those that chose to opt in were required, no later than October 1, 2011, to pass an ordinance declaring their desire to do so, after which they would receive an invoice from the Department of Finance reflecting the payment they will be asked to make to the local districts.

B. Projected budgetary savings were based upon both ABX1 26 and ABX1 27.

In an effort to support their claim that ABX1 26 was intended to force participation in the VARP, petitioners argue that "the Legislature was told that the entire $1.7 billion payment would be made, which assumes that *none* of the RDAs would be dissolved." (Pet. Inf. Reply, p. 4. (original emphasis).) Not so. The legislative history of ABX1 26 reveals that the Legislature was *not* anticipating full participation in the VARP, and that the savings it anticipated through ABX1 26 and ABX1 27 was based on a *combination* of voluntary payments under VARP *and* flows of tax revenues formerly directed to RDAs under ABX1 26:

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[10] Petitioners' portrayal of ABX1 26 and 27 as a unitary scheme by the Legislature to evade the dictates of Proposition 22 is belied by the terms of ABX1 27. The Legislature clearly states that the VARP created in ABX1 27 is "distinct and severable" from the provisions of ABX1 26 which freeze and dissolve RDAs and that "those provisions shall continue in effect if any of the provisions of [ABX1 27] are held invalid." (ABX1 27, § 4.) The Legislature's clear resolve to dissolve RDAs must be analyzed separately from its decision to offer an alternative, optional, redevelopment program going forward.

> A $1.7 billion State General Fund solution is scored from the two bills. It is anticipated that most cities and counties that created an existing RDA will elect to participate in the alternative voluntary redevelopment program. To the extent a community elects not to participate in the voluntary alternative program, this bill would direct the property tax otherwise available to the RDAs: (1) to continue "pass-through payments" to schools and other local governments; (2) to fund outstanding RDA-related debt and administration; and (3) to schools and other local taxes agencies.

(Sen. Rules Com., Off. of Floor Analyses, 3d reading analysis of Assem. Bill No. ABX1 26 (2011-2012 First Ex. Sess.) as amended June 14, 2011, pp. 1-2.)

The potential revenue flows generated solely from eliminating RDAs are extensive. The Governor's January 2011 budget proposal assumed that "tax increment revenues from dissolved redevelopment areas would be approximately $5.2 billion in 2011-12." (Legis. Analyst, Policy Brief, *supra*, *Should California End Redevelopment Agencies?*, p. 9.) After deducting $2.2 billion to pay redevelopment debts and obligations, and $1.1 billion for existing pass-through agreements to counties, schools and special districts, the Governor projected that more than $1.7 billion would remain to offset state costs. (*Ibid.*) Following the passage of ABX1 26 and ABX1 27, the Department of Finance projected that if no entity opted into the VARP set up by ABX1 27, or if ABX1 27 were annulled and ABX1 26 was left intact, the state would receive $1.1 billion annually in general fund relief. (Preliminary Offering Statement Dated September 6, 2011 for $5,400,000,000 State of California 2011-12 Revenue Anticipation Notes, Series A-1 and Series A-2, Introduction, page A-15.)[11] Accordingly,

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[11] A copy of the Preliminary Offering Statement is available on the State Treasurer's website: www.treasurer.ca.gov/pos/rans.asp. An excerpt (continued...)

even if no local governments participated in the VARP, the potential for savings on the scale needed to achieve the budget solution contemplated by the Legislature can be found in ABX1 26 alone.

C. Proposition 22 is not violated because no payments are required or compelled by ABX1 27.

All of petitioners' arguments regarding the unconstitutionality of ABX1 27 rest upon the same false premise—that the voluntary payments called for in ABX1 27 are "compelled," "required," or "mandated" in violation of the Constitution. (See, e.g., Pet., p. 22 ["payments must be made"]; p. 24 ["compel them to make payments"]; p. 27 ["payments compelled by ABX1 27"]; p. 36 ["Legislature cannot compel use of property tax proceeds"].) These arguments, as discussed above, rest upon mischaracterizations of subdivision (a)(7) of section 25.5. That subdivision, again, states that "the Legislature shall not enact a statute to . . . [r]equire a community redevelopment agency" to direct its funds in a specified manner. (Cal. Const., art. XIII, § 25.5, subd. (a)(7).) Petitioners' characterization of ABX1 27's voluntary payments as mandatory is the linchpin to their case; thus, if these payments are not *required*, there is no constitutional violation and their arguments collapse.

