Case No. C076343

COURT OF APPEAL FOR THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

CITY OF BRENTWOOD, et al

Appellants,

vs.

CALIFORNIA DEPARTMENT OF FINANCE, et al.,

Respondents

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS CITY OF BRENTWOOD, ET AL.

Appeal From the Superior Court of California, County of Sacramento
Superior Court Case No. 34-2013-80001568
Honorable Allen H. Sumner, Judge

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Third Appellate District

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I. INTRODUCTION.

Pursuant to California Rules of Court, Rule 8.200, subdivision (c), the League of California Cities ("League") requests leave to file the brief submitted herewith in support of Petitioners/Plaintiffs and Appellants City of Brentwood and Brentwood Successor Agency (collectively, the "Appellants"). Appellants' Opening Brief was filed July 18, 2014, and Reply Brief was filed on October 23, 2014.

II. THE NATURE OF THE *AMICUS CURIAE* INTEREST.

The League of California Cities is an association of 473 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. The League is advised by its Legal Advocacy Committee ("Committee"), which is comprised of 24 city attorneys from all regions of the State. The Committee 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.

Furthermore, the League is uniquely positioned to inform the Court as to the history and purpose behind Proposition 22. Along with other members of a broad coalition, which included the California Fire Chiefs Association, Peace Officers Research Association of California, California Chamber of Commerce, and more than 300 cities and towns, the League was integrally involved with and

supportive of the "Yes on 22" campaign in 2010. As such, the League can confirm that the intent behind seeking the voters' approval of Proposition 22 was to constitutionally protect RDA tax increment ***funds*** that were constitutionally and statutorily authorized to be used to further redevelopment projects.

The League and its member cities have a substantial interest in the outcome of this appeal, which seeks reversal of the trial court's order denying a writ of mandate in a challenge of a determination by the California Department of Finance ("DOF"). Specifically, the League concurs with Appellants that the interpretation and application by the DOF of the Due Diligence Review ("DDR") process and "claw-back" provisions, enacted as part of Assembly Bill 1484 from the 2011-12 Regular Session of the California Legislature (stats. 2012, ch. 26, and referred herein as "AB 1484"), are unconstitutional. The League agrees that the DOF exceeds its authority by attempting to reclaim and then redistribute to other local agencies, for the benefit of the State of California ("State"), tax increment funds that were lawfully allocated to the former Brentwood Redevelopment Agency and then constitutionally protected from this exact State practice under Article XIII, Sections 24(b) and 25.5(a)(7) of the California Constitution, enacted by the voters in November 2010 as part of Proposition 22 ("Proposition 22").

More than three-quarters of the League's member cities had formed redevelopment agencies to serve as agents of their communities' economic and physical development, and nearly all of those cities participated in the redevelopment agencies' dissolution. Accordingly, the League hopes to assist

this Court in understanding how the DOF's interpretation of AB 1484 and application of those "claw-back" provisions are unconstitutional.

Furthermore, the League and its member cities have a substantial financial stake in the outcome of this litigation. If the DOF is allowed to claw-back tax increment funds that had already been lawfully allocated to redevelopment agencies and then used to pay for their indebtedness obligations while redevelopment agencies were still operational and prior to their dissolution, then the League's member cities would suffer an unconstitutional re-distribution of tax increment funds that could exceed one billion dollars.

Even more disturbing, should DOF prevail in the matter at hand, the sought-after tax increment funds would not be available for re-distribution to other taxing agencies. While DOF may take the position that it is seeking to have the Brentwood Successor Agency hand over its excess tax increment funds, the Brentwood Successor Agency cannot comply because, simply put, it has no excess tax increment funds since the Brentwood Redevelopment Agency used them to pay for indebtedness obligations owed by the former redevelopment agency. And yet, this untenable "Catch-22" scenario is not unique to Appellants. Several League member cities and their respective successor agencies face the same potential unconstitutional reallocation of tax increment funds that, simply put, have been spent in furtherance of valid redevelopment projects and indebtedness obligations.

Moreover, the DOF claims that AB 1484 grants it the ability to offset the Brentwood Successor Agency's allocated tax increment funds by reducing other tax revenues reserved to the City of Brentwood, *i.e.* the City's sales and use tax revenues. Since the dissolution of redevelopment agencies in February 2012, this unconstitutional scenario has played out and continues to play out in many of the League's member cities. With city coffers under this threat, the League has a significant interest in participating as *amicus curiae* to further explain to the Court the history and purpose of Proposition 22 was to avoid this type of unconstitutional reallocation of RDA tax increment funds.

