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.

REAL PARTY IN INTEREST'S RETURN TO ORDER TO SHOW CAUSE

Thomas W. Hiltachk*
(SBN: 131215)
Paul Gough (75502)
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
tomh@bmhlaw.com
Attorneys for Real Party in Interest

Jonathan Coupal (107815)
Timothy Bittle (112300)
Laura Dougherty (255855)
HOWARD JARVIS TAXPAYERS ASSOCIATION
1201 K Street, Suite 1030
Sacramento, CA 95814
laura@hjta.org

TABLE OF CONTENTS

INTRODUCTION 9

RETURN BY ANSWER 16

MEMORANDUM OF POINTS AND AUTHORITIES 23

I. THE TAXPAYER PROTECTION AND GOVERNMENT ACCOUNTABILITY ACT 23

A. TPA's State Tax Provision 23

B. TPA's State "Exempt Charge" Provision 24

C. TPA's Local Tax Provision 24

D. TPA's Local "Exempt Charge" Provision 26

II. ARGUMENT 26

A. Pre-Election Invalidation Is an Extreme and Rarely Granted Remedy Reserved for Proposed Initiative Measures that are Clearly and Unmistakably Invalid on their Face. 26

B. TPA Does Not Revise the Constitution. 37

1) Petitioners Misconstrue this Court's Prior Revision Cases. 37

2) TPA's Voter-Approval Requirement for Taxes is Not a Revision. 45

3) TPA'S REQUIREMENT THAT THE LEGISLATURE APPROVE AGENCY PROPOSED FEES AND CHARGES IS NOT A REVISION. 53

C. TPA Does Not "Gravely Interfere" With Essential Government Functions. 58

1) TPA Does Not Replace Legislative Control of Fiscal Affairs. 59

2) TPA's Alleged Impact on State Funding During a "Crisis" is Entirely Speculative and Widely Over-Stated 61

III. CONCLUSION 63

VERIFICATION 64

CERTIFICATE OF COMPLIANCE 65

TABLE OF AUTHORITIES

CASES

Altadena Library Dist. v. Bloodgood
(1987) 192 Cal.App.3d 585 25

Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization
(1978) 22 Cal.3d 208 ..... *passim*

Associated Home Builders etc., Inc. v. City of Livermore
(1976) 18 Cal.3d 582 27

Bighorn-Desert View Water Agency v. Verjil
(2006) 39 Cal.4th 205 61

Brosnahan v. Brown
(1982) 32 Cal.3d 236 ..... 15, 33, 59, 60

Cal. Teachers Ass'n v. Cory
(1984) 155 Cal.App.3d 494 ..... 12, 43

California Cannabis Coalition v. City of Upland
(2017) 3 Cal.5th 924 ..... 25, 28, 52

California Chamber of Commerce v. State Air Resources Bd.
10 Cal.App.5th 604 54

California Redevelopment Assn. v. Matosantos,
(2011), 53 Cal.4th at 255 55

Carlson v. Cory
(1983) 139 Cal. App. 3d 724 ..... 50, 51, 58, 60

Carmel Valley Fire Protection Dist. v. State
(2001) 25 Cal.4th 287 ..... 14, 55

City of Morgan Hill v. Bushey
(2018) 5 Cal.5th 1068, ... 28

Costa v. Super. Ct.
(2006) 37 Cal.4th 986 ..... 26, 34

Daniels v. Tergeson
(1989) 211 Cal.App.3d 1204 34

Delaney v. Lowery
(1944) 25 Cal.2d 651 41

Hi-Voltage Wire Works, Inc. v. City of San Jose
(2000) 24 Cal.4th 537 32

In re Lance W.
(1985) 37 Cal.3d 873 33

Independent Energy Producers Assn. v. McPherson
(2006) 38 Cal.4th 1020 ..... 27, 32

Kennedy Wholesale, Inc. v. State Bd. of Equalization
(1991) 53 Cal.3d 245 32

Legislature v. Deukmejian
(1983) 34 Cal.3d 658 ..... 27, 36

Livermore v. Waite
(1894) 102 Cal. 113 41

McBearty v. City of Brawley
(1997) 59 Cal.App.4th 1441 11

McFadden v. Jordan
(1948) 32 Cal.2d 330 ..... 10, 28, 32

Owens v. County of Los Angeles
(2013) 220 Cal.App.4th 107 11

Pala Band of Mission Indians v. Bd. of Sup.
(1997) 54 Cal.App.4th 565 33

People ex. Rel. Attorney Gen. v. Johnson
(1856) 6 Cal. 499 46

Planning & Conservation League v. Padilla
(2018) S249859 (2018 Cal.LEXIS 6817 31

Professional Engineers in California Government v. Kempton
(2007) 40 Cal.4th 1016 33

Raven v. Deukmejian
(1990) 52 Cal.3d 336 ..... *passim*

Rossi v. Brown
(1995) 9 Cal.4th 688 ..... 11, 13, 28, 51, 60

Santa Clara County Local Transportation Authority v. Guardino
(1995) 11 Cal. 4th 220 ..... 11, 36, 59

Schabarum v. Cal. Legislature
(1998) 60 Cal.App.4th 1205..... 56, 57

Senate v. Jones
(1999) 21 Cal.4th 1142 ..... 31, 33

Steiner v. Superior Court
(1996) 50 Cal.App.4th 1771..... 14, 56

Strauss v. Horton
(2009) 46 Cal.4th 364 ..... 33, 37, 44

Taylor v. Palmer
(1886) 31 Cal. 240..... 41

The Gillette Co. v. Franchise Tax Bd.
(2015) 62 Cal.4th 468 41

Tomra Pacific, Inc. v. Chiang
(2011) 199 Cal.App.4th 463..... 63

West Coast Advertising Co. v. City and County of San Francisco
(1939) 14 Cal.2d 516..... 42

Wilde v. City of Dunsmuir
(2020) 9 Cal.5th 1105, ... 60

Zaremberg v. Super. Ct.
(2004) 115 Cal.App.4th 111..... 26

CODES

Business & Professions Code,
section 1724..... 53
section 5134..... 53
section 6140..... 53
section 7137..... 53
section 10213.5 53
section 11232..... 53

section 19170 53
section 19288 53
section 19612 53
section 22973.3 53
section 23320 53

Code of Civil Procedure
section 867 36

Education Code,
section 76300 54

Elections Code
section 1000 35
section 1400 36

Food & Agricultural Code,
sections 21281.5 - 35231 54

Government Code
section 53727(c) 36
section 70600 54
section 66016(b) 15
section 66016 57
section 8645 62

Health & Safety Code
section 18502 54
section 103625 54

Insurance Code,
section 1750 54

Vehicle Code
section 9101 54

CONSTITUTIONAL PROVISIONS

California Constitution
Article II, section 1 40
Article II, section 8 ..... 28, 31
Article II, section 10 ..... 48, 49
Article III, section 3 55

Article IV, section 1 ..... 38, 40
Article IV, section 8 36
Article XI section 13 46
Article XIII 50
Article XIII, section 12 47
Article XIII, section 19 50
Article XIII, section 26 50
Article XIII, section 28 50
Article XIII, section 29 48
Article XIII, section 32 36
Article XIII, section 34 50
Article XIII A 23, 50
Article XIII A, section 3 ..... 23, 24, 36, 43, 48, 49, 50, 53, 59
Article XIII A, section 4 ..... 14, 24, 25
Article XIII B, section 5 62
Article XIII C 23, 24, 25, 26, 60
Article XIII C section 1 ..... 25, 61
Article XIII C, section 2 ..... 14, 25, 36, 53
Article XIII D 23, 60
Article XVI, ... 49
Article XVI, section 1 ..... 14, 48, 49
Article XVI, section 2 ..... 14, 48
Article XVI, section 3.5 48
Article XVI, section 17 48
Article XVI, section 21 62
Article XVI, section 22 62
Article XX, section 1 48
Article XXXIV, section 1 48
Article XVIII, section 3 31
Article XVIII, section 4 ..... 35, 49