In the petition itself, petitioners allege that the statutes at issue "effectively require," or "compel" or "mandate" ABX1 27's payments. (Pet., pp. 5, 7, 22.) Petitioners now concede that "in this case, no city or county is *legally required to make the AB1X 27 payments.*" (Pet. Inf. Reply, p. 5 (emphasis supplied).) Petitioners maintain, however, that cities and counties with RDAs will "be under hydraulic pressure" to join the

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(...continued)
of the relevant portions of it are attached as Exhibit C to the Request for Judicial Notice being filed by Respondent.

VARP and make the voluntary payments under ABX1 27. (Pet., p. 14.) Such "pressure," if it exists, is not proscribed by Proposition 22.

Petitioners contend that *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 319 ("*SCOPE*") controls the outcome here. Respondent respectfully disagrees. In *SCOPE*, the Legislature released certain funds to counties on the condition that the counties limit pay raises for their employees in fiscal year 1978-79. (*Id.* at p. 304.) In doing so, the Legislature "declared *null and void* any provision of 'a contract, agreement, or memorandum of understanding between a local public agency and an employee organization or an individual employee which provides for a cost of living wage or salary increase' in excess of the increase provided for state employees." (*Id.* at p. 305 (original emphasis).) The Court found that because "constitutional power cannot be used by way of condition to attain an unconstitutional result," the Legislature "could not require as a condition of granting those funds that the local agencies impair valid contracts to pay wage increases." (*Id.* at p. 319 (emphasis supplied) (citation omitted).) Relying upon this language, petitioners contend that this is "precisely what the Legislature did when it attempted to use its supposed power over the continued existence of RDAs to compel them to make payments that would have been prohibited by section 25.5(a)(7)(A) had they been commanded directly by the Legislature." (Pet., p. 24.)

The circumstances of this case are plainly distinguishable from *SCOPE*; here there is no constitutional violation. By declaring counties' employment contracts null and void, the legislation in *SCOPE* violated the contract rights of thousands of people, a direct constitutional violation that was expressly linked to the offer of funds to the counties. In contrast, the acts challenged by petitioners do not infringe on any contract or constitutional rights. Indeed, ABX1 26 goes to great lengths to ensure that

all bondholders and others who have enforceable rights against the RDAs are protected and receive their payments. (See discussion in Section I.D.3, *supra.*) Further, as demonstrated above, because there is no constitutional "right" for RDAs to exist at all, terminating the RDA program through ABX1 26 works no constitutional violation. Finally, the lack of compulsion to join the VARP makes all payments under ABX1 27 strictly voluntary, removing it from Proposition 22's coverage. *SCOPE* has no application to this case.

D. Merely asking cities and counties to make difficult policy choices does not violate the Constitution.

Reduced to its essence, petitioners' claim is that cities and counties have been compelled to share funds in violation of Proposition 22 because it would be economically advantageous for them to be able to continue operating their RDAs, and that they therefore have no choice but to tender the funds called for by ABX1 27.[12] But the choice is genuine and the offer being made does not violate the Constitution.

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[12] Petitioners' claims that "calamitous" harms will be created for the communities which do not participate in the VARP (Pet., pp. 14-15) do not withstand scrutiny. ABX1 26 expressly provides that RDAs can continue to make payments as they are due and meet its obligations during the initial phase of wind down. (§§ 34167, subd. (f), 34169.) Once successor agencies are in place, they expressly have the power to (1) pay the debts of the RDA (§ 34177, subd. (a)), (2) dispose of RDA assets "in a manner aimed at maximizing value" (§ 34177, subd. (e)), (3) collect sums owed to the RDA for rent or loans (§ 34177, subd. (f)), (4) transfer "housing functions and assets" to an appropriate entity (§ 34177, subd. (g)) and (5) continue to "oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties." (§ 34177, subd. (i).) Thus, even those localities that do not participate in the VARP will have the assets formerly held by their RDAs preserved and maintained in an appropriate fashion.

