SUPREME COURT COPY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S224779

CITIZENS FOR FAIR REU RATES, et al.,

Plaintiffs and Appellants,

v.

CITY OF REDDING, et al.,

Defendants and Respondents.

SUPREME COURT
FILED

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After an Opinion by the Court of Appeal,
Third Appellate District
(Case No. C071906)

On Appeal from the Superior Court of Shasta County
(Case Nos. 171377 & 172960, Honorable William Gallagher, Judge)

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFFS/APPELLANTS

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APPLICATION TO FILE BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION

Pursuant to Rule of Court 8.520(f)(2), Pacific Legal Foundation (PLF) respectfully applies for permission to file this amicus brief in support of Plaintiffs and Appellees Citizens for Fair REU Rates and Fee Fighter LLC, et al.

Headquartered in Sacramento, PLF is the most experienced public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. PLF boasts a long history of participating in legal actions to protect the interest of taxpayers and the integrity of government by enforcing constitutional, statutory, and regulatory restraints on taxing and spending. PLF participated as amicus curiae in this Court in many cases interpreting the scope of voter-enacted limitations on the taxing power. *See*, *e.g.*, *Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 24 Cal. 4th 830 (2001); *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866 (1997); *Santa Clara Cnty. Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220 (1995); *Knox v. City of Orland*, 4 Cal. 4th 132 (1992); *Carman v. Alvord*, 31 Cal. 3d 318 (1982).

PLF's litigation experience on issues concerning taxpayer protections will assist the Court by examining Proposition 26 in its historical context to show that the City of Redding's adoption of higher electricity rates to pay for

the transfer of funds from its municipally owned utility into the City's general fund, without voter approval, is the type of conduct that the California Tax Initiatives (Propositions 13, 218, and 26) were intended to prohibit.

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFFS/APPELLANTS

INTRODUCTION

Proposition 26 amended the constitution to state, plainly and simply, that subject to specific exceptions, before "*any* levy, charge, or exaction of *any kind*" can be imposed by a local government, it must be approved by the voters. Cal. Const. art. XIIIC, §§ 1(e); 2(b) (emphasis added). The City of Redding (City) claims that Proposition 26 does not apply to the transfer of $6 million from the municipally owned utility (Utility) to the City's general fund in June 2009, or another $6 million transfer in 2011. 3 CT 677 (City's 2010 & 2011 Biennial Budget); VII AR Tab 183, at 1598 (City Resolution 2009-61 (June 11, 2009)). These "Payment In-Lieu of Taxes" (PILOT) transfers were not based on the cost of City services; rather, they were a flat percentage of the Utility's assets. *Citizens for Fair REU Rates v. City of Redding*, 233 Cal. App. 4th 402, 182 Cal. Rptr. 3d 722, 729 (2015). The transfer payments are funded by increasing the Utility rates paid by the citizens of Redding.

The court below properly held that the rate increases used to subsidize PILOT transfers operate as taxes subject to Proposition 26's vote requirements. Proposition 26 is the last in the trifecta of California Tax Initiatives, beginning with Proposition 13, Cal. Const. art. XIIIA, followed by Proposition 218, Cal. Const. articles XIIIC and XIIID. These measures limit the ability of government to increase property taxes (Proposition 13), assessments, fees, and charges (Proposition 218), and now "any" levy, charge, or exaction (Proposition 26), by requiring voter approval. *See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 231 (1978) (Proposition 13's provisions form an interlocking "package" to assure effective real property tax relief); *Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 24 Cal. 4th 830, 837 (2001) (Proposition 218 "buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges.").

Proposition 26 further places the burden of proof on the local government, which must establish that a challenged levy, charge, or exaction is constitutional. *Schmeer v. Cnty. of Los Angeles*, 213 Cal. App. 4th 1310, 1322 (2013) (Proposition 26 expanded the definition of taxes, and shifted to the state or local government the burden of demonstrating that any charge, levy, or assessment is not a tax.). As the court correctly held below, the City of Redding failed to satisfy its burden and should be affirmed.

