C064907
Sacramento County Superior Court
No. 34-2009-80000359-CU-WM-GDS

COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FOR THE THIRD APPELLATE DISTRICT

CALIFORNIA REDEVELOPMENT ASSOCIATION, et al.,
Plaintiffs and Appellants,

v.

MICHAEL C. GENEST, as Director, etc. et al.,
Respondents and Defendants.

On Appeal From a May 4, 2010 Order and May 13, 2010 Judgment by the Hon. Lloyd Connelly, Superior Court, County of Sacramento

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APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE *AMICUS* BRIEF IN SUPPORT OF APPELLANTS; PROPOSED BRIEF OF *AMICUS CURIAE*

MEYERS, NAVE, RIBACK, SILVER & WILSON

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Clerk, Court of Appeal,
Third Appellate District

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I. INTRODUCTION

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

Pursuant to California Rule of Court 8.200(c)(1), the League of California Cities ("League") respectfully requests leave to file the accompanying brief of *amicus curiae* in support of the Appellants California Redevelopment Association, Community Redevelopment Agency of the City of Union City and Fountain Valley Agency for Community Redevelopment.

II. INTEREST OF THE *AMICUS*

The League of California Cities is an association of 474 California cities united in promoting the general welfare of cities and their citizens. The League is advised by its Legal Advocacy Committee, which comprises 24 city attorneys representing all 16 divisions of the League from all parts of the State. The Committee monitors appellate litigation affecting municipalities and identifies those that are of statewide significance. The Committee has identified this case as being of such significance.

With the adoption of the Community Redevelopment Law more than 50 years ago, the State Legislature declared that the existence of blighted areas in California's cities and counties constituted a "serious and growing menace which is condemned as injurious and inimical to the public health, safety and welfare of the people of the communities in which they exist and of the people of the State." (Health & Safety Code § 33035 subd. (a).) This menace was deemed "beyond remedy and control solely by regulatory process in the exercise of police power." (§33035 subd. (b).) Thus local government was given the power to establish redevelopment agencies, and those agencies were given the power and the tools to address blight and revitalize crumbling neighborhoods.

The evils of blight and decay, and the barriers to economic development that they represent, still exist within our cities. Redeveloping blighted areas can

bring job growth and investment into California's cities when they most desperately need it. Moreover, since the passage of Proposition 13 in 1977, the enhanced property tax revenue created by redevelopment has become a vital source of revenue not only for the redevelopment agencies that are authorized to use property tax increment to carry out redevelopment activities, but also for the cities, counties, school districts and other taxing entities who share in the benefits of an improved local economy, an increased property tax base, and increased sales tax and other revenues. In California, local government has always been heavily dependent on property tax revenues to fund essential services. Redevelopment projects are thus a key component of local government financing because redevelopment enhances property values in blighted neighborhoods, thus increasing property tax revenue while also generating jobs and increased sales, use and other tax revenues. With the recent economic downturn and the resulting curtailing of private development, redevelopment projects have become even more important to long term viability of local governments. Therefore, more than ever, the vitality of redevelopment agencies in California's cities is a matter of critical importance.

With the passage of ABX4-26, the State of California (hereinafter the "State") seeks to take more than two billion dollars from local redevelopment agencies. This shift of resources away from local economic development and affordable housing projects will have severe adverse impacts on local governments and their ability to eliminate blight and support economic development activities that create jobs and affordable housing. Many development projects will simply be stopped in their tracks, with the result being the continuation of blight and the loss or significant delay of the future enhanced property tax that the redeveloped areas would provide. Eighteen cities responded to a survey request and reported that as a result of ABX4-26 they are cancelling or delaying new construction projects with a combined value of 1.9 billion dollars. (See, Request to Consider Evidence in Support of Amicus Application (hereinafter

"Request"), Exhibit 1, 2010 Report of Gus Kohler p. 7.) In addition to those cities, the City of Madera is cancelling seven housing projects (involving 190 units) and 10 capital improvement projects, with a total value of over $ 37 million. (Request, Exhibit 2.) That cancellation also represents a loss of over 1,400 construction jobs in an area hard hit by the economic downturn. Because cities also enter into cooperative agreements to share staff with their redevelopment agencies, the payments required by ABX4-26 have also required cities to lay off important personnel. The City of San Jose alone has lost over 50 full time positions. (Request, Exhibit 3). In order to protect the ability of redevelopment agencies to continue revitalization efforts, some city governments will simply be forced to pay the ABX4-26 obligation to the State directly out of city coffers. Moreover, for those projects that are able to continue, the legislation virtually insures that there will be a delay of at least a year, probably more, before the cities can begin to receive the benefits for the increase in property taxes that redevelopment projects create. ABX4-26 is an indirect assault on the future tax revenues of local governments, and therefore, the League and its membership have a vital interest in supporting and joining with the efforts of the Appellants in this matter.

