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January 25, 2018

VIA FEDERAL EXPRESS

The Honorable Chief Justice Tani Gorre Cantil-Sakauye
and the Associate Supreme Court Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *City of Grass Valley et al v. Cohen;* Third Appellate District, Case No. C078981; *Amicus Curiae* Letter in Support of Petition for Review (California Rules of Court, Rule 8.500(g))

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.500(g), we are pleased to submit this letter on behalf of the League of California Cities ("League") in support of appellant and cross-respondent City of Grass Valley's petition for review in *City of Grass Valley et al v. Cohen*, Third Appellate District, Case No. C078981. The League of California Cities is an association of 475 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"), 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.

Until the dissolution of redevelopment agencies by the Legislature in 2011[1], the Community Redevelopment Law was widely used by California's cities. Over 400 California cities activated redevelopment agencies that operated within their jurisdictions. The dissolution of redevelopment agencies and the subsequent unwinding of their contractual, governmental and regulatory relationships under the oversight of the State Department of Finance ("DOF") has been fraught with difficulty and caused a variety of problems for cities throughout the State. At one point, over 200 separate actions were pending in Sacramento Superior Court challenging

[1] Dissolution of redevelopment agencies was implemented by a series of bills enacted over a period of several years. The initial bill, ABx1 26 was enacted June 28, 2011. Subsequent bills were enacted in succeeding years to revise, clarify and respond to unanticipated problems with the initial legislation. This law is generally found at Health and Safety Code Sections 34161 through 34191.6 and will be referred to in this letter as the "Dissolution Law."

determinations of DOF under the Dissolution Law. Some of these cases have been resolved, but many are still pending and new cases continue to be filed in Superior Court almost seven years after enactment of the Dissolution Law.

The cause of the difficulty in implementing the Dissolution Law is rooted in the nature of the redevelopment process as set forth in the Community Redevelopment Law (Health & Saf. Code §33000 et seq.). First, the redevelopment process was essentially transactional, not regulatory. (See, e.g., *County of Santa Cruz v. City Watsonville* (1985) 177 Cal. App. 3d 831, 841.) Redevelopment agencies brought about redevelopment of blighted areas not by enacting regulations but by negotiating and contracting with public and private stakeholders.

Second, financing for redevelopment activity was uniquely dependent upon debt. Tax increment financing, which comprised by far the majority of financing available for redevelopment projects, was by definition debt financing. Article XVI, Section 16 of the California Constitution and Health and Safety Code Section 33670 authorized the allocation of property taxes to a redevelopment agency to "pay the principal of and interest on loans, moneys advanced to, or indebtedness . . . incurred by the redevelopment agency to finance . . . the redevelopment project." Thus, unless and until a redevelopment agency created debt, it did not receive tax increment and would continue to receive tax increment only until the indebtedness was repaid.

A variety of different instruments were used to create indebtedness including bonds, loans, reimbursement agreements, development agreements and other contracts with city and county governments, developers, property owners, tenants, banks and bond holders It is not an exaggeration to say that at the time of adoption of the Dissolution Law, hundreds of redevelopment agencies had entered into tens of thousands of contracts to carry out their statutory duties. Specifically, most, if not all, cities had agreements with their redevelopment agency pursuant to which: (1) the city would provide staff services to the redevelopment agency and be reimbursed from tax increment (Health & Saf. Code §33206); and (2) the city would construct public improvements and facilities within the redevelopment project area which benefitted the city and be reimbursed from tax increment (Health & Saf. Code §33445). These agreements were commonly called "Cooperative Agreements."

The Dissolution Law recognized the existence and binding nature of continuing obligations contained in redevelopment agency contracts and provided a process to insure those obligations were not impaired. Successor agencies were created to wind down the affairs of the dissolved redevelopment agency (Health & Saf. Code §34177 et seq.) and required to periodically submit for DOF's approval Recognized Obligation Payment Schedules ("ROPS") listing "enforceable obligations" for which the successor agency could receive an allocation of property taxes. (Health & Saf. Code §34183) Inexplicably, enforceable obligations were

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defined to exclude agreements between a city and its redevelopment agency. (Health & Saf. Code §34171(d)(2)) The result of this omission was to shift the cost of hundreds of millions of dollars of public improvements and services contained in Cooperative Agreements from tax increment revenues lawfully pledged for that purpose by the redevelopment agency to the general funds of sponsoring cities who were struggling under their own revenue shortfalls. The beneficiaries of this shift were other taxing agencies and, in particular, the State which reaped a dollar for dollar benefit for property taxes reallocated to school districts. (See, e.g., *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231, 248.)

