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Our File No. 99904.0191

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Via TrueFiling

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: ***Legislature of the State of California et al. v. Weber (Hiltachk)***
Case No. S281977

Honorable Chief Justice Guerrero and Associate Justices,

INTRODUCTION AND SUMMARY OF ARGUMENT. I write on behalf of the local government associations identified *infra* (“Local Government Amici”) pursuant to California Rules of Court, rule 8.500(g) to provide amicus support for this Petition for the exercise of this Court’s original jurisdiction.

This Court’s preelection review of the so-called Taxpayer Protection and Government Accountability Act in its original jurisdiction is warranted notwithstanding the very high bar for such review because the proposed measure is already destabilizing government finance. It proposes sweeping restrictions on every form of government funding, is retroactive to January 2022, and demands that revenue measures which did not anticipate its detailed provisions be ratified at special elections in 2025, yet bars special elections on local general taxes absent a legislative body’s unanimous declaration of fiscal emergency. These provisions discourage new government efforts no matter how urgent the problem to be addressed, discourage expenditures in fiscal years 2023–2024 and 2024–2025, hang like a shadow over budgets to be adopted in summer 2025 for fiscal year 2025–2026, may trigger continuing disclosure obligations of issuers of publicly traded debt, and impair California governments’ ability to borrow. Substantial questions as to the lawfulness and meaning of the proposed measure arise that, if left unresolved through the November 2024 election, will exacerbate these uncertainties and necessarily reduce government efficiency for months and years after that election. This Court’s

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preelection review can resolve those uncertainties or, at very least, better inform the November 2024 electorate.

For all these reasons, Local Government Amici urge this Court to exercise its original jurisdiction here and to entertain pre-election review. Should the Court do so, Local Government Amici stand ready to brief the merits to aid the Court's review.

INTEREST OF AMICI. The Local Government Amici are associations of local governments which provide essential services to Californians. The proposed measure would dramatically curtail their ability to finance those services.

The **California Association of Sanitation Agencies** (CASA) is a nonprofit mutual benefit corporation organized and existing under the laws of the State of California. CASA is comprised of over 130 local public agencies throughout the state, including cities, sanitation districts, sanitary districts, community services districts, sewer districts, county water districts, California water districts, and municipal utility districts. CASA's member agencies provide wastewater collection, treatment, water recycling, renewable energy, and biosolids management services to millions of California residents, businesses, industries, and institutions.

The **California Municipal Utilities Association** (CMUA) represents 77 publicly owned electric utilities, water agencies, and gas and oil services statewide. Together, CMUA members provide water service to 70 percent of Californians and electric service to 25 percent of the state. CMUA represents its members' interests on energy and water issues before the California Legislature, the Governor's Office, and regulatory bodies, such as the California Energy Commission, the California Air Resources Board, the Department of Water Resources, the California Independent System Operator, and the State Water Resources Control Board.

The **California Special Districts Association** (CSDA) is a non-profit corporation with a membership of more than 1,000 special districts throughout California that was formed to promote good governance and to improve core local services through professional development, advocacy, and other services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities, including irrigation, water, recreation and parks, cemetery, fire protection, police protection, library, utilities, harbor, healthcare, community-service districts, and more. CSDA monitors issues of concern to special districts and identifies those matters that are of statewide significance, and has identified

this case as having such significance given the harmful impact on special districts throughout the state of the measure it challenges.

The **California State Association of Counties** (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The **League of California Cities** (Cal Cities) is an association of 476 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. Cal Cities is advised by its Legal Advocacy 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.

THE PROPOSED MEASURE CREATES SIGNIFICANT UNCERTAINTY FOR LOCAL GOVERNMENT FINANCE. This Court has recognized our Constitution's intent "to prevent disruption of [the State's] operations by interference with the administration of its fiscal powers and policies." (*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, 1122 [quoting *Geiger v. Board of Sup'rs of Butte County* (1957) 48 Cal.2d 832, 839–840].) The efficient administration of public services requires that governments have the ability to plan and that needless or prolonged uncertainty be avoided. (E.g., *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842–844 [validation statutes afford prompt certainty in public finance disputes to allow governments to plan].)

The pendency of the proposed measure disables fiscal planning by California's State and local governments. It will affect nearly every revenue source. Section 3 of the measure states its purpose to require voter approval of "**any** new or higher tax" and to require legislative, not administrative, action on "**all** fees or other charges." (Emphasis added.) It states intent to reverse decisions of this and other courts involving:

- initiative taxes (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924),

- fees in lieu of compliance with regulatory measures (*California Chamber of Commerce v. State Air Resources Bd.* (2017) 10 Cal.App.5th 604),
- price controls (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310),
- advisory measures related to general taxes (*Johnson v. County of Mendocino* (2018) 25 Cal.App.5th 1017),
- application of city taxes to annexed areas (*Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182); and
- referenda on utility fees and other revenue measures (*Wilde, supra*, 9 Cal.5th 1105).

(Measure, § 3, subd. (e).)

And it is replete with broad pronouncements and undefined terms, some puzzling. For example, its newly tightened restrictions on fees for government services or products limit them to the “[a]ctual cost” to provide the service or product, stating:

In computing “actual cost” the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(Measure, § 5 [proposed Cal. Const., art. XIII C, § 1, subd. (a)].) What other taxes must be used to subsidize utility services? The phrase “all other sources of revenue” seems encompassing but, surely, cities must still fund police and fire services and cannot be obliged to divert tax revenues needed to do so to subsidize utility service. How might a local government subsidize utility rates with the proceeds of “other exempt charges” without violating the requirement that the proceeds of those charges fund only the purpose for which they are imposed? (Measure, § 6 [proposed Cal. Const., art. XIII C, § 2, subd. (h)(1)].)

