No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

SUPREME COURT FILED

Plaintiff/Appellant/Petitioner,

FEB 2 0 2015

VS.

CITY OF SAN RAFAEL, et al.

Frank A. McGuire Clerk

Deputy

Defendants/Respondents.

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On Review of the Published Decision of the Court of Appeal, First District, Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]

Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding Superior Court Case No. CIV 1300112

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I. INTRODUCTION

Cherrity Wheatherford (Petitioner) asks the Court to disregard more than a century of established statutory and case law and fundamentally alter the rules of taxpayer standing. Specifically, she wants this Court to allow any person who pays any type of taxes or fees to any individual or entity to challenge the ways in which local municipalities enforce their laws. The Court should deny her request.

To justify her urged interpretation of the taxpayer standing provision found in Code of Civil Procedure section 526a (section 526a), Petitioner tries to couch the issue as one of due process and equal protection guarantees. She argues that this Court is compelled to expand the scope of taxpayer standing beyond section 526a's plain text, and in direct contradiction to decades of unanimous case law, because any other result would be unconstitutional. That is, however, simply not the case. Taxpayer standing, as established by section 526a and implemented by California courts, does not implicate or violate any constitutional guarantees. It is simply an additional means, beyond meeting the more traditional and more stringent standing requirements, by which certain portions of the state's citizenry may challenge governmental action.

The reading of section 526a standing that Petitioner advances would enable essentially every single person who had even the most remote or brief contact with any of California's cities or counties to bring taxpayer actions against these local governments. Such an interpretation is inconsistent with the Legislature's intent in crafting section 526a extending taxpayer standing exclusively to those individuals who have a sufficient interest in the expenditure of government resources to become dedicated adversaries and would eviscerate the entire concept of standing as against local governments. California courts have repeatedly rejected Petitioner's

expansive interpretation of section 526a and this Court should do the same.

The Court should affirm.

II. ISSUES PRESENTED FOR REVIEW

The Petition for Review presented the following questions:

- 1. What type of taxes must a plaintiff pay, or be liable to pay, to have taxpayer standing under section 526a?
- 2. Did the trial court err in dismissing plaintiff's complaint for lack of taxpayer standing?¹

(Petition for Review, p. 5.)

III. PROCEDURAL HISTORY AND STATEMENT OF FACTS

On January 9, 2013, Petitioner filed a complaint for declaratory and injunctive relief in the Marin County Superior Court. (CT² 1.) Petitioner challenged the County of Marin's (the County) policies and practices concerning the impoundment of vehicles under Vehicle Code section 14602.6. (CT 1 - 12.) She brought this challenge despite the fact that the County had never impounded her vehicle under the section, and despite the fact that she had no reason to believe the County would ever do so. (CT 2 - 3.) Petitioner's only claim to standing was the taxpayer standing provision found in section 526a.

¹While Petitioner's Opening Brief attempts to submit an alternative second issue for review, review was originally requested, and granted by this Court, on the above-recited issues. (See Petitioner's Opening Brief, p. 2 ["2. If section 526a is limited to payment, or liability for payment, of taxes assessed on owners of real property and retail businesses, and excludes other forms of tax payments, does the statute discriminate based on wealth in violation of due process and equal protection guarantees?"].)

² All references to "CT" refer to the Clerk's Transcript on Appeal, Volume 1, filed July 12, 2013, and attached to the County's Answer to Petition for Review as Exhibit A.

Petitioner alleged she possessed taxpayer standing under section 526a because she had paid sales tax, gasoline tax, and water and sewage fees in both the City of San Rafael and the County of Marin.³ (CT 1.) She conceded, however, that she did not pay property or any other taxes sufficient for taxpayer standing under existing law. (CT 1 - 2, 13 - 14 [claiming there was "no possibility" that Petitioner could amend her complaint to cure the defect in standing].) On April 22, 2013, the trial court filed a stipulated order and judgment of dismissal. (CT 15.) On June 11, 2013, Petitioner filed a timely notice of appeal. (CT 21.)

Having read and considered briefing by all parties, the First District Court of Appeal, Division One (Court of Appeal), issued an opinion on May 22, 2014, holding that (1) Petitioner's payment of sales and gasoline taxes as a consumer did not confer taxpayer standing; (2) Petitioner's payment of fees for services such as water and sewage did not confer taxpayer standing; (3) any disparate treatment based upon wealth was reviewed for rational basis under the equal protection clause; and (4) wealth-based classification concerning taxpayer standing to restrain county or city expenditures did not violate equal protection. (Wheatherford v. City of San Rafael (2014) 226 Cal.App.4th 460 (Wheatherford).) Petitioner timely filed a petition for rehearing or modification of the Wheatherford opinion, which

³ Although Petitioner now alleges she has paid income and telephone taxes imposed by the City, County and State, she did not raise these allegations during the trial court proceedings. (Petition for Review, p. 11; Petitioner's Opening Brief, p. 3; CT 1 - 15.) Because of this failure, the First District Court of Appeal, Division One, ignored similar factual allegations in reaching its decision in *Wheatherford v. City of San Rafael* (2014) 226 Cal.App.4th 460. The County respectfully requests that this Court do the same. California courts "ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived." (*Bank of America, N.A. v. Roberts* (2013) 217 Cal.App.4th 1386, 1399.)

the Court of Appeal denied on June 16, 2014. The decision of the Court of Appeal became final on June 21, 2014.

On June 26, 2014, Petitioner filed a Petition for Review, which this Court granted on September 10, 2014. Petitioner filed her Opening Brief on December 9, 2014.

IV. ARGUMENT

A. THE COURT REVIEWS THE ISSUES IN THIS CASE DE NOVO

The Court is being asked to decide what type of taxes a person must pay to have taxpayer standing under section 526a. The construction and interpretation of statutes is a question of law that the Court reviews de novo. (Ceja v. Rudolph & Sletten, Inc. (2013) 56 Cal.4th 1113, 1119). Constitutional issues, including the constitutionality of a statute, are also treated as questions of law over which the Court should exercise its independent judgment. (Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority (2008) 44 Cal.4th 431, 448-49.) Thus, the de novo standard of review applies to this case.

Further, the Court treats its review of the record underlying a stipulated judgment as it would the record underlying a judgment of dismissal on demurrer. (See, e.g., *People ex rel. Harris v. Pac Anchor Transp., Inc.* (2014) 59 Cal.4th 772, 777 ["A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review."].) The Court must assume the truth of all facts properly pleaded in the complaint, but need not lend any consideration to contentions, deductions, or conclusions of fact or law. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 (*Serrano I*)). The Court's ultimate objective is to determine whether the complaint states facts sufficient to constitute a cause of action (*ibid.*), which, in the present case, means facts sufficient for Petitioner to have section 526a taxpayer standing.

B. PLAINTIFF MAY NOT INTRODUCE AND THE COURT SHOULD NOT CONSIDER NEW FACTS ON APPEAL

Petitioner has repeatedly attempted to broaden the scope of her initial complaint by alleging numerous facts that she failed to raise at the trial court level. These new factual allegations violate the general rule that "an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration." (In re Elise K. (1982) 33 Cal.3d 138, 149, quoting In re James V. (1979) 90 Cal.App.3d 300, 304.) As Petitioner admits, her complaint did not include any facts addressing whether or not she owned a business (Petitioner's Opening Brief, p. 14), nor did it make any mention of Petitioner's payment of income, telephone or other types of directly Petitioner now suggests that it is the County's fault that assessed taxes. Petitioner did not raise such allegations, since the County brought up the issue of sales taxes paid by business owners and other directly-assessed taxes "[f]or the first time on appeal." (Petitioner's Opening Brief, p. 14, original italics.) But the County brought up all of its arguments regarding 526a taxpayer standing for the first time on appeal; the trial court entered judgment before the County filed an answer. (CT 13-14.) Petitioner is not being "required to defend for the first time on appeal against a new theory that 'contemplates a factual situation the consequences of which are open to controversy and were not put in issue or presented [in the] trial [court]." (Petitioner's Opening Brief, p. 14, quoting Ward v. Taggart (1959) 51 Cal.2d 736, 742.) Rather, Petitioner is being asked to defend exactly what was stipulated to and contemplated in the order and judgment of dismissal: "[Petitioner's] lack of taxpayer standing under section 526a." (CT 14.)

