Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff/Appellant/Petitioner,

vs.

CITY OF SANTA RAFAEL, et al.,

Defendants/Respondents.

PETITIONER'S REPLY BRIEF

On Review of the Published Decision of the Court of Appeal, First District, Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012] Appellate Case No. A138949

On Appeal from the Judgement of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding Superior Court Case No. CIV 1300112

Mark T. Clausen (Calif. SB# 196721)
Attorney at Law
769 Carr Avenue
Santa Rosa, California 95404
Telephone: (707) 235-3663
Facsimile: (707) 542-9713
Email: MarkToddClausen@yahoo.com

Attorney for Plaintiff/Appellant/Petitioner
Cherrity Wheatherford

Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff/Appellant/Petitioner,

vs.

CITY OF SANTA RAFAEL, et al.,

Defendants/Respondents.

PETITIONER'S REPLY BRIEF

On Review of the Published Decision of the Court of Appeal, First District, Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgement of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

Mark T. Clausen (Calif. SB# 196721)
Attorney at Law
769 Carr Avenue
Santa Rosa, California 95404
Telephone: (707) 235-3663
Facsimile: (707) 542-9713
Email: MarkToddClausen@yahoo.com

Attorney for Plaintiff/Appellant/Petitioner
Cherrity Wheatherford

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

SUMMARY OF ARGUMENT

The taxpayer standing statute, Code of Civil Procedure section 526a (section 526a), provides standing to a "citizen resident" of a "town, city or ... county of the state," "who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein."

Respondents insist that an "assessed" tax is one imposed directly on the citizen resident, such as real property taxes, and not one assessed on a third party and passed on to the citizen resident, who pays it at the time of purchase, such as sales and gasoline taxes imposed on retailers and commonly passed on to consumers. That is the narrow construction given the statute by the Court of Appeal in each of the five cases that have squarely addressed the issue presented by this appeal.[1] While petitioner respectfully disagrees with that construction and urges a more liberal reading of the statute which would provide standing to citizen residents who pay an "assessed tax" which is *either* imposed directly on them *or* passed on to them, it cannot be said that the Court of Appeal and respondents are clearly wrong on that specific point.

Clear error, however, appears when the Court of Appeal and respondents seek to go a step further by qualifying their core construction of the statute and greatly narrowing the reach of section 526a by picking and

---

[1] See *Wheatherford v. City of San Rafael* (1st Dist., Div. 1, 2014) 226 Cal.App.4th 460 (*Wheatherford*), depublished on grant of review; *Torres v. City of Yorba Linda* (4th Dist., Div. 3, 1993) 13 Cal.App.4th 1035 (*Torres*); *Cornelius v. Los Angeles County etc. Authority* (2nd Dist., Div. 4, 1996) 49 Cal.App.4th 1761 (*Cornelius*); *Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Co. Assn. of Governments* (2nd Dist., Div. 6, 2008) 167 Cal.App.4th 1229 (*Santa Barbara Co.*); *Reynolds v. City of Calistoga* (1st Dist., Div. 5, 2014) 223 Cal.App.4th 865 (*Reynolds*).

choosing among "assessed" taxes which they like– real property taxes and sales and gasoline taxes imposed on retailers– and those they do not– basically everything else, including income, telephone and utility taxes– and by requiring the tax to be assessed *by*– rather than *in*, as section 526a reads– the city, county or state against whom suit is brought, such that taxes imposed by the state, e.g., income tax, would not provide taxpayer standing to bring suit against a city or county, and taxes imposed by a city or county, e.g, real property tax, would not afford taxpayer standing to bring suit against the state.

That construction of section 526a imposes a direct nexus requirement– assessment of the tax *by* the city, county or state against whom suit is brought– nowhere found in the statute, and its acceptance would necessitate overruling several previous decisions of the Court holding that payment of real property taxes affords standing under section 526a to bring suit against cities, counties *and* the state.[2] Respondents have not asked the Court to overrule those decisions, nor has the Court of Appeal, but that is the outcome required if the Court were to accept the misguided notion that taxpayer standing reaches a city or county or the state only if the specific tax paid by the resident-citizen-plaintiff was assessed *by* the city or county or the state against whom suit is brought.