California Constitution of 1849,
Article IV, section 37 46
Article VIII 47

California Constitution of 1879,
Article XI, section 12 47
Article XIII, section 1 47
Article XVI, section 1 47
Article XX, section 1 48

Article XIII, section 19 50

Other Constitutional Provisions

Arizona
Article IX, section 22 57
Arkansas
Article V, section 38 49
Colorado
Article X, section 20 49
Delaware
Article XVI, section 11 57
Florida
Article II, section 7 49
Article VII, section 19 57
Michigan
Article IX, sections 6; 25 49
Missouri
Article X, section 10 49
Nevada
Article IV, section 18 57
Oklahoma
Article V, section 33 49

OTHER AUTHORITIES

Fankhauser, *A Financial History of California*
(1913) page 120 46

Jennifer Kindred Mitchell, "*Why Not More States?: States' Importance to Democracy and Statehood's Relevance to Twenty-First Century America*," (2022) 48 J. Legis. 236 32

Professor Gerald Uelman "*Handling Hot Potatoes: Judicial Review of California Initiatives after Senate v. Jone*s,"
(2001) 41 Santa Clara L. Rev. 999 31

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA, pursuant to the Order of this Court issued on November 29, 2023, Real Party in Interest submits his return to the Emergency Petition for Writ of Mandate as follows:

INTRODUCTION

Petitioners seek to remove a duly-qualified initiative measure – The Taxpayer Protection and Accountability Act ("TPA") – from the November 5, 2024 General Election ballot. Similar attempts were made to remove 1978's landmark tax reform initiative, Proposition 13, from the ballot, but this Court denied the pre-election lawsuits. (See, Los Angeles Times, March 2, 1978 ["Jarvis Stays on the Ballot – Court Bars Challenges to Prop. 13" [both summary denials were signed by Chief Justice Rose Bird].) After the voters approved Proposition 13, this Court rejected a claim that it was an impermissible revision of the Constitution in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 229 ("*Amador Valley*"). The constitutional provisions enacted by Proposition 13 were, at that time, groundbreaking. By comparison, TPA merely proposes incremental change to ***existing*** provisions of the California Constitution, which were all previously approved by the voters. This Petition should be 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. 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, where 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. Not surprisingly, a unanimous Court determined that it was "overwhelmingly certain" that the proposed measure was a constitutional revision (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 349). In every other instance, this Court has instead considered constitutional challenges based on a claimed revision *post-election*, and can easily do so here in the event TPA passes.

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. 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 not based on evidence and are wildly overblown.[1] Furthermore, such a provision is not new. Propositions 26 and 218 amended the Constitution and included the same requirement for the same reason that it is included in TPA, namely, to discourage a rush to impose new taxes without the requisite

[1] The Petition makes 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 only 26 local tax measures that did not fully comply 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.

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] More fundamentally, local governments do not have a vested right to impose and collect taxes in perpetuity. (*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.)

Finally, on the alleged merits, both of Petitioners' claims are unfounded. Their claim that the challenged initiative unlawfully ***revises*** the Constitution does not "necessarily or inevitably appear from the face of the challenged provision," as this Court has required. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 510.) Rather, their challenge is predicated entirely on their own speculation of the fiscal effects TPA will have on state and local government, primarily from TPA's voter approval requirement. But Petitioners' presumption that voters will never approve tax increases, upon which they rest their speculative parade of horribles, is defied by recent history.[3] More importantly, this

---

[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.

[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].) At the local level, over a similar period of time, most tax measures have been approved by voters (See, https://www.californiacityfinance.com/Votes2211final.pdf).

Court has long-held that such "uncertainty" prohibits the Court from holding that a constitutional revision has or will occur. (*Legislature v. Eu* (1991) 54 Cal. 3d 492, 509-511 [asserted momentous consequences are largely speculative and dependent on unproven premises]; *Raven v. Deukmejian* (1990) 52 Cal. 3d 336, 349 [dire economic consequences predicted by petitioners are not inevitable or necessarily compelled by face of initiative].)

Moreover, their revision claims parallel those that were previously rejected by this Court in *Amador Valley*, which upheld strikingly similar—but even farther-reaching—provisions in Proposition 13. Proposition 13 reduced the existing rate of taxation of property significantly, limited future increases in the assessed value of such property, prohibited the Legislature from proposing other types of taxes on real property, required a super-majority of the Legislature to enact new state taxes, and required a super-majority of local voters to approve new special taxes. (*Amador Valley, supra,* 22 Cal.3d 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.) Unlike Proposition 13, TPA does not repeal or reduce any tax. Nor does it reduce the rate of any tax. And, it does not prohibit the Legislature or local legislative body from proposing any

new or higher tax.[4] It simply requires voter approval for new or higher taxes, a provision that this Court upheld in *Amador Valley*. (*Id.*)

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."

There are also ample other reasons 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

---

[4] Statewide initiative measures repealing taxes, reducing tax rates, and even requiring future voter approval to increase taxes have appeared on the ballot and were either approved or rejected by voters. Many of these examples were noted in this Court's decision in *Rossi v. Brown* (1995) 9 Cal. 4th 688, 702 fn. 8. Proposition 17, in 1958 is one such example. Proposition 17 would have reduced the sales and use tax by one percent and both lowered and raised the income tax rate, depending on income. It also provided that the Legislature could lower such rates but also provided that "the Legislature shall not have authority to increase them above the rates set by [the initiative]. The power to amend or repeal [the initiative] is reserved to the people by the vote of the electors." Proposition 17 was not approved by the voters.
(https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1604&context=ca_ballot_props)

our Constitution. Even TPA's voter approval 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].)

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 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. Even now, it is common for many standard agency "fees" to be established or limited by statutes enacted by the Legislature. 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."

Finally, Petitioners' allegation that TPA 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. In short, Petitioners' claim is based on conjecture and, like their revision claim, does not "necessarily or inevitably appear from the face of the challenged provision," as this Court has long-required. (*Brosnahan, supra,* 32 Cal.3d at 258-59 [rejecting argument that Proposition 8 would improperly cause impairment of essential government functions].)

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.[5]

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 and confirm its duty to "jealously guard" the exercise, by not only Real Party, but the more than one million voters who signed the TPA petition, of their reserved constitutional power to propose the amendments included within TPA. Because Petitioners cannot meet the very high burden justifying pre-election invalidation of the duly qualified constitutional amendment, Real Party respectfully requests that the Court deny the Petition.

RETURN BY ANSWER

Real Party in Interest hereby answers Petitioners' allegations as follows:

For the foregoing reasons, Real Party in Interest denies every allegation in the Introduction to the Petition, and;

1. In answer to Paragraph 1 of the Petition, Real Party In Interest denies that preelection review is necessary or appropriate.

2. In answer to Paragraph 2 of the Petition, Real Party In Interest denies each allegation.

[5] 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.).)

3. In answer to Paragraph 3 of the Petition, Real Party In Interest denies that preelection review is "uniquely urgent" here.

4. In answer to Paragraph 4 of the Petition, Real Party In Interest has no knowledge of the allegations nor information and belief as to the allegations set forth therein, and on that basis, denies all of the allegations.

5. In answer to Paragraph 5 of the Petition, Real Party In Interest denies that preelection review will provide this Court more time to consider the constitutionality of the Measure than post-election review.

6. In answer to Paragraph 6 of the Petition, Real Party In Interest admits venue in this Court is proper.

7. In answer to Paragraph 7 of the Petition, Real Party In Interest admits the citations of law are accurate but deny that the petition presents an issue of great public importance.

8. In answer to Paragraph 8 of the Petition, Real Party In Interest denies all allegations set forth therein.

9. In answer to Paragraph 9 of the Petition, Real Party In Interest admits that the LEGISLATURE has legislative authority, but denies that such authority is not presently limited to enact taxes, appropriate public funds, and enact other laws.

10. In answer to Paragraph 10 of the Petition, Real Party In Interest admits GOVERNOR GAVIN NEWSOM is the Governor for the State of California and that he is vested with executive power. Real Party In Interest denies each and every remaining allegation contained in Paragraph 10 of the Petition.

