

**No. S281977**

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

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

v.

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

THOMAS W. HILTACHK,  
*Real Party in Interest*

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**AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS  
FILED BY  
OPERATING ENGINEERS LOCAL 3  
CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION  
SAN JOSE POLICE OFFICERS' ASSOCIATION  
SUPERIOR COURT PROFESSIONAL EMPLOYEES ASSOCIATION  
DAVIS PROFESSIONAL FIREFIGHTERS' ASSOCIATION, LOCAL 3494  
EAST PALO ALTO POLICE OFFICERS' ASSOCIATION  
SACRAMENTO HOUSING & REDEVELOPMENT AGENCY EMPLOYEES  
ASSOCIATION**

**CRITICAL DATE: June 27, 2024**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to California Rules of Court, rule 8.208, I certify that Amici Curiae Operating Engineers Local 3, California Statewide Law Enforcement Association, San Jose Police Officers' Association, Superior Court Professional Employees' Association, Davis Professional Firefighters' Association, Local 3494, East Palo Alto Police Officers' Association and Sacramento Housing & Redevelopment Agency Employees Association know of no person or entity that must be listed under rule 8.208.

DATED: January 31, 2024

MESSING ADAM & JASMINE LLP

By: 

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

Proposed amici curiae filing this brief are Operating Engineers Local 3, California Statewide Law Enforcement Association, San Jose Police Officers' Association, Superior Court Professional Employees' Association, Davis Professional Firefighters' Association, Local 3494, East Palo Alto Police Officers' Association and Sacramento Housing & Redevelopment Agency Employees Association (collectively, "amici"). Pursuant to Rule 8.487(e)(2) of the California Rules of Court, amici respectfully request leave to file the attached proposed brief in support of Petitioners LEGISLATURE OF THE STATE OF CALIFORNIA, GAVIN NEWSOM, in his official capacity as Governor of the State of California ("State"); and JOHN BURTON (collectively, "Petitioners"). This application is timely made pursuant to this Court's order filed on November 29, 2023 permitting applications to file amicus curiae briefs on or before January 31, 2024.

### **I. INTERESTS OF AMICI CURIAE**

Amici are labor unions that represent over 45,000 individuals who serve as peace officers, firefighters, court staff, heavy-equipment operators and mechanics, surveyors, construction inspectors, highway maintenance workers and other public sector employees employed by the State and localities throughout California. In their capacity as the collective bargaining representatives for these employees, amici have bargained for a wide variety of contractual provisions that address public sector employees' compensation, benefits, staffing levels, workload, work hours, equipment, training and other working conditions. Because these working conditions

directly affect the quality and method by which these employees perform their job functions, these conditions often have a significant impact on public safety and other essential government functions. And, amici in their dual roles as public sector employees and labor leaders have gained insight into how public revenue should be spent to improve public safety and other public services.

This matter concerns a ballot initiative, the “Taxpayer Protection and Government Accountability Act” (the “Measure”), that has been submitted to Respondent SHIRLEY N. WEBER, PhD., in her official capacity as Secretary of State of the State of California, to qualify for the November 5, 2024 ballot. The issue at bar is whether the Measure should be denied a place on the ballot because its proposed restrictions on the ability of State and local governments to raise revenue through taxation and the imposition of fees constitute an unlawful revision of the Constitution and impair essential government functions.

Amici have a substantial interest in the outcome of this proceeding because State and local governments’ authority to raise such funds is vital to these entities’ ability to guarantee proper working conditions for their employees so that these employees may successfully carry out the essential functions of government, including protecting public safety. These governments therefore must be able to raise significant funds to provide market-rate compensation and benefits to recruit and retain sufficient personnel, purchase and maintain equipment, furnish high quality training and provide other protections and benefits that safeguard the physical and mental well-being of public sector employees—especially public safety employees who risk their lives to keep their communities safe. If this Court

rules against Petitioners, the Measure's placement on the ballot will cause fiscal uncertainty for many public sector employers who already face severe staff shortages that are negatively impacting public safety, during an economic recession and increasing budget deficits. Accordingly, public sector employees are at risk of being terminated, losing compensation and benefits or, worse, suffering unsafe working conditions that could ultimately put their health and lives at risk, e.g. police officers who have no back up during dangerous law enforcement operations or firefighters who are forced to work mandatory overtime around the clock under grueling conditions fighting fires.

**II.**  
**AMICI'S BRIEF WILL ASSIST THE COURT  
IN DECIDING THIS MATTER**

Amici are familiar with the issues before the Court. Amici believe that this brief will address matters not fully addressed by the parties' briefs that are germane to these proceedings. Specifically, amici will explain how the ballot initiative, if allowed to be placed on the ballot, will impair essential government functions relating to public safety and other public services.

**III.**  
**CERTIFICATE REGARDING AUTHORSHIP AND FUNDING**

Pursuant to rule 8.200(c)(3) of the California Rules of Court, amici hereby certify that no party in the pending case or their counsel authored the proposed amici curiae brief in whole or in part or made any monetary contribution intended to fund the preparation or submission of the brief.

