No. S281977

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

LEGISLATURE OF THE STATE OF CALIFORNIA, ET AL.,
*Petitioners,*

v.

SHIRLEY N. WEBER,
*Respondent*,

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

# APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND PROPOSED BRIEF OF *AMICI CURIAE* ACLU OF NORTHERN CALIFORNIA AND ACLU OF SOUTHERN CALIFORNIA IN SUPPORT OF PETITIONERS

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## APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, proposed *amici curiae* respectfully request leave to file the accompanying proposed *amici curiae* brief in support of the petitioners.

## INTERESTS OF *AMICI CURIAE* [1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the federal and state constitutions. The ACLU of Northern California and the ACLU of Southern California are regional affiliates of the national ACLU, and they have repeatedly appeared before this Court in cases involving voter initiatives proposing major changes to our state's Constitution and the rights that it guarantees to the people of California. (See, e.g., *Strauss v. Horton* (2009) 46 Cal.4th 364; *Raven v. Deukmejian* (1990) 52 Cal.3d 336; *Brosnahan v. Brown* (1982) 32 Cal.3d 236.) Additionally, the ACLU of Northern California and the ACLU of Southern California have frequently supported and collaborated on voter initiatives to secure essential funding for housing,

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[1] Pursuant to Rule 8.520(f)(4), *amici* state that no counsel for a party authored this brief in whole or in part, and no other person or entity, other than *amici curiae*, its members, or its counsel, made any monetary contribution to the preparation or submission of this brief.

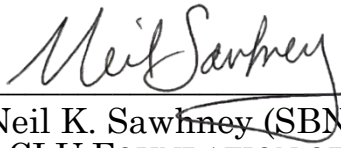
schools, healthcare, and other public services—all of which will be severely threatened if the Court does not grant the petition.

This case asks whether the "Taxpayer Protection and Government Accountability Act" ("TPAA" or "the Act") makes such fundamental and far-reaching changes to our basic constitutional plan that it qualifies as a constitutional revision that may not be enacted by voter initiative. Although the petitioners have persuasively argued that the Act fundamentally alters the balance and division of power between the legislative and executive branches, *amici* file this brief to explain how the TPAA makes sweeping and unprecedented changes to the voters' initiative power *itself*. These changes—which would embed in our Constitution an unequal treatment between voters who favor tax measures and those who oppose them—are further reason to conclude that the Act unlawfully seeks to implement a constitutional revision.

For these reasons, *amici* respectfully request leave to file the accompanying proposed brief.

Dated: January 30, 2024

Respectfully submitted,



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## BRIEF OF *AMICI CURIAE*

## INTRODUCTION

The ballot measure here—the "Taxpayer Protection and Government Accountability Act" ("TPAA" or "the Act")—makes novel and sweeping changes to the division of power and responsibilities between our State's political branches, local governments, and the voters. The Act would, among other things, (1) practically eliminate the legislature's power of taxation by subjecting any tax law to voter approval; (2) impair the legislature's and local governments' spending power by requiring any change in how special-tax revenues are spent to be approved by the voters; and (3) prohibit executive, administrative, and local agencies from exercising their delegated power to implement tax law and set regulatory fees. *Amici* agree with the petitioners that these "far reaching changes in the nature of our basic governmental plan . . . amount to a constitutional revision beyond the scope of the initiative process." (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 351–352.)

In resisting this conclusion, the TPAA's proponents seek to justify the Act as a lawful exercise of the voters' constitutional power to legislate by initiative. Ironically, however, the TPAA would in fact substantially *limit* the voters' initiative power—a far-reaching change that further supports the conclusion that the Act is a constitutional revision. In this brief, *amici* explain why the TPAA's proposed changes to the voters' initiative power are out of step with both our present constitutional framework and historical practice.

If approved, the TPAA will, for the first time, impose a supermajority requirement on *voter-initiated* ballot measures. And it will eliminate altogether the voters' right to amend city charters to impose or increase taxes. As a result, the TPAA would severely restrict the ability of voters, community groups, and organizations like *amici* to propose initiatives to secure essential funding for critically needed services, including housing, schools, healthcare, and other public services.

Thus, far from protecting the voters' exercise of the initiative power, the TPAA would undermine it—at least for those voters who favor generating revenue and investments in their communities. Coupled with its other changes, the TPAA's dramatic change to the initiative power as currently set forth in our Constitution can only be achieved through the constitutional-revision process: It "may be adopted only after the convening of a constitutional convention and popular ratification or by legislative submission to the people." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 260.) Accordingly, this Court should grant the petition for writ of mandate and direct the Secretary of State to remove the TPAA from the November 2024 ballot.