III. ASSISTANCE IN DECIDING THE MATTER

The very first sentence of the State's brief claims that "every year, billions of dollars of property tax revenue are diverted from schools, cities and counties to redevelopment agencies." (Resp. Brf. p.1.) As a representative of those same cities that the State suggests are losing tax revenues, the League is in a unique position to demonstrate just how specious this statement is. In the attached brief, the League will demonstrate that the tax increment made available to redevelopment agencies by Article XVI, section 16 of the State Constitution is crucial to the financial health of the League's member cities. The League will show that the effect of ABX4-26 is to take property tax revenues from cities and counties for the benefit of the State budget, and the State budget alone.

This fiscal reality informs the constitutional analysis as it runs contrary to the legislative findings upon which the State so heavily relies. The State's brief implicitly recognizes that in order to find that ABX4-26 is constitutional, the Court must accept the legislation's declaration that the transfer it creates amounts to an indebtedness of the redevelopment agencies, even though the Legislature created this "indebtedness" out of thin air. Yet, since ABX4-26 will result in a loss of revenue to cities, the legislation violates both the spirit and text of a different constitutional provision—one passed by the voters--Proposition 1A. What the legislation accomplishes is to shift from cities to the State the benefit of property tax increases resulting from redevelopment projects. Even if the Court were to hold that the legislation does not technically violate Proposition 1A, the fact that the Legislature acted contrary to the will of the voters affords no reason for the Court to accept the legislative declaration without critical analysis.

IV. CONCLUSION

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represents that he wrote this brief in its entirety in a pro bono capacity, that his firm is paying for the entire cost of preparing and submitting this brief, and that no party to this action or any other person either wrote this brief or made any monetary contribution to fund the preparation or submission of this brief. For the reasons set forth herein, the League respectfully requests that the Court accept the accompanying brief for filing in this case.

DATED: January 24, 2011

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____

Attorneys for Amicus Curiae
League of California Cities

AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANTS

I. INTRODUCTION

In 1951, the State Legislature declared that the existence of blighted areas within California's communities had become a "growing menace" that was "beyond remedy and control solely by regulatory processes in the exercise of police power." (Health & Safety Code § 33035 subd. (a)(b).)[1] In order to address this problem, the Legislature enacted the Community Redevelopment Law (Health and Safety Code §§ 33000 *et seq.*) to "protect and promote the sound development and redevelopment of blighted areas..." (§ 33037 subd. (a).) The recognition of this need took on constitutional significance the following year when the voters of the State protected funding for redevelopment with the adoption of Article XVI, section 16 of the State Constitution. (See, e.g. *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 866 fn. 7 ["CRL was first adopted in 1951. After voter approval it was made part of the California Constitution in 1952 as section 19 of article XIII, since renumbered as article XVI, section 16."]) The system set up by Article XVI, section 16 is that debts are incurred by redevelopment agencies to fund projects, and then the resulting increase in property taxes is used to pay that debt off. Once the debt is paid off, then the enhanced property taxes flow directly to local governments and schools.

Now, local redevelopment finds itself under attack. For years, State legislators have been unable to agree on measures to limit the State's increasingly out of balance budgets and have taken to raiding local governments' property tax revenues to solve the State's problems. The voters of the State attempted to put a stop to this practice with the passage

[1] Unless otherwise indicated, all statutory references will be to the Health and Safety Code.

of Proposition 1A in 2004 . In response, the State passed ABX4-26 which, rather than attacking local revenues directly, did so indirectly by taking the money from local redevelopment agencies. With ABX4-26, the State essentially forced redevelopment agencies to pay a portion of the State's constitutional obligation to fund public education, thereby freeing up money the State could use to balance its budget. This legislation is both short sighted and unconstitutional.