## PROPOSED BRIEF OF AMICI CURIAE

Amici Curiae OPERATING ENGINEERS LOCAL 3, CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION, SAN JOSE POLICE OFFICERS' ASSOCIATION, SUPERIOR COURT PROFESSIONAL EMPLOYEES' ASSOCIATION, DAVIS PROFESSIONAL FIREFIGHTERS' ASSOCIATION, LOCAL 3494, EAST PALO ALTO POLICE OFFICERS' ASSOCIATION and SACRAMENTO HOUSING & REDEVELOPMENT AGENCY EMPLOYEES ASSOCIATION (collectively, "amici") file this brief in support of Petitioners LEGISLATURE OF THE STATE OF CALIFORNIA, GAVIN NEWSOM, in his official capacity as Governor of the State of California (the "State"), and JOHN BURTON (collectively, "Petitioners").

Amici join the Petitioners in requesting that this Court grant preelection review of the constitutionality of the "Taxpayer Protection and Government Accountability Act" (the "Measure") and issue emergency relief precluding the Measure from the statewide ballot in the November 5, 2024 election.

### I. INTRODUCTION

As Petitioners argue, the Measure must be excluded from the ballot because, if passed, it would unlawfully "revise" the Constitution as opposed to simply "amending" it. (*See Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349 (the ballot initiative process may be used to propose and adopt *amendments* to the Constitution, but such process may not be used to *revise* the Constitution).) The Measure unlawfully **revises** the Constitution

because it will enact “**far-reaching** change[s] in our governmental framework as to amount to a qualitative constitutional revision...” (Emphasis added.) (*Id.* at 341.) Namely, the Measure would significantly limit the ability of the State’s legislative and executive branches, as well as that of local governments, to raise revenue on their own authority. In the case of the State Legislature, the Measure would require voter approval of legislative actions that impose new taxes, increase taxes or assess fees. (Measure, § 4 (proposing to amend Art. XIII A, § 3(b)(1) of Cal. Constitution).) Furthermore, current non-tax charges that the governor and agencies now implement on their own authority would, under the Measure’s expanded definition of “taxes,” be labeled “taxes” and thus require passage by two-thirds of the Legislature and approval by the electorate in a state-wide vote. (*Id.* (proposing to amend Art. XIII A, § 3(a), (b)(1), (c), (h)(4) of Cal. Constitution.)) And, cities and counties would no longer be able to assess special taxes on their own volition, but would need approval of the two-thirds of the electorate. (*Id.* (proposing to amend Art. XIII A, § 2(c) of Cal. Constitution.))

By imposing these substantial restrictions on State and local governments’ authority to raise revenue, the Measure would necessarily impair essential government functions. This impact would result in a separate constitutional violation from the above unlawful revision of the Constitution and thus too would invalidate the Measure. (*See Rossi v. Brown* (1995) 9 Cal.4th 688, 703 (“If essential governmental functions would be seriously impaired by the referendum process, the courts, in construing the applicable constitutional and statutory provisions, will assume that no such result was intended. [Citations.] One of the reasons, if

not the chief reason, why the Constitution excepts from the referendum power acts of the Legislature providing for tax levies or appropriations for the usual current expenses of the state is to prevent disruption of its operations by interference with the administration of its fiscal powers and policies.”).)

Real Party in Interest, THOMAS W. HILTACHK, attempts to refute this point by claiming that “any presumed impairment [of governmental functions] and ‘delay’ [in obtaining voter approval of any taxes] is purely speculative.” (Real Party in Interest’s Return to Order to Show Cause, p. 58.) Yet, these contentions are in vain. State and local entities are already facing the negative effects of California’s economic recession and budget deficits, which in combination with California’s high cost of living make it difficult to raise and prioritize funds to preserve the quality of essential governmental services. The Measure is further aggravating these entities’ ability to address these fiscal problems and thus disabling essential governmental services, including public safety.

As discussed above in Sections I and II of the Application to File Amici Curiae Brief (see pp. 4 – 6 of this document), amici are specifically qualified to analyze how the Measure would impair public safety and other vital functions of State and local governments. In their analysis below, amici will show that insufficient funding at the State and local levels are already causing severe staff shortages in public departments or agencies that compromise these entities’ missions. The Measure will only exacerbate these problems and thus unlawfully impair essential government functions.

## **II. ARGUMENT**

### **A. Police, Fire and Other Emergency Services Are Essential Functions of Government**

One of the most important responsibilities of State and local governments is keeping their citizens safe. The successful operation of police departments, fire departments, and other public safety agencies is an essential, if not the most essential, function of these governments. Public safety officers are a large and important segment of the public sector workforce. Hundreds of thousands of public safety officers and first responders protect California. They include more than 79,000 state and local police officers, (U.S. Dept. of Justice Off. of Justice Programs, Bureau of Justice Statistics, Census of State and Local Law Enforcement Agencies, 2018 – Statistical Tables, October 2022, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cslla18st.pdf>) and 32,000 firefighters, (U.S. Bureau of Lab. Statistics, Occupational Emp't and Wage Statistics, 33-2011 Firefighters, <https://www.bls.gov/oes/current/oes332011.htm>).

