Case No. S281977

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

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

Respondent,

THOMAS W. HILTACHK,

Real Party in Interest.

ON THE EMERGENCY PETITION FOR WRIT OF MANDATE

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE OF THE CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA ASSEMBLY REPUBLICAN CAUCUS LEADER JAMES GALLAGHER, FORMER CALIFORNIA ASSEMBLY MEMBER AND CHAIR OF THE LATINO LEGISLATIVE CAUCUS JOE COTO, AND CALIFORNIA STATE SENATE PRESIDENT PRO TEMP EMERITUS DON PERATA IN SUPPORT OF RESPONDENT AND REAL PARTY IN INTEREST

WM. GREGORY TURNER
State Bar No. 161475
TURNER LAW
1701 L Street, No. 146
Sacramento, CA 95814
greg@turnersalt.com
(916) 251-7398

Attorney for Amicus Curiae:
California Farm Bureau Federation
James Gallagher, Assembly Republican Caucus Leader
Joe Coto, Fmr. Chair, Latino Legislative Caucus, and California State Assembly Member
Don Perata, California State Senator and President pro Tem, Emeritus

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA ASSEMBLY REPUBLICAN CAUCUS LEADER JAMES GALLAGHER, FORMER CALIFORNIA ASSEMBLY MEMBER AND CHAIR OF THE LATINO LEGISLATIVE CAUCUS, JOE COTO AND CALIFORNIA STATE SENATE PRESIDENT PRO TEMP EMERITUS, DON PERATA IN SUPPORT OF RESPONDENT AND REAL PARTY IN INTEREST

TO THE HONORABLE CHIEF JUSTICE GUERRERO AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The California Farm Bureau Federation (Farm Bureau), California Assembly Republican Caucus Leader James Gallagher, Former California Assembly Member and Chair of the Latino Legislative Caucus Joe Coto, and California State Senator and President *pro Temp* Emeritus Don Perata respectfully request leave to file the attached brief of amicus curiae in support of respondent and real party in interest pursuant to Rule 8.520(f), of the California Rules of Court.

No party or counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. (See Cal. Rules of Court, § 8.520(f)(4).)

A. INTEREST OF AMICUS

The California Farm Bureau Federation (Farm Bureau) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home, and the rural community. The Farm Bureau is California's largest farm organization, comprised of 54 county Farm Bureaus currently representing approximately 26,000 members in 56 counties. The Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau members in each county where they reside and operate face economic impacts from the imposition of state and local taxes and other charges in California. Farm Bureau members have a keen interest in the outcome of this litigation, as the proposed initiative aligns with an interest to ensure that whenever possible, the levying of new or increased taxes or other charges represents a common understanding of the nature and scope of those charges and that such taxes be contingent upon a determination made by those persons upon whom they are imposed.

Assembly Republican Caucus Leader James Gallagher represents California's Third Assembly District and previously served the people of the County of Sutter as a member of the Board of Supervisors. Leader Gallagher graduated from the University of California at Berkley (BA) and the University of California at Davis (JD), where he graduated at the top of his class. In his law practice, his family farming business, and as a legislative representative of the people of the Third Assembly District, Leader Gallagher has first-hand

experience with the impacts of taxation and other methods utilized by State and local governments to raise money from the wealth and activities of the people. While some members of the Legislature took it upon themselves to file the Petition before this Court, other members believe the effort disenfranchises voters who have repeatedly expressed an interest in having a say in what taxes are and the manner and methods by which they are imposed on them. The assertion by Petitioners that greater government transparency and accountability is beyond the scope of the people's reserve power of initiative must be answered.

Don Perata is a former member of the California State Legislature, serving two years in the California State Assembly and ten years in the California State Senate, including four years as the 48th President pro Tem.

Perata worked with Governor Arnold Schwarzenegger to gain passage of five infrastructure-related bond measures in 2006. Before serving in the State Legislature, he served as a member of the Board of Supervisors of Alameda County and as a teacher.

