No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

v.

ANA MATOSANTOS, *et al.*,
Respondents.

SUPREME COURT
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Deputy

RESPONDENT COUNTY OF SANTA CLARA'S RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN

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RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE

Respondents the County of Santa Clara and Vinod K. Sharma, County of Santa Clara Auditor-Controller, (collectively, the "County") answer the writ petition of California Redevelopment Association *et al.* as follows:

A. Answers to General Allegations

Each numbered paragraph below answers the corresponding numbered paragraph in the Petition. All allegations not expressly admitted are denied.

1. The County admits that Petitioner California Redevelopment Association is a California non-profit corporation. As to the remainder of the paragraph, the County is without knowledge or information sufficient to form a belief as to the truth of the allegations and, placing its denial upon that ground, denies all other allegations.

2. The County admits that Petitioner League of California Cities is an association. As to the remainder of the paragraph, the County is without knowledge or information sufficient to form a belief as to the truth of the allegations and, placing its denial upon that ground, denies all other allegations.

3. Admitted.

4. Admitted.

5. The County denies that Petitioner John F. Shirey is the Executive Director of Petitioner California Redevelopment Association. As to the remainder of the paragraph, the County has no information or belief upon the subject and, placing its denial upon that ground, denies all other allegations.

6. Admitted.

7. Admitted.

8. The County admits only that Respondent Patrick O'Connell is the Auditor-Controller of the County of Alameda and is named as a Respondent in his official capacity. As to the remainder of the paragraph, the County denies all other allegations.

9. The County admits that this case concerns the constitutionality of ABX1 26 and ABX1 27, which bills were signed by the Governor on June 28, 2011. All other allegations are denied.

10. The allegations contained in this paragraph constitute conclusions of law to which no answer is required; to the extent that they may be deemed allegations of fact, they are denied.

11. The County denies the allegation in the first sentence of the paragraph. The County is without knowledge or information sufficient to form a belief as to the truth of the allegation that all Respondents intend to enforce ABX1 26 and ABX1 27 unless restrained by a writ of mandate and, placing its denial upon that ground, denies that allegation.

12. The County is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the Petitioners' beneficial interests and, placing its denial upon that ground, denies all allegations in this paragraph.

13. The County is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, placing its denial upon that ground, denies all allegations.

14. The County admits that the Petition was filed in the Court as an original matter. As to the remainder of the paragraph, the County has no information or belief upon the subject and, placing its denial upon that ground, denies all other allegations.

15. The County admits that Petitioners seek a writ of mandate concerning, and a stay of, ABX1 26 and ABX1 27. All other allegations in this paragraph are denied.

16. The County generally and specifically denies the arguments in the Petitioners' memorandum and declarations, except as specifically indicated otherwise herein or in the accompanying Memorandum. The County hereby incorporates by reference the Memorandum that follows and all other memoranda, papers, and supporting declarations the County has filed with the Court in this litigation.

B. <u>Affirmative Defenses</u>

1. For the reasons indicated in the accompanying Memorandum, which is hereby incorporated by reference, certain operative provisions of ABX1 27 are unconstitutional. Because some operative provisions of ABX1 27 are unconstitutional, pursuant to the non-severability clause of ABX1 27, the operative provisions of ABX1 27 in their entirety are invalid.

2. The Petition fails to state a claim upon which relief may be granted.

3. Petitioners' claims are not within the jurisdiction of the Court because, among other things, they raise concerns regarding separation of powers, fiscal impacts, and political questions.

4. The Court should refrain from exercising jurisdiction to decide the Petition because the Petition raises political questions, fiscal impacts, and separation of powers concerns that are best left to the political branches for decision.

5. The Petitioners are not entitled to an award of attorneys' fees.

6. Each of the Petitioners lacks standing to bring this action.

7. Petitioners failed to serve the Petition on all county auditor-controllers, as required because all county auditor-controllers would be subject to the requested writ and are parties to this proceeding.

8. Petitioners failed to join all indispensible parties by not including real parties in interest such as counties and school districts as respondents.

9. Exclusive jurisdiction for the part of the Petition that requests relief with respect to certain operative provisions of ABX1 26 lies with the Superior Court in and for the County of Sacramento, pursuant to Health and Safety Code section 34168(a); therefore, the Court lacks jurisdiction over Petitioners' requests with respect to those provisions of ABX1 26.

C. Prayer

WHEREFORE, the County prays that:

1. With respect to ABX1 26, judgment be entered in favor of Respondents and against Petitioners, and that Petitioners take nothing by the Petition;

2. With respect to ABX1 27, judgment be entered in favor of the County on its First Affirmative Defense such that, in accordance with the severability clause of ABX1 27, the operative provisions of the bill in their entirety are declared unconstitutional;

3. The Court issue a preemptory writ ordering Respondents to refrain from enforcing any provision of ABX1 27;

4. Petitioners not be awarded costs of suit or attorneys' fees; and

5. Respondents be awarded any other relief the Court deems just and proper.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN

Respondents the County of Santa Clara and Vinod K. Sharma, County of Santa Clara Auditor-Controller, (collectively, the "County") respectfully file this memorandum of points and authorities in support of its return to the order to show cause why the relief requested by the Petitioners should not be granted.

I. INTRODUCTION

Petitioners ask this Court to ignore well-established principles of constitutional interpretation in an attempt to argue that redevelopment agencies (RDAs) have the unfettered constitutional right to divert billions of dollars from schools, counties, and other public agencies, elevating RDAs as if their existence were permanently enshrined in the California Constitution. They do so notwithstanding the fact that the constitutional and legislative scheme underlying the extraordinary power of redevelopment is predicated upon the goal of winding down redevelopment activities – and returning tax increment diverted from local governments – as soon conditions of urban blight have been eradicated.

