

Case No. S281977

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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LEGISLATURE OF THE STATE OF CALIFORNIA;  
GAVIN NEWSOM, in his official capacity as Governor of the  
State of California; and JOHN BURTON,  
*Petitioners,*

v.

SHIRLEY N. WEBER, Ph.D., in her official capacity as  
Secretary of State of the State of California,  
*Respondent,*

THOMAS W. HILTACHK,  
*Real Party in Interest.*

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**APPLICATION OF CALIFORNIA PROFESSIONAL  
FIREFIGHTERS FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF PETITIONERS;  
[PROPOSED] AMICUS CURIAE BRIEF**

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE**

**BRIEF**

Pursuant to the California Rules of Court, rule 8.520(f), the undersigned California Professional Firefighters request leave to file the attached brief amicus curiae in support of Petitioners in the above-captioned case.

**INTRODUCTION**

**AND STATEMENT OF INTEREST**

California Professional Firefighters (“CPF”) is the largest statewide organization dedicated exclusively to serving the needs of career firefighters, representing more than 32,000 current firefighters employed by state and local agencies in the State of California. CPF is one of the nation’s strongest and most influential public employee organizations that advocates to build better health and safety programs for firefighters and the public. CPF is a visible force at all levels of government, promoting causes that protect the well-being of public safety professionals and the citizens they serve. CPF has a strong interest in preserving reliable sources of funding for firefighting objectives, as well as supporting the ability of state and local governments to act effectively in response to emergencies.

CPF submits this amicus brief to alert the Court to dangers posed to essential public services by the “Taxpayer Protection and Government Accountability Act (“Measure”). The Measure constitutes an imminent threat to the ability of state and local governments to prepare for and deliver essential services. Starting in 2025, billions of dollars in critical funding may be vulnerable as a result of the Measure. This includes funding that has previously

been approved under standard procedures, but which does not meet the retroactive vote threshold required by the Measure. Thus, revenue that voters and the government have already dedicated toward public services, including fire and emergency response, could be stripped away. The potential for delays in voter approvals would endanger essential government functions and could devastate state and local services, especially in relation to the provision of emergency services.

## **BRIEF OF AMICUS CURIAE**

### **I.**

#### **BACKGROUND**

#### **I. The Measure Severely Limits State and Local Government Ability to Raise Revenue.**

The Measure would revise the California Constitution to limit government's ability to implement taxes and fees to raise funds for essential government services. Today, the Legislature can enact taxes with a two-thirds vote. (Cal. Const., art. XIII A, § 3.) Under the Measure, the Legislature could only propose state taxes to the voters, who have the sole authority to approve those taxes by a majority vote. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1).) Furthermore, the Measure would enable voters to place binding limitations on how revenue is spent, thereby stripping the Legislature of its ability to appropriate funds according to changing circumstances.

Additionally, the Measure would erode the ability of the State executive branch and state and local administrative agencies to impose fees. Fees for a specific government service or product would need to be proven through clear and convincing evidence to

reflect no more than the government’s “actual costs” for providing the service or product. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (g)(1); Sec. 6, proposed art. XIII C, § 2, subd. (h)(1).) Finally, the Measure also includes a retroactivity clause: any taxes and fees adopted since January 1, 2022 that do not comply with the Measure’s adoption rules would become void unless reenacted within a year of the effective date of the Measure.

## **II. California’s Primary Revenue Source of Personal Income Tax is Highly Volatile.**

It is well documented that California’s revenues are unpredictable, mainly due to the reliance on personal income tax. For example, as a result of the 2001 and 2008 recessions, California experienced declines in its personal income tax revenues of 26 percent and 20 percent, respectively. (Governor’s Budget Summary – 2021-22, p. 241.)

For fiscal year 2023-2024, personal income tax accounts for almost \$129 billion of California’s General Fund revenue sources, approximately 60 percent of the fund. (Governor’s Budget Summary – 2023-24, p. 12.) However, on December 1, 2023, the Legislative Analyst’s Office, the California Legislature’s Nonpartisan Fiscal and Policy Advisor, published an update stating “[w]ith the recent receipt of various postponed tax payments, the impact of recent economic weakness and last year’s financial market distress on state revenues has become clearer... Overall, our updated revenue outlook anticipates collections to come in \$58 billion below Budget Act projections across 2022-23 to 2024-25.” (<https://lao.ca.gov/LAOEconTax/article/Detail/777>.)

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## II. ANALYSIS

### I. **The Measure Impairs Funding for Essential Government Functions.**

The California Supreme Court has recognized on numerous occasions the importance of stability in government's ability to plan and fund its operations. "One of the reasons, if not the chief reason, why the Constitution excepts from the referendum power acts of the Legislature providing for tax levies or appropriations for the usual current expenses of the state is to prevent disruption of its operations b[y] interference with the administration of its fiscal powers and policies." (*Geiger v. Bd. of Sup'rs of Butte Cnty.* (1957) 48 Cal.2d 832, 839–40.) Courts should assume that referendum powers were never intended to enable actions that would "greatly [] impair or wholly destroy the efficacy of some other governmental power." (*Hunt v. Mayor & Council of City of Riverside* (1948) 31 Cal.2d 619, 628–29.) "[I]f a tax measure were subject to referendum, the county's ability to adopt a balanced budget and raise funds for current operating expenses through taxation would be delayed and might be impossible. As a result, the county would be unable to comply with the law or to provide essential services to residents of the county." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 703.)