As a second example, a revenue measure would be deemed “imposed” when it is collected. (Measure, § 5 [proposed California Const., art. XIII C, § 1, subd. (d)].) But only legislative bodies may “impose” an exempt charge. (Measure, § 6 [proposed Cal. Const.,

art. XIII C, § 2, subd. (e)].) Are city councilmembers to issue utility bills? And the unamended text of California Constitution, article XIII D, section 6 requires notice and hearing to “impose” a property-related fee, within the newly defined, “exempt charge.” Are utility ratemaking hearings now required monthly before each mailing of bills?

As a final example, local fines and penalties are now permitted only “pursuant to an adjudicatory process.” (Measure, § 5 [proposed Cal. Const., art. XIII C, § 1, subd. (i)(4).) Must a neutral preside over librarians assessing late fines? Accompany parking meter readers? Or must voters approve every such regulatory device?

In short, should the measure become law, there will be ample interpretative work for local governments, their counsel, and courts.

THE CONSEQUENCES OF THAT UNCERTAINTY ARE ALREADY FELT. The measure will invalidate every local government revenue measure adopted after January 1, 2022 that did not anticipate its requirements unless reapproved by voters in the 12 months following the measure’s late-2024 effective date:

Any tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted **in compliance with the requirements of this section.**

(Measure, § 6 [proposed Cal. Const., art. XIII C, § 2, subd. (q), emphasis added].) But “the requirements of this section” include a duty to present general taxes only at general elections. (Measure, § 6 [proposed Cal. Const., art. XIII C, § 2, subd. (b)].) And, statute requires most local governments to conduct elections on State general election dates — in even-numbered years. (Elec. Code, § 14052.) Thus, absent a unanimous Council or Board declaration of a fiscal emergency, general taxes must lapse from late 2025 until they can be renewed in 2026. (Measure, § 6 [proposed Cal. Const., art. XIII C, § 2, subd. (b)].)

The risk that many government revenue measures may lapse in late 2025, either because voters do not reapprove them or because a governing body cannot muster a unanimous declaration of fiscal emergency to justify a special election on a general tax, is already undermining certainty and impairing planning in government finance. Rational government leaders may:

- restrain spending in the current and next fiscal year to build reserves, declining to undertake new initiatives absent a certain funding source; new challenges arising from climate change, wildfire risk, and ocean rise must await more certain times;
- budget for FY 2025–2026 accounting for the risk that major revenue streams may lapse midyear; and,
- consider whether to update continuing disclosures to the security markets to reflect these new risks to repayment of outstanding debt (17 CFR 240.15c2-12 [duty to make continuing disclosures to debt markets of financial circumstances of issuers of municipal securities]).

Lenders to State and local governments can also be expected to respond to these risks, including risk premiums in interest rates offered or denying credit altogether. As this Court recently wrote:

We feel that the possibility of future litigation [over the county’s loan guarantees] is very likely to have a chilling effect upon potential third party lenders, thus resulting in higher interest rates or even the total denial of credit

(*Davis v. Fresno Unified School Dist.* (2023) 14 Cal.5th 671, 694 [quoting and abridging *Walters v. County of Plumas* (1976) 61 Cal.App.3d 460, 468].)

These impacts are felt now. They will worsen as the November 2024 election approaches and the campaign on the proposed measure unfolds. Should it pass, even were this Court to entertain post-election review in its original jurisdiction, decision cannot be expected sooner than mid-2025 — after elections have been called to readopt those measures subject to retroactive invalidation. (Cf. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 [upholding Prop. 13 three months after its approval].) This measure has far more serious implications for local government financial stability than did Proposition 13, which affected only ad valorem property taxes. And, of course, unlike the earlier measure, it impairs both State and local finance. It warrants exercise of this Court’s original jurisdiction. The uncertainties noted above warrant preelection review.

CONCLUSION. The Petition demonstrates that, at the very least, powerful arguments can be made that the proposed measure is an unconstitutional initiative revision of our Constitution that would impair essential State and local government functions. This letter demonstrates the uncertainties its questionable drafting raise for State and local government finance and that those uncertainties already have deleterious effects on government finance. For all these reasons, Local Government Amici urge this Court to exercise its original jurisdiction, entertain preelection review of the measure, and invite full briefing and argument of the merits. If it does so, Local Government Amici will be pleased to brief the merits to assist that review.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael G. Colantuono". The signature is stylized with a large, sweeping "S" shape.

Michael G. Colantuono
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State Bar No. 143551

MGC:mgc

Attachment: Proof of Service

cc: California Association of Sanitation Agencies
California Municipal Utilities Association
California Special Districts Association
California State Association of Counties
League of California Cities

PROOF OF SERVICE

Legislature of the State of California et al. v. Weber (Hiltachk)
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I, Tracey S. West, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, CA 91101-2109. On September 28, 2023, I served the document(s) described as **LOCAL GOVERNMENT AMICI LETTER SUPPORTING REQUEST FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED LIST FOR METHOD OF SERVICE

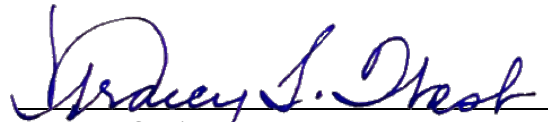
BY MAIL: By enclosing the document(s) in a sealed envelope addressed to the person(s) at the address listed in the Service List. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

BY E-MAIL OR ELECTRONIC TRANSMISSION: By electronically mailing the document(s) to the persons at the e mail addresses listed in the Service List. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

BY ELECTRONIC SERVICE: I electronically transmitted the above document(s) to the person(s) at the e-mail address(es) set forth below via the TrueFiling electronic service portal.

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

Executed on September 28, 2023, at St. Louis, Missouri.


Tracey S. West

SERVICE LIST

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