The language of section 526a is not a buffet from which respondents and the Court of Appeal may take the words they like and leave those they don't. If an "assessed" tax means a tax assessed *directly on* the citizen-

---

2

See, e.g., *Blair, supra,* 5 Cal.3d at pp. 267-270 and 285-286, fn. 21; *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 18-19 (*Irwin*); *Serrano v. Priest* (1971) 5 Cal.3d 584, 618 (*Serrano*).

resident-plaintiff, then *all* taxes assessed directly on citizen residents necessarily meet the requirement of section 526a, including real property taxes, income taxes, sales and gasoline taxes (as imposed on retailers, not as passed on to consumers), and telephone and utility taxes. And payment of any one of those taxes by a citizen resident of a city and county must be considered sufficient to support taxpayer standing to bring suit against that city and county and the state, and their agencies and officials, regardless of whether the tax is imposed *by* the city or the county or the state, as section 526a requires only that the tax be paid "therein"– i.e., *in* the city and county and state in which the citizen resides.

Such a construction is in keeping with the plain language of the statute and its legislative purpose, to "'enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the [direct] standing requirement,'"[3] as it imposes no restrictions on taxpayer standing based on the size (i.e., the amount) of the "assessed" tax and thus does not limit standing to real property taxpayers, whose tax assessment is generally larger than other forms of assessed taxes, but also extends standing to income taxpayers, retail sales and gasoline taxpayers (but not consumers to whom those taxes are passed on by retailers), and telephone and utility taxpayers, whose tax assessments are generally much smaller. Section 526a does not provide for a minimum threshold amount of an assessed tax payment or liability, so any assessed tax will do, no matter its size. Telephone and utility taxes are often minuscule, a dollar or two each month for the average resident taxpayer,

---

3

Van Atta v. Scott (1980) 27 Cal. 3d 424, 447 (*Van Atta*), quoting *Blair v. Ptichess* (1971) 5 Cal.3d 258, 267-268 (*Blair*).

while real property and income taxes are often quite large, easily reaching thousands, even tens of thousands of dollars in some cases. The language of section 526a does not discriminate between those taxes or any other assessed tax based on the amount of the tax.[4]

This construction also eliminates the wealth-based discrimination (i.e., due process and equal protection) problem inherent in the Court of Appeal's and Respondents' reading of the statute as limited to real property and retail sales taxpayers, who are commonly more wealthy than taxpayers that only pay other forms of assessed taxes, like income, telephone and utility taxes. If all forms of assessed taxes find coverage under section 526a, regardless of the size of the tax, then *all* citizen resident taxpayers– rich and poor alike– have access to taxpayer standing if they have paid, or are liable to pay, any form tax assessed directly on them *in* the city, county and state of their residence, against whom they have brought suit to challenge unlawful government activity.

Section 526a provides a unique avenue to advance the constitutional right to petition the court for redress of grievances against the government– state and local. Affording that right primarily, if not exclusively to the wealthier segment of the citizenry, who own real property and retail businesses and pay taxes assessed thereon, offends due process and equal protection principles and is contrary to the purposes of taxpayer standing– to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the [direct]

---

[4] This position was advocated by amicus curiae in the Court of Appeal in the trailing case granted review by the Court, *Dane v. City of Santa Rosa*, First Dist., Div. 2, A138355 [non pub. opinion], S221341.

standing requirement."

Given the choice between the extremely narrow construction of section 526a advanced by the Court of Appeal and Respondents, which limits taxpayer standing to those citizen residents who have paid or are liable to pay real property and retail business taxes, and the broad construction of the statute advanced by petitioner, which includes *all* forms of assessed taxes, no matter their size, and thus reaches real property taxpayers, income taxpayers, sales and gasoline taxpayers (be they retailers or consumers), and telephone and utility taxpayers, the Court should reject the former and accept the latter and thereby advance the purpose of the statute while simultaneously eliminating the constitutional questions which would otherwise arise.

As the complaint alleges that petitioner has paid all forms of assessed taxes *other than* real property taxes, the complaint is sufficient to afford petitioner taxpayer standing under section 526a, and therefore the decision of the Court of Appeal should be reversed with directions to the trial court to vacate the judgment of dismissal and permit the case to proceed on the pleadings and beyond.

I.

