G060880

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION THREE

ASHLEE ELIZABETH PALMER,

Plaintiff and Appellant,

v.

CITY OF ANAHEIM,

Defendant and Respondent.

From the Superior Court in and for the County of Orange
Case No. 30-2017-00938646
The Honorable Randall J. Sherman

THE LEAGUE OF CALIFORNIA CITIES' APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT CITY OF ANAHEIM; AMICUS CURIAE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

DATED: September 26, 2022 HANSON BRIDGETT LLP

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The League of California Cities ("Cal Cities") respectfully requests permission under rule 8.200(c) of the California Rules of Court to file an amicus curiae brief in support of Respondent City of Anaheim.[1]

Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. A Legal Advocacy Committee, which comprises twenty-four city attorneys from all regions of the State, advises Cal Cities. The Committee monitors litigation of concern to municipalities, and identifies cases that have statewide or nationwide significance. This is one of those cases.

Cal Cities' members are responsible for municipal planning and budgeting processes throughout the State, and the decision here could implicate those processes. By focusing on these important issues in a way that the parties cannot as a result of the need to address a range of other questions, Cal Cities can provide perspective that highlights practical implications of Ms. Palmer's arguments and aids this Court's resolution of the issues presented.

[1] Cal Cities certifies that no person or entity other than Cal Cities and its counsel authored or made any monetary contribution intended to fund the preparation or submission of the proposed brief. (Cal. Rules of Court, rule 8.200(c)(3).)

DATED: September 26, 2022 HANSON BRIDGETT LLP

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BRIEF OF AMICUS CURIAE THE LEAGUE OF CALIFORNIA CITIES

INTRODUCTION

Appellant Ashlee Elizabeth Palmer presents her challenge to Respondent City of Anaheim's annual general fund transfer as an effort to protect the authority of local voters over the taxes they pay. In reality, however, she seeks to displace the will of actual voters, as expressed through their actual enactments, with her own policy preferences. She asks the Court to construe the California Constitution in a way that is not justified by the text California voters enacted and that undermines the policies they sought to achieve. And she asks the Court to construe the Anaheim City Charter in a manner that ignores the text that local voters enacted, in favor of portions of legislative history that she believes support her preferred outcome. The Court should reject her arguments and affirm the judgment below.

Proposition 218, also known as the "Right to Vote on Taxes Act," added voter-approval requirements for general and special taxes to the Constitution. Under that amendment, voter approval is required when cities and other public agencies seek to impose or increase a tax.

It is of course never certain that voters will approve any given tax proposed by local government. But when voters do approve a tax, local governments then rely on that approval. They budget and plan present and future operations based in part on the revenue they anticipate will result from a voter-approved tax. And as long as the governments act within the voter-approved

limitations, the voter-approval process now embedded in our Constitution has served its purpose.

Appellant Ashlee Elizabeth Palmer's challenge to Respondent City of Anaheim's annual general fund transfer turns this voter-approval process on its head. More than a majority of voters approved the transfer *twice*. Decades later, Palmer seeks to undo the majority's approval. In so doing, Palmer uses the voters' constitutional protections under article XIII C in a way that the Constitution did not intend: to undermine the voters' will. Cal Cities submits this amicus brief to highlight two serious concerns with Palmer's claims that will substantially disrupt cities' and public agencies' budgeting and planning operations.

First, Palmer has invented a distinction that does not exist between taxes that voters approved before and after 1996, when voters approved Proposition 218. Palmer argues that courts should provide less deference to pre-Proposition 218 approvals. She is wrong; nothing in the Constitution suggests that the voters who enacted Proposition 218 intended to invalidate taxes previously approved by local voters. On the contrary, Proposition 218 carved out a specific and narrow set of taxes—those enacted after January 1, 1995 *without* voter approval—that would sunset unless approved by local voters. The Constitution could have but did not require a similar new vote regarding taxes adopted before 1995 or regarding taxes previously approved by voters. The Court should accordingly reject Palmer's attempt to read into the Constitution a requirement that California voters chose to omit.