As explained above, there is little doubt that the Legislature was empowered to dismantle a community redevelopment scheme of its own creation. Stated otherwise, the Legislature could have taken no further action after dissolving RDAs. Merely dissolving the RDA program would have left approximately $1.1 billion annually for local services. (See pp. 22-23, *supra.*) Taking the additional step of offering a new, voluntary redevelopment program does not make the repeal of RDA program any less effective. The voluntary redevelopment program merely provides an opportunity for those cities and counties that want to pursue redevelopment to do so, albeit on a different footing reflecting current policy objectives and fiscal realities.

Petitioners confuse hard policy choices with legal compulsion. It may be a difficult choice for the cities and counties that had RDAs to decide whether to participate in the VARP or, alternatively, to allow their RDAs to be wound down pursuant to ABX1 26 and conduct future redevelopment efforts using their traditional revenue streams and not tax increment funding. But it is unmistakably a choice. And hard choices are the order of the day in California in 2011. Solving a budget gap exceeding $25 billion left the Governor and the Legislature with many tough choices. The statutes at issue are but two examples of the difficult choices they made to balance the budget.[13]

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[13] The difficult budgetary choices presented by the current fiscal climate cannot be understated. The Legislature ultimately reduced expenditures by $15 billion, including reducing CalWORKS grants to their lowest level since 1987, reducing the California Department of Corrections and Rehabilitation's inmate population by 25 percent; cutting statewide support to the judicial branch by over $700 million; reducing the state's support for the University of California and California State University by 22 and 25 percent, respectively; reducing the state workforce by 5,500 employees; and increasing the co-pay for recipients of Medi-Cal health

(continued...)

E. The voluntary payments specified in ABX1 27 do not otherwise violate the Constitution.

Petitioners raise three additional constitutional challenges to ABX1 27. First, they maintain that the "payments compelled by AB1X 27 violate Article XIII, Sections 25.5(a)(1) and (a)(3) to the extent they are made with property tax proceeds." (Pet., p. 34.) Second, petitioners maintain that the payments "compelled by AB1X 27 violate Article XIII, Section 24(b) to the extent they are made with the proceeds of local taxes other than property tax." (Pet., p. 36.) Finally, they argue that the "RDA reimbursement provision in AB1X 27 violates Article XIIIB, section 6(b)(3)." (Pet., p. 38.)

It is true that the three sections cited by petitioners each restrict the Legislature's ability to adjust the distribution of certain tax proceeds. But ABX1 27 does not require that these restricted categories be tapped, and expressly contemplates that local governments need not use these categories of restricted tax proceeds to make payments under the VARP. Section 34194.1 subdivision (a) provides that a city or county "making remittances to the county auditor-controller pursuant to Section 34194 or 34194.5 *may use any available funds not otherwise obligated for other uses*." (Emphasis supplied.) Thus, those entities that choose to participate in the VARP need not use restricted tax proceeds and can use whatever revenue source they desire. Moreover, these arguments assume that the payment schedule set out in ABX1 27 is "compelled" or "mandated." But as petitioners conceded in their informal reply in this action, and as explained in detail above, there is no legal compulsion present in ABX1 27.

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benefits. (See 2011-12 State Budget at pp. 3-4, available online at www.ebudget.ca.gov/pdf/Enacted/BudgetSummary/Introduction.pdf.) In addition, if certain revenue targets are not met, the Budget provides for a reduction in education spending of $1.9 billion, including reducing the school year by seven days. (*Id.* at p. 4.)

(Pet. Inf. Reply, p. 5.) And without compulsion, there is no constitutional violation. Finally, ABX1 27 does not alter property tax allocations or ratios. All taxes flow to the cities and counties and then those entities make their own voluntary choice about how to allocate and spend them. The salient point is that it is the city or county's choice, not the Legislature's.

