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Supreme Court of California
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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 AMICI CURIAE BRIEF IN SUPPORT OF REAL PARTY IN INTEREST AND [PROPOSED] AMICI CURIAE BRIEF OF ALAMEDA COUNTY TAXPAYERS' ASSOCIATION, CALIFORNIA TAXPAYER PROTECTION COMMITTEE, CENTRAL VALLEY TAXPAYERS ASSOCIATION, CHICO TAXPAYERS ASSOCIATION, COALITION OF SENSIBLE TAXPAYERS (MARIN COUNTY), GOLD COUNTRY TAXPAYERS ASSOCIATION, LOS ANGELES COUNTY TAXPAYERS ASSOCIATION, ORANGE COUNTY TAXPAYERS ASSOCIATION, PLACER COUNTY TAXPAYERS ASSOCIATION, REFORM CALIFORNIA, SACRAMENTO COUNTY TAXPAYERS ASSOCIATION, SAN FRANCISCO TAXPAYERS ASSOCIATION, SILICON VALLEY TAXPAYERS' ASSOCIATION, SOLANO COUNTY TAXPAYERS ASSOCIATION, SUTTER YUBA TAXPAYERS ASSOCIATION, VENTURA COUNTY TAXPAYERS ASSOCIATION, THE RED BRENNAN GROUP AND MOVING OXNARD FORWARD IN SUPPORT OF REAL PARTY IN INTEREST

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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to California Rules of Court, rules 8.200(c), 8.487(e) and 8.520(f), leave is hereby requested to file the attached Brief of Amici Curiae Alameda County Taxpayers' Association, California Taxpayer Protection Committee, Central Valley Taxpayers Association, Chico Taxpayers Association, Coalition of Sensible Taxpayers (Marin County), Gold Country Taxpayers Association, Los Angeles County Taxpayers Association, Orange County Taxpayers Association, Placer County Taxpayers Association, Reform California, Sacramento County Taxpayers Association, San Francisco Taxpayers Association, Silicon Valley Taxpayers' Association, Solano County Taxpayers Association, Sutter Yuba Taxpayers Association, Ventura County Taxpayers Association, the Red Brennan Group and Moving Oxnard Forward in support of Real Party in Interest Thomas W. Hiltachk, in the above-captioned Petition for Writ of Mandate ("Petition").

HOW THIS BRIEF WILL ASSIST THE COURT

This proposed *amici curiae* brief will provide the Court with the grassroots voters' perspective for why Petitioners' writ

petition should be denied. The *amici* are local taxpayer organizations from across California, whose purpose is to advocate positions on tax policy. Their members are directly affected by state and local tax measures. The *amici* elaborate upon how the Legislature does not have plenary taxing authority, and other issues raised by the Petition.

STATEMENT OF INTEREST OF AMICI CURIAE

The *amici* organizations are local taxpayer associations throughout California.

The *amici* organizations have a direct interest in the case. The Court potentially could remove the Taxpayer Protection and Government Accountability Act ("TPA"), an initiative constitutional amendment, from the statewide ballot in the November 5, 2024 election. All share a mission; all firmly believe in the right of the People to approve or disapprove tax measures at the ballot box, especially at the local government level.

Many members of *amici* have signed the TPA initiative in order to qualify it. Some members of *amici* organizations also have circulated the TPA initiative petition. The *amici* want the People to approve the TPA in order to overturn *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924

("*Upland*"). The *amici* are especially concerned that the California Supreme Court could grant Petitioners' writ petition, joining the other two branches of state government in undermining the People's right to amend their State Constitution. This matter is unusually sensitive, as the TPA is an effort to overturn the Court's *Upland* ruling. The public will judge the Court's credibility and fairness based on its ruling on the Petition.

Several of the *amici* organizations and their leaders have been litigants in tax measure challenges in recent years, both pre-election and post-election. See, e.g., *City of Oxnard v. Starr* (2023) 88 Cal.App.5th 313. See also *County of Alameda v. Alameda County Taxpayers' Assn.* (January 29, 2024) __ Cal.App.5th ___, 2024 Cal. App. LEXIS 51.