Moreover, Palmer's position would undermine Proposition 218's emphasis on voter power. If anything, long-standing voter-approved taxes should be entitled to a greater presumption of validity. Local governments have relied on pre-Proposition 218 approvals for decades. And in that time, voters that once gave their approval could have withdrawn or modified it by initiative. But when voters leave a tax in place, the Constitution does not empower one voter to overturn that approval unilaterally through litigation as Palmer seeks to do here. Since the Constitution does not distinguish between voter approvals made before and after Proposition 218, Palmer's proposed distinction should be rejected.

Second, Palmer also seeks to undermine the will of the local voters who enacted the challenged provision of the Anaheim Charter by arguing a construction of that provision that is inconsistent with the text voters adopted. Well-established principles for interpreting laws like city charters require that courts first focus on the law's text as the most reliable indicator of voter intent. Legislative history, on the other hand, is less reliable. Using legislative history, as has been said, is like entering a crowded cocktail party to look over the heads of the guests for one's friends. (*Exxon Mobil Corp. v. Allapattah Services, Inc.* (2005) 545 U.S. 546, 568.) To avoid such cherry-picking in statutory construction, courts demand an exhaustive analysis of the law's text before turning to legislative history. Palmer does not rest her case on an adequate textual analysis of the relevant charter provision. She focuses instead on legislative history to suggest a

construction that cannot be reconciled with the charter's text. That approach is inconsistent with settled law and should be rejected.

Cal Cities thus respectfully requests that the Court uphold the trial court's judgment and reject Palmer's challenge.

ARGUMENT

I. Article XIII C Does Not Invalidate Taxes Approved by Voters Before Proposition 218's Enactment.

For purposes of this appeal, there is no dispute that article XIII C requires voter approval of taxes, that an above-cost portion of the City's electric-service charge is a tax, or that City voters approved that tax in 1976 and again in 1991. Despite that, Palmer contends that the tax violates article XIII C because it was not approved by voters *after* article XIII C's enactment in 1996. (Open. Br. 17, 45.) But Article XIII C does not invalidate prior voter approval in the way that Palmer suggests. And her contrary arguments would undermine article XIII C's fundamental purpose, to empower voters. She is thus wrong.

A. Voters' power to approve the type, amount, and use of taxes significantly predated Proposition 218.

In 1996, California voters enacted Proposition 218, adding articles XIII C and XIII D of the California Constitution. As reflected in countless court decisions, these provisions were designed to *bolster* preexisting requirements that local voters approve local taxes. (See, e.g., *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 940 (*California Cannabis*);

Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles (2001) 24 Cal.4th 830, 839.) It did this by closing perceived loopholes in the processes by which local governments raise revenues, loopholes that voters believed allowed local governments to impose taxes—often called by some other name—without voter approval. (*Ibid.*)

As this history suggests, however, voter approval for taxes predated Proposition 218. Most importantly, in 1978, voters had enacted Proposition 13, adding article XIII A to the California Constitution. As relevant here, article XIII A, section 4 required voter approval for any local special tax. And in 1986, voters enacted Proposition 62, which added sections 53721 and 53722 to the Government Code, requiring voter approval for all local taxes, except those adopted by local charter authority.

Many city charters also required voter approval or set cost-based requirements for local taxes—some of which predated Proposition 218 by decades. The City of San Diego's 1931 Charter, for instance, required two-thirds voter approval for increases in special taxes. (*Ruane v. City of San Diego* (1968) 267 Cal.App.2d 548, 553, quoting Stats. 1931, ch. 47, § 76, p. 2890.) And the City of Fresno's 1957 Charter required that the municipally owned utility apply annual profits to rate reductions and prohibited the utility from becoming a "general revenue-producing agency for the City." (*Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 917, quoting Fresno Charter, § 1218.)

Consistent with Proposition 218's limits on property-related fees, the City of Santa Clara similarly required that rates consider

both current and future operational expenses. (*American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042.) So too with the City of Anaheim. (2-AA/1235-36 [1976 Charter Amendment requiring that City Council base rates on the cost of service and other requirements].)