11. In answer to Paragraph 11 of the Petition, Real Party In Interest has no knowledge of the allegations contained in paragraph 11 nor

information and belief as to the allegations set forth therein, and on that basis, denies all allegations set forth therein.

12. In answer to Paragraph 12 of the Petition, Real Party In Interest admits the allegations contained in Paragraph 12 of the Petition.

13. In answer to Paragraph 13 of the Petition, Real Party In Interest admits he is the proponent of the Measure.

14. In answer to Paragraph 14 of the Petition, Real Party In Interest denies each and every allegation contained therein.

15. In answer to Paragraph 15 of the Petition, Real Party In Interest denies each and every allegation contained therein.

16. In answer to Paragraph 16 of the Petition, Real Party In Interest denies each and every allegation contained therein.

17. In answer to Paragraph 17 of the Petition, Real Party In Interest denies each and every allegation contained therein.

18. In answer to Paragraph 18 of the Petition, Real Party In Interest admits the citations to the Measure are accurate but denies the characterization of such by each and every allegation contained therein.

19. In answer to Paragraph 19 of the Petition, Real Party In Interest admits the citations to the Measure are accurate but denies the characterization of such by each and every allegation contained therein.

20. In answer to Paragraph 20 of the Petition, Real Party In Interest denies each and every allegation contained therein.

21. In answer to Paragraph 21 of the Petition, Real Party In Interest denies each and every allegation contained therein.

22. In answer to Paragraph 22 of the Petition, Real Party In Interest denies each and every allegation contained therein.

23. In answer to Paragraph 23 of the Petition, Real Party In Interest

admits the citations to the Measure are accurate but denies the characterization of such by each and every allegation contained therein.

24. In answer to Paragraph 24 of the Petition, Real Party In Interest denies each and every allegation contained therein.

25. In answer to Paragraph 25 of the Petition, Real Party In Interest admits the citations of law but denies the characterization of each and therefore denies the allegations contained therein.

26. In answer to Paragraph 26 of the Petition, Real Party In Interest denies each and every allegation contained therein.

27. In answer to Paragraph 27 of the Petition, Real Party In Interest denies each and every allegation contained therein.

28. In answer to Paragraph 28 of the Petition, Real Party In Interest denies each and every allegation contained therein.

29. In answer to Paragraph 29 of the Petition, Real Party In Interest denies each and every allegation contained therein.

30. In answer to Paragraph 30 of the Petition, Real Party In Interest denies each and every allegation contained therein.

31. In answer to Paragraph 31 of the Petition, Real Party In Interest admits the citation to law but denies each and every allegation contained therein.

32. In answer to Paragraph 32 of the Petition, Real Party In Interest denies each and every allegation contained therein.

33. In answer to Paragraph 33 of the Petition, Real Party In Interest denies each and every allegation contained therein.

34. In answer to Paragraph 34 of the Petition, Real Party In Interest denies each and every allegation contained therein.

35. In answer to Paragraph 35 of the Petition, Real Party In Interest

denies each and every allegation contained therein.

36. In answer to Paragraph 36 of the Petition, Real Party In Interest admits the citation of law but denies each and every allegation contained therein.

37. In answer to Paragraph 37 of the Petition, Real Party In Interest denies each and every allegation contained therein.

38. In answer to Paragraph 38 of the Petition, Real Party In Interest denies each and every allegation contained therein.

39. In answer to Paragraph 39 of the Petition, Real Party In Interest denies each and every allegation contained therein.

40. In answer to Paragraph 40 of the Petition, Real Party In Interest denies each and every allegation contained therein.

41. In answer to Paragraph 41 of the Petition, Real Party In Interest denies each and every allegation contained therein.

42. In answer to Paragraph 42 of the Petition, Real Party In Interest denies each and every allegation contained therein.

43. In answer to Paragraph 43 of the Petition, Real Party In Interest denies each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

1. As a first affirmative defense, Real Party In Interest asserts that the Petition on file herein fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a second affirmative defense, Real Party In Interest asserts that Petitioners' claims are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

3. As a third affirmative defense, Real Party In Interest asserts that

at all relevant times Respondents and Real Party's conduct complied with all applicable laws, statutes, codes, rules and regulations in effect at the time of the conduct which purportedly gave rise to the causes of action asserted in the Petition.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth affirmative defense, Real Party In Interest asserts that Petitioners' Petition, constitutes a SLAPP suit under Code of Civil Procedure § 425.16 intended to harass Real Party in his exercise of his First Amendment rights of speech and petition in connection with public issues.

FIFTH AFFIRMATIVE DEFENSE

5. As a sixth affirmative defense, Real Party In Interest asserts that Petitioners' claims are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

6. As a seventh affirmative defense, Real Party In Interest asserts that Petitioners' claims are barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

7. As an eighth affirmative defense, Real Party In Interest asserts that Petitioners' claims are barred by the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Real Party In Interest prays for relief as follows:

1. That the Petition be dismissed, with prejudice and in its entirety;

2. That Petitioners take nothing by this action and that judgment be entered against Petitioners and in favor of Real Party In Interest;

3. That Real Party In Interest be awarded their attorneys' fees and costs incurred in defending against the Petition; and

4. That Real Party In Interest be granted such other and further relief as the Court may deem just and proper.

Dated: December 27, 2023 BELL, McANDREWS & HILTACHK

By: _____
THOMAS W. HILTACHK
Attorney for Real Party in Interest

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE TAXPAYER PROTECTION AND GOVERNMENT ACCOUNTABILITY ACT

TPA became eligible for the November 5, 2024 General Election ballot on February 1, 2023 after more than 1 million California voters signed a petition seeking to place it on the ballot. (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.

A. TPA's State Tax Provision

Our Constitution currently imposes a two-thirds vote requirement by the Legislature to approve 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 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 to a different purpose (see, TPA, Sec. 4, amending § 3 of Art. XIIIA).

B. 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 hand. (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.[6] These amendments 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. (See, TPA, Sec. 4, amending § 3 of Art. XIIIA.)

C. 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

[6] The "actual cost" concept is not new. It currently exists in Cal. Const., Art. XIII D sec. 4(b), where an engineer's report is required to support assessment amounts pursuant to voter adopted Proposition 218.

"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.

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 legislative body desires to redirect the use of the tax revenue to a different purpose, TPA requires the legislative body to obtain subsequent voter approval. (See, TPA Sec. 5, amending §§ 1 and 2 of Art. XIIIC.)

D. 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. (See, TPA Sec. 5, amending §§ 1 and 2 of Art. XIIIC.)

II.

ARGUMENT

A. Pre-Election Invalidation Is an Extreme and Rarely Granted Remedy Reserved for Proposed Initiative Measures that are Clearly and Unmistakably Invalid on their Face.

In accord with the authorities cited in the Introduction, *supra,* an unbroken line of opinions from this Court makes clear that removing a qualified voter initiative from the ballot is an extreme action reserved only for measures that are proven to be unquestionably invalid. "[W]hen 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; 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)].)

Even the nature of an alleged defect plays an important role in whether judicial intervention is warranted. On the one hand, a "procedural" challenge based on an alleged failure "to comply with the essential procedural requirements necessary to qualify an initiative measure for the ballot" is often properly determined prior to an election. (See *Costa, supra* 37 Cal.4th at 1006.) On the other hand, a "substantive" challenge, like the one at issue here, is most often more appropriately decided post-election. (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030 ["because this type of challenge is one that can be raised and resolved after an election, deferring judicial resolution until after the election—when there will be more time for full briefing and deliberation—often will be the wiser course"]; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 665 ["[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"].)

The rationale for this cautious approach is rooted not only in respect for judicial economy, but in the extensive breadth of the People's initiative power. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 ["[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 reserved power, courts will preserve it."].) 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; see also *California Cannabis Coalition v. City of Upland, supra,* 3 Cal.5th at 936.) As such, even post-election, a challenged initiative must "be upheld" unless its invalidity "clearly, positively, and unmistakably appears." (*Rossi, supra,* 9 Cal.4th at 711 (citations omitted).)