Another feature of the Dissolution Law that has caused endless disputes and wreaked havoc on many city budgets is the so-called "clawback" of tax increment lawfully paid to a city by its redevelopment agency prior to its dissolution. Health and Safety Code Section 34179.5 (enacted by AB 1484 a year after adoption of ABx1 26 and following the dissolution of redevelopment agencies on February 1, 2012) required successor agencies to conduct "due diligence reviews" amounting to audits of transactions between the redevelopment agency and its sponsoring city between January 1, 2011 (roughly when the Governor announced his intention to dissolve redevelopment agencies) and June 30, 2012,[2] including the time (roughly January 1, 2011 to June 28, 2011) before the Dissolution Law was enacted. During the interval of time before ABx1 26 was adopted and anticipating that legislation could be enacted which would interrupt the flow of tax increment to cities under Cooperative Agreements, many redevelopment agencies transferred tax increment to their sponsoring city as payment for services and public improvements under the Cooperative Agreements. There was nothing illegal about these transfers. They were motivated by a desire to complete programs and projects which had been planned for long periods of time and in some cases commenced but not yet completed.

Section 34179.5 required any transfers not supported by enforceable obligations to be returned to the successor agency for payment to taxing agencies. "Enforceable obligations," of course, was defined to exclude Cooperative Agreements and as a result tax increment allocated to redevelopment agencies and subsequently paid to cities was indirectly required to be transferred for the benefit of the State and local jurisdictions.[3]

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[2] Since redevelopment agencies were dissolved on February 1, 2012, no transactions could have occurred after that date.

[3] Again, any property taxes diverted to school districts resulted in a dollar for dollar reduction in the amount of State aid to those school districts, thus benefitting not the school districts but the State.

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The petition for review in this case raises two questions of immense importance to California cities: (1) Why are otherwise legal obligations of former redevelopment agencies to their sponsoring cities not protected from impairment by the contract clause of the Constitution (Cal. Const., Art. 1 §9) like all other obligations? and (2) Why do the provisions of Proposition 22 which prohibit the Legislature from requiring transfers of tax increment paid to a redevelopment agency for the benefit of the State or a local jurisdiction (Cal. Const. Art. XIII, §25.5(a)(7)) not apply to the clawback provisions of the Dissolution Law? For the reasons set forth in Grass Valley's Petition for Review, the League strongly urges the Supreme Court to grant review and provide a definitive answer to these important questions. If review is granted, the League anticipates requesting leave to file a brief *amicus curiae*.

Respectfully submitted,

BEST BEST & KRIEGER LLP

Iris P. Yang
Attorneys for the League of California Cities

IPY:pa

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814. On January 25, 2018, I served the following document(s):

AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW

☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

☐ **By personal service.** At ____ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

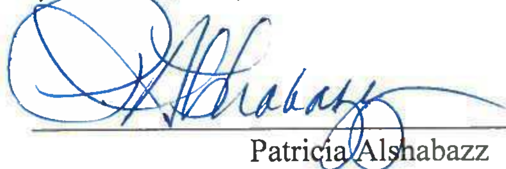
☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Xavier Beccera Marc A. LeForestier Nancy J. Doig 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 T: (916) 210-6064 F: (916) 324-8835 Nancy.doig@doj.ca.gov	Attorneys for Respondent and Defendant Michael Cohen, Director of the Department of Finance **VIA U.S. MAIL**
Office of the County Counsel Scott McLeran, County Counsel 950 Maidu Avenue, Suite 240 Nevada City, CA 95959 T: (530) 265-1319 F: (530) 265-9840 Scott.mcleran@co.neada.ca.us	Attorneys for Defendant and Appellant Marcia Salter in her official capacity as Nevada County Auditor-Controller **VIA U.S. MAIL**
Sacramento Superior Court Dept. 42 – Hon. Allen Sumner 720 Ninth Street Sacramento, CA 95814-1398 Case No. 34-2013-80001580-CU-WM-GDS	**VIA U.S. MAIL**
Third Appellate District 914 Capitol Mall, Fourth Floor Sacramento, CA 95814-4814 COURT OF APPEALS CASE NO. C078981	**VIA U.S. MAIL**
The Honorable Chief Justice Tani Gorre Cantil-Sakauye and the Associate Supreme Court Justices Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797	**VIA FEDERAL EXPRESS**

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

Executed on January 25, 2018, at Sacramento, California.



Patricia Alshabazz

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