As to the application only

C089702

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CITY OF SACRAMENTO
Defendant and Appellant,

v.

RUSSELL WYATT,
Plaintiff and Respondent.

Appeal from the Superior Court of the State of California
County of Sacramento, Case No. 34-2017-80002634
The Honorable Richard K. Sueyoshi, Judge Presiding

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF SACRAMENTO; PROPOSED AMICUS CURIAE BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C089702
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APPELLANT/ PETITIONER: City of Sacramento RESPONDENT/ REAL PARTY IN INTEREST: Russell Wyatt	

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Date: May 20, 2020

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF SACRAMENTO

TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities ("the League") respectfully requests permission to file the attached amicus curiae brief in support of Defendant and Appellant City of Sacramento ("the City"). The League is an association of 478 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents and enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State, which monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.[1]

[1] The deadline for submitting this application would ordinarily be May 4, 2020, 14 days after the City filed its reply brief. However, the deadline was extended by 30 days pursuant to the Court's Implementation Order for the Renewed Order Pursuant to Rule 8.66 of the California Rules of Court, issued on April 17, 2020 to address the ongoing effects of the COVID-19 pandemic. The League appreciates the Court's willingness to grant an extension during this difficult time, so that it, as well as any other interested parties, may comment on the important issues that have been raised in this case.

The League and its member cities have a substantial interest in the outcome of this case because it raises important questions concerning the proper interpretation of articles XIIIC and XIIID of the California Constitution—questions that have the potential to significantly impact California cities. These questions can be summarized as follows:

(1) Does article XIIID of the California Constitution prohibit cities from imposing a "general tax" on the use of water, sewer, garbage, or other "property-related" services to help finance critical municipal services like police and fire service, parks, and libraries, even when the tax has been approved by a majority vote of the local electorate pursuant to article XIIIC, section 2(b) of the California Constitution?

(2) If the answer to question (1) is no, may such a tax be combined with and collected as part of a city's rates for utility service, rather than separately stated on a customer's utility bill, and if so, what must voters do to approve the collection of the tax in this manner?

For the reasons set forth in its amicus curiae brief, the League contends that "general" taxes imposed on the use of property-related services are constitutional if they have been approved by a majority vote, except in very limited circumstances. Articles XIIIC and XIIID, which were both added to the California Constitution by Proposition 218, operate in tandem to limit the ways in which cities may levy taxes ***without voter approval***. Respondent Russell Wyatt, however, asks

this Court to go further and find that article XIIID bans every general tax imposed on the use of a property-related service, regardless of whether the tax has been approved by local voters or not—a claim that, if accepted, would invalidate taxes collected by at least 87 cities throughout California. The League urges the Court to reject this extreme position, which is not dictated by the text of articles XIIIC and XIIID and runs counter to Proposition 218's central purpose of granting local voters the right to make local taxing decisions.

The League also contends that general taxes imposed on the use of property-related services may, once they have been approved by local voters, be collected as part of a city's rates for utility service, and that Sacramento voters have provided the approval needed for the City to do so here, by imposing upon the City a mandatory obligation to pay money from its water, sewer, storm drainage, and solid waste utilities to its general fund for the support of core municipal functions. Respondent's arguments to the contrary would require the Court to place strict limits on how voters may approve local taxes—limits that are found nowhere in the Constitution, or any other legal authority.

The attached brief will provide the Court with valuable information about the potential impact to California cities should the judgment below be affirmed, and the League believes that its perspective on the issues identified above will assist the Court in its resolution of the City's appeal. The undersigned counsel has carefully examined the briefs submitted by the parties and represents that the League's brief, while consonant with the City's arguments, will highlight a number of critical points that, in the League's view,

warrant further analysis. Accordingly, the League respectfully asks that the Court grant its application and accept its brief for filing.

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represents that he authored the League's brief in its entirety on a pro bono basis; that his firm is paying for the entire cost of preparing and submitting the brief; and that no party to this action, or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief.

JARVIS, FAY & GIBSON, LLP

Dated: May 20, 2020

By: /s/ Gabriel McWhirter .
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LEAGUE OF CALIFORNIA CITIES

AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT CITY OF SACRAMENTO

I. INTRODUCTION

On June 30, 1998, Sacramento voters, by a majority vote, approved a ballot measure that added Section 3.20.010 to the Sacramento City Code. (2 AA 401.)[2] Section 3.20.010 provides:

> There is imposed upon the enterprises operated by the city which provide water, sewer, storm drainage, and solid waste services, a general tax which shall be paid to the city general fund. The tax imposed by this section shall be at the rate of eleven (11) percent of the gross revenues received by the city-operated enterprises from user fees and charges. In levying the tax, the city council may impose a tax rate higher or lower than eleven (11) percent on one [or] more of the enterprises, so long as the total tax paid by all of the enterprises does not exceed eleven (11) percent of the total gross revenues from user fees and charges of all of the enterprises combined.

(*Ibid.*) Every year, in compliance with this direction from its voters, the City of Sacramento pays to its general fund 11% of the gross revenues received from utility rates that it collects for the provision of water, sewer, storm drainage, and solid waste services. (*Ibid.*)

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[2] As used herein, "AA" refers to Appellant's Appendix; "CB" refers to the City of Sacramento's opening brief on appeal; and "RB" refers to Respondent Russell Wyatt's opposition brief on appeal. All facts referenced by the League are taken from the City's opening brief and the trial court's "Ruling on Submitted Matter." (2 AA 398-419.)

To ensure that it has money available to make these mandatory payments and operate its utilities, the City designs its rates for utility service so that they will generate enough revenue to fund its payment obligations under Section 3.20.010—or, as Respondent Russell Wyatt puts it, the City includes a "surcharge" in its utility rates that is designed to generate the revenue needed to make the payments.[3] (2 AA 417; RB at 10.) Amounts paid to the general fund may be used to support the City's core municipal functions, including police and fire service, park maintenance, public improvement projects, and libraries.

The question now presented for resolution by the Court is whether it is constitutionally permissible for the City to include a "surcharge" in its rates for utility service that is sufficient to fund the payments mandated by Section 3.20.010. The League agrees with the City that this practice is not barred by article XIIID of the California Constitution. Although article XIIID strictly limits fees collected for water, sewer, garbage, and other "property-related" services when those fees are imposed without voter approval, it does not, except in very limited circumstances, prohibit cities from imposing a "general tax" on the use of these services to provide funding for their general governmental operations—so long as the tax is approved by a majority vote of the local electorate, as required by article XIIIC,

[3] Because the term "surcharge" captures the relevant concepts in a pithier fashion than saying "the portion of the City's utility rates that funds the payments required by Section 3.20.010 of the Sacramento City Code," the League will use that term throughout the remainder of its brief, except when the context requires otherwise.

section 2(b) of the California Constitution. The "surcharge" collected by the City is such a general tax, and Sacramento voters, when they adopted Section 3.20.010, approved it.

Respondent's argument to the contrary—that article XIIID prohibits cities from imposing voter-approved general taxes on the use of property-related services—finds no support in the text of article XIIID, is inconsistent with Proposition 218's fundamental purpose, and would, if accepted, wipe out similar taxes collected by at least 87 cities throughout the State. And his claim that Section 3.20.010 does not authorize the collection of the challenged surcharge is similarly misplaced. Reading Section 3.20.010 in the restrictive manner that Respondent proposes would contradict the intended effect of Sacramento voters' decision to impose the payment required by that section—a result that is inconsistent with general rules of statutory interpretation and that is not compelled, so far as the League is aware, by any constitutional provision or other law. Accordingly, the League joins the City in urging this Court to reverse the judgment below.

II. BACKGROUND LAW

Articles XIIIC and XIIID were added to the California Constitution in 1996 by Proposition 218, the "Right to Vote on Taxes Act." The two articles were presented to California voters as a single package and are functionally intertwined in a number of important ways, with both articles furthering Proposition 218's goal of "limiting the methods by which local governments exact revenue from taxpayers without their consent." (2 AA 248 [Proposition 218, § 2].)

A. Article XIIIC of the California Constitution.

Article XIIIC, titled "Voter Approval for Local Tax Levies," states that "[a]ll taxes imposed by any local government"—including cities—"are deemed to be either general taxes or special taxes." (Cal Const. art. XIIIC, §§ 1(b), 2(a).) "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote[,]" and "[n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." (*Id.* art. XIIIC, § 2(b), (d).) General tax elections must be "consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency ...." (*Id.* art. XIIIC, § 2(b).)

A tax is a general tax subject to the majority-vote requirement when its proceeds are placed in a local government's "general fund" and made "available for expenditure for any and all governmental purposes." (*Id.* art. XIIIC, § 1(a); *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1185 ["*Roseville II*"].) A tax is a special tax, in contrast, when its proceeds are earmarked or otherwise limited to one or more "specific purposes ...." (Cal. Const. art. XIIIC, § 1(d); *Roseville II*, *supra*, 106 Cal.App.4th at 1185.)