IN DECIDING WHICH TAXES QUALIFY UNDER SECTION 526a, THE COURT SHOULD CONSIDER ALL FORMS OF ASSESSED TAXES

Petitioner expressly alleged in the complaint that "[t]he taxes [she has] paid ...include sales tax, gasoline tax ... and *other taxes, ... routinely imposed by municipalities, counties and the state*, with the exception of property taxes which she does not pay because she does not own and cannot afford to buy real property in California[.]" (CT 1-2, italics added.) The

italicized language plainly imposes no limitation on the type of assessed tax petitioner has paid, other than the express exclusion of real property taxes. The plain language of the complaint therefore reaches income taxes and telephone and utility taxes assessed directly on petitioner by the city, county or state, as well as sales and gasoline taxes assessed on retailers and passed on to petitioner as a consumer.

The purpose of the parties' stipulated judgment of dismissal is to permit petitioner to challenge the existing appellate case law which is adverse to her position on the issue of taxpayer standing, without waiver of the right of appeal. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399-402.) That purpose would be undermined if petitioner is found to have waived the right to claim payment of one or more specific forms of assessed tax, other than real property taxes which she expressly alleged she has not paid.[5] Consequently, the Court should consider each of those assessed taxes, and any others that amicus or the Court may suggest are "routinely imposed by municipalities, counties and the state," when determining which forms of taxes satisfy section 526a.

---

[5] Respondents' argument seems to be that the stipulated judgment limits petitioner to a claim that her non-payment of real property taxes should not disqualify her from taxpayer standing under section 526a, without regard to the taxes she *has* paid. That limitation makes no sense because petitioner has expressly alleged that she has paid all forms of assessed taxes, *other than* real property taxes. The intent of the stipulated judgment is to permit petitioner to argue that one or more of taxes she *has* paid satisfy the requirements of section 526a. The language of the complaint is broad enough to include virtually any form of assessed tax imaginable, other than real property taxes, as the allegation is that petitioner has paid "sales tax, gasoline tax ... and *other taxes, ... routinely imposed by municipalities, counties and the state*." (CT 1-2, italics added.)

Moreover, even if the Court were to find that petitioner has not pleaded or has otherwise waived the right to assert one or more specific forms of tax payment as satisfying section 526a, as Respondents have claimed, it would still be appropriate for the Court to consider *all* forms of assessed taxes in its Opinion, for benefit of the general citizenry, state and local governments, and lower courts. This case marks the first time in over a century, since section 526a was enacted in 1909, that the Court will expressly address the question of what type of taxes satisfy section 526a. It would be contrary to the public interest and judicial economy to forgo consideration of one or more specific forms of tax payment simply because petitioner is perceived to have omitted that form of tax payment from her complaint or to have somehow waived it by virtue of positions taken in briefing in lower courts. (See, e.g., *Dix v. Superior Court* (1991) 53 Cal.3d 442, 454-455 and fn. 8 [although the plaintiff was found to lack standing to raise the issue under consideration (a trial court's authority in a criminal case to recall a sentence under Penal Code section 1170, subdivision (d)), this Court elected to reach the merits because the issues were "significant," "the case [was] fully briefed" and "all parties apparently [sought] a decision on the merits," and doing so would provide much-needed "guidance [for] the lower courts."]; *Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1202, fn. 8 [even if an issue is moot as to the parties, the merits may be reached "where the appeal raises issues of continuing public importance."].)[6]

6

Respondents protest that some of the facts included in the introductory portion of petitioner's opening brief are not found in the complaint, such as petitioner's status as a hardworking single mother, and respondents therefore ask that those facts be disregarded. If the Court finds merit in that contention it should treat those facts as hypothetical averments to the

II.

AN "ASSESSED" TAX IS AN "ASSESSED" TAX– RESPONDENTS MAY NOT PICK AND CHOOSE BETWEEN FORMS OF "ASSESSED" TAXES AND DISMISS THOSE TAXES WHICH ARE NOT TO THEIR LIKING

All parties agree, as does the Court of Appeal, that payment of real property taxes satisfies section 526a because such a tax is "assessed" directly on the property owner. (See *Wheatherford, supra,* 226 Cal.App.4th 460, depublished on grant of review; *Torres, supra,* 13 Cal.App.4th 1035; *Cornelius, supra,* 49 Cal.App.4th 1761; *Santa Barbara Co., supra,* 167 Cal.App.4th 1229; *Reynolds, supra,* 223 Cal.App.4th 865.) This Court has repeatedly recognized real property tax payment as one method of satisfying the statute's requirements. (See, e.g., *Blair, supra,* 5 Cal.3d at pp. 267-270 and 285-286, fn. 21; *Irwin, supra,* 65 Cal.2d 13, 18-19; *Serrano, supra,* 5