I

CALIFORNIA'S TAX INITIATIVES PROHIBIT LOCAL GOVERNMENT FROM IMPOSING HIDDEN TAXES

When the Redding City Council approved the City's budgets for fiscal years 2009 and 2010, it also approved annual transfers of money from the Utility to the City's general fund in an amount equal to 1% of the Utility's assets. *Citizens for Fair REU Rates*, 182 Cal. Rptr. 3d at 724, 729. No state law or local ordinance requires the City's PILOT. In fact, the City is prohibited from directly taxing the Utility's property assets. *See* Cal. Const. art. XIII, § 3(b) (property owned by a local government is exempt from property taxation). The City Council simply took 1% of the Utility's assets to be used however it wants for general fund purposes, *see* 2 CT 388-389 (City's Electric Utility Director stating the PILOT has never been related to the Utilities cost of providing services), and charged rate payers to restore the transferred funds. Neither the PILOT, nor any rate increase, has been subjected to a vote. Proposition 26 prohibits the City's revenue-generating scheme.

A. The California Tax Revolt Sought to Control Taxes Imposed by Local Governments

Proposition 26 must be construed by examining the history behind the taxpayer revolt, starting with Proposition 13. *See Citizens Ass'n of Sunset Beach v. Orange Cnty. Local Agency Formation Comm'n*, 209 Cal. App. 4th

1182, 1195 (2012) (examining history of Proposition 218 to understand its intent). In 1978, the California taxpayers began to fight back against local governments. The first target was property taxes, which like other taxes and fees were imposed by local governments without voter consent. *See* Julie K. Koyama, *Financing Local Government in the Post Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources*, 22 Pac. L.J. 1333, 1337 (1991) (prior to Proposition 13, local governments generally had the power to impose any taxes and fees by a vote of their governing bodies). Local governments had taken full advantage of their power by increasing property taxes, so much so that California voters paid some of the highest property taxes in the nation. *See* U.S. Dep't of Commerce, Bureau of the Census, *Governmental Finances in 1976-77*, at 64, table 25 (1978) (showing only Alaska, Massachusetts, and New Jersey had higher per capita property taxes than California).[1]

As taxes rose, so did the anger of property owners. Dramatic increases in housing prices, coupled with automatically increasing assessed valuations and higher property taxes, led more and more taxpayers to seek relief. *See* William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & Pol. 607, 625 (1996) ("California housing prices exploded—there is no better word for it—during the 1970s."). Those burdened by higher property taxes were not

[1] http://www2.census.gov/govs/pubs/govt_fin/1977_govt_fin.pdf.

only senior citizens on fixed incomes, but also young families struggling to buy their first home when property taxes doubled and tripled in a matter of months.[2] Local governments failed to ease the financial burden on property owners by simply reducing the applicable tax rates on assessed value. Fischel, *supra*, at 626. This led to homeowners paying increased taxes based on an unrealized gain. At the same time, the Legislature failed to pass any form of tax relief, and the state budget surplus grew to "unprecedented amounts." John S. Throckmorton, *What Is a Property-Related Fee? An Interpretation of California's Proposition 218*, 48 Hastings L.J. 1059, 1060 (1997). Property owners were thus forced to pay increasingly higher property taxes while, at the same time, tax revenues exceeded the needs of state and local governments. *Id.*

The unresponsiveness of both state and local elected representatives to effectively deal with staggering tax burdens angered voters across the board. Howard Jarvis and Paul Gann, the chairmen of two taxpayer organizations, sponsored Proposition 13 in 1978, which promised to limit property tax to 1% of market value. Ballot Pamp., *Text of Proposed Law and Arguments in Favor*

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[2] *The Impact of California's Biggest Tax Revolt* (KPBS radio broadcast Feb. 23, 2010) (Joanne Faryon describing those who were impacted by rising taxes in the mid-1970s); http://www.kpbs.org/news/2010/feb/23/impact-californias-biggest-tax-revolt/.

of Proposition 13, 57-58 (June 6, 1978).[3] On June 6th, 1978, the largest turnout of California voters since 1958 resoundingly approved the measure by a margin of two to one. Kathryn Julia Woods, *California's Voters Revolt Lynwood, California and Proposition 13, A Snapshot of Property's Slipping from Whiteness's Grasp*, 37 UWLA L. Rev. 171, 188 (2004); *see* Fischel, *supra*, at 622 ("Rich and poor, north and south, rural and urban, big and small, almost every community in the state gave [Proposition 13] a majority.").