In 2010, California voters adopted Proposition 26, which amended article XIIIC to define the word "tax." Article XIIIC, section 1(e) now states that "[a]s used in this article, 'tax' means any levy, charge, or exaction of any kind imposed by a local government," unless it fits into one of seven enumerated exceptions. As relevant

here, "[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those charged, and which does not exceed the reasonable costs to the local government of providing the service or product[,]" is not a "tax." (*Id.* art. XIIIC, § 1(e)(2).) Any amounts charged for a government service that exceed the reasonable costs of providing that service are, however, considered a "tax," and must be submitted to local voters for their approval. (Cf. *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 269 ["excessive portion" of franchise fee is a "tax"].) If the excess funds are unrestricted, a majority vote is required. If they are earmarked for "specific purposes," a two-thirds vote is required.

B. Article XIIID of the California Constitution.

Article XIIID of the California Constitution, titled "Assessment and Property-Related Fee Reform," establishes special rules for local "assessments," "fees" and "charges." (See *id.* art. XIIIC, § 1(e)(7) [excluding "[a]ssessments and property-related fees imposed in accordance with the provisions of Article XIII D" from article XIIIC's definition of "tax"].) An assessment is a "levy or charge [imposed] upon real property by an agency for a special benefit conferred upon the real property." (*Id.* art. XIIID, § 2(b).) "Fees" and "charges," meanwhile, are all levies, "other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service." (*Id.* art. XIIID, § 2(e).) A "property-related service" is a "public service" that has "a direct relationship to property ownership." (*Id.* art. XIIID, § 2(h).)

If a particular levy qualifies as a "fee" or "charge" under this definition, it is subject to a number of substantive restrictions. Revenues from a "fee" or "charge" must support the service for which the fee or charge is collected and may not "exceed the funds required to provide" that service. (*Id.* art. XIIID, § 6(b)(1)-(2).) The amount imposed on any particular parcel or person may not "exceed the proportional cost of the service attributable to the parcel." (*Id.* art. XIIID, § 6(b)(3).) And "[n]o fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners." (*Id.* art. XIIID, § 6(b)(5).)

III. ARGUMENT

A. Article XIIID of the California Constitution does not prohibit cities from collecting general taxes on the use of water, sewer, garbage, and other property-related services, if those taxes are approved by a majority vote.

The League's main purpose in submitting this brief is to address Respondent's argument, raised below and reiterated by him now on appeal, that article XIIID of the California Constitution prohibits cities from imposing a "general tax" on the use of water, sewer, garbage, and other "property-related" services, even if that tax was submitted to and approved by a majority vote in full compliance with article XIIIC, section 2(b) of the California Constitution. (RB at 45-55.) The trial court endorsed this argument by holding that a general tax imposed on the use of property-related services is a "fee"

or "charge" within the meaning of article XIIID, section 2(e). (2 AA 410-416.) Because the proceeds of a general tax are used for general governmental purposes, without restriction (Cal. Const. art. XIIIC, § 1(a)), and article XIIID, section 6(b) states that the proceeds of a "fee" or "charge" may only be used to provide the service for which the "fee" or "charge" is collected, general taxes can never satisfy the substantive requirements applicable to "fees" and "charges." Thus, the trial court's holding that general taxes imposed on the use of property-related services are "fees" or "charges" would, if accepted, compel the conclusion that such taxes are unconstitutional.

As the League will explain below, the trial court erred. Except in very limited circumstances, general taxes imposed on the use of property-related services are not "fees" or "charges" subject to article XIIID, section 6(b). The text of article XIIID, the legislative history of Proposition 218, and the legal context from which Proposition 218 arose all show that article XIIID was never intended to invalidate voter-approved general taxes on the use of water, sewer, garbage, and other property-related services, unless the tax is structured so that liability is triggered solely because the taxpayer owns property.

The League cannot overstate how disastrous the trial court's expansive interpretation of the terms "fee" and "charge" would be for California cities if it were to be upheld by this Court. By the League's count, 87 cities in California currently impose what is commonly known as a "utility users tax" on persons who use water, sewer, or garbage service. (*Eastern Municipal Water District v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, 25-27 & n.1 [city tax imposed on

the use of water and sewer service]; see also Rev. & Tax. Code § 7284.2 [authorizing counties to impose taxes on the use of water and sewer service].) A decision holding that these utility users taxes are unconstitutional, even when they have been approved by local voters, would wipe out tens of millions of dollars in revenue, if not more, that is currently used by cities to support police, fire, parks, libraries, and other critical municipal services. In the best of times, this would be a hard blow. Now, in the midst of the worldwide economic disruption caused by the COVID-19 pandemic, it would be devastating.[4]

The League respectfully urges this Court to reject the trial court's holding and instead affirm that voter-approved general taxes on the use of property-related services are constitutionally valid.

1. Article XIIID does not expressly or implicitly bar the imposition of general taxes on the use of property-related services, except in limited circumstances.

When interpreting the California Constitution, the Court's "primary concern" is to give full effect "to the intended purpose" of the constitutional provisions at issue. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933.) The constitutional text,

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[4] At pages 46 to 53 of this brief, the League has listed every city that it has identified as currently imposing a "general" utility users tax on water, sewer, and/or garbage service and provided links and citations to the code provisions establishing those taxes. A compendium of local utility users tax measures that have been approved by voters since 2008 is available at Ballotpedia, *Utility taxes in California – Election results* (last accessed May 19, 2020).

For a preliminary assessment of the severe revenue shortfalls cities are expecting to experience due to the pandemic, see *COVID-19: Fiscal Impact on California Cities* (last accessed May 19, 2020).

analyzed in its "relevant context," is "typically the best and most reliable indicator of purpose." (*Ibid.*) If the text is ambiguous, the Court may also "'consider extrinsic evidence of the enacting body's intent'"—including any "'[b]allot summaries and arguments'" that were presented to the voters. (*Id.* at 934; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037, citations omitted; Cal. Const. art. XVIII, § 4.)

Proposition 218 has very little to say, directly, about general taxes. Article XIIIC, section 2(b) and article XIIIC, section 2(c) together provide that a public agency may only impose, extend, or increase a general tax after January 1, 1995, if that tax has been approved by a majority vote at an election held concurrently with a general election for members of the agency's governing body, except in cases of emergency. Article XIIIC, section 2(a) states that "[s]pecial purpose districts or agencies, including school districts, shall have no power to levy general taxes." That's it. None of these provisions bans general taxes imposed on the use of water, sewer, garbage, or other property-related services or otherwise addresses what types of activities may, or may not, be subject to a general tax that voters have properly approved.

Unable to point to any express prohibition, Respondent contends that general taxes imposed on the use of property-related services are "fees" and "charges" within the meaning of article XIIID, section 2(e) and that, because such taxes cannot comply with the substantive requirements applicable to "fees" and "charges," they are implicitly prohibited by article XIIID. The League does not agree.

Article XIIID, section 2(e) states that "[a]s used in this article …[,] '[f]ee' or 'charge' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." By using the word "including," which operates to enlarge the application of a statute beyond the meaning of the clause that precedes it (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216-17), this definition creates two separate tests for what constitutes a "fee" or "charge." First and foremost, a "fee" or "charge" means "any levy other than an ad valorem tax, a special tax, or an assessment, imposed upon a parcel or upon a person as an incident of property ownership ...." But it also means—"includ[es]"—a "user fee or charge for a property-related service." (Compare *Hoechst Celanese Corp. v. Franchise Tax Board* (2001) 25 Cal.4th 508, 520-26 [statute defining "business income" as "income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property" under specified circumstances creates two tests for when income is business income].)

On its face, a ***general tax*** imposed on the use of a property-related service does not satisfy either of these tests. In arguing to the contrary, Respondent conflates levies that are imposed "upon a person as an incident of property ownership" with "user fee[s] or charge[s] for a property-related service." (RB at 47.) The two levies are not the same, and article XIIID does not treat them in the same way.

In *Apartment Ass'n of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 841-43, the California Supreme Court explained that a levy is imposed "as an incident of property ownership" when the obligation to pay the levy arises "solely by virtue of property ownership." The phrase operates in tandem with the phrase "upon a parcel" to ensure that when liability for a particular levy is triggered by the ownership of property alone, article XIIID, section 2(e) applies—regardless of whether the levy is characterized as one imposed on property directly or one imposed on the person who owns that property. (See *Tesoro Logistics Operations, LLC v. City of Rialto* (2019) 40 Cal.App.5th 798, 810-14 [liability for challenged general tax triggered by the "mere act of owning" fuel storage facilities]; *Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396, 400-01, 406-08 [$9.55 fee imposed on all residential households to fund hazardous waste disposal facilities, regardless of whether households actually used those facilities].)[5]

In contrast, a "user fee or charge for a property-related service" is not imposed solely by virtue of property ownership. "Property-related" services are defined as public services that have "a direct relationship to property ownership[,]" such as domestic water, sewer, and garbage service. (Cal. Const. art. XIIID, § 2(h); *Richmond v.*

[5] Under article XIIID, "property ownership" is "deemed to include tenancies of real property where tenants are directly liable to pay the ... fee[] or charge in question." (Cal. Const. art. XIIID, § 2(g).) Thus, for tenancies, the question would be whether liability is triggered solely because the person is leasing the property at issue.