Long before Proposition 218, then, some local voters exercised their power by setting controls on how local governments set taxes and fees. And when voters added controls on rate-setting and taxing authority, those controls remained law unless the voters exercised their power again. So when voters approved taxes like Anaheim's general fund transfer—even when given before Proposition 218—that approval was a considered choice by local voters that is entitled to respect. In other words, Proposition 218 did not undermine these prior voter approvals; it bolstered them.

B. Nothing in article XIII C's text invalidates taxes approved by voters before Proposition 218's enactment.

Propositions 218 and 26 added article XIII C to the California Constitution. And nothing within article XIII C hints at an intent to invalidate taxes approved before its enactment.

Article XIII C limits how local governments impose "taxes" by subjecting them to voter approval. (Cal. Const. art. XIII C, § 2, subd. (b), (d).) With limited, expressed exceptions, the Constitution's plain text reflects that this limitation applies prospectively, without an intent to disrupt previously approved voter-approved taxes. The text reveals three reasons why.

First, requiring voter approval when local governments "extend" or "increase" taxes assumes an existing tax. Extensions and increases apply, of course, to taxes approved after 1996. That requirement necessarily implies that taxes approved before 1996 need not be approved (Cal. Const. art. XIII C, § 2, subd. (b), (d).)

Second, article XIII C contains an express but limited exception for general taxes "imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of" article XIII C. (Cal. Const. art. XIII C, § 2, subd. (c).) Taxes imposed, extended, or increased during this interregnum "shall continue to be imposed only if approved by a majority vote of the voters … within two years of the effective date of" article XIII C. (*Ibid.*) But there is no similar requirement for taxes imposed, extended, or increased without voter approval *before* 1995. Nor is there a similar requirement for taxes approved *by voters* before the effective date of article XIII C. Since California voters enacted an express approval requirement for a specific set of pre-Proposition 218 taxes, courts should not imply a broader requirement for taxes outside that category. (See *Cornette v. Dept. of Transp.* (2001) 26 Cal.4th 63, 73 [reflecting the rule of construction that, where one part of a law includes a term or provision, its omission from another part of that law indicates legislative intent]; *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576 [same].) In short, taxes approved by voters prior to 1995 require no further approval.

Third, article XIII C contains a saving clause that protects voter initiative power. "Notwithstanding any other provision of

this Constitution," article XIII C provides, "the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge." (Cal. Const. art. XIII C, § 3.) Article XIII C thus expressly left existing taxes in place while preserving local voters' power to reduce or repeal those taxes through the initiative process.

Article XIII C's text thus reflects a voter-empowerment scheme that prevents local governments from imposing, extending, or increasing taxes after 1995 without voter approval. Article XIII C otherwise does not distinguish between taxes imposed with voter approval before or after Proposition 218 was enacted. Had the voters intended to invalidate a larger swath of previously approved taxes, they would have said so. But they did not. Reading into the Constitution a distinction between pre- and post-Proposition 218 taxes thus is unreasonable and defies the Constitution's plain text.

C. Invalidating a voter-approved tax undermines article XIII C's underlying purpose to give voters control over the taxes they pay.

Because article XIII C's text unambiguously *does not* invalidate pre-1995 taxes, the Court's interpretive analysis need not consider extrinsic evidence. But even if the Court were to consider extrinsic evidence, it would find that it supports the conclusion that article XIII C did not invalidate pre-1995 taxes.