This segment of the public sector workforce performs a range of important functions, from patrolling the streets to guarding prisoners to putting out fires to resuscitating unconscious individuals. For example, California state and local authorities receive more than 26.5 million 9-1-1 calls annually. (Nat'l 911 Program, Nat'l Annual Report, 2021 Data, 11, [https://www.911.gov/assets/2021-911-Profile-Database-Report\\_FINAL.pdf](https://www.911.gov/assets/2021-911-Profile-Database-Report_FINAL.pdf).) This translates into approximately 1,900 calls per day in a major city like San Francisco. (City and Cnty. of San Francisco, 911 Call



Volume and Response, <https://sfgov.org/scorecards/public-safety/911-call-volume-and-response>.) Firefighters of the California Department of Forestry and Fire Protection (“CAL FIRE”) combat over 7,127 wildland fires across the state each year and deal with over 594,000 emergency incidents. (CAL FIRE, 2023 Incident Archive, <https://www.fire.ca.gov/incidents/2023>.) On the local level, the San Francisco Fire Department handled a total of 120,536 calls in 2013, which included 28,281 fire calls and 92,255 calls regarding emergency medical services or EMS, (San Francisco Fire Dept., Annual Report, 2012-2013 (FY), <https://sf-fire.org/files/FileCenter/Documents/3584-2012-2013.pdf>), and firefighters for the City of Davis responded to more than 6,700 calls in 2022, (City of Davis, About DFD, <https://www.cityofdavis.org/city-hall/fire-department/about-dfd#:~:text=The%20City%20of%20Davis%20Fire%20Department%20is%20staffed%20by%2036,%2C%20West%2C%20and%20South%20Davis>).

To keep the public safe, each department must have officers on duty or on call at all times. This requirement translates to atypical work shifts, including 24-hour shifts for firefighters and night shifts for police officers. These schedules, coupled with the dangerous nature of the job, impose special burdens on public safety officers.

**B. Staffing Shortages at Police and Fire Departments Are Impairing Public Safety Causing Governments to Expend Significant Financial Resources to Hire Additional Personnel**

**1. Staffing Problems in Law Enforcement**

Police staffing throughout the State has been declining for years. From 2021 to 2022, California police departments lost approximately 1,500

sworn officers and 100 civilian employees. (Brandon Martin, Magnus Lofstrom and Andrew Skelton, Law Enforcement Staffing in California, Public Policy Institute of California, January 2024, <https://www.ppic.org/publication/law-enforcement-staffing-in-california/#:~:text=Staffing%20levels%20continued%20to%20drop,%25%20and%203%25%2C%20respectively.>) The decline was even larger from 2020 to 2021 as departments lost approximately 2,100 sworn officers and 1,100 civilian staff. (*Id.*) The number of patrol officers in California per 100,000 residents is at its lowest point since at least 1991, while the total number of sworn officers per 100,000 residents is at the lowest level since 1994. (*Id.*) As of 2018, the most recent year for reliable data for state and national comparisons, California had fewer officers per 100,000 residents than the nation overall (200 vs. 241). (*Id.*)

Large municipalities in California are experiencing shortages. The Los Angeles Police Department's total number of sworn police officers is approximately 9,600, which is the department's lowest tally since 2017. (Josh Haskell, Bass says city trying to grow LAPD after years of shrinking force, ABC7 Los Angeles, Dec. 7, 2023, <https://abc7.com/lapd-mayor-karen-bass-police-chief-michel-moore/14151750/>.) Data from the city's controller's office showed that "nearly one in five positions within the LAPD" were vacant. (*Id.*) San Francisco's police department has lost hundreds of police officers in recent years, representing a loss of 13% of the department compared to 2020 staffing levels. (Eliyahu Kamisher, Sarah Holder, Even at \$112,000 starting pay, fewer people want to be San Francisco cops, The Mercury News, Jan. 9, 2024, <https://www.mercurynews.com/2024/01/09/even-at-112000-starting-pay->



primarily through deterrence. (Martin, *supra*.) Going back to the examples above, in Vallejo, even though almost all sworn personnel are already working forced overtime, police response times are excessively long. “On average, almost an hour and a half [ ] passes between the time Vallejo emergency services receive a call warranting [sic] police response and the time an officer is dispatched [ ].” (*Id.*) In San Diego, records show that since 2018, police there are also taking longer to respond to emergency calls, which may be attributable to the department’s staffing shortage. (*Id.*) And, the department in its efforts to resolve this problem have reassigned officers in specialized assignments, e.g. SWAT and the Motorcycle units, to answering radio calls. (*Id.*) In other words, the department is sacrificing its specialized services, which significantly enhance a city’s ability to deter crime and rescue civilians in danger, to fill the basic needs of law enforcement.