Reform California with Carl DeMaio – Ballot Measure Committee (hereinafter Reform California), founded in 2003, is a 527 political action committee currently registered as a candidate-controlled ballot measure committee with the State of California. Reform California has over 400,000 opt-in active subscribers to its news service, has over 35,000 active volunteers, and received contributions from over 51,000 supporters across

the state. Reform California helped collect tens of thousands of the signatures from registered voters to qualify the TPA for a vote on the statewide ballot.

The Red Brennan Group is a taxpayer protection organization in San Bernardino County. Moving Oxnard Forward is a local group with strong taxpayer interests in Ventura County.

CERTIFICATE RE: AUTHORSHIP AND FUNDING

No party or counsel in the pending case 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. No person other than the proposed amici curiae made any monetary contribution intended to fund the preparation or submission of this brief.

Dated: January 31, 2024

Respectfully submitted,

/s/ Jason A. Bezis

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JASON A. BEZIS

Attorney for Amici Curiae

Alameda County Taxpayers’ Association, California Taxpayer Protection Committee, Central Valley Taxpayers Association, Chico Taxpayers Association, Coalition of Sensible Taxpayers (Marin County), Gold Country Taxpayers Association, Los Angeles County Taxpayers Association, Orange County Taxpayers Association, Placer County Taxpayers Association, Reform California, Sacramento County Taxpayers Association, San Francisco Taxpayers Association, Silicon Valley Taxpayers' Association, Solano County Taxpayers Association, Sutter Yuba Taxpayers Association, Ventura County Taxpayers Association, the Red Brennan Group and Moving Oxnard Forward.

BRIEF OF AMICI CURIAE

INTRODUCTION

Popular sovereignty is the bedrock foundation upon which California's polity is constituted. "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require," reads Article II, Section 1 of our State Constitution.

The *amici curiae* local taxpayer organizations have submitted this brief because the instant writ petition interferes with their constitutional right to alter or reform California's government through the Taxpayer Protection and Government Accountability Act ("TPA"), an initiative constitutional amendment that already has qualified for the statewide ballot in the November 5, 2024 election.

A decision by this court to remove the TPA from the ballot would facilitate an abuse of power by state politicians and would irreparably harm and eliminate constitutionally protected rights of citizens to place initiatives on the ballot to check the power of their government.

The *amici* seek to rectify a major loophole that this Court created in their Proposition 13/218/26/4 schema with *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 ("*Upland*"). Since *Upland*, local governments have been intentionally circumventing the two-thirds voter approval thresholds for special taxes in Propositions 13 (1978, article XIII A) and 218 (1996, article XIII C) by generating government-sponsored initiatives subject to just majority voter approval. Local governments have developed a newfound solicitude for initiatives that is a 180 degree role reversal from their pre-*Upland* position. Based upon this Court's decision in *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the Fourth Appellate District has created a "too much government involvement" test for special tax initiatives, which the First Appellate District brazenly denies.[1] *Amici* support the TPA in order to definitively close the loopholes to Propositions 13 and 218 that this Court created by dicta in *Upland*.

[1] Compare *Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419, 447-448 (review den. and de-publication request den., November 21, 2023) with *County of Alameda v. Alameda County Taxpayers' Assn.* (January 29, 2024) __ Cal.App.5th ___, 2024 Cal. App. LEXIS 51.

In the extraordinary case at bench, California's Legislature and Chief Executive are directly asking the State's highest court to prohibit the People of California from voting upon the TPA, a duly-qualified initiative constitutional amendment signed by more than one million registered voters. Article IV (Legislature) and Article V (Governor) powers effectively are collaborating with Article VI (Supreme Court) powers to prevent Article II (the People) powers from being exercised through the TPA. The Judiciary typically rejects such blatant political interference with the initiative process, especially in the pre-election context. This is not how our system of checks and balances is supposed to operate, especially when political questions are at issue.[2] These issues are more properly raised post-election. This Court should deny the Writ Petition.

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[2] The Court should take into account Professor Jesse Choper's theory of judicial review. A Supreme Court should have greater solicitude, in exercising its judicial review powers, for cases concerning individual rights than for cases involving governmental inter-branch disputes. See Jesse Choper, "Judicial Review and the National Political Process: a Functional Reconsideration of the Role of the Supreme Court" (1980). In the instant writ petition, two branches are attempting to use the third in order to curtail the petition rights of more than one million individuals who signed the TPA initiative and rights of millions of other Californians to vote on the TPA in the November 5, 2024 election.

