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.

PRELIMINARY OPPOSITION TO EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY

CRITICAL DATE: June 27, 2024

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Supreme Court of the State of California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, Rules 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)

Supreme Court Case Caption:

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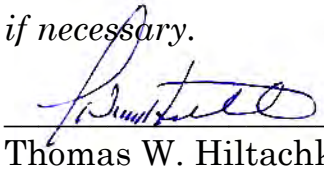
Real Party in Interest.

Please check here if applicable:

[X] There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Please attach additional sheets with Entity or Person Information, if necessary.



Date: October 30, 2023

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Pursuant to this Court's request that Real Party submit a preliminary opposition to the Petition, Real Party respectfully submits the following and asks this Court to deny the Petition forthwith.

I.
SUMMARY OF PRELIMINARY OPPOSITION

The Petition should be summarily denied for three primary reasons. First, Petitioners cannot overcome this Court's long-standing rule against removing a duly qualified initiative measure from the ballot absent a clear and unquestionable showing of invalidity. Second, Petitioners' asserted "emergency" justifying this Court's immediate intervention is based entirely on speculation regarding future events that may never come to pass or, at the very least, may involve materially different facts and circumstances. Finally, on the alleged merits, Petitioners' claims are unfounded. Their claim that the challenged initiative unlawfully ***revises*** the Constitution parallels those that were previously rejected by this Court, which upheld strikingly similar —but farther-reaching— provisions in Proposition 13. Their allegation that the initiative will interfere with essential government functions is belied by the government's demonstrated ability—over the last several decades—to conform to the same constitutional requirements enacted in prior measures relating to the very same subject.

II.
INTRODUCTION

The initiative measure at issue here, "The Taxpayer Protection and Government Accountability Act" (hereafter

"TPA"), is neither an improper constitutional revision nor does it impair essential government functions. In 1978, California voters adopted an amendment to their Constitution making comprehensive changes to state and local taxation via Proposition 13—an "interlocking package" of tax reforms. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 ("*Amador Valley*").) These comprehensive reforms included "four distinct elements,"—establishing 1) a permanent property tax rate cap of 1% and a permanent cap of 2% on the annual increase of assessed value of such property; 2) a rollback and restriction on assessed real property values (retroactive to 1975 levels resulting in a substantial reduction of property tax revenue); 3) a supermajority requirement for the Legislature to adopt state taxes; and 4) a supermajority voter approval requirement for local special taxes. (*Id.* at 220.) Although Proposition 13 "necessitated a far-reaching restructuring of the fiscal basis of local government" (*Cal. Teachers Ass'n v. Cory* (1984) 155 Cal.App.3d 494, 501), this Court nonetheless found Proposition 13 did ***not*** represent a constitutional revision. (*Amador Valley, supra,* 22 Cal.3d at 229 ["We conclude that Article XIII A fairly may be deemed a constitutional amendment, not a revision"].)

In comparison, TPA proposes only incremental changes to ***existing*** provisions of the California Constitution, which were all previously approved by the voters. These changes simply bring greater transparency and accountability to the process by which state and local governments impose fees and taxes. Unlike

Proposition 13, TPA does not repeal or reduce any state tax. Nor does it reduce the rate of any state tax. And, it does not prohibit the Legislature from proposing any new or higher tax.

To the contrary, and despite Petitioners' hyperbolic claims of certain calamity if TPA becomes law, ***no*** provision of TPA is new or untested, including voter approval for taxes, which has long been a major structural element of our State Constitution. "Indeed, if the . . .description of the initiative as a 'legislative battering ram' is accurate it would seem anomalous to insist, as petitioners in effect do, that the sovereign people cannot themselves act directly to adopt tax relief measures of this kind, but instead must defer to the Legislature, their own representatives." (*Amador Valley, supra,* 22 Cal.3d at 229.) The amendments proposed by TPA are, in reality, merely a continuation of well-established California constitutional principles and fall far short of the standard established by this Court for what constitutes a constitutional "revision."

Particularly in the face of the precedent established by *Amador Valley,* Petitioners have plainly failed to meet this Court's high standard for *pre-election* review – namely that Petitioners have made such a "clear showing of invalidity" that this Court must intercede now and deny the voters their constitutional right under the initiative power to decide for themselves whether to accept or reject the proposed amendments. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [declining to hear constitutional revision claim pre-election]; see also *Legislature v. Eu* (1991) 54 Cal.3d 492, 501 [even post-election, a measure must

be upheld unless it is "clearly, positively, and unmistakably" unconstitutional].) In fact, the only reported decision of this Court granting *pre-election* review of a proposed initiative on the grounds that it constituted a constitutional revision occurred 75 years ago, and the initiative in question affected more than half of the provisions in the Constitution and covered such a wide range of wholly unrelated subjects that it led to the enactment of the "single-subject" rule for initiatives. This Court has instead considered several constitutional challenges based on a claimed revision *post-election*, and can easily do so here in the event TPA passes.

Petitioners' only stated "emergency" supposedly justifying this Court's highly disfavored pre-election intervention is a provision in TPA that requires state and local governments to bring any taxes or fees adopted after January 1, 2022, that are not in compliance with the requirements of TPA, into compliance within one year after TPA's effective date. On this point, Petitioners' claims of "sweeping" impact are both purely speculative as to future events and wildly overblown.[1] Furthermore, such a provision is not new. Propositions 26 and 218 amended the Constitution and included the same

[1] Petitioners make no attempt to identify or quantify the number of tax measures subject to reauthorization under TPA, other than the use of the word "dozens" or "numerous." Real Party believes that from among the 58 counties, 482 cities, and over 1,000 special districts in the state, there are fewer than two dozen local tax measures that may not have fully complied with the requirements of TPA. Real Party also believes that more than 100 local tax measures were recently approved by the voters and did comply with the requirements of TPA.

requirement for the same reason that it is included in TPA, namely, to discourage a rush to impose new taxes without the requisite voter approval required by TPA. (See *McBearty v. City of Brawley* (1997) 59 Cal.App.4th 1441, 1450; *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 129.) In fact, the window period in Proposition 218 applied to many more taxes than TPA, yet local governments were able to respond without "jeopardizing essential government functions."[2] But more fundamentally, local governments do not have a vested right to impose and collect taxes in perpetuity. As this Court has stated:

> Municipal corporations do not have, as to the taxing power, vested rights which may not be affected by subsequent legislation. The power to levy taxes… may be revoked, modified, or limited at any time. [citation]

(*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 248-49; see also *Rossi v. Brown* (1995) 9 Cal.4th 688, 696.)