State and local governments are trying to address staff shortages and slow response times by increasing police salaries. The City of Alameda, for example, during the Spring of 2023 was in the midst of a significant shortage in its police ranks. “Almost one third of the 88 positions in [the] department were vacant.” (Anabel Sosa, A California city offered a \$75,000 bonus to new cops, Cal Matters, Sep. 27, 2023, <https://calmatters.org/justice/2023/09/california-police-bonuses-raises-contracts/>.) To lure candidates to join the department, the city offered new recruits a \$75,000 signing bonus. (*Id.*) The bonus program was a success. The department received 170 applications from around the country to fill 24 open positions. (*Id.*) It now has enough officers enrolled in academies to bring the vacancies down to 10 by early next year. (*Id.*) Other departments have

taken similar approaches. For example, police departments in Los Angeles and San Francisco have increased pay and are also offering bonuses. (*Id.*)

Staff shortages “are particularly prevalent in rural areas [ ]. There, police chiefs and sheriffs say they struggle to compete with the big cities that offer higher salaries to new officers.” (Ryan Sabalow, With tighter budgets, California police seek less time in court, *Cal Matters* Jan. 12, 2024, <https://calmatters.org/politics/capitol/2024/01/police-budgets-california-testimony/>.)

The California Highway Patrol has also embarked on a hiring campaign, which has also been successful due to large salary increases to its rank-and-file officers. In 2022, they received a 6.2% general salary increase, and they will soon get another increase of 7.9%. (Nigel Duara, CHP officers get biggest raise in 20 years as hiring challenges drive up California police pay, *Sacramento News and Review*, Dec. 4, 2023, <https://calmatters.org/justice/2023/11/chp-2023-salary-increase/#:~:text=California%20Highway%20Patrol%20officers%20are,high%20raises%20for%20the%20officers.>)

## **2. Staffing Shortages and Excessive Overtime at Fire Departments**

Over the past several years, CAL FIRE and/or the local departments through which it works (“Local Partners”) have failed to staff an adequate number of firefighters and other emergency service positions to fulfill CAL FIRE’s core duties of fire protection and responding to other types of emergencies. (*See* Julie Cart, Slow burn: Cal Fire has failed to fight PTSD, heavy workloads, *CalMatters*, June 13, 2022, <https://calmatters.org/environment/2022/06/cal-fire-firefighter-ptsd/?series=california->

firefighters-trauma-wildfires (“[CAL FIRE Battalion Chief] Burrow said his [County of] Riverside staff is operating at about 50% capacity.”). *See also, id.* (“[CAL FIRE] data released [ ] shows that about 10% of its workforce quit last year. The number of firefighters and other personnel who left in 2021 was 691, nearly twice the average for the previous four years...”)) To address these chronic staff shortages, CAL FIRE and its Local Partners, e.g. Riverside County Fire Department, have consistently ordered CAL FIRE employees to work massive amounts of overtime<sup>1</sup> to cover positions that must be filled, which include covering vacant positions, employees who are on leave (e.g., holiday, vacation, annual leave, and sick leave) and employees who are working “fire assignments” outside of the county (e.g., to fight large fires in other parts of the state). (Complaint, CAL FIRE Local 2881, et. al v. State of California, et. al, Sup. Ct. of Cnty. of Sacramento, Case No. 34-2023-00332915, 8:15 – 9:20.) Rather than solving the problem on a permanent basis by hiring more personnel, CAL

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<sup>1</sup> This overtime consists of both so-called “voluntary” overtime as well as ordered, or “forced,” overtime. In the case of the former, CAL FIRE management asks employees to sign-up voluntarily to cover shortages in essential positions; however, if an insufficient number of employees volunteer, management will order employees to fill these positions. The term “voluntary overtime” therefore belies the fact that these overtime assignments are ultimately compulsory—management must fill them to cover essential positions and all employees are aware that management will order “forced” overtime if there are insufficient volunteers. In the case of “forced” overtime, management forgoes soliciting volunteers to sign up and immediately orders employees to work an overtime shift to cover an essential position. (Complaint, CAL FIRE Local 2881, et. al v. State of California, et. al, Sup. Ct. of Cnty. of Sacramento, Case No. 34-2023-00332915, 8:4 – 13.)

FIRE and its Local Partners have instead resorted to triage, i.e., ordering employees to work excessive overtime. (*Id.*, 35:21 – 28.)

The total overtime worked by CAL FIRE employees in its largest unit covering Riverside County exemplifies the magnitude of the staffing crisis that exists throughout the State’s largest fire department. The total overtime (i.e., the sum of forced and “voluntary” overtime) numbers in 2020, 2021, and 2022 were 34,073, 34,103 and 50,959 **days (not hours)**, respectively. (*Id.*, 9:12 – 20.) Individual CAL FIRE employees have been known to work 30 days or more without time off. (*Id.*, 2:7-12.) In the most egregious cases, employees were on duty for up to 49 straight days without a day off. (*Id.*) This means these employees worked 24-hour work days consecutively over multiple weeks without any time off due. (*Id.*) To put this in the proper perspective, CAL FIRE employees generally work a consecutive 72-hour period<sup>2</sup> without a day off in normal times, (Section 8.1.1 of the Agreement between the State and CAL FIRE Local 2881 Covering Bargaining Unit 8 Firefighters Effective July 1, 2022 through June 30, 2024), which is far more than the 56-hour work week of almost all other firefighters in the state, (*see, e.g.* Section 14.3 of Memorandum of Agreement between the City of San Jose and International Assoc. of Firefighters, Local 230, July 1, 2018 – June 30, 2024). And, it greatly