## ARGUMENT

### I. The TPAA's far-reaching changes to the voters' initiative power demonstrate that the Act amounts to a constitutional revision.

This Court has held that when an initiative "involves a change in the basic plan of California government, i.e., a change in its fundamental structure or the foundational powers of its branches," it constitutes a constitutional revision. (*Legislature v.*

*Eu* (1991) 54 Cal.3d 492, 509, citing *Raven*, *supra*, 52 Cal.3d at pp. 352–355.) In their briefing, the petitioners ably explain why the TPAA's reworking of the State's and local governments' legislative and executive powers is so foundational so as to qualify as a constitutional revision. (See Pet. at pp. 39–58; Traverse at pp. 28–53.)

The TPAA also makes two far-reaching changes to the voter initiative power itself—both of which further compel the conclusion that the Act is a revision. *First*, contrary to the well-established constitutional principle that voters wield the initiative power by simple majority vote, the Act forces voter-initiated revenue-generating measures to satisfy a supermajority two-thirds requirement to be enacted into law. *Second*, the TPAA prohibits voters from amending county and city charters to impose taxes—an unprecedented carveout from the voters' longstanding general power to revise their own charters. As a result of these two proposals, the TPAA effectively mandates an unequal treatment between voters who favor increasing taxes and those who favor reducing them—a profound deviation from the existing constitutional framework, which treats all voter initiatives the same.

The TPAA, in other words, makes far-reaching changes to the voter-initiative power—changes that are without historical precedent. Combined with the TPAA's other changes to our basic governmental plan discussed by the petitioners, there can be no doubt: The Act is a constitutional revision. It therefore cannot be implemented by voter initiative.

### A. The TPAA imposes an unprecedented supermajority requirement on voter initiatives.

**1.** "When voters exercise the initiative power," this Court has observed, "they do so subject to precious few limits on that power." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 935 (*Upland*).) That is because the initiative functions " 'not as a right granted the people, but a power reserved by them.' " (*Ibid.*, quoting *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.)

A central feature of Californians' initiative power is that "[i]nitiatives, whether constitutional or statutory, require only a simple majority for passage." (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250 (*Kennedy Wholesale*).) Ever since the Constitution was amended in 1911 to include the initiative power, that power has been understood to operate by a simple majority vote of the electorate. (See, e.g., Cal. Const., art. II, § 10, subd. (a); Cal. Const., art. XVIII, § 4*; Newport Beach Fire and Police Protective League v. City Council of City of Newport Beach* (1961) 189 Cal.App.2d 17, 22 ["[T]he Constitution indicates clearly that an initiative measure is adopted by a majority vote."].) This is true for both statewide and local initiatives: For example, when the Legislature in 1912 established procedures to implement the voters' local initiative power (see Cal. Const., art. II, § 11, subd. (a)), it expressly required a "majority" vote. (*Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540, 550, quoting Stats. 1912, 1st Ex. Sess. ch. 33, pp. 131–132.)

This Court has likewise recognized that the Constitution safeguards the voters' power to enact initiatives by majority vote. In *Kennedy Wholesale*, for example, the petitioners argued that Proposition 13's supermajority requirement for raising taxes (Cal. Const., art. XII, § 3, subd. (a)) applied not only to the Legislature but also to voter initiatives. This Court squarely rejected that argument, reasoning that the petitioners' interpretation would "conflict with article II, section 10 . . . which expressly provides that an initiative statue takes effect if '*approved by a majority*.' " (*Kennedy Wholesale*, *supra*, at p. 251, italics in original.)

Furthermore, *Kennedy Wholesale* referenced an earlier decision in which this Court had held that provisions implicating the initiative power " 'must be strictly construed . . . so as to limit the measures to which the two-third requirement applies.' " (*Id.* at p. 252, fn. 6, citing *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 52.) That holding was premised on this Court's recognition that imposing a two-thirds vote requirement on the voter initiative was "inherently undemocratic." (*Farrell*, *supra*, at p. 52; see also *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 205 (*Richmond*) [describing "the fundamentally undemocratic nature of the requirement for an extraordinary majority"].)