Proposition 13 added article XIIIA to the California Constitution, imposing important limitations upon the assessment and taxing powers of state and local governments. *Amador Valley Joint Union High Sch. Dist.*, 22 Cal. 3d at 218. Although Proposition 13 is best known for limiting real property taxes, it also limited ad valorem tax rates, requiring that increases in state taxes and special taxes imposed by local governments be approved by a two-thirds vote of the governing body. Thus, when the voters passed Proposition 13 in 1978, they sought to restrict the ability of government to impose taxes and other charges on property owners without their approval.

B. Local Governments Thwarted the Voters' Mandate by Passing Taxes Disguised as Fees and Assessments Without Voter Approval

Proposition 13's basic one-percent limit in art. XIIIA, § 1 did not mention special assessments; it only mentioned ad valorem property taxes.

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[3] http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1845&context=ca_ballot_props.

And, the two-thirds vote provision in art. XIIIA, § 4 only mentioned "special taxes," and did not use the words "assessments" or "special assessments." Consequently, local governments exploited these perceived loopholes in Proposition 13 by subjecting taxpayers to excessive assessments, fees, and charges that frustrated the requirements for voter approval.

Government assessments were constrained only by "the limits of human imagination." *Citizens Ass'n of Sunset Beach*, 209 Cal. App. 4th at 1196. Through local agencies and commissions that were not subject to Proposition 13, local governments increased their assessments by over 2400% over 15 years, while cities raised benefit assessments by almost 10 times their previous amounts. *Id.* at 1195; *see* Cal. Const. art. XIIIA, § 4 (only cities, counties, and "special districts" are subject to the two-thirds voter requirement). Examples include: (1) "A view tax in Southern California—the better the view of the ocean you have the more you pay"; (2) "In Los Angeles, a proposal for assessments for a $2-million scoreboard and a $6-million equestrian center to be paid for by property owners"; (3) "In Northern California, taxpayers 27 miles away from a park are assessed because their property supposedly benefits from that park"; and (4) "In the Central Valley, homeowners are assessed to refurbish a college football field." Ballot Pamp., *Argument in Favor of Proposition 218*, 76 (Nov. 5, 1996).[4]

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[4] http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2138&context=ca_ballot_props.

In *Los Angeles Cnty. Transp. Comm'n v. Richmond*, the Los Angeles County Transportation Commission imposed an unapproved tax on the sale, storage, or use of tangible personal property in Los Angeles County. 31 Cal. 3d 197, 199, 208 (1982). A plurality of this Court approved the tax, holding that the term "special districts" was ambiguous, and did not apply to the commission. *Id.* at 201 (plur. opn. of Mosk, J.). The dissent noted that resolving ambiguities in favor of local government allowed it "to *evade* the clear two-thirds voter approval requirement by which the people chose to limit additional or increased tax levies by such government." *Id.* at 210 (Richardson, J., dissenting).

After *Richmond*, local governments continued to evade Proposition 13's requirements. In *City & Cnty. of San Francisco v. Farrell*, the voters approved, by a simple majority, a local tax on businesses that was to be used for general fund purposes. 32 Cal. 3d 47, 51 (1982). *Farrell* upheld the tax, concluding that Proposition 13's requirement that "special taxes" must be approved by two-thirds of voters did not apply to taxes paid into the general fund. *Id.* at 57. Justice Richardson again dissented, arguing that the majority's interpretation of "special tax" would allow local government to "easily circumvent" Proposition 13's limitations. *Id.* at 57-58 (Richardson, J., dissenting). He was prescient. *See Rider v. Cnty. of San Diego*, 1 Cal. 4th 1, 10 (1991) (noting that since *Richmond*, government created numerous agencies to raise taxes and avoid Proposition 13's "special districts" requirement); *Knox*

v. City of Orland, 4 Cal. 4th 132, 140-41, 145 (1992) (charge levied against real property for the maintenance of public parks was a "special assessment" not subject to Proposition 13); *Greene v. Marin Cnty. Flood Control & Water Conservation Dist.*, 49 Cal. 4th 277, 284 (2010) (local governments can impose "special assessments" without a two-thirds majority vote).