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<sup>2</sup> The State and CAL FIRE Local 2881, the labor union representing CAL FIRE employees, agreed to decrease the 72-hour workweek to 66 hours starting in late 2024, but such change is dependent on the State appropriating sufficient money in its budget for the change. (Section 14.6A of the Agreement between the State and CAL FIRE Local 2881 Covering Bargaining Unit 8 Firefighters Effective July 1, 2022 through June 30, 2024.)

exceeds the number of hours of a typical workweek that most people are accustomed to, i.e. 40 hours per week with two days off.

Moreover, certain Riverside County fire stations are very busy experiencing heavy emergency call volume, i.e., approximately 12 to 15 calls a day, requiring personnel to respond to these calls throughout the day and all hours of the night. (Complaint, CAL FIRE Local 2881, et. al v. State of California, et. al, Sup. Ct. of Cnty. of Sacramento, Case No. 34-2023-00332915, 12:18 – 27.) Accordingly, firefighters who are forced to work overtime in these stations, on top of their normal shifts, are placed under great stress, which may adversely affect their health.

Furthermore, wildland fires are burning with greater intensity than before and thus are more dangerous. These changes are likely due to the effects of climate change as California is becoming hotter and drier. (See California Office of Environmental Health Hazard Assessment, “New report shows rapidly accelerating effects of climate change, demonstrates importance of state actions, “Nov. 1, 2022, <https://oehha.ca.gov/climate-change/press-release/new-report-shows-rapidly-accelerating-effects-climate-change> (“Since 1895, annual average air temperatures have increased by about 2.5 degrees F statewide, creating hotter and drier conditions in California.”)) For example, during the 5-year period from 2008 to 2012, approximately 662,553 acres of wildlands have been damaged by fire. (CAL FIRE, Statistics: Past Wildfire Activity Statistics (Redbooks), <https://34c031f8-c9fd-4018-8c5a-4159cdff6b0d-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/fires-acres-all-agencies-thru-2018.pdf?rev=bdb130cf3de24d00addcba1d2b08561f&hash=07DBEC4EFA15DC6CA9A>



D88BAAE613A01.) This means the annual average of acres damaged by fire during this 5-year period is approximately 132,511. (*Id.*) In comparison, the 5-year period from 2013 to 2018 saw a total of approximately 2,229,816 wildland acres damaged by fire, translating into an annual average of approximately 445,963 acres being affected by fire. (*Id.*)

Consistent with the above, the State’s spending on CAL FIRE’s base fire protection budget has grown more than 60% over the past five years. In 2017-2018, spending totaled approximately \$1.3 billion, while in 2021-2022, it totaled approximately \$2.1 billion. (Legislative Analyst’s Office, The 2022-23 Budget: Wildfire Response Proposals, January 28, 2022, <https://lao.ca.gov/Publications/Report/4504>.) The total budget, including the above amounts plus resource management and fire prevention and emergency fire suppression, has also increased by roughly 45% in the same period, from approximately \$2.5 billion to \$3.7 billion.” (*Id.*)

Similar problems are plaguing other localities that do not partner with CAL FIRE. For example, the Los Angeles Fire Department is experiencing staff shortages, as it has less than 4,000 personnel to service a city of 4,000,000 people. (Gina Silva, “LA has outgrown its fire department: LAFD’s 4k personnel struggle to serve population of 4M,” Fox 11 Los Angeles, Feb. 16, 2023, <https://www.foxla.com/news/la-has-outgrown-its-fire-department-lafds-4k-personnel-struggle-to-serve-population-of-4m>.) To cover the shortage, firefighters and paramedics are working mandatory overtime shifts for extended periods, including “5, 7, 10 days in a row without any relief.” (*Id.*) The City of Gilroy continues to face chronic firefighter shortages, which it has endured for years and has

led to slower response times. (Luis Melecio-Zambrano, Gilroy Fire Dept. faces staffing shortage, but quick solutions are scarce, The Mercury News, Nov. 24, 2023, <https://www.mercurynews.com/2023/11/24/gilroy-fire-department-faces-staffing-shortage-but-quick-solutions-are-scarce/>.) City staff admits that more positions are needed to staff the department, but caution that “Gilroy’s budget margin is small and may shrink in coming years.” (*Id.*) And, the City Administrator warned that cutting into the city’s reserve funds would cause “‘catastrophic’ financial consequences.” (*Id.*)

The arduous schedules spent working hour after hour, for days on end, have wreaked havoc on State and local firefighters. They are unable to “turn off” either mentally or physically to recuperate from the extended work periods, which causes firefighters to suffer from sleep deprivation and stress. This in turn causes fatigue, that decreases firefighters’ ability to experience heightened awareness during emergency incidents. As a result, occupational accidents are more likely to occur.

