Case No. S281977

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL

Scott A. Kronland (SBN 171693)
Stacey M. Leyton (SBN 203827)
*Matthew J. Murray (SBN 271461)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, California 94108
Tel. (415) 421-7151
Fax (415) 362-8064
Email: skronland@altber.com
sleyton@altber.com
mmurray@altber.com

Attorneys for Proposed Amicus Curiae SEIU California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The Service Employees International Union California State Council ("SEIU California") has no interested entities or persons that must be listed in this Certificate under Rule 8.208 of the California Rules of Court.

Dated: January 31, 2024

Respectfully submitted,

ALTSHULER BERZON LLP

By: */s/ Matthew J. Murray*
Matthew J. Murray

Attorneys for Proposed Amicus Curiae SEIU California

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, the Service Employees International Union California State Council respectfully requests permission to file the accompanying amicus curiae brief in support of Petitioners.[1]

Interest of the Amicus Curiae

The Service Employees International Union California State Council ("SEIU California") is comprised of local unions of the Service Employees International Union that represent hundreds of thousands of workers throughout California. SEIU California's mission is to secure economic fairness for working people and create an equitable, just, and prosperous California. SEIU California's affiliated local unions represent hundreds of thousands of members whose work to provide essential government services is threatened by the "Taxpayer Protection and Government Accountability Act" (the "Measure"), including workers for state, county, city, and district governments, higher education, and K-12 education, as well as state-funded child-care and Medi-Cal programs (including In-Home Supportive Services (IHSS)). SEIU California's affiliate local unions include:

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[1] Pursuant to Rule 8.520(f)(4), no party or counsel for a party authored the proposed amicus curiae brief in whole or in part or made a monetary contribution intended to fund the preparation of the brief. No person or entity other than amicus curiae SEIU California, its members, and its counsel made a monetary contribution to fund the preparation or submission of the amicus curiae brief.

- SEIU Local 1000 represents almost 100,000 working people employed by the State of California. Local 1000's members contribute almost $6 billion to the California economy. They include accounting officers; analysts; auditors; bookbinders; civil engineers; computer systems analysts; cooks; court, municipal, and license clerks; custodians; disability evaluators; DMV field representatives; education specialists; employment program representatives; engineering technicians; graphic designers; information technology analysts; laundry workers; librarians; medical assistants; nurses; office technicians and clericals; pharmacy technicians; social services specialists; teachers; transportation workers; urban and regional planners; and many other workers providing Californians with vital State services every day.

- The Committee of Interns and Residents (CIR) is the largest housestaff union in the United States, representing more than 30,000 resident physicians and fellows. CIR represents resident physicians and fellows at UC Davis, UC Irvine, UC Los Angeles, UC Riverside, and UC San Francisco. CIR also represents residents and fellows at the local government level at Alameda Health System, San Francisco General Hospital, and Los Angeles General Medical Center.

- The California Faculty Association represents about 29,000 professors, lecturers, librarians, counselors, and coaches who teach and provide services to the California State University (CSU) system's 485,000 students on 23 CSU campuses.

- The California State University Employees Union represents 16,000 staff across the CSU campuses, providing information technology, healthcare, clerical, administrative support, academic support, police dispatch, library services, food service, groundskeeping, and custodial services, and other services to support campus operations.
- Child Care Providers United represents 40,000 state-funded family childcare providers through a joint partnership between SEIU and AFSCME/UDW. These home-based providers offer vital early learning and care options for thousands of low-income children whose care is subsidized by the State of California.
- SEIU Local 2015 represents long term care workers, including about 420,000 In-Home Supportive Services (IHSS) workers across 37 counties who provide state-subsidized care to low-income adults who are aging and individuals living with disabilities to allow them to receive care safely in their homes with comfort and dignity.
- Several other local affiliates of SEIU California represent public sector workers at the local government level who provide essential publicly funded services throughout California. These workers include social workers, nurses, teachers' assistants, clerical workers, playground workers, foster care workers, special education assistants, bus drivers, mental health workers, gardeners, law enforcement, librarians, sanitation workers, office clerks, custodians, cafeteria workers, water treatment engineers, parks and recreation workers, maintenance workers, early care

and education workers, and others working in local agencies, schools, community colleges and administrative offices. They nurse our sick, educate our children, care for our seniors, and provide a host of other important services throughout our communities.

The Measure threatens the state and local governments' ability to raise revenue to fund all these critical services.

Reasons the Proposed Amicus Brief Will Assist the Court

The proposed amicus brief will assist the Court by supplementing the arguments of the parties and providing the perspective of the membership organization that represents a substantial number of state and local government workers throughout California who provide essential services that would be threatened by the Measure.