More recently, following in this Court's footsteps, multiple courts of appeal have held that certain supermajority requirements in the Constitution that apply to voter *approval* of tax laws enacted by local governments do *not* apply to *voter-initiated* ballot measures. (See, e.g., *City and County of San*

*Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703 (*All Persons*); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220 (*Fresno*); *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227 (*Howard Jarvis*); *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058 (*Proposition G*); *Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419 (*Alliance San Diego*).) As with this Court's jurisprudence, these decisions rest primarily on the understanding that "[a] defining characteristic of the initiative is the people's power to adopt laws *by majority vote*." (*All Persons*, *supra*, at p. 709, italics added.)

**2.** The TPAA upends this basic understanding. It would impose, for the first time, a supermajority requirement on a particular subset of voter initiatives. That is not simply a minor adjustment or modification; it is a wholesale revision of the initiative power.

Specifically, the TPAA would revise Article XIII C, section 2, subdivision (c) of the California Constitution to provide that, "no local law, whether proposed by the governing body *or by an elector*, may impose any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." (TPAA, § 6, italics added [proposed Cal. Const., art. XIII C, § 2, subd. (c)].) As a result, voters who seek to increase taxes by initiative face not the longstanding simple-majority requirement, but a far more demanding (and ahistorical) two-thirds

supermajority requirement. In other words, the TPAA substantially *burdens* the people's ability to utilize the initiative power to increase or impose taxes. But that is contrary to this Court's repeated admonitions that "burden[s] on the electors' constitutional power to legislate by initiative" are disfavored. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189; see also, e.g., *Upland*, *supra*, 3 Cal.5th at p. 936 [noting that this Court "narrowly construe[s] provisions that would burden or limit the exercise of that power"]; *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078 [same].)

To be clear, we do not contend that the voters' initiative power may *never* be burdened or constrained—whether by the imposition of a supermajority requirement or some other procedure. Nor do we question the wisdom of supermajority requirements generally as a matter of constitutional policy.[2] The point is that burdening Californians' initiative power by imposing a novel supermajority requirement lies "beyond the scope of the initiative process." (*Raven*, *supra*, 52 Cal.3d at pp. 351–352.) The Act, in other words, changes "the nature of our basic governmental plan," which for more than a century has recognized that voters can wield the initiative power by a simple-majority vote. A change of this magnitude is a constitutional revision.

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[2] Indeed, supermajority requirements can at times protect vulnerable minorities against unfettered majority rule. (See generally McGinnis & Rappaport, *Our Supermajoritarian Constitution* (2002) 80 Tex. L. Rev. 703; but see Bloom & Tebbe, *Countersupermajoritarianism* (2015) 113 Mich. L. Rev. 809, 818.)

**3.** To escape this conclusion, the proponents try to minimize the novelty of the TPAA's voter-approval requirements. (See Hiltachk Return at pp. 45–53.) But, while there may be some historical support for requiring voter approval of *legislative* action, the proponents do not even attempt to defend (on historical grounds or otherwise) the TPAA's imposition of a supermajority requirement on voters' exercise of the initiative power. For good reason: Neither of the two sets of constitutional provisions that the proponents invoke as support actually involve supermajority requirements *for voter initiatives*.

*First*, the proponents rely heavily on Proposition 13's and Proposition 218's requirements that voters approve, by a two-thirds vote, all local special taxes. (See Cal. Const., art. XIII A, § 4; Cal. Const., art. XIII C, § 2.) According to the proponents, because these propositions added supermajority requirements that were ultimately upheld as valid constitutional amendments by this Court in *Amador Valley*, the TPAA's supermajority requirements must be upheld as well. (See, e.g., Hiltachk Return at pp. 43–45.)

This argument can be easily dispatched. The two-thirds requirements for special taxes set out in Propositions 13 and 218 apply only to voter approval of *legislation* enacted by local governments; as numerous courts have held, they do "*not* constrain the people's *initiative* power." (*All Persons*, *supra*, 51 Cal.App.5th at p. 724, italics added; see also, e.g., *id.* at pp. 714–724; *Fresno, supra,* 59 Cal.App.5th at pp. 230–38; *Howard Jarvis, supra,* 60 Cal.App.5th pp. 237–239; *Proposition G, supra,* 66

Cal.App.5th at pp. 1070–1076; *Alliance San Diego, supra,* 94 Cal.App.5th at pp. 430–434.) Indeed, the animating principle underlying these decisions is that the voters' initiative power has always been understood to operate by majority vote—and that, therefore, Proposition 13's and 218's supermajority requirements should not be construed to apply to voter-initiated special-tax measures. If anything, the consensus on this question undermines the proponents' position: It presumes and flows from the premise that imposing a supermajority requirement on voter tax initiatives *would* be contrary to our constitutional history and practice.