C. Voters Attempted to Close the Special Tax/Assessment Loophole with Proposition 218

To restore the protections originally thought to have existed in Proposition 13, California voters adopted Proposition 218, the Right to Vote on Taxes Act, in November 1996, which added articles XIIIC and XIIID to the constitution. The initiative's findings and declaration of purpose stated that "local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself." Ballot Pamp., *Proposition 218: Text of Proposed Law*, § 2, 108 (Nov. 5, 1996). Proposition 218 was specifically "intended to protect taxpayers by limiting the methods by which local governments can exact revenue from taxpayers without their consent." *Id.*

Articles XIIIC and XIIID "allow[] only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge." *Howard Jarvis Taxpayers Ass'n v. City of Riverside*, 73 Cal. App. 4th 679, 682 (1999). Article XIIIC imposes restrictions on general

and special property taxes in addition to those imposed under Article XIIIA, and requires voter approval for any general or special tax imposed by a local governmental entity. Article XIIID sets forth procedures, requirements, and voter approval mechanisms for local government assessments, fees, and charges. *Howard Jarvis Taxpayers Ass'n v. City of Roseville*, 97 Cal. App. 4th 637, 640 (2002).

In spite of the changes mandated by Proposition 218, local governments still managed to impose fees and assessments without voter approval. *See, e.g.*, *Paland v. Brooktrails Twp. Cmty. Servs. Dist. Bd. of Dirs.*, 179 Cal. App. 4th 1358, 1362 (2009) (charge imposed on parcels for the basic cost of providing water or sewer service, regardless of actual use, is not subject to ballot approval); *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409, 415 (2004) (assessments on property for capital improvements and fire suppression did not violate Proposition 218); *Howard Jarvis Taxpayers Ass'n v. City of Riverside*, 73 Cal. App. 4th at 681 (streetlighting assessments were not subject to Proposition 218); *Howard Jarvis Taxpayers Ass'n v. City of San Diego*, 72 Cal. App. 4th 230, 234 (1999) (assessments to provide revenue to defray the costs of services and programs to benefit businesses were not subject to Proposition 218).

In *Apartment Ass'n of Los Angeles Cnty., Inc.*, 24 Cal. 4th at 833, this Court held that Proposition 218 did not apply to an inspection fee imposed on property owners in their capacity as landlords. Justice Brown dissented,

writing that the voters passed Proposition 13 to "restrict the ability of government to impose taxes and other charges on property owners without their approval," and that since then voters have "witnessed politicians evade this constitutional limitation," and that the message of Proposition 218 is that voters "meant what they said." *Id.* at 848 (Brown, J., dissenting). Justice Brown warned that if Proposition 218 was interpreted by courts in deference of government, then "we may well expect a future effort to stop politicians' end-runs around Proposition 13." *Id.* (citations omitted). She was right.

D. The Voters Approved Proposition 26 to Expand the Protections of Propositions 13 and 218

Proposition 26, approved by California voters on November 2, 2010, allows the people to vote on levies, charges, or exactions imposed by local governments. Proposition 26's findings and declaration state that local governments had disguised new taxes as "fees" in order to extract revenue from California taxpayers without abiding by the voting requirements mandated by Propositions 13 and 218. Ballot Pamp., *Text of Proposition 26*, § 1, 114 (Nov. 2, 2010).[5] Proposition 26 closed the "loopholes in Propositions 13 and 218," which had allowed the proliferation of state and local taxes disguised as fees without a two-thirds vote of the Legislature or the voters' approval. *Schmeer*, 213 Cal. App. 4th at 1323, 1326.

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[5] http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2304&context=ca_ballot_props.

Proposition 26 defines a "tax" to include "any levy, charge, or exaction of any kind imposed by" the state or a local government, with specified exceptions. Working in concert with Propositions 13 and 218, this means any new local government mechanism that creates revenue by extracting money from the people must have voter approval. Cal. Const. art. XIIIA, § 4 (Proposition 13); art. XIIIC, § 1 (Proposition 218). The City's actions of raising electricity rates to pay for the transfer of millions of dollars from the Utility into the City's general fund, without voter approval, is exactly the type of conduct Proposition 26 was enacted to prevent. *See* Ballot Pamp., *Argument in Favor of Proposition 26*, 60 (Nov. 2, 2010) ("Local politicians play tricks on voters by disguising taxes as fees so they don't have to ask voters for approval.").