In seeking to invalidate ABX1 26, Petitioners bear the burden of convincing the Court to do all of the following:

- deem ABX1 26 and ABX1 27 to be a single statute despite the fact that they are separate bills enacting separate statutes and contain express severability clauses evincing clear legislative intent to maintain their separation;
- ignore accepted principles of constitutional interpretation to deprive the Legislature of its constitutional authority over RDAs;
- find that the voluntary alternative redevelopment plan is not, in fact, voluntary; and
- disregard separation of powers principles.

Petitioners cannot meet their burden on any of those counts. ABX1 26 stands alone and carefully honors the existing constitutional and statutory body of law governing redevelopment. Moreover, neither Proposition 1A nor Proposition 22 expressly or impliedly repealed the Legislature's fundamental authority over the existence of RDAs. The Court should, therefore, decline Petitioners' overreaching invitation with respect to ABX1 26. However, as explained in Part V.F below, certain provisions of ABX1 27 are unconstitutional. Therefore, according to its express non-severability clause, ABX1 27 must be invalidated in its entirety.

II. ISSUES PRESENTED

The issues presented are as follows:

(1) Does the Legislature retain the authority to dissolve RDAs notwithstanding Propositions 1A and 22?

(2) Are ABX1 26 and ABX1 27 separate statutes?

(3) Do any of ABX1 27's provisions violate the California Constitution?

For reasons described below, the answer to all of these questions is "yes." As requested by the Court, we also address the Court's questions regarding the effect of the stay on the statutory dates for compliance. (*See* Part V.G, *infra*.)

III. STATEMENT OF FACTS

A. History of Redevelopment in California

Before redevelopment was even mentioned in the California Constitution, the Legislature enacted its first redevelopment law in 1945. (Community Redevelopment Act, Stats. 1945, c. 1326.) This Act gave cities and counties the statutory authority to address urban decay and the ability to obtain federal financing for those efforts. In 1951, this Act was renamed the "Community Redevelopment Law" and codified in the Health

and Safety Code. (Stats. 1951, c. 710, § 33000 *et seq.*) It was not until 1952 that the California Constitution was amended to give the Legislature the authority to allow RDAs to use tax increment financing to pay debts incurred to finance redevelopment projects. (Cal. Const., art. XVI, § 16.) Nowhere in the California Constitution does it state that RDAs have a guaranteed right to exist.

While there is no question that there are some redevelopment success stories, the relative costs and benefits of redevelopment have justifiably been the source of much study and controversy.[1] One treatise describes the situation as follows:

> Originally designed to revitalize struggling inner-city neighborhoods, redevelopment has been transformed by local governments around the state into dozens of different mutations to serve whatever political ends seemed important in a particular place at a particular time.[2]

Over the years, the Legislature amended the Community Redevelopment Law to curb redevelopment abuses and partially alleviate the financial impacts to the state and other public agencies resulting from RDA property tax diversions. One of the most comprehensive legislative efforts to address these issues was the Community Redevelopment Law Reform Act of 1993 ("AB 1290"). (Assem. Bill No. 1290 (1993-1994 Reg. Sess.) c. 942.) Among other things, AB 1290 established a definition of

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[1] *See, e.g.*, California Budget Project, *What Does the Research Say About Redevelopment?* (updated Jan. 27, 2011); Sen. Local Gov. Comm. Report, *Winding Down: Preparing for the End of Older Redevelopment Projects* (Feb. 20, 2008 informational hearing summary report and briefing paper); Lefcoe, *Finding the Blight That's Right for California Redevelopment Law* (2001) 52 Hastings L.J. 991; Dardia, *Subsidizing Redevelopment in California* (1998) Public Policy Institute of California; Cal. Office of the Legis. Analyst, *Redevelopment After Reform: A Preliminary Look* (Dec. 29, 1994).

[2] Fulton and Shigley, *Guide to California Planning* (3d ed. 2005) p. 259.

"blight," imposed specific time limits on redevelopment plans, required RDAs to make mandatory "pass-through" payments to local taxing agencies to partially mitigate their financial impacts, required RDAs to adopt implementation plans describing their goals and objectives, and required RDAs to include certain information on the statements of indebtedness they file with county auditors.

In 2006, the Legislature further restricted the definition of "blight." (Sen. Bill No. 1206 (2005-2006 Reg. Sess.), c. 595.) The Legislature's findings and declarations included the following:

> It is the intent of the Legislature . . . to restrict the statutory definition of blight and to require better documentation of local officials' findings regarding the conditions of blight. The legislative purpose of these statutory amendments is to focus public officials' attention and their extraordinary redevelopment powers on properties with physical and economic conditions that are so significantly degraded that they seriously harm the prospects for physical and economic development without the use of redevelopment. (*Id.*, § 1(e).)

B. State Financial Crisis

During the last few years, the State of California, counties, cities, school districts, courts and many other public agencies have faced severe budget crises. While these problems may have been worsened by the "Great Recession," they are rooted in what is widely recognized as a byzantine public finance system. The genesis of this patchwork finance system was Proposition 13, enacted in 1978. (Cal. Const., art. XIIIA.) By severely limiting property tax revenues, Proposition 13 fundamentally altered the state's financial landscape.[3] This has forced the Legislature to resort to increasingly creative and complex revenue sources and

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[3] The effects of Proposition 13 were exacerbated by Propositions 64, 218, and 26 and, with regard to school funding, Propositions 98 and 111.

distribution schemes known by such names as "TEA," "ERAF shifts," "VLF swap" and "Triple-Flip."