*Second*, the proponents attempt to seek refuge in the constitutional provisions governing bond measures. (See Hiltachk Return at pp. 14, 38, 48–49.) But this likewise fails. To start, the primary provision on which the proponents rely, Article XVI, section 1, imposes a simple-majority requirement, not a supermajority. More importantly, the various bond-related provisions again concern only voter *approval* of legislatively enacted bond measures; like Propositions 13 and 218, they do not impose any specific requirements for voter-*initiated* bond measures. (See Cal. Const., art. XVI, §§ 1, 2, 18.)[3] So they

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[3] Even if Article XVI, section 18—the sole bond-related provision imposing a two-thirds voter-approval requirement—*was* interpreted to apply to voter-initiated bond measures (and it has not been), it predates the 1911 constitutional amendment establishing the initiative power. (See *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 515 [noting that "[t]he provision providing for bond measures to be placed on the ballot was adopted at the 1878–1879 Constitutional Convention"].)

similarly offer no basis to conclude that the TPAA's supermajority requirement on the voter-initiative process itself is permissible.

In sum, contrary to the petitioners' assertions, there is no historical analogue to the type of supermajority requirement that the TPAA seeks to impose on the voters' initiative power. That far-reaching change to the people's reserved power—just one of many such changes the Act proposes—demonstrates that the TPPA seeks to implement a constitutional revision.

### B. The TPAA eliminates voters' ability to amend city and county charters to impose taxes.

Although the TPAA's most prominent change is the supermajority requirement on revenue-generating voter initiatives, it also makes another: It categorically prohibits voters from amending their city or county charter to impose, extend, or increase a tax or exempt charge. (TPAA, § 6.) That flat prohibition—which, to our knowledge, has no precedent—is further reason to conclude that the TPAA implements a constitutional revision.

Article XI, section 3 of the Constitution allows counties and cities to adopt charters for their own governance. (See, e.g., *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1206.) As relevant here, section 3 provides: "For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. . . . A charter may be amended, revised, or repealed *in the same manner*." (Cal. Const., art. XI, § 3, subd. (a), italics added.) Accordingly, like adoption of the charter itself, a charter

can be amended "by majority vote of the county's [or the city's] voters." (*Coalition of County Unions v. Los Angeles County Bd. of Supervisors* (2023) 93 Cal.App.5th 1367, 1390.) Applying this principle, courts have held unconstitutional initiatives seeking to enshrine in a charter a supermajority voting requirement for certain types of charter amendments. (See, e.g., *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 386 ["[T]he electorate of a city has the right, but not the obligation, to adopt or amend a charter, but if the electorate exercises that right, only a majority vote, not a supermajority vote, is required for approval of such charter adoption or amendment."].)

The TPAA imposes far more than a supermajority requirement for charters—it bans outright any charter amendments that impose taxes. If a supermajority requirement conflicts with Article XI, section 3, then the TPAA's prohibition on certain charter amendments necessarily does so even more. As one court explained in a case involving a conflict between the City of San Leandro's charter and a statewide supermajority requirement:

> [T]he number of votes required to put a local tax measure on the ballot . . . is precisely the sort of matter to fall within the decisionmaking power of a home rule municipality. It is a subject that is predominantly, if not entirely, of interest to the citizens of San Leandro. After all, who else can best determine the proper balance between the powers delegated to the elected representatives of San Leandro to propose a local tax measure, and the powers reserved to the residents of San Leandro to enact such a tax measure? Certainly, it is the people

> of San Leandro, who are familiar with local conditions, who are best able to regulate such matters by means of charter provisions and municipal codes.

*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 47. Yet the TPAA would revoke entirely the power to amend a charter from the city or county's voters—at least with respect to imposing taxes.

"The power to tax," this Court has held, "is the lifeblood of the charter city." (*City and County of San Francisco v. Regents of the University of California* (2019) 7 Cal.5th 536, 545.) By removing the voters' ability to advance that critical taxation power through amending the charter, the TPAA interferes with not only the voters' reserved powers but also "the sweeping self-governing authority granted to charter cities" by the state's constitution. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 698, fn. 4.) In this respect as well, the TPAA works a fundamental change to our basic constitutional plan—that is, a revision.

### C. Under the TPAA, voters who favor reducing taxes receive preferential treatment compared to voters who favor increasing taxes.