Indeed, as stated *supra,* 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, supra,* 32 Cal.2d. at 331.) In summing up the sweeping scope of the widely multifarious measure—which pre-dated (and gave rise to) the adoption of the single-subject rule (art. II, § 8(d))—the Court recognized:

> [A]t 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.

(*Id*. at 345.) In the words of this Court in *McFadden*, "it is overwhelmingly certain that the measure now before us would constitute a revision of the Constitution." (32 Cal.2d at 345 [emphasis added].) TPA is nothing like the measure invalidated in *McFadden*.

In addition, Petitioners are unable to meet this Court's high standard for pre-election review because their "revision" claim is based entirely on their own speculation of the negative fiscal effects TPA will have on state and local government, primarily from the voter approval requirement to impose new or higher taxes (See, e.g. Petition ¶ 4 ["policymakers would have to reckon with the possibility that the voters would reject revenues"]; ¶ 17 ["voters are more likely to reject taxes that can be used for unrestricted purposes"]; ¶ 20 ["This would dramatically slow if not impede critical government operations"]; ¶ 23 ["This could transform many charges… into taxes"]; ¶ 25 ["This means that some exactions that are now considered exempt from the referendum would become subject to the referendum"]; ¶ 25 ["This would have sweeping consequences for the state and local governance"]; ¶ 25 ["the time needed to seek voter approval would eviscerate government's ability to respond quickly to emergencies"]; ¶ 39 [""the Measure would make it impossible for state and local government to provide the essential government services upon which our civil society depends"]; ¶ 41 ["other essential government functions will suffer or remain unfulfilled if elections must be held"]; ¶ 42 ["Even absent an emergency, essential government functions will be impaired if certain charges can no longer be imposed without voter approval or are subject to referendum"].)

But, this Court has long-held that such a challenge must "necessarily or inevitably appear from the face of the challenged provision" (*Eu, supra,* 54 Cal.3d at 510 [a revision must "necessarily or inevitably appear from the face of the challenged provision"]) and cannot be based on speculation dependent on unproven premises. (*Eu,*

supra, 54 Cal.3d at 509-511 ["Our prior decisions have made it clear that to find such a revision, it must necessarily or inevitably appear from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in our Constitution" (emphasis in original)]; *Amador, supra,* 22 Cal.3d at 224-226 [nothing on face of Prop. 13 "necessarily and inevitably" would result in an unconstitutional revision]; *Raven, supra,* 52 Cal.3d at 349 [dire economic consequences predicted by petitioners are not inevitable or necessarily compelled by face of initiative].) As this Court stated in *Legislature v. Eu*, even in a post-election context, when a challenge based on a revision claim is supported by speculative, uncertain, and controversial assertions regarding the consequences the initiative will have on government, such uncertainty, necessarily "inhibits" the Court from holding that a revision has occurred. (*Legislature v. Eu, supra,* 54 Cal.3d at 510.) This same inhibition must apply with even greater force when such speculation and uncertainty is the basis of Petitioners' pre-election challenge.

In applying these principles over the past quarter-century, this Court has delineated the boundary that an initiative must cross before pre-election removal is granted: the challenge must identify and prove a *procedural defect* in the measure's qualification; or in the alternative, a *substantive defect* must be so egregious that initiative's proponent either admits the violation or cannot seriously contest removal from the ballot.

Senate v. Jones, where this Court removed an initiative from the ballot on grounds that it violated the constitution's single-subject rule, falls into this latter category. First, the Court concluded that pre-

election review of such a claim was not presumptively improper due to the specific language of the constitutional provision at issue, which explicitly states that "[a]n initiative measure embracing more than one subject *may not be submitted to the electors* or have any effect." (Cal. Const. art. II, § 8(d) [emphasis added]; *Senate v. Jones* (1999) 21 Cal.4th 1142, 1154.) No such language accompanies the revision/amendment provision of the Constitution. (Cal. Const. Art. XVIII, § 3.) Second, the record in *Jones* included an indisputable pattern of conduct demonstrating an intent to engage in impermissible logrolling—in addition to an explicit admission by the measure's proponent that he was purposefully attempting to obtain passage of an unpopular provision (redistricting modifications) by attaching it to a popular one (reducing legislator salaries). (*Jones, supra,* 21 Cal.4th at 1152, fn. 5, 6; see also, Professor Gerald Uelman "*Handling Hot Potatoes: Judicial Review of California Initiatives after Senate v. Jone*s," (2001) 41 Santa Clara L. Rev. 999, 1005 [cataloguing admissions from proponent that voters were uninterested in redistricting changes so he considered several "sweeteners" to attach and ultimately settled on legislator salary reductions as the most popular concept likely to pull redistricting across the finish line.].) *Jones* represented the unique—and unlikely to be repeated—scenario where the Court removed an initiative based on undisputable facts in the record demonstrating a clear intent to advance an initiative with an acknowledged constitutional violation.

More recently, in *Planning & Conservation League v. Padilla* (2018) S249859 (2018 Cal.LEXIS 6817), this Court removed Proposition 9 from the November 2018 ballot. The proponent of Proposition 9 consented to the removal. (*Id.*) This was perhaps no surprise because

Proposition 9 incredibly sought to dismember the State of California into three new, separate states. (Jennifer Kindred Mitchell, "*Why Not More States?: States' Importance to Democracy and Statehood's Relevance to Twenty-First Century America*," (2022) 48 J. Legis. 236, 260-62 [Prop. 9 proposed to establish the new states of "Northern California," Southern California," and a smaller, reconstituted "California" hugging the central coast].) As the foregoing demonstrates, during the past quarter-century this Court has reserved pre-election removal strictly for initiatives that are beyond the pale in terms of their illegitimacy. There is no comparison between TPA and these prior measures.

There is yet another "good reason for a court to be even more cautious" when faced with a claim that a "measure cannot lawfully be enacted through the initiative process." (*McPherson, supra,* 38 Cal.4th at 1030.) Unlike in the context of a post-election challenge, which provides more time for full briefing and deliberation, a pre-election challenge such as this one also withholds from the reviewing court ballot materials and other sources of voter intent that would otherwise be critical in aiding that court in interpreting the measure's provisions. (See, e.g., *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249 [rejecting plaintiff's assertion that it was appropriate to enforce an initiative "according to its 'plain meaning' without considering the section's history or other indications of the voters' intent"]; *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 565 [recognizing the key role ballot materials play in properly analyzing an initiative measure].) Indeed, the only reported instance besides *McFadden* of this Court granting relief on constitutional revision grounds was decided post-election. (*Raven v.*

Deukmejian (1990) 52 Cal.3d 336, 349–56 [invaliding part of Proposition 115 on revision grounds]; but see *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].)

Notably, the Court in *Raven*, having the benefit of every indicator of voter intent—including the ballot pamphlet containing the Attorney General's ballot title and summary, the impartial analysis by Office of the Legislative Analyst, and the ballot arguments for and against—did not strike down Proposition 115 in its entirety. To the contrary, and appropriately, the Court severed the unconstitutional provision from the remainder of the initiative. (*Raven, supra,* 52 Cal.3d at 355-356 ["invalidity [of an article] does not affect the remaining provisions of Proposition 115, which are clearly severable from the invalid portion"]; see also *Pala Band of Mission Indians v. Bd. of Sup.* (1997) 54 Cal.App.4th 565, 585 ["When an initiative provision is invalid, the void provision must be stricken but the remaining provisions should be given effect if the invalid provision is severable"]; but see, e.g., *Jones, supra,* 21 Cal.4th at 1168 ["severance is not an available remedy" for pre-election review].)