III. ISSUES NEEDING FURTHER PRESENTATION.

This appeal involves the scope of the protections guaranteed to local governments, not just dissolved redevelopment agencies but also cities and successor agencies, in allocating their locally garnered tax revenue under Proposition 22. Additional briefing offered herewith is necessary to address matters not fully addressed by Appellants' briefs, such as the history and purpose of Proposition 22, in which the League was integrally involved. The League's briefing includes case citations, legal principles and ballot history that are not included in Appellants' briefs.

IV. INVOLVED PARTIES AND COUNSEL.

Pursuant to Rule 8.520, subdivision (f), of the California Rules of Court, the only person who played a role in authoring the accompanying brief, in whole or in part, is the attorney listed in the caption of this application, William H. Ihrke

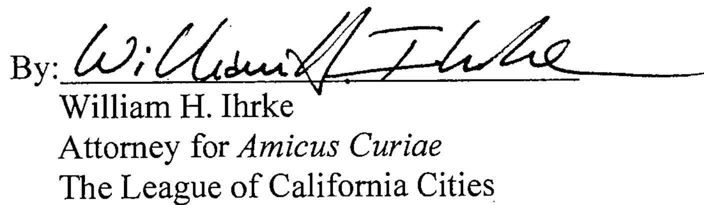
of Rutan & Tucker, LLP. No parties to this case (or entities who are not parties to this case other than the listed attorneys) authored the brief in whole or in part. The undersigned prepared and authored the brief *pro bono,* and no persons or entities paid for the preparation of the accompanying brief.

V. CONCLUSION.

For the foregoing reasons, the League of California Cities respectfully requests permission to file the accompanying *amicus curiae* brief in support of the Appellants in this action.

Dated: October 28, 2014

RUTAN & TUCKER, LLP
WILLIAM H. IHRKE



By: ______________________
William H. Ihrke
Attorney for *Amicus Curiae*
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Court of Appeal, Third District Case No. C076343)

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State of California
Court of Appeal
Third Appellate District

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Department of Finance, et al

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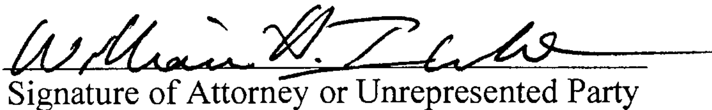
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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

The League of California Cities ("League") concurs with Petitioners/Plaintiffs and Appellants City of Brentwood and Brentwood Successor Agency ("Appellants") that the interpretation and application by the California Department of Finance ("DOF") of the Due Diligence Review ("DDR") process, enacted as part of Assembly Bill 1484 from the 2011-12 Regular Session of the California Legislature (stats. 2012, ch. 26, and referred herein as "AB 1484"), are unconstitutional. DOF exceeds its authority by attempting to reclaim and then redistribute to other local agencies, for the benefit of the State of California ("State"), tax increment funds that were lawfully allocated to the former Brentwood Redevelopment Agency and then constitutionally protected from this exact State practice under Article XIII, Sections 24(b) and 25.5(a)(7) of the California Constitution, enacted by the voters in November 2010 as part of Proposition 22 ("Proposition 22").

While the Legislature had the authority to dissolve redevelopment agencies notwithstanding the provisions in Article XVI, Section 16 of the California Constitution ("Article XVI, Section 16") allowing for the allocation of tax increment funds to redevelopment agencies ("RDAs"), the Legislature does not have the authority to enact a law that requires, ***either directly or indirectly***, the transfer of those tax increment funds once allocated to the RDAs pursuant to Article XVI, Section 16, and used to

pay existing indebtedness of the RDAs. No less than the California Supreme Court has definitively decided these issues. (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 261-264 ("*CRA*").)

Therefore, the League urges this honorable Court to reverse the trial court's denial of the writ of mandate. Furthermore, the League requests that this Court provide instructions on remand that would uphold the intent of the voters when Proposition 22 was adopted, such that no State agency, whether DOF or otherwise, may apply a practice, under the DDR process or otherwise, that "claws back" previously allocated tax increment funds for redistribution to other local agencies for the benefit of the State.