As a result of the two voter-constraining changes discussed above, the TPAA embeds in our constitution a form of disparate treatment. Voters who prefer reducing taxes can do so through a simple majority vote on an initiative, or by amending their city or county charter. In sharp contrast, under the TPAA's regime, voters who seek to increase taxes by initiative must satisfy a two-thirds supermajority requirement; and they are simply unable to amend the charter to achieve that aim.

This Court has previously suggested that such an "inherently undemocratic" outcome is constitutionally suspect on its own terms. (*Farrell*, *supra*, 32 Cal. 3d at pp. 52, 57; see also *Richmond*, *supra*, 31 Cal.3d at p. 205.) Indeed, in *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, this Court held that that the two-thirds voter-approval requirement for local bonds violated the federal equal protection clause—a decision that was later abrogated by the U.S. Supreme Court in *Gordon v. Lance* (1971) 403 U.S. 1. Notably, *Westbrook* did not consider whether a supermajority requirement imposed on the voter initiative itself would violate equal protection, nor did it analyze Article I, section 7(a) of our state constitution. *Cf. Beeman v. Anthem Prescription Management, LLC* (2013) 58 Cal.4th 329, 341, [highlighting "the unquestioned proposition that the California Constitution is an independent document and its constitutional protections are separate from and not dependent upon the federal Constitution"].) In any event, even if constitutionalizing such unequal treatment *is* permissible as a matter of equal protection (see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 237), it nonetheless sufficiently deviates from the current constitutional framework and text—which do not distinguish among voter-initiated tax proposals—as to suggest that the TPAA effectuates a constitutional revision.

The TPAA's unequal treatment between voters who favor increasing taxes and those who favor reducing them also raises potential free-speech concerns. As one federal judge has

explained, a state's voters "may not rig election laws by imposing a content-based two-thirds majority requirement . . . without implicating the First Amendment." (*Initiative and Referendum Institute v. Walker* (10th Cir. 2006) 450 F.3d 1082, 1110 (Lucero, J., concurring in part and dissenting in part) (*Walker*).) That's because the "citizens' use of the initiative process constitutes expressive conduct"; indeed, "[t]he Supreme Court has made clear that the process involved in proposing legislation by means of initiative involves core political speech." (*Wirzburger v. Galvin* (1st Cir. 2005) 412 F.3d 271, 276, citing *Meyer v. Grant* (1988) 486 U.S. 414.)

To be sure, it is unsettled whether supermajority or subject-matter restrictions on the exercise of the initiative power do in fact implicate the First Amendment's protections. (Compare *Wirzburger, supra*, 412 F.3d at p. 276, with *Walker*, *supra*, 450 F.3d at pp. 1099–1103; *Marijuana Policy Project v. U.S.* (D.C. Cir. 2002) 304 F.3d 82, 85–87.) But, again, the question here is not whether the TPAA's supermajority requirement and charter-amendment ban are themselves unconstitutional; it is whether such changes to the initiative power are so far-reaching so as to constitute a constitutional revision. And the fact the TPAA would entrench in our constitution this unequal treatment between voters—solely on the basis of their views about taxation—is further reason to conclude that the Act is a revision.

. . . . .

This Court has long recognized that it has a "solemn duty to jealously guard the precious initiative power, and to resolve

any reasonable doubts in favor of its exercise." (*Legislature v. Eu*, *supra*, 54 Cal.3d at p. 501.) This case presents the unusual situation where fulfilling that "solemn duty" requires the Court to remove from the ballot the TPAA—itself, an initiative—to protect the future electorate's exercise of the initiative power. (See *Walker*, *supra*, 450 F.3d at p. 1114 (op. of Lucero, J.) ["Future majorities that spring from today's unpopular opinions should not be strangled by the dead hands of the past."].) When the people first added the initiative to the constitution in 1911, they enshrined their expectation that it would be wielded by a majority of voters—and they did so "overwhelmingly." (See *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1041–1043 [detailing history].) That century-long understanding of the "previous" initiative power should not be disturbed without the "formality, discussion and deliberation" guaranteed by the constitutional-revision process. (*Raven*, *supra*, 52 Cal.3d at pp. 349–350.) This Court should therefore grant the petition.

## II. The TPAA will dramatically reduce voters' ability to enact revenue measures, which play a key role in funding needed programs and services.

For the reasons above and in the petitioners' briefing, the TPAA unlawfully seeks to implement a constitutional revision. In this section, *amici* explain why the TPAA, if approved, would have significant and troubling consequences for Californian voters and communities.