---

circumstances likely to be found amongst the class of the general citizenry who will be excluded from taxpayer standing if the Court of Appeal's decision is affirmed. In deciding which taxes satisfy section 526a and whether wealth-based discrimination is found in the statute, it is appropriate for the Court to hypothesize concerning the type of taxpayers who are included and excluded from section 526a under the parties' competing constructions of the statute. It is not difficult to image a hardworking single mother (or father), gainfully employed and taxpaying, who cannot afford to buy real property or start a retail business in the County of Marin or the surrounding Bay Area, and who is therefore excluded from taxpayer standing under the existing precedent of the Court of Appeal. The Court can just as easily envision other scenarios of exclusion from the statute's reach, such as a senior citizen on a fixed income who does not own real property and cannot afford to buy it– perhaps he once owned a home but gave it away to his daughter so he could see her enjoy it during his lifetime rather than pass it to her at death as the Court of Appeal posited would be one way for a non-real-property-taxpayer to obtain standing under section 526a.

Cal.3d 584, 618.)

Nonetheless, Respondents seek to disallow taxpayer standing to bring suit against a city or county or the state in circumstances where the specific tax paid by the resident-citizen-plaintiff was not assessed *by* the city or county or state against whom suit has been brought. Acceptance of that construction of section 526a would necessary require the Court to overrule its previous decisions holding that payment of real property taxes allows the citizen-plaintiff to bring suit against the city and county *and* state in which the real property is located, even if the plaintiff does not reside there. (*Ibid.*) This is because real property taxes are assessed by cities and counties, not the state.

Respondents do not acknowledge this. Instead, they argue that petitioner's payment of income taxes does not afford her standing to bring suit against Respondents, as city and county, because the state assesses income taxes, not cities and counties. Respondents look to *Cornelius, supra,* 49 Cal.App.4th 1761, where the Court of Appeal rejected income tax payment as providing grounds for taxpayer standing to sue the County of Los Angeles. The *Cornelius* court reasoned that income taxes are paid to the state, not counties, and generally have very little tangential relationship to the funding of local government; and if payment of income taxes is recognized as grounds for taxpayer standing to sue cities and counties and their agencies and officials, virtually everyone would have standing to do so because virtually everyone pays income taxes– "it would not be sound public policy to permit the haphazard initiation of lawsuits against local public agencies based only on the payment of state income taxes." (*Cornelius, supra*, 49 Cal.4th at pp. 1778-1779.)

Cornelius cited no authority to support is reasoning and conclusion

on this issue, and Respondents have cited none and Petitioner has found none. Earlier in its opinion, the *Cornelius* court recognized that payment of real property taxes qualifies one for taxpayer standing. (*Id.*, pp. 1776-1778.) The court did not explain how that could be so for purposes of suit against the state, if, as the court reasoned with respect to income tax payment, the tax paid by the plaintiff claiming standing under section 526a must be assessed *by* the government body (city, county or state) against whom suit is brought– as the state does not assess real property taxes, cities and counties do.

The plain language of section 526a provides standing to those citizen residents of a city or county or the state, who have paid or are liable to pay an assessed tax "therein." The language of the statute does not require that the tax be assessed *by* the city or county or the state against whom suit is brought, only that it be assessed "therein." Thus, payment of real property taxes by a citizen resident of a city or county or the state is sufficient to confer standing under section 526a to bring suit against the city and county and state of residence, because the real property taxes are assessed "therein." So, too, with respect to income taxes and all other forms of assessed taxes, including telephone and utility taxes and sales and gasoline taxes (as imposed on retailers and consumers), as such taxes are assessed *in* the city, county and state in which the taxpayer resides and are thus imposed "therein" as section 526a requires.