In general, *ad valorem* property taxes are distributed throughout the state as follows: 37% to K-14 schools; 18% to cities; 25% to counties; 8% to special districts; and 12% to RDAs.[4] However, in some counties, more than 25% of property tax revenues are diverted to RDAs.[5]

RDA property tax diversions impact the state budget because the state must backfill school districts for their property tax losses to RDAs:

> Because about half of statewide property tax revenues go to schools, it's fair to say that half of redevelopment agencies' tax increment revenues come from schools. [¶] But the diversion of property tax increment financing never harms schools because the State General Fund makes up the missing revenues. The State General Fund automatically backfills the difference between what a school district receives in property tax revenues and what the district needs to meet its revenue allocation limit. . . . In other words, these payments are an indirect state subsidy to redevelopment agencies.[6]

Equally significant is the fact that these diversions directly draw resources from counties, cities, and other local governments that provide essential public services. (*See, e.g.*, Declaration of Vinod K. Sharma, filed on August 10, 2011 with Motion of Vinod K. Sharma and County of Santa Clara to Intervene (describing the serious impacts to the County, including the diversion of over $90 million per year away from the County and nearly $300 million per year from local agencies countywide).)

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[4] 2011-2012 Governor's Budget Summary (Jan. 10, 2011) p. 168.

[5] Cal. Office of the Legis. Analyst, *The 2011-12 Budget: Should California End Redevelopment Agencies?* (Feb. 9, 2011) p. 1.

[6] Sen. Local Gov. Comm. Briefing Paper for Informational Hearing on *Winding Down: Preparing for the End of Older Redevelopment Projects* (Feb. 20, 2008) p. 6. It should be noted that the state does not backfill property tax revenues that "basic aid" school districts lose to RDAs.

In light of several studies questioning the value of RDAs, and with $5 billion statewide and 12% of all *ad valorem* property taxes diverted to RDAs, it was entirely appropriate for the Governor and the Legislature to scrutinize whether the sizeable portion of property tax dollars was being used for the greatest public good.

On January 10, 2011, Governor Jerry Brown released his fiscal year 2011-2012 proposed budget. The primary focus of his proposal was "to close California's structural budget deficit and provide a strong and stable foundation to meet future needs."[7] He proposed to eliminate RDAs because "it became clear that the state's investment in local economic development and redevelopment agencies is less critical than other activities."[8] If successful, the Governor's proposal to completely eliminate RDAs would have immediately resulted in at least $1.1 billion of relief to the state general fund, and $1.7 billion of relief to schools, cities, counties and other public agencies in fiscal year 2011-2012.[9] This amount would have increased each year as existing RDA debts were retired.

The Governor's initial proposal failed to receive the two-thirds vote it required to pass the Legislature, but eventually a compromise was reached through the enactment of two bills – ABX1 26 and ABX1 27. These bills expressed a legislative preference to allow an opt-in voluntary payment plan to help mitigate some of the effects of RDAs. But the

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[7] 2011-2012 Governor's Budget Summary (Jan. 10, 2011) p. 1.

[8] *Id.* at p. 28; *see also id.* at pp. 168-172. The Governor's proposal to eliminate RDAs triggered several analyses. (*See, e.g.*, Cal. Sen. Comm. on Gov. and Finance, *Restructuring Redevelopment: Reviewing the Governor's Budget Proposal* (Feb. 9, 2011 legislative oversight hearing summary report); Cal. Office of the Legis. Analyst, *The 2011-12 Budget: Should California End Redevelopment Agencies?* (Feb. 9, 2011).)

[9] Cal. Office of the Legis. Analyst, *The 2011-12 Budget: Overview of the Governor's Budget* (Jan. 12, 2011) p. 21.

Legislature also expressed its clear intent within the bills that its fallback position was to eliminate RDAs if the voluntary payment plan was invalidated for any reason. This makes sense in light of the fact that the complete elimination of RDAs would still provide significant budget relief to the state in fiscal year 2011-2012.[10]

C. Adoption of ABX1 26 and ABX1 27

ABX1 26 and ABX1 27 were signed by the Governor and became law on June 28, 2011. Their provisions are briefly summarized below.

1. ABX1 26

ABX1 26 provides that, as of October 1, 2011, RDAs are to be dissolved and successor agencies established to wind down their affairs. (ABX1 26, § 7, adding Part 1.85, Health & Saf. Code §§ 34170-34191.)[11] Until then, ABX1 26 immediately required RDAs to cease virtually all of their activities, including incurring additional debt, entering into contractual obligations, transferring assets, and reneging on their pass-through obligations to other public entities. (ABX1 26, § 6, adding Part 1.8, §§ 34161-34169.5.)

The Legislature enacted ABX1 26 to address several important public policy concerns, as follows:

> The Legislature finds and declares all of the following:
>
> (a) The economy and the residents of this state are slowly recovering from the worst recession since the Great Depression.
>
> (b) State and local governments are still facing incredibly significant declines in revenues and increased need for core governmental services.

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[10] *Ibid.*

[11] All further statutory references are to the Health and Safety Code unless otherwise indicated.

(c) Local governments across this state continue to confront difficult choices and have had to reduce fire and police protection among other services.

(d) Schools have faced reductions in funding that have caused school districts to increase class size and layoff teachers, as well as make other hurtful cuts.

