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, vs. SHIRLEY N. WEBER, Ph.D., in her capacity as Secretary of State of the State of California, Respondent. THOMAS W. HILTACHK, Real Party In Interest.	)	Case No. S281977

APPLICATION TO FILE AMICUS BRIEF AND AMICUS BRIEF IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDATE

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, *amicus curiae,* California Budget and Policy Center, respectfully requests leave to file the attached brief of *amicus curiae* in support of all Petitioners. This application is timely made pursuant to the Court's order of November 29, 2023, permitting such briefs on or before January 31, 2024.

The California Budget and Policy Center ("Amicus") is a California nonprofit organization. *Amicus* is a nonpartisan research and analysis organization committed to advancing public policies that improve the lives of Californians who are denied opportunities to share in the state's wealth and who deserve the dignity and support to lead thriving lives in our communities. *Amicus* advocates for State and local public policies and budgetary decisions that will improve the lives of all Californians through policy guidance and solutions based on independent research and analysis. *Amicus* also engages in strategic collaborations and communications to expand equitable economic opportunities and promote well-being for all Californians.

For these reasons, *Amicus* has a substantial interest in the outcome of this proceeding, as "The Taxpayer Protection and Government Accountability Act" ("Initiative") will have a devastating negative effect on State and local governments' ability to

manage government finances and budgets, expand economic opportunities and promote the well-being of all Californians. As an organization dedicated to preserving and enhancing the expansion of economic opportunities and well-being on behalf of all Californians, *Amicus* is interested in the issues presented in this writ petition.

This proceeding addresses the issue of whether the Initiative is beyond the power of the voters of California to adopt via a statewide vote at the November 5, 2024 statewide general election, whether it is unconstitutional, unfair, and unreasonable, and whether the Court should prevent the Act from appearing on the ballot.

Amicus is familiar with the issues before the Court. *Amicus* believes that further briefing is necessary to address matters not fully addressed by the parties' briefs. Specifically, *Amicus* will detail the negative impact that the initiative will have on local government officials' and agencies' budget processes and will explain the negative impacts to voters and residents of numerous local jurisdictions that would result if the Court fails to grant the emergency writ petition and instead allows the Initiative to be put before the voters at the November 5, 2024 election.

No party to this action has provided support in any form regarding the authorship, production, or filing of this brief. *Amicus*'

sole interest in this action is the Initiative's ramifications on the interests of California citizens on whose behalf the Center advocates.

BRIEF OF AMICUS CURIAE

INTRODUCTION

The Initiative at issue in this matter is ill-conceived and should not be put before the California voters on November 5, 2024, or at any other election, because it is an impermissible revision of the State Constitution, as addressed by Petitioners' briefs. In addition, the Initiative's proposed retroactive application provisions violate the Due Process protections enshrined in the federal and State Constitutions. If it were to be enacted, it will cause massive chaos to the structure and functions of State and local governments, deprive Californians, particularly low-income and other disadvantaged State residents, of essential services, and clog the State's judicial branch with litigation.

Among other things, the Initiative requires any local tax enacted from January 1, 2022, up to and including any tax enacted on November 5, 2024, to be approved by voters consistent with the Initiative's provisions, regardless of whether it was previously approved under existing law. Funds have already been budgeted by the relevant government agencies and much of these funds have no doubt already been expended for essential services to millions of

residents in those local jurisdictions. These services will now be thrown into jeopardy due to the potential invalidation of numerous local tax and bond measures without any regard for the voters who already approved them in prior elections. This violates the Due Process rights of these voters, residents, and businesses in these local jurisdictions and is, thus, impermissible under the federal and State constitutions.

As Petitioners have also discussed, the Initiative is a revision of the State Constitution, not an amendment. A revision of the State Constitution must be passed by a two thirds majority of both houses of the State Legislature and then approved by a majority of the State's voters at a statewide election. The Initiative did not follow this process and, thus, is ineligible to be placed on the November 5, 2024 ballot.

