As to application only

No. C095486

In the Court of Appeal, State of California

THIRD APPELLATE DISTRICT

CULTIVA LA SALUD ET AL.,
Plaintiffs and Respondents

vs.

STATE OF CALIFORNIA ET AL.,
Defendants and Appellants.

Sacramento County Superior Court. Case No. 34-2020-80003458
The Honorable Shelleyanne W. L. Chang, Judge Presiding

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICI LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENTS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

These entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the Justices should consider in determining whether to disqualify themselves:

None.

DATED: December 12, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC

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LEAGUE OF CALIFORNIA CITIES
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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

To the Honorable Acting Presiding Justice and Associate Justices of the Court of Appeal for the Third Appellate District:

Under California Rules of Court, rule 8.200(c), the League of California Cities ("Cal Cities") and California State Association of Counties ("CSAC") respectfully request permission to file the attached amicus curiae brief supporting Plaintiffs and Respondents Cultiva La Salud and Martine Watkins.

Cal Cities is an association of 479 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.

Cal Cities and its member cities have a substantial interest in the outcome of this case because it raises important questions about the Legislature's power to preempt a city's constitutional home rule authority. Cities are required to contract with the State to collect sales and use taxes to fund essential municipal services, and the penalty at issue here will forfeit those funds if a city exercises the will of its populace by taxing sugar-sweetened beverages. Cal Cities

wishes to explain its view of the law regarding these issues and the implications of the parties' arguments to assist the Court in resolving this appeal.

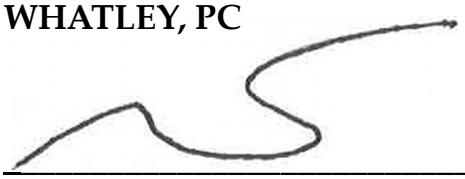
CSAC is a non-profit corporation, the membership of which is California's 58 counties. CSAC sponsors a Litigation Coordination Program administered by the County Counsels' Association of California and CSAC's Litigation Overview Committee, comprised of county counsels from around the state. The Litigation Overview Committee monitors litigation of concern to California counties and has determined that this case affects all of them. CSAC's interest in this case focuses on "punitive preemption" by which the State punishes local governments for exercising their legal authority, and seeks to provide further context for the Court.

In compliance with rule 8.200(c)(3) of the California Rules of Court, the undersigned counsel represents that they authored this amicus brief in its entirety on a pro bono basis; that their firm is paying the cost to do so; and that no party to this action, nor any other person, authored the brief or made any monetary contribution to fund its preparation and filing.

Accordingly, Cal Cities and CSAC respectfully request leave to file the brief attached to this application.

DATED: December 12, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC



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INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus Curiae League of California Cities ("Cal Cities") and California State Association of Counties ("CSAC") offer context for this dispute over Revenue & Taxation Code section 7284.12, subdivision (f) which requires the California Department of Tax and Fee Administration (CDTFA) to "terminate its contract to administer any sales or use tax ordinance of a local agency … if that local agency imposes … any tax, fee, or other assessment on groceries" in violation of subdivision (a) of that same statute. The "Penalty Provision," as the trial court labels it (Order Granting Petition for Writ of Mandate ["Order"], p. 5 [JA430[1]]), has two conditions:

- The tax, fee or other assessment must violate this statute and not be within its exceptions; and,
- A court must find the tax, fee, or other assessment a lawful exercise of a charter city's home rule authority under article XI, section 5 of our Constitution.[2]

Ending that contract effectively repeals a city's sales and use taxes, as it will be infeasible to collect them independently of CDTFA and the Revenue and Taxation Code requires a city to contract with CDTFA to collect local sales and use taxes. (Rev. & Tax. Code, § 7202, subs. (d) & (h)(4).)

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[1] Citations to the Joint Appendix are in the form "JA[page(s)]."

[2] Unspecified references to articles are to the California Constitution.

Thus, the Penalty Provision coerces California's charter cities from exercising home rule authority to tax sugar-sweetened beverages by threatening loss of **all** their sales and use tax revenues — one-third of Stockton's budget and a quarter of Santa Cruz's. (Order, p. 5 [JA430].)