ARGUMENT

I. The Legislature Does Not Have "Plenary" Taxing Authority.

Petitioners claim that "it is an indisputable fact that the framers themselves restricted the Legislature's taxing powers through revisions, not amendments." (Traverse, p. 35.) *Amici* disagree. Petitioners also assert in their Traverse that in the decades after ratification of the 1879 California Constitution, "[T]his Court declared the Legislature's remaining taxing authority to be 'plenary' in that same era." (Traverse, p. 34.) Much has evolved in California's legal system since this Court decided *In re Estate of Wilmerding* (1897) 117 Cal. 281, cited by Petitioners, at the end of the 19th century.[3]

A. The TPA is consistent with Article IV, Section 1, which reserves taxation powers for the People.

Powerful private corporations, exemplified by the Southern Pacific Railroad Company's political "machine," dominated the Legislature and the rest of California government in that same era. In reaction, Governor Hiram W. Johnson and other

[3] Note that a mere "department" of this Court decided *In re Estate of Wilmerding* in 1897. That pre-dated the creation of California's intermediate appellate courts in 1905.

progressive reformers proposed the constitutional amendments that gave women the right to vote and reserved for the People the rights of initiative, referendum, and recall. The People approved those amendments in 1911. Consequently, the preamble to the "Legislative" article of our Constitution today reads, "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." (California Constitution, article IV, section 1.)

The Legislature's powers under our Constitution, including taxation, undeniably are subject to popular control. With the TPA initiative, the People are reserving to themselves taxation powers that rightfully belong to the People.

B. The TPA is consistent with the 1914 constitutional amendment that ended California's poll tax.

The People of California quickly used their new initiative powers in the early 1910s to eliminate a tax. In November 1914, an initiative constitutional amendment (Proposition 10) prohibited the Legislature from exercising the power to impose the poll or head tax, which had been granted under both the

Constitution of 1849 and the Constitution of 1879. (See the former California Constitution, article XIII, section 12.)

The ballot argument in favor of Proposition 10 in 1914, signed by Paul Scharrenberg of the California State Federation of Labor, argued that the poll tax was outdated and fell on working people because it was deducted from their wages.

The ballot argument against Proposition 10, authored by University of California professor of public finance Carl C. Plehn, asserted that the poll tax had collected in 1913 alone over one million dollars ($1,160,000, which exceeds $34,000,000 in 2024 dollars). It provided "about one seventh of the total amount of the state school fund" for the support of public schools and provided 35 counties necessary revenue for "school, roads and hospitals," without making any provision for other sources of revenue. (See, Voter Information Guide for the 1914 General Election, "Abolition of Poll Tax" at unpaginated p. 55-56. https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1081&context=ca_ballot_props)

This Court subsequently relied on that constitutional provision (after a 1920 amendment) to hold that a subsequent

poll tax on resident aliens was unconstitutional. (*In re Terui* (1921) 187 Cal. 20, 21-22.)

In the instant case, Petitioners argue that the TPA "revises" the State constitution merely because it restricts the ability of the legislature to impose taxes. Since the 1914 initiative prohibiting the imposition of a pre-existing tax without offering a new alternative source of revenue was an amendment to the Constitution, an initiative proposing a new method for imposing future taxes does not rise to a "revision" of the Constitution.

C. The TPA is consistent with Article XIII A (1978 Proposition 13), which this Court upheld as a constitutional amendment, not a revision.

In June 1978, California voters approved Proposition 13, which added article XIII A (Tax Limitation) to our Constitution. Article XIII A tremendously altered and reformed property and other forms of taxation at all levels of California government, including controls on the Legislature's power. In *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 229, this Court concluded that "article XIII A fairly may be deemed a constitutional amendment, not a revision."

Proposition 13 altered and reformed state and local taxing powers that were more severe than the changes proposed by the TPA, yet Proposition 13 was placed onto the ballot and upheld by this Court after its approval. Since Proposition 13 was not a proscribed "revision," then neither is the TPA.

D. The TPA is consistent with Article XIII B (1979 Proposition 4), the Gann limit.

Article XIII B (Government Spending Limitation) is commonly known as the Gann limit. California voters originally approved that initiative constitutional amendment as Proposition 4 in November 1979. The Gann limit and the entirety of article XIII B, as amended, further illustrate that the Legislature presently does not have "plenary" power over taxing and spending in the absolute sense contended by Petitioners.