The proposed amicus brief emphasizes two of the many far-reaching changes to our basic plan of government that would be imposed by certain provisions in the Measure, which would not just limit, but would entirely eliminate, certain core powers of the Legislature and the state and local governments. The proposed amicus brief also highlights some of the essential government functions that would be threatened by the Measure's enactment.

Dated: January 31, 2024

Respectfully submitted,

ALTSHULER BERZON LLP

By: */s/ Matthew J. Murray*
Matthew J. Murray

Attorneys for Proposed Amicus Curiae SEIU California

AMICUS CURIAE BRIEF

INTRODUCTION

The "Taxpayer Protection and Government Accountability Act" (the "Measure") is an unconstitutional attempt to use the initiative process to fundamentally revise, rather than merely amend, California's Constitution. The Measure should not be placed on the November ballot, for all the reasons Petitioners explain.

Amicus Curiae the Service Employees International Union California State Council ("SEIU California") and its affiliated local unions represent hundreds of thousands of state and local government workers who provide essential services that would be existentially threatened by the Measure. These workers carry out state, county, city, and district programs, provide higher education and K-12 education, and deliver state-funded childcare and Medi-Cal (including In-Home Supportive Services (IHSS)) services throughout California.

Petitioners have amply demonstrated both the legal invalidity of the proposed initiative and the need for this Court to take action now, before the election. SEIU California writes to emphasize three critical points:

First, the Measure would not just amend the contours of certain of the Legislature's foundational powers; it would revise our basic plan of government by entirely abolishing those powers. In particular, by requiring that any new, increased, or redirected state tax be approved by the same process that must be followed to *amend the Constitution*, the Measure would have the same

practical effect as a provision eliminating the Legislature's core power to tax in its entirety. The Legislature would have the power only to *propose* and not to *enact* taxes. The result would be to freeze in place the policy choices of past legislatures and forbid future legislatures from adjusting state revenue policy. This would alter the basic plan of our government, which vests a deliberative body—the Legislature—with the continuing authority to respond to changing circumstances.

Second, the Measure would alter our basic plan of government by entirely eliminating the power of our government to respond to emergencies by adopting a revenue-generating measure that takes effect immediately. By requiring any new or adjusted tax to be approved by a vote of the electorate before taking effect, and by subjecting any new or adjusted "exempt charge" to challenge and inevitable delay through a referendum at the whim of any person or entity with the resources to pay to gather enough signatures, the Measure would eliminate the ability of government to act promptly to raise or adjust revenue when needed to respond to crises and pressing changed circumstances.

Third, the impact of the Measure on essential government services at both the state and local levels would be profound and devastating. Because of the aging of California's population, fluctuations in tax receipts, and unforeseen circumstances, it is inevitable that revenue streams will need to be adjusted to provide and maintain necessary services. The Measure would require the Legislature to comply with the current requirements

for amending the constitution simply in order to ensure the continuation of essential government services, which would be a fundamental change to our representative form of government.

ARGUMENT

The parties agree that "although the initiative power may be used *to amend* the California Constitution, it may not be used *to revise* the Constitution." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 414, emphasis in original.) A measure would "revise" the Constitution if it would "make a far reaching change in the fundamental governmental structure or the foundational power of its branches as set forth in the Constitution." (*Id.* at p. 444.) "'[E]ven a relatively simple enactment may accomplish such far reaching changes *in the nature of our basic governmental plan* as to amount to a revision ….'" (*Id.* at p. 427, quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 223, italics in *Strauss*.)

This Measure would rise to the level of a constitutional revision by, among other things:

- Withdrawing in its entirety the Legislature's power to impose new taxes, raise taxes, or even adjust state taxes in any way that results in any taxpayer paying a higher tax. The Legislature's role as a deliberative body that can respond to changing circumstances by adjusting tax policy would be eliminated.
- Preventing the government from responding to emergencies and other unforeseen events that require an immediate increase in revenues. Even revenue increases from "exempt

charges" that do not qualify as taxes could be held hostage by anyone with the funds to pay for the gathering of signatures for a referendum.

These changes to our basic plan of government would threaten the government's ability to maintain essential services.

I. The Measure would revise the Constitution by eliminating the Legislature's core power to tax.

If the Measure were to take effect, the Legislature would have no power to raise revenue for the operation of government through any new, increased, or redirected "tax." Rather, under the Measure, any "change in law," broadly defined, that "results in any taxpayer paying a new or higher tax," could only be *proposed* by the Legislature through a two-thirds vote of both houses and could only be *enacted* by a subsequent majority vote of the electorate in a statewide election. (Measure § 4, proposed art. XIIIA, § 3, subd. (b)(1).) The Measure would thus impose the same requirements on any effort to enact, raise, or repurpose any state tax as have historically applied to *amendments to the Constitution*. (See Cal. Const., art. XVIII, §§ 1, 4 [Legislature may propose amendment to Constitution by two-thirds vote of each house, which takes effect only if approved by majority of electors in statewide election].)