Here, Petitioners do not challenge TPA in its entirety, but instead focus their opposition on two provisions that are far from being clearly, positively, and unmistakably invalid on their face. (See discussion, *infra*.) Yet they insist that, because of the timing of their

challenge, TPA must be invalidated in its entirety and removed from the ballot. They also jump straight to pre-election removal without even explaining why the doctrine of substantial compliance would not, post-election, ameliorate all or even some of their main objections. (*Costa, supra* 37 Cal.4th at 1019 ["Over the years, numerous relatively minor departures from the constitutional and statutory requirements applicable to initiative and referendum measures have been found to satisfy the substantial compliance test, so long as the court was able to conclude that the departure in question, as a realistic and practical matter, did not undermine or frustrate the basic purposes served by the statutory requirements in ensuring the integrity of the initiative or referendum process"]; *Daniels v. Tergeson* (1989) 211 Cal.App.3d 1204, 1208 ["Departure from a directory provision does not render the election void if there has been substantial compliance with the law"].)[7]

Finally, there is also no greater urgency shown here than in any of the other countless cases that have more appropriately been decided post-election. Petitioners' lone claim of urgency is based on TPA's lookback provision, potentially requiring "numerous" elections to bring

[7] Significantly, Petitioners here do not, and cannot, assert actual legal claims relating to the handful of local tax measures adopted during or after the circulation of TPA but before its effective date should it be adopted by voters in November. Specifically, although Petitioners point to questions as to whether such tax measures comply with TPA's procedural requirements, such claims are not properly before this Court. In addition to standing and ripeness issues, such claims are unquestionably as-applied challenges that not only require proper parties and the consideration of a developed factual record, but will likely be decided on "substantial compliance grounds," thereby avoiding the "fiscal emergency" alleged by Petitioners. Conceding as much, Petitioners have been careful to preserve that position in more appropriate future litigation. (See Kaminski Decl. at Ex. A and p. 5 ["the inclusion of any local tax or bond measure on these charts cannot and may not be construed as Petitioners' opinion that any measure is in fact void unless reenacted under the Measure's retroactivity clause"].)

non-compliant tax measures into compliance with TPA's requirements. (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"].) Petitioners' use of the term "numerous" is pure speculation.[8] Even as to those tax measures, there is no certainty that the local legislative body will, in fact, seek subsequent voter approval.

But more importantly, there is ample time to litigate Petitioners' claims post-election, both facially and as applied to any of the local tax measures that may be at issue. As a constitutional amendment, if the voters approve TPA, it will take effect on the fifth day following the Secretary of State's certification of the election results, approximately December 15, 2024. (Art. XVIII, § 4.) Thus, this exact lawsuit could be filed in this, or any other court, more than 13 months ***before*** the look-back provision in TPA would even apply. The Court would be free to issue a stay delaying the implementation of the look-back provision, if the Court determined that it was unable to act within that period – a period far longer than proposed in this lawsuit.

With respect to any "as-applied" challenge to any non-compliant local tax (or even a tax of questionable compliance), the normal legal processes would be available to a local government or local taxpayer. First, a city, county, or special district might choose to hold an election on November 4, 2025, which is a regularly "established" election date in this State, to re-authorize a non-compliant tax. (Elec. Code, § 1000(e).) This would easily comply with the 12-month look-back provision in TPA. A local government might also choose to do so in a special

[8] Real Party asserts that only 26 local tax measures are clearly non-compliant with TPA. (Declaration of Yonan, ¶ 9.)

election called at any time before that date.[9] If a local government does not believe that an election is required, it is free to seek confirmation of the validity of the tax by filing a "validation action" under Code of Civil Procedure section 860, et. seq. Such a legal action is also entitled to calendar preference. (Code of Civ. Proc. § 867.) And of course, a local government is free to decide that its prior tax is compliant with TPA, and do nothing. In that instance, a taxpayer could also file a timely "reverse validation" action challenging that determination, citing TPA. In such an action, the tax is still imposed and results in a refund if the taxpayer prevails on the constitutional challenge. (See, Art. XIII, § 32.)

Because there is an existing legal process, it is not surprising that Petitioners ignore that other initiatives similar to TPA contained analogous lookback provisions. (See, e.g., Prop. 26 (2010), Cal. Const., Art. XIII A, § 3(c); Prop. 218 (1996), Cal. Const. Art. XIII C, § 2(c); Prop. 62 (1986), Gov. Code, § 53727(c).) Moreover, this Court has long held that local governments have no vested right in any taxing authority, or the revenue derived therefrom, and thus the potential loss of such revenue cannot be the basis of a "emergency" here. (*Santa Clara County Local Transportation Authority v. Guardino*, *supra,* 11 Cal.4th at 248-49.) There simply is no "emergency" here. If TPA fails to pass in November 2024, the matter is entirely moot and need not be considered at all. (See, e.g., *Legislature v. Deukmejian*, *supra,* 34 Cal.3d at 665.) and if it passes, there is ample time for Petitioners to litigate

[9] 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.)

their claims. Petitioners have wholly failed to meet this Court's high standard for preelection invalidation.

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 this Court's opinion in *Strauss, supra,* 46 Cal.4th at 414 and this Court's controlling opinion in *Amador Valley*.

1) Petitioners Misconstrue this Court's Prior Revision Cases.

In *Strauss v. Horton, supra,* 46 Cal.4th at 413-40, this Court undertook a detailed and comprehensive review of California jurisprudence on the question of what constitutes an unlawful revision. While Petitioners cite *Strauss*, they disregard its key points. To begin, this Court stated:

> Article II, section 1 of the California Constitution states in full: "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 provision originated in one of the initial sections of the Declaration of Rights contained in California's first Constitution (Cal. Const. of 1849, art. I, § 2), and reflects a basic precept of our governmental system: that the people have the constitutional right to alter or reform their government. This fundamental principle underlies the provisions concerning the amendment and revision of our state Constitution.

(*Strauss, supra,* 46 Cal.4th at 412-13.) After a thorough analysis of all the prior Supreme Court revision cases, this Court summarized its conclusion that there is "only" one type of qualitative change proposed by initiative that would be considered an impermissible revision:

> As is revealed by the foregoing history of the amendment/revision distinction, and as our past cases demonstrate in applying that distinction, a change in the California Constitution properly is viewed as a constitutional revision only if it embodies a change of such *far-reaching scope* that is fairly comparable to the example set forth in the *Amador* decision, namely, a change that "vest[s] all judicial power in the Legislature." (*Amador, supra*, 22 Cal.3d at p. 223.) It is only a qualitative change *of that kind of far-reaching scope* that the framers of the 1849 and 1879 Constitutions plausibly intended to be proposed *only* by *a new constitutional convention,* and *not* through the ordinary amendment process.

(*Id.* at 445, emphasis in original.) TPA vests no legislative power in any other branch of government. Indeed, with respect to legislative power, that power is shared by the Legislature and the people. (Cal. Const. Art. IV, § 1.) As indicated more fully *infra,* TPA's voter approval provision for taxes is based on a virtually identical provision found in both the 1849 and 1879 Constitutions for revenue obtained by the issuance of bond debt, and voter approval of taxes specifically, first approved by Proposition 13 and then again, with Proposition 218.

Petitioners rely on this Court's decision in *Raven, supra.* *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." (52 Cal.3d at 350.)

As discussed *supra*, *Raven* was decided post-election, with the invalid portion severed from the remaining valid provisions; the case therefore does little to support Petitioners' position that TPA should be invalidated *in its entirety* on a *pre-election* basis, before the voters have

had the opportunity to weigh in on the measure. Further, the impacts of the provision of Proposition 115 challenged in *Raven* on the California Constitution and our state's system of government is fundamentally distinguishable from the amendments proposed by TPA in at least two ways.

First, the impact of Proposition 115 was "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.) Indeed, the measure proposed a fundamental, structural revision to our state constitution 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. (*Id*.) The Court in *Raven* was therefore clear that its decision to invalidate the challenged provision of Proposition 115 was in large part based on the measure's intended impact on the continued existence of important, independent California constitutional rights for criminal defendants, which were separate and apart from those granted by the federal Constitution. (See *Raven, supra,* 52 Cal.3d at 354 [collecting "numerous decisions interpreting the state Constitution as extending protection to our citizens beyond the limits imposed by the high court under the federal Constitution"].) In other words, Proposition 115 constituted a revision because it wiped-out entire, foundational aspects of the state Constitution. TPA contains no such provision and has no such effect. TPA merely amends existing provisions of the Constitution which have long-served to limit taxes and fees by state and local governments.