E. The TPA is consistent with Article XIII, which controls the Legislature's taxation authority.

Even before articles XIII A and XIII B were added to the constitution in the late 1970s, article XIII regulated, and continues to control, the Legislature's taxation authority. Most of article XIII would be unnecessary if the Legislature inherently had absolute authority over taxation. Sections 27 and 28 of article XIII are not about property taxes, but other types of taxes.

F. The TPA is consistent with Article IV, Section 22, which declares the right of the People to hold their Legislators accountable.

In 1990, the Legislature placed Proposition 112 on the ballot, which voters approved. It added article IV, Section 22 to our Constitution, which states in part, "It is the right of the people to hold their legislators accountable." The TPA is consistent with the People's right to hold their legislators accountable.

G. The TPA is consistent with Article XIII C (1996 Proposition 218).

Voters approved Proposition 218 in 1996, adding Article XIII C to our Constitution. Although it primarily was focused on local governments, it also restricted the Legislature (in Section 3). Proposition 218 specifically states that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., text of Prop. 218, § 5.) (See *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448.)

II. The California Taxpayer Protection Act Initiative Does Not Constitute a "Revision" to the State Constitution.

Petitioners argue that "the Measure is a qualitative revision because it would alter the fundamental structure of California's government and the foundational powers of its branches." (Petition, ¶ 35.)

The Court must explore this question not only by examining the reforms contained in the TPA itself, but also by comparing the initiative in dispute to other initiatives that were allowed in the past.

A. The TPA Citizens' Initiative is of similar nature and impact to numerous previous initiatives that were readily allowed in the past.

As discussed in Section I *supra*, in recent decades, numerous citizen initiatives have made changes similar in nature and reach to the state Constitution and were not deemed to be revisions of the state Constitution.

Supporters of the TPA were motivated to draft and qualify their initiative because politicians – and the courts – have created and exploited loopholes in previous tax reform provisions placed inside the state Constitution through previous initiatives.

- Specifically Proposition 13 (1978), required that increases in state taxes be adopted by not less than two-thirds of the members elected to each house of the Legislature.
- Proposition 218 (1986) required that increases in local taxes be approved by the voters – and required that special taxes could only be approved by a two-thirds vote of the people. Prop 218 also contained significant reforms to stop politicians from calling a tax a "fee" to avoid voting requirements in the state Constitution previously imposed by voters.
- Proposition 26 (2010) once again attempted to clarify the definition of a "fee" versus a "tax" to prevent politicians from evading and violating initiative-imposed constitutional rights to a two-thirds vote of the governing body and/or a public vote on these charges.

All three of these citizen initiatives were deemed appropriate and overwhelmingly supported by voters. Petitioners have failed to show the Court how the TPA is substantially different than these previous initiatives.

The Court should also compare the TPA to Proposition 4 (1979) which limited the ability of the Legislature and local governments to spend in excess of the so-called Gann spending limit.

Putting aside the tax reform theme of the TPA, it is important to note that Petitioners have endorsed and campaigned for other initiatives that enacted substantial change to how our government operates and those initiatives were not considered "revision" measures.

For example, Petitioners supported Proposition 25 (2010) that reduced the required votes in the state legislature from two-thirds to a mere majority.

The Court must examine the TPA in the context of these and other previous citizen initiatives that have been accepted as appropriate under the right to initiative contained in the state Constitution.

B. The TPA cannot be deemed a "revision" because it merely enacts important refinements to existing state constitutional provisions enacted by previous citizen initiatives.

The TPA is not a "revision" measure because it simply seeks to refine and clarify the requirements of existing state

constitutional provisions related to taxation that were similarly imposed by previous citizen initiatives. Amici note that none of the constitutional amendments in the TPA would be to Articles IV (Legislative) or V (Executive); there is no "red pen" to "core powers" of Petitioners, despite the fulminations in their briefing.

1. Ballot Title Requirements.

The TPA restores the integrity of voting rights requirements in Propositions 13 and 218 by requiring that any tax measure presented on the ballot must contain an honest ballot title (also known as "ballot label" or "ballot question") that reveals the nature of the tax being proposed in a more transparent manner.