Joe Coto is an educator and former member of the California State Assembly for six years, including two years as the Chair of the Latino Legislative Caucus. Before serving in the State Assembly, he spent fourteen years as a School District Superintendent in San Jose and served four years on the Oakland City Council.

Former elected representatives of the people Perata and Coto have repeatedly defended the right of the people to exercise their reserve power of initiative. As representatives of the people in both the State Legislature and local governments in their respective communities, Perata and Coto are deeply experienced with the struggles of elected officials to raise the money necessary to provide the type of government their citizens demand while also serving their desire to have a say in the types, manner, and methods of how they are being charged for that government.

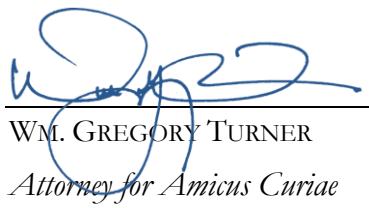
B. ASSISTANCE PROVIDED BY AMICUS

Amici have read the briefs of the parties and the real party in interest and believe additional arguments can be made to assist the Court in addressing the question presented. Namely, while Petitioners' brief enumerates various speculative consequences of the Taxpayer Protection and Government Accountability Act ("TPA"), there is a long history of tax limitation efforts by the people in California exercising their reserve power of initiative. The TPA was not constructed from whole cloth but is part of a tapestry of terms and conditions woven into our Constitution over the last several decades by the people in their ongoing struggle to articulate words of sufficient clarity so their intent is expressly communicated to resistant Executive and Legislative branches as well as to the Courts in their commitment to effectuating voter intent.

In addition, Amici would like to draw the Court's attention to the consequences of rendering a wholly unnecessary decision now. Petitioners' inventory of certain speculative infirmities hopes by some unspecified summation method to tally as a revision. However, accepting Petitioners' questionable math and removing a duly qualified initiative from the ballot would deprive voters of the opportunity to vote on ALL the provisions of the TPA. Consequently, even if, in the unlikely event, one or more provisions are determined to be unenforceable in post-election litigation, voter intent can nevertheless be protected as to the remainder according to the initiative's severability clause. Petitioners' all-or-nothing request seeks to short-circuit that possibility.

Dated: January 31, 2024

Respectfully submitted,

By 

WM. GREGORY TURNER

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INTRODUCTION

Amici offer the following observations on the request of Petitioners for this Court to take the extraordinary action of removing a duly qualified ballot measure - "The Taxpayer Protection and Government Accountability Act" ("TPA") - from consideration by voters on the basis it constitutes a revision to the Constitution.[1]

[1] Of the several hundred ballot initiatives placed before voters since the 1911 amendments empowering the initiative process, amici are aware of only one instance in which this Court

First, the TPA can best be understood as evolutionary, not revolutionary. Whatever speculative parade of horribles Petitioner predicts consequent to its passage, the TPA is the product of a nearly half-century struggle to articulate the boundaries of voter desire for tax limitation with sufficient clarity. Never has this Court found an initiative singularly focused on limiting the power of taxation to be a 'revision' to the Constitution. (See *Amador Valley Jt. Un. High Sch. v. State Bd. Of Equalization* (1978) 22 Cal.3d 208, 227. ["To conclude, however, that the mere imposition of tax limitations, per se, accomplishes a constitutional revision would in effect bar the people from ever achieving *any* local tax relief through the initiative process."].)(Emphasis in original.) Proscribing tax limitation by initiative would strike at a driving purpose of the people's reserve power of initiative. (*See Rossi v. Brown* (1995) 9 Cal.4th 688, 699 ["taxation was not only a permitted subject for the initiative, but was an intended object of that power."].)

Second, Petitioner's request for this Court's extraordinary intervention to preclude the exercise of voters' "most precious of rights" (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591; *Amador Valley*, supra at p. 219), is wholly unnecessary as Petitioners' allegations are entirely within the Court's power to consider *after* the November elections should the TPA be approved by voters. Petitioners' catalog of calamities warranting this "emergency" writ, while keeping with tradition for opposing *any* tax limitations, fails to account for State or local government's evident abundance.[2] Nevertheless, the burden on Petitioners to establish grounds for their extraordinary request is great. It must move beyond the rhetoric of the campaign trail to overcome this Court's strong presumptions favoring the

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has preemptively excluded a duly qualified measure from the ballot as a revision. (See *McFadden v. Jordan* (1948) 32 Cal.2d 330.)