There are also ample reasons, in addition to this Court's prior determination in *Amador Valley, supra,* that Proposition 13 was not a revision, why Petitioners' allegation that TPA is a "revision" of the Constitution is unfounded. As discussed more fully *infra,* limitations on the Legislature's taxing authority and even voter approval of certain legislative acts have <u>always</u> been part of our Constitution. Indeed, TPA's voter approval

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[2] Real Party's review of data collected and published by the California Debt and Investment Advisory Commission indicates that more than 30 local tax measures were placed on ballots for approval, and that dozens of other previously identified "assessments" were submitted for approval as "special taxes," in the window period following enactment of Proposition 218.

requirement for legislation proposing to obtain revenue by new or higher state taxes is modeled closely after the existing voter approval requirement for legislation proposing to obtain revenue by issuance of state bond debt, a requirement that has been part of our Constitution since statehood. (Cal. Const., Art. XVI, §§ 1, 2.) With respect to local taxes, our Constitution and state law have required local governments to obtain voter approval for proposed taxes for decades. (Cal. Const. Art. XIII A, § 4 [Prop. 13 since 1978]; Art. XIII C, § 2 [Prop. 218 since 1996].) Despite Petitioners' implied assumption that voters will never approve tax increases, upon which they rest their speculative parade of horribles, recent history proves otherwise.[3]

Equally baseless is Petitioners' related claim that TPA's requirement for legislative approval of agency-imposed fees constitutes a constitutional revision because it "eliminates" much of the executive branch's administrative power. It is well established that the executive branch's quasi-legislative power to impose agency fees and charges is derived from the legislative branch. Petitioners themselves concede this point: "[t]he Legislature has delegated the duty to set many such fees to state agencies…." (Petition at p. 53.) Petitioners' argument, however, presumes that once the Legislature grants an agency power to

[3] Over the last 20 years, California voters have approved at least seven initiative measures increasing state taxes. (See, e.g., Proposition 55 – 2016 [income tax increase]; Proposition 56 – 2016 [tobacco tax increase]; Proposition 39 – 2012 [business tax increase]; Proposition 30 – 2012 [income and sales tax increase]; Proposition 63 – 2004 [income tax increase]; Proposition 10 – 1998 [tobacco tax increase]; and Proposition 172 – 1993 [sales tax increase].)

establish or set fees or charges, such power cannot be revoked or even modified. This Court has previously held otherwise. Indeed, the Legislature retains its constitutional authority to limit or even revoke quasi-legislative power it has provided to an executive branch agency. (*Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 301; *Steiner v. Superior Court* (1996) 50 Cal.App.4th 1771, 1785.)

In short, TPA merely requires our elected representatives to approve the fees proposed by the unelected bureaucrats in the State's administrative agencies. That is the hallmark of our representative democracy, not a revision of it. In fact, this was the Legislature's standard practice, dating back over 100 years, when the Legislature would routinely approve omnibus legislation setting a variety of government fees (see, e.g., Stats. 1855, ch. 74). Even now, it is common for many standard agency "fees" to be established or limited by statutes enacted by the Legislature. (See Section IV(B)(2), *infra* [listing examples of legislative enactments relating to fees].) Notably, this all occurs without "gutting the administrative state," and actually demonstrates how TPA reflects and respects existing boundaries between legislative and executive functions. Indeed, it is Petitioners' apparent advocacy for independent bureaucratic revenue-raising powers, including taxing power, that would be potentially revisionary

Similarly, at the local level, fee-schedule resolutions approved by local legislative bodies are very common. In fact, the Legislature requires local legislative bodies to approve fees by

resolution or ordinance in many instances and prohibits delegation of authority to impose such fees to a non-legislative body. (See, e.g., Gov. Code, § 66016(b).) This too all occurs without "impeding critical government operations."

Given California voters' long and well-documented history of adopting state and local tax reform measures in the face of government opposition, it is perhaps not surprising Petitioners object to the imposition of additional limits on its taxing authority. What is surprising are the lengths that ***this*** government will go to suppress and punish the exercise of the constitutional right of the People to propose a reasonable limitation on their own government.[4] Using taxpayer dollars to fund this "emergency" petition, these elected officials completely disregard the basic tenet of our Constitution as stated in section one of Article II:

> 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.

This Court should reject the Governor's and the Legislature's preemptive attack on the voters' exercise of their reserved, fundamental right to amend their Constitution. It is this Court's duty to "jealously guard" the exercise, by not only Real Party, but the more than one million voters who signed the TPA petition, of

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[4] The present lawsuit is not Petitioners' only effort to undermine the will of the People. The Legislature has also placed a Constitutional amendment on the November 2024 ballot, ACA 13, with the stated intent to attempt to interfere with the voters' right to adopt TPA at the same election. (Assem. Const. Amend. No. 13 (2023-2024 Reg. Sess.).)

their reserved constitutional power to propose the amendments included within TPA. In the area of taxation, even Petitioner Legislature has declared "that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression." (Rev. and Tax Code, § 21002.) The State's voters must be trusted to make a fair and well-reasoned decision regarding the wisdom of TPA.

Because Petitioners cannot meet the very high burden justifying pre-election review of their substantive challenge to the proposed constitutional amendment, Real Party respectfully requests that the Court summarily deny the Petition.

III.

THE TAXPAYER PROTECTION AND GOVERNMENT ACCOUNTABILITY ACT

TPA became eligible for the November 5, 2024 ballot on February 1, 2023 after more than 1 million California voters signed a petition seeking to place it on the ballot and almost ten months before Petitioners asked this Court to remove it (https://elections.cdn.sos.ca.gov/ccrov/2023/february/ 23017jh.pdf). TPA amends ***one*** section of article XIII A (Propositions 13 and 26) relating to the imposition of state taxes and other "exempt charges." With respect to local taxes and exempt charges, TPA amends ***two*** sections of article XIII C (Propositions 26 and 218). Lastly, TPA makes conforming amendments to ***one*** section of article XIII D (Proposition 218), and ***two*** sections of article XIII relating to property taxes and charges.

1) TPA's State Tax Provision

Our Constitution currently imposes a two-thirds vote requirement by the Legislature for legislation that results in any taxpayer paying a higher tax. (Cal. Const. Art., XIII A, § 3(a).) TPA amends this section to require that such tax legislation also be "submitted to the electorate and approved by a majority vote." In addition, to help ensure government transparency and accountability, TPA also requires such legislation to include an estimate of the revenue to be derived from the tax, to identify the duration of time the tax will be imposed, and to state how the revenue from the tax will be used (e.g., for a specific purpose or for general, unrestricted purposes). This information must be presented to the voters on the ballot and in the ballot materials accompanying the proposed measure. Finally, TPA requires the Legislature to obtain voter approval if the Legislature subsequently desires to redirect the use of the revenue from a tax approved for a specific purpose.

2) TPA's State "Exempt Charge" Provision

Our Constitution currently distinguishes a "tax" required to be enacted by a supermajority of the Legislature on the one hand and other charges imposed by the State on the other. (Cal. Const., Art. XIII A, § 3(b).) The same subdivision defines several different types of "charges" and imposes limitations on the amount that may be charged. TPA clears up ambiguities in the definition of such charges, and defines the term "actual cost" to aid in the calculation of the limitation.[5] These amendments

[5] The "actual cost" concept is not new. It currently exists in Cal.

address issues arising from prior litigation interpreting the existing provisions of section 3(b). Lastly, TPA requires that such charges be enacted by a majority of the Legislature rather than imposed directly by an executive branch agency without input or consent from the elected legislators who must answer to the People.

3) TPA's Local Tax Provision

Our Constitution has required voter approval of local special taxes since 1978. First, Proposition 13 added section 4 of article XIII A to require all cities, counties, and special districts to obtain voter approval of "special taxes." In 1996, Proposition 218 added article XIII C to the Constitution to require majority voter approval of local "general taxes" and to reaffirm the two-thirds voter approval requirement for "special taxes," including definitions of such terms. For nearly 40 years, Propositions 13 and 218 were understood to apply to special tax measures proposed by the initiative power. (See, e.g., *Altadena Library Dist. v. Bloodgood* (1987) 192 Cal.App.3d 585, 588 [Under Article XIII A, section 4, a library district could impose special taxes only by a two-thirds vote of the qualified electors of the district; accordingly, a citizen's initiative to levy a special tax within the district was also governed by section 4's supermajority provision].) That understanding was upended by *dicta* in this Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924.