When a constitutional provision is ambiguous, courts may consider "the analysis and arguments contained in the official ballot pamphlet" to determine the voters' intent. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 504.) And the Proposition 218 ballot

pamphlet highlighted that California voters intended to "protect[] taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (*California Cannabis*, *supra*, 3 Cal.5th at p. 940, quoting Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, p. 108, emphasis omitted.) Voters understood that Proposition 218 "does NOT prevent government from raising and spending money for vital services … ." (*Id*., quoting 1996 Ballot Pamp., *supra*, at p. 76.) Instead, "[i]f politicians want to raise taxes they need only convince local voters that new taxes are really needed." (*Ibid*., emphasis omitted; see also 2 AA/1261-63 [Proposition 218 ballot materials].) This purpose mirrored the concerns animating Proposition 13, as well as the later Proposition 26, which added a constitutional definition of "tax" to article XIII C. Both initiatives similarly dealt with "a specific concern with *politicians* and their imposition of taxes without voter approval." (*California Cannabis*, *supra*, 3 Cal.5th at p. 941.) These initiatives are thus intended to affirm and not undermine voter power.

Courts have repeatedly affirmed this intent of protecting voter power. Consider *Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245 (*Kennedy Wholesale*), in which a company argued that Proposition 13 did not allow voters to increase a tax on tobacco products—only the Legislature could raise taxes. (*Id*. at p. 249.) The Supreme Court rejected this argument. "Nothing in the official ballot pamphlet supports the inference that the voters intended to limit their own power to raise taxes in the future by statutory initiative." (*Id*. at p. 250.) While

Kennedy Wholesale involved a voter-sponsored initiative, the underlying point applies equally to council-sponsored ballot measures: because Proposition 13 was directed against "spendthrift politicians," the claim "that the voters intended to limit their own power would be difficult to justify." (*Ibid.*)

Consistently, in *California Cannabis*, the California Supreme Court found that a fee proposed by voters was not subject to article XIII C's general-election requirement, even though the fee appeared to meet the constitution's definition of a general tax. (*California Cannabis*, *supra*, 3 Cal.5th at pp. 943, 945.) Because article XIII C is concerned with empowering voters, and because nothing in the constitutional text suggested an intent to restrict voters' authority to tax themselves, the general-election requirement simply did not apply to a voter-sponsored tax initiative. (*Id.* at pp. 938-939.)

Following this precedent, the courts have repeatedly upheld voter measures that imposed a special tax with only a simple majority. (*City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 231-232; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058 (*Proposition G*); *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703 (*Proposition C*).) Those cases recognized the power of voters to tax themselves, despite article XIII C's supermajority requirement for special taxes imposed by local government. (Cal. Const., art. XIII C, § 2, subd. (d).) Article XIII C does not limit voter-sponsored tax measures that are not

imposed by local governments. (*Proposition C*, *supra*, 51 Cal.App.5th at p. 723.) Applying article XIII C's requirements thus would risk upsetting the will of the voters.

Courts have emphasized in these decisions that "[t]he crux of the concern" with article XIII C "is with local governments and politicians—not the electorate—imposing taxes." (*California Cannabis*, *supra*, 3 Cal.5th at p. 940.) And because courts carry a duty to "jealously guard" and "liberally construe" voters' exercise of their voting rights, courts must "resolve doubts in favor of the exercise of the right whenever possible." (*Id.* at p. 934.) Through this lens, the Supreme Court has explained that the drafters of article XIII C "simply did not contemplate that they were affecting the power of voters to propose taxes via initiatives." (*Id.* at p. 941.) The same principle governs in cases like this one, where voters did approve a council proposed measure.

Nor did anyone contemplate "that Proposition 218 would rescue voters from measures they might, through a majority vote, impose on themselves." (*California Cannabis*, *supra*, 3 Cal.5th at 940.) Proposition 218 intended simply to extend "the long standing constitutional protection against politicians imposing tax increases without voter approval." (*Proposition C*, *supra*, 51 Cal.App.5th at p. 724; see also 2 AA/1261.)

Palmer's appeal—though veiled in a claim to protect voters—seeks to undermine these protections. Her arguments would invalidate voter choice by distinguishing between approvals given before and after Proposition 218 was enacted. This novel and

unsupported theory conflicts with article XIII C's text and intent and must be rejected.