[2] Just in the period from 2011 to 2021, State revenues more than doubled. See State of California, Annual Comprehensive Financial Report, Statement of Revenues, Expenditures, and Changes in Fund Balances, FYE June 30, 2011 (p. 36) and FYE June 30, 2021 (p. 46.) https://sco.ca.gov/ard_state_acfr.html.

validity of an initiative (*Raven v. Deukmejian* (1990) 52 Cal.3d 336). Petitioners must establish *clear and compelling reasons* supporting interference by this Court (*Farley v. Healey* (1967) 67 Cal.2d 325). Petitioners' must show that the type of initiative at issue either alters the *substantial entirety* of the Constitution or the *comprehensive powers* of one or more branches of government. (*Amador Valley*, supra; *Raven*, supra). Beyond Petitioners' failure to overcome these very high hurdles, pre-election action precludes the possibility that if a post-election review discovers impermissible attributes of the TPA, those provisions might be excised, preserving what remains and, thereby, voter intent. (See, TPA, Sec. 9(C) "The provisions of this Act are severable.")

ARGUMENT

A. A PAGE OF HISTORY

In support of their writ, Petitioners allege the TPA will "make a far-reaching change in the fundamental structure or the foundational power of its branches as set forth in the Constitution" (See Petitioner's Brief at p. 11, citing *Strauss v. Horton* (2009) 46 Cal.4th 364), by (a) "revoking" core legislative powers, (b) shifting core executive power to the legislature, (c) expanding the definition of what constitutes a "tax" thereby narrowing core legislative and executive power, and (d) both expanding voters power to challenge enacted taxes and limiting voters power to impose taxes via local initiative.

Fundamentally, however, the TPA simply further refines *limited* aspects of tax limitation efforts previously enacted by Proposition 13, Proposition 218, and Proposition 26. Proposition 13, which combined significant tax reduction, tax limitation in the form of fundamentally changing the method of property tax assessment, and limiting the powers of state and local governments in raising future taxes, was far broader than what the TPA now proposes. Yet, this Court considered that measure through the lens of "the limited area of taxation." (*Amador Valley, supra*, at p. 227.) The changes proposed by TPA are in no

manner of reasonable description "so extensive . . . as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions." (*Raven, supra at p.* 351, citing *Amador Valley, supra*, at p. 223; *See also Strauss, supra at p. 432 citing Brosnahan v. Brown* (1982) 32 Cal.3d 236, 260, [the changes at issue there were "not 'so extensive . . . as to change directly the "substantial entirety" of the Constitution…"]) Nor do the proposed changes substantially alter the fundamental structure of one or more branches of government. (*Legislature v. Eu* (1991) 54 Cal.3d 492.) "Our prior decisions have made it clear that to find such a revision, it must necessarily or inevitably appear from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in our Constitution." (*Id.* at p. 510.)

The critical error of the Petitioners' writ is to confuse their opposition to change in some of their authority with the type of alterations to either the whole of our Constitution or the *comprehensive powers* of one or more branches of government to effectively nullify their existence. For example, "vesting all judicial power in the Legislature." (*Amador Valley, supra*, at p. 223.) The TPA cannot reasonably be construed as remotely similar regarding effectuating constitutional changes.