Simply put, by taking money from redevelopment agencies today, local governments are being robbed of badly needed property tax revenues in years to come. By revitalizing blighted neighborhoods, redevelopment agencies create new wealth in the form of increased property values and enhanced economic prosperity. With property tax revenues otherwise frozen by Proposition 13, local governments will be in desperate need of those revenues in order to be able to pay for fire, police, schools and other essential functions in years to come. In order to create this future prosperity, redevelopment agencies have incurred debt which must be paid off. With ABX4-26 and other similar legislation, the State is attempting to solve its temporary budget problems by forcing agencies to pay for a portion of the State's obligation to fund public education. But every dollar that is taken from an agency today is a dollar that is lost to local government because ABX4-26 forces agencies to delay or halt the implementation of projects that would enhance the local tax base and ultimately generate additional revenue for all local taxing entities. Forcing redevelopment agencies to share in the State's obligations to pay for public education violates Article XVI, section 16, which prohibits the use of tax increment created by redevelopment to be used for anything other than paying debts incurred by a redevelopment agency. By purporting to add to the agencies' debt, the Legislature has also violated Proposition 1A (Cal. Const. Art XIII, section 25.5) because every tax increment dollar over and

above what is needed to pay a redevelopment agency's debts belongs to the local taxing entities.

With respect to the former point, the issue has been more than adequately addressed in the Appellants' briefs, as well as the opening brief of Los Angeles County in the parallel proceeding. (See, Appellant Opening Brief, in *County of Los Angeles v. Genest,* Case no. C06530, ordered consolidated for argument with the instant case on August 9, 2010.) Therefore, with this brief, the League will focus on the latter point and demonstrate how ABX4-26 is an indirect taking of property tax revenues from cities, counties and school districts in violation of Proposition 1A. This brief will also demonstrate that even if the Court were to conclude that because the taking is indirect there is no technical violation of Proposition 1A, ABX4-26 nonetheless violates the clear intent of the voters to protect local property tax revenues, and, therefore, there is no basis for giving deference to the legislative declaration that the new payments are "debts" of the redevelopment agencies. This lack of required deference to the legislative declaration dictates the outcome of this suit because, as all parties seem to agree, without this declaration ABX4-26 violates Article XVI, section 16.

II. REDEVELOPMENT SERVES A VITAL INTEREST TO LOCAL GOVERNMENTS THAT ABX4-26 PUTS AT RISK.

At the outset it is necessary to address the fundamental misstatement that underlies all of the State's arguments. In the opening lines of the State's brief, it offers this rational for taking money away from redevelopment agencies:

> Every year, billions of dollars of property tax revenue are diverted from schools, cities and counties to redevelopment agencies. And historically, the State has protected schools from the effect of tax increment financing by backfilling the needed amount. (Respondent's Brief, p. 1.)

While this statement makes a good sound bite, it is fundamentally wrong. Simply put, tax increment financing does not "divert" property taxes away from local governments and schools that they would otherwise receive. By enhancing property values, redevelopment creates new property tax revenues that eventually flow to the local taxing authorities. Without redevelopment, these new revenues would likely not exist. Thus, by creating increased property values, redevelopment activity benefits not only the city in which the agency operates, but also benefits the county, the neighboring jurisdictions, the schools and other taxing entities that in the long term will all benefit from the increase in property tax revenues. The only limitation is that the increased revenues must first be used to pay the debts that were incurred which made the projects possible. Even in the short term, redevelopment projects increase economic opportunities and quality of life for local citizens. This is precisely why local governments adopt redevelopment plans in the first place.

A redevelopment agency does not come into existence until the local legislative body declares by ordinance "that there is a need for an agency to function in the community." (§ 33101.) Redevelopment projects begin when the local legislative body establishes a survey area to determine the existence of blighted conditions and the need for redevelopment. (§§ 33310-33312.) The local planning commission then selects a project area comprising all or part of the survey area and formulates a preliminary plan. (§§ 33322-33324.) This preliminary plan is then submitted to the redevelopment agency, which then notifies tax officials of its intent to adopt a redevelopment plan. (§33327.) After a comprehensive schedule that includes community meetings, consultation with State and local taxing entities and other public agencies, environmental review, publication of a final report, and public hearings, the local legislative body then votes on an ordinance adopting the plan. (§ 33367.) In order to be valid, the ordinance

must make specific findings, including that the project area is blighted, that the blight is unlikely to be eliminated by the private or public sectors acting alone, and that the plan "would redevelop the area in conformity with this part and in the interests of the public peace, health, safety and welfare." (§33367 subd. (d)(1) & (2).) Adoption of the plan is then subject to referendum or other legal challenge. (§§ 33365, 33501.)