Const., Art. XIII D sec. 4(b), where an engineer's report is required to support assessment amounts pursuant to voter adopted Proposition 218.

TPA therefore amends section 2 of article XIII C to restate that the two-thirds voter approval requirement for local special taxes also applies to taxes proposed by the electorate via initiative. In furtherance of this provision, TPA prohibits proposing a local tax in a charter city as a majority vote *charter amendment* to evade the two-thirds voter approval requirement for special taxes. TPA similarly prohibits the use of so-called companion "advisory" measures in connection with a "general tax," which are frequently used by local governments to promise that "general tax" revenue will be used for a specific purpose (again, to evade the two-thirds vote requirement for "special taxes"). Finally, when the voters have approved a tax to be used for a specific purpose, if the Legislature desires to redirect the use of the tax revenue to a different purpose, TPA requires the Legislature to obtain subsequent voter approval.

4) TPA's Local "Exempt Charge" Provision

Our Constitution already distinguishes a "tax" from a "charge" in connection with local government exactions in the same way that it does for state government exactions. (Cal. Const., Art. XIII C, § 1(e) [Prop. 26 (2010)].) TPA makes the same clarifying amendments to the section governing local government charges as it does for charges imposed by the state, as discussed *supra*. Specifically, TPA imposes the requirement that such charges must be enacted by a majority of the local legislative body rather than imposed directly by a local executive branch agency without legislative consent.

IV.

ARGUMENT

A. Petitioners Have Not Met This Court's Stringent Standard for Pre-Election Review of Their Substantive Challenge to the Constitutionality of TPA.

Petitioners have not met, and cannot meet, this Court's exacting standard for pre-election review. This Court has long recognized the extensive breadth of the People's initiative power:

> The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. '[I]t has long been our judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' [Citations.]

(*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [emphasis added; fns. omitted].)

Recently, this Court once again recognized that these principles apply with extraordinary force when, as here, a lawsuit backed by the government seeks to interfere with the People's exercise of their constitutionally reserved powers by removing a qualified measure from the ballot. (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078 ["Our duty is to 'jealously guard' the

referendum and initiative powers, and to liberally construe those powers so that they 'be not improperly annulled'"]; see also *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 936 ["[W]e resolve doubts about the scope of the initiative power in its favor whenever possible [citation], and we narrowly construe provisions that would burden or limit the exercise of that power"].)

Accordingly, "when a preelection challenge is brought against an initiative measure that has been signed by the requisite number of voters to qualify it for the ballot," the People's fundamental right to approve or reject proposed legislative changes "requires that a court exercise considerable caution before intervening to remove or withhold the measure from an imminent election." (*Costa v. Super. Ct.* (2006) 37 Cal.4th 986, 1007.) Indeed, pre-election challenges of initiatives are strongly disfavored and the standard for prevailing is very high: "in the absence of some clear showing of invalidity," a reviewing court will not grant pre-election relief. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [declining to hear constitutional revision claim pre-election; emphasis added]; see also *Zaremberg v. Super. Ct.* (2004) 115 Cal.App.4th 111, 116 ["[T]he ballot box is the sword of democracy. A court will intervene in the. . .process only when there are clear, compelling reasons to do so" (citations omitted; emphasis added)]; *Rossi v. Brown* (1995) 9 Cal.4th 688, 711 [initiative measures, even post-election "must be upheld" unless their invalidity "clearly, positively, and unmistakably appears" (citations omitted; emphasis added)].)

In the words of this Court, "[i]t is usually more appropriate to review constitutional and other [substantive] challenges to [] initiative measures after an election. . .If the measure passes, there will be ample time to rule on its validity. If it fails, judicial action will not be required." (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 665; *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030 [because a claim that a "measure cannot lawfully be enacted through the initiative process" can always be resolved post-election, "there is good reason for a court to be even more cautious"].)

As such, Real Party is aware of only a single reported case in the history of our State where this Court removed a qualified initiative measure from the ballot on constitutional revision grounds and then, only because a unanimous Court determined it was "clear beyond question" that the measure at issue sought to rewrite virtually the entire Constitution. (*McFadden v. Jordan* (1948) 32 Cal.2d. 330, 331; see also *Amador Valley, supra*, 22 Cal.3d at 222 [rejecting post-election challenge that Prop. 13 constituted an unlawful revision and distinguishing the *McFadden* measure, "which would have added 21,000 words to our then existing 55,000-word Constitution" and "dealt with such varied and diverse subjects as retirement pensions, gambling, taxes, oleomargarine, healing arts, civic centers, senate reapportionment, fish and game, and surface mining" and thereby "would have repealed or substantially altered at least 15 of the 25 articles which then comprised the Constitution"].) In summing up the sweeping scope and widely multifarious

measure—which pre-dated (and gave rise to) the adoption of the single-subject rule (Art. II, § 8(d))—the Court in *McFadden* concluded: "it is overwhelmingly certain that the measure now before us would constitute a revision of the Constitution." (32 Cal.2d at 345.)

The only other reported instance of this Court striking down part of a measure on constitutional revision grounds was decided *post-election*. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349–56 [post-election decision invaliding part of Proposition 115 on revision grounds].) Notably, the Court severed the unconstitutional provision from the remainder of the initiative in *Raven*, a remedy not readily available in a pre-election context. *McFadden*, where the defect was plain and unmistakable, is the clear outlier; in all other instances where this Court considered (and rejected) a revision claim, it did so after the election. (*People v. Frierson* (1979) 25 Cal.3d 142, 187 [rejecting post-election constitutional revision claim]; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 261 [same]; *In re Lance W.* (1985) 37 Cal.3d 873, 892 [same]; *Legislature v. Eu* (1991) 54 Cal.3d 492, 509 [same]; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1047 [same]; *Strauss v. Horton* (2009) 46 Cal.4th 364, 457 [same].)

There is also no greater urgency here than in any of the other countless cases that have more appropriately been decided post-election. (See Petition at p. 34 [baldly contending that "[a] post-election challenge would have to be conducted at the same time as numerous hastily scheduled state and local special elections costing millions of dollars"].) First, Petitioners' use of

the term "numerous" is pure speculation. As to those tax measures, there is no certainty that the local legislative body will, in fact, seek subsequent voter approval. Moreover, this Court has long held that local governments have no vested right in any taxing authority, or the revenue derived therefrom. (*Santa Clara County Local Transportation Authority v. Guardino*, *supra,* 11 Cal.4th at 248-49.)

Second, Petitioners ignore that other initiatives similar to TPA contained analogous lookback provisions, which serve as reasonable protection against attempts by State and local governments to rush through the adoption of new revenue-raising measures during the time the initiative is circulated for voter signatures and qualified for the ballot. (See, e.g., Prop. 26 (2010), Cal. Const., Art. XIII A, § 3(c) ["Any tax adopted after January 1, 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section"]; Prop. 218 (1996), Cal. Const. Art. XIII C, § 2(c) ["Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b)"]; Prop. 62 (1986), Gov. Code, § 53727(c) ["Any tax

imposed by any local government or district on or after August 1, 1985, and prior to the effective date of this Article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of imposition, which election shall be held within two years of the effective date of this Article"].)