1. What is a "Tax" and What is Not

Taxes are simultaneously the lifeblood of "civilized society"[3] and the embodiment of the ills citizens attribute to the government funded by them. If the people's reservation unto themselves of the power of initiative was at least partly born of a desire to influence taxation, it should be no surprise that

[3] See *Compañia General de Tabacos de Filipinas v. Collector of Internal Revenue* (1927) 275 U.S. 87, 100 (1927). Another renown quote of Justice Holmes, "[t]axes are what we pay for civilized society, including the chance to insure." But as the majority noted, a post-hoc rationalization of purpose cannot be a definitional foundation. "We are unable to see any sound distinction between the imposition of a so-called tax and the imposition of a fine in such a case." (*Id.* at 95.)

taxation has often been their subject. Since the initiative was established in 1911, more than 240 ballot propositions involving taxes have been presented to voters.[4] Whether limiting the exercise of taxing authority or imposing their will by proposing and adopting their own taxing schemes, each expression of a preferred subject, method, or means of raising money for government purposes is an inherent limitation on the Legislature's power. While Petitioners appear to acknowledge that the reserve power of initiative allows voters to adopt tax limitation measures, they seem to object to voters defining what a "tax" is. The TPA, however, is simply a further expounding on the particulars and scope of tax limitation standing on the foundation of what has already been constructed by Proposition 13, Proposition 218, and Proposition 26, adding clarity to the words used to express voter intent for tax limitation.

For example, Cal. Const., art. XIII A, § 3, as adopted by voters in 1978 (Proposition 13), required new state taxes to be approved by a two-thirds vote of the legislature. Art. XIII A, § 3, then read:

> "any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in method of computation must be approved by an Act passed by no less than two-thirds of all members elected to each of the two houses of the Legislature…" (See Cal. Const., art. XIII A, § 3, as adopted June 6, 1978.)

For many years, the Legislature operated under the presumption that Section 3 was concerned only with legislative acts that, in totality, raised *new tax* revenue for the State.[5] However, when this Court found in *Sinclair Paint Co. v. State Bd. Of Equalization* (1996) 15 Cal.4th 866, the *police power* was sufficiently broad to support raising money to "mitigate the *past, present, or future* adverse impact of the fee payor's operations…" (Id. at p. 878), defining "negative

[4] The count excludes initiatives submitted for title and summary but failing to qualify for the ballot and yet to be voted on. See https://ballotpedia.org/Taxes_on_the_ballot.

[5] Ops. Cal. Legis. Counsel No. 10846 (May 21, 1981) Tax Legislation: Vote Requirement.

externalities"[6] became a new method for raising money for government programs without the constraints of a two-thirds vote, though in all practicality indistinguishable from taxes.[7] In one notable effort, the legislature proposed in companion bills a new "oil severance tax," a surtax on personal income, an increase in the sales tax, and the *elimination* of the existing excise tax and sales tax on gasoline and diesel fuel.[8] Those "tax" measures were revenue neutral. However, the Legislature also proposed a new "fee" on gasoline and diesel, which was expected to raise more than $7 billion by a majority vote, notwithstanding the limitations in art. XIII A, § 3.

Such ambiguities arose not simply from consideration of the scope of the police power but the very meaning of the term "tax." "The cases recognize that 'tax' has no fixed meaning, and that the distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts." (*Sinclair Paint Co., supra* at p. 874; *Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105.). "Tax" limitation becomes ephemeral without a clear understanding of what constitutes a "tax" in the first place.

As a result of *Sinclair Paint Co.*, voters adopted Proposition 26 to clarify their intent of the scope of their desire for tax limitation to define "tax" as "any levy, charge, or exaction of any kind imposed by the State, except [certain specified charges]" (Cal. Const., art. XIII A, § 3, art. XIII C, § 1(e) ["imposed by a local government, except [certain specified charges]."] The TPA further refines "tax" by adding clarity to the meaning of the term as well as to the term "exempt charges."

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[6] A "negative externality" occurs when one party creates costs on others for which they do not compensate or from which they do not benefit. Such "Pigovian Taxes" can be rewards or penalties but are intended to effect market pricing. See Galle, *The Tragedy of the Carrots: Economics & Politics in the Choice of Price Instruments*, 64 STAN.L.REV. 797 (2012).

[7] Taxpayers had identified to the Legislature a number of proposed charges that might avoid the two-thirds vote requirement as "fees." See http://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/hearings/Attachment%20A.pdf.