Along with Petitioner's latest allegations concerning business ownership (Petitioner's Opening Brief, p. 14), Petitioner has presented the Court with

the following factual allegations, none of which were included in her original complaint:

- "Petitioner is 38 years old and a single mother of a daughter, age
 20." (Petitioner's Opening Brief, p. 2.)
- "Petitioner and her daughter share a modest apartment in the City of San Rafael." (*Ibid.*)
- "Petitioner is gainfully employed and works very hard to support herself and her daughter." (*Ibid.*)
- "Petitioner also cannot afford to buy or start a business, so she does not pay taxes imposed on business owners." (*Ibid.* at 3.)
- "Petitioner does... pay state and federal income taxes." (Ibid.)
- "[Petitioner] pays... telephone taxes." (Ibid.)
- "Petitioner is just 38 years old and is therefore too young to have purchased a home decades ago when prices were lower (20 years ago, petitioner was 19 years old and pregnant with her daughter) and petitioner has not been so 'fortunate' (an oxymoron in this context) to have had a family member die, leaving her real property as an inheritance." (Id. at p. 5.)
- "Petitioner is validly licensed to drive and has not suffered the impoundment of a vehicle." (*Id.* at 5-6.)

The County objects to this Court's consideration of these and any other new factual allegations advanced by Petitioner in this action. When a plaintiff has been given the opportunity to amend her complaint, but chooses instead to stipulate to a judgment of dismissal, the Court must assume that the plaintiff has stated as strong a case as she can. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572, fn. 4.) As "it is the province of the trial court to decide questions of fact and of the appellate court to decide

questions of law" (*Tupman v. Haberkern* (1929) 208 Cal. 256, 262-263), the above-detailed statements are not the proper subject of this Court's consideration and should be disregarded.

C. A SUMMARY OF TAXPAYERS' ACTIONS UNDER SECTION 526a

California taxpayers enjoy the right, in limited circumstances, to bring lawsuits against governmental bodies and their officers in a representative capacity. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268 (*Blair*).) These lawsuits, commonly termed taxpayers' actions, provide a method by which potential plaintiffs can satisfy the jurisdictional requirement of standing. (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 159 (*Harman*).) Section 526a provides, in pertinent part:

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.(Cal. Code Civ. Proc., § 526a, emphasis added.)

The purpose of this statute is to permit a large body, though notably not the entire body, of the citizenry to challenge governmental action that could otherwise go unchallenged in the courts due to more stringent standing requirements. (*Blair, supra*, 5 Cal.3d at 267-268.)

D. CALIFORNIA APPELLATE COURTS HAVE UNANIMOUSLY REQUIRED THAT AN INDIVIDUAL MUST PAY, OR BE LIABLE TO PAY, A DIRECTLY ASSESSED TAX TO HAVE TAXPAYER STANDING

The California Courts of Appeal have, on several occasions over the course of more than twenty (20) years, expressly considered and decided the question now before this Court, namely: what type of taxes must a

plaintiff pay, or be liable to pay, in order to have taxpayer standing under In so doing, the courts have uniformly held that an section 526a? individual must pay, or be liable to pay, a tax which has been assessed directly upon that individual. The first case to squarely address this matter was Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035 (Torres). In that case, the plaintiffs who were neither city residents nor city property taxpayers⁴, attempted to bring a taxpayer's action against the City of Yorba Linda, seeking declaratory and injunctive relief from the city's proposed redevelopment plan. (Torres, supra, 13 Cal.App.4th at 1039.) Plaintiffs claimed that they would move into the city if they could find decent and affordable housing, but that, in the meantime, they were relegated to simply paying sales tax to the city. (Ibid.) The court held that plaintiffs could not assert standing as taxpayers, as their mere purchase of goods and 'payment' of sales tax within the city did not render them taxpayers within the meaning of section 526a. (Id. at 1048.) Relying on the plain language of the statute, the court reiterated that a section 526a taxpayer is one "who is assessed for and is liable to pay... a tax therein." (*Id.* at 1047.)

Although one plaintiff owned and paid taxes on real property within the county (*Torres, supra*, 13 Cal.App.4th at 1041), the court held that payment of County property taxes could not confer taxpayer standing upon an individual residing in the city of Anaheim and attempting to bring an action against the City of Yorba Linda and the City of Yorba Linda Redevelopment Agency. The *Torres* plaintiff's position as a county property owner would likely have rendered that plaintiff a section 526a taxpayer as against the county, but the lawsuit did not name the county as a defendant. As such, Petitioner's suggestion that the *Torres* court erred in failing to consider payment of a county property tax as a basis for taxpayer standing as against a city and a city agency is misplaced. The court did in fact consider the issue of property tax payment quite explicitly, noting that "[b]oth plaintiffs are residents of Anaheim, not Yorba Linda. Neither one pays property taxes in that city..." (*Id.* at 1043.)

The court went on to explain that sales taxes are assessed on the retailer, not the consumer to whom the retailer may or may not choose to pass on the burden. (*Torres, supra,* 13 Cal.App.4th at 1047 ["Contrary to plaintiffs' analysis, a sales tax is a levy imposed on the retailer, not the consumer"]; [see also] Rev. and Tax. Code, § 6051 ["For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers..."].) Even though the price of goods purchased was increased by the amount of the sales tax, "the tax was imposed on the person who sold the goods to [plaintiffs]," and section 526a consequently did not confer taxpayer standing on plaintiff purchasers. (*Torres, supra,* 13 Cal.App.4th at 1048.)

The second appellate case to address what type of taxes must be paid to trigger section 526a taxpayer standing was Cornelius v. Los Angeles Co. Metro. Transp. Auth. (1996) 49 Cal.App.4th 1761 (Cornelius). In that case, a non-resident engineer, employed by a subcontractor on a bid that had been rejected by the county's transportation authority challenged the constitutionality of an affirmative action program for awarding construction contracts. (Id. at 1764.) The court held that the plaintiff did not have taxpayer standing because (1) he did not pay any property or other taxes directly to the county; (2) the sales and gasoline taxes that he had paid were taxes on the retailer, not the consumer; and (3) plaintiff's payment of state income taxes were insufficient to confer standing to bring suit against a county agency. (Id. at 1775-1780.)

The court in *Cornelius* employed logic similar to that in *Torres* in concluding that payment of sales tax did not qualify as payment of an "assessed" tax for purposes of section 526a, but went a step further by applying this same analysis to gasoline taxes. The court reasoned that gasoline taxes, like sales taxes, must be construed as being taxes assessed on the retailer, not the consumer, of gasoline. "The clear intent

of the [Gasoline Tax Act of 1923] was to levy an excise or occupation tax upon distributors of motor vehicle fuel, giving such distributors, however, ample opportunity to fully indemnify themselves by adding the amount of the tax to the selling price of the fuel...." (*People v. Ventura Refining Co.* (1928) 204 Cal. 286, 294; [see also] Rev. and Tax. Code, § 7361.1 ["For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel shall pay a tax"] and Rev. and Tax. Code § 8733 ["The tax required to be collected by the vendor constitutes a debt owed by the vendor to this State"].) As such, under *Cornelius*, a consumer's repayment of gasoline taxes to a gasoline vendor can no more endow that consumer with taxpayer standing than can their repayment of a sales tax to a business owner. (*Cornelius, supra,* 49 Cal.App.4th at 1777-1778.)

The third appellate case to hold that an individual must pay, or be liable to pay, a directly assessed tax to enjoy section 526a standing was Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Co. Assn. of Governments (2008) 167 Cal.App.4th 1229 (Santa Barbara). In that case, the court held that a retailer who paid sales taxes on the sale of T-shirts had in fact established taxpayer standing under section 526a. As such, the retailer could properly challenge a local county taxing measure. (Id. at 1236.) By paying the assessed sales taxes, plaintiff had "established liability to pay a tax assessed by Santa Barbara County." (Ibid.)

The court in Santa Barbara Co. reiterated "[e]ven if a merchant passes the tax on to the consumer a sales tax is considered a tax on the retailer." (Santa Barbara, supra, 167 Cal.App.4th at 1236, quoting Cornelius, supra, 49 Cal.App.4th at 1777-1778.) Thus, a County retailer who is liable for remitting the sales taxes levied upon the goods he or she

vends can assert taxpayer standing, but the customer to whom the retailer may or may not pass along that tax burden cannot.

The fourth and final appellate case addressing the issue was the underlying *Wheatherford* decision, which found that Petitioner lacked section 526a taxpayer standing to bring the present lawsuit, because she had not paid any tax directly assessed by either of the named Respondents. The Court of Appeal reiterated that a consumer's payment of sales or gasoline taxes is an insufficient foundation upon which to rest a claim of taxpayer standing (*Wheatherford*, *supra*, 226 Cal.App.4th at 465), and that, while "standing under section 526a is not limited to real property owners" (*Id.* at p. 467, fn. 6), it is limited to those individuals who have paid or are liable to pay an assessed tax.

Although this Court is not bound by this line of cases, it should reach the same conclusions for the reasons discussed below.