The proposed Measure would take away a crucial tool of state and local government to maintain essential government services while also complying with the California Constitution. If the Measure becomes law, its impairments on funding for essential government services will be immediate and immense. It would add



voter approval requirements to every kind of tax or fee, either directly for taxes or indirectly by subjecting fees to referendum. In order to raise a fee to simply cover actual costs of public services, a legislative body may be forced to decide between calling a special election at the cost of millions, or waiting several years until the next general election. As a result, even if a tax or fee is ultimately approved, the Measure would build frustrating delays into every effort to fund the government. These limitations would be particularly hard-hitting when the state is faced with an economic recession or natural disaster.

**A. The State Requires Flexibility to Meet the Needs of CalFire Funding.**

Reliable funding is crucial to the ability of firefighters and other first responders to remain fully staffed, equipped, and prepared at all times in order to minimize injury, damage, and loss to the public. The contemporary circumstances facing firefighters are especially daunting. In October 2022, the California Department of Forestry and Fire Protection (CalFire) published a list of the top 20 largest California wildfires since 1932, a 90-year survey. (Cal Fire, “Top 20 Largest Wildfires,” October 24, 2022, <https://www.fire.ca.gov/our-impact/statistics>.) Twelve of the top 20 have occurred in the last 10 years. (*Id.*) *Six of the top seven* have occurred since 2020. (*Id.*)

At the state level, CalFire is responsible for resource management and wildland fire protection of an area that encompasses 31 million acres, almost one-third of the state’s land area. (Governor’s Budget Summary – 2022-23, p. 161.) CalFire is largely funded by California’s General Fund, including \$2.7 billion

of its \$3.7 billion budget. (*Id.*) As described above, the majority of California’s General Fund is derived from highly volatile personal income tax revenue. This puts essential firefighting services at risk if the Legislature is not able to supplement its revenue sources in response to changing circumstances. Revenue fluctuation combined with California’s constitutional restrictions on spending and federally controlled entitlements (e.g., Medi-Cal) will make it near impossible for the State Legislature to reduce expenditures to balance the budget and maintain essential services. Additionally, the California Constitution requires the State Legislature to balance the state budget annually.

Moreover, California firefighters regularly depend on emergency funding. “Cal Fire routinely spends more money than is budgeted to suppress wildfires, and in 2020, fire suppression costs surpassed \$1 billion for the first time.” (“Why California wildfires are getting worse” – Cal Matters, August 15 2023, <https://calmatters.org/newsletters/whatmatters/2023/08/california-wildfires/>.) The devastating wildfires of 2018 illustrate the need for flexibility in funding. “By the end of August [2018], California had burned through most of the \$440 million in emergency funds that had been allotted for the 2018 fiscal year. One week later, [CalFire] requested an additional \$234 million for firefighting efforts through November.” (“Wildland Development Escalates California Fire Costs” – Bay City News, December 18, 2018, <https://www.kqed.org/news/11713393/wildland-developmentescalates-california-fire-costs>.) Then, by the end of November, “Cal Fire asked for about \$250 million more in emergency funds,” in large part due to the Camp Fire in Paradise.

(*Id.*) The California Legislature must retain the ability to respond to such circumstances in a timely and efficient manner.

Apart from wildfires, Californians are threatened by the constant risk of a major earthquake, torrential rains that cause flooding and mudslides, public health emergencies, and other natural disasters. Even if governments will necessarily spend money to address such emergencies, the restrictions and delays embedded in the Measure make it likely that funds will need to be diverted from other essential public services.

**B. Government Requires the Ability to Adjust Fees for Essential Services.**

The Measure creates arduous standards for state and local governments to implement non-tax fees and charges. It mandates the excessively burdensome duty of proving by clear and convincing evidence that fees do not “exceed the actual cost of providing the service or product to the payor.” (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (g)(1); Sec. 6, proposed art. XIII C, § 2, subd. (h)(1).) This could have far-reaching effects on the funding of essential fire prevention and emergency services. As the Sonoma County Fire District succinctly describes:

Local fire agencies have far expanded their original duty of fighting fires and responding to emergencies. Originally, only basic medical services were provided (splints, CPR, etc.). Today, more than 80% of all calls the fire district responds to are for advanced life support, including intubations and the use of defibrillators. The challenge for fire districts is to ensure revenues match the increasing expenses for providing this essential public service.

This change in balance from traditional fire suppression to medical services has shifted the rationale for financing fire district operations toward a combination of general fund revenues and user fees, instead of solely from general fund revenues. This combination will create a more sustainable funding source by providing revenues beyond property tax assessments.