Article XIII C, as discussed, protects taxpayers by limiting how local governments may impose taxes "without their consent." (2 AA/1263 § 2.) So long as voters approved the tax, article XIII C's purpose is satisfied. The politicians have "convince[d] the local voters." (*California Cannabis*, *supra,* 3 Cal.5th at p. 940, quoting 1996 Ballot Pamp., *supra*, p. 76; see also 2 AA/1261.) Whether that vote was before or after Proposition 218 is irrelevant. The purpose of safeguarding voters' say in the taxing process was already met.

Nonetheless, Palmer argues that Proposition 218 implicitly repealed prior approvals that contain some ambiguity. But "the law shuns repeals by implication." (*Proposition C*, *supra*, 51 Cal.App.5th at p. 715, quoting *Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 249.) Had the voters wished to repeal their prior approval, they could have voted to do so by initiative any time in the decades since. (Cal. Const., art. XIII C, § 4.) But when voters do not collectively agree to repeal their approval, it would undermine article XIII C to allow just one voter (say, Palmer) to decide alone to repeal it for all others.

Sanctioning Palmer's attack on the 1976 and 1991 voter approvals thus would discredit voter approvals elsewhere on which other cities and public agencies have relied for decades. That doubt would infect local governments' budgeting processes and impose substantial costs on local governments (and thus ratepayers and taxpayers). Local governments have several-year budget planning horizons for expenditures like capital improvement projects. And

in that planning horizon, these local governments must rely heavily on existing and anticipated tax revenues. Invalidating a previously approved tax several years into a planning horizon would create disarray. But to what end? Not voter protection. Palmer's approach does not strengthen voting power; it dilutes it.

Attributing less deference and import to pre-Proposition 218 voter approvals would empower individual citizens and courts to give less meaning to voter approval than what the voters intended. Courts elsewhere—like in *Proposition C* and *Proposition G*—have exercised great caution in applying too strict a reading of article XIII C when doing so undermines voting power. That same disinclination to set aside the will of the voters should apply here.

Cal Cities thus asks this Court to refrain from adopting Palmer's view of the voter's 1976 and 1991 approvals of the City of Anaheim's Charter amendments. That view spurns article XIII C's purpose and must be rejected.

II. The Court Should Construe the City Charter Based on Its Text, As the Most Reliable Source of Voter Intent, and It Should Not Focus on Legislative History.

Palmer seeks to undermine voters' power in another way. Statutory interpretation begins with the law's text. Only when an exhaustive interpretation of the text reveals ambiguity may courts turn to extrinsic sources like legislative history. Palmer suggests ambiguity by seizing on one phrase in section 1221 ("cost of service") without considering any context. (Open. Br. 38-39.) And she suggests ambiguity because section 1221 does not use the term

"tax." (*Id.* at p. 45.) In other words, Palmer does not actually analyze the text or discuss what the words mean; she discusses the text only long enough to assert ambiguity and then turns to cherry-picking what she views as helpful arguments based on legislative history. Courts often caution against and reject reflexive reliance on legislative history like what Palmer proposes. But Palmer offers no reason for the Court to abandon these principles now. Cal Cities thus requests that the Court reject her proposed interpretation of the City's Charter amendments.

A. Courts interpret statutes and city charters alike by focusing first on the legislation's text.

Interpreting city charters is no different than interpreting statutes. (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 349.) A court's analysis for both begins with the charter's or statute's language by giving the words the "meaning they bear in ordinary use." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 (*Lungren*).) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Ibid.*)

Courts begin with a textual analysis because "the statutory language is generally the most reliable indicator of legislative intent." (*Scher v. Burke* (2017) 3 Cal.5th 136, 143, cleaned up (*Scher*).) So when "the statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.'" (*Hartford Fire Ins. Co. v. Macri* (1992) 4 Cal.4th 318,

326, quoting *Campbell v. State Farm Mut. Auto Ins. Co.* (1989) 209 Cal.App.3d 871, 875.) Put otherwise, a court's task is "to construe, not to amend, the statute" and a court "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.)