The practical effect, then, of this provision in the Measure would be identical to revising the Constitution to state: "The Legislature's power to tax is hereby revoked. Neither the Legislature nor any other branch of government has the power to adopt any change in law that results in any taxpayer paying a

new or increased tax." Under either the Measure or this hypothetical provision expressly eliminating the Legislature's taxing power, the only way for the state government to collect any new or increased tax revenue to fund the basic and essential functions of government would be through complying with the process necessary to amend the Constitution.

If this elimination of the Legislature's power to tax is not an example of a "far reaching change in … the foundational power of [one of the state government's] branches," *Strauss*, *supra*, 46 Cal.4th at p. 444, it is hard to fathom what would be. From the beginning, the "basic governmental plan" created by California's Constitution, *id.* at p. 441 (emphasis omitted), has relied on the existence of a representative deliberative body, the Legislature, with the power to adopt and change state policy by raising revenue and appropriating funds to respond to changing circumstances.

As this Court has recognized, "[t]he core functions of the legislative branch include passing laws, levying taxes, and making appropriations." (*Carmel Valley Fire Prot. Dist. v. California* (2001) 25 Cal.4th 287, 299.) As a matter of "fundamental governmental structure," these are the Legislature's "foundational power[s]." (*Strauss*, *supra*, 46 Cal.4th at p. 444; see Cal. Const., art. IV, §§ 1, 8, subd. (b), 10, 12; *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 595, quoting *Myers v. English* (1858) 9 Cal. 341, 349 ["'[T]he power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the Legislature.'"]; *Ingels v. Riley* (1936) 5 Cal.2d

154, 163 ["It is elementary that the legislature is vested with all governmental powers in matters of regulation and revenue not delegated to the federal government or denied to the state legislature by our own or the federal Constitution."].)

From the beginning, the Constitution has carefully protected the Legislature's power to tax. The 1879 Constitution expressly prohibited the Legislature from giving away that core power. (1879 Cal. Const., former art. XIII, § 6 ["The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party."].) That core provision remains a part of the Constitution today. (Cal. Const., art. XIII, § 31 ["The power to tax may not be surrendered or suspended by grant or contract."].) And it is well-established that, as a fundamental matter of governmental structure, the Legislature cannot restrict the ability of future legislatures to exercise their core powers to set tax policy in response to changing circumstances. "[A] legislative body cannot limit or restrict its own power or that of subsequent Legislatures …." (*In re Collie* (1952) 38 Cal.2d 396, 398.)

The Measure would radically alter that basic governmental plan and freeze the budgetary and policy choices of prior legislatures in place as a matter of basic constitutional structure, by forbidding any future legislature from making any revenue-enhancing change to current tax levels or rates without complying with the procedure necessary to amend the Constitution.

Thus, future legislatures would have no power to respond to changing circumstances, demographics, or needs by adjusting the current mix of revenue sources adopted by past legislatures. Future legislatures would not even have the power to keep the level of overall taxes constant while adjusting the distribution of those taxes among payers, because the Measure would require a vote of the electorate to adopt any "change in law" that results in "*any* [single] taxpayer paying a new or higher tax." (Measure § 4, proposed art. XIIIA, § 3, subd. (b)(1), emphasis added.) The only way for future legislatures to adjust prior legislatures' policy choices—or even simply to maintain current social services levels in the face of inevitably increased costs needed to serve our aging population—would be through the process necessary to amend the Constitution. That would be a radical change to our basic governmental plan.

The provision of Proposition 115 that this Court struck down in *Raven v. Deukmejian* (1990) 52 Cal.3d 336, because it constituted a revision rather than an amendment of the judiciary's core powers was substantially less far reaching. Proposition 115 purported to "amend[] section 24 of article I of the state Constitution, to provide that certain enumerated criminal law rights shall be construed consistently with the United States Constitution, and shall not be construed to afford greater rights to criminal or juvenile defendants than afforded by the federal Constitution." (*Raven*, *supra*, 52 Cal.3d at pp. 342-343.)