III. EVEN IF THE COURT INVALIDATES ABX1 27, ABX1 26 SHOULD REMAIN IN FORCE.

Petitioners' attack on ABX1 26 and ABX1 27 as a unitary act by the Legislature ignores the fact that each measure must be considered on its own merits. These were independent statutes, and the invalidation of one should have no legal effect on the other. To reinforce this principle, the Legislature expressly addressed the question of whether ABX1 26 should remain in force should ABX1 27 be invalidated:

> The provisions of Section 2 of this act are distinct and severable from the provisions of Part 1.8 (commencing with 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code and those provisions shall continue in effect if any provisions of this act are held invalid.

(ABX1 27, uncodified § 4. p. 11.) This provision makes the Legislature's intent to save ABX1 26 explicit. (See *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1207 [noting that "[i]n some cases, a statute contains a severability clause that makes explicit the legislative preference"].)

"Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. . . ." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821.) Courts usually ask if what remains after severance "is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute." (*Ibid.*) Here, that exercise is not necessary.

The Legislature passed ABX1 26 and ABX1 27 as independent measures. Although interrelated, the provisions of ABX1 26 eliminating the RDA program stand entirely on their own. Even if ABX1 27 is not upheld, ABX1 26 winds down the affairs of RDAs in a manner that protects property rights and the public fisc while achieving substantial budgetary savings, an obvious goal of the Legislature.[14] Accordingly, if the Court finds any portion of ABX1 27 invalid, it should uphold ABX1 26 as contemplated by the Legislature.

IV. THE STATUTORY DATES FOR COMPLIANCE SHOULD BE ADJUSTED DUE TO THE STAY.

This Court has asked the parties to brief the following questions in its order of August 17:

> Assuming solely for the sake of argument that the court's decision upholds both statutes and dissolves the existing stay, what effect would the stay have on the statutory dates for compliance, including those for enactment of an ordinance (Health & Saf. Code, § 34193, subd. (a)) and payment of the remittance amount (*id.*, § 34194, subd. (d))? If it becomes necessary to postpone the statutory compliance dates, what should the new dates be?

In response to the first question, many statutory compliance dates will have passed by the time the Court issues a decision. For example, section 34172, subdivision (a)(1) dissolves RDAs on October 1, 2011; section 34175, subdivision (b) transfers the assets of the former RDAs to successor entities on October 1, 2011; and section 34193, subdivision (a) requires a local entity to pass an ordinance by November 1, 2011 for the RDA to

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[14] Indeed, as discussed above, the budgetary savings from ABX1 26 *alone* is approximately $1.1 billion per year. (See p. 22, *supra*, and Exhibit C to Respondent's Request for Judicial Notice filed herewith.) Therefore a result that eliminates ABX1 27 but retains ABX1 26 leaves substantially intact the budget solution crafted for the current fiscal year and also provides over a billion dollars each year thereafter for future budget relief.

continue to exist under the VARP. Other statutory dates for compliance will be imminent when the Court issues its decision, such as section 34194, subdivision (d), which schedules annual remittance payments on January 15 and May 15, 2011. Finally, some other statutory compliance dates are further removed, such as requirements for county auditor-controllers to complete audits of former RDAs by March 1, 2012 (§ 34182, subd. (a)(1)), and the requirement that the California Law Revision Commission submit a redevelopment law cleanup bill to the Legislature by January 1, 2013. (§ 34189, subd. (b).)

Accordingly, if ABX1 26 and ABX1 27 are upheld, it will be necessary to modify or reform some statutory compliance dates. (*Kopp v. Fair Pol. Practices Comm'n.* (1995) 11 Cal.4th 607, 662 ["courts may legitimately employ the power to reform in order to effectuate policy judgments clearly articulated by the Legislature or electorate].)

Respondent submits that certain statutory deadlines should receive only a modest extension because they require less administrative work. Under the statutes, September 1, 2011 is the date by which RDA sponsors must opt-out of their role as successor agencies, if they so choose (§ 34172, subd. (d)(1)). October 1, 2011 is the date (1) on which RDAs are dissolved unless an ordinance or resolution opting into the VARP was passed (§§ 34172, subd. (a)(1); 34193, subd. (b)); (2) on which successor agencies are created to wind down the affairs of RDAs which did not opt-in to the VARP (§ 34173); (3) on which Redevelopment Property Tax Trust Funds ("RPTTF") are to be created (§ 34170.5, subd. (b)); (4) on which all assets of dissolved RDAs are to be transmitted to the successor agencies (§ 34175, subd.(b)); and (5) by which all VARP participants must file a statement of indebtedness (§34194, subd. (c)(2)(a)). November 1, 2011 is the date (1) by which local entities must adopt final ordinances or resolutions opting-in to the VARP (§ 34193, subd. (b)); and (2) on which the start period for