Shasta Community Services District (2004) 32 Cal.4th 409, 426-27.) But a public agency that sells water, sewer, and garbage service only collects a "user fee or charge" from "the person actually using the service" (*Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 597-98; *Verjil*, *supra*, 39 Cal.4th at 216-17), and a person can own property without purchasing water, sewer, or garbage service from a public agency (cf. *Apartment Ass'n*, *supra*, 24 Cal.4th at 841). A "user fee or charge for a property-related service" is treated as a "fee" or "charge" not because liability is triggered by property ownership *per se*—it isn't—but because such services generally involve "nothing other than normal ownership and ***use*** of property." (*Richmond*, *supra*, 32 Cal.4th at 427, emphasis added.)

Another way of thinking about the relationship between levies imposed "upon a person as an incident of property ownership" and "user fee[s] or charge[s] for a property-related service" is that, for purposes of article XIIID, a user fee or charge for a property-related service is treated ***as if*** it were imposed upon a person as an incident of property ownership. This reading is supported by article XIIID, section 3(b), which states that "fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership"—language suggesting that user fees or charges for electric and gas service would, absent section 3(b), be "deemed" to be imposed upon persons as an incident of property ownership (*Richmond*, *supra*, 32 Cal.4th at 426-27), and that user fees or charges for property-related services are also "deemed" to be imposed upon persons as an incident of property ownership. The use

of the word "deemed" is key; "deem" means "[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have ...." ("Deem," Black's Law Dictionary (11th ed. 2019).)

There are, in sum, two different types of levies that qualify as a "fee" or "charge" under article XIIID, section 2(e)—(1) any levy, imposed upon a person solely because that person owns property, except for "an ad valorem tax, a special tax, or an assessment[;]" and (2) "a user fee or charge" for a service that has a direct relationship to property ownership.[6] A voter-approved general tax imposed on a person who uses a property-related service is not the same thing as a user fee or charge for that service and so does not fall within the second category; a general tax is exacted from taxpayers to support general governmental functions that benefit the public at large, not to fund a public agency's provision of utility service to the taxpayer. (Cal. Const. art. XIIIC, § 1(a); see *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 690-91, 693, 695-96 [fee collected from telephone service subscribers to fund 911

[6] Although not admissible as evidence of the voters' intent in adopting Proposition 218 (*Johnson v. County of Mendocino* (2018) 25 Cal.App.5th 1017, 1031), the League notes that the Howard Jarvis Taxpayers Association—the organization that drafted Proposition 218—has also taken the position that article XIIID, section 2(e) covers two different types of levies. In an annotation to article XIIID dated January 2, 1997, the Association stated that "'Fees,' for purposes of this article, are limited to levies imposed as an incident of property ownership ***or*** fees for property related services." (A copy of this annotation is available in the League of California Cities' *Propositions 26 and 218 Implementation Guide* (May 2019), pp. 141, 148 [comment to article XIIID, section 2(e), emphasis added].)

emergency communication system was a "tax" because its proceeds benefitted the "public as a whole" rather than subscribers in particular].) In contrast, a general tax can fall within the first category, if liability for the tax is triggered solely because the taxpayer owns property. But general taxes imposed on the use of water, sewer, garbage, and other property-related services will typically not meet this criterion, because the property owner must choose to sign up for and use the service before liability for the tax attaches.

Article XIIID, section 3(a), cited by Respondent, is consistent with this framework. (RB at 45-47.) Section 3(a) states that:

> No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:
>
> (1) The ad valorem property tax imposed pursuant to Article XIII and XIII A.
>
> (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.
>
> (3) Assessments as provided by this article.
>
> (4) Fees or charges for property-related services as provided by this article.

This language closes the loop on the first type of levy covered by article XIIID, section 2(e)'s definition of "fee" or "charge." Together, the two provisions make it crystal clear that public agencies may not impose ***any*** levy upon a person solely because that person owns property unless that levy is an ad valorem property tax, a special tax approved by a two-thirds vote, an assessment, or a "fee" or

"charge"—i.e., "any levy other than an ad valorem tax, a special tax, or an assessment"—that complies with the substantive requirements of article XIIID, section 6(b). When liability for a general tax requires something more than just the ownership of property, however, that tax is not "imposed upon [a] person as an incident of property ownership" and does not fall within the scope of section 3(a)'s prohibition.

Thus, general taxes imposed on the use of water, sewer, garbage, and other property-related services are not barred by article XIIID of the California Constitution when they apply only to persons who actually purchase and use the service subject to taxation and have been approved by a majority vote in compliance with article XIIIC, section 2(b) of the California Constitution.

2. Proposition 218's ballot materials, and the legal context from which Proposition 218 arose, demonstrate that general taxes imposed on the use of property-related services are permissible.

Even if there were some doubt about article XIIID's application to general taxes imposed on the use of property-related services, extrinsic sources, and the legal context from which Proposition 218 arose, should dispel that doubt. Respondent's claim that the terms "fee" and "charge" include general taxes of this type contradicts what California voters were told about the purpose and scope of Proposition 218—that public agencies would retain the power to levy taxes, when local voters authorize them to do so.

Before article XIIID was adopted, courts had already held that general, non-ad valorem taxes approved by a majority vote and

imposed on property—or upon a person simply because that person owns property, "without regard to the use to which the property is put"—were prohibited by article XIII, section 1 and article XIIIA of the California Constitution. (*City of Oakland v. Digre* (1988) 205 Cal.App.3d 99, 102-04, 106, 109-11; *Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4th 1084, 1086-95.) But general taxes were permissible, even if they had some connection to real property, so long as the tax was "triggered not by ownership but instead by some particular use of the property or privilege associated with ownership ...." (*Thomas*, *supra*, 53 Cal.App.4th at 1088-89; *Digre*, *supra*, 205 Cal.App.3d at 104-09 [noting that a general tax on the use of "municipal services" could be valid when measured "by the type and extent of ... services used"].) And special assessments and fees—including user fees and charges for services provided by a public agency—were, unless clearly excessive, not considered taxes at all; they therefore could be, and often were, imposed without a vote of the people. (See *City of Union City*, *supra*, 162 Cal.App.4th at 693-95.)

Article XIIID was directed at this final category of levies. (Cal. Const art. XIIID, §§ 4, 6.) The ballot arguments for Proposition 218 stated that the purpose of article XIIID was to stop local governments from avoiding voter-approval requirements adopted in previous initiatives—such as Proposition 13 (Cal. Const. art. XIIIA, § 4) and Proposition 62 (Gov't Code §§ 53720-53730)—by charging excessive assessments, fees, and charges without holding a vote. The opening argument in favor of Proposition 218 insisted that "politicians [had] created a loophole in the law that allows them to raise taxes

without voter approval by calling taxes 'assessments' and 'fees.'" (2 AA 258.) The argument then set out the solution to this perceived problem: "Proposition 218 guarantees your right to vote on local tax increases—even when they are called something else, like 'assessments' or 'fees' and imposed on homeowners." (*Ibid.*)

These statements do not suggest any intent to change the existing rules applicable to voter-approved taxes on property and property-related services. Instead, they show that article XIIID, like article XIIIC, was designed to create strict new limits on levies imposed by local governments ***without voter approval***. Proposition 218's proponents even argued, explicitly, that if the proposition was adopted, local voters would have the power to approve taxes on water service—a property-related service. "Proposition 218 guarantees your right to vote on taxes imposed on your water, gas, electric, and telephone bills." (*Ibid.*; see also 2 AA 259 ["Non-voted taxes on electricity, gas, water, and telephone services hit renters and homeowners hard."].) Given how common utility users taxes are in California, had the drafters of Proposition 218—the "Right to Vote on Taxes Act"—actually intended to ***eliminate*** local voters' existing authority to approve such taxes by a majority vote when the service at issue has a "direct relationship to property ownership[,]" one would expect them to do so clearly in article XIIID's text, or at least make some statement to that effect in the ballot materials. (Cal. Const. art. XIIID, § 2(h); *Thomas*, *supra*, 53 Cal.App.4th at 1088.) Their failure to do so speaks volumes. (See *Upland*, *supra*, 3 Cal.5th at 940,

citations omitted [the drafters of legislation "'do not ... hide elephants in mouseholes'"].)

At first blush, it might seem odd that article XIIID would simply codify the existing constitutional rules prohibiting general taxes imposed on the ownership of property *per se*. But Proposition 218 actually codified existing law in a number of ways. Article XIIIC, section 2(a)'s statement that "[s]pecial purpose districts or agencies ... shall have no power to levy general taxes" codified a 1991 California Supreme Court opinion holding that "every tax levied by a 'special purpose' district or agency [is] ... deemed a 'special tax.'" (*Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15, emphasis omitted.) And article XIIIC, section 3, which provides that "the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax," codified a 1995 Supreme Court decision, *Rossi v. Brown* (1995) 9 Cal.4th 688, that upheld a local initiative to repeal an existing tax. Indeed, article XIIIC, section 2(d)'s requirement that all special taxes be approved by a two-thirds vote merely restated an existing constitutional provision that was added to the California Constitution in 1978 by Proposition 13—article XIIIA, section 4. (*Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 220.) The League's interpretation of article XIIID fits squarely within this pattern.