That provision would not have eliminated the judiciary's interpretive power in its entirety. Rather, "[i]n *essence and practical* effect, … [it] would vest all judicial interpretive power, *as to fundamental criminal defense rights*, in the United States Supreme Court." (*Raven*, *supra*, 52 Cal.3d. at p. 352, emphases altered.) California courts would still retain their power to interpret the state's laws and Constitution, with one limited but important exception—the judiciary would lose its power to interpret the state Constitution to provide greater protections to criminal defendants than the United States Supreme Court interpreted the federal Constitution to provide. Decisions of lower federal courts would still not be binding on state courts, but "ultimate protection of criminal defendants from deprivation of their constitutional rights would be left in the care of the United States Supreme Court." (*Ibid.*)

This Court held that the elimination of that *portion* of the judiciary's core interpretative power was enough to render the provision a revision, not an amendment. The Court explained that "in practical effect, the new provision vests a *critical portion* of state judicial power in the United States Supreme Court, certainly a fundamental change in our preexisting governmental plan." (*Raven*, *supra*, 52 Cal.3d at p. 355, emphasis added.)

In comparison, the Measure's elimination of the Legislature's core power to tax would constitute a much farther-reaching and more radical change to a foundational power of one of the State's branches of government. If vesting a "critical portion" of the state judicial power in the United State Supreme

Court would constitute a revision, then removing *all* of the Legislature's core power to tax surely constitutes "such [a] far reaching change[] in the nature of our basic governmental plan as to amount to a revision…." (*Raven*, *supra*, 52 Cal.3d at pp. 351-352, quoting *Amador*, *supra*, 22 Cal.3d at p. 223.)

II. The Measure would revise the Constitution by eliminating the government's power to respond to emergencies by raising revenue immediately.

The Measure would also alter our basic governmental plan by eliminating the ability of our government to respond to emergencies by raising *any* new revenue with immediate effect. As Petitioners explain, the Measure would "ensure that every single revenue-raising measure enacted at the state or local level would be subject to voter approval, either because it is a tax that the voters must enact in the first instance, or because it is an exempt charge that can only be enacted by the legislative branch, subject to the voters' power of referendum." (Petition ¶26, emphasis omitted.) The Measure would thus eliminate the power of the state and local governments to raise urgently needed revenue for immediate use, without the inevitable cost and delay required to hold a vote of the electorate.

The basic plan of California's government has always taken into account the need for the Legislature to be able to respond to emergencies by taking actions with immediate effect. The 1879 Constitution, like the current Constitution, allowed the Governor to call the Legislature into session by proclamation and allowed the Legislature, by a two-thirds vote, to pass laws with immediate effect. (See 1879 Cal. Const., former art. IV § 2; *id.*

former art. V, § 9; see also *id.* former art. IV, § 15 [allowing Legislature to dispense with requirement that bills be in print for three days in the event of emergency].)

When the people amended the Constitution to add the initiative and referendum power in 1911, they carefully maintained the Legislature's power to adopt taxes and make appropriations to fund the current operations of government, with immediate effect. (See *Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, 1122; Cal. Const., art. IV, § 8, subd. (c)(3).) While other statutes cannot take effect for at least 90 days to allow for a challenge through the referendum power, and if challenged do not take effect until approved by a vote of the electorate, the power of referendum explicitly does not apply to "tax levies or appropriations for the usual current expenses of the State." (Cal. Const., art. II, § 9, subd. (a).)

That limitation on the referendum power is a critically important part of the fundamental structure of government, because it maintains the Legislature's ability to respond to emergencies and immediately pressing needs. As this Court has explained, the Constitution exempts "statutes providing for tax levies or appropriations for usual current expenses of the government" from the referendum power specifically "to prevent the referendum process from disrupting essential governmental operations." (*Wilde*, *supra*, 9 Cal.5th at p. 1111.)

The Measure would fundamentally alter this aspect of our basic governmental plan, by eliminating the government's ability to raise revenue without delay when necessary. Eliminating the

Legislature's power to tax (*supra* at Part I) would prevent the government from responding to crises, by requiring a vote of the electorate before any new or adjusted tax could take effect. The Measure could also prevent the adoption or adjustment of any "exempt charge" with immediate effect, by subjecting all such changes to challenge by referendum—effectively giving any sufficiently wealthy individual or entity with the resources to pay for signature gatherers the power to prevent any immediately needed revenue adjustment from taking effect for months if not years.

When a referendum challenging a statute enacted by the Legislature qualifies for the ballot, the enactment does not take effect until after the challenged statute is approved by a vote of the electorate. (Cal. Const., art. II, § 9.) The next general election could be two years away. Calling a special election would involve inherent delays and in many cases cost tens or hundreds of millions of dollars. As this Court has explained, if tax levies and appropriations for the usual current expenses of the State were subject to referendum, the government's "ability to adopt a balanced budget and raise funds for current operating expenses through taxation would be delayed and might be impossible." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 703.)