Petitioners, in attempting to argue there will be a rash of special elections and election spending in the wake of TPA's adoption, similarly ignore that there is a regularly "established" election date in this State on the "first Tuesday after the first Monday in November of each year." (Elec. Code, § 1000(e) [emphasis added].)[6] Moreover, the deadline for local governments to place measures on the ballot for November 4, 2025 is not until August 8, 2025. (See, e.g., Elec. Code, §§ 1405, 1415 [orders of election due 88 days prior to election].) Because TPA does not require a local government to seek voter approval of any prior tax measure – that decision is up to each city council or board of supervisors – the allegations in the Petition are speculative at best. Nevertheless, for any tax measures where the local legislative body does seek voter approval, there would be ample time—at least nine months—to litigate Petitioners' legal claims post-election in the event TPA is adopted by the voters. If TPA fails[7] to pass in November 2024, the matter is entirely moot and

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[6] This is not to mention that both the Legislature and local legislative bodies have the power to call a special election at any time, including consolidated elections to help offset costs. (Cal. Const., Art. IV, § 8(c)(3); Elec. Code, § 1400 et seq.)

[7] Real Party, as the "proponent" of the initiative, retains the

need not be considered at all. (See, e.g., *Legislature v. Deukmejian*, *supra,* 34 Cal.3d at 665.)

B. TPA Does Not Revise the Constitution.

Petitioners' central argument is that TPA constitutes a constitutional "revision" rather than an "amendment" because it purportedly proposes "a far-reaching change in the fundamental government structure or the foundational power of its branches as set forth in the Constitution." (Petition at p. 11.) Their position is deeply at odds with relevant case law. As a general matter,

> [A]n *amendment* to the California Constitution may be proposed to the electorate either by the required vote of the Legislature or by an initiative petition signed by the requisite number of voters. A *revision* to the California Constitution may be proposed either by the required vote of the Legislature or by a constitutional convention (proposed by the Legislature and approved by the voters). Either a proposed amendment or a proposed revision of the Constitution must be submitted to the voters, and becomes effective if approved by a majority of votes cast thereon at the election. Under these provisions, although the initiative power may be used *to amend* the California Constitution, it may not be used *to revise* the Constitution.

(*Strauss v. Horton* (2009) 46 Cal.4th 364, 414.) Whether a particular initiative constitutes a "revision" (as opposed to an amendment) can be measured either quantitatively—by its length and/or the number of sections it affects—or qualitatively—by the degree of impact on the "nature of our basic governmental

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legal right to withdraw the initiative from the November 2024 ballot up to 131 days before the election (Elec. Code, § 9604(b)).

plan," regardless of length. (*Legislature v. Eu, supra,* 54 Cal.3d at 506 (quoting *Amador Valley, supra,* 22 Cal.3d at 223).)

Petitioners, in attempting to argue that TPA is an illegal qualitative revision, misconstrue the writings of this Court, including the many instances in which this Court has determined that even "deeply significant" changes to the California Constitution were not revisions but instead constituted mere amendments lawfully enacted by initiative. They also fail to acknowledge just how exceedingly rare it has been for this Court to hold that an initiative unlawfully revises the constitution.

In *Strauss v. Horton, supra,* 46 Cal. 4th at 413-40, which was decided in 2009, this Court undertook a detailed and comprehensive review of California jurisprudence on the question of what constitutes an unlawful revision. The exhaustive list of cases shows that only twice has the Court concluded a measure constitutes a revision as opposed to a mere amendment, and only once in the entire history of this State has the Court removed an initiative from the ballot on these grounds.

In *McFadden v. Jordan* (1948) 32 Cal. 2d 330, 345-46, the sole case decided pre-election, this Court considered an initiative measure that made an extensive number of revisions over a wide range of completely disparate subjects. In terms of subject matter, the "vast sweep of the measure" covered everything "from gamblers to ministers; from mines to civic centers; from fish to oleomargarine; from state courts to city budgets; from liquor control to senate reapportionment; from naturopaths to allopaths; from proposing constitutional amendments to

reimbursing political campaign workers; and from taxes to pensions." (*Id*. at 349.) The extensive nature of the revisions in both volume and scope led the Court to conclude that the Measure was an illegal revision:

> To recapitulate, at least 15 of the 25 articles contained in our present Constitution would be either repealed in their entirety or substantially altered by the measure, a minimum of four (five, if the civic center provision be deemed new) new topics would be treated, and the functions of both the legislative and the judicial branches of our state government would be substantially curtailed. Our review of the subjects covered by the measure and of its effect on the totality of our plan of government as now constituted does not purport to be exhaustive. It is amply sufficient, however, to demonstrate the wide and diverse range of subject matters proposed to be voted upon, and the revisional effect which it would necessarily have on our basic plan of government.

(*Id*. at 345-46 [emphasis added].) TPA, which deals only with a discrete and limited area of the Constitution, is nothing like the unlawful initiative in *McFadden*.

The only other instance in which this Court has invalidated an initiative on grounds that it constitutes an unlawful revision is *Raven v. Deukmejian* (1990) 52 Cal.3d 336 (which, as noted above, invalidated the challenged initiative *post-election*). *Raven* considered an initiative (Proposition 115) that, among other things, required California state courts to construe rights granted to criminal defendants "consistent with the Constitution of the United States," and provided that the state Constitution "shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States." (*Id*. at 350.) The Court concluded that this

constituted a qualitative revision because "[i]n essence and practical effect, it would vest all judicial *interpretive* power, as to fundamental criminal defense rights, in the United States Supreme Court." (*Id*. at 352.) The Court further described the impact of Proposition 115 as "devastating" because it "would substantially alter the substance and integrity of the state Constitution as a document of independent force and effect." (*Id*. at 352 [Proposition 115 proposed a fundamental, structural revision because "California courts in criminal cases would no longer have authority to interpret the state Constitution in a manner more protective of defendants' rights than extended by the federal Constitution," essentially eliminating state constitutional rights of criminal defendants].)

Petitioners' attempt to compare TPA's *limitation* on the Legislature's taxing authority to the complete *elimination* of this Court's power to interpret this state's Constitution, as in *Raven v. Deukmejian*, wildly misses the mark. While describing the Legislature's taxing power as "supreme," even Petitioners are forced to acknowledge in a footnote that its taxing power only "exists unless it has been expressly eliminated by the Constitution." (Petition at p. 43, fn. 21, citing *The Gillette Co. v. Franchise Tax Bd.* (2015) 62 Cal.4th 468, 477, citation omitted, emphasis added.)

This key point, obscured in Petitioners' presentation, is more fully explained in *Delaney v. Lowery* (1944) 25 Cal.2d 651, the "citation omitted" by Petitioners. In *Delaney* this Court stated:

> Generally, the Legislature is supreme in the field of taxation, and the provisions on taxation in the state Constitution are a limitation on the power of the Legislature rather than a grant to it. [The Legislature's] power in the field of taxation is limited only by constitutional restrictions.