The nexus requirement that Respondents advance and the *Cornelius* court appears to have endorsed enjoys not support from the decisions of this Court. This Court has never suggested that section 526a requires the taxpayer-plaintiff to prove that he has paid or is liable to pay a tax assessed *by* (as opposed to *in*) the city, county or the state against whom suit is

brought, or to otherwise establish a nexus between the specific taxes paid by the plaintiff and the funding for the challenged government action. To the contrary, this Court has said taxpayer standing under section 526a lies even if the challenged government action is *not* funded by taxes and is instead are derived from such things as "the operation of a public utility or from gas revenues"[7] (*Blair, supra,* 5 Cal.3d at 268), and even if the challenged government action actually effects a *savings* of taxpayer funds. (*Blair, supra,* 5 Cal.3d 258, 267-270, 285-286 and fn. 21.)

The *Blair* plaintiffs' payment of real property taxes, found adequate to support standing under section 526a, bore no nexus to the funding for the claim and delivery laws which were successfully challenged as unconstitutional, with an injunction issued against city, county and state agencies and officials. In fact, the governmental defendants in *Blair* said the fees imposed by local agencies on those invoking the claim and delivery laws provided *more* revenue than was needed to fund the enforcement of those laws. This Court did not disagree, but nonetheless found that section 526a applied because its purpose is to remedy unlawful government action, not effect an overall savings of taxpayer funds. (*Ibid.*)

Without saying so, it appears the *Cornelius* court erroneously applied rules applicable to taxpayer actions in *federal* court, wherein "a plaintiff must allege a direct injury caused by the expenditure of tax dollars; the pleadings of a valid taxpayer suit must 'set forth the relationship between taxpayer, tax dollars, and the allegedly illegal government activity.'"

---

[7] It is on this passage from *Blair* that petitioner has relied to assert her payment of water and sewage fees as an additional basis for taxpayer standing. (CT 1-2.)

(*Cantrell v. City of Long Beach* (9th Cir. 2001) 241 F.3d 674, 683, internal citations omitted.) The restrictive federal rules of standing do not apply to taxpayer actions under section 526a brought in *state* court. (See *id.*, pp. 682-683, citing, among others, *Blair, supra*, 5 Cal.3d 258, 268.)

Also suspect is the *Cornelius* court's finding that a "haphazard initiation" of taxpayer lawsuits against city and county agencies by non-residents would ensue if payment of income taxes is recognized as grounds for taxpayer standing in actions against cities and counties. (*Cornelius, supra*, 49 Cal.4th at pp. 1778-1779.) For this finding the *Cornelius* court cited no authority– because there is none. This Court has never suggested that taxpayer standing should be curtailed in actions against local governments. To the contrary, the Court has consistently interpreted and applied section 526a broadly to permit such actions to proceed so that ordinary citizens may challenge government action which might otherwise go unchallenged as a result of the direct standing requirement. (*Blair, supra,* 5 Cal.3d 258, 267-270, 285-286 and fn. 21.)

The so-called "haphazard" litigation against agencies of cities and counties by taxpayers who do not reside therein, which *Cornelius* claimed should be avoided, is expressly authorized by this Court's decision in *Irwin, supra,* 65 Cal.2d 13, 18-20, where, based on equal protection principles, the Court found that natural persons must be permitted to bring suit against cities and counties in which they do *not* reside, just as corporations are permitted to do under section 526a. The *Cornelius* court was not at liberty to question the wisdom of this Court's jurisprudence or to depart from it.

Because the plain language of section 526a applies to any "assessed" tax, the *Cornelius* court and Respondents have no statutory basis on which to argue that income taxes "assessed" on resident citizens *in* a city or county

or the state do not provide taxpayer standing to bring suit against the city and county and state of residence. Likewise, all other forms of assessed taxes also satisfy section 526a, including sales and gasoline taxes on retailers, and telephone and utility taxes. It matters not which governing body (city, county or state) assesses the taxes, so long as the taxes are assessed therein– that is, *in* the city, county and state of residence of the taxpayer-plaintiff against whom suit is brought.

Respondents have offered no cogent reason to allow them or the Court of Appeal to cherry-pick from among the many forms of taxes assessed by cities, counties and the state, such that payment of real property taxes satisfies section 526a but payment of income taxes and telephone and utility taxes (which are indisputably assessed directly on the general citizenry as taxpayers) do not meet the requirements of the statute.