Similarly, under our current basic government structure, state and local government executive agencies may adopt or adjust fees or other charges necessary for government to operate, and the referendum power does not extend to those administrative acts. (See *City of San Diego v. Dunkl* (2001) 86

Cal.App.4th 384, 399-400.) That is because "to allow the referendum or initiative to be invoked to annul or delay the executive or administrative conduct would destroy the efficient administration of the business affairs of a city or municipality." (*Id.* at 399, quoting *Lincoln Prop. Co. No. 41, Inc. v. Law* (1975) 45 Cal.App.3d 230, 234.) The Measure would do just that, by making every change to an "exempt charge" at any level of government that resulted in a higher payment for even a single individual subject to challenge through referendum.

The Measure's elimination of the government's ability to adjust revenue necessary to respond to crises, exigencies, and changed circumstances without delay would fundamentally alter our basic governmental plan. This Court has explained that "[o]ne 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 by interference with the administration of its fiscal powers and policies." (*Rossi*, *supra*, 9 Cal.4th at p. 703, quoting *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839-840; see also *Hunt v. Mayor & Council of City of Riverside* (1948) 31 Cal.2d 619, 628-629, quoting *Chase v. Kalber* (1915) 28 Cal.App. 561, 569-570 ["'[I]n examining and ascertaining the intention of the people with respect to the scope and nature of those (reserved, referendum) powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so

applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential … to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers, and that they do not so apply.'"].)

In other words, the exception to the referendum power for tax measures reflects a core feature of the current constitutional structure necessary for government to fulfill its essential functions. As this Court recently explained, "Article II, section 9's exemptions from referendum reflect a recognition that in certain areas"—including through "statutes providing for tax levies or appropriations for usual current expenses of the state"—"*legislators must be permitted to act expediently*, without the delays and uncertainty that accompany the referendum process." (*Wilde*, *supra*, 9 Cal.5th at pp. 1122-1123, emphasis added.) Such measures have "'special urgency, a delay in the implementation of which could disrupt essential governmental operations.'" (*Ibid.*, quoting *Rossi*, *supra*, 9 Cal.4th at p. 703.)

Moreover, as this Court explained in *Wilde*, the Constitution's concern with delay in the ability of the government to fund basic services is not limited to emergencies. In response to the argument that an increase in certain water fees should be subject to the referendum power because a city could default to prior water rates if the referendum succeeded, this Court

explained that "the exceptions to referendum do not exist solely to shield governments from certain and immediate disaster. From the standpoint of the Constitution's referendum provision, the gradual disrepair of a fundamental government service is as much a cause for concern as a wholesale shutdown." (*Wilde*, *supra*, 9 Cal.5th at p. 1124.) The Court reasoned that "[t]he City will *inevitably need to raise the funds* required for the operation, repair, and upkeep of its utilities, *just as it would for any other essential government service*. Waiting to institute new water rates until a successful referendum runs the risk of forcing the City to wait too long. The purpose of the taxation exception in article II, section 9 is to alleviate that risk." (*Ibid.*, emphasis added.) The same is true for myriad government-funded services and programs.

Considering the wide sweep of important government services provided throughout California, the state and local governments "will inevitably need to raise the funds required for the operation" of countless "essential government service[s]." (*Wilde*, *supra*, 9 Cal.5th at p. 1124.) The Measure would eliminate the governments' ability to do so when time is of the essence.

III. The Measure would prevent the government from carrying out essential functions.

By removing from the Legislature the power to raise revenue and to respond expeditiously to unforeseen events (and by making several other changes to our basic plan of government that Petitioners explain), the Measure would threaten essential

government services. (See Petition at 62-69; Traverse at 53-61.) As just some examples:

- The Measure would seriously undermine the ability of the government to respond to natural disasters and similar events. The 1989 Loma Prieta earthquake was estimated to have resulted in over $5 billion in total damage in California, dozens of deaths, and the displacement of more than 13,000 Californians. (See California Senate, "1989 Northern California Earthquake: Legislative Response" (1989), California Senate Paper 227, at p. 1.[2]) To respond to the emergency, Governor Deukmejian called the Legislature into Extraordinary Session, and just over two weeks after the earthquake struck, the Legislature enacted 24 measures to provide necessary statewide relief and emergency response. (*Id.* at p. 4.) A critical component of that emergency response was a temporary quarter percent increase in the state sales tax, which took effect on December 1, 1989 (less than a month-and-a-half after the earthquake struck) and lasted 13 months, for the purpose of creating a Disaster Relief Fund to fund the other measures enacted in the extraordinary session. (*Id.* at pp. 9-10.) That tax increase provided approximately $776 million in vital state aid to individuals, businesses, and nonprofit organizations as well as state and local government agencies, to confront the emergency caused by the earthquake—yet it still was not enough to fund all the State's disaster relief efforts. (See Office of the Auditor

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[2] Available at http://digitalcommons.law.ggu.edu/caldocs_senate/227.