(*Id.* at 658.) While this Court's inherent power to interpret the state Constitution is "the very essence of judicial power," which may not be eliminated or limited (*Raven v. Deukmejian, supra,* 52 Cal.3d at 354, citations omitted), *Delaney* makes clear that the Legislature's power to tax can be limited "by constitutional restrictions." Indeed, the Legislature's power of taxation has been limited by our Constitution since its very first enactment (discussed more fully *infra*).

Moreover, prior decisions of this Court have previously held that initiatives, like TPA, are clearly *amendments* of the Constitution, not a *revision.* As defined by this Court nearly 130 years ago in *Livermore v. Waite* (1894) 102 Cal. 113, 118-19, and reaffirmed in *Amador Valley, supra* 22 Cal.3d at 222, "the term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement or better carry out the purpose for which it was framed." TPA, like Propositions 218 and 26 before it, merely amends existing sections of the Constitution (sections that the voters themselves added via prior initiative constitutional amendments) to better carry out the purposes for which those provisions were enacted by the voters in prior years.

1) TPA's Voter-Approval Requirement for Taxes is Not a Revision.

Our Constitution has included provisions limiting the Legislature's taxing authority and even requiring voter approval of certain legislative acts since its inception in 1849. With respect to taxation, the first Constitution of California imposed a limit on the Legislature's ability to impose taxes generally and on property specifically. Then, section 13 of article XI provided:

> Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law….

The first Constitution also specifically directed the Legislature to "restrict" the power of taxation by local governments (Cal. Const. of 1849, Art. IV, § 37 ["It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation…"]). Many other provisions in article IV of the 1849 Constitution limited the Legislature's power over other subjects.

The 1879 Constitution added additional limitations on the Legislature's power of taxation. For example, it stated: "[t]he Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof for county, city, town, or other municipal purposes…." (Cal. Const. of 1879, Art. XI, § 12.) It exempted certain property from the reach of the Legislature's power of taxation, including growing crops and property owned by the United States, the State of California, or a public school or local government. (Cal. Const. of 1879, Art. XIII, § 1.) And it

prohibited the Legislature from imposing poll taxes on certain people, including "seniors over 60, paupers, and Indians." (*Id.*, Art. XIII, § 12.)

Voter approval of certain legislative matters was also part of the very first Constitution.[8] Most relevant here was the requirement that legislation creating revenue through the issuance of debt (e.g., general obligation bond debt) must be limited to a single object or work and that "no such law shall take effect until, at a general election, it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election." (Cal. Const., of 1849, Art. VIII.) That original provision also provided that "all money raised by the authority of such law, shall be applied only to the specific object therein stated." (*Ibid.*) The 1879 Constitution restated the same requirement. (Cal. Const. of 1879, Art. XVI, § 1.)

This voter approval provision exists in substantially the same form today. (Cal. Const., Art. XVI, § 1.)[9] Indeed, the

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[8] Voter approval of legislative proposals to amend the Constitution was required by the first constitution in 1849 (Cal. Const. of 1849, Art. X, § 1 ["it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people…"].) This requirement remains today. (Cal. Const., Art. XVIII, § 4.)

[9] Over the years, additional provisions limiting the Legislature's authority by requiring voter approval of a legislative enactment have been added to our Constitution, all without "revising" the Constitution (see. e.g., Cal. Const. of 1879, Art. XX, § 1 ["no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State…"]). Our current Constitution includes several voter approval requirements that limit the Legislature's authority. (See. e.g., Cal. Const., Art. II, § 10(b) [proposed

current version of the voter approval provision for revenue to be derived from bond debt is nearly identical to the voter approval provision proposed by TPA. First, the proposed bond law must be proposed in the form of a statute (Cal. Const. Art. XVI, § 2(a)) and approved by a two-thirds vote of the Legislature. (Cal. Const. Art. XVI, § 1.) TPA requires that the law proposing a new or higher tax must be in the form of a statute and approved by a two-thirds vote of the Legislature. (TPA Sec. 4, amending section 3(b)(1) of article XIIIA.) Second, a proposed bond law must state the purposes for which the proceeds of the bond will be used. (Cal. Const. Art. XVI, § 1.) TPA requires that a proposed law providing for a new or higher tax must state how the proceeds of the tax will be used. (TPA Sec. 4, amending section 3(b)(1)(B) of article XIIIA.) Third, a proposed bond law must be approved by a majority of the voters (Cal. Const., Art. XVI, § 1), and TPA requires that a proposed law providing for a new or higher tax must be approved by a majority of the voters. (TPA Sec. 4, amending section 3(b)(1) of article XIIIA.) Fourth, the Constitution requires that the voters be specifically informed about details of the proposed bond statute in the ballot materials. (Cal. Const. Art. XVI, § 1.) TPA also requires specific voter information about a proposed tax, including the use of the

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amendment of initiative measure]; Art. XIII, § 29 [proposed tax sharing agreements between counties]; Art. XVI, § 3.5(a) [proposed amendments to hospital provider tax]; Art. XVI, § 17(f) [proposed changes to retirement board]; Art. XX, § 1 [legislation proposing consolidation of the city and county of Sacramento]; and Art. XXXIV, § 1 [law acquiring or developing low income housing].)

proceeds, the amount or rate of tax, and its duration. (TPA Sec. 4, amending section 3(b)(2) of article XIIIA.) Lastly, the Constitution requires the Legislature to use the proceeds of the bond approved by the voters "only to the specific object stated [in the bond law] or to the payment of the debt thereby created." (Cal. Const., Art. XVI, § 1.) TPA likewise requires the Legislature to use the proceeds of the tax approved by the voters only for the purpose stated in the law. (TPA Sec. 4, amending section 3(b)(1)(B) of article XIIIA.)[10]

With regard to local taxation, our Constitution has required voter approval of special taxes since the enactment of Proposition 13 in 1978, which was upheld as a permissible *amendment* of the Constitution and not a *revision* in *Amador Valley, supra,* 22 Cal.3d at 229. Voter approval of local general and special taxes was also enacted and enhanced by Propositions 62 in 1986 and 218 in 1996. In fact, TPA merely confirms the voter approval

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[10] California is not alone when it comes to voter approval requirements for bonds and/or taxes. In fact, several other state constitutions impose some form of voter approval for taxes proposed by the Legislature. (See, e.g., Oklahoma: OK Const. Art. V, § 33 [majority vote required for "any revenue bill"]; Florida: F.S.A Const., Art. II, § 7 [two-thirds voter approval for constitutional amendment proposing new tax or fee]; Missouri: V.A.M.S Const., Art. X, § 10 [voter approval of taxes and fees if Legislature exceeds state spending limit]; Arkansas: A.R. Const., Art. V, § 38 [voter approval of proposed increase in tax rates of taxes "now levied"]; Colorado: CO Const., Art. X, §§ 20(6)(c) and 7(d) [voter approval of "revenue changes" exceeding prior year spending limit and voter approval to continue taxes imposed to address "emergency"]; Michigan: Mich. Const. Art. IX, §§ 6; 25-34 [legislative proposal to exceed state revenue limit requires voter approval].)

requirement of local taxes that existed for over 20 years until this Court's opinion in *California Cannabis Coalition v. City of Upland, supra,* 3 Cal.5th at 924 created some doubt about whether Proposition 218 required a two-thirds vote for special taxes proposed by initiative, rather than by the governing body.