E. STATUTORY ANALYSIS OF SECTION 526A SUPPORTS THE CONCLUSION THAT PETITIONER MUST PAY, OR BE LIABLE TO PAY, A DIRECTLY ASSESSED TAX TO HAVE TAXPAYER STANDING

In interpreting statutory language, the fundamental task of the reviewing court is to "ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." (*Estate of Griswold* (2001) 25 Cal.4th 904, 910.) This Court typically accomplishes this in two sequential steps. First, the Court will look to the words of the statute, "because they generally provide the most reliable indicator of legislative intent." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) Second, the Court may "turn to extrinsic aids to assist in interpretation," but this is only done when the statute's plain language is "ambiguous or susceptible of more than one reasonable interpretation." (*In re Ethan C.* (2012) 54 Cal.4th 610, 627.)

i. Step One: Statutory Language

When engaging in the first step of statutory analysis, courts must give the actual words of the statute "a plain and commonsense meaning" (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 577), while at the same time construing them within the context and purpose of the statute as a whole (*Pineda v. Williams–Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 529–530). When the statutory language is not ambiguous, the plain meaning of the statute will govern. (*Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1119.)

a. Plain Meaning

Section 526a enables certain actions to be brought against governments by an individual who "is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." (Cal. Code Civ. Proc., § 526a.) Thus, the statute is written so as to provide taxpayer standing to two classes of individuals: (1) the individual who is assessed for and is liable to pay a tax, and (2) the individual who within one year before the commencement of the action, has paid, a tax.

An "assessment" is the "[i]mposition of something, such as a tax or fine, according to an established rate." (Black's Law Dict. (10th ed. 2014) p. 139, col. 2.) To be liable is to be "[r]esponsible or answerable in law; legally obligated." (*Id.* At 1055, col. 2.) To pay⁵ is to "give money for a good or service that one buys; to make satisfaction." (*Id.* at 1309, col. 1.) And a "tax" is a "charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue." (*Id.* at 1685, col. 1.)

⁵ "Payment" is the "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation." (Black's Law Dict. (10th ed. 2014) p. 1309, col. 2.)

Applying these definitions to the language of the statute underscores the fact that section 526a, on its face, affords taxpayer standing only to those individuals (1) who have had imposed on them (assessed for) and are legally obligated to satisfy (liable to pay) a charge by the government (tax), or (2) who, within the past year, have satisfied (have paid) a charge by the government (tax). This commonsense reading of the statute compels the conclusion that an individual who has not been directly held liable for payment of a tax cannot, under the plain meaning of section 526a, properly invoke taxpayer standing. Such an interpretation comports not only with the commonplace definitions of the words used in the statute, but also with the unanimous reasoning of California courts on this topic, as discussed above. As Petitioner herself concedes, every court that has construed the words of section 526a has concluded that they mean what they say: the taxes referred to must be assessed by the government on the taxpayer-plaintiff.

Yet, Petitioner argues that the language of section 526a should be read to allow taxpayer standing for any individual who has paid a tax on goods or fees for services to any entity (a government, a retailer, a property owner) so long as that money is potentially later used to pay off a tax that has been assessed on that entity. (Petitioner's Opening Brief, 38-39.) She attempts to support this theory by offering the following definition of a taxpayer: "one that pays or is liable for a tax... a person who pays a tax or is subject to taxation." (*Ibid.*) It is worth noting that nowhere in section 526a does the word taxpayer appear, so analyzing the plain meaning of this term is irrelevant. Even if the term were included in the statute, however, its plain meaning only serves to undermine Petitioner's argument. To pay means to make satisfaction for something, and a payment is a full or partial discharge of an obligation. A liability is a legal obligation. Thus, to qualify as a taxpayer under Petitioner's own definition,

an individual would have to have actually discharged, or at least actually incurred, indebtedness for a tax liability imposed directly on her by a government: paid or been <u>liable for</u> a <u>tax</u>.

Common sense also counsels that a consumer's payment in exchange for goods (the price of which may have been increased to account for the vendor's tax liabilities), or a renter's payment of rent (the price of which may have been calculated so as to help cover the property owner's tax liabilities), does not render such individuals "taxpayers." Money paid to a vender of goods or an owner of land does not actually serve to pay off or discharge the ultimate tax liabilities on the goods sold or the land rented. The vendor or landlord could retain all of the profits from the sale or rental, including those amounts that were in theory charged to the customer to help offset tax debt, and later fail to discharge their tax obligation, leaving the retail or property tax unpaid. The consumer of goods does not "pay a tax," as his purchase of goods even if some of the purchase price was in theory slated to assist in covering tax liabilities does not serve to discharge the vendor's tax debt to the government. It remains the legal obligation of the individual who actually bears the tax liability the true taxpayer to pay off the debt that ultimately only he owes. As such, Petitioner's urged reading of section 526a not only distorts the plain statutory language, but also paves the way to absurd results.

b. Context and Purpose

The language of section 526a is plain and unambiguous on its face, but the Statute's meaning is equally apparent when considered within the context and purpose of taxpayer standing as a whole. Reading section 526a to require payment of an assessed tax directly to a governmental entity here, the County is consistent with the primary purpose of taxpayer actions in general to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts

because of the standing requirement." (*Blair, supra,* 5 Cal.3d at 267-268.) County homeowners and retailers, for instance, are immediately liable for payment of taxes directly imposed on them by the County. Thus, that entire portion of the citizenry can therefore challenge any of the County's policies and procedures that might otherwise go unchallenged. In addition, any parties directly aggrieved by such governmental actions would also have standing to sue. Thus, the application of section 526a taxpayer standing to those who are actually liable for payment of a tax promotes and is in accordance with the statute's overall purpose of providing a "prompt" (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 749) and "broad basis of relief" (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 450, superseded by statute on other grounds (*Van Atta*)) to a large, although not universal, body of the citizenry.

Looking at the plain language of the statute, as considered within the context of the statute's overall purpose, Petitioner's payment of unassessed taxes and fees is insufficient to find a claim of taxpayer standing against the County. Because the plain language of the statute is susceptible to only one reasonable interpretation, the Court's exercise in statutory construction should end here. Even if this Court were to find that the language of section 526a somehow ambiguous, the use of extrinsic aids to assist in interpreting the statute only serves to further compel the same conclusion.

ii. Step Two: Extrinsic Aids to Interpretation

"Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735.) Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

(Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387.)

a. Legislative History

Because section 526a was enacted in 1909, there is a dearth of official legislative history for the bill. (Senate Bill No. 924 (1909 Reg. Sess.) ch. 348, § 1. Attached to Respondents Request for Judicial Notice as Exhibit A.) The County has been unable to locate any surviving substantive records concerning the statute's legislative history from any of the more traditional sources at the state archives or any supporting state agency reports.

Perhaps the most illuminating piece of legislative history that today remains available for analysis is the simple fact that section 526a was amended only twice, once in 1911 and once in 1967. Neither of these amendments impacted or altered the portions of the statute now under examination by the Court and thus, did not add any particular clarity to the issue of what sort of taxes an individual must pay in order to qualify for taxpayer standing. The fact that the Legislature undertook these amendments without further elaborating upon the present understanding of what it meant to pay an assessed tax, however, does imply a tacit approval of the state of the law at the time of the last amendment.

The Court's decision in *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13 (*Irwin*) came down just a year prior to the Legislature's last alteration of section 526a. In that case, this Court reaffirmed the plain language and commonsense reading of the statute, noting that the plaintiff in *Irwin* was entitled to invoke section 526a standing specifically because she had paid real property taxes to the city defendant named in the lawsuit. (*Id.* at 16.) In other words, plaintiff had paid a tax that had been directly assessed upon her by the governmental entity against whom she was bringing suit. "When a statute has been construed by the courts, and

the Legislature thereafter reenacts that statute without changing the interpretation put on that statute by the courts, the Legislature is presumed to have been aware of, and acquiesced in, the courts' construction of that statute." (*People v. Bouzas* (1991) 53 Cal.3d 467, 475.) As such, it must be presumed that the Legislature, in amending section 526a in 1967, was aware of, and in agreement with, this Court's reading of the statute as being properly applicable to individuals who have paid a directly assessed tax. This presumption is further supported when the Legislature's actions are not considered only in isolation, but within the wider historical circumstances of the statute's original enactment.

b. Wider Historical Circumstances of Statute's Enactment

By 1909, the right of a taxpayer to maintain an action to prevent the misappropriation of public funds was, as a general rule, widely recognized by courts across the country. Of these cases, those that discussed explicitly what it meant to be a "taxpayer" for purposes of taxpayer standing universally contemplated payment of a directly assessed tax. (Chamberlain v. City of Tampa (1898) 40 Fla. 74, 75 [plaintiff properly brought a taxpayer action as a resident, citizen and taxpayer of the city of Tampa who owned "certain described real estate, besides other real and personal property of the value of \$20,000, subject to taxation by said city, all of which had been duly assessed and taxed by said city"]; Savidge v. Village of Spring Lake (1987) 112 Mich. 91, 92 ["The complainant is a resident and taxpayer of [the village of Spring Lake], and she is assessed

⁶ See, e.g., Chamberlain v. City of Tampa (1898) 40 Fla. 74; Bradley v. Gilbert (1892) 46 III.App. 623; Savidge v. Village of Spring Lake (1987) 112 Mich. 91; Tukey v. City of Omaha (1898) 54 Neb. 370; Blood v. Manchester Electric Light Co. (1895) 68 N.H. 340; Elyria Gas & Water Co. v. City of Elyria (1898) 57 Ohio St. 374; Brownfield v. Houser (1897) 30 Or. 534; Webster v. Douglas County (1899) 102 Wis. 181; Crampton v. Zabriskie (1879) 101 U.S. 601.

and taxed to the amount of nearly one-half of the taxable property of said village"]; Crampton v. Zabriskie (1879) 101 U.S. 601, 609 ["Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay, there is at this day no serious question"].)