Second, *Raven* involved an attempt to completely *eliminate* the entire role of the state's *judicial branch* in criminal cases by "vest[ing] all judicial *interpretive* power, as to fundamental criminal defense rights, in the United States Supreme Court." (*Id.* at 352.) "'The judiciary, from the very nature of its powers and means given it by the Constitution, must possess the right to construe the Constitution in the last resort....'" (*Id.* at 354 [internal citations omitted].) Indeed, the power to interpret and apply the state Constitution belongs *solely* to the state judiciary. The People have no shared power in this arena, and the use of the initiative power to fundamentally alter the scope of the judiciary's power would have changed entirely the very nature of California's judicial branch. In sum, the change proposed by Proposition 115 was comparable to the only type of constitutional change that this Court in *Amador* and *Strauss* identified as being a qualitative revision of the Constitution rather than an amendment.

Legislative power, on the other hand, is shared between the People, including via their reserved powers of initiative and referendum, and the State Legislature. (See Cal. Const. art. IV, Sec. 1 ["The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum"].) Under the California Constitution, "[a]ll political power is inherent in the people." (Cal. Const., art. II, § 1.) It is beyond dispute that the power to levy or repeal taxes and fees is a shared one, and the people's initiative power has long served as a check on legislative power in this arena. While describing the Legislature's taxing power as "supreme," even Petitioners are forced to acknowledge in a footnote that its taxing

power "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; see also *Taylor v. Palmer* (1886) 31 Cal. 240, 252 [acknowledging that the Constitution may be "a limitation" on the Legislature's taxing authority].) This key point, obscured in Petitioners' memorandum, is more fully explained in *Delaney v. Lowery* (1944) 25 Cal.2d 561, 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 568.) 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, 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*). TPA is nothing like the initiative measure in *Raven.*

More directly on point is this Court's decision in *Amador Valley,* which held that an initiative measure much like TPA was clearly an *amendment* 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 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.

Petitioners' attempt to distinguish *Amador Valley* are unfounded.[10] 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. Proposition 13 amended the Constitution by enacting an "interlocking package" of tax reforms. (*Amador Valley, supra,* 22 Cal.3d at 231.) It 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, which could not be changed without voter approval; 2) a rollback and restriction on assessed real property values (retroactive to 1975 levels resulting in a substantial reduction of property tax

[10] 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 state 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.

revenue); 3) a supermajority requirement for the Legislature to adopt all other types of state taxes; and 4) a supermajority voter approval requirement for local special taxes. (*Id.* at 220.) Proposition 13 also prohibited the Legislature from enacting other types of taxes on real property. (Cal. Const. Art. XIIIA, § 3.)

Petitioners here concede that Proposition 13 "is often recognized as one of the most consequential measures in the State's history" (Petition at p. 45). Yet, 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"].)

Particularly relevant here — because Petitioners make much ado about TPA's new and/or enhanced voter approval requirements for taxes — is the Court's discussion of the claim in *Amador Valley* that Proposition 13's 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*, *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, 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"].)

By comparison, Proposition 13 was significantly more far-reaching and disruptive to the operation of government than TPA will

ever be.[11] In terms of actual fiscal impact alone, at the time Proposition 13 was presented to the voters, it was estimated that its rollback of property tax rates would immediately reduce local government revenue by seven billion dollars. (See ballot pamphlet materials for Proposition 13 https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1849&context=ca_ballot_props.) Seven billion dollars in 1978 equates to about 33 billion dollars today. TPA's lookback provision will undoubtedly require some taxes to obtain subsequent voter approval. But it is possible that all such taxes will be reapproved by voters and TPA will have no immediate fiscal impact. Even if Petitioners' worse-case scenario resulted in the unlikely voter rejection of all prior local tax measures alleged to be non-compliant with TPA (a figure Real Party alleges is wildly overblown), the total fiscal impact would be only between 1.3 and 1.9 billion dollars. (Declaration of Kaminski at ¶ 12.)

TPA is clearly an amendment and ***not*** a revision under the prior decisions of this Court, principally *Amador Valley*. But even in the absence of that controlling precedent, the specific elements of TPA challenged by Petitioners do not revise the Constitution.

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

TPA's provisions are all drawn "within the lines" of both the original Constitution and the current Constitution. Indeed, our Constitution has included provisions limiting the Legislature's taxing

[11] Real party asserts that other constitutional amendments that have been approved by the voters are far more disruptive to the Legislature's authority over fiscal matters. Even Petitioners concede as much, citing Proposition 98 (See Petition at pg. 67 ["the most significant" limitation on the Legislature's spending power]). Proposition 98 requires nearly half the state budget to be spent on public education. The Legislature has never asserted that Proposition 98 was an impermissible revision.

authority and even requiring voter approval of certain legislative acts since its inception in 1849. With respect to taxation, California's first Constitution imposed both a prohibition and 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….

In fact, the inclusion of this provision limiting the Legislature's taxing authority was necessary to obtain the support of delegates needed to gain approval of the very first Constitution. (Fankhauser, A Financial History of California (1913) pages 120-121 ["As the discussion on the report proceeded, it became more and more evident that the southern delegates and the native population would not support the Constitution unless there was inserted a clause guaranteeing to them protection from injudicious and unrestricted tax legislation."]; see also, *People ex. Rel. Attorney Gen. v. Johnson* (1856) 6 Cal. 499, 502-03.) 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…"].)

The 1879 Constitution added additional prohibitions and 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.)[12]

Petitioners' primary objection to TPA is the voter-approval requirement for the enactment of new or higher state taxes. But even voter approval of certain legislative matters was part of the very first Constitution. 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.)

[12] The 1879 Constitution actually authorized the Legislature to impose and collect an income tax (Cal. Const. of 1879, Art. XIII, § 11).

This voter approval provision exists in substantially the same form today. (Cal. Const., Art. XVI, § 1.)[13] Indeed, the 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

[13] 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 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 [a law acquiring or developing low income housing].)

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 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.)[14]

With respect to taxation, even today, the Legislature is constitutionally prohibited from enacting or increasing many different types of taxes without voter approval. Voter approval for taxes is required when a tax prohibition or limitation is enacted as a Constitutional amendment, whether proposed by the Legislature or by initiative (Cal. Const. Art. XVIII, § 4), or if such has been enacted by a statutory initiative measure. (Cal. Const. Art. II, § 10(c).) For example,

[14] 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].)

the Legislature is presently prohibited from imposing or increasing the following types of taxes without voter approval:

· A change to the property tax, including rates, standard of valuation, and classifying real property for differential taxation or exemption (Cal. Const. Art. XIII and XIIIA);

· A "new" ad valorem tax on real property (Cal. Const. Art. XIIIA, § 3);

· A sales or transaction tax on the sale of real property (Cal. Const. Art. XIIIA, § 3);

· A change in the tax rate or the "basis" for the tax on insurance companies, or if a state or local tax other than the gross premiums tax is to apply to insurance companies (Cal. Const. Art. XIII, § 28);

· A change in the method of assessing property taxes on multi-county pipelines, flumes, canals, ditches and aqueducts (Cal. Const.. Art. XIII, § 19);

· A change in property tax imposed on a regulated railway company, telegraph or telephone company, or gas or electric company (Cal. Const. Art. XIII, § 19);

· A tax other than a property tax (e.g. a utility tax) that is not a general tax imposed on all businesses, imposed on regulated railway company, telegraph or telephone company, or gas or electric company (Cal. Const. Art. XIII, § 19);

· An income tax on interest earned on government bonds (Cal. Const. Art. XIII, § 26);

· An income tax on the income of nonprofit organizations, including certain educational institutions (Cal. Const. Art. XIII, § 26);

· A sales or use tax on the sale, storage, or consumption of food products for human consumption (Cal. Const. Art. XIII, § 34);

· A tax on gifts or inheritances (1982 - Propositions 5 and 6; *Carlson v. Cory* (1983) 139 Cal. App. 3d 724); and

· A change to the manner in which the income of any multistate business is apportioned (2012 – Proposition 39).