The Penalty Provision is inconsistent with the "home rule" principle California added to our Constitution of 1879 to reflect the need for protection of local governments demonstrated by experience under the Constitution of 1849. The State's penalty on charter cities which impose soda taxes plainly forces them to surrender control of municipal affairs to maintain essential local sales and use tax revenues. But our Constitution assigns municipal affairs to charter cities and, even as to counties and general law cities, requires the Legislature to act with reason and uniformly as to all local governments unless it offers justification for special legislation. (Cal. Const., art. IV, § 16.) Fundamentally, the law the trial court set aside here is undemocratic. Reversing the trial court here will undermine the Constitution and invite further incursions into home rule authority. Indeed, the substance of the ballot measure the soda industry traded for the Penalty Provision has again been submitted to county registrars for signature verification.[3]

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[3] Initiative Constitutional Amendment 21-0042A1, which the Attorney General has entitled, "Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services.

Cal Cities and CSAC respectfully request the Court consider the damaging potential of the Penalty Provision to California's cities and counties and those they serve, and to home rule, and affirm.

STATEMENT OF FACTS AND CASE

Amicus incorporates by reference the statement of facts and procedural history included Respondent Cultiva La Salud's brief.

ARGUMENT

Cultiva La Salud, a non-profit public health organization, and Santa Cruz Vice Mayor Martine Watkins, suing in her personal capacity, challenge the constitutionality of Revenue & Taxation Code section 7284.12(f) — the Penalty Provision. It requires CDTFA to stop collecting the sales and use taxes of any charter city and to terminate its contract to administer sales and use taxes for any charter city that imposes a tax that conflicts with the ban on "grocery" taxes in the "Keep Groceries Affordable Act of 2018." ("Groceries Act") (Rev. & Tax. Code, § 7284.12(f).) That statute defines "groceries" to include "carbonated and noncarbonated nonalcoholic beverages." (Rev. & Tax. Code, § 7284.10, subd. (e)(1).)

Imitative Constitutional Amendment." Its text and status appear here: < https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-and-referenda-pending-signature-verification > (as of Dec. 11, 2022).

The Penalty Provision applies only if a court holds a local tax is a lawful exercise of a charter city's authority to regulate "municipal affairs" under article XI, section 5. (Rev. & Tax. Code, § 7284.12, subd. (f)(2).)

I. THE PENALTY PROVISION IS POWERFULLY COERCIVE

The Penalty Provision coerces charter cities into surrendering constitutional home rule authority. As the trial court noted (Order, p. 5 [JA430]), both Stockton and Santa Cruz abandoned soda tax proposals after the Penalty Provision was enacted. The Penalty Provision effectively deters local soda-tax proposals — whether proposed by initiative or by a City Council proposal to voters, as in the four cities that adopted such taxes before the Legislature adopted the Penalty Provision. (Order, p. 3 [JA428]; Rev. & Tax. Code § 7284.12, subds. (b) & (c) [exempting pre-2018 soda taxes].) When the Legislature approved the Penalty Provision, Santa Cruz abandoned its soda tax proposal and a grass-roots effort to pursue such a tax in Stockton fizzled.

Forcing charter cities to choose between existing revenues funding vital local services like police, fire, streets, parks and libraries and new taxes to achieve public health goals has preempted local legislation just as effectively as would a statutory bar. If the State can threaten to bankrupt cities by refusing to collect their sales and use taxes, other, similar threats can be expected to follow. If the

Penalty Provision is lawful, the Legislature has nearly unlimited power to control cities despite a constitutional commitment to the separation of state and local authority and finances that reflected experience under the Constitution of 1849 which lacked those protections. Article XI, section 5 would be toothless.

Upholding this coercive legislation would override the will of local voters, inviting cynicism and nonparticipation in local democracy. Why gather signatures in Santa Cruz and Stockton if only the Legislature's views have force? California voters have the constitutional right to approve local legislation, and our Constitution disallows the Legislature to defeat the right, whether directly or indirectly by financial compulsion, as here. This is but an application of the doctrine of unconstitutional conditions. (Order, p. 9 [JA434].)