recognizing new debt for purposes of remittances due under the VARP begins (§34194, subd. (c)(2)(a)). December 1, 2011 is the date by which local entities must adopt final ordinances or resolutions opting-in to the VARP if an extension had been granted by the Department of Finance (§ 34194, subd. (b)(2)(L)(ii)). January 15, 2012 is the date on which the first payment due under the VARP must be made (§ 34194, subd. (d)). Respondent proposes that each of the foregoing deadlines be extended to 10 days after this Court's decision in this matter becomes final. This will give ample time for local entities to act, but ensure that they act promptly enough for the statutes to go into effect quickly.

Other deadlines in the statutes require more significant administrative work, and should be extended for longer periods of time. Respondent proposes that the draft Recognized Obligation Payment Schedule ("ROPS") due November 1, 2011 (§ 34177, subd. (l)(2)(A)) be extended to 40 days after this Court's decision in this matter becomes final, and that the successor agency report of insufficient funds to meet the ROPS due December 1, 2011 (§ 34183, subd. (b)) be extended 70 days after finality.

Respondent proposes that the three actions which must occur by December 15, 2011 (external auditor review of ROPS (§34177, subd. (l)(2)(A)), oversight board of successor agency approval of ROPS (§34177 subd. (l)(2)(B)), and delivery of ROPS to the Department of Finance, the State Controller and county auditor-controllers (§ 34177 subd. (l)(3)) be extended to 85 days after finality.

Respondent proposes that the two actions which must occur by January 1, 2012 (only payments listed on ROPS can be paid (§ 34177 subd. (a)(3)), and names of oversight board forwarded to the Department of Finance (§ 34179 subd. (a)), and the action which must occur by January 15, 2011 (Governor to fill oversight board vacancies (§ 34179 subd. (b)) be extended to 100 days after finality. Respondent proposes that the actions

which must occur by January 16, 2012 (county auditor-controllers distribute pass-throughs from RPTTFs (§ 34185), and county auditor-controllers distribute amounts for ROPS and administration to successor agencies (§ 34183, subds. (a)(2) and (a)(3)) be extended to 120 days after finality. Finally, Respondent proposes that the requirement that county auditor-controllers notify the Department of Finance of any failures to pay remittances called for under the VARP by 14, 2012 (§ 34194 subd. (d)(2)) be extended to 20 days after finality.

Adjusting these deadlines as requested should give the entities involved a sufficient opportunity to perform the required acts while also complying with this Court's order that ABX1 26 and ABX1 27 "if upheld, be implemented with as little delay as possible."

CONCLUSION

Petitioners have not met their burden to demonstrate that the challenged statutes violate the California Constitution. The Legislature was free to dismantle a redevelopment program of its own making, and because the alternative redevelopment program created by the Legislature is voluntary, it too passes constitutional muster. Respondent respectfully requests that the petition be denied on the merits.

Dated: September 9, 2011

Respectfully submitted,

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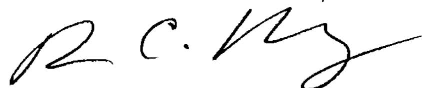

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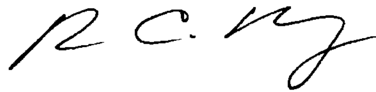
CERTIFICATE OF COMPLIANCE

I certify that the attached RETURN TO PETITION FOR WRIT OF MANDATE; SUPPORTING MEMORANDUM uses a 13 point Times New Roman font and contains 9,931 words.

Dated: September 9, 2011

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **California Redevelopment Association, et al. v. Matosantos, et al.**

No.: **S194861**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 9, 2011, I served the attached **RETURN TO PETITION FOR WRIT OF MANDATE; SUPPORTING MEMORANDUM** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 9, 2011, at San Francisco, California.

Janet Wong	J Wong
Declarant	Signature

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