General of California, "The State's Disaster Relief Fund Has Insufficient Revenues to Cover All State Costs from the Loma Prieta Earthquake" (May 1992), P-123, at p. S-1.[3]). Had the Measure been in effect, the Legislature would have had no power to immediately raise these vital emergency relief revenues.

California is virtually certain to experience another major earthquake. The California Earthquake Authority has estimated potential losses from a major earthquake on the Hayward Fault at over $100 billion. (California Earthquake Authority, "What to Expect from an Earthquake along the Hayward Fault" (Updated July 24, 2020).[4]) The State's ability to promptly enact and fund relief programs without delay to respond to such a disaster would be severely curtailed by the Measure.

Much the same can be said about the government's ability to respond to floods, fires, another pandemic, or other disasters. The Measure would cripple the government's ability to take prompt, decisive action to confront existential and sweeping emergencies. Our basic governmental plan was designed to avoid that kind of hamstringing of government's ability to protect and promote the public good in times of crisis.

- The Measure would threaten devastation to every public program by effectively requiring a constitutional

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[3] Available at https://www.bsa.ca.gov/pdfs/oag/p-123.pdf.

[4] Available at https://www.earthquakeauthority.com/blog/2019/hayward-fault-earthquake-prediction.

amendment just to maintain *current* levels of public services in the face of an aging population—let alone to increase or otherwise adjust those services. Take Medi-Cal as just one important example. Medi-Cal is a state and federal partnership program that provides health care coverage for low-income Californians. Covered services include visits to the doctor's office, stays at the hospital, prescription drugs, behavioral health services, long-term care, and dental services, among many other areas, including the State's In-Home Supportive Services (IHSS) program that alone provides services to approximately 640,000 Californians. The State currently spends roughly $37 billion, or 13% to 17% of the State's annual budget, on Medi-Cal. (See Legislative Analyst's Office, "The 2024-25 Budget, Medi-Cal Fiscal Outlook" (Dec. 7, 2023) ("LAO Medi-Cal Fiscal Outlook").[5]) The federal government, in turn, provides more than $86 billion. (Legislative Analyst's Office, "The 2023-23 Budget, Analysis of the Medi-Cal Budget" (Feb. 10, 2023) at p. 3.[6]) The Medi-Cal program serves roughly one-third of all Californians. (LAO Medi-Cal Fiscal Outlook.)

To receive federal funds to support the Medi-Cal program, the State must provide certain basic services, and the costs of those services will inevitably rise with California's aging

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[5] Available at https://lao.ca.gov/Publications/Report/4820#:~:text=Under%20the%202023%2D24%20Budget,)%20higher%20in%202023%2D24.

[6] Available at https://www.lao.ca.gov/reports/2023/4675/Medi-Cal-Budget-Analysis-021023.pdf.

population. The Legislative Analyst's Office projects that the State's general fund commitment to Medi-Cal will rise to more than $43 billion in 2027-28, due in substantial part to California's increasingly aging population. (LAO Medi-Cal Fiscal Outlook.) Federal laws restrict the State's ability to cut funding for Medi-Cal while continuing to receive the billions of dollars in federal funding that support the program. (See, e.g., *Douglas v. Indep. Living Ctr. of S. California, Inc.* (2012) 565 U.S. 606, 611-612 [discussing preliminary injunctions that prevented California from cutting various Medi-Cal payment rates in 2008 and 2009 in response to budget shortfalls]; *Oster v. Lightbourne* (N.D. Cal. Mar. 2, 2012) No. C 09-4668 CW, 2012 WL 691833, at *15, appeal dismissed as moot, *Oster v. Wagner* (9th Cir. 2013) 504 F. App'x 555, 556 [example of preliminary injunction preventing cuts to IHSS spending in part based on requirements of Americans with Disabilities Act and Rehabilitation Act of 1973]; see also *Armstrong v. Exceptional Child Ctr., Inc.* (2015) 575 U.S. 320, 328 [explaining that if State fails to comply with Medicaid requirements, federal government can revoke federal funding].)