Accordingly, a redevelopment plan, with its accompanying allocation of tax increment financing to the redevelopment agency, would not exist unless the legislative body of the local government deemed it necessary in compliance with all requirements of State law. As the principal briefs in this matter have adequately described, the phrase "tax increment" refers to the increase in property taxes resulting from an increase in assessed property values. "The increase in assessed valuation occurs because of the new construction and revitalization in the project area." (*Redevelopment Agency of San Bernardino v. County of San Bernardino* (1978) 28 Cal.3d 255, 259.) Redevelopment agencies use this future tax increment to finance their projects.

> Increment revenue, which is the primary source of funding for redevelopment projects, consists of the increased property tax revenue resulting from rises in the assessed valuation of property in a redevelopment project area. Taxing agencies continue to receive the amount of revenue they would have received under the assessed valuation existing at the time the project was approved, while the additional revenue attributable to the project is placed in a special fund of the redevelopment agency for repayment of indebtedness incurred in financing the project. (*County of Santa Clara v. Redevelopment Agency* (1993) 18 Cal.App.4th 1008, 1011.)

Thus, "when the redevelopment results in increased property values, in the redevelopment area, the increase in value—the tax increment—is distributed by the taxing authority into a special fund of the redevelopment agency, to pay the principal of and interest, on its debt." (*Glendale*

Redevelopment Association v. County of Los Angeles (2010) 184 Cal.App.4th 1388, 1394.) "Taxes which are not attributable to the increase in property values, but which are instead attributable to a pre-redevelopment 'base year value,' are distributed as they would have been had a redevelopment plan not been adopted." (*Ibid.*) Tax increment financing is premised on the notion that an "increase in assessed valuation occurs because of the new construction and revitalization in the project area." (*Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27.) "[The] increases in the assessed value produce tax revenues which are used to pay off the loans which were used for the improvements which produced the increased assessed property values." (*Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 431.)

In keeping with the purpose of tax increment financing, a redevelopment agency is only entitled to that portion of the tax increment needed to pay its debts. Every year, the agency must file with the county auditor a statement of indebtedness (SOI) which the county auditor uses to calculate the amount of tax increment to which the agency is entitled. (§ 33675; see also *Glendale Redevelopment Association, supra,* at 1394.) "[A]n agency is entitled to the increment only in the amount of its indebtedness, less available revenue." (*Glendale Redevelopment Association, supra.* at p. 1374.) Any tax increment in excess is distributed to local taxing entities. Furthermore, once a project's indebtedness has been repaid, or a project's term has expired, the entire tax increment reverts back to the local taxing entities. (*Bernardi v. City Council* (1997) 54 Cal.App.4th 426, 436.)

Pursuant to statutory requirements, each redevelopment plan contains specific deadlines for plan effectiveness, receipt of tax increment and repayment of debt, and other redevelopment actions. (§ 33333.2.) Once the term of a redevelopment project expires, Article XVI, section 16's

authorization for the agency to receive tax increment also expires. Except in limited specified circumstances, the redevelopment time limits can only be extended by an ordinance amending the redevelopment plan, adopted by the local legislative body based on a finding either that there remains significant blight in a project area or that a project has not met required affordable housing goals. (§§ 33333.2 & 33333.10.)

Therefore, under this system it is the local taxing entities which ultimately benefit through the receipt of higher property tax revenues they receive after the agency pays its debts. The only "diversion" of those revenues to redevelopment agencies is that which is needed to repay the debts that made the higher assessments possible in the first place. Without that debt, the project areas in a given community would remain blighted and the property values would remain suppressed.

Yet, blighted neighborhoods and suppressed property values is the future the State seeks to create. The losses to local government statewide are staggering. By requiring agencies to use such a huge portion of their tax increment to assist the State in balancing its budget, agencies find themselves having to cancel or delay valuable projects. For example, as a result of being required to make the SERAF payments, the City of Madera is cancelling seven housing projects (involving 190 units) and 10 capital improvement projects. (Evidence Request, Exhibit 2.) The total value of the lost projects exceeds 37 million dollars. That cancellation also represents a loss of over 1,400 construction jobs in an area hard hit by the economic downturn. The cities of Brea, Riverside, Clearlake, Cloverdale, Duarte, Gonzales, Imperial Beach, Lakeport, Monterey, Paramount, Pinole, Porterville, San Mateo, San Pablo, Simi Valley, and Temecula have all reported that they will be cancelling or delaying redevelopment projects representing a combined loss of $1.8 billion in new construction. (Evidence Request, Exhibit 1.) Not only does this result in an immediate

loss of over 11,000 construction jobs when they are needed most, but also every lost project means that underlying property will remain blighted for the foreseeable future, and these cities will have lost a valuable source of future revenues. These are just the figures from the League's member cities that were able to respond in time for the filing of this brief.