II. ARGUMENT.

As the leading advocacy group for California's cities, over 400 of which had former redevelopment agencies ("RDAs") and now have successor agencies which have taken over the winding down of those former RDAs, the League not only has standing to represent cities interested in this important issue on appeal (see, e.g., *Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005) 132 Cal.App.4th 666, 672-673 (organizational standing as espoused by the United States Supreme Court), but, equally important, the League has the prerogative to protect the interests of California cities that would suffer an

unconstitutional hit to their own financial resources.[1]

Furthermore, the League is uniquely positioned to inform the Court as to the history and purpose behind Proposition 22. Along with other members of a broad coalition, which included the California Fire Chiefs Association, Peace Officers Research Association of California, California Chamber of Commerce, and more than 300 cities and towns, the League was integrally involved with and supportive of the "Yes on 22" campaign in 2010. (AA-00107.)[2] As such, the League can confirm that the intent behind seeking the voters' approval of Proposition 22 was to constitutionally protect RDA tax increment ***funds*** that were constitutionally and statutorily authorized to be used to further redevelopment projects. (*Id.*)

The Community Redevelopment Law, Health and Safety Code

---

[1] The League is an association of 473 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. The League is advised by its Legal Advocacy Committee ("Committee"), which is comprised of 24 city attorneys from all regions of the State. The Committee 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.

[2] "AA" means the Appellants' Appendix filed with Appellants' Opening Brief, which consists of Volumes 1-3. Page numbers in this *Amicus* Brief correspond to those in the AA.

Section 33000 *et seq.*[3] ("CRL"), and other relevant statutes expressly allowed and encouraged the use of city funds to further redevelopment projects. (See, e.g., §§ 33004, 33132, 33133, 33220(e), 33600, 33601, 33610; Gov. Code § 53601(e).) Cities took advantage of these provisions and provided funds, with an expectation to receive reimbursement once its RDA generated sufficient tax increment funds over the life of a redevelopment project, or with an expectation that tax increment funds were specifically intended to be used by cities to complete redevelopment projects. (See, e.g., Cal. Const., art. XVI, § 16; §§ 33020, 33021, 33030, 33031, 33670; see also *Pacific States Enterprises v. City of Coachella* (1993) 13 Cal.App.4th 1414, 1424 [cities and RDAs were legally separate public agencies].)

As explained by our State's high court, RDAs could not levy taxes but, instead, relied on "tax increment financing." (*CRA, supra,* 53 Cal.4th at p. 246-247.) Under this system, public agencies entitled to receive property tax revenue in a redevelopment project area are allocated a portion based on the assessed value of the property prior to the effective date of a redevelopment plan. (*Id.*) Tax revenue in excess of that amount -- the "tax increment" created by the increased value of project area property that occurred over the life of a redevelopment plan -- would be

---

[3] References to "Section" or "§" shall be to the Health and Safety Code unless otherwise indicated.

allocated to the RDAs. (*Id.*)

Many cities, like Brentwood here, received tax increment from their RDAs prior to RDA dissolution on February 1, 2012. The cities lawfully and legitimately relied on these tax increment funds to further redevelopment projects. If DOF were able to use the DDR process to indirectly reallocate tax increment funds, which were lawfully allocated to RDAs and then used to pay host cities for moneys loaned to RDAs for valid redevelopment projects, the DOF would subvert the clear intent of the voters with the enactment of Proposition 22.

A. The Language Enacted by the Voters with Proposition 22 Evidences a Clear Intent to Protect Tax Increment Funds Allocated to RDAs From Redistribution to Other Local Agencies for the Benefit of the State.

The power of the people through the statutory initiative is coextensive with the power of the Legislature. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 549.) Courts "must enforce the provisions of [the California] Constitution and 'may not lightly disregard or blink at . . . a clear constitutional mandate.' In so doing, we are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448 [citations omitted].)

As with the interpretation of any constitutional provision added by

ballot initiative, the purpose of this Court is to implement the intent of the voters. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276; *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 576 [conc. & dis. opn. of George, C.J.].) To glean that intent, the Court should first consult the language of the proposition itself. (*People v. Birkett* (1999) 21 Cal.4th 226, 231.)

Here, the intent of Proposition 22 is embedded in the language; namely, that tax increment funds allocated to RDAs to pay their respective indebtedness obligations was (and still is) "off limits" for use by the State:

> On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:
>
> . . .
>
> Require [RDAs] (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the [RDA] pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction....

(Cal. Const., art. XIII, § 25.5(a)(7).) The similar language appears in the pertinent provisions added to Section 24 by Proposition 22:

> The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed

or levied by a local government solely for the local government's purposes.

(Cal. Const., art. XIII, § 24(b).)