[8] See Sen. Bill No. 11 (2009-2010 1st Ex. Sess.); Assem. Bill No. 2 (2009-2010 1st Ex. Sess.).

The Court of Appeal in *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, however, found that so long as payment, though compulsory, was not made to the government directly, such charge was not subject to the tax limitations of art. XIII C.[9] Consequently, if a local government mandated a charge be imposed by retailers upon certain retail purchases and mandated how the proceeds of that charge could be used by the retailer (therefore achieving the policy choices of the governing body), all the attributes of taxation and appropriation are achieved but in a manner in which the voters are entirely carved out of the process, notwithstanding their repeated expressions of a desire to have the opportunity to express their will. The TPA clarifies the application of tax limitation in these circumstances.

Petitioners argue the TPA's requirement that voter-sponsored initiative tax increases adhere to the same requirements as those imposed on elected officials of governing bodies amounts to "profound changes" in the Constitution's governing structure. However, it was only in *dicta* in this Court's opinion in *Cal. Cannabis Coal. v. City of Upland* (2017) 3 Cal.5th 924, which *first* suggested Proposition 218's vote thresholds applicable to "local governments" were not intended by the voters to include voter-sponsored initiatives. "Without an unambiguous indication that a provision's purpose was to constrain the initiative power, we will not construe it to impose such limitations." (Id. at p. 945-46). This construction upended decades of prior understanding. (See *Altadena Library Dist. v. Bloodgood* (1987) 192 Cal.App.3d 585, 592 [court found a voter-sponsored initiative subject to Proposition 13's two-thirds vote requirement for "special taxes"].) TPA's amendments provide clarification to this on-going uncertainty.

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[9] "We conclude that the paper carryout bag charge is not a tax for purposes of article XIII C because the charge is payable to and retained by the retail store and is not remitted to the county." (*Schmeer*, *supra* at p. 1314. Because the ordinance also directed the manner in which retailers were permitted to spend the funds, the measure achieved all the goals of taxation (raising money for a government purpose) but without the limitations placed thereon by voters.

These examples are far from exhaustive but illustrate the nature of the clarifications and extensions of the language of "tax limitation" necessary to preserve the People's opportunity to have a say. Tax limitation becomes an exercise in futility absent clear language expressing voter intent. In each of the Petitioners' objections, the TPA represents an extension of prior tax limitation efforts, building on the foundations of Proposition 13, Proposition 218, and Proposition 26. By further clarifying voter intent, TPA constitutes an evolution of "tax reform," not the revolution by revision alleged by Petitioners.

2. Legislative Limits a Plenty

Petitioners argue the TPA's requirement that new legislatively adopted taxes not become effective until approved by voters constitutes a revocation, or at least a substantial diminishing of a core legislative power, belies the long list of existing constitutional limits on the legislature's taxing powers, some imposed by voters via initiative and others originating from the Legislature itself. Their attack on the power of voters to enact tax measures, tax reform, or tax limitation, therefore, belies the scores of prior initiative efforts to control the scope, means, and methods of taxation in this State.

Whether limiting the exercise of taxing authority or imposing their will by proposing and adopting their own taxing schemes, each constitutional expression of a preferred subject, method, or means of raising money for government purposes is an inherent limitation on the Legislature's power. For example, Cal. Const., art. XIII, § 1, provides "[u]nless otherwise provided by the Constitution or the laws of the United States: (a) All property is taxable and shall be assessed at the same percentage of fair market value." This taxing scheme constitutionally deprives the Legislature of the power to classify real property for differential tax treatment or exemption. (*Lucas v. County of Monterey* (1977) 65 Cal.App.3d 947.)

Cal. Const., art. II, §10(c) is a far broader limitation on the Legislature's power than the TPA proposes. This section requires legislative amendments to

any initiative statute to be submitted to voters before becoming effective unless the initiative statute authorizes such amendments. Complexity is no exception. When voters approved Proposition 39 in 2012[10], they substantially modified California's core method to ascertain multi-state and multi-national corporate income subject to taxation in this State. The provisions of the measure are not subject to Legislative amendment *at all*. Only with subsequent voter approval under art. II, § 10(c), can changes to that core methodology ever be made effective.