Additionally, many redevelopment agencies share staffs with their municipalities. A portion of these staff salaries represents part of the costs incurred in administering the redevelopment agency and therefore the agency pays a corresponding portion of these salaries. By taking from redevelopment coffers, the State has compelled both the agencies and cities to lay off employees. In San Jose, for example, the mandated SERAF payments resulted in the reduction in the city's work force by over 53 positions. (Evidence Request, Exhibit 3.)

Therefore, in real terms, ABX4-26 is costing California's cities billions in future property tax revenues and even more in lost economic growth and opportunities. Once again, the State Legislature has attempted to solve its intractable budget woes by taking badly needed revenues away from local governments. The question this case presents is whether this taking is constitutional. It is not.

III. ARGUMENT

A. The Purpose of Proposition 1A is to Prohibit The State Government From Taking Property Tax Revenues Away From Local Uses To Solve The States Budget Problems.

Any analysis of Proposition 1A and the effects of any State action reducing property tax revenues must first begin with the passage of Proposition 13 in 1978. With its passage, ad valorem property taxes were frozen at 1% of the existing property value for all properties in the State. (Cal. Const. Art. XIIIA, sec. 1 subd. (a).) More importantly, the proposition allowed for only modest inflationary increases in property taxes

and allowed for a reassessment of property values only on resale, new construction and substantial rehabilitation. (Cal. Const. Art. XIIIA, sec. 2 subd. (a) (b) & (c).) One consequence of Proposition 13 is that local government has become increasingly reliant on new construction and development in order for property tax revenues to keep pace with inflation.

At the time Proposition 13 passed, the State had sizable budget surpluses. Following passage of the measure, the State was called upon to use those surpluses for the benefit of local governments and school districts. (See, *Jarvis v. Cory* (1980) 28 Cal.3d 562, 574.) This assistance was accomplished through block grants and relieving local government of responsibility for certain welfare programs. (*County of Sonoma v. Condition on State Mandates* (2000) 84 Cal.App.4th 1264, 1274.) The State undertook direct funding of much of the State's educational system and the reduced property taxes were divided among local agencies according to a complex formula. In 1988, the voters passed Proposition 98, which established a minimum level of State funding for public schools and community colleges. (Cal. Const. Art. XVI, sec. 8.)

Yet statewide revenues continued to decline in comparison with costs, and in 1992, the State was faced with what was then described as "an unprecedented budgetary crisis." (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155. 163.) Rather than looking to State tax increases or serious cuts in State services, the State enacted Revenue and Taxation Code section 97.2, which effectively took local property taxes away from local governments and deposited them into "Educational Revenue Augmentation Funds" (ERAF) which were then used to relieve the State of its Proposition 98 obligations. This statute freed State money to be used for other purposes. (See, *County of Sonoma v. Commission on State Mandates, supra,* 84 Cal.App.4th at 1276-1277.) Soon thereafter the Legislature required redevelopment agencies to

contribute to ERAF funds. (See, *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 275-277.)

Unfortunately, what was thought in 1992 to be an "unprecedented" budgetary crisis became an ordinary annual occurrence. In 2004 then Governor Schwarzenegger announced an intent to shift an additional $1.3 billion in property taxes away from local government in order to fund the State's Proposition 98 obligations. (See, Evidence Request, Exhibit 2) This proposal resulted in the passage of Proposition 1A. Now found at Article XIII, section 25.5, Proposition 1A prohibits the State Legislature from reducing "the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004." (Art. XIII, sec 25.5 (a)(1)(A).) Thus, the voters forever barred the Legislature from taking an additional share of the local property tax pie and using it for some other purpose. Unfortunately, the proposition left a hole through which the Legislature has again sought to raid local property taxes. Specifically, "local agency" was defined to have the same meaning as provided in Revenue and Taxations Code section 95. (Art. XIII, sec. 25.5 (b)(2)) Redevelopment agencies are not included in section 95's definition of "local agency." Seizing on this omission, the Legislature enacted ABX4-26 (as well as its predecessor statute) seeking to get at local property tax revenues by forcing redevelopment agencies to part with $2.1 billion in property tax increment they received. ABX4-26 then uses this money to relieve the State of even more of its Proposition 98 obligations. (§ 33690 subd. (k).) There can be little doubt that this move was contrary to the will of the people as expressed in Proposition 1A.