The Legislature has never alleged that any of these prior prohibitions or limitations on their power to impose or raise such taxes "revise" the Constitution. TPA merely proposes a uniform rule applicable to state taxes rather than achieving the same objective by specific reference to the type and amount of tax that requires subsequent voter approval.

In sum, Petitioners do not explain, nor can they explain, how TPA's voter approval requirement is more damaging to their legislative power than any of the prior constitutional amendments and initiative statutes repealing a tax or fixing the rate and manner of assessing a tax. That is because "when the statewide initiative power was added to the Constitution in 1911 as part of newly adopted article IV, section 1, taxation was not only a permitted subject for the initiative, but was an intended object of that power." (*Rossi, supra,* 9 Cal.4th at 699.) In fact, this Court has expressly recognized the many times the statewide initiative power has been invoked to address tax-related matters (some successfully and some unsuccessfully) including some of the matters described *supra.* (*Id.* at 702, fn. 8.)

The people's power to require voter approval for new and higher state taxes has been part of our Constitution since the people provided themselves with the power to amend their Constitution and to propose statutes by initiative. As the appellate court in *Carlson v. Cory, supra,* 139 Cal.App.3d at 728, which upheld a statutory initiative repealing the gift and inheritance tax, stated: "[t]his reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature."

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 requirement of local taxes that existed for over 20 years until this Court's opinion in *California Cannabis Coalition, supra,* 3 Cal.5th 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 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, there are numerous examples of taxes that have been enacted by constitutional amendment or statutory initiative where the revenue derived is dedicated to a specific use, all without revising the Constitution. (See, e.g., 2016 – Prop 55, high earner income tax to fund education and healthcare; 2004 – Prop 63 high earner income tax to fund mental health services; 1998 - Prop 10, tobacco tax for early childhood development; 1993 – Prop 172, statewide sales and use tax for public safety.) In fact, the Legislature has placed Proposition 1 on the March 5, 2024 statewide election ballot to obtain voter approval to

change the use tax revenue derived from Proposition 63. Simply put, requiring honesty and transparency in government on the limited subject of taxation cannot be considered a *revision* of our Constitution.

3) 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. 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. (*Id.* [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.

(*Id.*) 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.

(*Id*. 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. (*Id*. 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.[15]

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 service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority

[15] 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…"].)

> 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 a "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.

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

Petitioners cite no authority of this Court ever holding that a constitutional requirement was invalid because it interfered with essential government functions. (See, *Carlson v. Cory, supra,* 139 Cal.App.3d at 729-30 ["Petitioners, however, cite no case, and we are aware of none, where this rule has been applied to statewide measures"].) Putting 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 <u>all</u> local governments have operated under a voter approval requirement for <u>all</u> 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. Petitioners' mere

speculation about the *potential* for government impairment cannot form the basis of a pre-election facial challenge to TPA. (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal. 4th 220, 254 upholding Proposition 62 requiring voter approval for local taxes ["serious impairment or wholesale destruction must also be inevitable"]; *Brosnahan, 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].)

Most importantly, TPA does nothing to 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.

1) 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. (See, e.g., *Rossi v. Brown, supra,* 9 Cal.4th at 688 [upholding repeal of local tax]; *Carlson v. Cory, supra,* 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.) 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*, *supra,* 32 Cal.3d at 248.) This Court has recognized this as a matter of voter choice. (*Wilde, 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 avoided, reduced or eliminated altogether by the enactment of TPA. (TPA § 5, amending section 1 of article XIII C.)

2) 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 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.) 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 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. Notably, at the height of the Great Depression, the Legislature chose to ask the voters to approve a constitutional amendment (Proposition 1) limiting state appropriations, imposing taxes on banks and insurance companies, and authorizing the Legislature to impose any form of taxation not prohibited by the Constitution. The Legislature called a special statewide election for Tuesday, June 27, 1933 (https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1313&context=ca_ballot_props). The voters approved the constitutional amendment. During perhaps the worst economic crisis in the state's history, the Legislature sought voter approval of taxes.

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].) 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.[16]

III.
CONCLUSION

For all the reasons previously argued in briefs filed in this Court and the reasons expressed herein, Real Party has shown good cause why the requested emergency petition for writ of mandate should be denied.

Dated: December 27, 2023 Respectfully submitted,

BELL, McANDREWS & HILTACHK

By: _____
Thomas W. Hiltachk
Attorney for Real Party in Interest

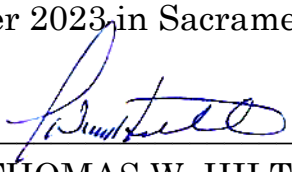
[16] The State has held several statewide special elections. Recently, statewide special elections were held in 1973, 1979, 1993, 2003, 2005, 2009, and 2021. In addition, California holds two regularly scheduled statewide elections every even-numbered year.

VERIFICATION

I, THOMAS W. HILTACHK have read this Real Party In Interest's Return To Order To Show Cause and have personal knowledge of the contents stated therein and believe them to be true.

I declare under penalty of perjury and under the laws of the state of California that the foregoing is true and correct.

Executed on this 27th day of December 2023 in Sacramento, California.



THOMAS W. HILTACHK

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 Times New Roman type including footnotes and contains approximately 13,920 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: December 27, 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 electronic business address is kmerina@bmhlaw.com.

On December 27, 2023, I served the following:

REAL PARTY IN INTEREST'S RETURN TO ORDER TO SHOW CAUSE

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 via Truefiling:

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

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

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 December 27, 2023 at Sacramento, California.

K Merina

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.

DECLARATION OF SARAH E. YONAN IN SUPPORT OF REAL PARTY IN INTEREST'S RETURN TO ORDER TO SHOW CAUSE

Thomas W. Hiltachk*
Paul Gough
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
tomh@bmhlaw.com

Jonathan Coupal
Timothy Bittle
Laura Dougherty
HOWARD JARVIS TAXPAYERS ASSOCIATION
1201 K Street, Suite 1030
Sacramento, CA 95814
laura@hjta.org

Attorneys for Real Party in Interest

DECLARATION OF SARAH E. YONAN

I, Sarah E. Yonan, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of California and am employed by the law firm Bell, McAndrews & Hiltachk, LLP. I am one of the attorneys for Real Party in Interest in the above-entitled action. I submit this declaration in support of Real Party in Interest's return to the order to show cause. I make this declaration of my personal knowledge of the facts stated herein and could and would competently testify to them if called to do so.

2. This declaration rebuts "conclusions" made in the Declaration of Petitioners' Counsel, Inez Kaminski, in Support of the Emergency Petition for Writ of Mandate regarding the potential impact that the Taxpayer Protection and Government Accountability Act ("TPA") may have specific local tax measures that have been enacted since January 1, 2022, through today.

3. Notably, the declaration is based on speculation and improper legal conclusions that Counsel admits "might be applied," "may apply," or "could void" certain recently enacted local tax measures and, more importantly, conceding that "it was not possible to reach a conclusive determination" as to those measures. (Declaration of Kaminski at ¶ 8, ¶ 9, ¶ 10).

4. Counsel for Petitioners claim that approximately 131 local tax measures "could be" invalidated by TPA (Declaration of Kaminski at ¶ 9). I have reviewed the Declaration carefully, as well as the Exhibits included therein. Based on my analysis, only 26 local tax measures are clearly non-compliant with TPA.

5. I agree with Counsel for Petitioners that there are six (6) local tax measures that are in fact "special taxes" that were not approved by a two-thirds vote, as required by Proposition 218 and TPA. Those local tax measures are shown in Table 1 below.

Table 1: Special Taxes Allegedly Approved by Majority Vote Only

Measure Y – Oakland, Alameda County
Measure L – Crocket CSD, Contra Costa County
Measure GS – Santa Monica, Los Angeles County
Measure ULA – Los Angeles, Los Angeles County
Measure O – County of Mendocino
Proposition M – San Francisco, San Francisco County

6. I also agree with Counsel for Petitioner that two (2) local tax measures were "general taxes" but were also accompanied with an "advisory measure" that clearly violate TPA. Those two measures are shown in Table 2 below.