Similarly, legislation proposing to obtain money through the issuance of state bond debt has required voter approval since statehood. (Cal. Const., art. XVI, §§ 1 & 2.)

Giving voters the final say in the limited arena of taxation can hardly be described as a far-reaching change to the fundamental government structure or the foundational power of one or more branches of government. Such an expansive reading of "revision" would jeopardize the very nature of the initiative as a power *reserved* to the people. (*Carlson v. Cory* (1983) 139 Cal.App.3d 724. ["This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature."])

Given the plethora of existing requirements obligating voter approval of or otherwise placing limitations on legislative taxing powers, TPA's requirement of voter approval in the narrow circumstance of increased taxes (*Amador Valley, supra*) is hardly a basis for finding a "far-reaching change in the fundamental governmental structure or the foundational power of its branches…" (*Strauss, supra at* p. 444.).

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[10] Proposition 39 – "Tax Treatment for Multistate Businesses. Clean Energy and Energy Efficiency Funding." In addition to altering California's corporate income tax inter-state apportionment formula, Prop. 39 dedicated the revenue derived therefrom to specified "clean energy and efficiency" programs. See Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 39, p. 125-129 available here: https://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf

Petitioners' complaint that requiring the Legislature to specify the intended use of tax proceeds (whether for a specific purpose or an unrestricted one)—and be bound by that declaration— TPA "revokes" the Legislature's power to appropriate revenue is equally absurd. Several initiatives over the last few decades—and even several sponsored by the Legislature itself—either specifically curtail Legislative appropriation powers or impose a tax and specifically direct how revenue derived therefrom must be appropriated. Here is but a sampling:

- Proposition 55 (2016) – Extending the temporary tax increases adopted by voters in Proposition 30 (2012).
- Proposition 56 (2016) – Increased taxes on tobacco products.
- Proposition 39 (2012) – Change the method of taxing out-of-state businesses and dedicate revenues raised to clean energy and energy efficiency programs.
- Proposition 30 (2012) – Sales and Use Tax increase, personal income tax increase allocated to K-12 schools and community colleges, bars use of funds for administrative costs, "guarantees funding for public safety services realigned from state to local governments."
- Proposition 63 (2004) – 1% tax on incomes over $1 million, allocating revenues in specified percentages to local capital facilities, education and training programs, county planning, and specified state agencies.
- Proposition 42 (2002) – Obligated gasoline sales tax revenues be used for specific state and local transportation services by specified percentages.
- Proposition 10 (1998) – Increased tax on tobacco products dedicated revenues to new early childhood education programs.
- Proposition 111 (1990) – The Traffic Congestion Relief and Spending Limitation Act of 1990 (Legislative Constitutional Amendment).
- Proposition 172 (1993) Sales tax increases revenue dedicated to local public safety activities. (Legislative Constitutional Amendment).
- Proposition 98 (1988) – Guarantees minimum funding from the State budget for K-12 schools and community colleges.

- Proposition 4 (1979) – The Gann Spending Limit – limited state and local government spending, including certain fee revenues based on population and cost of living adjustments, required the State to reimburse local governments the costs of complying with state-mandated programs.

So common are initiative measures proposing to increase or expand taxes the revenue from which is dedicated for a specific purpose completely outside the Legislature's control, critics have derided the process as abdication by "ballot-box budgeting."[11] To suggest that TPA's simple requirement of transparency amounts to a tectonic change in core functions of the Legislative branch is demonstrably ridiculous.

3. Executive Branch Tax Increases

Petitioners' argument that legislative approval of the type and amount of fees or charges proposed by executive branch agencies "shifts substantial power" from the executive to legislative branches is logically indefensible. It is undoubtedly true the legislature *may* delegate quasi-legislative authority to executive branch agencies. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 142 ["To deal with the manifold problems of modern society these administrators have been delegated substantial quasi-legislative and quasi-adjudicative powers."].) It is also true that such a delegation of authority may include, either broadly or specifically, the authority to impose certain specified charges or perhaps take other actions, the effect of which is to raise money for the State (*Cal. Chamber of Commerce v. State Air Res. Bd* (2017) 10 Cal.App.5th 604, [the Legislature gave broad discretion to an executive branch agency to raise billions of dollars for government programs.]) "A corollary of the legislative power to make new laws is the power to abrogate existing ones. What the Legislature has enacted, it may repeal." (*California Redevelopment Assoc. v. Matosantos* (2011) 53 Cal.4th 231, 255.)