(e) Redevelopment agencies have expanded over the years in this state. The expansion of redevelopment agencies has increasingly shifted property taxes away from services provided to schools, counties, special districts, and cities.

(f) Redevelopment agencies take in approximately 12 percent of all of the property taxes collected across this state.

(g) It is estimated that under current law, redevelopment agencies will divert $5 billion in property tax revenue from other taxing agencies in the 2011-12 fiscal year. . . . (ABX1 26, § 1.)

2. ABX1 27

ABX1 27 establishes a voluntary alternative redevelopment program (Part 1.9) under which an RDA may continue to exist despite the provisions of ABX1 26 if the city or county that created the RDA agrees to make certain payments to the appropriate county auditor-controller. (§ 34193.) ABX1 27 contains several other technical provisions regarding implementation of the alternative program and how the voluntary payments are to be calculated and reallocated to other public entities. (§§ 34194-34194.4.) It also provides that, if an RDA agrees to reimburse its city or county for the voluntary payments, it must use property tax increment for this purpose. (§ 34194.2.)

3. Severability

ABX1 26 and ABX1 27 are expressly severable from each other. (ABX1 26, § 12; ABX1 27, § 4.) And the provisions of ABX1 26 are also

expressly severable from one another. (ABX1 26, § 12.) However, ABX1 27 contains a non-severability clause providing that, if any aspect of the voluntary alternative redevelopment plan is held invalid, no part of ABX1 27 shall have any force or effect. (ABX1 27, § 5.) These clauses reflect the Legislature's recognition that the bills would likely be challenged in court; and its desire that, even if ABX1 27 is invalidated, the state budget will still see significant relief through the dissolution of RDAs pursuant to ABX1 26.[12]

IV. LEGAL STANDARD

Where, as here, Petitioners seek to invalidate legislative statutes, they "bear a heavy burden . . . ." (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.) "In analyzing petitioners' challenge to the constitutionality of [legislation], [courts] start from several fundamental principles of constitutional adjudication." (*Ibid.*)

"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." (*Ibid.* (quotation and citations omitted).)

"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." (*Ibid., quoting Methodist Hosp. of*

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[12] *See, e.g.*, Cal. Office of the Legis. Analyst, *The 2011-12 Budget: Overview of the Governor's Budget* (Jan. 12, 2011) p. 21. By contrast, RDAs that opt into the voluntary program only provide one-time fiscal relief to the state in fiscal year 2011-2012. The payments in future years go to schools, but do not offset the state's contribution to schools.

Sacramento v. Saylor (1971) 5 Cal.3d 685, 691 (internal quotation and citation omitted).)

Finally, as is applicable here, "past cases establish that the presumption of constitutionality accorded to legislative acts is particularly appropriate when the Legislature has enacted a statute with the relevant constitutional prescriptions clearly in mind. In such a case, the statute represents a considered legislative judgment as to the appropriate reach of the constitutional provision. Although the ultimate constitutional interpretation must rest, of course, with the judiciary, a focused legislative judgment on the question enjoys significant weight and deference by the courts." (*Ibid.* (citations omitted).)

V. ARGUMENT

The County's arguments are summarized as follows:

First, ABX1 26 and ABX1 27 are two separate statutes and have explicit severability clauses. There is no legal basis for finding them to be a unified and non-severable statute; hence, the constitutionality of each must be analyzed separately.

Second, the Legislature has plenary constitutional authority to establish and abolish RDAs. This authority is further supported by article XVI, section 16, which gives the Legislature discretion to allow RDAs to use property tax increment to repay debts incurred to finance their redevelopment projects.

Third, the Legislature's power to dissolve RDAs was not expressly or impliedly repealed by Propositions 1A or 22. Petitioners' arguments that the propositions completely abrogate the Legislature's fundamental powers over RDAs are without foundation, contrary to longstanding principles of constitutional interpretation, and place the Court in an untenable position with respect to separation of powers considerations. Consequently, there is no basis for invalidating ABX1 26.

Finally, certain aspects of ABX1 27 violate several provisions of the California Constitution. Thus, according to its own terms, ABX1 27 must be voided in its entirety.

A. **ABX1 26 and ABX1 27 Are Separate Statutes That Must Be Analyzed Independently.**

Petitioners assert that ABX1 26 and ABX1 27 are not severable from each other. Jurisprudential rules addressing severability focus on whether different parts of a statute are severable from each other, combined with the Legislature's express intent regarding severability. The standard severability test is as follows:

> But if the statute is not severable, then the void part taints the remainder and the whole becomes a nullity. It is also true that in considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. This is possible and proper where the language of the statute is mechanically severable, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words.[13]

A prerequisite for applying this mechanical test is that the provisions at issue must be part of the same statute. Otherwise, the test makes no sense.

Petitioners attempt to turn this test upside down by essentially arguing that ABX1 26 and ABX1 27 must first be merged together, and then asserting that the combined provisions are non-severable. Petitioners cite no legal authority to support this novel approach. This assertion is also in direct conflict with the plain language of the bills. Moreover, the various

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[13] *In re Blaney* (1947) 30 Cal.2d 643, 655; *see also Santa Barbara School Dist. v. Superior Court* (1975) 13 Cal.3d 315, 330-331.

provisions of ABX1 26 and ABX1 27 are also easily segregated, and thus are "mechanically severable."[14]

The Legislature foresaw challenges to ABX1 26 and ABX1 27 and took great pains to include express severability clauses in both bills. With respect to ABX1 26, the Legislature provided as follows:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end, the provisions of this act are severable. The Legislature expressly intends that the provisions of Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code are severable from the provisions of Part 1.8 (commencing with Section 34161) of Division 24 of the Health and Safety Code, and if Part 1.85 is held invalid, then Part 1.8 shall continue in effect. (ABX1 26, § 12.)