One final point: The League notes that Respondent's interpretation of article XIIID would create an anomaly in the law. Privately-owned utilities provide water service to approximately 16%

of California residents.[7] Because a "property-related service" is "a ***public*** service having a direct relationship to property ownership" (Cal. Const. art. XIIID, § 2(h), emphasis added), cities could, if Respondent is correct, impose general taxes on the use of these private water services, even though a similar tax on public water services would be barred. The same would be true for private sewer and garbage service as well. No justification for this disparate treatment can be found in article XIIID or Proposition 218's ballot materials.

In the 24 years since article XIIID went into effect, no published decision has held that Proposition 218 bans general taxes imposed on the use of property-related services, so long as those taxes are approved by a majority vote in compliance with article XIIIC, section 2(b). This Court should not be first. Except in those rare instances where liability for a general tax is triggered solely because the taxpayer owns property, article XIIID simply does not control.

B. The surcharge collected by the City to fund the payment mandated by Section 3.20.010 of the Sacramento City Code is a valid general tax that has been approved by Sacramento voters.

The League acknowledges that the challenged levy in this case is not styled as a utility users tax; it is a part of the rates charged by the City for utility service, or, as Respondent puts it, a "surcharge" that has been included by the City in those rates to fund the payments

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[7] See *California Public Utilities Commission, Water Division* (last accessed May 19, 2020) [noting that the Water Division of the California Public Utilities Commission "regulates over ... 100 investor-owned water and sewer utilities"].

mandated by Section 3.20.010 of the Sacramento City Code. Nevertheless, that "surcharge" is functionally identical to a general tax imposed on users of the City's utility services; liability is, at least for water, sewer, and solid waste service, triggered by use of the service, not simply because the payor owns property, and the revenues generated by the surcharge support general governmental services. (Cal. Const. art. XIIIC, § 1(a)).) The only relevant differences, for present purposes, are that the surcharge is not collected as a separately-stated line item on customers' utility bills; and that, unlike a typical utility users tax ordinance, Section 3.20.010 does not impose a levy directly on customers and instead directs the City to make mandatory payments from its utility departments to its general fund.

For the reasons set forth below, the League agrees with the City that these differences are not material to the validity of the challenged surcharge. The surcharge is a general tax imposed on the use of property-related services, and that tax was approved by a majority of Sacramento voters—as required by article XIIIC—when Section 3.20.010 was adopted in 1998. Accordingly, the surcharge is lawful.

1. The fact that the surcharge is collected as a part of the City's utility rates does not mean that it is an illegal "fee" or "charge."

In its ruling against the City, the trial court concluded that regardless of any similarity the challenged surcharge might bear to a utility users tax, the fact that the surcharge was collected as a part of the City's rates for utility service means that it is necessarily a "fee" or "charge" that does not comply with article XIIID, section 6(b).

(AA 410-412.) The League encourages the Court to take a more practical approach to evaluating the validity of the surcharge. A rule of decision that hinges on the manner in which a particular levy is collected, rather than that levy's substantive characteristics, "would exalt form over substance, a practice that courts strive to avoid when interpreting tax law." (*Title Insurance Co. of Minnesota v. State Board of Equalization* (1992) 4 Cal.4th 715, 723.) If the alleged defect pressed by Respondent can be remedied by simply collecting the surcharge as a separate line item on customers' utility bills, the trial court's reading of article XIIID cannot be correct.

It is irrelevant that the surcharge is not labelled a "tax." "'Although the classification of a revenue-producing device can be determinative of the lawfulness of the device, courts look to the actual attributes of the device as enacted in order to arrive at the proper classification; the label attached to the device by the local government is not determinative.'" (*Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022, 1038, citations, emphasis omitted.) For purposes of article XIIIC, a levy may be a "service fee" and also, to the extent that it exceeds the cost of providing the service at issue, a "tax." (Cal. Const. art. XIIIC, § 1(e)(2); *Jacks*, *supra*, 3 Cal.5th at 269; cf. *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1422 [some revenue measures "may have attributes of more than one traditional revenue devices," including measures that are a "hybrid" of a "service fee" and an "excise tax"].) Article XIIID should be applied in the same manner. Indeed, Proposition 218's proponents made this point themselves when they explained, in the ballot

materials, that Proposition 218 would "guarantee[] your right to vote on local tax increases—***even when they are called something else***, like 'assessments' or 'fees' ...." (2 AA 258, emphasis added.)

Advocacy materials prepared by the Howard Jarvis Taxpayers Association drive this point home. In a pamphlet titled "The Myths About Proposition 218," the Association argued that public agencies' "practice of ... overcharging ratepayers through excessive utility bills and transferring the 'surplus' to the general fund" amounted to a "'hidden tax' that is imposed without voter approval.'" It also explained that:

> Proposition 218 does not eliminate funding sources for public safety programs or any other program. Rather, Proposition 218 focuses on local government revenues imposed without voter approval, and requires local officials to obtain voter approval if they want to continue imposing that particular revenue source. For example, "fees" for general governmental services are thinly disguised taxes that politicians impose without voter approval. Local politicians can call such levies whatever they want, but Proposition 218 treats these levies as taxes that may be imposed as long as voter approval is obtained.[8]

[8] A copy of "The Myths About Proposition 218" pamphlet is included, along with other materials, in a report prepared by the Senate Committees on Local Government and Revenue and Taxation after a joint hearing held by those Committees on September 24, 1996, shortly before the adoption of Proposition 218. Because the report—which is titled *November 1996 Ballot, Proposition 218: The Right to Vote on Taxes Act*—is not readily accessible, the League has attached pertinent excerpts to the end of this brief pursuant to Rule 8.204(d) of the California Rules of Court.

This statement acknowledges what is now black-letter law—that the label attached to a particular levy does not determine its lawfulness.

In practice, this means that local voters can approve utility rates for property-related services that exceed the cost of providing those services, just like they can for other types of services. (See *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 18 [when setting utility rates, local governments "must either charge a rate that does not exceed the reasonable costs of providing the service or obtain voter approval for rates that exceed costs"].) But recognizing that voters hold this power is nothing new. As the Fourth District Court of Appeal has explained: "The way Proposition 218 operates, water rates that exceed the cost of service operate as a tax, similar to the way a 'carbon tax' might be imposed on [the] use of energy. But … [j]ust because such above-cost rates are a tax does not mean they cannot be imposed—they just have to be submitted to the relevant electorate and approved by the people in a vote." (*Capistrano Taxpayers Ass'n v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1515.)

The trial court therefore erred in holding that because the challenged surcharge is collected as a part of the City's utility rates, it must be a "fee" or "charge" subject to article XIIID. The surcharge operates as a general tax—and as a general tax, it is valid if it has been approved by the voters. For the reasons set forth below, the League believes that the necessary approval was provided in this case.

2. Sacramento voters' approval of Section 3.20.010 authorizes the City to collect the surcharge from its utility customers.

In its briefing to this Court, the City contends that the challenged surcharge is valid because Section 3.20.010 imposes a kind of sales tax on the City's own utilities that may be recouped from utility customers as a cost of providing utility service. (Compare Rev. & Tax. Code §§ 6051, 7202(h)(1), 7261(a) [state and local sales tax levied on all retailers as a percentage of their "gross receipts ... from the sale of all tangible personal property"] with Sacramento City Code § 3.20.010 [tax levied on the City's utility departments as a percentage of the "gross receipts" from the sale of utility service].) When setting rates for utility service, privately owned and publicly owned utilities both design their rates to generate enough revenue that the utility will be able to cover its "costs and expenses ... attributed to providing the service," and governmental levies imposed on a private utility, such as taxes, are costs that may properly be treated as one of these "revenue requirements." (*City and County of San Francisco v. Public Utilities Commission* (1971) 6 Cal.3d 119, 122-23; *Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 899; *Southern California Gas Co. v. Public Utilities Commission* (1979) 23 Cal.3d 470, 474.) The City believes that because the payments mandated by Section 3.20.010 operate as a "tax" imposed on the City's utility departments, they should be treated in the same way.

Respondent rejects the City's position on the grounds that the City, purportedly, cannot tax itself. (RB at 25-30, 42-45.) This is not

correct. Although public agencies typically do not impose taxes upon their own activities, they can. For instance, local governments impose "sales" and "use" taxes and are also, by statute, required to pay those same taxes if they engage in retail sales (such as sales of souvenirs at city-owned gift shops) or use personal property purchased from an out-of-state vendor. (Rev. & Tax. Code §§ 6005, 6014, 6015, 6201, 6202(a), 7202(h)(2), 7203(a), 7261(b), 7262(a) ["retailers" subject to local sales taxes and "persons" subject to local use taxes include governmental entities]; see also Cal. Const. art. XIIID, § 4(a) [public agency must assess its own property if that property receives a "special benefit" from the project funded by the assessment].)