The effect of this improper Initiative will be devastating to State and local governments if it is permitted to be on the ballot. All the funding measures approved since January 1, 2022 will be placed in question, despite the funds having already been budgeted and, in some cases, already expended. State and local elections processes that conclude in November are incongruous with state laws requiring state and local governments to enact balanced budgets by June 30 or October 2. Local governments would be unable to impose or

increase taxes and fees to pay for needed services. All of this will negatively impact residents and businesses in numerous local jurisdictions, have a disproportionate effect on California's residents, including those with low incomes, Californians of color, disabled Californians, and other Californians facing barriers to economic stability.

The Court should grant Petitioner's emergency request for a writ of mandate and prevent the Initiative from appearing on the November 5, 2024 ballot.

ARGUMENT

I. THE RETROACTIVE APPLICATION OF THE INITIATIVE IS IMPERMISSIBLE UNDER THE STATE CONSTITUTION BECAUSE IT WOULD VIOLATE THE DUE PROCESS RIGHTS OF THE RESIDENTS OF LOCAL AGENCIES THAT ADOPTED TAX AND BOND MEASURES AFTER JANUARY 1, 2022.

The Initiative and its retroactivity provision are unreasonable, disruptive to societal interests, and harmful to voters and persons served by local agencies that approved tax and bond measures after January 1, 2022, to the point of being unfair, non-rational, and violative of the Due Process rights of those voters and persons.

A. California Courts Have Long Been Wary Of Retroactive Laws Because Of Elementary Considerations Of Fairness And Constitutional Due Process Implications.

A "retrospective law" is one which "affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the [law]." (*Evangelatos v. Superior Court* (1988) 44 Cal. App. 3d 1188, 1206 *quoting Aetna Casualty & Surety Co. v. Industrial Acci. Com.* (1947) 30 Cal. 2d 388, 391.) California courts have long been wary of applying laws retroactively; generally, laws operate prospectively only. (*See McClung v. Employment Development Dept.* (2004) 34 Cal. 4th 467, 475.) In fact, "[t]he presumption against retroactive legislation is deeply rooted in our jurisprudence and embodies a legal doctrine that is centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly . . . ." (*Id.* quoting *Landgraf v. Usi Film Prods.* (1994) 511 U.S. 244, 265.)

Retroactive application of a law raises constitutional implications. (*See McClung, supra,* 34 Cal. 4th at p. 476.) "Both this court and the United States Supreme Court have expressed concerns that retroactively creating liability for past conduct might violate the Constitution . . . ." (*Id.*) This Court has declared that an "established

rule of statutory construction" requires it to construe laws to avoid "constitutional infirmities." (*Id. citing Myers v. Philip Morris Co.* (2002) 28 Cal. 4th 828, 846-847.) In the voter initiative context, California judicial precedent has established "that retroactive application of a new measure may conflict with constitutional principles 'if it deprives a person of a vested right without due process of law.'" (*Strauss v. Horton* (2009) 46 Cal. 4th 364, 473 quoting *In re Marriage of Buol* (1985) 39 Cal. 3d 751, 756 (applying state due process clause).) Courts have held that "[a] right is 'vested' when it is 'already possessed' or 'legitimately acquired.'" (*Standard Oil Co. v. Feldstein* (1980) 105 Cal. App. 3d 590, 605 quoting *Harlow v. Carleson* (1976) 16 Cal. 3d 731, 735.)

This Court has also explained that "in determining whether a retroactive law contravenes the *due process clause,* we consider such factors as the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions." (*Strauss, supra,* 46 Cal. 4th at 473 (emphasis in original) quoting *In re Marriage of Bouquet* (1976) 16 Cal. 3d 583, 592.) Also, in order for

laws affecting economic legislation or taxation retroactively to not offend due process, courts have required a showing of "rational legislative purpose." (*River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal. App. 4th 922, 943-944; quoting *United States v. Carlton* (1994) 512 U.S. 26, 30-31.) Here, there is no rational legislative purpose to apply this prospective new law retroactively.