As this Court is well-aware, voter-led initiatives are critical to funding a wide array of needed services in California, from

education and housing to public health and public safety. In cities and counties throughout the state, voters routinely use the initiative process to impose or raise taxes to generate revenues that can then be invested in their communities. These voter initiatives are often the most important—and, sometimes, the only—source for funding desperately needed community priorities.

To take one recent example, Los Angeles voters voted in November 2022 to approve Measure ULA, the largest investment in affordable housing in Los Angeles history backed by a coalition of over two hundred community groups and partner organizations, including *amici*. By enacting real-estate transfer taxes on property sales of more than $5 million, Measure ULA will produce hundreds of millions of dollars annually to purchase and construct affordable housing, provide financial assistance to low-income seniors and tenants, and fund legal assistance for tenants facing eviction. Indeed, just a couple of months ago, the Los Angeles City Council unanimously approved spending the first $150 million of Measure ULA funds on programs to reduce the city's housing crisis.

Measure ULA was passed by a significant majority—around 58%—of Los Angeles voters. Under current law, this proportion of voters far exceeded the simple majority vote needed to enact a local revenue measure. (*See, e.g.*, *All Persons, supra,* 51 Cal.App.5th at pp. 714, 721–24; *Fresno, supra,* 59 Cal.App.5th at pp. 235, 238.) If the TPAA is approved, however, even this significant majority vote would not be enough to enact similar measures.

Of course, Measure ULA is just one of more than two hundred local tax and bond measures that were enacted in the November 2022 election. In that same election, for instance, Santa Monica voters approved Measure GS, a transfer-tax initiative like Measure ULA that will support housing affordability; and San Francisco voters approved Proposition M, a vacancy-tax initiative to fund rent subsidies and affordable housing. Earlier voter initiatives like Measure P in Fresno, which created a sales tax that will provide more than $30 million of funding per year for parks and recreation for thirty years, continue to pay major dividends for local communities. Although these measures received the support of significant majorities of local voters, none of them satisfy the TPAA's supermajority requirement.

Even worse, as the petitioners explain (Pet. at pp. 33–38), the validity of these and other recently enacted measures will be called into doubt if the TPAA is approved. That's because the Act's scope is not limited to *future* measures; it encompasses many *existing* laws as well. Specifically, the TPAA's retroactivity provision would "void" any tax adopted after January 1, 2022, unless the tax is reenacted within one year to comply with the initiative's requirements. (See TPAA, § 4 [proposed Cal. Const., art. XIII A, § 3, subd. (f)]; *Id.*, § 6 [proposed Cal. Const., art. XIII C, § 2, subd. (g)].)

Without this Court's intervention, the implications will be drastic. It could mean, for instance, that Measure ULA would be invalidated, absent a two-thirds re-approval vote by November

2025. Until then, what would happen to the Measure ULA funds that the City of Los Angeles budgeted for—or already spent on—affordable housing and other programs? The same would be true for the other recently enacted measures discussed above: Existing budgets would be thrown into disarray and local spending would have to be redistributed and cut back, leading to the reduction of critical programs and services.

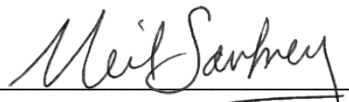
None of these consequences need come to pass. As explained, the TPAA's proposed changes to the initiative power—as well as the division of power between the legislative and executive branches—are so far-reaching so as to amount to a constitutional revision. Such a revision simply cannot be accomplished through an initiative like the TPAA. It therefore must be removed from the November 2024 statewide ballot.

## CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to grant the petition for writ of mandate.

Dated: January 30, 2024

Respectfully submitted,



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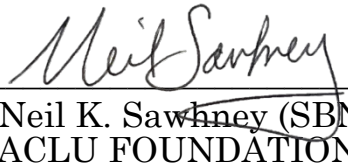
## CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed *Amici Curiae* Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 4,430 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File *Amici Curiae* Brief required under Rule 8.520(f), this certificate, and the signature blocks. *See* Rule 8.204(c)(3).

Dated: January 30, 2024

Respectfully submitted,



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I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is scooksey@aclunc.org. On January 30, 2024, I served the attached,

**Application For Leave To File *Amici Curiae* Brief** and **Proposed Brief of *Amici Curiae* ACLU of Northern California and ACLU of Southern California in Support of Petitioners**

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

Sara Cooksey

Sara Cooksey, Declarant

**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**
Lower Court Case Number:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/30/2024

Date

/s/Sara Cooksey

Signature

Sawhney, Neil (300130)

Last Name, First Name (PNum)

ACLU of Northern California

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