Significantly, both Sections 24(b) and 25.5(a)(7) include extraordinarily broad language to effectuate the limit on the State's ability to re-allocate, re-direct, or re-distribute RDA tax increment ***funds*** by specifically stating the State may not "***otherwise use the proceeds***" or "***otherwise transfer, directly or indirectly,***" these funds for the benefit of the State.

DOF mischaracterizes Proposition 22 as a narrow constitutional amendment aimed at solely protecting the rights of "redevelopment agencies." (Respondent's Brief at pp. 16-17.) DOF argues that a regulation impacting "successor agencies" does not implicate the rights guaranteed under Proposition 22 because they are not "redevelopment agencies." (*Id.*)

This argument elevates form over substance because it ignores the status of successor agencies as the successors-in-interest to RDAs. (§ 34173(a).) Like RDAs, successor agencies are separate public entities from their host jurisdictions. (§ 34173(g).) Notably, successor agencies have the same authority, rights, and powers previously vested with RDAs except to the extent provisions in the CRL were repealed, restricted, or revised under Part 1.85 (commencing with Section 34170) of Division 24

of the Health and Safety Code (generally referred to as the "dissolution law"). (§ 34173(b).) Nothing in the dissolution did, or could, repeal, restrict, or revise the protections added to the California Constitution pursuant to Proposition 22. As such, successor agencies have the same protections as RDAs as to ***how*** tax increment funds allocated to RDAs, used to pay RDA indebtedness, must be spent, and cannot be reallocated by the State. (Cal. Const., art. XIII, § 25.5(a)(7); § 34173(b).)

Furthermore, DOF's argument is not supported by the language added by Proposition 22. First, the argument ignores Section 24(b) entirely. Second, it is not supported by the text in Section 25.5(a)(7) that, when read together and as a whole, evidences the ***intent to protect how tax increment funds are to be spent, not solely redevelopment agencies.*** (*Bonnell v. Medical Board of Cal.* (2003) 31 Cal.4th 1255, 1261 [statutory language is not considered in isolation but interpreted as a whole so as to make sense of the entire statutory scheme]; *Horwich, supra,* 21 Cal.4th at p. 276 [language must be construed in the context of the statute as a whole and the overall statutory scheme in light of the electorate's intent].)

While the plain meaning rule may apply to issues of statutory construction, California has long recognized that, if a literal reading of a statute does not comport with its purpose, the courts must look at the language of the statute or proposition from a broader context. (*Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.) "Literal construction should not

prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (*Id.* (citations omitted).)

The "intent" language in Proposition 22 itself renders indisputable that how RDA funds are to be spent, not RDAs in and of themselves, were to be constitutionally protected. Section 9 of the proposition provides:

> 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 entire 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.***

(AA-00107 [emphasis added].) Because the language in Proposition 22 shows a clear intent to restrict the State's ability from deciding the best use of tax increment funds, the trial court erred by not issuing a writ of mandate.

B. The Historic State Raids on Local Agency *Funds* Led to the Submission to the Voters of Proposition 22.

To further understand the intent behind Proposition 22, historical context is useful. "A statute must be construed in the light of the legislative purpose and design. In enforcing command of a statute, both the ***policy*** expressed in its terms and the object ***implicit in its history and background should be recognized.***" (*People v. Navarro* (1972) 7 Cal.3d 248, 273 [emphasis added & citations omitted].)

In 1945, the Legislature enacted the Community Redevelopment Act, the predecessor to the current CRL. (Stats. 1945, ch. 1326, p. 2478 *et seq.*)[4] In 1952, the State's voters approved a constitutional amendment authorizing the use of tax increment financing by RDAs under the language that is now set forth in Article XVI, Section 16. (*CRA, supra,* 53 Cal.4th at p. 256.) As explained by the State Supreme Court, since the mid-1970s, the State and local governments have been in conflict over

[4] The CRL has not been repealed or superseded in full and remains "on the books." Indeed, the CRL still governs successor agencies and housing successor agencies. (§§ 34173(b), 34176(a).)

allocation of *ad valorem* property taxes, including tax increment funds, due to two "seismic" events: the decisions in *Serrano v. Priest* (1971) 5 Cal.3d 584 ("*Serrano I*") and *Serrano v. Priest* (1976) 18 Cal.3d 728 ("*Serrano II*"), and the adoption in June 1978 by the States voters of Proposition 13. (*CRA, supra,* 53 Cal.4th at p. 244.)