Further, the laws already on the books in other states at the time of the Legislature's adoption of Senate Bill 924 placed a similar emphasis on the fact that a taxpayer for purposes of taxpayer standing would have had to pay a directly assessed tax, imposed by the entity against whom the taxpayer was bringing suit.⁷ In fact, no historical sources that the County has found endorse the position that Petitioner now urges; that 'payment' of a third party's tax burden, such as a consumer's payment of passed-along

All officers, agents, commissioners and other persons acting for and on behalf of any county, town, village or municipal corporation in this state, and each and every one of them, may be prosecuted and an action or actions may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to any property, funds or estate of such county, town, village or municipal corporation by any person whose assessment, or by any numbers of persons jointly the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes upon such assessment or assessments in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon an assessment or assessments of the above-named amount within one year previous to the commencement of any such action or actions... ((1881 Reg. Sess.) ch. 531, § 1, emphasis added. Attached to Respondent's Request for Judicial Notice as Exhibit B.)

⁷ The State of New York, for instance, enacted the following legislation in 1881:

gas or sales tax or a tenant's payment of rent, would have or should now allow for the initiation of a taxpayer action.

Finally, as the Second District Court of Appeal pointed out in Thomas v. Joplin (1910) 14 Cal.App. 662 (Thomas), the state of the law prior to the adoption of section 526a had been such that any taxpayer could bring an action to restrain the illegal expenditure of public funds. As such, the language of section 526a actually reflects the Legislature's intention to alter the common law by limiting the previously unfettered right to initiate taxpayer lawsuits: "The effect of the legislative act must be regarded as one intending to limit the right to prosecute such an action to suitors of the kind mentioned therein, or it can be given no effect at all." (Id. at 664-665.) Courts avoid interpreting statutes in a manner that would result in absurd consequences that the Legislature plainly did not intend. (Comm'n on Peace Officer Standards And Training v. Superior Court (2007) 42 Cal.4th 278, 290.) As such, reading a statute that was created for the express purpose of limiting taxpayer standing in such a manner as to enable unlimited standing, as Petitioner urges this Court to do, is inappropriate.

F. PETITIONER'S EXPANSIVE READING OF SECTION 526A IS CONTRARY TO THE LEGISLATURE'S UNAMBIGUOUSLY EXPRESSED INTENT AND TO THIS COURT'S PRIOR RULINGS.

Petitioner argues that, because the Court has "repeatedly" strayed from the literal language of section 526a, it should necessarily continue do so here. (Petitioner's Opening Brief, p. 39, emphasis in original.) It does not follow, however, that simply because this Court has construed certain provisions within section 526a liberally in the past, the Court is bound to continue construing each and every other provision within that statute with similar openhandedness. Further, there has been only one instance in which this Court has substantively analyzed whether it should depart from

the statute's plain words and concluded that it must. The remainder of the instances in which the Court afforded the text of section 526a broad interpretation involved reliance on appellate court cases, many of which lack any substantive discussion concerning the reach of the statute, and all of which actually counsel against Petitioner's urged interpretation.

i. Section 526a's Application to Nonresident Citizens

In Irwin, the Court held that a nonresident taxpayer could invoke section 526a standing despite the statute's specific inclusion of a residency requirement. (65 Cal.2d at 18-20.) The Court did so reluctantly, however, stating that it would abide by the statute's plain text "if it were not for the fact that the reading of section 526a which defendants favor violates the equal protection clause of the Fourteenth Amendment." (Ibid. at 19.) "No reason has been presented to us, or conceived by us, which would render less than arbitrary and capricious a distinction which would give a nonresident corporate taxpayer the right to maintain a suit such as here contemplated, but would deny the same right to a nonresident taxpayer who is a natural person." (Ibid., italics in original.) This same equal protection reasoning does not however, apply to, or guide the Court's analysis of the present matter.8 And, despite the fact that the Court did liberally construe the otherwise plain text of section 526a in this instance, Irwin does not actually serve to advance Petitioner's argument regarding liberal construction for two reasons.

First, the Court made a point of recognizing that section 526a was originally enacted with the intention of <u>limiting</u> taxpayer actions. (*Irwin*, *supra*, 65 Cal.2d at 19.) As mentioned earlier, before the enactment of section 526a, the common law "required only that the plaintiff be a taxpayer supporting the governmental entity whose act is sought to be

⁸ See Section H below for a complete discussion of Petitioner's constitutional challenges.

challenged." (*Ibid.*, citing *Thomas*, *supra*, 14 Cal.App. at 664 [holding that a noncitizen resident could not invoke section 526a standing].) Therefore, "the language of section 526a clearly reflects a legislative intention to limit the right to sue in this kind of case, for it clearly altered the common law." (*Irwin*, *supra*, 65 Cal.2d 13 at 19.) Indeed for this reason, were it not for the equal protection problem, the Court in *Irwin* would have overruled a case allowing a nonresident taxpayer to challenge alleged illegal government expenditures in light of defendants' "eminently persuasive" statutory arguments. (*Ibid.*)

Second, the Court's admittedly broad reading of section 526a in *Irwin* did not conflict with the statute's aim to allow only people and businesses with a sufficiently personal interest in the illegal expenditure of funds to maintain an action. As the Court stated in *Harman*, *supra*, 7 Cal.3d at p. 159, internal quotations omitted:

Because a successful attack on wrongful municipal spending or disposition of assets in all likelihood may reduce the municipal taxpayer's burden of meeting the expenses of government, courts do not doubt that a municipal taxpayer will effectively present his claim. [T]axpayers have a sufficiently personal interest in the illegal expenditure of funds by [municipal] officials to become dedicated adversaries.

Thus, even though the plaintiff in *Irwin* did not reside in defendant city, the Court noted that she was "a real property owner and taxpayer in the defendant City of Manhattan Beach" and therefore an indisputably dedicated adversary in the lawsuit. (*Irwin*, *supra*, 65 Cal.2d 13 at 16.)

ii. Section 526a's Application to State Agencies

Although this Court has applied section 526a to state agencies despite the statute's language naming only local government units and officers, it has done so without analysis or in dicta. In Serrano I, supra, 5 Cal.3d at p. 618, fn. 38, the Court allowed plaintiffs to sue the state as well

as county officials under section 526a. But the Court did not analyze the issue, instead citing only one Supreme Court case, *Blair*, *supra*, 5 Cal.3d 258, and two appellate court cases, *California State Employees' Assn. v. Williams* (1970) 7 Cal.App.3d 390, 395 (*Williams*) and *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 252-54 (*Ahlgren*). The Court in *Blair* cited these same appellate cases while briefly noting that the lower courts had allowed taxpayers to sue state officials. The Court's comment on the subject in *Blair* was not, however, necessary in deciding the case, as the plaintiffs there sought to "enjoin defendants, who admittedly are county officials" from illegal expenditures. (*Blair*, supra, 5 Cal.3d at 269.)