In any event, from the League's perspective, it is irrelevant whether the payment mandated by Section 3.20.010 is properly characterized as a "tax" in some abstract sense. For purposes of article XIIIC, which defines the word "tax" broadly to encompass nearly all governmental levies, what matters is that Sacramento voters, by a majority vote, chose to require the City to pay money from its water, sewer, storm drainage, and solid waste utilities to its general fund and allow that money to be spent for general governmental purposes. (Cal. Const art. XIIIC, §§ 1(a), (e), 2(b).) The Sacramento City Council cannot decide to use the City's utilities as a source of general revenue by unilaterally mandating that they spend money on activities with no reasonable relationship to the provision of utility service; article XIIID, section 6(b)(2) forbids this practice. (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 647-49 ["*Roseville I*"].) But the same is not true here, where ***Sacramento***

voters imposed the mandate. With voter approval, the mandate operates like a tax on the City's utilities and, when the cost of compliance is passed through to customers, the resulting surcharge operates as a valid general tax on the use of utility services.

This result is compelled by basic principles of statutory interpretation. "'[W]here power is given to perform an act, the authority to employ all necessary means to accomplish the end is always one of the implications of the law.'" (*Manteca Union High School District v. City of Stockton* (1961) 197 Cal.App.2d 750, 755, citations omitted; see *People ex rel. California Regional Water Quality Control Board v. Barry* (1987) 194 Cal.App.3d 158, 177-78 [statute requiring agency to abate pollution on private property impliedly authorized agency to enter polluted property]; *De Witt v. City of San Francisco* (1852) 2 Cal. 289, 296 [statute authorizing erection of courthouse impliedly authorized agency to purchase the site for that courthouse].) For Section 3.20.010 to make sense, the money for the required payments must come from some source of revenue received by the City's utilities, and as the City has shown, Sacramento voters understood, when they voted on the measure that added Section 3.20.010 to the Sacramento City Code, that the payments would be funded through utility rates. (CB at 16-21.)

This interpretation of Section 3.20.010 comports with the principle that when setting utility rates, cities may "include[] all ***the required*** costs of providing service …." (*Roseville I*, *supra*, 97 Cal.App.4th at 647-48, emphasis added.) And it is a "reasonable and commonsense interpretation" that is both "consistent with the

apparent purpose and intention of the voters" and "practical rather than technical in nature ...." (*People v. Hartley* (2007) 156 Cal.App.4th 859, 863.) Because Respondent has failed to offer any contrary interpretation, this Court should hold that Sacramento voters' approval of Section 3.20.010 authorizes the City to recover the cost of the payments mandated by that section from its utility customers.

3. Articles XIIIC and XIIID do not prevent the City from complying with Section 3.20.010 by collecting the surcharge from its utility customers.

Respondent, of course, rejects the analysis set forth above and claims that the City has not been authorized to collect the challenged surcharge from its utility customers to fund the payments mandated by Section 3.20.010. But Respondent never explains why it is appropriate to interpret Section 3.20.010 in a manner that omits this authorization. (See *Plantier v. Ramona Municipal Water District* (2019) 7 Cal.5th 372, 386 ["Interpretations that render statutory language meaningless are to be avoided."].) Instead, he seems to suggest that articles XIIIC and XIIID of the California Constitution render Section 3.20.010 unenforceable because Sacramento voters did not specifically approve the challenged surcharge or state, in Section 3.20.010, that the cost of the payments required by that section may be recouped from utility customers. (RB at 26-30, 40, 42-45.)

The League does not agree. If a city sells utility service at rates that exceed its costs of providing the service, the excess amounts collected are considered a "tax." (Cal. Const. art. XIIIC, § 1(e)(2); *Jacks*, *supra*, 3 Cal.5th at 269.) It is entirely logical for voters to

authorize such a "tax" by directly approving, on an ongoing basis, the expense that causes the excess to occur, rather than by taking a new vote each and every time utility rates are adjusted. (Gov. Code § 53750(h)(2) [a tax is not "increased," and no new vote is required, if a "previously approved" methodology for calculating the tax is not revised].) That is precisely what Sacramento voters did in this case.

Although article XIIIC states that voter approval must be secured as a condition precedent to the levy of any local "tax," it says nothing—not a single word—about the form that voter approval must take. Nor does article XIIID. Respondent bases his argument instead on four decisions applying articles XIIIC and XIIID. For the following reasons, these decisions do not support Respondent's claim.

Respondent cites *Redding*, *supra*, 6 Cal.5th 1 and *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244, for the proposition that payments of money from one department of the City to another are not "taxes" and then reasons, from there, that if the payments mandated by Section 3.20.010 are not "taxes," the fact that Sacramento voters approved the payments must be irrelevant. (RB at 43-44.) But as the League has explained above, the City may collect a surcharge from its utility customers to cover the cost of the payments required by Section 3.20.010, whether or not those payments are properly characterized as a "tax." Neither *Redding* nor *Webb* hold to the contrary. In *Redding*, *supra*, 6 Cal.5th at 12-19, the California Supreme Court held that transfers made by Redding from its electric utility to its general fund were paid entirely from sources other than electric rates. Because Redding did not require its electric utility

customers to pay for the transfers, the Court had no occasion to address what Redding's voters would need to do to authorize the collection of a levy from those customers to fund the transfers. Likewise, in *Webb*, *supra*, 23 Cal.App.5th at 257-60, the Fourth District Court of Appeal concluded that the portion of the transfer from Riverside's electric utility to its general fund that had been timely challenged in that case was paid entirely from non-rate revenue and had no impact on Riverside's rates. The issue of voter approval simply didn't come up. "[C]ases are not authority for propositions that are not considered." (*California Building Industry Ass'n v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1043.)

In *Roseville I*, *supra*, 97 Cal.App.4th at 638-50, this Court held that an "in-lieu franchise fee" paid by Roseville's water, sewer, and refuse collection utilities to its general fund and recouped from its utility customers violated article XIIID of the California Constitution. But unlike this case, the challenged in-lieu fee was not approved by Roseville's voters. And while the Court did discuss two ballot measures that Roseville voters approved ***after*** judgment was entered, its discussion does not offer any guidance here. (*Id.* at 649-50.)

The first measure, Measure U, stated that "'[e]ach city-owned utility shall be financially self-sufficient, and shall fully compensate the city general fund for all goods, services, real property and rights to use or operate on or in city-owned real property.'" (*Id.* at 649-50.) The Court held that this measure simply allowed the city to charge its utilities (and customers) for service-related costs incurred by other departments—a charge that is wholly different from the payment

required by Section 3.20.010. (*Ibid.*) The second measure, Measure K, was more akin to Section 3.20.010, stating that the city's utilities "may pay to Roseville's general fund an in-lieu franchise fee not to exceed 4 percent of total utility operating and capital expenditures, which shall be budgeted and appropriated solely for police, fire, parks and recreation, or library services." (*Ibid.*) The Court, however, expressed "no views regarding the validity of Measure K." (*Ibid*.)

That leaves *Howard Jarvis Taxpayer's Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914. In *Fresno*, the Fifth District Court of Appeal held that article XIIID prohibited Fresno from paying an "in lieu fee" from its water, sewer, and garbage utilities to its general fund, except to cover the "actual costs" of services provided to the utilities by other departments. (*Id.* at 917-21, 925-27.) It also held that article XIIID prevented the city from designing its utility rates to fund the "in lieu fee," because doing so caused those rates to exceed the costs of providing water, sewer, and garbage service. (*Ibid.*) As Respondent notes, the "in lieu fee" was imposed by the city's governing body pursuant to authority granted in the city's charter, which had been approved by Fresno voters in the 1950s. (*Id.* at 917.)

The League acknowledges that the rates invalidated in *Fresno* are similar to those at issue in this case. However, a close read of *Fresno* shows that the Court did not consider the possibility that voter approval of the "in lieu fee" might validate Fresno's utility rates—the point is simply not discussed. As noted above, "cases are not authority for propositions that are not considered." (*California Building*

Industry Ass'n, *supra*, 4 Cal.5th at 1043.) The question of voter approval left unaddressed in *Fresno* is raised squarely by this case.[9]

The Court did discuss whether the "in lieu fee is actually a tax on the consumption of utility services." (*Fresno*, *supra*, 127 Cal.App.4th at 926-27.) This is an odd way of framing the question; as the Court noted, the "in lieu fee" was imposed on the city's utilities, so the "tax" at issue would have been the portion of the city's utility rates that allowed the utilities to raise enough revenue to pay the "in lieu fee" to the city's general fund. (*Ibid.*) In any event, the Court's discussion does not aid the resolution of this case, for two reasons.

First, the Court in *Fresno* was unwilling to characterize the "in lieu fee" as a "tax on the consumption of utility services" because Fresno's charter prohibited the city from imposing a tax on utility customers. (*Ibid*.) No similar prohibition applies to Sacramento. Second, the Court appears to have assumed that the City did not need to recover the cost of the "in lieu fee" from residential customers because article XIIID did not apply to commercial customers; "[n]othing ... would prohibit, for example, recovery of the water division's entire in lieu fee from commercial water users through the rate for their metered water service ...." (*Id.* at 927.) The Court's

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[9] For instance, although the Court noted that Fresno was "not required to recover the in lieu fee from ratepayers in any particular manner" (*Fresno*, *supra*, 127 Cal.App.4th at 926-27), it did not consider the possibility that when Fresno voters approved the charter provision that authorized the "in lieu fee," they understood that Fresno would treat the fee as part of its utilities' revenue requirements, consistent with standard rate-setting practices. (See *supra*, p. 36.)

assumption was incorrect; article XIIID applies to "user fee[s] or charge[s] for a property-related service[,]" regardless of whether the service is metered or unmetered or the customer is a residence or a business. (See *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926, 933-38; *Verjil*, *supra*, 39 Cal.4th at 216-17; Cal. Const art. XIIID, § 2(e).) This error allowed the Court to avoid the reality that the money for the "in lieu fee" had to come, at least in part, from Fresno's utility rates—and thus, that those rates did, practically speaking, include a "tax on the consumption of utility services."