The federal government warns that on-duty accidents become more frequent the longer employees work. (*See* U.S. Department of Labor, Occupational Safety and Health Administration, Extended/Unusual Work Shifts Guide, <https://www.osha.gov/emergency-preparedness/guides/extended-unusual-work-shifts> (last visited Jan. 11, 2023) (The federal Occupational Safety and Health Administration states that non-traditional shifts and extended work hours (i.e., work schedules that are longer than a traditional schedule of eight hours a day, five days a week) may disrupt the body's regular schedule, leading to increased fatigue, stress, and lack of concentration. These effects lead to an increased risk of operator error, injuries and/or accidents.)) This warning is supported by

private research. For example, firefighters who work more than 70 hours in a week—like most CAL FIRE first responders whose work week is a minimum of 72 hours—experienced significantly increased levels of stress and sleep disturbance and had a significantly higher risk of occupational accidents, compared to firefighters who work no more than 50 hours a week. (*See* Lupa et al., Perceived physical work capacity, stress, sleep disturbance and occupational accidents among firefighters working during a strike, *WORK & STRESS*, 2002, Vol. 6, No. 3, 264.) A sleep deficit accumulated over time magnifies these negative effects. (*Id.*) Studies also show that the rate of accidents increases considerably after a person has been on duty nine hours or more. After 10 hours on duty, the risk increases by approximately 90 percent, and after 12 hours, the risk increases by 110 percent. (*See id.*) Thus, “it is evident that poor sleep hygiene poses a serious risk to firefighters and the public due to compromised cognitive functioning.” (*See* Chris Frost, et al., The effects of sleep on firefighter occupational performance and health: A systematic review and call for action, *SLEEP EPIDEMIOLOGY*, Vol. 1, 11 (2021), available at <https://www.sciencedirect.com/science/article/pii/S2667343621000147>.)

Furthermore, from 2003 to 2006, 38 out of 494 wildfire incidents appeared to be related to human perceptual errors. (*See* Diane L. Elliot, MD, et al., The Effects of Sleep Deprivation on Fire Fighters and EMS Responders, Final Report June 2007, IAFC, 54-55, available at [https://www.iafc.org/docs/default-source/1safehealthshs/progssleep\\_sleepdeprivationreport.pdf?sfvrsn=f9e4da0d\\_2](https://www.iafc.org/docs/default-source/1safehealthshs/progssleep_sleepdeprivationreport.pdf?sfvrsn=f9e4da0d_2).) Fatigue was a clear contributor in six of the serious incidents in this group, three of which resulted in rollover vehicle crashes. (*See id.* at 55.) Moreover, 45% of on-

duty firefighter deaths result from cardiac events, and a 2011 international study concluded that sleep deprivation increases the risk of a cardiac event by 46%, regardless of diet or fitness. (See Eric Saylor, Firefighters are not machines; they need sleep, MEDIUM, January 6, 2018, <https://medium.com/@esaylors/firefighters-are-notmachines- they-need-sleep-9fc33b8cfb3e> citing Rita F. Fahy, U.S. firefighter fatalities due to sudden cardiac death, National Fire Protection Association, June 2005, available at [http://tkolb.net/FireReports/2012/FF\\_CardiacDeath95-04.pdf](http://tkolb.net/FireReports/2012/FF_CardiacDeath95-04.pdf).)

Per the above research, there are public safety implications to firefighters working while fatigued in terms of response time and making critical decisions while suffering the cognitive impairment of sleep deprivation. “It’s important to have a policy limiting scheduled work—**ideally to no more than 12 hours a day, and exceptionally to no more than 16 consecutive hours.** [ ] People need at least one day off a week, and ideally two in a row, in order to avoid building up a sleep deficit.” (Emphasis added.) (See B. Fryer, Organizational Culture-Sleep Deficit: The Performance Killer, HARVARD BUSINESS REVIEW, October 2006, available at <https://hbr.org/2006/10/sleep-deficit-the-performance-killer>.) CAL FIRE’s 72-hour work week and its practice of relying on compulsory overtime to fill vacancies ignores these recommendations, to the detriment of the firefighters themselves as well as of members of the public, who rely on firefighters to perform, unimpaired, a critical safety function.