I. The Initiative's Stated Interests And The Means To Accomplish Them, When Retroactively Applied, Are Unreasonable, Disruptive To Societal Interests, Harmful And Unfair To Voters And Persons Served By Local Agencies That Adopted Tax And Bond Measures After January 1, 2022.

In terms of presumed significant state interests, the Initiative states in its "Statement of Purpose" that "[i]n enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval." (Initiative, §. 3(a).) Further, they "also intend that all fees and other charges are passed or rejected by voters themselves . . . ." (*Id.*) Another alleged interest is to "increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot . . . to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax." (Initiative, § 3(b).) The Initiative proponents

also seek "to clarify that any new or increased form of state government revenue . . . shall be authorized only by a vote of the Legislature and the signature of the Governor . . . ." (Initiative, § 3(c).) The Initiative is further intended to "ensure that taxpayers have the right and ability to effectively balance new or increased taxes or other charges with rapidly increasing costs Californians are already paying . . . ." (Initiative, § 3(d).) Last, the Initiative states that "voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter requirements for government revenue increases created by the courts . . . ." (Initiative, § 3(e).).

With respect to local governments, the Initiative seeks to accomplish these interests through its "Local Government Tax Limitation" that would amend Section 2 of Article XIII C of the California Constitution. (Initiative, Sec. 6.) Thus, the Initiative could prevent any local government or voter initiative from imposing or increasing a general tax, unless that tax is submitted to the electorate and approved by majority vote. (Initiative, Sec. 6, proposed Cal. Const. art. XIII C, § 2(b).) No local government or voter initiative could enact a special tax unless that tax were approved by a two-thirds vote of the electorate. (Initiative, § 6, proposed Cal. Const. art. XIII C, § 2(c).) Other requirements in the Initiative include, but are not limited to, requiring various statements to be made in the title

and summary of voter initiatives and measures, ballot label, or question. (Initiative, § 6, proposed Cal. Const. art. XIII C, § 2(d).) There is even a provision that prohibits voters from amending city and county charters "which provides for the imposition, extension, or increase of a tax . . . ." (Initiative, Sec. 6, proposed Cal. Const. art. XIII C, § 2(f).) The Initiative also would enact a retroactive application provision, stating, "[a]ny tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance with the requirements of this section." (Initiative, § 6, proposed Cal. Const. art. XIII C, § 2(g).)

It follows that regardless of whether the Court considers the Initiative's stated purposes as "significant state interests" or whether their proposed constitutional amendments *might* be reasonable means to secure those interests on a *prospective basis*; such purposes and the means to accomplish them are wholly unreasonable, disruptive to societal interests, harmful, and unfair when applied *retroactively* to tax and bond measures approved since January 1, 2022. This is because numerous tax and bond ballot measures were put on the ballot in accordance with then-current constitutional and

statutory requirements, numerous voter initiatives were qualified with great effort and expense, voters already voted to adopt tax and bond measures and voter initiatives pursuant to current laws, and residents in those local jurisdictions are already relying on important services facilitated by those funding measures.

Indeed, negative ramifications are already occurring from the threat that the Initiative will be on the November 2024 General Election ballot; effects that will only be exacerbated by placing the Initiative on the ballot and adopting it at the polls. However, the Initiative's supporters appear not to have sufficiently considered, have ignored, or, more likely, intended the disruptive effect and uncertainty their Initiative poses to local finances, along with the draconian effect of cuts in services to people and businesses, the raft of litigation that will ensue, and the millions that will be spent on rushed elections (assuming such elections can even be accomplished). Since the Initiative apparently intends to cause such effects, these self-appointed disruptors of the system are engaging in unreasonable and non-rational purposes. Indeed, the inclusion of the retroactivity provision shows that, rather than being a serious attempt at reform, the Initiative is a punitive exercise against those who spent great effort to enact local tax measures and voter initiatives and the electorate who voted to pass those measures.