However, the loophole in Proposition 1A is of no assistance to the State because, as we shall see, the necessary consequence of ABX4-26 is that local taxing entities will see their share of property tax revenues reduced. Because of this, the effect of ABX4-26 is to indirectly take property tax revenues away from local agencies and put it to State uses, thereby violating proposition 1A.

B. ABX4-26 Will Inevitably Delay And Reduce Property Tax Revenues To Cities In Violation Of Proposition 1A.

Although a court "may not invalidate a statute simply because in some future hypothetical situation constitutional problems may arise," neither can a court "uphold the law simply because in some hypothetical situation it might lead to a permissible result." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 347.) In other words, where a statute will inevitably lead to a fatal conflict with the applicable constitutional mandate, it cannot stand. (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 337, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181.) This does not mean that a finding of unconstitutionality is dependent on a finding that the legislation will always result in an unconstitutional act; it is enough that application of the statute would be unconstitutional "in the generally or great majority of cases." (*County of Sonoma, supra,* at p. 337, quoting, *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 673.)

There are two related ways in which ABX4-26 will inevitably violate Proposition 1A by reducing local taxing authorities' receipt of their designated percentage of property taxes. First, to compensate for the immediate losses, ABX4-26 authorizes redevelopment agencies to extend their plan terms by up to one year. (§ 33331.5) Because of the size of the required SERAF payments, agencies will inevitably exercise this option.

This means that ABX4-26 effectively forces most communities to delay by one year the completion of their redevelopment plans, thereby delaying by one year cities' and other local taxing entities' direct receipt of the tax increment. Second, in those communities where a redevelopment agency's Statement of Indebtedness reveals that the entire tax increment is not required to meet the agency's debt obligations, adding to the agency's debt will result in a reduction in the current tax increment that would go to those cities and other local taxing entities. Third, cities and counties may agree to pay the SERAF transfer on behalf of their redevelopment agencies, which results in a direct and immediate loss their revenues. Not only is one or all of these events likely to occur, they are the necessary logical consequence of the challenged legislation. When carefully examined, what the legislation accomplishes is that it uses redevelopment agencies as a conduit through which to take property tax revenues from local taxing agencies, now and/or in the future.

By statutory mandate, both the length of time a redevelopment agency can receive tax increment and the amount of the tax increment it receives are limited to what is necessary to pay the agency's debt obligations. (See, *Glendale Redevelopment Agency v. County of Los Angeles, supra,* 184 Cal.App.4th at p. 1395.) Everything over and above what is needed to pay off a project's debts is thus property tax revenue to which cities and other local taxing entities are entitled. Correspondingly, every dollar the Legislature adds to a redevelopment agency's debt load represents a dollar in property tax revenues that will eventually be lost to local governments. Requiring redevelopment agencies to use billions of dollars of tax increments for the State's purposes necessarily means that there will be billions of dollars less remaining that would otherwise go directly to the local taxing entities.

Therefore, the ultimate consequence of ABX4-26 is a shift of the property tax values of redevelopment properties to the State government and away from cities, counties and even school districts.

As the County of Los Angeles points out, one need only look to the Assembly's analysis to quantify the actual likely costs to local governments. (See Opening Brief of County of Los Angeles, pp. 24-25, and Los Angeles County Appendix p 807.) The Assembly analysis recognizes that most redevelopment agencies would delay completing their plans by the additional year allowed by ABX4-26, and since the total annual tax increment revenues are approximately $ 5 billion, the aggregate loss in tax revenues to cities, counties and school districts would be nearly three times the amount that the State seeks to take from redevelopment agencies in order to temporarily avoid $1.7 billion in its Proposition 98 obligations.

The entire purpose of Proposition 1A was to prevent the State from trying to solve its ongoing budget problems by taking from local governments any portion of their shrinking property tax revenues and putting those revenues to State uses. This is exactly what ABX4-26 accomplishes. The fact that the redistribution was indirect makes it no less pernicious. It is a violation of the will of the people and must be declared as such.

C. At A Minimum, The Fact That ABX4-26 Violates The Purpose of Proposition 1A Means That No Deference Need Be Accorded To The Legislative Findings In Determining Whether The Act Violates Article XVI, Section 16 .