The decisions in *Serrano I* and *Serrano II* led to the State becoming "the principal financial backstop for local school districts." (*CRA, supra,* 53 Cal.4th at p. 243.) Proposition 13 locked the *ad valorem* property tax rate throughout California at one percent (1%) of a property's assessed value, subject to capped increases as well as other restrictions on the taxing ability of both the State and local governments. (*Id.* at p. 244.) Consequentially, the State and local governments fought over a much smaller share of *ad valorem* property taxes, which served as the sole source of revenue for RDA tax increment funds. (*Id.*)

In 1988 and 1990, the State's general fund encountered more significant constitutional amendments with the approval of Propositions 98 and 111. (*CRA, supra,* 53 Cal.4th at p. 245.). Together, these propositions created a constitutional mandate guaranteeing a minimum State funding requirement for schools. (*Id.; Los Angeles Unified School Dist. v. County of Los Angeles* (2010) 181 Cal.App.4th 414, 420.)

In order to meet the obligations imposed by Propositions 98 and 111, the State tried, for the first time in fiscal year 1991-92, to gain

control of the RDAs' tax increment funds. (*CRA, supra,* 53 Cal.4th at p. 245; *Los Angeles Unified School Dist., supra,* 181 Cal.App.4th at p. 420.) Faced with an "unprecedented budgetary crisis," the Legislature passed the 1992 educational revenue augmentation fund ("ERAF") legislation, Revenue and Taxation Code former section 97.03 (presently § 97.2). (*Ibid.*) The ERAF legislation lessened the impact on the State's general fund by reducing the amount of property taxes allocated to local agencies and shifting the amount of the reduction to the respective county-administered ERAFs, which then distributed those funds to the schools. (*Ibid.*)

Additionally, the Legislature amended the Health and Safety Code and required RDAs to make an additional, graduated series of payments to ERAFs ("ERAF shifts") vis-a-vis the redistribution of tax increment funds allocated to RDAs. (*Los Angeles Unified School Dist., supra,* 181 Cal.App.4th at p. 421.) Initially requiring RDAs to make these payments for fiscal years 1992-1993 and 1993-1994, the Legislature passed subsequent legislation mandating further ERAF shifts for fiscal years 1994-1995, 2002-2003, 2003-2004, 2004-2005 and 2005-2006. (*Id.*; *see also* RJN Exh. A, p.15 [describing the impact of ERAFs on local agencies' budgets].)[5]

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[5] "RJN" means the League of California Cities' Request for Judicial Notice filed concurrently with this *Amicus* Brief. "Exh." refers to the

Recognizing the State's continuous requirements to reallocate local agency funds as a means to balance the State's budget, local agencies sought to limit, constitutionally, the practice in November 2004. (*CRA, supra,* 53 Cal.4th at p. 249.) To this end, local agencies and the State agreed to a compromise set of constitutional amendments, adopted by the voters with Proposition 1A. (*Id.*; see also RJN Exh. B, p. 22.) Among other provisions, Proposition 1A prevented the Legislature, on or after November 3, 2004, from modifying the manner in which *ad valorem* property taxes are allocated, with the intent to be protecting the ***funds***, not the existence of the entities that received those funds. (See Cal. Const., art. XIII, § 25.5(a)(1).)

Nevertheless, in fiscal year 2009-10, the State once again forced the remittance of tax increment funds to cover a State budget shortfall. As had been enacted with prior legislation, the State required a certain percentage of RDA tax increment funds to be diverted to support school districts under newly-created "Supplemental Educational Revenue Augmentation Funds" ("SERAFs"). (*California Redevelopment Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457, 1469-70.) Specifically, the State mandated additional ERAF shifts for fiscal years 2009-2010 and 2010-2011 that required about Two Billion Dollars ($2,000,000,000) of tax increment funds to be redistributed to schools. (AA-00104-AA-

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exhibits attached thereto.

00105; *see also* RJN Exh. A, p. 17 (itemizing the impact of ERAFs on local agencies' budgets).)

It is against this historical backdrop that Proposition 22 eventually made its way to the ballot in November 2010. The League knows first-hand the detrimental impact that the ERAF and SERAF shifts have had on cities. In its analysis of this impact, the League explained that, since their inception in 1992, the ERAF and SERAF shifts resulted in approximately One Hundred Ten Billion Dollars ($110,000,000,000) in losses to local agencies. (*See generally*, RJN Exh. A.) Accordingly, the League, cities, and other interested groups brought before the voters Proposition 22 with the specific intent to protect tax increment funds once they have been allocated to RDAs.