Thus, the Initiative either ignores or condones the chaos, costs, and suffering that will negatively impact millions of individuals who reside in local jurisdictions that adopted tax and bond measures after January 1, 2022.

The Court has recognized the California Constitution's intent "to prevent disruption of [local government] operation by interference with the administration of its fiscal powers and policies." (*Wilde v. City of Dunsmuir* (2020) 9 Cal. App. 5th 1105, 1122.) The efficient administration of public services requires that governments have the ability to plan, so that uncertainty and disruption to those that local governments serve can be avoided. Despite this, the Initiative creates significant uncertainty for local government finance. The Initiative effectively disables fiscal planning by local governments through the requirement of voter *re-approval* of every tax approved since January 1, 2022, not adopted in compliance with the Initiative's provisions, in some cases at a higher voter approval threshold. Such disruption appears to be intentional, as indicated by express terms of the Initiative that would reverse decisions affecting local tax measures and initiatives, fees in lieu of compliance with regulatory measures, price controls, advisory measures related to general taxes, application of city taxes to annexed areas, and utility fees, and in many cases require

reapproval of already enacted measures, despite having been deemed constitutional and valid under existing laws. This erases the stability and certainty upon which local officials and residents have depended, and which have determined the course of local finances, budget allocations and services according to prevailing law. (*See e.g.,* Initiative, § 3(e)(seeking to overturn *Cal. Cannabis Coal. v. City of Upland* (2017) 3 Cal. App. 5th 924 (approval thresholds for local tax initiatives), *Cal. Chamber of Commerce v. State Air Resources Bd.* (2017) 10 Cal. App. 5th 604 (fees in lieu of compliance with regulatory measures), *Schmeer v. County of Los Angeles* (2013) 213 Cal. App. 4th 1310 (local paper carryout bag charge), *Johnson v. County of Mendocino* (2018) 25 Cal. App. 5th 1017; *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal. App. 4th 1182 (application of city taxes to unincorporated areas), *Wilde v. City of Dunsmuir* (2020) 9 Cal. App. 5th 1105 (referendum on utility fees and other revenue measures).)

As various local government organizations, such as the California Association of Sanitation Agencies (CASA), the California Municipal Utilities Association (CMUA), the California Special Districts Association (CSDA), the California State Association of Counties (CSAC), and the League of California

Cities have already pointed out to the Court, the consequences of that disruption and uncertainty have already taken hold. (*See* Local Government Amici Support Letter Supporting Request for Review from Counsel to CASA, CMUA, CSDA, CSAC, and League of Cal. Cities dated September 28, 2023, at pp. 1-4.)

The Initiative seeks to invalidate every local government revenue measure adopted after January 1, 2022 that did not anticipate the Initiative's requirements unless reapproved by voters in the 12 months following the Initiative's late-2024 effective date. (Initiative § 6, proposed Cal. Const., art. XIII C, § 2(g).) Therefore, numerous general tax, special tax, and bond ballot measures that were duly authorized by elected officials, and voter initiatives submitted by electors of various local jurisdictions would have to go through this entire election process again. Yet, the Initiative imposes structural impediments on the ability of local jurisdictions to place these previously adopted tax measures on the ballot. For example, "the requirements of this [retroactive application] section" include a requirement to present general taxes only at general elections." (Initiative, § 6, proposed Cal. Const. art. XIII C, § 2(b).) And, California law requires most local governments to conduct elections on State general election dates, in even numbered years. (*See* Cal. Elec. Code § 14052.) Thus, absent a *unanimous* vote by a local

government's legislative body to declare a fiscal emergency, general taxes must lapse from late 2025 until they can be renewed in 2026. (Initiative, § 6, proposed Cal. Const. art. XIII C, § 2(b); *see* Local Government Amici Support Letter Supporting Request for Review from Counsel to CASA, CMUA, CSDA, CSAC, and League of Cal. Cities dated September 28, 2023, at p. 5.)