While Propositions 13 and 218 (along with other reform measures) require certain tax increases be put before voters, politicians – with help from the courts – have deceived voters with misleading ballot titles that make no mention of a measure containing a tax increase. By depriving voters of a title that makes the tax hike proposal transparent, the politicians are depriving voters of their constitutionally protected rights to an informed vote on these matters. The TPA merely restores these constitutionally protected rights by mandating that the tax

increase be made clear in the title of the measure printed on the ballot.

2. Definition of Exempt Charges.

The TPA clarifies provisions in Propositions 218 and 26 by providing a much clearer definition of what a “fee” is to prevent politicians from misclassifying a tax as a “fee” to deprive citizens of their existing constitutionally-protected rights. Numerous court cases have been brought in the last thirty years to dispute whether a charge is a tax or a fee under existing language in the state Constitution. The TPA seeks to put those disputes to rest. The court should consider the simplicity of the clear definition established by the TPA in rejecting Petitioner’s claim that this definition is somehow so unconventional as to constitute a “revision” to the way government operates.

3. Public Voting Requirements.

The TPA restores the two-thirds vote requirement for special taxes that voters originally imposed through Proposition 218. In doing so, the TPA is responding to the *Upland* case that stripped voters of their prior vote to require a two-thirds vote threshold on all special taxes. In addition, the TPA extends a right to vote on all statewide tax increases. While this would add

one additional category of tax increases subject to voter approval, it is hardly different in nature or function than the voting rights on other categories of taxes established by Propositions 13 and 218.

In addition, the TPA is establishing this voting right because state politicians have routinely enacted costly and unfair tax hikes that a super-majority of voters oppose. For example, take California Senate Bill 1 (SB 1) in 2017 authored by State Senator Jim Beall, which significantly raised car and gas taxes. The state legislature enacted these unpopular tax hikes and voters had to resort to collecting over 1 million signatures to force a public vote to repeal these tax hikes, during which time citizens were required to pay a tax they did not support. Then, the politicians via the California Attorney General put a deceptive title on the repeal initiative to deceive voters.

Had the TPA been in place with a public vote requirement with an honest ballot title, Californians more likely would have rejected this tax increase (Proposition 6 on the November 2018 ballot). The TPA Initiative is the citizens' remedy to prevent this from recurring – and it is exactly consistent with the reason why we have the right to citizen initiatives in our state Constitution –

to check the corruption of our politicians displayed during the fight over SB 1 (the car and gas tax hikes) in the 2018 election.

4. Voting Requirements of the Legislature.

Petitioners argue that the TPA is a “revision” by requiring the state legislature to approve fees by a simple majority vote. To the contrary, the TPA simply makes changes in existing voting requirements to make the imposition of fees more transparent and accountable throughout the legislative process. Currently, fee-based revenues are included in the budget for each state agency and the legislature has the duty to vote to approve or reject fee-based revenues through the annual state budget process.

The TPA seeks to provide the public with more transparency on the imposition of fees by requiring that the legislature vote on the component fees which generate that revenue. This refinement to the existing state budget process is hardly a burden that constitutes a revision. Moreover, the state legislature already has the power to prohibit the executive branch from charging fees or requiring the executive branch to impose new fees.

For example, in 2022 the Legislature passed Assembly Bill 205 (AB 205) that mandates that the Public Utilities Commission modify their fees and rate structure to charge Californians higher fees based on their household income. Similarly, the Legislature recently passed Senate Bill X1-2 (SBx1-2) to delegate its legislative authority to impose a tax on oil companies by instructing the California Energy Commission to adopt an "excess profits penalty" fee. In both the case of AB 205 and SBx1-2 the legislature is instructing the administrative state to impose a fee – something Petitioners erroneously argue should be purely the purview of the executive branch. By requiring a vote by the Legislature on fees, the TPA is doing nothing that is not already happening routinely on a case-by-case basis and is merely attempting to make the imposition of fees more transparent and hold politicians accountable for the policies they support.

Limitations on the power of the legislature or the executive branch to do something does not automatically constitute a revision. The voter-approved citizen initiatives cited previously all limited the power of the legislature and the executive branch and/or required a more deliberate process for certain actions to be taken.

The Court should not be surprised that Petitioners argue that the TPA would have a substantial impact. By design, it is intended to limit their ability to impose taxes without more transparency and accountability and without complying with the intent of previously adopted tax reform measures. *Amici* agree that is a burden for politicians who want the easy ability to get more money from taxpayers.