The Measure would threaten California's ability to maintain its current Medi-Cal program, and to maintain access to the *tens of billions* of dollars in federal funds that help support that program, by effectively requiring constitutional amendments to fund the increased costs that will inevitably result even if the State makes no changes to current benefits levels. The Measure would cause similar threats to virtually

every other current state-funded program that will incur increasing costs as the population ages.[7]

- The Measure would handcuff the State's ability to react to unpredictable fluctuations in revenue from volatile tax bases. The Governor recently released a proposed State budget of $208 billion, designed to address a shortfall of some $37.9 billion largely resulting from volatility in tax revenues outside the

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[7] The Measure provides that a specialized kind of Medi-Cal provider charge would qualify as an "exempt charge" rather than a tax. (See Measure § 4, proposed art. XIIIA, §3, subd. (e)(3) [exempt charge includes a "levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal assistance expenditures"].) That provision appears targeted at certain existing Medi-Cal charges like the "hospital quality assurance fee" authorized by the Medi-Cal Hospital Reimbursement Improvement Act of 2013, Welf. & Inst. Code §§ 14169.50 et seq. (See also, e.g., Stats. 2023, ch. 13 (A.B. 119) [managed care organization provider tax].) These existing charges are designed to increase federal financial participation to allow for supplemental Medi-Cal payments to health care providers. (See, e.g., Welf. & Inst. Code § 14169.50, subd. (d).) Following Proposition 52 in 2016, the Legislature may only amend or add provisions to the hospital quality assurance fee statute that further the purposes of the act; any other change to the statute requires a vote of the electorate. (Cal. Const., art. XVI, § 3.5.) The Measure's inclusion of this kind of narrow Medi-Cal provider charge in the definition of an "exempt charge" (which must be adopted by the Legislature and be subject to challenge by referendum) rather than a tax would do little to address the Measure's serious practical impacts on Medi-Cal, and nothing to address the Measure's sweeping effects on other public services.

Legislature's, and the State's, control. (2024-25 Governor's Budget Summary (Jan. 10, 2024) at pp. 1-5, 10.[8]) While this year the Governor has proposed transfers from reserve funds to make up a substantial portion of that shortfall, there is no guarantee that reserve funds will be available in future years of budget shortfalls.

- By requiring legislative approval, subject to referendum, of any local change in law that results in any person paying a higher "exempt charge," the Measure would also be devastating for local government services. Virtually every city, county, and special district must regularly adopt increases to fee rates and charges and revise rate schedules to accommodate new users and services. The Measure would subject most of these adjustments to new standards and limitations and threatened legal challenges.

Major examples of affected fees and charges include: certain water, sanitary sewer, wastewater, garbage, electric, gas, and other utility fees; nuisance abatement charges, such as for weed, rubbish and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs; emergency response fees; advanced life support transport charges; business improvement district charges; fees for processing land use and develop applications such as plan check fees, use permits, design review, environmental assessment, plan amendment, and subdivision map changes;

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[8] Available at https://ebudget.ca.gov/2024-25/pdf/BudgetSummary/FullBudgetSummary.pdf.

document processing and duplication fees; facility use charges, parking fees, and tolls; and fees for parks and recreation services.

Take public hospital charges as just one example. Like private hospitals, public hospitals currently charge dozens or hundreds of different fees for specific health care services. Those fees often vary by payer—varying prices for delivering services might be set through negotiation with insurance companies, rather than reflecting the actual cost of serving an individual patient (which may itself be extremely difficult to isolate), and many hospitals charge privately insured patients at a rate higher than the actual cost of delivering services so they can use the excess revenue to subsidize care of the uninsured or those with Medi-Cal coverage. By requiring legislative approval of every such fee, subject to challenge through a referendum (if a wealthy individual, insurance company, or other entity decides to pay to gather enough signatures), and by requiring that each "exempt charge" "not exceed the actual cost of providing the service" (Measure § 4, proposed art. XIIIA, § 3, subd. (g)(1); Measure § 6, proposed art. XIIIC, § 2, subd. (h)(1)), the Measure would threaten to radically change how public hospitals operate and are funded, seriously threatening local governments' ability to provide vital emergency and other healthcare services to their communities.

Indeed, by impeding the ability of local governments to adopt and adjust fees necessary to fund basic services, the Measure would almost certainly cause reductions and declines

in virtually every vital government service, including fire and emergency response, law enforcement, public health, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention and mental health services, and public hospitals. The far reaching, devastating nature of the Measure's impact on government's basic ability to function is hard to overestimate.

CONCLUSION

This Court should grant the Petition and issue a writ of mandate prohibiting respondent from placing the Measure on any statewide ballot.

Dated: January 31, 2024

Respectfully submitted,

ALTSHULER BERZON LLP

By: */s/ Matthew J. Murray*
Matthew J. Murray

Attorneys for Amicus Curiae SEIU California

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Pursuant to Rule 8.204 of the California Rules of Court, I hereby certify that the foregoing document is proportionally spaced, has a typeface of 13 points, and contains 5,255 words, excluding the cover, application, tables, signature block, and certificates, based on the word count of the word-processing program used to prepare this brief.