The risk that many government revenue measures may lapse in late 2025 is a severe impairment to planning in government finance and the uninterrupted provision of services to those served by those local governmental agencies. As numerous local government organizations have pointed out, local agencies may have to constrain their spending in the current and next fiscal year to build reserves, thereby cutting services and not addressing challenges such as preparing for and addressing natural disasters arising from climate change and wildfire risk, cutting budgets for FY 2025-2026 to account for risks that revenue streams may lapse, and facing the denial of credit and increased interest rates by lenders arising from the impending litigation costs and risk. (*See generally Davis v. Fresno Unified Sch. Dist.* (2023) 14 Cal. App. 5th 671, 694.)

The impact of the Initiative's retroactive mandate will be far-reaching. The Initiative's retroactivity provision might be applied in ways that could void at least 102 local tax measures across 90

jurisdictions. (*See* Declaration of Inez Kaminski In Support of Emergency Petition for Writ of Mandate, ¶ 9, at p. 5.) And, depending on how the Initiative's mandated statement of the "duration of the tax" requirement (i.e., whether a local tax is required to be imposed for a specified duration or whether it may be imposed for an unlimited duration until rescinded by voters) is interpreted, at least 29 more local tax measures across 27 more jurisdictions may be voided. (*Id.*) Considered together, the Initiative's retroactivity provision threatens to void tax measures that are expected to raise between $1.3 billion and $1.9 billion in annual revenue in California. (*Id.* at ¶ 12, p. 9.)

To take one recent example as illustration, City of Los Angeles voters in November 2022 approved 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. (Amicus Letter in Support of Petition for Writ of Mandate in *Legislature v. Weber (Hiltachk)*, Case No. S281977 Submitted by Counsel for ACLU of Northern California and ACLU of Southern California dated November 13, 2023 at p. 2.) By enacting real-estate transfer taxes on property sales of more than $5 million, Measure ULA will generate 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. (*Id.*) Recently, the Los Angeles City Council unanimously approved the spending of the first $150 million of Measure ULA funds on programs to reduce the city's housing crisis. (*Id.*)

Measure ULA passed with approximately 58% of the vote. (*Id.*) Under current law, this proportion of voters far exceeds the simple majority vote needed to enact a local revenue measure. (*See e.g., City & County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal. App. 5th 703, 714, 721-24; *City of Fresno v. Fresno Bldg. Healthy Communities* (2020) 59 Cal. App. 5th 220, 235, 238.) However, if the Initiative is allowed to stay on the ballot, and approved, not only would this majority vote not be enough to enact similar tax measures, the City of Los Angeles and its residents would face the effective nullification of hundreds of thousands of duly-voted ballots, the challenging prospect of addressing how millions of dollars of approved expenditures would be funded, the loss of affordable housing and homelessness programs, and the uncertainty of the budget crisis that would ensue.

As noted above, Measure ULA is just one of numerous previously approved tax measures that would be affected. In the same November 2022 election, Santa Monica voters approved

Measure GS, a transfer-tax initiative like Measure ULA that would support housing affordability; and San Francisco voters approved Measure M, a vacancy-tax initiative to fund rent subsidies and affordable housing. (ACLU Amicus Letter dated November 13, 2023, at pp. 2-3.) Although these measures received the support of significant majorities of local voters, none of them satisfied the Initiative's proposed supermajority requirements, thereby putting their revenue streams and the benefits that they are set to provide in doubt.

In addition, the Initiative may also impact the ability of California to issue bonds because the current and potential future revenue streams backing such debt would be called into question. By creating uncertainty about state and local governments' ability to fulfill bond repayment obligations, the Initiative could jeopardize bond ratings, making it more expensive or more difficult for state and local governments to raise capital. The danger posed is very real; the Initiative's retroactivity provision may apply to at least 87 local bond measures in 81 different jurisdictions. (*See* Kaminski Declaration, ¶ 16, at p. 10.)