[11] See Levinson and Stern, *Ballot Box Budgeting in California: The Bane of the Golden State or an Overstated Problem*? 37 HASTINGS CONST. L.Q. 689 (2010).

Petitioners identify no source of *inherent* executive branch authority to raise money for government purposes. (See *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 301, 299; *State Bd. of Education v. Honig*, *supra*, 13 Cal.App.4th at pp. 750-752 ["there is no agency discretion to promulgate a regulation which is inconsistent with the governing statute."] (italics omitted); *Imperial Irrigation Dist. v. State Water Resources Control Bd.* (1990) 225 Cal.App.3d 548, 567 ["the powers of public [agencies] are derived from the statutes which create them and define their functions."].); As this Court has explained, "[a]dministrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void." (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 391.) Additionally, "the rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency. . . . [R]egulations that alter or amend the statute or enlarge or impair its scope are void." (*Physicians Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982.) An executive agency lacks the power to disburse funds for a purpose contrary to a legislative enactment. (*Assembly v. Public Utilities Com.* (1995) 12 Cal.4th 87, 100-104.)

Consequently, it is entirely within the reserve *legislative* power of initiative for voters to require any delegation of authority to the executive branch to obligate any charges to be subsequently approved by the Legislature (if not spelled out in the delegation itself). To find otherwise would allow the executive branch to "arrogate to itself the core functions" of the Legislature. (*Carmel Valley, supra*, at p. 297.)

Petitioners also point to requirements in the TPA restricting amendments to local government charters to increase taxes and subject voter-sponsored initiatives to the same voter approval requirements as those of locally elected legislative bodies make far-reaching changes to the voters' foundational powers and, thereby, the fundamental government structure of the State. "In our federal system the states are sovereign but cities and counties are not; in

California as elsewhere they are mere creatures of the state and exist only at the state's sufferance." (*Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914.) More recently, in *California Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 255, this Court stated:

> "The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.... The State, therefore, at its pleasure may modify or withdraw all such powers, ... expand or contract the territorial area, unite the whole or a part of it with another municipality, [or] repeal the charter and destroy the corporation."

Even amendments to charters are subject to legislative limitations. (See *Boling v. Pub. Employment Relations Bd.* (2018) 5 Cal.5th 898, 915.) An initiative exercising the reserved legislative power to proscribe certain types of charter amendments by constitutional amendment is entirely within the initiative power. Petitioners' position would suggest local charters exceed the boundaries of even constitutional restriction.

B. AN UNNECESSARY BUT CONVENIENT SHORT-CIRCUIT

Petitioners argue this request for emergency relief by pre-election challenge is warranted because (a) the measure is a revision and "voters will be harmed if the Measure appears on the November 5, 2024 ballot." and (b) because the measure has retroactive elements, "every government entity that has enacted non-conforming taxes or fees" may be impacted by it. (Petitioners' Brief, pp. 14-16.)

As Respondent Real Party in Interest has articulated in great length, and we briefly summarize above, Petitioners' first argument is demonstrably false.

Petitioners' second argument fails to articulate the basis on which voters *clearly* lack the power to adopt the amendments they challenge. Both Proposition 218 and Proposition 26 included similar look-back provisions. "The initiative power must be liberally construed to promote the democratic

process." (*Legislature v. Eu, supra* at p. 500 citing *Raven*, *supra*, at p. 341). "Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. As with statutes adopted by the Legislature, all presumptions favor the validity of initiative measures and mere doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Id.* at p. 501, *citing Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814.). The Court should order removal only "on a compelling showing that a proper case has been established for interfering with the initiative power." (*Farley v. Healey* (1967) 67 Cal.2d 325, 327.). "The ballot box is the sword of democracy. A court will intervene in the … process only when there are clear, compelling reasons to do so." (*Zaremberg v. Superior Court* (2004) 115 Cal.App.4th 111, 116.) Petitioner has not articulated any sufficient legal rationale for this Court's intervention now based on TPA's minor look-back provision, but instead relies upon mere speculation of uncertain future events.