This case, in short, presents a question of first impression. The Court should resolve that question in a way that gives full effect to Sacramento voters' decision to approve Section 3.20.010, by recognizing that the City may lawfully collect from its utility customers the amounts needed to ensure that the payments mandated by Section 3.20.010 can be made.

IV. CONCLUSION

The proponents of Proposition 218 told California voters that articles XIIIC and XIIID would "**NOT** prevent government from raising and spending money for vital services like police, fire, and education. If politicians want to raise taxes they need only convince local voters that new taxes are really needed." (2 AA 258.) In this case, Sacramento voters were convinced, approving Section 3.20.010 by a majority vote. The trial court's holding that article XIIID prohibits the City from charging its utility customers for the cost of the payments required by Section 3.20.010 distorts Proposition 218's purpose, turning it into a weapon that undermines voter control over

local taxation, and the court's reasoning calls into doubt the validity of dozens of utility users taxes collected across the State. The League urges this Court to take a different path, one that respects the considered decision that Sacramento voters made—and the authority they have been given to make that decision, by the Constitution.

Accordingly, for the reasons set forth above, the League respectfully asks that the Court reverse the trial court's judgment.

JARVIS, FAY & GIBSON, LLP

Dated: May 20, 2020

By: /s/ Gabriel McWhirter .
Gabriel McWhirter
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

LIST OF CITIES WITH GENERAL UTILITY USERS TAXES ON WATER, SEWER, AND/OR GARBAGE SERVICE[10]

(1) **Alhambra** (Water)
Alhambra Municipal Code § 5.71.050

(2) **Arcadia** (Water)
Arcadia Municipal Code § 2671.3

(3) **Arcata** (Water and Sewer)
Arcata Municipal Code §§ 2630, 2631

(4) **Azusa** (Water)
Azusa Municipal Code § 70-268

(5) **Baldwin Park** (Water)
Baldwin Park Municipal Code §§ 35.091, 35.092, 35.100

(6) **Bell** (Water)
Bell Municipal Code §§ 3.28.020, 3.28.100

(7) **Brawley** (Water, Sewer, and Garbage)
Brawley Municipal Code §§ 24.80, 24.86, 24.87, 24.88

(8) **Canyon Lake** (Water, Sewer, and Garbage)
Canyon Lake Municipal Code §§ 3.26.080, 3.26.090, 3.26.100

(9) **Cathedral City** (Garbage)
Cathedral City Municipal Code § 3.26.090

(10) **Chico** (Water)
Chico Municipal Code § 3.56.060

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[10] General utility users taxes that were first enacted before January 1, 1995, may not have been approved by voters. However, article XIIIC did not retroactively invalidate preexisting general utility users taxes, and no new vote is required for such taxes until they are "extended" or "increased." (*Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 130; Cal. Const. art. XIIIC, §§ 2(b), (c).)

(11) **Citrus Heights** (Sewer)
Citrus Heights Code §§ 86-143, 86-151

(12) **Claremont** (Water)
Claremont Municipal Code § 3.29.090

(13) **Coachella** (Water, Sewer, and Garbage)
Coachella Municipal Code §§ 4.30.010, 4.30.080, 4.30.090, 4.30.100

(14) **Compton** (Water)
Compton Municipal Code § 3-4.7

(15) **Covina** (Water)
Covina Municipal Code §§ 3.14.010, 3.14.070

(16) **Cudahy** (Water and Garbage)
Cudahy Municipal Code §§ 3.36.020, 3.36.090, 3.36.100

(17) **Culver City** (Water)
Culver City Municipal Code § 3.08.225

(18) **East Palo Alto** (Water)
East Palo Alto Municipal Code §§ 3.64.010, 3.64.080

(19) **El Cerrito** (Water)
El Cerrito Municipal Code §§ 4.40.010, 4.40.070

(20) **El Segundo** (Water)
El Segundo City Code § 3-7-6

(21) **Elk Grove** (Sewer)
Elk Grove Municipal Code § 3.40.090

(22) **Fontana** (Water)
Fontana Municipal Code § 10-348

(23) **Gardena** (Water)
Gardena Municipal Code § 3.20.070

(24) **Glendale** (Water)
Glendale Municipal Code §§ 4.36.050, 4.36.150

(25) **Grover Beach** (Water)
Grover City Municipal Code §§ 101201, 101208

(26) **Guadalupe** (Water)
Guadalupe Municipal Code §§ 3.24.020, 3.24.090

(27) **Gustine** (Water)
Gustine Municipal Code §§ 9-6-2, 9-6-8

(28) **Hawthorne** (Water)
Hawthorne Municipal Code §§ 3.44.060, 3.44.350

(29) **Hercules** (Water)
Hercules Municipal Code §§ 8-8.205, 8-8.402

(30) **Hermosa Beach** (Water)
Hermosa Beach Municipal Code §§ 3.36.070, 3.36.190

(31) **Holtville** (Water, Sewer, and Garbage)
Holtville Municipal Code §§ 3.36.010, 3.36.085

(32) **Huntington Beach** (Water)
Huntington Beach Municipal Code § 3.36.060

(33) **Huntington Park** (Water)
Huntington Park Municipal Code § 3-9.08

(34) **Indio** (Water)
Code of Indio § 34.158

(35) **Inglewood** (Water)
Inglewood Municipal Code § 9-74

(36) **Irwindale** (Water)
Irwindale Municipal Code §§ 3.16.005, 3.16.050

(37) **Lakewood** (Water)
Lakewood Municipal Code § 2908

(38) **Lawndale** (Water)
Lawndale Municipal Code § 3.14.090

(39) **Lindsay** (Water, Sewer, and Garbage)
Lindsay Municipal Code §§ 3.30.010, 3.30.090, 3.30.110, 3.30.120

(40) **Long Beach** (Water)
Long Beach Municipal Code §§ 3.68.010, 3.68.060

(41) **Los Alamitos** (Water)
Los Alamitos Municipal Code §§ 3.20.030, 3.20.100

(42) **Los Altos** (Water)
Los Altos Municipal Code §§ 3.40.020, 3.40.110

(43) **Lynwood** (Water)
Lynwood Municipal Code §§ 6-5.1(c), 6-5.9

(44) **Maywood** (Water and Garbage)
Maywood Municipal Code §§ 3-5.502, 3-5.507, 3-5.508

(45) **Menlo Park** (Water)
Menlo Park Municipal Code § 3.14.070

(46) **Modesto** (Water)
Modesto Municipal Code § 8-2.909

(47) **Montclair** (Water)
Montclair Municipal Code § 3.36.090

(48) **Monterey** (Water)
Monterey City Code § 35-45

(49) **Moreno Valley** (Water and Sewer)
Moreno Valley Municipal Code §§ 3.26.100, 3.26.110

(50) **Oroville** (Water)
Oroville Municipal Code § 3.28.080

(51) **Pacific Grove** (Water)
Pacific Grove Municipal Code § 6.10.060

(52) **Palo Alto** (Water)
Palo Alto Municipal Code §§ 2.35.030, 2.35.080

(53) **Pasadena** (Water)
Pasadena Municipal Code § 4.56.060

(54) **Piedmont** (Water)
Piedmont City Code § 20A.6

(55) **Pomona** (Water)
Pomona City Code § 50-206

(56) **Port Hueneme** (Water)
Port Hueneme Municipal Code §§ 5401, 5409

(57) **Porterville** (Water)
Porterville City Code § 22-46

(58) **Portola Valley** (Water)[11]
Portola Valley Municipal Code § 3.32.070

(59) **Rancho Cordova** (Sewer)
Rancho Cordova Municipal Code § 3.40.090

(60) **Rancho Palos Verdes** (Water)
Rancho Palos Verdes Municipal Code §§ 3.30.080, 3.30.090

(61) **Redondo Beach** (Water)
Redondo Beach Municipal Code § 8-9.08

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[11] Portola Valley's utility users tax is a hybrid "general" and "special" tax, with a portion of the proceeds of the tax reserved for funding "open space."