Nevertheless, the Court should conclude that the requirements of the TPA are within the right of voters to impose on the existing processes in state and local government for consideration of tax increases.

III. The California Taxpayer Protection Initiative Does Not Present a Risk of Impairing "Essential Government Functions."

The Petitioners claim that adoption of the TPA would impair so-called "essential government functions." The Petitioners have failed to provide the Court with convincing evidence to substantiate the need for the revocation of the citizens' right to vote on the TPA.

Indeed, the Court must reconcile the Petitioners' unsubstantiated claim with the notion that California already

has the most oppressive existing tax burden of any state in the nation.[4]

The reality is state and local governments in California have more than enough money to fulfill their duties for providing "essential government functions." In fact, state and local government in California has gone far beyond "essential government functions" to create unnecessary government programs for functions that should be private matters, not government obligations.

The Court must also consider that the previously referenced initiatives all imposed similar requirements that Petitioners now claim will lead to impairment of "essential government functions" – and yet implementation of those previous initiatives provide ample refutation of Petitioners' argument.

California Proposition 4 (1979) limited what government could spend on all functions of government and Proposition 98 (1988) mandated a lion's share of state government funding go to education programs, to the limitation of all other functions of

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[4] For example, California has a personal income tax which is the highest top rate in the country at 13.3 percent.

state government – and yet we see no impairment of “essential” functions.

California Proposition 13 (1978) and Proposition 218 (1986) imposed voter approval requirements on taxes – and yet we see no impairment of “essential” functions.

Proposition 218 (1986) and Proposition 26 (2010) imposed limitations on fees and special charges by state and local government – and yet we see no impairment of “essential” functions.

The only impairment on functions that is raised in connection with the TPA is the fact that California working families have had their essential functions impaired by out-of-control levels of taxation (including ever-rising sales and transactions and use tax rates). Blocking a vote on the TPA would lead to additional taxes and additional impairment of “essential” functions by working families in our state, at their own kitchen tables as they try to balance their own household budgets.

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IV. The *Amici* Seek to Prevent Local Governments From Unilaterally Defining "Essential Government Functions."

Courts need to reconcile the definition of "essential" in the "essential government functions" test that governments wield against referenda that they disfavor (*Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839-40) with the "essential services" claims that governments use to promote their own ballot measures.

The oft-repeated mischaracterization of "essential services" by local governments in election materials is a major reason why the *amici* support the TPA's amendment of California Constitution, article XIII C, section 2(d) to regulate the content of ballot questions. *Amici* are outraged by this brazen attempt by the Legislature and Governor Newsom through this Writ Petition to keep this important "ballot label reform" constitutional amendment off of the ballot, asserting it would "impair[] the ability of state and local governments to provide essential government functions." (Petition at p. 18 (¶ 11).)

California governments typically adopt an overbroad definition of "essential" government functions. In local government-sponsored tax measures, local governments regularly

include “essential” among the 75 words in the ballot label or question. (Elections Code section 9051(b).) Local governments characterize virtually every general fund expenditure as “essential.”

Amici contend the term “essential” in a ballot label or question is inherently argumentative and likely to create prejudice concerning the measure, in violation of Elections Code sections 9051 and 13119(c). Trial courts routinely reject such challenges, but the abbreviated time frame of election challenges, due to the imminent printing of ballots, prevents challengers from seeking appellate review.

No appellate court has yet analyzed the use of the word “essential” in ballot question in a pre-election challenge. But local governments routinely cite *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169 to claim that “essential” may be used in a ballot question simply because the use of the word “essential” was not challenged in that precedent-setting lawsuit. Local governments also convince trial courts that “essential” is acceptable in ballot questions because of *dicta* concerning “essential services” in a post-election challenge, *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 125. No Elections

Code section 13119(c) challenge has yet been decided in a published appellate decision.

V. California Voters Have Been Willing to Increase Their Taxes Through Statewide Ballot Measures (California Constitution, article XIII, section 36).