With respect to ABX1 27, it stated:

> The provisions of Section 2 of this act [Part 1.9] 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 of the provisions of this act are held invalid. (ABX1 27, § 4.)
>
> If Section 2 of this act, or the application thereof, is held invalid in a court of competent jurisdiction, the remaining provisions of this act are not severable and shall not be given, or otherwise have, any force or effect. (ABX1 27, § 5.)

Each bill is its own act and is complete in itself; therefore, there is no basis for disregarding the Legislature's express severability clauses:

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[14] ABX1 26 contains two operative parts: (1) Part 1.8 prohibits RDAs from incurring further indebtedness pending their dissolution; and (2) Part 1.85 sets forth the RDA dissolution and wind down processes. ABX1 27 has one operative part – Part 1.9, which gives an RDA's host city or county the ability to opt into a voluntary alternative redevelopment plan and sets forth the procedures for calculating and distributing the voluntary payments.

> Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder . . . is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute or constitutes a completely operative expression of the legislative intent . . . [and] are [not] so connected with the rest of the statute as to be inseparable.[15]

The Legislature could not have been more explicit that ABX1 26 was not to be tainted by any possible problems with ABX1 27. Its intent was crystal clear that if <u>any</u> of ABX1 27's operative provisions were held invalid, then ABX1 27 would fail in its entirety and RDAs would be eliminated. (ABX1 27, § 5.)

Petitioners' assertions that the Legislature intended the bills to be a package deal are in direct conflict with the Legislature's express intent as manifested in the severability clauses.

Moreover, even if the Court considers ABX1 26 and ABX1 27 to be a unified statute, Petitioners' arguments still fail because the payments allowed under ABX1 27 are <u>voluntary</u>. Petitioners' assertion that the Legislature may not accomplish something with two bills that it may not achieve with one ignores this essential distinction. Petitioners attempt to convert the voluntary choice provided by ABX1 27 into a coercive mandate. It is not. Admittedly, this may not be a desirable choice for a city or county, but it is a choice nonetheless.[16]

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[15] *Santa Barbara School Dist.*, *supra*, 13 Cal.3d at p. 330 (internal quotations and citations omitted).

[16] Petitioners argue that, because the Legislature assumed that all RDA host cities and counties would opt into the voluntary plan and included $1.7 billion in relief in the fiscal year 2011-2012 budget, this somehow proves that ABX1 27 is not, in fact, "voluntary" and that ABX1 26 is coercive.

Petitioners only cite *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296 ("*SCOPE*") to support their claim. *SCOPE* is inapposite. In *SCOPE*, the legislation at issue attempted to invalidate existing labor agreements between cities and counties and their employees. The Court held that this violated the impairment of contracts clauses in the state and federal constitutions, as well as the state constitution's provisions giving "home rule" powers to cities and counties. (23 Cal.3d at pp. 314, 317-318.) As an ancillary matter, the Court held that the Legislature could not punish cities and counties for complying with the constitutional mandate to honor their existing contracts by withholding state funding. (*Id.* at p. 319.)

In *SCOPE*, compliance with the condition imposed by the payment statute would have forced the affected entities to engage in illegal conduct; hence, there was no lawful option. Unlike the situation in *SCOPE*, ABX1 26 does not impose an unconstitutional mandate on RDAs. It eliminates RDAs, which is firmly within the Legislature's province. (*See* Part V.B, *infra*.) Cities and counties that desire to continue to engage in redevelopment activities may avail themselves of the new, voluntary program in ABX1 27. Even if certain provisions of ABX1 27 are deemed unconstitutional, its fundamental voluntary nature sets it apart from the provision at issue in *SCOPE*.

This argument ignores the plain language of the statutes, and the fact that ABX1 26, standing alone, would result in substantial and even greater budget relief to the state than if RDAs opt into the voluntary plan under ABX1 27. (*See, e.g.*, Cal. Office of the Legis. Analyst, *The 2011-12 Budget: Overview of the Governor's Budget* (Jan. 12, 2011) p. 21.) This explains why the Legislature properly assumed the full $1.7 billion of savings in fiscal year 2011-2012, regardless of the individual choice that would be made by each host city and county.

B. The Legislature Has Plenary Authority to Establish and Dissolve RDAs.

The Legislature is empowered to exercise any legislative authority not expressly denied to it by the California Constitution. (*Methodist Hospital of Sacramento v. Saylor*, *supra*, 5 Cal.3d at p. 691.) There is a strong presumption in favor of the Legislature's 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.

(*Ibid.*; *see also State Personnel Board v. Department of Personnel Administration* (2005) 37 Cal.4th 512, 523.)

Redevelopment agencies exist as the result of the Legislature's exercise of this plenary authority. As explained above, the Legislature enacted laws providing for the existence of RDAs before article XVI, section 16, was added to the California Constitution.

The purpose of the Community Redevelopment Law is to eradicate urban blight over a limited time period. It was never intended to serve as a permanent diversion of property tax revenues away from other public agencies. (*See* §§ 33030-33039.) In fact, because RDAs have a tendency to perpetuate themselves even when urban blight no longer justifies their existence, the Legislature has amended the Community Redevelopment Law to establish strict time limits on redevelopment plans and debt financing. (*See, e.g.*, AB 1290.) For redevelopment plans adopted after December 31, 1993, the maximum plan life is 30 years, and the maximum time limit to repay debt with tax increment is 45 years. (§ 33333.2.)[17]

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[17] These time limits may be extended under certain circumstances, for example, if the RDA has not fulfilled its affordable housing requirements. (§ 33333.8.)