(62) **Rialto** (Water and Sewer)
Rialto Municipal Code §§ 3.16.020, 3.16.080, 3.16.090

(63) **Riverside** (Water)
Riverside Municipal Code § 3.14.060

(64) **Salinas** (Water)
Salinas City Code § 32-54

(65) **San Francisco** (Water)[12]
San Francisco Business and Tax Regulations Code §§ 706, 720

(66) **San Gabriel** (Water)
San Gabriel Municipal Code § 35.084

(67) **San Jose** (Water)
San Jose Municipal Code §§ 4.68.010, 4.68.090

(68) **San Luis Obispo** (Water)
San Luis Obispo Municipal Code §§ 3.16.010, 3.16.090

(69) **San Marino** (Water)
San Marino City Code §§ 26.03.01, 26.03.09

(70) **San Pablo** (Water)
San Pablo Municipal Code § 3.40.060

(71) **Sanger** (Water)
Sanger City Code § 66-92

(72) **Santa Ana** (Water)
Santa Ana Municipal Code §§ 35-152, 35-159

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[12] In addition to San Francisco, which is both a city and a county, the League is aware of one other county that imposes a "general" utility users tax on sewer service—the County of Sacramento. (See Sacramento County Code §§ 3.40.030, 3.40.110.)

(73) **Santa Barbara** (Water and Garbage)[13]
Santa Barbara Municipal Code §§ 4.24.050, 4.24.060, 4.24.190

(74) **Santa Cruz** (Water, Sewer, and Garbage)
Santa Cruz Municipal Code §§ 3.29.080, 3.29.090, 3.29.100

(75) **Santa Monica** (Water and Sewer)
Santa Monica Municipal Code § 6.72.055

(76) **Seaside** (Water)
Seaside Municipal Code §§ 3.30.020, 3.30.120

(77) **Sebastopol** (Garbage)
Sebastopol Municipal Code § 3.10.090

(78) **Sierra Madre** (Water and Sewer)
Sierra Madre Municipal Code §§ 3.36.010, 3.36.090

(79) **South Pasadena** (Water)
South Pasadena Municipal Code §§ 34B.1, 34B.7

(80) **Stanton** (Water)
Stanton Municipal Code §§ 3.24.030, 3.24.110

(81) **Stockton** (Water)
Stockton Municipal Code § 3.24.060

(82) **Torrance** (Water)
Torrance Municipal Code § 225.1.6

(83) **Tulare** (Water)
Tulare Municipal Code § 5.76.070

(84) **Vernon** (Water)
Vernon City Code §§ 5.111, 5.116

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[13] Santa Barbara's tax on garbage service—and possibly its tax on water service as well, although the League is not sure—is a hybrid "general" and "special" tax, with a portion of the proceeds of the tax reserved for funding street reconstruction, maintenance, and repair.

(85) **Watsonville** (Water)
Watsonville Municipal Code §§ 3-6.901, 3-6.910

(86) **Westminster** (Water)
Westminster Municipal Code § 3.14.060

(87) **Whittier** (Water)
Whittier Municipal Code § 3.24.080

CERTIFICATE OF WORD COUNT

I certify that the League's application and brief, including the list of municipal utility users taxes, contains a total of 10,827 words, as indicated by the word count feature of Microsoft Word, the computer program used to prepare the application and brief. This word count excludes the cover page, tables, signature blocks, and this certification, as well as the excerpt from the *November 1996 Ballot, Proposition 218: The Right to Vote on Taxes Act* report attached to the brief pursuant to Rule 8.204(d) of the California Rules of Court.

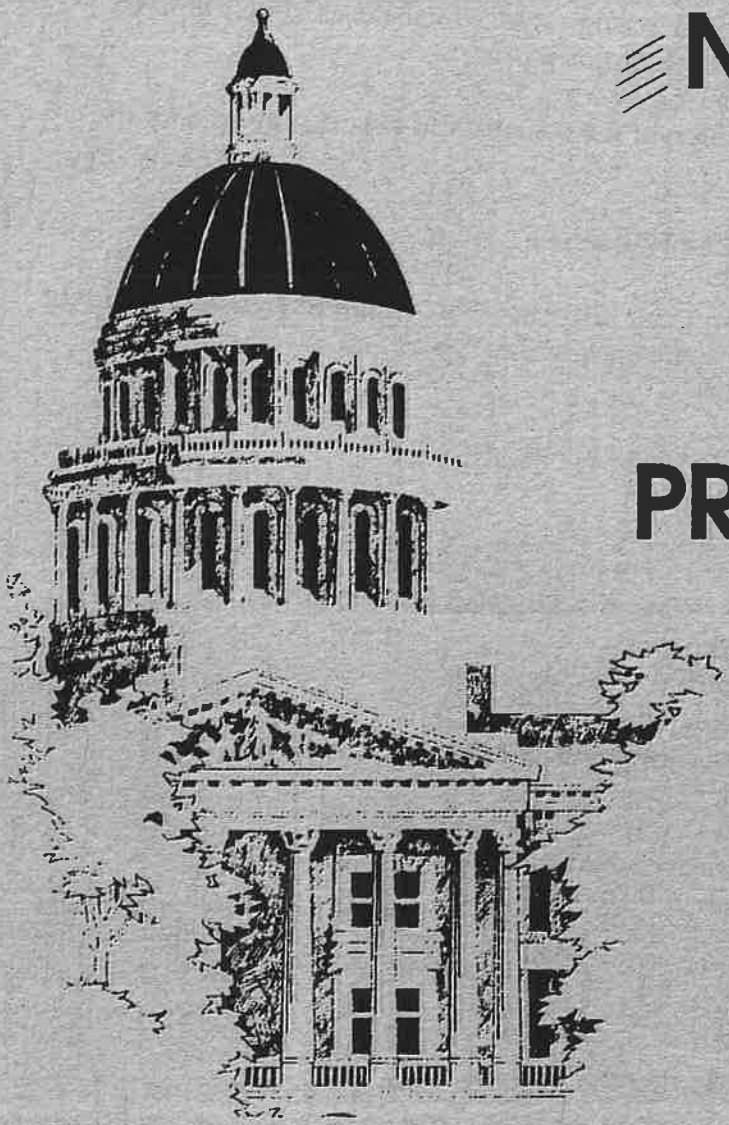
Dated: May 20, 2020 /s/ Gabriel McWhirter .

ATTACHMENT

(Rule 8.204(d) of the California Rules of Court)

California State Legislature

Senate Local Government Committee
Senate Revenue and Taxation Committee



NOVEMBER 1996 BALLOT

PROPOSITION 218:

RIGHT TO VOTE ON TAXES ACT

SEPTEMBER 1996

PROPOSITION 218:
RIGHT TO VOTE ON TAXES ACT

On Tuesday, September 24, 1996, the Senate Committees on Local Government and Revenue and Taxation held an interim hearing on Proposition 218, a proposed constitutional amendment on the November 5, 1996 state ballot. The Committees' Chairmen, Senator William A. Craven and Senator Lucy Killea, presided over the hearing. Other Senators attending the hearing at the State Capitol included: Senator Ayala, Senator Hurtt, Senator Johnson, Senator Rosenthal, and Senator Russell.

This staff summary of the interim hearing reports who spoke and summarizes their views. Although it attempts to accurately reflect what was said, any summary must inevitably skip over details. Readers may wish to refer to witnesses' own prepared statements which are reprinted in the back of this report.

The report also includes a revised version of the background report prepared by the Committee's staff.

The Witnesses

Thirteen witnesses spoke at the Committees' hearing. Eight of the witnesses submitted written testimony which is included in the back of this report and denoted by an asterisk (*) next to the witnesses name:

Marianne O'Malley, Legislative Analyst's Office *
Jean Ross, California Budget Project *
Steve Kroes, Cal-Tax *
Jonathan Coupal, Howard Jarvis Taxpayers Association*
Michael Colantuono, Richards, Watson & Gershon Law Firm*
Michael Coleman, City of Sacramento
Barbara Steckel, City of Riverside*
Steve Williams, City of Palmdale
Dan Wall, California State Association of Counties
Jim Knox, Planning and Conservation League
Stephen E. Heaney, California Public Securities Association
Marsha Knudson, Stockton Teachers Association*
Trudy Schafer, League of Women Voters*

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For the Right to Vote on Local Taxes
YES ON PROP 218!

More than a million California voters signed petitions to qualify Proposition 218 for the November ballot. Known as "The Right to Vote on Taxes Act," Proposition 218:

- **Requires local voter approval for all new local taxes—majority approval for new general taxes, and two-thirds approval for special purpose taxes, fees and charges.**
- **Requires majority approval by property owners before new assessments on their property can be imposed.**
- **Prohibits property-related fees and charges from being more than the cost of the service provided.**
- **Gives local voters the right to use the initiative process to make changes in local law governing taxes, assessments, fees and charges.**
- **Makes local taxation fair and uniform by giving all California voters the same voting rights over local taxes, no matter where they live.**
- **Establishes uniform procedures for assessing property owners—so all property owners are treated fairly and equally.**
- **Provides renters—for the first time ever—the right to vote on property tax assessments directly affecting their rental payments.**
- **Provides absolutely no new rights to corporations or non-resident property owners not already guaranteed under state law.**
- **Prevents local politicians from end-running Proposition 13. No longer can they raise taxes without voter approval by calling them "fees" or "assessments."**

For more information or to help on the campaign, please call (213) 384-9656.

YES ON 218

Prepared and distributed by YES on 218, a project of the Howard Jarvis Taxpayers Association, a nonprofit, tax-exempt organization, 621 South Westmoreland Avenue, Los Angeles, CA 90005-3971

The sky will not fall.

The world will not end. Civilization will not perish. And big corporations won't get new voting rights with Proposition 218.