Therefore, the impacts of the Initiative's retroactivity provisions show that it is unreasonable, disruptive to societal interests, harmful, and unfair when applied to tax and bond measures

approved since January 1, 2022, as mandated by Section 6(g) of the Initiative. The Initiative is violative of the due process rights of voters and residents of local agencies where such measures were qualified with significant effort, where voters already voted to adopt those measures, and where residents and businesses are already relying on services funded by those measures. For the foregoing reasons, the Court should prevent the Initiative from being placed on the November 2024 General Election ballot because its retroactivity provisions violate Due Process rights.

III. THE INITIATIVE IS AN IMPERMISSIBLE REVISION OF THE STATE CONSTITUTION THAT WOULD HAVE DEVASTATING EFFECTS ON STATE AND LOCAL GOVERNMENTS AND THEIR ABILITY TO PROVIDE NECESSARY SERVICES TO THEIR RESIDENTS.

The Petitioner's brief addresses the issue of whether the Initiative is an impermissible revision of the State Constitution in depth. *Amicus* will not repeat what it says, except to say that in deference to California's constitutional history and structure, pursuant to which all three branches of state and local government play well-articulated roles and have well-articulated, enumerated powers, this Court should not allow this carefully constructed balance of power to be overturned through an initiative, rather than through the constitutionally proscribed process for a revision of the State Constitution. If this balance of powers between the three

branches of California government is allowed to proceed to the ballot, the consequences would be severe.

A. The Initiative Conflicts With Existing Constitutional And Statutory Budget Deadlines; Its Passage Would Lead To Chaos In Government Budgeting.

Allowing such a revision would result in chaos for California's state and local governments. It would make virtually impossible the funding of necessary services, the planning and execution of annual budgets as required by the state's constitution and state statutes, and cause havoc for funding that has already been approved by the voters but would now have to be reapproved to continue operating.

Specifically, the Initiative is incongruous with constitutionally and/or statutorily required deadlines for the enactment of balanced budgets by California state and local governments. The California constitution requires that the state of California enact a balanced budget by June 30 of each year. (*See* Cal. Const. art. IV, §12.) California state law governing the budget processes of local governments requires that cities enact a balanced budget by June 30 of each year and that counties enact a balanced budget by either June 30 or October 2 of each year. However, the Initiative would require that efforts to raise local taxes and fees be submitted for voter approval via election processes that would not

provide resolution on those taxes and fees until November (the month in which the statewide general election is held), well after the deadlines for enacting state and local budgets. The processes for planning, enacting, and executing state and local budget processes would subsequently be subjected to chaos and significant unknowns about whether revenues from taxes and fees would be available, with resolution on those matters not coming until mid-fiscal year.

B. The Initiative Would Severely Restrict The Ability Of State And Local Governments To Fund Basic Services.

The Initiative would also fundamentally change how all levels of government fund their operations. The new requirements imposed by the Initiative would not just apply to revenue increases passed by the Legislature, local governing bodies, or voters. The Initiative also includes an expansive definition of changes to state and local laws. The new requirements, if approved, could apply not only to state statutes and local ordinances, but also to regulations, executive orders, rulings, opinion letters, and "other legal authority or interpretation." (Initiative §§4, 5, proposed Cal. Const., arts. XIII A, §3(h)(4) and C, §1(f).) Thus, in addition to making it more difficult for governments to raise tax revenue for general public services, the Initiative would also take power away from the executive and judicial branches by impacting their ability to

levy or increase regulatory fees, user charges, fines and penalties, and other non-tax levies. Some of these would be re-classified as taxes if the government could not prove that they were reasonable and based on the actual cost of providing a product or service, while those classified as "exempt charges" would have to be approved by the applicable governing body. Overall, these changes would constitute a major structural change in the way all branches of local government fund their operations and place the basic government function of providing essential services in jeopardy.

Further, the Initiative poses an existential threat to the fiscal health and governability of local governments by severely limiting their ability to generate revenues to provide essential public services and swiftly respond to economic and fiscal emergencies and other crises. The Initiative would create cumbersome new approval requirements for all types of government revenues, from requiring all state taxes be approved in a statewide election to requiring that elected bodies approve charges and fees currently under the purview of administrative and regulatory agencies. These new requirements would strip state and local policymakers of the authority to take timely action to balance their budgets and ensure the stable and sustainable delivery of the services upon which their constituents rely. When faced with looming budget deficits, state and

local leaders would be forced to make spending cuts when time does not permit holding an election for approval of additional revenues to balance the budget.