Dated: January 31, 2024

By: */s/Matthew J. Murray*
Matthew J. Murray

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I, Jada Commodore, declare as follows:

I am a resident of the State of California, and employed in San Francisco, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 177 Post Street, Suite 300, San Francisco, CA 94108.

On January 31, 2024, I served a copy of the following document(s):

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL

on the following parties in said action:

Robin B. Johansen Margaret R. Prinzing Richard R. Rios Inez Kaminski Olson Remcho, LLP 1901 Harrison Street, Suite 1550 Oakland, CA 94612 Phone: (510) 346-6200 Email: mprinzing@olsonremcho.com **(By Email Transmission)**	*Attorneys for Petitioners Legislature of the State of California, Governor Gavin Newson, and John Burton*
Steven J. Reyes Mary M. Mooney Alexa P. Howard Office of the Secretary of State 1500 - 11th Street Sacramento, CA 95814 Phone: (916) 767-8308 Email: mmooney@sos.ca.gov **(By Email Transmission)**	*Attorneys for Respondent Secretary of State Shirley N. Weber, Ph.D.*

Thomas W. Hiltachk Paul Gough Bell, McAndrews & Hiltachk, LLP 455 Capitol Mall, Suite 600 Sacramento, CA 95814 Phone: (916) 442-7757 Email: tomh@bmhlaw.com **(By Email Transmission)**	*Attorneys for Real Party in Interest Thomas W. Hiltachk*
Jonathan Coupal, Timothy Bittle, Laura Dougherty Howard Jarvis Taxpayers Association 1201 K Street, Suite 1030 Sacramento, CA 95814 Phone: (916) 444-9950 Email: laura@hjta.org **(By Email Transmission)**	
Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 **(By United States Mail)**	*Pursuant to Rule 8.29 of the California Rules of Court*

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/s/Jada Commodore

Jada Commodore

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
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Michael Colantuono Colantuono, Highsmith & Whatley, PC 143551	mcolantuono@chwlaw.us	e-Serve	1/31/2024 10:16:16 AM
Inez Kaminski Olson Remcho, LLP 345584	ikaminski@olsonremcho.com	e-Serve	1/31/2024 10:16:16 AM
Alexa Howard Office of the California Secretary of State 309197	lhoward@sos.ca.gov	e-Serve	1/31/2024 10:16:16 AM
Adrian Granda City of San Diego	ADGranda@sandiego.gov	e-Serve	1/31/2024 10:16:16 AM
Robin Johansen Olson Remcho LLP 79084	rjohansen@olsonremcho.com	e-Serve	1/31/2024 10:16:16 AM
Neil Sawhney ACLU of Northern California	nsawhney@aclunc.org	e-Serve	1/31/2024 10:16:16 AM

300130			
Natalie Boust California Business Roundtable	natalie@cbrt.org	e-Serve	1/31/2024 10:16:16 AM
Mike Young California Environmental Voters	mike@envirovoters.org	e-Serve	1/31/2024 10:16:16 AM
Richard Rios Olson Remcho, LLP 238897	rrios@olsonremcho.com	e-Serve	1/31/2024 10:16:16 AM
Adam Skaggs Giffords Law Center 4211173	askaggs@giffords.org	e-Serve	1/31/2024 10:16:16 AM
Thomas Hiltachk Bell, McAndrews & Hiltachk, LLP 131215	tomh@bmhlaw.com	e-Serve	1/31/2024 10:16:16 AM
Paul Dress ARC	Paul.Dress@asm.ca.gov	e-Serve	1/31/2024 10:16:16 AM
Hector Barajas	hbarajas@gmail.com	e-Serve	1/31/2024 10:16:16 AM
Christopher Hoene California Budget & Policy Center	choene@calbudgetcenter.org	e-Serve	1/31/2024 10:16:16 AM
Coyote Marin Court Added	c.c.marin@ic.institute	e-Serve	1/31/2024 10:16:16 AM
Steven Reyes Calfornia Secretary of State	steve.reyes@sos.ca.gov	e-Serve	1/31/2024 10:16:16 AM
Christina Williamson Mastagni Holstedt, A.P.C.	cwilliamson@mastagni.com	e-Serve	1/31/2024 10:16:16 AM
Thomas Hiltachk Bell, McAndrews & Hiltachk, LLP 131215	kmerina@bmhlaw.com	e-Serve	1/31/2024 10:16:16 AM
Matthew Murray 271461	mmurray@altber.com	e-Serve	1/31/2024 10:16:16 AM

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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.

1/31/2024

Date

/s/Matthew Murray

Signature

Murray, Matthew (271461)

Last Name, First Name (PNum)

Altshuler Berzon LLP

Law Firm