C. The Ballot Materials Evidence Clear Intent to Constitutionally Protect Tax Increment Funds.

Ballot materials may be used to discover the voters' intentions when they passed a law. (*Robert L. v. Superior* Court (2003) 30 Cal.4th 894, 906.) "[A]bsent some basis for determining that the intent of the electorate was in conflict with the intent of the drafters, evidence of the drafters' intent is an appropriate tool in interpreting the scope of an initiative." (*Hermosa Beach, supra,* 86 Cal.App.4th at p. 551.)

Here, the intent of the drafters of Proposition 22, which was, in part, sponsored by the League, clearly evidenced an intent to forever and

once and for all prevent the State from reallocating tax increment revenues that had been allocated to RDAs. (AA-00105 [a purpose of the constitutional amendments made by Proposition 22 is to prevent the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction].)

Moreover, ballot materials sent to voters, both for and against the measure, demonstrate the intent to ***stop all raids by the State on tax increment funds*** that had been allocated to RDAs.

According to the Voter Information Guide (the "Guide"), Proposition 22 "eliminates the state's authority to . . . [r]edirect redevelopment agency property taxes to any other local government." (AA-00105.) The Guide reiterates this clear intent by stating that Proposition 22 "[p]rohibits redirection of redevelopment property tax revenue." (AA-00102.)

The Guide evidences an intent to stop the State from shifting funds that were received through redevelopment property tax revenues. In fact, the Guide itself rarely discusses "redevelopment agencies," instead focusing on the protection of the funds that RDAs received pursuant to Article XVI, Section 16 of the California Constitution.

Additionally, the Guide informed voters that approving Proposition 22 would cause an impact to the State's general fund, which would in turn

cause the State to have to take other actions to balance a State budget shortfall, such as lessening State expenditures or increasing the State income tax. (AA-00105.) Clearly, the Guide informed voters that Proposition 22 was intended to cut off tax increment ***funds*** entirely from reallocation to other taxing agencies by order from the State.

DOF attempts to limit the scope of tax increment protection, once allocated to RDAs, by arguing that "voters approved Proposition 22 with the specific intent of ending" the ERAF/SERAF shifts that occurred in 2009-2010 and 2010-2011, not fund transfers generally. (Respondent's Brief at 19.) Respondent's argument flatly ignores the Guide and other voter materials that were used for the promotion and refutation of Proposition 22.

For instance, the impartial analysis of Proposition 22 by the Legislative Analyst Office ("LAO") refers to an RDA's responsibility to transfer funds to schools ***merely as an example*** of the Legislature's statutory power to redistribute property tax increment revenues. (AA-00104 ("State law allows the state to make some changes to the distribution of property tax revenue. ***For example***, the state may require redevelopment agencies to shift revenues to nearby schools." [emphasis added].) The LAO did not analyze Proposition 22 as a constitutional amendment that would result in only a limited end of ERAF/SERAF shifts. Rather, the LAO viewed Proposition 22 as a constitutional

amendment addressing the overall trend that the proponents of the measure wanted to stop, *i.e.* to stop the State's requirement to reallocate, transfer, or otherwise use tax increment/property tax funds for the benefit of the State. (AA-00105.)

As the trial court noted, "the ballot materials for Proposition 22 support" the City's argument. (AA-00672.) Erroneously, however, the trial court did not properly rely on the ballot materials when interpreting the intent of the voters in approving Proposition 22. (*Robert L., supra,* 30 Cal.4th at p. 906.) Because this Court must interpret constitutional amendments in a manner that effectuates voter intent, the decision below must be reversed and a writ of mandate issued. (*Silicon Valley*, *supra*, 44 Cal.4th at p. 448.)

D. News Accounts and Media Reports Also Show a Clear Intent to Constitutionally Protect RDA Funds.

While reliance on newspaper articles to determine voter intent may be controversial, the California Supreme Court has relied on such information in the past. (*McMahon v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368, 1377, fn.6, citing *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 178 [using newspapers to glean the voters' intent in passing a ballot initiative].) Although news articles in and of themselves may not be appropriate for the truth of the matter asserted, the existence of those news articles can be used to show

what issues the voters were considering when a ballot proposition was proposed. (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807, fn.5 [taking judicial notice of news articles not for the truth of what they were saying, but to describe what they discussed]; *Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 270, fn.2 ["In the instant case, the Board essentially contends the proffered documents will clarify the Board's constitutional and statutory authority. While we may properly take judicial notice of these documents, we remind the Board we do not take judicial notice that everything contained in these documents is true."]; *Schaeffer v. State* (1970) 3 Cal.App.3d 348, 354 [same].) Accordingly, when the interest of justice may be served, as it would be in this case, this Court can and should consider news reports to gain additional insight as to the intent of voters supporting Proposition 22. Upon canvassing these news reports, it is clear that Proposition 22 was intended to constitutionally protect tax increment funds and prohibit any legislation that would directly or indirectly re-allocate or re-distribute these funds.