These limits are further evidence that RDAs do not have an independent, permanent right to exist or to spend other public agencies' tax revenues to finance their activities.

C. Article XVI, Section 16, Gives the Legislature Sole Discretion Over Whether RDAs Receive Property Tax Revenue.

Nothing in the California Constitution gives RDAs any right to receive property tax revenues. To the contrary, article XVI, section 16, places this decision solely within the Legislature's discretion:

> The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows . . . . (Emphasis added.)[18]

The plain meaning of this provision is that the Legislature's decision regarding whether to allow RDAs to utilize tax increment financing lies within its sound discretion, as does its decision whether to allow RDAs to exist at all. "When interpreting the Constitution, [the court] must choose the plain meaning of the provision if the language is clear and unambiguous." (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1206; *see also Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444.)

This Court should not interfere with the Legislature's exercise of discretion under article XVI, section 16. "[T]he separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature." (*Butt v. State of California* (1992) 4 Cal.4th 668, 695.) The Court has

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[18] Formerly Cal. Const., art. XIII, § 19.

acknowledged that the separation of powers doctrine is particularly germane where the issues involve state budget and fiscal matters. (*Id.* at pp. 698-704; *California School Boards Assn. v. State of California* (2011) 192 Cal.App.4th 770, 802-803; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 598-599.)

The language of Article XVI, section 16, dictates that, if the Legislature exercises its discretion to allow RDAs to use tax increment financing, then those revenues may only be used to pay indebtedness incurred to finance their "redevelopment projects." After an RDA's debts are repaid, the property tax revenues that previously were diverted to the RDA must be reallocated to the other taxing agencies in the same manner as other property tax revenues:

> When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid. (Cal. Const., art. XVI, § 16(b).)

Article XVI, section 16, further directs the Legislature to "enact those laws as may be necessary to enforce the provisions of this section." The Legislature chose to exercise this discretion as follows:

> Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount[19] shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or

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[19] The reference to "that amount" in Health and Safety Code section 33670, subdivision (b), refers back to subdivision (a), and is the amount of taxes based on the assessed value shown on the assessment roll last equalized before the effective date of the ordinance adopting the redevelopment plan. This amount constitutes the "base" for tax increment financing.

otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid. (Health & Saf. Code § 33670(b) (emphasis added).)[20]

ABX1 26 honors this existing legal landscape. Once an RDA is dissolved, ABX1 26 provides that tax increment will continue to flow into a Redevelopment Property Tax Trust Fund established for that particular RDA. The relevant county auditor-controller will disburse funds from the Trust Fund to pay the RDA's debts. Any remaining funds will then be redistributed to the local taxing agencies in the same manner as other property taxes.[21]

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[20] *See also* § 33675(b) (requiring RDAs to certify and file an annual statement of indebtedness with the county auditor).

[21] *See* § 34172(c), (d) (requiring tax revenues previously allocated to an RDA pursuant to art. XVI, § 16 to be deposited in the Redevelopment Property Tax Trust Fund and used to pay RDA indebtedness); § 34175 (stating that preexisting RDA debts are to be honored); § 34182(c) (imposing duties on county auditor-controllers to manage Redevelopment Property Tax Trust Funds for benefit of RDA creditors, taxing agencies entitled to pass-through payments, and other taxing agencies entitled to remaining property tax revenues); § 34183 (establishing priorities for distribution of property tax revenues from each Redevelopment Property Tax Trust Fund); § 34188 (requiring distribution of remaining property tax revenues to be made in accordance with each taxing agency's proportionate share of other property tax revenues).

D. **<u>Propositions 1A and 22 Do Not Expressly or Impliedly Abrogate the Legislature's Authority over RDAs or Tax Increment Financing.</u>**

Given the Legislature's plenary authority over the existence of RDAs and its express authority over RDA finances granted pursuant to article XVI, section 16, Petitioners are left arguing that Propositions 1A and 22 repealed these independent bases of authority. But Propositions 1A and 22 contain no express language to this effect, and repeal by implication is highly disfavored:

> Repeals by implication are not favored; they will be recognized only where there is no rational basis for harmonizing potentially conflicting statutes. [citation omitted] The presumption is against repeal by implication where express terms are not used and the statutes are not irreconcilable.

(*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 838, *citing People v. Martin* (1922) 188 Cal. 281, 285, and *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 54.)

This presumption is even stronger when the question is whether a constitutional provision has been repealed by implication:

> So strong is the presumption against implied repeals that when a new enactment conflicts with an existing provision, "In order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first."

(*Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868, *quoting Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176; *see also ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866.)