Petitioners refer in their writ petition to the unsuccessful tax measures in the 2009 special election. (Petition, pp. 68-69.) But in November 2012, California voters passed Proposition 30, a so-called "temporary" income tax and sales tax increase, which is codified in the California Constitution, article XIII, section 36. In November 2016, voters statewide approved Proposition 55, which extended that income tax increase to 2030. That substantial revenue source will remain available to the Legislature and Governor for the next seven years. Propositions 30 and 55 also serve as potential models for successful voter approval of future statewide tax measures under the TPA.

VI. The State's "Rainy Day Fund" Is Available to Cover Deficits.

Petitioners claim in their Traverse, "The State faces a deficit in the tens of billions of dollars in the 2024-2025 fiscal

year. The only way to cover a deficit that large is to decrease spending, increase revenues, or both." (Traverse, p. 59.)

The Legislature, Governor Newsom, and Mr. Burton are not telling this Court the truth. In March 2004, voters passed Proposition 58 to create the State of California's "rainy day fund," or Budget Stabilization Account, to protect the State from revenue volatility. A decade later, in November 2014, voters also approved Proposition 2, which requires an annual deposit equal to 1.5 percent of the state's General Fund into the "rainy day fund." This provides a backstop in the event that voters, in a given year, refuse to approve a tax increase that legislators desire.

As for Petitioners' claims about the effects of the TPA on local government measures approved since January 1, 2022, many *amici* would have preferred that the operative date had been January 1, 2020 or even earlier, in order to reverse many other tax measures that took advantage of the *Upland* loophole. The TPA drafters selected the January 1, 2022 date as a policy decision that the Courts should respect. Moreover, the affected local governments would have standing to assert their concerns

after the election, were voters to approve the TPA in November 2024.

VII. The TPA's Provisions Concerning State Government Are Not Radically Different From Other States' Taxpayer Protections.

A comparison between the TPA and taxpayer protections existing in other states demonstrates that the TPA neither "revises" the California Constitution nor impairs State government. (Real Party's Return to Order to Show Cause, p. 49, fn. 14.)

Petitioners assert in their Traverse, "Oklahoma allows the Legislature to increase taxes without voter approval with three-quarters supermajority votes. (Okla. Const., art. V, § 33, subd. (D).)" (Traverse, p. 43, fn. 17.) *Amici* wonder how often the Oklahoma Legislature actually has used that provision in lieu of voter approval. In *Naifeh v. State ex rel. Okla. Tax. Comm'n* (2017) 400 P.3d 759, the Oklahoma Supreme Court invalidated a tax that failed to comply. *Amici* note that the sole feature distinguishing the TPA from Oklahoma law is that if the voters fail to approve a statewide tax, the Legislature can then still impose the tax by a three-quarters vote.

VIII. Petitioners' Validation Actions Argument Lacks Merit.

In their Traverse, Petitioners contend, "Real Party's suggestion that state and local officials could bring validation actions is similarly unavailing. Whether the validation statutes even apply to a particular tax or charge is often unclear …" (Traverse, p. 27.)

In order to challenge tax measures and other actions by local governments, *amici* are routinely forced to file reverse validation actions pursuant to Code of Civil Procedure section 863. *Golden Gate Hill Development Co., Inc. v. County of Alameda* (2015) 242 Cal.App.4th 760, among other legal authority, forces this burden upon *amici*. This Court and the rest of the judiciary rigidly enforce the peculiar procedural requirements in the Validation Statutes against challengers, including curtailment of appellate review. (See, e.g., *Planning & Conservation League v. Dep't of Water Res.* (1998) 17 Cal.4th 264, *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 211-214.)

Unlike the average citizen or advocacy organization (such as *amici*), the Legislature and Governor Newsom possess the

authority to amend the Validation Statutes, thereby re-directing the judiciary. If voters were to approve the TPA, the Petitioners could amend the Validation Statutes to address their concerns. Nothing prevents the Legislature and Governor Newsom from amending statutes pre-election in anticipation of passage of the TPA on November 5, 2024. This Court should deny the writ petition and stay out of this political question.

IX. As an Alternative to Striking the Measure From the Ballot, *Amici* Suggest Severance of Offending Provisions.

Should this Honorable Court find grounds to grant the Petition, *amici* suggest the Court instead take a granular approach by severing the offending provisions, and retaining those that do not suffer from the defects asserted by Petitioners.