Petitioners' attempts to distinguish *Amador Valley* are unfounded.[11] Indeed, Petitioners both inaccurately narrow the Court's express holding in that case and ignore its now well-established principles, which have been repeatedly acknowledged by this Court when considering (and practically universally rejecting) claims that an initiative proposes an unlawful revision.

Amador Valley considered a challenge to Proposition 13, which Petitioners concede "is often recognized as one of the most consequential measures in the State's history." (Petition at p. 45.) Particularly relevant here — because Petitioners make much ado about TPA's new and/or enhanced voter approval requirements for taxpayer revenue increases—is the Court's discussion of the claim in *Amador Valley* that Proposition 13's

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[11] Petitioners state that *Amador* is distinguishable because it only related to local taxes and that "local governments 'have no inherent power to tax' whatsoever" apparently unlike the Legislature (Petition at p. 48). First, Proposition 13 limited the Legislature's authority to enact <u>state</u> taxes. Second, Petitioners mis-state the law. Charter cities have broad constitutional power to tax, and general law cities have been given comparable power by statute. (*West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 524 [charter cities derive the power to tax from article XI, section 5 of the Constitution]; and general law cities have the same taxing authority pursuant to Government Code section 37100.5].) Finally, the Legislature's taxing power is always properly *limited* by our Constitution, as discussed *supra. Amador Valley* is not distinguishable.

voter approval requirement "will result in a change from a 'republican' form of government (i.e., lawmaking by elected representatives) to a 'democratic' governmental plan (i.e., lawmaking directly by the people)." (*Id.* at 227.) This Court roundly rejected this argument, holding that "[o]ther than in the limited area of taxation, the authority of local government to enact appropriate laws and regulations remains wholly unimpaired." (*Id.* at 227 [emphasis added].)

The Court also recognized that, given the right of initiative *reserved to the People* by the state Constitution, Proposition 13's voter approval requirement "adds nothing novel to the existing governmental framework of this state." (*Id.* at 228.) In fact, the Court noted that the idea that the People cannot use the initiative power for this purpose is antithetical to their broad constitutional rights. (*Id.* at 229 [because the reserved right of initiative is a "legislative battering ram," the People must be permitted to "act directly to adopt tax relief measures," including over the objections of their elected representatives]; see also *Strauss v. Horton*, *supra* 46 Cal.4th at 428 [In *Amador Valley,* "We explained that the measure affected only the limited area of taxation, leaving undiminished the authority of representative elected bodies to enact appropriate laws and regulations in all other areas"]; *Raven v. Deukmejian, supra*, 52 Cal.3d at 351 [describing *Amador Valley* as "upholding [a] measure affecting only a few articles dealing with taxation"]; *Legislature v. Eu, supra,* 54 Cal.3d at 510-11 ["In *Amador*, we considered and rejected a similar revision challenge based on the predicted dire

economic consequences to home rule in California arising from the property tax limitations of Proposition 13. We recognized the potential "limiting effect" on local government that would result from the substantial reduction in tax revenues contemplated by the measure, but we concluded that such economic consequences were insufficient to accomplish a constitutional revision"].) The voter approval requirement for proposed tax increases at both the state and local levels is clearly ***not*** a revision under the prior decisions of this Court, principally *Amador Valley*. As such, Petitioners' request for this Court to abruptly reverse course—and in a pre-election proceeding at that—should be summarily rejected.

Petitioners also seem to argue that TPA revises the Constitution by requiring the Legislature to keep its word to the voters when it says it will spend the revenue from a dedicated tax on a specific project or program. (Petition at ¶¶ 15, 16.) First, the decision to restrict the use of tax revenue in the first instance would be the Legislature's, not the voters'. Second, the Legislature is free to seek subsequent voter approval if it later desires to redirect the tax revenue. And finally, such a limitation has existed in our Constitution since its inception in 1849 (as discussed *supra*). Simply put, requiring honesty and transparency in government on the limited subject of taxation cannot be considered a *revision* of our Constitution.

2) TPA's Requirement That the Legislature Approve Agency Proposed Fees and Charges is Not a Revision.

Petitioners next argue that TPA's requirement that a legislative body (consisting of elected representatives) must approve the type and amount of fees or charges proposed by executive branch agencies (consisting of unelected bureaucrats) somehow "shifts substantial power" between the legislative and executive branch resulting in an unlawful revision of the Constitution. The provision at issue here is found in the proposed *amendment* of section 3 of article XIII A and section 2 of article XIII C of the Constitution.

While Petitioners cite no case that has considered such a requirement, the Legislature's own historical and current practice shows that this provision in TPA is not a revision, but rather merely an extension of its legislative authority, as evidenced by the dozens of statutes setting, or limiting, fees for numerous state agencies. (See, e.g., Bus. & Prof. Code, §§ 1724 [fees relating to the practice of dentistry]; 5134 [fees charged by the Board of Accountancy]; 6140 [setting the state bar's annual fee]; 7137 [statutory fees related to contractor licensing]; 10213.5 [setting of fees related to licensing of realtors]; 11232 [fees related to time-shares]; 19612 [statutory fees related to horse-racing]; 19288 [fees relating to household movers]; 19170 [fees related to home furnishings and mattress sales]; 22973.3 [statutory fees related to tobacco sales]; 23320 [setting of fees charged by Department of Alcoholic Beverage Control]; Gov. Code § 70600 et seq. [statutory filing fees and other civil fees that may

be charged by Superior Courts]; Veh. Code § 9101 *et seq*. [setting vehicle registration and weight fees charged by the Department of Motor Vehicles]; 14900 et seq. [statutory fees for driver's licenses and DMV identification cards]; Health & Saf. Code §§ 18502 [setting fees for mobilehome parks charged by the Department of Housing and Community Development]; 103625 et seq. [statutory fees charged by state and local agencies for certified copies of birth, death, marital, and other vital records]; 25205.2 et seq. [setting fees charged by the Board of Environmental Safety for permitting or operating a hazardous waste storage, treatment, or disposal facility]; Ins. Code, § 1750 et seq. [statutory fees charged by the Insurance Commissioner for the licensing of insurance companies, brokers and agents, and bail bondsmen]; Educ. Code, § 76300 et seq. [setting fees and tuition for Community Colleges relating to everything from classes to student parking]; Food & Ag. Code, §§ 21281.5 - 35231 [statutory fees charged by the Department of Food and Agriculture for everything from onsite cattle brand inspections to licensing butter graders].)

Undoubtedly, the Legislature has authorized some agencies to establish the amount of certain fees and charges, as Petitioners correctly point out. However, Petitioners seem to suggest that the Legislature can also authorize some agencies to impose "taxes." (Petition at p. 50.) This misstates the law. The Legislature may not delegate its taxing authority to an executive branch agency, under any circumstance. (*California Chamber of*

Commerce v. State Air Resources Bd. (2017) 10 Cal.App.5th 604, 625, fn. 13.)

Most importantly, however, the source of an executive branch agency's authority is derived from the legislative branch. On this point, Petitioners are forced to concede as much: "[t]he Legislature has delegated the duty to set many such fees to state agencies…." (Petition at p. 53.) But, if the legislative branch can extend quasi-legislative authority (e.g., fee-setting) to an executive branch agency, it can also rescind it at any time. And so too can the People, by amending the relevant provisions in the Constitution. In *California Redevelopment Assn. v. Matosantos, supra,* 53 Cal.4th at 255, this Court summarized the Legislature's power, citing several other decisions, stating: "[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. If a 'power is statutory, the Legislature may eliminate it' [and] rights that are 'creatures of legislative will' may be withdrawn by the Legislature" (citations omitted). This includes political entities created by the Legislature. (*Ibid.* [elimination of redevelopment agencies by statute].)