Even if Petitioners constructed a demonstrable legal argument the TPA's look-back was of questionable constitutional validity, the success of that argument would not place the *entire* initiative outside the purview of the voters' power to adopt. "At this time we neither consider nor anticipate possible attacks, constitutional or otherwise, which in the future may be directed at the various substantive changes [of the initiative]. As in *Amador,* we examine here "only those principal, fundamental challenges to the validity of [the initiative] as a whole. . ." (*Brosnahan*, supra at p. 241; underscoring added.) The only exception to this Court's strong presumption against a pre-election challenge to an initiative measure is when the measure, as a whole, is of a *type* that cannot be adopted through the initiative process. (*Indep. Energy v. McPherson* (2006) 38 Cal.4th 1020, 1024.) Petitioners' challenge is based entirely on speculative consequences assuming TPA is adopted, neglects to address similar

amendments adopted by prior initiatives, and fails to rise to the type or scope of change pre-election challenge is available to redress.

The danger, of course, is that a single element of the measures proposed changes becomes an anchor that, by pre-election challenge, sinks the whole. Such a result is not within this Court's prior construction of what constitutes a 'revision.' It is also clearly not the intention of the TPA. (See, TPA, Sec. 9(C) "The provisions of this Act are severable.")

CONCLUSION

For these reasons, Petitioners' request for extraordinary writ should be denied.

Dated: January 31, 2024

Respectfully submitted,

By _____

WM. GREGORY TURNER

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, 8.520(c), I hereby certify that this *amicus curiae* brief uses 13-point type and, according to the word count of the computer program used to prepare this brief, contains 4,943 words (including footnotes).

Executed on January 31, 2024.

WM. GREGORY TURNER
Attorney for Amicus Curiae

DECLARATION OF SERVICE

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

I am a citizen of the United States, over the age of 18, and not a party to the above cause of action. My electronic business address is greg@turnersalt.com

On January 31, 2024, I served the following:

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE OF THE CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA ASSEMBLY REPUBLICAN CAUCUS LEADER JAMES GALLAGHER, FORMER CALIFORNIA ASSEMBLY MEMBER AND CHAIR OF THE LATINO LEGISLATIVE CAUCUS JOE COTO, AND CALIFORNIA STATE SENATE PRESIDENT PRO TEMP EMERITUS DON PERATA IN SUPPORT OF RESPONDENT AND REAL PARTY IN INTEREST

BY ELECTRONIC MAIL: By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed via Truefiling:

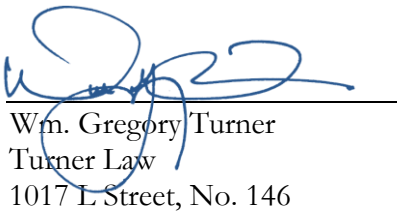
Richard Rios
Email: RRios@olsonremcho.com
Margaret R. Prinzing
Email: mprinzing@olsonremcho.com
Attorneys for the Legislature of the State of California, Governor Gavin Newsom, and John Burton

Mary Mooney
mmooney@sos.ca.gov
Attorney for Respondent, Secretary of State

Thomas W. Hiltachk
tomh@bmhlaw.com
Real Party in Interest.

Via US MAIL: pursuant to Rule 8.29 of CRC.
Office of the Attorney General
PO Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury under the laws of the State of California that the preceding is true and correct and that this declaration was executed on January 31, 2024, in Sacramento, California.



Wm. Gregory Turner
Turner Law
1017 L Street, No. 146
Sacramento, CA 95814
greg@turnersalt.com
916.251.7398