The fact that this Court has apparently approved of the application of section 526a to agencies of the state again does not serve to advance Petitioner's argument. The broad reading of the statute in the above-recited cases did not conflict with the statute's purpose that in order to invoke taxpayer standing a plaintiff must have a sufficiently personal interest in the illegal expenditure of funds by [the government's] officials to become dedicated adversaries." (*Blair*, *supra*, 5 Cal.3d at p. 270.) Reading out the "assessed tax" language would, on the other hand, fundamentally undermine this purpose.

iii. Section 526a's Application to Suits for Declaratory Relief, Damages, and Mandamus

As Petitioner points out, the Court has also concluded that section 526a permits taxpayer suits for declaratory relief despite the language allowing only actions "restraining and preventing" illegal expenditures. (See *Van Atta*, *supra*, 27 Cal.3d at 449-450.) But, the cases on which the Court in *Van Atta* relied for the proposition that "taxpayer suits have not been limited to actions for injunctions," did not support that decision. To show that the Court had approved declaratory relief under section 526a, it cited four Supreme Court cases: *Stanson v. Mott* (1976) 17 Cal.3d 206,

223 (Stanson); Serrano I, supra, 5 Cal.3d at p. 618; Regents of University of California v. Superior Court (1970) 3 Cal.3d 529 (Regents); and Gogerty v. Coachella Valley Junior College Dist. (1962) 57 Cal.2d 727 (Gogerty). But in Stanson, the Court cited only Ahlgren, which did not involve declaratory relief. In Serrano I and Regents, the Court did not analyze the departure from the statutory language. And in Gogerty, the Court neither analyzed the issue nor mentioned section 526a. To show that the Court had approved damages relief under section 526a, the Court in Van Atta again cited Stanson and also Mines v. Del Valle (1927) 201 Cal. 273, disapproved on other grounds in Stanson. But in the former, damages were not in issue and in the latter, the Court did not analyze the issue. To show that the Court had approved mandamus relief under section 526a, the Court in Van Atta cited Adams v. Department of Motor Vehicles (1974) 11 Cal.3d 146 (Adams). But again, the Court in Adams did not offer any analysis of or explanation for the departure from the statutory language of section 526a.

iv. Section 526a's Application to Representative Organizations and the Attorney General

In support of her claim that representative organizations may maintain section 526a taxpayer actions, Petitioner cites to two court of appeals decisions that, of course, do not represent this Court's interpretation of taxpayer standing. (Petitioner's Opening Brief, p. 41.) And, while one of these cases did extend taxpayer standing to an organization, it also counseled against Petitioner's own urged reading of the statue. In *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1032, the court allowed for a representative organization to bring a section 526a lawsuit on behalf of its constituents, but the court stressed the fact that the

organization was filled with individuals "who are residents of City and District and are taxpayers" such that they would be dedicated adversaries. *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, on the other hand, did not even mention section 526a or any other form of taxpayer standing.

Finally, Petitioner's citation to *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921 (*Harris*) in support of the proposition that courts have read section 526a to provide the Attorney General with taxpayer standing to seek relief on behalf of a city is misplaced. (Petitioner's Opening Brief, 41-42.) The appellate court there held that "the Attorney General, on behalf of the City, may pursue an action for government waste, even if the City does not meet the standing requirements for a taxpayer action under Code of Civil Procedure section 526a." (*Harris*, *supra*, 214 Cal.App.4th at 938.) In other words, the Attorney General was not found to have section 526a standing to bring the lawsuit on behalf of a city, but rather the court held that section 526a does not limit standing to bring actions for waste to taxpayers. This distinction is further clarified later in the opinion:

The Attorney General brought this cause of action under Code of Civil Procedure section 526a, the statute providing for taxpayer actions to enjoin, and obtain restitution to the government for government waste. As we have discussed, the City on whose behalf the action was brought does not have standing as a taxpayer under Code of Civil Procedure section 526a. However, Code of Civil Procedure section 526a does not prevent the City from itself suing to enjoin, and obtain restitution for, government waste. Thus, although the Attorney General should not have brought this cause of action under Code of Civil Procedure section 526a, a cause of action for government waste could nonetheless be alleged. (*Id.* at 945, internal citations omitted.)

In sum, no cases from this Court support Petitioner's expansive reading of section 526a. While California's courts have at times read

section 526a broadly to allow a large portion of the citizenry to challenge state and local governmental action, they have never gone so far as to undermine the foundational requirement that a plaintiff actually be the person or entity that paid the tax, and the Court should not do so now. (See *Torres*, *supra*, 13 Cal.App.4th at p. 1047 [listing the ways in which section 526a has been liberally construed, and concluding that "[n]onetheless, a plaintiff must establish he or she is a taxpayer to invoke standing under Section 526a or the case law"].)

G. 'TAXES' PURPORTEDLY 'PAID' BY PETITIONER DO NOT TRIGGER SECTION 526A TAXPAYER STANDING

Petitioner argues that, "[i]n the end, no matter their form, all taxes ultimately fund government action at the local and state level. It would necessarily follow, then, that all forms of tax payment satisfy section 526a." (Petitioner's Opening Brief, 43-44, emphasis in original.) Following this logic, an individual's 'payment' of any state or local tax to any retailer should enable that person to bring a lawsuit against any or all state or local governments. Such an interpretation of section 526a effectively guts the entire concept of standing with respect to California's governments. None of the 'taxes' that Petitioner claims to have 'paid' are sufficient to support her claim of section 526a taxpayer standing as against the County.

i. Property Tax

Petitioner does not claim to have paid property taxes, but she does suggest that California courts' present interpretation of section 526a is so "overly-restrictive" that not even payment of assessed real property taxes would qualify a taxpayer for standing under the statute. (Petitioner's Opening Brief, 42.) According to Petitioner, ever since the passage of Proposition 13 in 1978, property taxes are no longer assessed by or paid

directly to local governments. Rather, they are assessed by and paid out to the state. (*Id.* at 42-43.) Her position on this issue is untenable.

California's property tax system was first introduced as part of the state's original constitution in 1849. (1849 Cal. Const., art. XI.) Its initial objective was to "raise revenue for *all* government purposes, both state and local. [B]ut after 1910 it was basically devoted, as it still is, to the support of *local* governments." (Ehrman & Flavin, Taxing Cal. Property (4th ed. 2011) § 1:5, 1-10.)

Property taxes, including real property taxes, continue to be assessed by, and distributed to, local governments. (See Cal. Const., art. XIII, § 14 ["All property taxed by local government shall be assessed in the county, city, and district in which it is situated."]; Cal. Const., art. XIII A, § 1, subd. (a) [declaring "[t]he one percent (1%) [ad valorem tax on real property] to be collected by the counties and apportioned according to law to the districts within the counties."].) Since the passage of Proposition 13, the property tax revenues collected are pooled at the county level and distributed as directed by the Legislature among local agencies based on the approximate shares that each agency has received in the past. (Gov. Code, § 26912; Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 226–227 (Amador).) Proposition 13 "does not by its terms empower the Legislature to direct or control local budgetary decisions or program or service priorities," and the Legislature has made clear its "intention to preserve home rule and local autonomy respecting the allocation and expenditure of real property tax revenues." (Amador, supra, 22 Cal.3d at 226.)

It remains reasonable for California courts to hold, as they consistently have, that an individual's payment of real property taxes assessed directly against that individual renders him or her a section 526a taxpayer as against the taxing entity. (See *Irwin*, *supra*, 65 Cal.2d at 18-

20 [a city nonresident, who owned and paid property taxes within the city, could properly bring a taxpayer suit under section 526a]; *Blair, supra,* 5 Cal.3d at p. 269 [plaintiff residents of the county, who had all been assessed and paid real property taxes therein, could properly bring a taxpayer suit under section 526a]; *Serrano I, supra,* 5 Cal.3d at p. 618 [plaintiffs allowed to bring taxpayer suit based on allegations that they were citizens and residents of Los Angeles County who owned real property assessed by the county].)

ii. Sales Tax

Petitioner's argument regarding her 'payment' of sales taxes is similarly contrived. Petitioner claims that the Court of Appeal in Wheatherford held that "sales taxes are not used to fund city and county law enforcement efforts and therefore petitioner's payment of sales tax is [in]adequate [sic] to confer standing on her under section 526a." (Petitioner's Opening Brief, p. 43.) Petitioner then points out that respondent City of San Rafael supposedly imposed, in 2005, a half-cent sales tax to help fund city agencies. (Ibid.) This line of reasoning, however, misstates the lower court's decision, and misunderstands the appropriate line of inquiry when evaluating whether or not payment of a sales tax is sufficient to convey taxpayer standing.

Nowhere did the Court of Appeal in *Wheatherford* discuss whether or not sales taxes were used to fund city or county law enforcement efforts. Rather, the court simply affirmed the long-standing precedent that plaintiff consumers who seek to invoke section 526a standing through payment of a sales tax will be prevented from doing so because such taxes are assessed against retailers, not consumers, of goods. (*Wheatherford*, *supra*, at 464-466; see also Rev. and Tax. Code § 6051 ["For the privilege of selling tangible personal property a retail a tax is hereby imposed upon all retailers..."]; *Decorative Carpets, Inc. v. State Board of Equalization*

(1962) 58 Cal.2d 252, 254 [finding that retailer plaintiff was entitled to a refund of overpaid taxes because it was the taxpayer under the law].) Petitioner's discussion concerning whether or not sales taxes are used to fund certain law enforcement efforts misses the point; the issue is not how the governments ultimately use the taxes, but rather who was liable to pay the taxes.