Simply put, Propositions 1A or 22 were not intended to be a substitute for the entire subject of redevelopment.[22]

Petitioners admit that Proposition 1A "did not specifically protect RDA tax increments against diversion." (*See* Supporting Memorandum filed with Petition ("Pet. Mem."), p. 10.) And there is no evidence that the voters intended for Proposition 22 to fundamentally alter the nature of RDAs or the Community Redevelopment Law. To the contrary, an uncodified section of Proposition 22 expressly recognizes the Legislature's constitutional authority over RDAs and references the Community Redevelopment Law. (Proposition 22, § 9 (referencing art. XVI, § 16), § 4 (adding subsection (a)(7) to art. XIII, § 25.5).)[23]

As discussed above, existing law gives the Legislature ultimate control over the existence of RDAs and their ability to take tax increment from other public agencies. The only reason RDAs receive tax increment at all is because the Legislature exercised its discretion under article XVI, section 16, of the Constitution to allow them to do so for the limited

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[22] The fact that Proposition 22 expressly repealed another constitutional provision is further evidence that the voters did not intend to repeal the Legislature's authority over RDAs pursuant to article XVI, section 16. (*See* Proposition 22, § 5.6 (repealing Cal. Const., art. XIX, § 6).) "Where the electorate has demonstrated the ability to make their intent clear, it is not the province of this court to imply an intent left unexpressed." (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 412; *see also Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245, 330 (the fact that the voters expressly adopted a requirement in one section of an initiative strongly suggests that they did not impliedly adopt such a requirement in another section).)

[23] Section 9 of Proposition 22 erroneously asserts that article XVI, section 16, requires the Legislature to allocate a certain portion of property tax increment to RDAs. This uncodified assertion is directly at odds with the plain language in article XVI, section 16, which gives the Legislature discretion over this issue.

purpose of paying their existing debts incurred to undertake redevelopment projects for the purpose of eliminating urban blight. What the Legislature has the discretion to establish, it has the discretion to take away. (*State Personnel Board*, *supra*, 37 Cal.4th at p. 523 (Legislature may exercise any and all legislative powers unless expressly prohibited by the Constitution); *United Milk Producers of California v. Cecil* (1941) 47 Cal.App.2d 758, 764-765 ("Every legislative body may modify or abolish the acts passed by itself or its predecessors.").)

Petitioners essentially argue, as they must to prevail, that Propositions 1A and 22 prohibit the Legislature from enacting or amending the Community Redevelopment Law (or any other law for that matter) that has any effect on RDA revenues. There is no logical stopping point to this argument. Such a broad construction would freeze in place all statutes that could have any effect whatsoever (direct or indirect) on RDA property tax revenues.

For example, is the Legislature prohibited from altering the maximum duration of redevelopment plans, as it has in the past? Is the Legislature precluded from amending the Community Redevelopment Law in any manner that alters existing provisions governing RDA debt issuance (*e.g.*, imposing a debt ceiling, limiting the duration of bonded indebtedness), as it has in the past? Is the Legislature banned from modifying the "blight" definition and other substantive criteria in the Community Redevelopment Law, as it has in the past? Does Proposition 22 prevent RDAs from concluding their activities and returning the diverted increment back to local agencies in accordance with article XVI, section 16? All of these arguably could have the effect of reducing the amount of tax increment flowing to RDAs and would, if Petitioners are correct, be beyond the Legislature's reach. There is no basis for such an expansive reading of Propositions 1A and 22.

E. **ABX1 26 Does Not Violate Propositions 1A or 22.**

ABX1 26 does not violate Propositions 1A or 22. Petitioners argue that the bill uses the threat of dissolution to extract unconstitutional payments from RDAs. This argument fails because its underlying premise is that Propositions 1A and/or 22 repealed the Legislature's constitutional authority over RDAs. This premise is erroneous for the reasons explained above.

Petitioners also argue that the prohibition on RDA activities between the effective date of the statute and October 1, 2011 violates article XIII, section 25.5(a)(7)(B), because it "requires RDAs to restrict the use of previously obtained property taxes in a wide variety of ways . . . ." (Pet. Mem., p. 30.) It is doubtful that a three-month hiatus on RDA spending (which the Court did not stay) rises to the level of an unconstitutional restriction on RDA tax increment. Moreover, because the ultimate aim of ABX1 26 is dissolution of RDAs, which is plainly within the Legislature's province, the requirement that RDAs not squander or further encumber their assets pending their dissolution is entirely proper.

Nevertheless, if the Court agrees with Petitioners that this brief restriction violates Proposition 22, the appropriate remedy is to honor the Legislature's express severability clause (ABX1 26, § 12), thus severing the offending provisions and leaving the remainder of ABX1 26 intact. "The general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part." (*In re Blaney*, *supra*, 30 Cal.2d at p. 655; *see also Santa Barbara School Dist. v. Superior Court*, *supra*, 13 Cal.3d at pp. 330-331.)

F. ABX1 27 Violates Article XVI, Section 16, and Article XIII, Section 25.5.

ABX1 27 violates both article XVI, section 16(b), and article XIII, section 25.5(a)(3) of the California Constitution. The offending provision is section 34194.2, which provides:

> In choosing to continue redevelopment pursuant to this part, a city or county may enter into an agreement with the redevelopment agency in that jurisdiction, whereby the redevelopment agency will transfer a portion of its tax increment to the city or county, in an amount not to exceed the [voluntary payment] required that year pursuant to this chapter, for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.

As previously explained, article XVI, section 16, restricts the use of property tax increment diverted RDAs to "to finance or refinance, in whole or in part, the redevelopment project." Using RDA property tax increment to reimburse a city or county for its voluntary payments violates this constitutional provision, as the ultimate expenditure of these funds would not be restricted to activities for "the redevelopment project." The fact that the voluntary payments would be redistributed to school districts and certain other public agencies does not negate the fact that this tax increment is not being used for "the redevelopment project" as required by article XVI, section 16.

The use of property tax increment to make the voluntary payments also violates the requirement in article XVI, section 16(b), that any property tax increment beyond what is needed by an RDA to repay debts incurred to finance its redevelopment project "shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid."