The State must end CAL FIRE’s staff shortages by hiring more firefighters. By doing so, less employees will work less overtime hours and thus avoid the dangers associated with exhaustion and fatigue. However, the only way the State can do this is by investing significantly more money

in its largest fire department for recruitment and retention purposes, which requires the ability to raise revenue through taxation. And, past experience shows that ad hoc hiring in one or two recruitment campaigns will likely not be sufficient. The Legislative Analyst’s Office recently noted that “[d]espite recent augmentations [in firefighting budgets], California’s relentless fires “can still strain response capacity.” (Legislative Analyst’s Office, The 2022-23 Budget: Wildfire Response Proposals, January 28, 2022, <https://lao.ca.gov/Publications/Report/4504>.) In 2020, “roughly 7,900 requests for fire engines, 900 requests for dozers, and 600 requests for helicopters could not be filled.” (*Id.*)

### **3. Non-Safety Public Services Are Facing Similar Staffing Issues**

California courts are experiencing a court reporter crisis throughout the state. (Manny Gomez, Why a court reporter shortage across California affects you, [Yourcentralvalley.com](https://www.yourcentralvalley.com/digital-exclusive/why-the-california-court-reporter-crisis-affects-you/), April 6, 2023, <https://www.yourcentralvalley.com/digital-exclusive/why-the-california-court-reporter-crisis-affects-you/>.) For example, the Orange County Superior Court reports that one out of every five court reporter positions is vacant. (Nick Gerda, Court Chiefs Ring Alarm Bells About Worsening Shortage of Court Reporters to Transcribe Hearings, [Voice of OC](https://voiceofoc.org/2023/01/court-chiefs-ring-alarm-bells-about-worsening-shortage-of-court-reporters-to-transcribe-hearings/), Jan. 3, 2023, <https://voiceofoc.org/2023/01/court-chiefs-ring-alarm-bells-about-worsening-shortage-of-court-reporters-to-transcribe-hearings/>.) As triage, certain counties are cutting back the types of cases for which court reporters will be used. In Los Angeles County, litigants in unlimited civil, family and probate cases will have to hire their own court reporter. (*Id.*) In Fresno County, the court stopped providing court reporters for non-criminal

matters. (ABC30, Fresno County Superior Court hiring amid statewide court reporter shortage, April 6, 2023, <https://abc30.com/court-reporter-shortage-now-hiring-fresno-county-superior-competitive-salary/13096216/>.)

Like public safety departments, the courts are trying to correct the problem by investing in employee salaries. The Fresno County Court is offering up to \$8,000 in incentives and other benefits to lure court reporter applicants. (ABC30, *supra*.) The court in L.A. County is offering a variety of incentives, including for example a signing bonus of \$20,000 over two years, loan forgiveness of up to \$27,500 for court reporter school, retention bonuses that can equal up to \$10,000, and a finder's fee of up to \$15,000 for court employees who refer official court reporters to the court. (Superior Court of California, County of Los Angeles Media Relations, News Release: Nation's Largest Trial Court Offers Substantial Incentives to Retain and Recruit Official Court Reporters Amid Staffing Shortage, Feb. 1, 2023, <https://www.lacourt.org/newsmedia/uploads/142023959215323NRCOURTREPORTERRECRUITMENTEFFORTS.pdf>.)

**C. The Measure Is Impairing Public Safety and Other Important Governmental Functions**

California and its localities will need to dedicate significant revenue to address the staffing crises afflicting both public safety and nonsafety departments. As discussed above, agencies that have invested more money to hire new employees, e.g. by offering signing bonuses and higher salaries, have experienced increases in their staff. Thus, spending public funds on the staffing problem does lead to positive results. And, to the extent that agencies have already dedicated monies to fix the problem, they will need

to continue doing so or spend even more money to avoid the same problems in the future.

Yet, continued or further investment in recruiting and retaining public employees is threatened by the State's current fiscal problems. California is "fac[ing] a serious budget deficit," which is currently estimated to be \$68 billion. (Legislative Analyst's Office, The 2024-25 Budget, California's Fiscal Outlook, Dec. 7, 2023 (<https://lao.ca.gov/Publications/Report/4819>).) And, California's economy continues to be in a recession, which started approximately a year ago. (Briah Uhler, Chas Alamo, Did California Enter a Recession Last Fall?, Legislative Analyst's Office, Oct. 3, 2023, <https://lao.ca.gov/LAOEconTax/Article/Detail/785>.) "[T]he threat that the recent slowdown could persist will be a significant risk for the foreseeable future." (*Id.*) "[T]he odds do not appear to be in the state's favor," as "[p]ast downturns similar to this recent episode have tended to be followed by additional weakness." (*Id.*) These negative economic factors indicate that revenue shortfalls will persist and impairment to government function will continue.

California's weak economy and its shortage of public sector employees are the circumstances under which the Measure is being brought forward. An analysis of how the Measure's restrictions are playing out cannot be separated from these problems. The Measure only compounds these difficulties by injecting greater uncertainty, and thus damage, to State and local finances. Managing public finances, just like the provision of public services, necessitates that unpredictability should be avoided. The Measure, though not yet subject to a vote, already has a destabilizing effect, since State and local leaders cannot be sure whether their power to raise

revenue will be severely limited going forward. And the possibility that the Measure will be enacted and have retroactive effect even worsens the confusion. Accordingly, the Measure is already having a negative impact on the precarious fiscal state of affairs within the state and thus impairs essential governmental functions. It therefore does not pass constitutional muster.

### III. CONCLUSION

For the foregoing reasons, this Court should grant pre-election review, hold that the proposed changes in the Measure constitute unlawful revisions to the Constitution and that the Measure impairs essential government functions, and order the Respondent not place the Measure on the ballot.