Additionally, Petitioner's focus on which agency— the City of San Rafael or the state – purportedly levied a particular sales tax is misplaced. The initial inquiry when it comes to payment of a sales tax is whether the tax was actually assessed against the individual claiming taxpayer standing status. Only then might it become relevant which agency was supposedly doing the assessing or to what use the funds may have ultimately been put. Because Petitioner has not claimed to be a business owner subject to a retail sales tax, it must be assumed that no sales tax has ever been levied against her. Her alleged 'payment' of a sales tax, regardless of who or what imposed the tax, is not therefore sufficient to trigger 526a's standing provision.

iii. Gasoline Tax

Petitioner advances a similar argument regarding gasoline taxes, reasoning that portions of such taxes "invariably wind up in the City and County's budgets and are used in part for law enforcement, be it by direct allocation, trickle-down budgeting, state and federal grants funded by such taxes, or state and local bonds paid for with such taxes." (Petitioner's Opening Brief, p. 43.) Again, however, Petitioner misses the main point: a government assesses gas taxes on the retailer, not the consumer, of gasoline. (See Rev. and Tax. Code, §§ 7361 ["For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel... shall pay a tax..."] and 8733 ["The tax required to be collected by the vendor constitutes a debt owed by the vendor to this

State"].) Any invented "nexus" (Petitioner's Opening Brief, p. 43) between a gasoline tax paid out to the state and some potential benefit later reaped by a local government is irrelevant, especially when it is not in fact Petitioner who paid the gasoline tax in the first instance. And because Petitioner has not claimed to be a distributor subject to a gasoline tax, it must be assumed that no gasoline tax has ever been levied against her. Her alleged 'payment' of such taxes, regardless of who or what imposed the tax, is also therefore insufficient to trigger 526a's standing provision.

iv. Income Tax

For the Court's convenience, the County will address the issue of income tax payments generally, despite the fact that Petitioner failed to raise the issue in the trial court, thereby waiving her right to specific consideration of the issue on appeal. California courts "ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived." (*Bank of America, N.A. v. Roberts* (2013) 217 Cal.App.4th 1386, 1399.) Additionally, Petitioner has neglected to specify in what city or county she supposedly works and is taxed. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 ["[T]o state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity"].) Even overlooking these procedural shortcomings, her purported payment of income taxes would still fail to afford her section 526a taxpayer standing against the County for the following reasons.

First, the County does not impose or collect an income tax on its own behalf. California law dictates that "no [] county [] shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident or nonresident." (Rev. & Tax. Code, § 17041.5.) Petitioner cannot move forward with a taxpayer suit against the

County under the guise of paying income taxes "therein" when the County is not the entity either imposing or receiving the tax. (Code Civ. Proc., § 526a.) No court has ever held payment of a state-imposed tax sufficient to challenge the policies of a local agency, because to do so would effectively remove all standing requirements for plaintiffs suing local public entities.

Second, by no stretch of the imagination does Petitioner meet the test developed by the Second District Court of Appeal in Cornelius, supra, 49 Cal.App.4th 1761, and discussed at length by Petitioner, to determine if a plaintiff's payment of state income taxes is sufficient to confer taxpayer standing in a lawsuit brought against a county agency. In Cornelius, the plaintiff alleged that the affirmative action program implemented by a county transportation authority an authority that the plaintiff termed the "functional equivalent" of a state agency to award contracts violated his constitutional rights. (Id. at 1764, 1775.) The court looked at three factors to conclude that plaintiff lacked taxpayer standing as against the county transportation authority. First, the court looked to the tangential relationship between the taxes paid and the policy being contested. (Id. at 1778.) The court stressed the fact that state income taxes constituted only a "partial and indirect source of funding for the [county transportation] authority]." (Ibid., original italics.) Second, the court looked to the ramifications of finding taxpayer standing on the basis requested by plaintiff.

"If we were to conclude that the mere payment of state income taxes conferred standing, then any state implemented program which to any degree is directly or indirectly financed by the state income tax could be subject to a legal challenge by any resident in any of our state's 58 counties as long as the resident pays state income taxes. We do not believe it would be sound public policy to permit the haphazard initiation of lawsuits against local public agencies based only on the payment of state

income taxes." (*Id.* at 1778-1779.) Third, the court looked to the underlying policy behind conferring taxpayer standing under section 526a. "Our Supreme Court has stated that while standing under that section is to be construed liberally, the reason to do so is to allow a challenge to governmental action which would otherwise go unchallenged because of the stricter requirement of standing imposed by case law." (*Id.* at 1779.)

As a threshold matter, the test laid out in *Cornelius* does not apply to the issues presently before this Court for at least two reasons. First, as already noted, the record on appeal is missing any factual allegation that Petitioner ever paid income tax. Second, Petitioner makes no allegation, and could not in good faith make an allegation that the County is acting as the 'functional equivalent' of a state agency, such that payment of state income tax would even arguably open the County up to a taxpayer lawsuit.

Even if the *Cornelius* test did apply, however, Petitioner would fail to meet each of the three factors. First, there's no alleged relationship between any state income paid and the County's vehicle impoundment policy. Second, if Petitioner's payment of state income taxes was enough to confer section 526a standing, any plaintiff who paid state income tax within California would be free to not only challenge state policies and procedures as a taxpayer, but also those of every county, city, and other municipality that had ever received even the most remote state funding. And third, a decision by this Court not to grant Petitioner taxpayer standing would not result in the California Vehicle Code going unchallenged. Any number of parties could readily come forward to properly challenge the law. At a bare minimum, all individuals who have paid assessed taxes directly to the County of Marin within the past year, as well as individuals who have suffered an actual injury as a result of the County's enforcement of the Code, could properly assert standing to challenge the law.

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Finally, Petitioner assures the Court that, because she is a County resident, she is not therefore a "mere interloper who visited the City and County and paid a nominal tax of some kind and now seeks to litigate without personal interest in local affairs." (Petitioner's Opening Brief, p. 50.) But this assurance is irrelevant, because as Petitioner repeatedly points out, residence within the County is not a prerequisite to Petitioner's ability to pursue a section 526a taxpayer against the County action under *Irwin* and its progeny.

v. Telephone tax

As with income tax payments, Petitioner's arguments regarding payment of telephone taxes cannot be entertained upon a record without any allegation that Petitioner has ever paid such taxes. "To allow mixed questions of law and fact to be raised on appeal for the first time would disrupt the orderly administration of justice." (*Harriman v. Tetik* (1961) 56 Cal.2d 805, 810.) Further, Petitioner provides not a single citation, either in the form of statutory or case law, tending to support her assertion that the County assesses telephone taxes "directly on consumers." (Petitioner's Opening Brief, p. 53.) In fact, the County does not.

H. REQUIRING THAT PLAINTIFF PAY AN ASSESSED TAX BEFORE ALLOWING TAXPAYER STANDING DOES NOT VIOLATE DUE PROCESS AND EQUAL PROTECTION GUARANTEES

A statute should be construed, whenever possible, so as to preserve its constitutionality. (*Department of Corrections v. Workers' Comp. Appeals Bd.* (1979) 23 Cal.3d 197, 207.) Petitioner, however, takes the opposite tack, incorrectly claiming that the Court of Appeal's construction of section 526a constitutes unconstitutional wealth-based discrimination that should be subjected to the most stringent standard of judicial review. The Court of Appeal's interpretation of section 526a is neither unconstitutional, nor the proper object of strict scrutiny. It is not

unconstitutional because it does not discriminate on the basis of wealth. Even if it did, such discrimination is not precluded by the due process or equal protection clauses. And it is not the proper subject of strict scrutiny because that standard of review is employed only "in cases involving suspect classifications or touching on fundamental interests." (*Serrano I*, *supra*, Cal.3d at 597.) This is not such a case.

a. Section 526a Is Not a Wealth-Based Classification

Petitioner offers no persuasive support for her claim that the issue of whether an individual has been assessed with a tax is a wealth-based classification. Real property ownership or, for that matter, ownership and operation of a business or gasoline station is ultimately a lifestyle choice, not a wealth issue. Many of the wealthier individuals within this state prefer to rent homes while some less wealthy people decide to invest a substantial portion of their capital into real property. Many of the state's more affluent citizens work for large corporations, while some of the less financially fortunate struggle to scrape by while operating their own momand-pop shops. The distinction drawn in section 526a is not, therefore, based on wealth, but rather upon classes of persons who are, for a wide range of reasons, subjected to a variety of very distinct tax burdens and who thus defy classification under customary equal protection terms. And, while Respondent readily acknowledges that there undoubtedly exist many citizens who would prefer to own property or open their own businesses if only they had the financial means to do so, it remains a fact that "the Constitution does not provide judicial remedies for every social and economic ill." (Lindsey v. Normet (1972) 405 U.S. 56, 74.) Equal protection "quarantees equal laws, not equal results." (Personnel Administrator of Mass. v. Feeney (1979) 442 U.S. 256, 273.)