Courts, of course, may turn to extrinsic evidence like legislative materials to interpret laws. But they do so only after first determining they cannot establish the statute's plain meaning from its literal construction. (*Lungren*, *supra*, 45 Cal.3d at p. 735.) That first interpretive step must be exhaustive. So courts begin with the words or sentences at issue, then construe them within their context. (*Ibid.*) For instance, courts will consider other provisions relating to the same subject matter, then harmonize them with the provision at issue. "Literal construction" of words or sentences, the Supreme Court explains, "should not prevail if it is contrary to the legislative intent apparent in the statute." (*Ibid.*)

Only when multiple reasonable interpretations flow from the above analysis may courts then consider "extrinsic aids." (*International Federation of Professional & Technical Engineers, AFL-CIO v. City of San Francisco* (1999) 76 Cal.App.4th 213, 225.) These aids include "the ostensible objects to be achieved, the evils to be remedied, the legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme." (*Ibid.*) And when that analysis may

yield "two alternative interpretations, the one that leads to the more reasonable result will be followed." (*Lungren*, *supra*, 45 Cal.3d at p. 735.)

Even then, courts exercise caution when resorting to legislative history as it tends to prompt cherry-picking. (See *J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1575-79 [discussing pitfalls and need for using legislative history].) "Although legislative history often can help interpret an ambiguous statute, it cannot change the plain meaning of clear language." (*In re Steele* (2004) 32 Cal.4th 682, 694.) Legislative history, therefore, cannot cloud statutory text that is otherwise clear. (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1160 (dis. opn. of Kruger, J.); see also *Milner v. Department of Navy* (2011) 562 U.S. 562, 574 ["Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."].)

Another restraint imposed when using legislative history involves subsequent legislative history. "The declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law." (*Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 52.) "Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244 (*Western Security Bank*).) "Unpassed bills, as evidences of legislative intent, have little value." (*Dyna-Med, Inc.*

v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1396 (*Dyna-Med*).) As a result, when courts look to legislative history to glean some intent, they should look to the history contemporaneous with the law being interpreted rather than some after-the-fact conduct relating to the law.

B. Palmer's interpretation of the Charter Amendments flips the rules of interpretation on their head by elevating legislative history over text.

Cal Cities reminds the Court of these "well-established principles" of statutory construction (*Arntz v. Superior Court* (2010) 187 Cal.App.4th 1082, 1091) because Palmer's proposed interpretive rule does not apply them.

Begin with the text: "The City Council shall establish rates, rules and regulations for the water and electrical utilities." (2-AA/1235.) Those rates, section 1221 requires, "shall be based upon cost of service … ." (*Ibid.*) But the text goes on to list several costs that the rates "shall be sufficient to pay." (2-AA/1235-36.) Those costs include system operations and maintenance; debt principal and interest; financial reserves; and capital construction for new facilities. (*Ibid.*) It also lists this key provision:

> For payments to the general fund of the City (exclusive of those amounts paid pursuant to subsection (a) of this Section 1221) in each fiscal year, in an amount equal to, or less than, four percent (4%) of the gross revenue earned by the utility during the previous fiscal year.

(*Ibid.*)

Because the budget transfer is included in a list of the City's utility service costs it should likewise be construed as a legally required cost of the City's service. (See, e.g., *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1012 [discussing the principle of construction that, when a statute lists items, "a court should interpret the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope" and avoid making an "item markedly dissimilar to the other items in the list."].)

But the analysis does not end there. While a cost of service, the general fund transfer also is a "general tax." Article XIII C defines a "tax" as "any levy, charge, or exaction of any kind imposed by a local government," subject to exceptions that do not apply. (Cal. Const. art. XIII C, § 1, subd. (e).) And a "general tax" is "any tax imposed for general governmental purposes." (Cal. Const. art. XIII C, § 1, subd. (a).) This definition fits a levy used to pay the cost of a general fund transfer. And nothing under the Constitution, section 1221, or elsewhere hints at prohibiting voters from approving a "cost of service" charge that is otherwise a "general tax." Read in this context, section 1221's plain text thus is clear that the general fund transfer amount is a voter-approved tax.