(“First Responder Fee FAQ” - Sonoma County, accessed January 17, 2024, <https://www.sonomacountyfd.org/first-responder-fee-faq>)

These user fees help to ensure that fire departments can continue to operate effectively, while avoiding the need to increase general taxes for people that did not use the services.

The Measure imposes paralyzing standards where functional safeguards are already in place. For example, the Mitigation Fee Act (Gov. Code, § 66000, et seq.) provides authority for local governments to impose fees on new developments to defray costs of the consequent expansion of public services, including fire protection and emergency medical services. In *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 325, the court found in favor of a public entity that argued fees of this type are “only fair” because the “developer has created a new, and cumulatively overwhelming, burden on local government facilities, and therefore [] should offset the additional responsibilities required of the public agency . . . to provide improvements and services required by the new development.” In setting those fees, the Mitigation Fee Act requires the local agency to “[d]emonstrate a reasonable relationship between the fee and the purpose for which it is charged.” (Gov. Code, § 66001(a)(3).) Proving the

“reasonable relationship” standard is far more realistic and practical than “actual cost” in terms of balancing public need and government accountability.

**C. The Measure Could Restrict Funding for Other Critical Emergency Services.**

Many public services, some of which are so familiar to the public as to be taken for granted, are funded by fees that would come under the Measure’s purview. As recently as July 1, 2019, SB 96 amended the fee structure that funds the 911 emergency call system. The bill implemented a monthly charge per access line to be paid by the consumer, in an amount determined by the Office of Emergency Services on an annual basis. The bill was enacted as an “urgency statute” stating that, “[i]n order to ensure funding for the 911 system is stable so that the system is robust and able to withstand emergency events, it is necessary that this act take effect immediately.” (Stats. 2019, Ch. 54 (S.B. 96) SEC. 44.) The base fee that supports the 911 emergency call system would be subject to increased scrutiny under the Measure, which could cause delays to or rejection of necessary adjustments in the future.

Likewise, AB 988, if enacted, will add a surcharge to supply the 988 State Mental Health and Crisis Services Special Fund. Under the Measure, the Legislature could no longer delegate fee setting authority, potentially necessitating annual actions by the State solely to cover the actual cost of providing the 988 suicide and crisis hotlines. Such restrictions, when imposed on critical life-saving services, could have disastrous effects.

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## **II. The Measure’s Retroactivity Clause Threatens Existing Revenue Sources.**

The Measure’s retroactivity provision will have severe consequences on the government’s ability to manage and plan its fiscal affairs. If it becomes law, the Measure will require every nonconforming tax, fee, or charge adopted since January 1, 2022 to become compliant within one year. (See Measure, Sec. 6, proposed art. XIII C, § 2, subd. (g); Sec. 4, proposed art. XIII A, § 3, subd. (f).) The League of California Cities estimates that “approximately \$2 billion in existing fees and charges, along with \$2 billion in voter-approved measures, will be subject to legal peril if this measure passes.” (“An existential threat to cities is on the 2024 ballot” – August 9, 2023, <https://www.calcities.org/news/post/2023/08/09/an-existential-threat-to-cities-is-on-the-2024-ballot>.)

Public officials charged with implementing the Measure will have little time to seek judicial guidance on the Measure’s requirements, such as whether local tax ordinances must contain sunset dates, as state measures would. (Compare Measure, Sec. 6, proposed art. XIII C, § 2, subd. (d)(2) with Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1)(A).) Jurisdictions will be forced to hold special elections to confirm voter approval, or otherwise cut services funded by at-risk revenue. Even allowing the Measure to be placed on the ballot will cause state and local governments to scramble in anticipation of its possible approval. Government entities will be pressured to take extensive action before even knowing whether the Measure passes.

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### III. CONCLUSION

The deleterious effects of this Measure will strain the service and infrastructure of fire and emergency response, law enforcement, public health, transportation, sanitation, and public schools, among other public services. Given these high stakes, Amicus Curiae CPF respectfully requests that the Court consider this amicus brief in deciding the legal issues in this case.

Dated: January 30, 2024

Respectfully submitted,

**MASTAGNI HOLSTEDT, A.P.C.**



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### **CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionally spaced, has a typeface of 13 points or more and contains 3,309 words as counted by the Microsoft Word word processing program used to generate the brief.

Dated: January 30, 2024

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I declare that I am over 18 years of age and not a party to the above-entitled action. My business address is 1912 I Street, Sacramento, California 95811. On January 30, 2024, I served the following document(s):

### **APPLICATION OF CALIFORNIA PROFESSIONAL FIREFIGHTERS FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS; [PROPOSED] AMICUS CURIAE BRIEF**

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I declare, under penalty of perjury that the foregoing is true and correct. Executed on January 30, 2024, in Sacramento, California.

/s/ Christina M. Williamson  
Christina Williamson

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **LEGISLATURE OF THE STATE OF CALIFORNIA v. WEBER  
(HILTACHK)**

Case Number: **S281977**

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/s/Christina Williamson

Signature

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