Petitioner nevertheless cites to a string of cases involving unconstitutional wealth-based discriminations, which she claims support

her argument that section 526a involves the same. These cases, however, are all distinguishable from the present situation. Boddie v. Connecticut (1971) 401 U.S. 371 (Boddie), involved women who sought to obtain divorces but were barred from doing so by their inability to pay uniformly required court fees and costs. These fees and costs were imposed as a precondition to the plaintiffs' ability to use the court system, to which they would have otherwise indisputably been entitled access. The Court in that case held that "the State's refusal to admit... appellants to its courts, the sole means for obtaining a divorce, must be regarded as the equivalent of denying them an opportunity to be heard upon their claimed right to a dissolution of their marriages, and, in the absence of a sufficient countervailing justification for the State's action, a denial of due process." (Id. at p. 787; see also Earls v. Sup. Ct. (1978) 6 Cal.3d 109.) Unlike in Boddie, however, Petitioner is not barred from accessing the court system due to her inability to pay a uniformly assessed fee, but rather because she lacks standing. Boddie did not hold, and no court has ever held, that due process requires allowing plaintiffs like Petitioner, who fundamentally lack standing to initiate a lawsuit, to nevertheless access the courts for purposes of litigation.

Harper v. Virginia State Bd. of Elections (1966) 383 U.S. 663, struck down poll taxes as unconstitutional violations of the equal protection. The Court there reasoned that "[v]oter qualifications have no relation to wealth nor to paying or not paying [a poll tax] or any other tax" and "[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." (Id. at 666, 668.) Again, however, section 526a does not impose a uniform fee on individuals before allowing them to access a fundamental right. The Legislature's requirement that, prior to bringing a taxpayer lawsuit, an individual must

actually pay an assessed tax against the entity that it seeks to sue, is neither capricious nor irrelevant.

Griffin v. Illinois (1966) 351 U.S. 12, involved defendants who could not afford to pay for the transcripts and court records necessary to prosecute an appeal. Douglas v. California (1963) 372 U.S. 353, held that a state may not deny an indigent criminal defendant the assistance of counsel on appeal. Again, such decisions shed no light on Petitioner's situation, which does not involve the state's wholesale denial of access to the justice system for an identifiable class of plaintiffs who cannot not afford to pay a uniform fee.

Finally, *Gebert v. Patterson* (1986) 186 Cal.App.3d 868 (*Gebert*), an appellate court decision, found unconstitutional a local regulation that required the proponent of a ballot argument to pay a fee before the argument would be published in the voter's handbook. *Gebert* relied in part on *Knoll v. Davidson* (1974) 12 Cal.3d 335 (*Knoll*), where this Court held that requiring the payment of a filing fee as a condition to becoming a candidate, without providing a reasonable alternative means of access to the ballot, was similarly impermissible. The Court in *Knoll* identified the "essential error" in all systems requiring prepaid ballot fees to be the fact that such systems relied "solely and absolutely upon the payment of a fee, without providing any alternative procedures for qualifying as a candidate." (*Id.* at 248.) Again, this is not Petitioner's situation.

In all of these cases, "[t]he individuals, or groups of individuals, who constituted the class discriminated against... share[] two distinguishing characteristics [that Petitioner lacks]: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." (San Antonio Independent School Dist. v. Rodriguez (1973) 411 U.S. 1, 20 (San Antonio).) Petitioner, however,

has provided "no definitive description of the classifying facts or delineation of the disfavored class" that she now urges this Court to protect, making it fundamentally impossible to determine whether or not such a 'class' would, because of their purported impecunity, be completely unable to pay a section 526a assessed tax. (*Id.* at 19.) Further, Petitioner offers no description of how much such a tax might actually cost.

Section 526a does not condition access to the courtroom on the payment of a uniform fee and does not, for the reasons discussed above, discriminate on the basis of wealth. The wealthiest individuals in the country may seek to bring section 526a taxpayer lawsuits against the cities and counties of California, but, without having had a tax assessed upon them by such cities and counties, these suits will be summarily dismissed for lack of standing. And finally, Petitioner does have an alternative procedure by which to access the court system to bring her lawsuit; non-taxpayer standing. (Code Civ. Proc., § 367 ["Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute."].) As such, the cases relied upon by Petitioner in support of her position that section 526a involves unconstitutional wealth-based classifications are simply not persuasive.

A more analogous case to the case at bar is *In re York* (1995) 9 Cal.4th 1133 (*York*). There, this Court rejected a wealth-based challenge to Penal Code section 1318, which governs defendants' release from custody under their own recognizance (OR) and requires "the defendant's promise to obey all reasonable conditions" imposed by a court or magistrate. (Pen. Code, § 1318, subd. (a)(2).) The Court in *York* affirmed the appellate court's reading of the statute, which allowed courts to condition OR release on a defendant's agreement to submit to random pretrial drug testing and warrantless search and seizure. (*York, supra*, 9 Cal.4th at 1152.) In doing so, the Court squarely rejected the petitioners'

argument that such a construction violated equal protection guarantees because defendants who were able to post bail were not subject to the same conditions:

Insofar as petitioner's contention rests upon the thesis that the statute creates an impermissible wealth-based classification, because persons who can afford to post the bail set for their offense will not need to seek OR release, petitioner's argument is in essence an argument that the bail process itself is unconstitutionally discriminatory, because that process is based upon a defendant's ability to post bail. We have rejected similar contentions raised in previous cases. (*Ibid.*)

Here, the Court is faced with a similar argument. Petitioner's contention that section 526a creates an impermissible wealth-based classification, because some individuals are directly assessed with and have paid taxes while others are not, is in essence an argument that the state's tax system as a whole is unconstitutionally discriminatory. This argument is no more valid than was the *York* petitioners' attack on the bail process, and should likewise be rejected. Statutes must be upheld unless they are "clearly, positively, and unmistakably" unconstitutional. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780.) "[T]he burden of establishing the unconstitutionality of a statute rests on him who assails it," and Petitioner here has by no means met her burden. (*Brown v. Superior Court* (1971) 5 Cal.3d 509, 520.)

i. Petitioner Is Not Similarly Situated to Section 526a Taxpayers

"The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (*Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578.) "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the

state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530.) Petitioner has not made this requisite showing.

Under the Equal Protection Clause, courts do not inquire "whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged." (Cooley v. Superior Court (2002) 9 Cal.4th 228, 253, quoting People v. Gibson (1988) 204 Cal.App.3d 1425, 1438.) This Court, then, must determine whether individuals who are directly assessed with a tax are similarly situated to those who are not. The answer is that they are not. Individuals who are assessed with a tax bear a burden of responsibility to the government that is not shared by those who incur no such debt. As such, individuals who are directly assessed with a tax have "a sufficiently personal interest in the illegal expenditure of funds by [that entity's] officials to become dedicated adversaries." (Blair, supra, 5 Cal.3d at p. 270; see also Torres, supra, 13 Cal.App.4th at p. 1048, fn. 7 [noting that non-taxpayer plaintiffs "are not similarly situated with others determined to have standing" under section 526a.1)

ii. Section 526a Is Not Subject to Strict Scrutiny

Classifications that disadvantage a "suspect class" or impinge upon the exercise of a "fundamental right" are subject to strict scrutiny, thereby requiring their proponents to demonstrate that such classifications have been "precisely tailored to serve a compelling governmental interest." (*Plyler v. Doe* (1982) 457 U.S. 202, 216–217.) In arguing that the Court should apply this heightened standard of review to section 526a, Petitioner maintains that wealth is a suspect classification and the Court of Appeal's interpretation of section 526a impinges upon a fundamental right. This, however, is not the case.

a. Wealth Is Not a Suspect Classification

The United States Supreme Court first discussed the potential for departure from the established principles of judicial restraint in determining the constitutionality of legislation in *United States v. Carolene Products Co.* (1937) 304 U.S. 144 (*Carolene Products*). There, the Court observed that "prejudice against discrete and insular minorities may be a special condition which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." (*Id.* at p. 152, fn. 4) In other words, judicial deference may not be appropriate where the majoritarian political processes cannot be relied upon for the protection of a particular discrete and insular minority.