For instance, the San Diego Union Tribune published a story outlining the possible effects of the proposition. The article discussed how "Prop 22 would prohibit diversions of local transportation and redevelopment funding to fill state budget shortfalls" and even discussed how the California Redevelopment Association considered such transfers

unconstitutional. (RJN, Exh. C, p. 25.)

The Orange County Register ran a story in which the author laid out arguments for and against the proposition. (RJN, Exh. D, pp. 29-30.) Of note, this article as well as many others discussed how opponents of the law did not support Proposition 22 because they feared it "walls off redevelopment agencies ***and their plentiful funds*** from the Legislature." (*Id.* at p. 30 [emphasis added].)

The San Luis Obispo Tribune ran an article before the election concerning the merits of Proposition 22. (RJN, Exh. E, p. 33.) The article cited the "Yes on 22" campaign's statistics, claiming that in 2009 the State took Five Billion Dollars ($5,000,000,000) from local funds, and that in 2010 the State took a "combined $3.6 million in redevelopment money . . . to the state for schools." (*Id.*) That same article cited the opponents discussing how Proposition 22 would undo the "Legislature's $2 billion takeaway from local redevelopment agencies . . . ." (*Id.* at p. 34.)

In Los Angeles and San Francisco, both of the major newspapers advised against voting for Proposition 22. The Los Angeles Times released an editorial advising its readership to vote against Proposition 22 on the grounds that redevelopment tax increment funds did not warrant any extra protection. (RJN, Exh. F, p. 36.) The article also discusses how, if Proposition 22 were approved, tax increment funds would be more

protected than funds going to school budgets. (*Id.*) Similarly, the San Francisco Chronicle released an editorial advising its readership not to vote for Proposition 22 because the editorial staff did not favor the constitutional protection of tax increment funds and did not believe it was wise to make tax increment funds "sacrosanct." (RJN, Exh. G, p. 38.)

Additionally, both the San Mateo Daily Journal (RJN, Exh. H, p. 39) and the Manteca Bulletin (RJN, Exh. I, p. 41) printed articles that informed their readership of the purpose of Proposition 22 and its intended impact on California. Specifically, both articles highlighted how Proposition 22 would "[a]dd additional constitutional protections to prevent the state from raiding redevelopment funds or shifting redevelopment funds to other state purposes." (RJN, Exh. H, p. 39; RJN Exh. I, p. 41.)

This sample of news reports evidences, on both sides of the issue, that Proposition 22 would result in the State no longer having the statutory authority to redirect tax increment funds. Accordingly, the League requests that this Court reverse the lower court's ruling.

E. The California Supreme Court Interpreted Proposition 22 as a Constitutional Protection of RDA Funds, Not RDAs.

The California Supreme Court shed light on the scope of Proposition 22, which supports entirely the League's position and intent behind supporting the measure. As discussed in the *CRA* case, after the

adoption by the voters of Proposition 22, the Governor proposed to dissolve RDAs to solve the State's budget shortfall for fiscal year 2011-12. (*CRA, supra,* 53 Cal.4th at pp. 250-252.) The Legislature took a different approach by enacting Assembly Bill 26 from the 2011-12 First Extraordinary Session of the Legislature (Stats. 2011, 1st Ex. Sess., ch. 5, and referred to as "ABx1 26") and Assembly Bill 27 from that same session (Stats. 2011, 1st Ex. Sess., ch. 6, and referred to as "ABx1 27"). (*Id.*) ABx1 26 "froze" RDAs and, among other restrictions, prevented them from entering into new agreements after June 28, 2011. ABx1 26 also dissolved RDAs on February 1, 2012, at which time successor agencies would be responsible for winding down the affairs of RDAs. ABx1 27, however, allowed RDAs to continue to operate uninterrupted if payments were made on behalf of the State. (*Id.*)

The State Supreme Court in *CRA* made two relevant holdings, each of which applies to this case. First, freezing and dissolving RDAs under ABx1 26 was constitutional under Proposition 22 and Article XVI, Section 16. Focusing on the Legislature's power to dissolve that which it creates absent a constitutional restriction to the contrary, the Supreme Court held RDAs do not have an "absolute right to [a] continued existence." (*Id.* at pp. 259-260.)