Proposition 26 enacted another key reform that applies to this case. Proposition 26 placed the burden on the City to prove "by a preponderance of the evidence" that any new levy, charge, or exaction is not a tax, and that the amount is no more than necessary to cover the reasonable costs of the governmental activity. Cal. Const. art. XIIIC, § 1(e). The City ignored Proposition 26's evidentiary requirements, *Citizens for Fair REU Rates*, 182 Cal. Rptr. 3d at 736, and asks this Court to do the same.

Prior to the adoption of Proposition 26, voters repeatedly sought to limit the authority of local governments to impose financial burdens on the public. But local governments repeatedly found ways to thwart the will of the voters

by disguising taxes as fees and assessments. The voters adopted Proposition 26 to stop such tactics. Proposition 26 does not prevent the City or the Utility from recovering the reasonable costs of electricity generation and distribution. But Proposition 26 does prohibit the City from raising electricity rates to pay for PILOTs without voter approval, or without showing that the rate increase reflects the reasonable costs to the City.

II

THE PILOTS AND RATE INCREASES ARE UNRELATED TO THE COST OF PROVIDING SERVICES

The City argues that its revenue-creating scheme of PILOTs funded by Utility rate increases are not subject to the voter approval requirement of Prop. 26, because it falls within an exception in art. XIIIC, § 1(e). The City claims a PILOT must be deemed to be reasonably related to the cost of providing services because PILOTs are common among public utilities, which generally set rates lower than investor-owned utilities. City's Opening Brief at 46. The City argues that its PILOT is only "intended to defray costs to the City" for the services it provides to the Utility, pointing to the Utility's relatively low electric rates compared to other cities. *Id.* at 40, 46. The City's argument is not in accord with Proposition 26, which shifted the burden of proof to the local government. Cal. Const. art. XIIIC, § 1.

Prior to Proposition 26—and largely a reason for the initiative—courts frequently deferred to government pronouncements as to whether an assessment was a tax. *See Beutz v. Cnty. of Riverside*, 184 Cal. App. 4th 1516, 1529 (2010) (county argued that its determinations as to how much of a special benefit should be funded by a special assessment was entitled to deference); *Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore*, 185 Cal. App. 4th 554, 562 (2010) (upholding validity of the majority of challenged fees); *California Farm Bureau Fed'n v. State Water Res. Control Bd.*, 51 Cal. 4th 421, 442 (2011) (a government agency should be accorded some flexibility in calculating the amount and distribution of a regulatory fee); *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866, 881 (1997) (placing the burden on the fee payer to prove that fees exceed the reasonable cost of services). The City fails to acknowledge the critical changes wrought by Proposition 26 when it continues to argue that it is the *plaintiffs'* burden to identify evidence demonstrating the City's cost to provide electricity and that the Utility's rates are excessive. City's Opening Brief at 36.

As the court below correctly held, Proposition 26 changed the burden of proof and placed it directly on government. Art. XIIIC, § 1(e) requires that *the City* prove that the amount of the PILOT and resulting increase of Utility rates are no more than necessary to cover the reasonable costs of City services necessary for electricity generation. Nowhere in the record does the City provide evidence of the *cost* of use of rights-of-way, street maintenance,

administration, or any other benefits the City may provide to the municipally owned utility. *See Citizens for Fair REU Rates*, 182 Cal. Rptr. 3d at 735 (City conceded that no cost of service analysis has been performed).

The City has provided no account of the cost of services provided to the Utility; apparently the City expects this Court to infer that the Utility's increased rates reasonably approximate the cost of government services. City Opening Brief at 46 (the Utility's rates "are reasonable as a matter of law . . . because those rates are lower than Pacific Gas & Electric rates"). However, a reasonable inference may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. Evid. Code § 600(b); *see People v. Davis*, 57 Cal. 4th 353, 360 (2013) (an inference must be drawn from evidence rather than mere speculation as to probabilities without evidence). As the court below noted, Proposition 26 requires the City to "cost justify the PILOT" and "rate increase." *Citizens for Fair REU Rates*, 182 Cal. Rptr. 3d at 732, 734. The City failed to produce evidence of such an accounting. Thus any inference that the Utility's rates are reasonable as a matter of law is based on conjecture. *See id.* at 736 (the City's argument that its Utility rates are "'reasonable' does not prove the PILOT bears a reasonable relationship to the costs of service").