DATED: January 31, 2024

MESSING ADAM & JASMINE LLP

By: 

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Jason H Jasmine

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*Attorneys for Amici Curiae*



**APPENDIX A**  
**DESCRIPTION OF AMICI**

**Operating Engineers Local 3**

Operating Engineers Local 3 is the bargaining representative for approximately 37,000 heavy equipment operators and mechanics, surveyors, construction inspectors, highway maintenance workers, police officers and other public sector employees. Its membership comprises the largest construction trades local in the United States. It represents members on all matters relating to wages, hours, and other terms and conditions of their employment.

**California Statewide Law Enforcement Association**

The California Statewide Law Enforcement Association is the exclusive bargaining representative for approximately 7,000 state-employed peace officers (including Special Agents of the Department of Justice, Park Rangers, and Investigators of the Departments of Motor Vehicles and Alcohol and Beverage Control) and non-sworn law enforcement related classifications (including Criminalists, Non-Sworn Investigators, and Communications Operators). It represents its members on all matters relating to wages, hours, and other terms and conditions of their employment.

**San Jose Police Officers Association**

The San Jose Police Officers Association is the exclusive bargaining representative for approximately 1,100 San Jose, California, Police Officers (including all sworn officers in the department from Police Officers through

the ranks of Deputy Chiefs and Commanders) in their labor relations with the City of San Jose, and represents its members on all matters relating to wages, hours, and other terms and conditions of their employment.

### **Superior Court Professional Employees' Association**

The Superior Court Professional Employees' Association is the exclusive bargaining representative for more than 300 employees who work as courtroom clerks, legal process clerks, court reporters, court secretaries, judicial secretaries, court investigators, legal research attorneys, mediators, court specialists, fiscal support techs and janitors at the Superior Court of the County of Santa Clara, California. It represents its members on all matters relating to wages, hours, and other terms and conditions of their employment.

### **Davis Professional Firefighters Association, Local 3494**

The Davis Professional Firefighters Association, Local 3494 is the exclusive bargaining representative for approximately 60 firefighters employed by the City of Davis, California. It is an affiliated local of the International Association of Firefighters and represents its members on all matters relating to wages, hours, and other terms and conditions of their employment.

### **East Palo Alto Police Officers' Association**

The East Palo Alto Police Officers' Association is the exclusive bargaining representative for East Palo Alto, San Jose Police Officers in their labor relations with the City of East Palo Alto. It represents its members on all

matters relating to wages, hours, and other terms and conditions of their employment.

**Sacramento Housing & Redevelopment Agency Employees Association**

The Sacramento Housing & Redevelopment Agency Employees Association is the exclusive bargaining representative for accountants, community development analysts, construction architects, engineers, and technicians; finance analysts, housing programs and specialists, loan administrators and analysts, redevelopment analysts, planners and specialists; regulatory compliance analysts and specialists, and other public employees in their labor relations with the Sacramento Housing & Redevelopment Agency. It represents its members on all matters relating to wages, hours, and other terms and conditions of their employment.

**CERTIFICATE OF COMPLIANCE**

Pursuant to California Rules of Court, rule 8.504, I certify that the total word count of this amici curiae brief in support of Petitioners, excluding covers, table of contents, table of authorities, and certificate of compliance, is 6,082.

DATED: January 31, 2024

By:   
\_\_\_\_\_

Matthew Taylor

**PROOF OF SERVICE**

*Legislature of the State of California v. Weber (Hiltachk)*

**Case No. S281977**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 2150 River Plaza Dr., Suite 140, Sacramento, CA 95833.

On January 31, 2024, I served true copies of the following document(s) described as **AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS FILED BY OPERATING ENGINEERS LOCAL 3, CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION, SAN JOSE POLICE OFFICERS' ASSOCIATION, SUPERIOR COURT PROFESSIONAL EMPLOYEES ASSOCIATION, DAVIS PROFESSIONAL FIREFIGHTERS' ASSOCIATION, LOCAL 3494, EAST PALO ALTO POLICE OFFICERS' ASSOCIATION and SACRAMENTO HOUSING & REDEVELOPMENT AGENCY EMPLOYEES ASSOCIATION**, on the interested parties in this action as follows:

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Pursuant to Rule 8.29 of the  
California Rules of Court

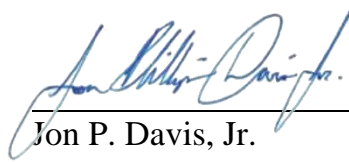
**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Messing Adam & Jasmine LLP 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. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

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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 31, 2024, at Sacramento, California.



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Jon P. Davis, Jr.

STATE OF CALIFORNIA  
Supreme Court of California

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Case Name: **LEGISLATURE OF THE STATE OF CALIFORNIA v. WEBER  
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Date

/s/Jon Davis

Signature

Taylor, Matthew (264551)

Last Name, First Name (PNum)

Messing Adam & Jasmine LLP

Law Firm

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