Table 2: General Taxes Approved with Companian Advisory Measure Directing Use of Revenue

Measure P – Susanville, Lassen County
Measure R – Montclair, San Bernardino County

7. TPA requires certain ballot transparency requirements, as indicated in the Declaration of Kaminski in paragraph 6. In reviewing the ballot questions for each of the local tax measures, I have identified three (3) local tax measures that clearly violate two of TPA's ballot transparency requirements. Those three measures are shown in Table 3 below.

Table 3: Multiple Ballot Transparency Requirements Absent

Measure	Absent
Measure T – Oakland, Alameda County	Duration and Revenue Use
Measure U – Garberville, Humboldt County	Amount of Tax and Duration
Measure N – Needles, San Bernardino County	Amount of Tax and Duration

8. I have also identified 15 additional local tax measures that clearly violate one of TPA's ballot transparency requirements. Those 15 measures are shown in Table 4 below.

Table 4: One Ballot Label Transparency Requirement Absent

Measure	Absent
Measure M – Berkeley, Alameda County	Revenue Use
Measure P – Knolls CSD, El Dorado County	Revenue Use
Measure L – Arcata, Humboldt County	Revenue Use
Measure C – County of Los Angeles	Revenue Use
Measure HMP – Santa Monica, Los Angeles County	Revenue Use

Measure CT – Redondo Beach, Los Angeles County	Revenue Use
Measure J – Monterey, Monterey County	Revenue Use
Measure M – Grand Terrace, San Bernardino County	Revenue Use
Measure A – County of Colusa	Duration
Measure P – Trinidad, Humboldt County	Duration
Measure R – Blue Lake, Humboldt County	Duration
Measure P – Santa Cruz, Santa Cruz County	Duration
Measure AB – Pico Rivera, Los Angeles County	Amount of Tax
Measure LL – South Pasadena, Los Angeles County	Amount of Tax
Measure J – Anaheim, Orange County	Amount of Tax

9. Thus, to summarize my conclusions, Tables 1 – 5 identify 26 local tax measures that clearly violate TPA's provisions. Nothing in TPA requires a city or county to seek re-authorization of any of these local tax measures.

10. The explanation for the difference between the 26 local tax measures I have identified and the 131 tax measures identified by Petitioners' Counsel is that she speculates that such tax measures "might" be

invalidated, whereas I identified tax measures that would be invalidated under the Measure.

11. For example, she identifies Measure O passed in Walnut Creek, Contra Costa County as a tax measure that ***might*** not meet the "type" requirement under the transparency provision of TPA. I disagree with her conclusions. The Ballot Label/Question for Measure O reads:

> To provide funding to maintain and enhance City of Walnut Creek services and facilities, including crime prevention; public safety; disaster preparedness; parks/open space; youth, senior and arts programs; sustainability initiatives; local business support; downtown improvements; replacing aging recreation, aquatics and community facilities at Heather Farm Park; and other important services and facilities, shall the City of Walnut Creek levy a half-cent ***sales tax***, providing approximately $11,000,000 annually for 10 years, requiring annual audits, independent citizens' oversight, and all funds benefitting Walnut Creek?" (emphasis added).

A "sales tax" is a type of tax. All the other TPA requirements are also present in the ballot question. There are several local tax measures described in the exhibit that clearly comply with the "type" requirement of TPA.

12. With respect to the "amount or rate" requirement in TPA, the declaration identifies Measure F passed in Martinez, Contra Costa County as possibly being invalidated by TPA. The Text of the Ballot Label/ Question reads:

> Shall the measure of the City of Martinez to levy a dedicated special tax to prevent development and acquire, create and maintain 297 acres of permanent public parkland and wildlife habitat known as the Alhambra Highlands, at a ***maximum rate of $79 annually*** for single-family parcels and at specified maximum rates for other parcel types, for 30 years, providing approximately $1.2 million annually, with exemptions for low income persons, be adopted?" (emphasis added). The

> rate is identified in the Ballot Label/Question just as it is identified in Measure C passed in Oakland, Alameda County.

This is another example of a ballot question that clearly complies with the "amount or rate" requirement of TPA, as are many other examples cited by Petitioners' counsel.

13. With respect to the "duration" requirement under TPA, the declaration identifies Measure K passed in Albany, Alameda County. The Ballot Label/Question reads:

> To maintain and enhance local paramedic, advanced life support, firefighting services, firefighting equipment and ambulance service; shall a measure repealing the current two special emergency services taxes and adding a new Emergency Medical Services, Advanced Life Support, and Fire Protection Special Tax on residential and commercial property at $0.074 per square foot of land, providing $1,950,000 annually, subject to CPI adjustment, ***until ended by voters***, exempting very low-income residents, with annual independent audits, be adopted?" (emphasis added).

This ballot question clearly complies with TPA and there are many other similar examples described in the declaration.

14. Finally, counsel for the Petitioners alleges that it is difficult to know whether courts will accept language that slightly deviates from the phrase "for general government use" if the tax measure proposed a "general tax" under TPA. The doctrine of substantial compliance has long been applied in election matters of this type. Obviously, the purpose of this provision is to ensure that the general objective of the proposed measure is clear when its intended use is for the general fund of a city or county. Measure O, passed in Emeryville, Alameda County, is a good example where the Ballot Label/Question reads:

> Shall the measure to ***fund general City services*** including fire/emergency response/police; street/sidewalk/park maintenance; water pollution prevention; disaster preparedness; affordable housing; senior/childcare/recreation services, by increasing the City of Emeryville Real Property Transfer Tax to $15 per thousand for property sales between $1,000,000 and $2,000,000 and $25 per thousand for property sales above $2,000,000, raising $ 5,000,000 annually until ended by voters, with citizen oversight, audits, and public disclosure of all spending be adopted?" (emphasis added).

Further, Measure G passed in Imperial, Imperial County, the Ballot Label/Question reads:

> Shall the City of Imperial amend the current Transient Occupancy Tax (TOT) paid only by hotel/motel/all other transient occupancies guests visiting the city from 8% to 12%, to ***support general municipal services*** such as street and road repair, parks and recreation, police and fire services, providing an estimated $600,000.00 annually, until repealed by voters, all funds benefiting Imperial residents?" (emphasis added).

15. I believe that these examples, and many others referenced in the declaration of Kaminski are unlikely to be challenged at all, and if challenged, the doctrine of substantial compliance would likely be applied to hold that such ballot questions were compliant with and furthered the purposes of TPA.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of December, 2023, in Sacramento, California.

Sarah E. Yonan

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 electronic business address is kmerina@bmhlaw.com.

On December 27, 2023, I served the following:

DECLARATION OF SARAH E. YONAN IN SUPPORT OF REAL PARTY IN INTEREST'S RETURN TO ORDER TO SHOW CAUSE

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 via Truefiling:

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

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

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 December 27, 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:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **kmerina@bmhlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Pld 023 Return to Court's OSC
ADDITIONAL DOCUMENTS	Pld 024 Yonan decl

Service Recipients:

Person Served	Email Address	Type	Date / Time
Mary Mooney Office of the California Secretary of State 287376	mmooney@sos.ca.gov	e-Serve	12/27/2023 10:48:30 AM
Margaret Prinzing Olson Remcho, LLP 209482	mprinzing@olsonremcho.com	e-Serve	12/27/2023 10:48:30 AM
Richard Rios Olson Remcho, LLP 238897	rrios@olsonremcho.com	e-Serve	12/27/2023 10:48:30 AM
Steven Reyes Calfornia Secretary of State	steve.reyes@sos.ca.gov	e-Serve	12/27/2023 10:48:30 AM
Thomas Hiltachk Bell, McAndrews & Hiltachk, LLP 131215	kmerina@bmhlaw.com	e-Serve	12/27/2023 10:48:30 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/27/2023
Date

/s/Thomas Hiltachk
Signature

Hiltachk, Thomas (131215)

Last Name, First Name (PNum)

Bell, McAndrews & Hiltachk, LLP

Law Firm