Rather than begin with the Charter's plain text and ordinary meaning and construe it within its context, Palmer pays short shrift to the text before jumping into legislative history. Palmer correctly acknowledges that the Court should "determine voter intent" (Open Br. 37), but she limits her textual analysis to just

two areas of scrutiny: (1) "Section 1221's 'cost-of-service requirement'" and (2) "neither the ballot measure nor the charter provision mention a 'tax' at all." (Open Br. 9, 10; see also *id*. at pp. 36-37 ["cost of service" argument] & 45 [section 1221 does not use the word "tax"].) After implying that these two areas make section 1221's intent ambiguous, Palmer then turns to extensive discussions of legislative history. (*Id*. at pp. 39, 40-41, 45-48.) This approach flouts the well-established principles of statutory construction.

Because the Charter's text is the most reliable indicator of voter intent (*Scher*, *supra*, 3 Cal.5th at p. 143), Palmer should have exhausted the ordinary tools of textual construction before turning to legislative history. For instance, Palmer assumes that section 1221's text must include the word "tax" to show voters' intent to approve a "tax." But that misapplies the analysis. As the City rightfully points out, the Court should consider whether voters approved a levy that would otherwise fit the definition of "tax." (See Opp'n Br. 35.) Whether section 1221 contains the word "tax" thus does not automatically render the Charter Amendment ambiguous as to the voters' intent, which was to authorize the very transfer that she now challenges. And as the City correctly explains, voters can approve a charge that they call a "cost of service" requirement, even if that charge is also a "tax" under article XIII C. (Opp'n Br. 32.)

Palmer thus reads too much into section 1221's "cost of service" language. And the result of Palmer's shallow textual analysis is that she improperly invokes legislative history to show

intent. No matter what the legislative history may say on her suggested issue, Palmer's knee-jerk reliance on extrinsic evidence does not show why it is necessary to glean voter intent. Such reflexive reliance risks clouding section 1221's clear text.

Even if Palmer had shown some need for legislative history, the Court cannot rely on the legislative history she highlights. Take Measure N, a 2014 proposal to amend the City's Charter that voters turned down. (3-AA/1783-90.) Palmer points to that unsuccessful vote as having "further bolstered" her interpretation of what the 1976 approval intended. (Open. Br. 40.) But voters and legislators do not vote for legislative proposals for many reasons. That is why unpassed laws "have little value" as evidence of legislative intent. (See *Dyna-Med*, *supra*, 43 Cal.3d at p. 1396.) The 2014 proposal is all the less relevant given the "gulf of decades" separating it from the 1976 approval. (See *Western Security Bank*, *supra*, 15 Cal.4th at p. 244.)

Cal Cities thus asks that the Court refrain from adopting Palmer's interpretive principles. Palmer has shown no need for ignoring section 1221's plain text. And she has wrongly relied on irrelevant legislative histories as supposed proof of voters' intent. These efforts lead to Palmer clouding the Charter's otherwise clear language. And in accordance with the well-established principles of interpretation, Palmer's approach must be rejected.

CONCLUSION

Cal Cities respectfully asks this Court to affirm the trial court's determination that the City may include the cost of

general fund transfer in its electric service charges without violating article XIII C.

DATED: September 26, 2022 HANSON BRIDGETT LLP

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CERTIFICATE OF COMPLIANCE

The text of this brief consists of 6,105, words as counted by Microsoft Word, the program used to prepare this brief.

Dated: September 26, 2022

By: */s/ Sean G. Herman*
Sean G. Herman

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of San Francisco. I am over the age of eighteen years and not a party to the within entitled action. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On September 26, 2022, I served the within THE LEAGUE OF CALIFORNIA CITIES' APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT CITY OF ANAHEIM; 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 First Class Mail: I caused each such envelope, with postage thereon fully prepaid to be placed in the United States mail to be mailed by First Class mail at San Francisco, California to:

Honorable Randall J. Sherman
Orange County Superior Court
751 W. Santa Ana Boulevard
Santa Ana, CA 92701

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

Executed on September 26, 2022 at San Francisco, CA.

Georgette D. Peck