For the same reason, section 34194.2 violates article XIII, section 25.5(a)(3), because it changes the pro rata shares by which property tax revenues are allocated among local agencies. The provision of Proposition

1A that is codified at article XIII, section 25.5(a)(3), prohibits the Legislature from enacting a statute that does the following:

> . . . change for any fiscal year the pro rata shares in which ad valorem property tax revenues[24] are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring. The Legislature shall not change the pro rata shares of ad valorem property tax pursuant to this paragraph, nor change the allocation of the revenues described in Section 15 of Article XI, to reimburse a local government when the Legislature or any state agency mandates a new program or higher level of service on that local government.

By authorizing an RDA to use property tax increment to reimburse its city or county for the voluntary payments, the Legislature has effectively changed the pro rata shares by which *ad valorem* property taxes are allocated among local agencies. This violates Proposition 1A.[25]

Article XVI, section 16, and Propositions 1A and 22 are in harmony on this issue. Once an RDA's debts are extinguished, the tax increment must go to the respective taxing agencies entitled to those revenues; the state may not take local revenues or otherwise redirect them in any manner other than distributing them to taxing agencies according to their existing pro rata allocations. (Cal. Const., art. XIII, § 25.5(a)(3); *id.*, art. XVI, § 16(b).)

For the same reason, another provision of ABX1 27, section 34194.1(b), also violates article XIII, section 25.5(a)(3). Section

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[24] "Ad valorem property tax revenues" are defined as "all revenues derived from the tax collected by a county under subdivision (a) of Section 1 of Article XIII A, regardless of any of this revenue being otherwise classified by statute." (Cal. Const., art. XIII, §25.5(b)(1).)

[25] ABX1 27 was not enacted in accordance with the heighted requirements set forth in article XIII, section 25.5(a)(3).

34194.1(b) declares that revenues remitted to school districts as a result of the voluntary payments are to be considered "property taxes" for the purpose of calculating the state's Educational Revenue Augmentation Fund ("ERAF") obligations. In other words, the property tax revenues that an RDA uses to reimburse its city or county for the voluntary payments made on its behalf will flow to school districts, thereby increasing the school districts' property tax allocations. Because school districts receive an offsetting reduction in revenue from the state, these payments do not result in any net increase in revenue to the school districts for fiscal year 2011-2012.[26] Nevertheless, these shifts change the pro rata shares by which property tax revenues are allocated among local agencies.

G. Effect of Stay on Statutory Compliance Dates

The Court directed the parties to address the following questions:

(1) What effect would the stay have on the statutory dates for compliance, including those for enactment of an ordinance (§ 34193(a)) and payment of the remittance amount (§ 34194(d))?

(2) If it becomes necessary to postpone the statutory compliance dates, what should the new dates be?

If the Court upholds ABX1 26 and invalidates ABX1 27, there is no reason why RDAs should not be dissolved immediately upon finality of the Court's decision. If the Court upholds both ABX1 26 and ABX1 27, then the County generally concurs with the schedule proposed by the Department of Finance, with the following additions:

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[26] Only revenue-limit school districts receive revenue from the voluntary payments. "Basic aid" school districts, whose property tax revenue losses are not backfilled by the state, do not benefit from ABX1 27.

- The deadline for county auditor-controllers to conduct an audit of each RDA pursuant to section 34182(a)(1) should be modified to be six months after the Court's decision is final; and
- The deadline for county auditor-controllers to submit the audit reports to the State Controller pursuant to section 34182(b) should be modified to be seven months after the Court's decision is final.

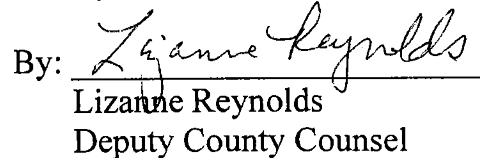
VI. CONCLUSION

There is no basis for treating ABX1 26 and ABX1 27 as one unified, non-severable statute. Furthermore, the Legislature's power to dissolve RDAs was not expressly or impliedly repealed by Propositions 1A or 22. Therefore there is no constitutional infirmity with ABX1 26. However, certain aspects of ABX1 27 violate several provisions of the California Constitution. For these reasons, the Court should uphold ABX1 26 and invalidate ABX1 27.

Dated: September 9, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

By: 
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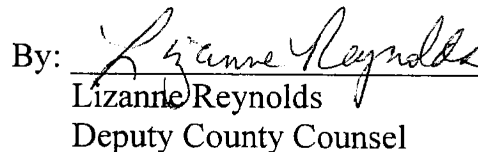
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504 or 8.204 of the California Rules of Court, I, **LIZANNE REYNOLDS,** hereby certify that this **RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE** and **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN,** has been prepared using one-and-a-half-spaced, 13-point Times New Roman typeface. According to the word count feature in our Microsoft Word 2007 software, the word count for this brief, including the signature lines following the brief's conclusion, is 8,630.

I declare under penalty of perjury under the laws of the State of California that this word count certification is true and correct and was executed on **September 9, 2011.**

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

By: 
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SUPREME COURT, STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

California Redevelopment Association, et al. v. Matosantos, et al.

Case No. S194861

I, Michele C. Wright, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served a copy of the **RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE** and **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN**

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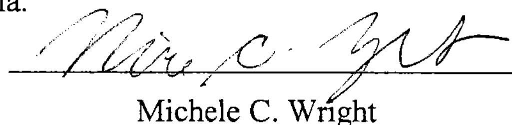
which envelope was then sealed, with postage fully prepaid thereon, on **September 9, 2011**, and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

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



Michele C. Wright