The fact that the legislation works such a transparent end-run around the will of the people as expressed in Proposition 1A, as later clarified by Proposition 22, militates against affording any deference to the legislative findings that were adopted to try to bring ABX4-26 within the terms of Article XVI, section 16.

It appears that both the California Redevelopment Association and the State agree that because Article XVI, section 16 mandates that property tax increments be used for redevelopment purposes, in order for ABX4-26 to be found constitutional, the Court must accept at face value the legislative declaration that the required SERAF payments are debts incurred by the redevelopment agencies. What the State essentially argues is that the deference typically afforded to legislative findings requires blind adherence to the Legislature's declaration that a legislatively imposed mandate somehow equates to a debt incurred by redevelopment agencies. This argument is wrong.

To begin with, what is at issue is not the accuracy of a legislative finding of fact used to justify a piece of legislation; rather it is the meaning of the phrase "debts incurred by the agency" used in Article XVI, section 16. In interpreting any constitutional provision, a court's "paramount task is to ascertain the intent of those who enacted it." (*Sutter's Place v. Superior Court* (2008) 161 Cal.App.4th 1370, 1381.) In performing this task, a court is bound, first and foremost, to choose the plain meaning of the provision if it is clear and unambiguous. (*California School Boards Ass'n v. State of California* (2009) 171 Cal.App.4th 1183, 1206.) Where a provision is passed by initiative, a court is to "presume the voters intend the meaning apparent on the face of the initiative measure." (*Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

Accordingly, although legislative findings as to what a constitutional provision means may be entitled to some deference, the findings are not binding. (*Amwest Surety Insurance Co, v. Wilson* (1995) 11 Cal.4th 1243, 1242.) Deference afforded to legislative findings "does not foreclose a court's independent judgment of the facts bearing on an issue of constitutional law." (*Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 569.) Additionally, blind deference

is not appropriate when the State's self interest is at stake. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 560.) If the State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as a public purpose, then constitutional constraints on the State's spending and revenue generating powers would provide no protection at all. (*Id.*, quoting, *United States Trust of New York v. New Jersey* (1977) 431 U.S. 1, 25-26.)

Here, granting deference to the legislative findings in question is particularly suspect because doing so would thwart the expressed will of the voters. Where the voters have spoken, broad deference to their will must be given in order to support the electorate's power to enact legislation. (*Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, 573-574.) Proposition 1A was enacted specifically to prevent the State government from reducing local government's share of property tax revenues and using those revenues for a State purpose. And as we have seen, that is exactly what ABX4-26 accomplished. It took future property tax revenues away from local governments by raiding the current funds available to redevelopment agencies, and then used those funds to satisfy the State's Proposition 98 obligations. The result of the SERAF legislation violates the principles embodied in Proposition 1A. This view is bolstered by the recent passage of Proposition 22.

Enacted within a year after the passage of ABX4-26, with Proposition 22 the voters moved to close the loophole left open by Proposition 1A. With Proposition 22's passage, Article XIII, section 25.5 now expressly prohibits the State from requiring "a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State ..." (Art. XIII sec. 25.5 subd. (a)(7).)

Proposition 22 clarifies that the will of the voters has always been to protect tax increments from state raids, and that redevelopment agencies were omitted from Proposition 1A only because it was understood that they were already protected by Article XVI, section 16. The text of Proposition 22 states as follows:

> Section 16 of Article XVI of the Constitution requires that a specified portion of the taxes levied upon the taxable property in a redevelopment project each year be allocated to the redevelopment agency to repay indebtedness incurred for the purpose of eliminating blight within the redevelopment project area. Section 16 of Article XVI prohibits the Legislature from reallocating some or that specified portion of the taxes to the State, an agency of the State, or any other taxing jurisdiction, instead of to the redevelopment agency. The Legislature has been illegally circumventing Section 16 of Article XVI in recent years by requiring redevelopment agencies to transfer a portion of those taxes for purposes other than the financing of redevelopment projects. A purpose of the amendments made by this measure is to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, the redevelopment agency to transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction. (See, Proposition 22, passed November, 2010, sec. 9.)