An "assessed" tax is an "assessed" tax and therefore *all* forms of taxes assessed directly on the taxpayer-plaintiff provide standing under section 526a. Accordingly, petitioner's payment of "sales tax, gasoline tax ... and *other taxes, ... routinely imposed by municipalities, counties and the state*, with the exception of property taxes" (CT 1-2, italics added), is adequate to afford taxpayer standing under section 526a.[8]

8

The question whether Respondents actually assess a specific tax which petitioner has paid, such as telephone taxes (which Respondents insist they do not impose) and utility taxes (which virtually every city and county in the state imposes) cannot be resolved from the face of the pleadings and is not appropriately addressed and resolved by the Court at this time. If the pleadings show taxpayer standing, the proper course is to reverse the judgment of dismissal and remand the matter to the trial court for further proceedings in which Petitioner must prove the allegations of the complaint. This appeal is not the time to resolve issues of proof.

III.

DISCUSSION OF THE COURT'S DECISION IN *TOBE* IS CONSPICUOUSLY ABSENT FROM RESPONDENTS' BRIEFS

The Court's decision in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1081-1086 (*Tobe*), is a significant barrier to Respondents' arguments and for that reason Respondents have taken great pains to ignore it.

In *Tobe*, the Court found taxpayer standing on behalf of two plaintiffs who were homeless and therefore obviously did not pay, and were not liable to pay, real property and retail business taxes. While it is true the Court did not describe the taxes which the plaintiffs had paid or were liable to pay, and did not expressly address or decide the issue presented here, it is difficult to believe the Court would grant taxpayer standing to two homeless persons if the Court were prepared to find that payment of real property and retail business taxes is the only means to satisfy section 526a. One would rightly presume the Court implicitly endorsed other forms of assessed taxes as meeting the requirements of section 526a. Petitioner, for one, finds such a presumption inherent in the opinion.

In reaching the merits of the appeal the Court is asked to consider the *Tobe* opinion and afford it the weight it is due– which petitioner sees as tipping the balance in her favor in the absence of any countervailing arguments by Respondents.

IV.

PETITIONER'S CONSTRUCTION OF SECTION 526a ELIMINATES THE WEALTH-BASED DISCRIMINATION PROBLEM

Respondents' arguments concerning the wealth-based discrimination problem fail to give adequate consideration to the importance of the

fundamental constitutional right to petition the government for redress of grievances. Section 526a acts as a ticket for entry to the courthouse where grievances against the government may be made. Without that ticket, only those directly aggrieved by the government actions have standing to challenge them. It is therefore apt for petitioner to argue that imposing a real property and retail business tax payment requirement under section 526a would in effect be a "poll tax" of sorts, granting the wealthy access to the judiciary's eyes and ears and excluding those too poor to pay the price of admission– the purchase of real property or a retail business. (See *Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 668 [16 L.Ed.2d 169, 173, 86 S.Ct. 1079] [invalidating the Virginia poll tax, the court stated: "To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."].)

Respondents' dismiss as inapposite the venerable line of cases on which petitioner relies for her wealth-based discrimination claim. (See *Boddie v. Connecticut* (1971) 401 U.S. 371 [28 L.Ed.2d 113, 91 S.Ct. 780] [denial of divorce based on inability to pay the required filing fee classifies based on wealth and is unconstitutional], *Earl v. Sup. Ct.* (1978) 6 Cal.3d 109 [same, citing *Boddie* and various California Supreme Court cases of a similar vein], *Harper v. Virginia State Bd. of Elections, supra*, 383 U.S. 663, 666-668 [flat fee, imposed as a precondition of voting, classifies on the basis of wealth and is unconstitutional], *Griffin v. Illinois, supra,* 351 U.S. 12 [states may not deny adequate appellate review to the poor while granting such review to all others. Indigent criminal defendants are entitled to a free reporter's transcript and other trial court records necessary for full and fair appellate review], and *Douglas v. California* (1963) 372 U.S. 353 [same as to appointment of counsel on appeal].) But analyzed from the

perspective of a low-income taxpayer like petitioner, who is denied the right to challenge unlawful government action because she is not wealthy enough to buy real property or a retail business, this case is not substantively different than those cases which have demanded the government treat the rich and poor alike in granting them access to the voting booth and the courts.