Subsequent decisions have expounded upon the concept first proffered in *Carolene Products*, identifying classifications such as race (*Korematsu v. United States* (1944) 323 U.S. 214), national origin (*Hernandez v. Texas* (1954) 347 U.S. 475), alienage (*Application of Griffiths* (1973) 413 U.S. 717), and gender (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24) as suspect and properly subject to a heightened level of judicial scrutiny. The underlying reasoning behind such determinations is that these 'suspect classifications' represent discrete and insular minorities, which have borne unique burdens and for which heightened judicial solicitude is appropriate. (*Graham v. Richardson* (1971) 403 U.S. 365, 372.) Wealth, on the other hand, is not properly considered a suspect classification:

The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. (San Antonio, supra, 411 U.S. at 28.)

Despite this, Petitioner persists in arguing that wealth-based classifications are subject to strict scrutiny. In so doing, she relies heavily on *Serrano I, supra*, 5 Cal.3d 584. There, the Court looked to prior United States Supreme Court cases, which had closely scrutinized "lines drawn on the basis of wealth" to conclude that wealth was in fact a suspect classification. (*Id.* at 597-598.) The Court then held unconstitutional the public school financing system because, among other things, it classified on the basis of wealth. (*Id.* at 614-615.) Yet *Serrano I* does not govern the situation at hand because the basis for the holding has changed and this Court later reconsidered that decision.

After the Court decided Serrano I, the United States Supreme Court concluded in no uncertain terms, that classifications based on wealth alone are not suspect. (San Antonio, supra, 411 U.S. at p. 29 [noting that the Supreme Court "has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny"]; Kadrmas v. Dickinson Public Schools (1988) 487 U.S. 450, 458 ["We have previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny."].) This Court also backtracked. Five years after Serrano I, in Serrano v. Priest (1976) 18 Cal.3d 728, the Court recognized that California's public school financing system did in fact satisfy federal equal protection standards. (Id. at 762 - 63.) With respect to the state constitutional question, the Court declined to address whether strict scrutiny review applied to governmental classifications based on wealth alone, reasoning instead that "[t]he classification here in question, which is based on district wealth, clearly affects the fundamental interest of the

children of the state in education[.]" (*Id.* at 766, fn. 45.) In *Hartzell v. Connell* (1984) 35 Cal.3d 899, this Court, in deciding a case concerning the imposition of fees for student participation in extra-curricular activities on equal protection grounds, again declined to find that wealth alone was a suspect classification. (See also *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1161, fn. 9, overruled on other grounds [noting the absence of any federal or state constitutional provision placing financial or economic status on same footing as traditional suspect classifications.].)

b. Section 526a Does Not Touch Upon a Fundamental Interest

Petitioner puts forth an alternative argument for the application of strict scrutiny to section 526a, presumably under the theory – although she hesitates to explicitly say as much – that bringing a lawsuit under the taxpayer provisions of the statute is somehow a fundamental right. Whether or not a right is considered 'fundamental' is determined by assessing whether it is "explicitly or implicitly guaranteed by the Constitution." (San Antonio, supra, 411 U.S. at 33.) Petitioner points to no provisions within either the state or federal constitution that either expressly or impliedly guarantee the right to enjoyment of the unique jurisdictional provisions accessible through section 526 taxpayer standing. In fact, Petitioner admits that "California is not required by the Federal or State Constitution to provide taxpayer standing under section 526a under rules which are far removed from the normally-applicable requirement of proof of direct injury to the plaintiff." (Petitioner's Opening Brief, p. 59.) As such, access to taxpayer standing under section 526a is neither a fundamental right nor a suspect classification, and is thus not the proper subject of strict scrutiny.

iii. Section 526a Passes Rational Basis

Generally speaking, a statute "should be sustained if [the court finds] that its classification is rationally related to achievement of a legitimate (Western & Southern Life Ins. Co. v. State Bd. of state purpose." Equalization (1981) 451 U.S. 648, 657.) "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (FCC v. Beach Communications, Inc. (1993) 508 U.S. 307, 313) Under such a rational basis analysis, any conceivable governmental purpose or policy should be considered by the courts in upholding the statute, including "rational speculation unsupported by evidence or empirical data." (Id. at 312-315.) The party challenging the constitutionality of a state law must "negative every conceivable basis which might support it." (Lehnhausen v. Lake Shore Auto Parts Co. (1973) 410 U.S. 356, 364.)

In York, this Court applied rational basis review to Penal Code section 1318, noting that "courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators." (York, supra, 9 Cal.4th at 1152.) Thus, the disparate treatment afforded those defendants in York released on bail and those released on OR did not violate equal protection because "section 1318 is facially neutral – it does not create wealth-based distinctions nor establish any classifications whatsoever. Pursuant to section 1318, a court or magistrate may impose reasonable conditions upon any defendant, wealthy or poor, who seeks OR release." (Ibid.) In

addition, the Court held that section 1318 did not have a discriminatory purpose:

Nothing contained in this history even remotely suggests a legislative attempt to discriminate against indigent defendants. To the contrary, in view of the inability of certain defendants to post bail, the Legislature clearly had a rational basis for concluding that public safety would be enhanced if such defendants, when afforded the leniency of a bail-free release, were required to comply with those reasonable conditions that a court or magistrate, in his or her discretion, believed to be necessary in order to deter further criminal conduct. (*Ibid.*)

The Court should reach the same result here. Like Penal Code section 1318, section 526a is facially neutral. It does not create wealth-based distinctions, but simply grants taxpayer standing to certain people and businesses that have paid an assessed tax to a government entity. Section 526a does not have any discriminatory purpose. Because the Legislature had a rational basis for concluding that only those people and businesses that have paid a tax directly assessed on them by a governmental entity have "a sufficiently personal interest in the illegal expenditure of funds by [that entity's] officials to become dedicated adversaries," section 526a cannot be said to violate due process or equal protection guarantees. (*Blair*, *supra*, 5 Cal.3d 258 at 270.)

I. THE LEGISLATURE, NOT THE COURT, MUST RESOLVE COMPETING PUBLIC POLICIES IN GRANTING TAXPAYER STANDING

Petitioner repeatedly urges the Court to adopt her construction of section 526a, because it would, from her vantage point, be beneficial as a matter of public policy. (Petitioner's Opening Brief, p. 7 [alleging that "[o]ur justice system will suffer immensely" if the Court rejects Petitioner's interpretation of section 562a].) But policy debates are "empirical question[s] of fact better suited to legislative investigation and determination" than to judicial interpretation. (State Dept. of Health

Services v. Superior Court (2003) 31 Cal.4th 1026, 1048.) As such, "absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (Superior Court v. County of Mendocino (1996) 13 Cal.4th 45, 53.) This Court has long recognized its role to interpret statutes as they are written, not to establish policy:

[A]s this court has often recognized, the judicial role in a democratic society is fundamentally to interpret laws, not to write them. The latter power belongs primarily to the people and the political branches of government. It cannot be too often repeated that due respect for the political branches of our government requires [the courts] to interpret the laws in accordance with the expressed intention of the Legislature. This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed. (California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist. (1997) 14 Cal.4th 627, 633, internal citations and quotations omitted.)

Therefore, whether or not section 526a constitutes sound policy "is not a matter [the courts] are at liberty to consider. Such pleas are properly directed to the Legislature, which is free to amend the terms of the [statute] in any constitutional manner it deems appropriate." (*General Motors Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 773, 792, fn. 14.)

V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court to affirm the decision of the Court of Appeal.

Dated: February 20, 2015

STEVEN M. WOODSIDE MARIN COUNTY COUNSEL

RENEE GIACOMINI BREWER

CERTIFICATION OF WORD COUNT

I, RENEE GIACOMINI BREWER, counsel for Respondent in this matter hereby certify that the attached Respondent's Brief contains a total of 13,224 words. This brief was produced on Microsoft Word processing program.

Dated: February 20, 2015

STEVEN M. WOODSIDE County Counsel

RENEE GIACOMINI BREWER Deputy County Counsel

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Marin County Counsel, 3501 Civic Center Dr., Room 275 San Rafael, CA 94903. On February 20, 2015, I served the within document(s):

RESPONDENT'S BRIEF

by placing the document(s) listed above in a sealed envelope for collection and mailing on that date following ordinary business practices. I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

Clerk of the California Supreme Court	Counsel for Respondent				
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350 McAllister Street	Richard W. Osman				
San Francisco, CA 94102	Bertrand, Fox & Elliott				
1 original, & 8 copies (courier delivery)	2749 Hyde Street				
1 e-file	San Francisco, CA 94109				
·					
Counsel for Appellant	Via Inter-Office Mail:				
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Santa Rosa, CA 95404	Judge Roy O. Chernus				
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 20, 2015, at San Rafael, California.