The adoption of Proposition 22 thus represents an express finding of the voters that takings such as those compelled by ABX4-26 were always intended to be prohibited. This finding is entitled to at least the same deference, if not more, from this Court as any declaration of the State Legislature. Where "the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.) While such a declaration is neither binding nor conclusive

(*California Employment Stabilization Commission v. Payne* (1947) 31 Cal.2d 210, 213.), "[n]evertheless, the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them." (*Western Security Bank v. Superior Court, supra,* 15 Cal.4th at p. 244.) In interpreting both Article XVI, section 16 and Proposition 1A, the relevant "legislative body" is the electorate itself since both were measures adopted by the voters. Thus it is proper to consider the express will of the voters as now reflected in Proposition 22 in interpreting Article XVI, section 16. In effect there are two competing declarations of intent. The first is the Legislature's own declaration that the SERAF payments can constitute "debts incurred by the agency" under Article XVI, section 16; the second is the people's declaration that they do not. Both declarations purport to speak to the intent of the voters nearly 60 years ago, and are thus somewhat questionable.(See, e.g. *Western Security Bank v. Superior Court, supra,* 15 Cal.4th at 244 ["There is little logic and some incongruity to the notion that one legislative body may speak authoritatively on the intent of an earlier legislature's enactment when a gulf of decades separates the two bodies."]) Yet this "incongruity" works more against the State's pronouncements than it does the electorate's, because the State's action appears to be such a transparent attempt to avoid the limitations the voters intended with Proposition 1A. The fact that the voters acted with such speed to close the gap left open by Proposition 1A is a strong indication that the will of the voters was always to protect all local property tax revenues, including those flowing to redevelopment associations, from further State raids.

To be clear, the League is not suggesting that this Court would somehow be bound to interpret Article XVI, section 16 consistent with Proposition 22 if doing so would be contrary to the plain meaning of Article XVI, section 16. Rather, in these unique circumstances where the

current will of the voters has been so clearly expressed, it makes little sense to defer to the Legislature's contrary interpretation, particularly where the Legislature's findings are so at odds with the common sense notion of what it means to incur a debt.

As the Appellants in this case have made clear, unless one blindly accepts the State Legislature's declarations, the SERAF payments simply cannot be viewed as debts "incurred" by a redevelopment agency within any reasonable interpretation of that term. SERAF payments serve no redevelopment purpose. They do not add anything to a redevelopment project; they do not remove blight; and they do nothing to add affordable housing. Redevelopment agencies took no action whatsoever to create this "debt." SERAF payments do not benefit the quality of education in redevelopment project areas. They add nothing to local school funding because the State uses the money as a dollar for dollar offset for its Proposition 98 obligations. Schools thus do not receive a dime more in funding than they would have without ABX4-26. All the legislation accomplishes is to free State money to be used for other State purposes. As the Appellants' Reply Brief demonstrates, the Governor's budget analysis for the 2010-2011 budget makes this point all too clear. (See Reply Brf. pp. 16-17.) Indeed, the analysis could not make the point more explicit. It states that the SERAF payments will result in savings to the State which "allows base property tax for schools to be shifted" to other State programs, including the funding of trial courts. (See Appellants Appendix pp. 1269-1271.) This budget as enacted specifically states it includes a direct "shift of $ 350 million in redevelopment funding to the courts." (See, Reply Brf. p. 17, citing,
http/www.lao.ca.gov/reports/2010/bud/major_features_101220.pdf.)

In the final analysis, the obligation to fund schools is an obligation Proposition 98 placed squarely on the State government. It is not an

obligation of redevelopment agencies, and thus in no way can be construed as a debt "incurred" by the agencies. Compelling agencies to shift tax increments away from their true purpose, paying off the debts that made the increments possible in the first place.. Therefore, ABX4-26 violates Article XVI, section 16.

IV. CONCLUSION

For the reasons set forth above, *amicus* the League of California Cities respectfully urges the Court to reverse the judgment of the trial court in this matter.

DATED: January 24, 2011

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____

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WORD CERTIFICATION

I hereby certify that, as counted by my MS Word word-processing system, this brief contains 5,725 words exclusive of the tables, signature block and this certification.

Executed this 24 day of January, 2011 at Sacramento California.

By: _____
J. Scott Smith

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STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Sacramento, State of California. My business address is 555 Capitol Mall, Suite 1200, Sacramento, California 95814.

On January 24, 2011, I served true copies of the following document(s) described as **APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AMICUS BRIEF IN SUPPORT OF APPELLANTS; PROPOSED BRIEF OF AMICUS CURIAE** on the interested parties in this action 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 January 24, 2011, at Sacramento, California.

Crystal Noe

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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.

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