C. The Initiative Would Have a Disproportionately Negative Effect on Californians with Low Incomes, Californians of Color, and Disabled Californians.

Historical experience with budget crises shows that the impacts of cuts to public services disproportionately harm and have lasting consequences for Californians with low incomes, Californians of color, disabled Californians, and other Californians facing barriers to economic stability. For example, after the Great Recession in 2008, deep cuts were made to the state's subsidized childcare and development programs resulting in the elimination of 110,000 spaces for children. Policymakers also slashed CalWORKs cash assistance to families and eliminated its inflation adjustment — drastically reducing its purchasing power — and cut State Supplementary Payments for low-income seniors and people with disabilities by one-third. Many of these cuts were not fully restored even a decade later. Deep cuts to safety net programs harm Californians with low incomes across the board. However, these cuts are particularly devastating to communities of color, who are overrepresented among people with low incomes due to generations of discrimination and structural racism and are often the first to be

impacted by layoffs and reductions to public services during economic downturns.

D The Initiative Will Endanger Emergency Preparedness and Result in a Large Volume of New Litigation Regarding Its Provisions.

Additionally, if the Initiative were enacted, state and local governments would be less equipped to prepare for and respond to increasingly frequent natural disasters and to make investments in climate resiliency at a time when these investments are becoming more urgent. And, as noted *supra*, this structural shift in how state and local governments finance their operations would potentially undermine their ability to issue debt for capital projects and increase borrowing costs for debt due to potential downgrades in state and local bond ratings.

Last, in addition to posing a dire threat to the fiscal security of the state and local jurisdictions and the well-being of California residents, the Initiative would also likely result in a raft of new litigation. One element of the Initiative that would likely provoke significant legal challenges is its proposed new set of standards for determining whether a charge is 1) a tax subject to revised vote requirements specified in the Initiative or 2) an "exempt fee." Specifically, the Initiative would re-classify as a tax any charge that is not deemed to be "reasonable" or that exceeds the "actual cost" of

providing the service or product, defined as the "minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor." (Initiative §4, proposed Cal. Const., art. XIII A,) These provisions could create myriad, ongoing challenges and litigation as to whether new or increased state and local charges comply with those definitions. This would burden the already strained judicial system and make government operations less efficient.

CONCLUSION

For the reasons set forth above, *Amicus* respectfully requests that the Court determine that the Petitioner's emergency writ be granted, and the Taxpayer Protection and Government Accountability Act be prevented from appearing on the November 5, 2024, or any other, statewide ballot.

Dated: January 31, 2024 KAUFMAN LEGAL GROUP, APC

By: _____
STEPHEN J. KAUFMAN
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Attorneys for Amicus Curiae
California Budget and Policy Center

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately 13-point Times New Roman typeface. According to the "Word Count" feature in Microsoft Word for Windows software, this brief contains 6,280 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on January 31, 2024.

GARY S. WINUK

PROOF OF SERVICE BY MAIL

I, the undersigned, state that I am a citizen of the United States and employed in the County of Los Angeles, State of California; that I am over the age of eighteen years and not a party to the within action; that my business address is 777 South Figueroa Street Suite 4050, Los Angeles, California 95060; that on the date set out below, I served a true copy of the following documents:

APPLICATION TO FILE AMICUS BRIEF AND AMICUS BRIEF IN SUPPORT OF PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDATE

by enclosing them in an envelope and

Depositing the sealed envelope with the United States Post Office
_____ with the postage fully prepaid.

_____ Placing the envelope for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid, addressed as follows:

See attached list.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of January, 2024, at Los Angeles, California.

CAROLINA VIRGEN

PROOF OF SERVICE LIST

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