This essential constitutional principle, grounded in the separation of powers clause of the Constitution (Cal. Const., Art. III, § 3), was affirmed by this Court in *Carmel Valley Fire Protection Dist. v. State, supra,* 25 Cal.4th at 301, where the Court stated:

> Considering the appropriate function of the Legislature – to define policy and allocate funds – and considering the inability of an administrative agency to which quasi-

> legislative power has been delegated to adopt rules inconsistent with the agency's governing statutes, we believe that a legislative enactment that limits the mandate of an administrative agency or withdraws certain of its powers is not necessarily suspect under the doctrine of separation of powers.

(*Ibid.*) In short, "revocation of legislative action is itself legislative" and therefore there cannot be a violation of separation of powers or a revision of the Constitution. (*Steiner v. Superior Court, supra,* 50 Cal.App.4th at 1785 [holding that a local legislative body's power to delegate quasi-legislative authority to an agency or to revoke the same authority are both legislative in character].)

Petitioners' misleading citation to *dicta* in *Schabarum v. Cal. Legislature* (1998) 60 Cal.App.4th 1205, 1223, does not support their claim. Petitioners' citation excludes the word "all" when the appellate court was discussing the Legislature's hypothetical rescission of "all quasi-legislative and quasi-judicial power" from executive branch agencies. The full citation reads:

> It may well be impossible, without risking paralysis in the conduct of the public business, to return to a form of government in which **all** legislative and judicial functions are performed solely and directly by the Legislature and by the courts. But it is certainly too late in the day to return to such a form of government without effecting a constitutional revision. Like the Supreme Court in *Legislature v. Eu, supra,* 54 Cal. 3d at pages 506 through 512, we do not discern in Proposition 140 any intent to effect such far reaching changes in the nature of our basic governmental plan.

(*Schabarum v. Cal. Legislature, supra,* 60 Cal.App.4th at 1224, emphasis added, citations omitted.) TPA does not affect the

delegation of "all" quasi-legislative power. It affects only one specific type of power – the power to set the amount of government fees or charges – a power that the Legislature has frequently chosen not to delegate to executive branch agencies. More importantly, however, the appellate court's decision in *Schabarum* explains the Legislature's inherent power to determine the scope of quasi-legislative power, particularly as it relates to revenue, and the power to directly control the exercise of that power. The Court of Appeal described this principle as follows:

> The scope of an agency's quasi-legislative authority has to be defined and limited by the Legislature, and the creation of such a power is a delegation of legislative authority, the exercise of which is legislative in character. (*Ibid.*) In many instances the Legislature utilizes state agencies to accomplish what are unquestionably responsibilities of the Legislature. For example, the power of appropriation, that is, to spend money, resides exclusively in the Legislature.....
>
> In addition to the delegation of legislative authority, state agencies have duties imposed upon them that aid or assist the legislative process. For example, in aid of the Legislature's exercise of the power of appropriation, every agency is required to prepare and submit a complete and detailed budget which, with the assistance of the Department of Finance, is utilized in the budget bill which must be submitted by the Governor and introduced in both houses of the Legislature.

(*Schabarum v. Cal. Legislature, supra,* 60 Cal.App.4th at 1223, citations omitted.) Of course, setting fees and charges is directly connected to the *appropriation* of government funds, and *budgeting* can only be accomplished by identification of the

amount and source of revenue that an agency expects to obtain from the charges it assesses and collects.[12]

TPA imposes the same requirement on local governments. Here again, it is quite common for a local legislative body (e.g., city council or board of supervisors) to approve a fee schedule for their locality (see, e.g., resolutions of the city council of Beverly Hills https://www.beverlyhills.org/cbhfiles/storage/files/15765257701395648458/FY22-23Taxes,Fees,andChargesBook.pdf and Chula Vista https://www.chulavistaca.gov/home/showpublisheddocument/2488/638242362729370000 approving annual fee schedule). More importantly, state law actually requires such approval, and prohibits delegation of many types of local government fees. Government Code section 66016 provides, in relevant part:

> (b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or

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[12] Other state constitutions also require legislative approval of fees and charges proposed by executive branch agencies (e.g. Arizona: Ariz. Const., Art. IX, § 22 [two-thirds vote of Legislature for "the imposition of any new state fee or assessment or the authorization of any new administratively set fee"]; Delaware: Del. Const., Art. XVI, § 11 ["No tax or license fee may be imposed or levied except pursuant to an act of the General Assembly adopted with the concurrence of three-fifths of all members of each House"]; Florida: Fla. Const., Art. VII, § 19 ["No new state tax or fee may be imposed or authorized by the legislature except through legislation approved by two-thirds of the membership of each house"]; Nevada: Nev. Const., Art. IV, § 18 ["[A]n affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates…"].)

> service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.
> (c) [omitted]
> (d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 65104, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

TPA's requirement that local legislative bodies approve all local fees is not "far-reaching change" to our basic governmental plan. Far from it. Nor will such a requirement wreak havoc on the functioning of local governments, which are already accustomed to adopting fees and fee schedules.

In sum, because Petitioners cannot possibly "clearly, and unmistakably" establish that any part of TPA is a revision of our Constitution, pre-election review is not appropriate and the Petition should be denied.

C. TPA Does Not "Gravely Interfere" With Essential Government Functions.

Petitioners' hyperbole aside, TPA does not substantially impair the functioning of state or local government. The source of such impairment is stated to be the "delay inherent in obtaining voter approval itself." (Petition at p. 63.) Petitioners' presumed impairment and "delay" is purely speculative and disregards the fact that all local governments have operated under a voter approval requirement for all taxes since at least 1996 (Proposition 218). They also wholly disregard the fact that

both state and local taxes have been routinely approved by voters. They disregard the fact that other states have operated under voter approval requirements for state taxes without "grave" impairment to their government functions.

Most importantly, TPA does nothing to these pre-existing tax revenues; it only applies to "new" or "higher" State taxes. (TPA § 3, amending section 3 of article XIII A.) Despite Petitioners' efforts to exaggerate and distort the potential impacts of TPA, it is merely a continuation of what was begun *over 40 years ago* to amend the state Constitution to limit the imposition of taxes and other charges, and to close loopholes invented and exploited by state and local governments to circumvent the will of the voters.

In sum, Petitioners' mere *speculation* about the *potential* for government impairment cannot form the basis of a pre-election facial challenge to TPA. (*Brosnahan v. Brown, supra,* 32 Cal. 3d at 259-60 [court must not presume substantial interference based on speculation or mere possibility in a facial challenge to initiative measure].)

3) TPA Does Not Replace Legislative Control of Fiscal Affairs.

TPA does not replace legislative control of fiscal affairs because it makes no budgetary appropriation, nor does it prioritize any government program over any other. Furthermore, it does not prohibit a legislative body from proposing any new or higher tax or imposing any exempt charge for the purpose of increasing revenue. Moreover, the legislative body is free to conduct an election to obtain voter approval at any time, and if

the voters reject the tax, the legislative body is free to try again, and again if need be.