Second, the Supreme Court invalidated ABx1 27 as violating Proposition 22 by essentially requiring the transfer of tax increment funds

allocated to RDAs for the benefit of the State. (*Id.* at 267, 270.) If the Legislature "authorizes [RDAs] and, moreover, authorizes their receipt of tax increment, it may not thereafter require that ***such allocated tax increment*** be remitted for the benefit of schools or other local agencies." (*Id.* at 274 [emphasis added].)

This language is dispositive in the case at hand, and the League agrees with the high court's interpretation. Proposition 22 was (and remains) intended to protect the ***funds*** that were properly allocated to the RDAs.

The Supreme Court laid out an analysis to use when determining the scope of Proposition 22. First, a court looks to see if the Legislature approved the creation of the RDA. There is no dispute that, prior to ABx1 26, the Legislature did allow for the existence of RDAs. Second, a court looks to see if the RDA was authorized to receive tax increment during the time it received the tax increment funds. Again, there is no dispute on that point here. Because both prongs are met, the State, through DOF or any other agency, ***cannot*** constitutionally reallocate those funds, period. (Cal. Const., art. XIII, §§ 24(b), 25.5(a)(7).)

DOF's argument that Proposition 22 does not apply to the DDR process because the "successor agency" instead of an RDA must reallocate tax increment funds ignores this holding. In *CRA*, the Supreme Court recognized "Proposition 22's broad prohibition on even direct, or

indirect transfers." (53 Cal.4th at p. 268.) Furthermore, the Supreme Court recognized the voters' intent to apply a liberal construction for the protection of allocated tax increment funds:

> Given the directive that we adopt a liberal construction as necessary to ensure the purposes of Proposition 22 are carried out, it follows that the constitutional prohibition against 'directly or indirectly' requiring transfers of tax increment (citation omitted) must extend to legislation that imposes a levy on the receipt of tax increment funds, ***even if the legislation does not specify that payment must come directly from the redevelopment agency or from its tax increment funds.***

(*CRA*, 53 Cal.4th at 267 [emphasis added].)

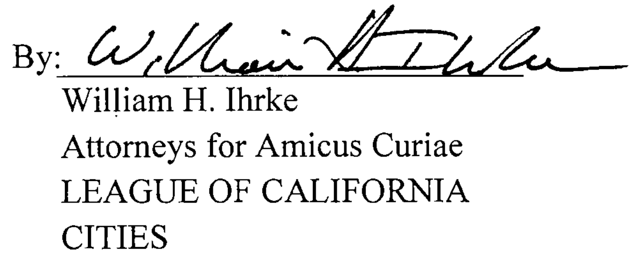
In the case at hand, DOF is attempting, through the DDR process, to directly or at a minimum indirectly transfer the funds that were already properly allocated to a redevelopment agency and spent on existing obligations of that redevelopment agency. This, DOF cannot do without running afoul of constitutional protections that these RDA tax increment funds have pursuant to Article XIII, Section 25.5(a)(7) of the California Constitution. (*CRA, supra,* 53 Cal.4th at p. 264.)

III. CONCLUSION.

For the reasons discussed above, the League respectfully requests that this Court reverse the order of the trial court, issue the writ of mandate, and grant the relief requested in this *Amicus* Brief.

Dated: October 28, 2014

RUTAN & TUCKER, LLP

By: 

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Certificate of Word Count

Pursuant to and in compliance with Rule 8.204, subdivision (c) of the California Rules of Court, I hereby certify that the foregoing Amicus Brief contains 5,272 words as counted by Microsoft Word 2007.

Dated: October 28, 2014

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By: [signature]
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1 **PROOF OF SERVICE**

2 *(City of Brentwood v. California Department of Finance, et al*
Court of Appeal, Third District Case No. C076343)

3

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9 **SUPPORT OF APPELLANTS, CITY OF BRENTWOOD, ET AL.**

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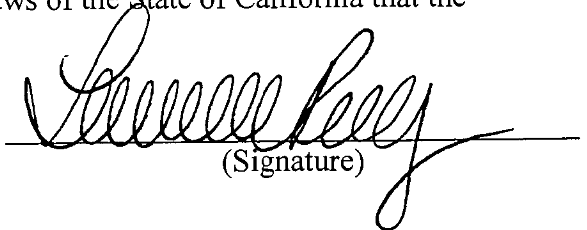

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