The question of pre-election severance has arisen multiple times in the context of single-subject rule challenges. (*Senate v. Jones*, (1999) 21 Cal.4th 1142.) Because the instant petition is not a single-subject rule challenge, that precedent is inapposite. *Amici* have not found any relevant caselaw that would prevent pre-election severance. They believe the existence of a severance clause, which obviously would be operative in a post-election context, would also be operative in a pre-election context. *Amici*

are confident that the Respondent Secretary of State can format the Voter Information Guide to clearly represent the TPA provisions that remain after this Court's ruling. Exercised only as a last, final resort, severance would respect the intent of over a million California voters, who clearly are vitally interested in the level of taxes and the law that governs taxes.

X. The TPA is Necessary to Prevent the Unlawful and Unconstitutional Abuse of Power by State and Local Politicians.

Any decision by this court to block the TPA would constitute an abuse of power by state politicians to the detriment of citizens.

California courts have a poor track record on protecting citizen initiative rights. Recently California courts invalidated a citizens' initiative, Proposition B (San Diego 2012), that reformed government pension benefits by incorrectly ruling that the measure was a government initiative rather than a citizens' initiative. (See, e.g., *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898.)

At its heart, the TPA is about holding state and local politicians accountable. The TPA is needed because of a pattern

of politicians disregarding the existing constitutional rights of California citizens relating to taxation.

State and local politicians have used deceptive ballot titles to strip voters of a fair vote on tax increases. If a voter does not understand that a measure constitutes a tax increase because it is not spelled out clearly in the ballot title, ballot label, or ballot question, they are not really given a fair chance to vote on the tax increase due to incomplete, misleading, and/or prejudicial information.[5]

Politicians have repeatedly imposed illegal taxes on citizens and avoided existing constitutionally mandated voting rights by merely calling a tax a "fee." Politicians have also evaded accountability to the public on their policies by delegating imposition of costly fees to administrative agencies.

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[5] More judicial scrutiny is warranted for review of local government-sponsored ballot questions because local measure sponsors are inherently more self-interested in writing ballot questions for their own measures than is the Attorney General in writing ballot questions and summaries for statewide measures. In stark contrast to local measures wherein local governments prepare their own ballot labels, for statewide measures "[t]he Attorney General shall invite and consider public comment in preparing each ballot title and summary." (Elections Code section 9051(d).)

Taking advantage of the flawed *Upland* decision, politicians are now colluding with wealthy special interests to disguise their tax increase proposals as "citizen initiatives" to avoid existing constitutionally mandated voting rights.

California courts are partially responsible for the need for the TPA, by repeatedly opening loopholes for politicians to enact tax increases outside of the procedures intended by voters through previous tax reform initiatives.

If state and local politicians were not violating these existing constitutionally protected voting rights, the TPA may not have been as necessary. However, the infringement on citizens' rights is so great that the citizens feel the need to strengthen and clarify existing constitutional provisions relating to taxation.

The court should not deprive voters of an opportunity to protect their existing constitutional rights on taxation by considering this important ballot initiative in the 2024 election.

CONCLUSION

The Taxpayer Protection and Government Accountability Act (TPA) gives more power to the voters, prevents excessive taxation, and promotes fiscal responsibility and accountability.

Voters are desperate for greater control over how taxes are raised and where the new revenue is spent. They will not appreciate the "weaponizing" of the courts.

Granting the petition would set a dangerous precedent to allow politicians to strip citizens of their initiative rights merely by arguing to a friendly court that each initiative the politicians oppose goes too far and is too sweeping in nature and therefore constitutes an improper "revision" to the constitution.

For the foregoing reasons, the *amici* local taxpayer advocacy organizations represented in this application respectively request that the Court deny the writ petition.

Dated: January 31, 2024 Respectfully submitted,

/s/ Jason A. Bezis

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Association, Solano County Taxpayers Association, Sutter Yuba Taxpayers Association, Ventura County Taxpayers Association, the Red Brennan Group and Moving Oxnard Forward.

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Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 5,490 words, including footnotes, but excluding the caption page, Application, Table of Contents, Table of Authorities, Certificate of Service, this Certificate of Word Count, and signature blocks. I have relied on the word count of the Microsoft Word program used to prepare this Certificate.

Respectfully submitted,

DATED: January 31, 2024. By:

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I, the undersigned, declare under penalty of perjury that:

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/s/ Jason A. Bezis

JASON A. BEZIS

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Supreme Court of California

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/s/Jason Bezis

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