Petitioners' suggestion that the initiative process cannot be used in matters involving "taxation and fiscal affairs" (Petition at p. 65) is contradicted by numerous prior holdings of this Court. Indeed, the initiative process has been used to repeal tax measures, including state taxes. (See, e.g., *Rossi v. Brown, supra,* 9 Cal.4th at 688 [upholding repeal of local tax]; *Carlson v. Cory* (1983) 139 Cal.App.3d 724 [repeal of state inheritance tax upheld].) To be clear, TPA repeals no tax. Nor does it prohibit the enactment of any type of new tax. It also does not prohibit the increase in rate or amount of any existing tax. It simply requires consent of the voters.

Petitioners' citation to this Court's opinion in *Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, is no help to their position. First, this Court expressed no reservation about the existing voter approval requirement for local taxes in Proposition 218 causing any impairment of government functions, stating: "but a preenactment vote does not suspend the operation of new rates in the same way as a postenactment challenge." (*Id.* at 1125.) Here, TPA simply extends the existing voter approval requirement for all local taxes to state taxes enacted by the Legislature. Second, with respect to the ability to challenge a specific utility rate increase by referendum, like the rate increase in *Wilde v. City of Dunsmuir*, TPA simply requires a court to undertake a "case-by-case" examination of the referendum at issue to determine if it substantially interferes with an essential

government function, a determination that the appellate court was able to do in *Wilde v. City of Dunsmuir*.

Finally, to the extent TPA proposes a different policy choice than this Court's interpretation of the Constitution, the voters are empowered to do just that by amending their Constitution. (*Brosnahan v. Brown*, *supra,* 32 Cal.3d at 248.) This Court has recognized this as a matter of voter choice. (*Wilde v. City of Dunsmuir, supra*, 9 Cal.5th at 1117 ["duty [to harmonize] does not compel us to graft the tax terminology of articles XIII C and XIII D onto the referendum provision *when the voters have not chosen to do so,*" emphasis added].) Indeed, this approach also appears to be consistent with the "power-sharing arrangement" applicable to the local initiative power under Proposition 218 and approved by this Court in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220.

Moreover, by clarifying the manner in which exempt charges are calculated, objectionable charges are likely to be reduced or eliminated altogether by the enactment of TPA. (TPA § 5, amending section 1 of article XIII C.)

4) TPA's Alleged Impact on State Funding During a "Crisis" is Entirely Speculative and Widely Over-Stated.

In keeping with their predictions of chaos if TPA is enacted, Petitioners again overstate its impact on state financing. Petitioners baldly state that TPA "threatens almost every service or program that requires funding in the State…." (Petition at p. 67.) This is hyperbolic rhetoric only. Again, TPA affects no existing state tax. State taxes are typically based on a tax rate

which is applied to some economic activity. For example, the income tax rate can be fixed, but since it is based on the income of the taxpayer, the revenue derived from the tax grows with *per capita* income. The sales tax is also based on a percentage of the sale price of taxable items. The state revenue from the sales tax grows without changing the rate at all. In short, TPA has no demonstrable effect on the State's ability to fund existing government programs, including anticipated growth in the costs for such programs, and there is no basis for this Court to presume such an impact.

Next, Petitioners anticipate their inability to respond to crisis if TPA is enacted. Paragraph 26 of the Petition (p. 26) cites the 2009 global financial crisis, the COVID-19 pandemic, and the 1994 Northridge earthquake as examples where the State might need resources "urgently." Interestingly, the Legislature did not enact tax increases in connection with the pandemic or the Northridge earthquake, and the taxes it enacted in 2009 in response to the global financial crisis were rejected by the voters less than a year later, yet the State was still able to function.

Petitioners also ignore multiple safeguards against calamity, including the existence of a Constitutional Budget Stabilization Account (approved by the voters in 2014) and the authority to access such funds in the event of a declared emergency (Cal. Const., Art. XVI, §§ 21, 22); the Constitutional authority for each entity of government, including the State, to establish emergency funds from which appropriations are not subject to the annual appropriation limit (the "Gann Limit") (Cal.

Const., Art. XIIIB, § 5); and the enormous power granted to the Governor by state law, including Government Code section 8645, which provides:

> In addition to any appropriation made to support activities contemplated by this chapter, the Governor is empowered to make expenditures from any fund legally available in order to deal with actual or threatened conditions of a state of war emergency, state of emergency, or local emergency.

Relatedly, the Legislature can authorize long-term interfund borrowing between state funds. (*Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463 [approving $519 million in loans between state funds to help balance the state budget during times of fiscal crisis, with repayment timelines of over a decade].) With a state budget exceeding $200 billion annually, there is no emergency that the State could not financially address without requiring urgent voter approval of new taxes. And, concede as they must, the Legislature (and local governments) are free to call a special election at any time to ask voters to approve taxes needed for an emergency reason, or even for no reason at all.[13]

V.

CONCLUSION

TPA is not, as Petitioners contend, a radical and broad attempt to alter the State's constitutional structure or impair essential government functions; instead, it is merely another step in the continuum of what is now a well-established feature of our

[13] The State has held several statewide special elections. Recently, statewide special elections were held in 1973, 1979, 1993, 2003, 2005, 2009, and 2021. In addition, California holds two regularly scheduled statewide elections every even-numbered year.

state constitution to control the growth of government and its demand for higher and higher taxes, fees, and other charges.[14] TPA merely ***amends a small number of existing*** provisions of our Constitution, and its reforms are soundly based in our constitutional scheme wherein the People reserve the right to reform their laws as the need arises. Real Party and the one million Californians who signed the TPA initiative petition believe that the need has arisen, and the People should be permitted to vote on this important, but targeted, issue of state and local tax policy. Based on the foregoing, Real Party respectfully requests that the Court summarily deny the Petition for Writ of Mandate.

Dated: October 30, 2023

BELL, MCANDREWS & HILTACHK,

BY: _____

Thomas W. Hiltachk
Attorney for Real Party in Interest

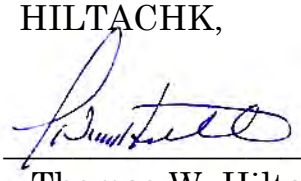
[14] Petitioner Governor Newsom's predecessor, Governor Jerry Brown vowed during his 2010 campaign for Governor that he would not raise State taxes without voter approval. During his first term, the voters approved an initiative measure proposing a multi-billion dollar tax increase to help solve the budget crisis facing the state (Proposition 30 – 2012). In 2017, Governor Brown signed a bill increasing the gas tax without voter approval (Senate Bill 1 – 2017).

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief is produced using 13-point Century Schoolbook type including footnotes and contain approximately 11,274 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: October 30, 2023

BELL, MCANDREWS & HILTACHK,

BY: 

Thomas W. Hiltachk
Attorney for Real Party in Interest

PROOF 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 within cause of action. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On October 30, 2023, I served the following:

PRELIMINARY OPPOSITION TO EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY

X **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:

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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 foregoing is true and correct, and that this declaration was executed on October 30, 2023 at Sacramento, California.

K Merina

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LEGISLATURE OF THE STATE OF CALIFORNIA v. WEBER (HILTACHK)**
Case Number: **S281977**
Lower Court Case Number:

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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.

10/30/2023

Date

/s/Thomas Hiltachk

Signature

Hiltachk, Thomas (131215)

Last Name, First Name (PNum)

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