Opponents of Proposition 218 are using something called the "big lie." You've seen it before—heated rhetoric, boogeymen and dark predictions of doom meant to strike terror in the hearts of voters.

Opponents of Proposition 218 claim it gives big corporations and foreign investors frightening new power over little local taxpayers. Scary—but not true.

They say libraries will close, police cars will stop rolling, fires will rampage and earthquakes will go unanswered if it passes. Do they have no shame?

Proposition 218 simply gives voters the right to vote on new local taxes, assessments and fees. Nothing scary about that to voters. In fact, in a recent poll, 71% of California voters said they want the right to vote on new local taxes, assessments and fees.

And why shouldn't they. Local taxes have soared 976% in California since 1978, many imposed without voter consent.

Because Proposition 218 gives taxpayers more control over the taxes they pay, it's endorsed by the California Chamber of Commerce, the California Taxpayers Association, 18 local tax reform groups and 35 legislators.

Don't be suckered by the "big lie." And remember who's opposing Proposition 218—the people who keep raising taxes, assessments and fees without voter approval.

Take time to learn the truth about Proposition 218. Knowing what it really does could save you a fortune. For more information, call our "set the record straight" line at 213-384-9656.

VOTE *Yes*

YES ON 218

Prepared and distributed by YES on 218, a project of the Howard Jarvis Taxpayers Association, a nonprofit, tax-exempt organization, 621 South Westmoreland Avenue, Los Angeles, CA 90005-3971

The Myths About Proposition 218

MYTH #1: Proposition 218 gives new powers to corporations and nonresidents.

TRUTH: No new powers are granted. Proposition 218 follows current assessment procedures which already allow property owners, including corporations and nonresident property owners, to participate. This includes proportional participation by property owners.

The current assessment process already allows property owners, including corporations and nonresident property owners, to protest an assessment. With few exceptions, an election is not required under current laws. Where an election is required, the California Supreme Court has recognized that property owner elections for assessments are appropriate because landowners are disproportionately affected by the election issue and because the financial burden falls directly and precisely on landowners. While Proposition 218 requires property owner elections for assessments, tax elections are voted upon by all registered voters.

Proportional participation by property owners, including corporations and nonresident property owners, is not new. Property owner protests under the current assessment process are weighted, usually according to the size of the parcel. Under Proposition 218, ballots are weighted according to the amount of assessment. This is fair because financial burden and voting power are equalized. As a practical matter, for assessments to finance local neighborhood improvements such as sidewalks, voting power will not vary that much because homeowners will generally pay similar assessment amounts.

In 1992, the Legislature enacted SB 773 which allows assessments for various indoor public facilities, subject to a property owner election using weighted (proportional) voting. This is just one example of existing statute containing the same voting elements that Proposition 218 opponents object to. Yet, there was no public outcry over the voting requirements when this law was enacted. The law was overwhelmingly approved by the Legislature, and without a single negative vote in the State Senate.

Please see the attached chart for additional comparative information about the Proposition 218 assessment process.

MYTH #2: Proposition 218 reduces homeowner voting rights for assessments.

TRUTH: Proposition 218 does not reduce homeowner voting rights for assessments because homeowners currently have no constitutional right to vote on assessments.

The current assessment process is very unfair to all property owners, including homeowners. Under current law, if a property owner does not file a written protest against an assessment (i.e., does nothing), it counts as though the owner supports the assessment. This makes it nearly impossible to block an assessment. Under Proposition 218, the outcome is determined only by those who actually vote, with a majority of ballots cast being necessary to approve an assessment. This will give homeowners a reasonable opportunity to block an assessment if they believe an assessment proposal lacks merit.

MYTH #3: Proposition 218 hurts public safety programs.

TRUTH: Local officials already have a constitutional obligation to give priority to providing adequate public safety services. Proposition 218 does not alter this obligation.

Proposition 172, approved by voters in 1993, sets forth the constitutional obligation that local officials give priority to providing adequate public safety services. Local officials are supposed to adequately fund public safety programs before they fund other programs. This is common sense, and any politician that doesn't do this will not likely remain in office for long. A new law enacted earlier this year (AB 3229) provides $100 MILLION in additional funding to local governments for public safety. If local officials want additional revenue from taxpayers, whether for public safety or any other purpose, they need only convince local voters that higher taxes are justified.

Proposition 218 does not eliminate funding sources for public safety programs or any other program. Rather, Proposition 218 focuses on local government revenues imposed without voter approval, and requires local officials to obtain voter approval if they want to continue imposing that particular revenue source. For example, "fees" for general governmental services are thinly disguised taxes that politicians impose without voter approval. Local politicians can call such levies whatever they want, but Proposition 218 treats these levies as taxes that may be imposed as long as voter approval is obtained.

Proposition 218 also does not prohibit legitimate assessments for emergency purposes such as a natural disaster. The time period required to comply with the assessment procedures under Proposition 218 is about the same as that under current law.

Opponents have also wrongfully claimed that all fire suppression assessments would end. Nothing in Proposition 218 expressly prohibits fire suppression assessments. If a fire suppression assessment district can be shown to provide special benefits to property within close proximity of a fire facility, then it may in fact meet the requirements of the act.

MYTH #4: Proposition 218 eliminates "Lifeline" services.

TRUTH: Proposition 218 does not eliminate or otherwise prohibit "Lifeline" services.

"Lifeline" rates for the elderly, disabled and the disadvantaged for telephone, gas and electric services are NOT affected by Proposition 218. Fees for these services are outside the scope of the measure.

Some communities have "lifeline" rates for water, sewer or garbage collection services. "Lifeline" programs for these services will not be prohibited. The decision to provide "lifeline" services is and will remain a discretionary policy decision made by local officials. Proposition 218 does not preclude local governments from using existing tax dollars to finance "lifeline" programs, just like taxpayer funds are used to finance other programs that benefit people in need. However, if local officials want to increase taxpayer utility bills to finance these programs, voter approval will be necessary.

Where Proposition 218 will provide significant relief to taxpayers, especially the elderly, the disabled and the disadvantaged, is with the fee limitation provisions. In particular, stopping the current practice of many public agencies from overcharging ratepayers through excessive utility bills and transferring the "surplus" to the general fund to be spent at the discretion of local politicians. Proposition 218 will stop this "hidden tax" that is imposed without voter approval.

MYTH #5: Proposition 218 imposes new taxes on public agencies.

TRUTH: Proposition 218 does not require any public agency to pay taxes.

As noted by the California Supreme Court, an assessment is not a tax, but rather "is a compulsory charge to recoup the cost of a public improvement made for the special benefit of particular property." Proposition 218 will require public agencies to pay their fair share of assessments to help recoup the cost of public improvements made by another public agency. Such improvements can range from water or sewer system improvements to improvements that enhance the safety of school children.

In recognizing that public agencies have to pay their bills just like everyone else, the Legislature already requires many public agencies to pay their fair share to finance certain public improvements made by other public agencies. In 1988, the Legislature enacted, without a single negative vote,

AB 1350. This law allows public agencies to charge other public agencies their fair share of utility fees to finance various capital improvements.

Moreover, under traditional assessment law, public agencies are already liable to pay assessments. For example, under the Municipal Improvement Act of 1911, the agency imposing the assessment has the discretion to charge other government entities. In short, this requirement is nothing new and merely reflects the fact that true assessments can provide benefits to public property just like they do to private property.

MYTH #6: Proposition 218 denies voting rights to renters.

TRUTH: Renters responsible for paying assessments and fees are entitled to vote under Proposition 218.

Proposition 218 expressly permits renters to vote on assessments and fees if the renter is directly liable to pay the assessment or fee in question. Under current law, renters have no such constitutional right to vote. In addition Proposition 218 allows renters to vote on all tax measures provided they are registered to vote. Renters also benefit from the fee protection provisions of Proposition 218, which will help give renters relief from high utility bills. Overall, renters acquire numerous rights and protections under Proposition 218 that they do not enjoy under current law.

MYTH #7: Proposition 218 increases government costs by forcing local agencies to hold elections that are currently not required.

TRUTH: The election requirements under Proposition 218 are triggered when local politicians decide that they want to raise taxes and assessments.

The election requirements under Proposition 218, which serve to protect taxpayers, are triggered when local politicians make a discretionary policy decision to impose a particular revenue source. In making that discretionary decision, local politicians will consider such factors as the likelihood of a successful election, the cost of the election versus the amount of revenue generated, and whether alternative options are available. For successful elections, the election costs are normally recovered from the proceeds of the tax or assessment that was approved.

Opponents of Proposition 218 also contend that all assessments will require annual reapproval by property owners. This is simply not true. Even the local governments' own experts agree that, as long as the assessment rates do not increase, then annual approval by the property owners is not necessary. Only increases in the assessment are subject to the approval process.

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

On May 20, 2020, I served the within

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF SACRAMENTO; PROPOSED AMICUS CURIAE BRIEF

on the parties in this action as follows:

By Truefiling: I caused a copy of the document to be sent to the parties listed below via the Court-mandated vendor, truefiling.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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By U.S. Mail: I caused an such envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 20, 2020, at Oakland, California.

Jennifer Dent

Jennifer Dent