Failing to establish that the Utility's PILOTs and rate increases are necessary to cover the reasonable cost of government services provided to the Utility, the City claims the Utility's rate increases are "presumed to be

reasonable." City's Opening Brief at 45. The City's argument is that, if the Utility's presumptively reasonable rate increase funds a PILOT, then "the PILOT is a reasonable cost of service as a matter of fact and law." *Id.* at 48. The City's reasoning has no basis in law after Proposition 26.

The City relies solely on *Durant v. City of Beverly Hills*, 39 Cal. App. 2d 133, 139 (1940), for the proposition that rates are presumed to be reasonable. City's Opening Brief at 45. Whatever presumptions may have existed in 1940 are defunct after the passage of Proposition 218 and Proposition 26, which amended the Constitution to ensure that there is no presumption in favor of government. *See* Cal. Const. art. XIIID, § 6(b)(5) ("In any legal action contesting the validity of a fee or charge, the burden shall be on the [local government] to demonstrate compliance with this article."); Cal. Const. art. XIIIC, § 1(e) (the local government bears the burden of proving that a levy, charge, or other exaction is no more than necessary to fund the government service). Requiring taxpayers to prove these elements to overcome a presumption of constitutionality would effectively delete the burden of proof that Proposition 26 places on local governments.[6]

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[6] The facts the City wants the Court to presume are the very facts the City must prove under Proposition 26: that a levy, charge, or other exaction (1) is not a tax; (2) that the amount is no more than necessary to cover the reasonable costs of the governmental activity; and (3) that the manner in which those costs are fairly allocated. Cal. Const. art. XIIIC, § 1.

A court that adopts the City's proposed presumption would effectively provide immunity to all cities operating municipally operated utilities that transfer PILOTs into their general funds and increase rates to pay for it. That was not the intent of voters when they adopted Proposition 26. *See* Ballot Pamp., *Argument in Favor of Proposition 26*, 60 (Nov. 2, 2010) ("Local politicians have been calling taxes "fees" so they can bypass voters and raise taxes without voter permission—taking away your right to stop these Hidden Taxes at the ballot. PROPOSITION 26 CLOSES THIS LOOPHOLE.").

The last paragraph of Section 1 of article XIIIC could not be more clear in requiring that local governments "bear the burden of proving by a preponderance of the evidence" that a levy, charge, or other exaction is not a tax. Cal. Const. art. XIIIC, § 1. Under Proposition 26, the measure of whether the City's rate increases and PILOTs are constitutional is not whether the City's electricity rates favorably compare to the rates in other municipalities, but whether the government can prove by a preponderance of the evidence that the fee is no more than necessary to cover the reasonable costs of the governmental activity. If the City's argument is accepted, then the last paragraph of Section 1 of article XIIIC is surplusage.

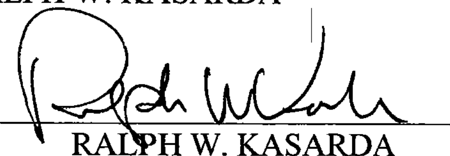
CONCLUSION

This Court should affirm the decision below.

DATED: August 19, 2015.

Respectfully submitted,

MERIEM L. HUBBARD
RALPH W. KASARDA

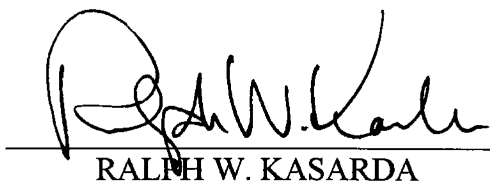
By 
RALPH W. KASARDA

Attorneys for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION is proportionately spaced, has a typeface of 13 points or more, and contains 4,349 words.

DATED: August 19, 2015.



RALPH W. KASARDA

DECLARATION OF SERVICE BY MAIL

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On August 19, 2015, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION were placed in envelopes addressed to:

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