If petitioner could afford to buy real property in the City of San Rafael and County of Marin she would indisputably have taxpayer standing to bring this case challenging the vehicle impoundment practices of the City and County. (See *Thompson v. Petaluma Police Department* (1st Dist., Div. 4, 2014) 231 Cal.App.4th 101 [in case presenting identical claims concerning vehicle impoundment practices of the City of Petaluma, also brought by petitioner's counsel at bar. the plaintiff was found to have taxpayer standing based on his ownership of real property in the city and payment of taxes assessed thereon, despite that he is not a resident of the city].) Because she is not so fortunate, she finds herself standing on the outside of taxpayer standing and looking in at the empty courtroom where her grievances would be heard if she were wealthy enough to buy real property and thereby pay the price of admission to the courthouse doors. The end result is a wealth-based classification which excludes petitioner and others citizens like her from taxpayer standing under section 526a on the sole basis of their limited economic status– because they are *too poor* to own real property or a retail business on which taxes are directly assessed.

This significant due process and equal protection problem is readily avoided by construing section 526a to afford taxpayer standing based on payment of any form of assessed tax, no matter its size, such that income taxes and telephone and utility taxes which are often quite small will be

adequate to afford taxpayer standing, along with larger tax assessments such as real property taxes and sales and gasoline taxes imposed on retailers (if not also consumers).

The Court should adopt that construction of the statute, not only because it allows the Court to avoid the constitutional issue, but because it is in keeping with the plain language of section 526a and its intended purpose– to "'enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the [direct] standing requirement.'" (*Van Atta, supra,* 27 Cal. 3d 424, 447, quoting *Blair, supra,* 5 Cal.3d 258, 267-268.) Ultimately, the construction of the statute which furthers its legislative purpose should be the construction that prevails, and on that score petitioner has the better of the arguments.

V.

PETITIONER HAS NOT ABANDONED HER CLAIM THAT SECTION 526a SHOULD REACH TAXES ASSESSED ON RETAILERS BUT PAID BY CONSUMERS

Petitioner continues to urge that section 526a should be construed to apply to taxes assessed on retailers but paid by consumers, such as sales and gasoline taxes. Petitioner has not abandoned that claim. She has simply determined that her opening brief adequately advances the claim without need of further elaboration here.

CONCLUSION

For the reasons stated herein and in petitioner's opening brief, the Court should find that petitioner has taxpayer standing under section 526a based on the allegations of her complaint, and therefore the decision of the Court of Appeal must be reversed.

Respectfully Submitted,

Date: April 9, 2015

By: /S/
Mark T. Clausen,
Attorney for Plaintiff/Appellant/Petitioner
Cherrity Wheatherford

CERTIFICATE OF WORD COUNT

I, Mark T. Clausen, do hereby certify that the word count for this brief is 6,109 words as determined by WordPerfect software. All margins are set at 1.5 inches and line spacing is set at 1.5, with the exception of blocked text.

/S/
Mark T. Clausen

PROOF OF SERVICE

I, Mark T. Clausen, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 769 Carr Avenue, Santa Rosa, California, 95404. On the date indicated below true copies of the attached document (Petitioner's Opening Brief)– were placed in a sealed envelope, postage prepaid, and deposited in the United States Mail, address as follows:

Clerk of the California Supreme Court Earl Warren Building 350 McAllister Street San Francisco, CA 94102 (1 original & 8 copies; and 1 PDF copy to follow via E-Submission)	High Court
Clerk of the Court of Appeal, Div. 1 Earl Warren Building 350 McAllister Street San Francisco, CA 94102 (Via E-Filing Only)	Court of Appeal
Richard W. Osman Bertrand, Fox & Elliot 2749 Hyde Street San Francisco, California 94109	Attorney for Defendant and Respondent City of San Rafael
Renee G. Brewer, Deputy County Counsel Office of Marin County Counsel 3501 Civic Center Drive, Suite 275 San Rafael, CA 94903	Attorneys for Defendant and Respondent County of Marin
Marin County Superior Court POB 4988 San Rafael, CA 94913	Trial Court
Cherrity Weatherford (BY HAND DELIVERY)	Plaintiff/Appellant/Petitioner

ACLU of Northern California
(BY EMAIL ONLY)

Courtesy Copy

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 13th day of April 2015 in Santa Rosa, California.

/S/
Mark T. Clausen