II. THE PENALTY PROVISION CHILLS LOCAL AUTONOMY AND PUBLIC HEALTH POLICY

The Penalty Provision is intended to quash, and has quashed, local soda taxes. Stockton and Santa Cruz abandoned theirs (Order, p. 5 [JA430]) and research reveals no other such proposal in California since the Penalty Provision became law. On its face, the ban applies to any taxes on "groceries," but Orwellian language cannot conceal its objective is to prohibit soda taxes. Groceries have always been immune from sales taxes, only the inclusion of carbonated and noncarbonated nonalcoholic beverages" in that

exemption is new. (Order, p. 3 [JA428] ["Sales and use taxes generally do not apply to the retail sales of 'food products for human consumption.' ([Rev. & Tax. Code] § 6359, subd. (a).) 'Carbonated beverages' are not classified as 'food products,' so they are subject to sales and use taxes. ([*Id*. at] § 6359, subds. (a) & (b)(3).)"]; Rev. & Tax. Code § 7284.10, subd. (f)(1) ["groceries" includes "carbonated and noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent alcohol by volume"].) Since 2014, four California charter cities have taxed the distribution of sugary drinks — a concern to many Californians due to the health impacts of such drinks, promoting the diabetes and obesity epidemic in this country and particularly affecting children. (Plaintiffs' Verified Complaint for Declaratory Relief and Injunction, and Petition for Writ of Mandate ["Petition"], p. 6 [JA014].) In response, the beverage industry placed the "Tax Fairness, Transparency and Accountability Act of 2018" on the November 2018 ballot. (Order, p. 4 [JA429].) The "Tax Fairness, Transparency and Accountability Act of 2018," would have been disastrous to both state and local finances requiring, among other things, two-thirds voter approval of **any** local tax and two-thirds legislative approval of many state agencies' regulations. (Order, p. 4 [JA429].)

To avoid the risk this initiative constitutional amendment might pass, the Legislature persuaded the soda industry to withdraw it in return for the "Keep Groceries Affordable act of

2018," Revenue & Taxation Code sections 7284.4 et seq.[4] And, as such, state actors decided whether to honor our Constitution's commitment to home rule.

The Penalty Provision is coercive, since sales and use taxes account for a large portion of most charter cities' revenues. (Order, p. 5 [JA430] [a third of Stockton's revenues; a quarter of Santa Cruz's.) And it has been effective. As soon as the ban was passed, Santa Cruz withdrew a proposed soda tax from the November 2018 ballot.[5] (Order, p. 5 [JA430].) The statute stopped a grassroots soda tax drive in Stockton.[6]

This penalty chills local governance, allowing state political groups to frustrate local democracy. Tobacco regulation was a

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[4] A similar measure may now qualify for the 2024 ballot and would apply retroactively to state and local revenue measures adopted after January 1, 2022. (Proposed art. XIII A, § 3, subd. (f); proposed art. XIII C, § 2, subd. (g).)

[5] Jondi Gumz, California ban quashes Santa Cruz soda tax, Santa Cruz Sentinel (June 28, 2018) < https://www.santacruzsentinel.com/2018/06/28/california-ban-quashes-santa-cruz-soda-tax/ > (as of Nov. 27, 2022.)

[6] Alexei Koseff, California bans local soda taxes through 2030 to avert industry-backed initiative, The Sacramento Bee (June 29, 2018) < https://www.sacbee.com/news/politics-government/capitol-alert/article213963039.html > (as of Nov. 27, 2022).

precursor to the current debate regarding soda taxes.[7] The Penalty Provision prevents local governments from responding to their residents' desires and serving as "laboratories of democracy" writ small. (*New State Ice Co. v. Liebmann* (1932) 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ["It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country"].) If the voters of a charter city want to use their local government to incubate new policies to address contemporary problems like childhood obesity, our Constitutional protection of home rule allows it — provided no genuine matter of statewide concern justifies preemption.

The State may not coerce charter cities to forego home rule autonomy by threatening to withhold essential revenues.

III. CALIFORNIA'S CONSTITUTIONAL COMMITMENT TO LOCAL AUTONOMY

Home rule is a cornerstone of California's democracy. The California Constitution of 1849 did not cover local government powers, but it quickly became apparent that more protection for local governments was needed. State encroachment on local

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[7] E.g., Eric Crosbie, Schmidt, Laura A., Preemption in Tobacco Control: A Framework for Other Areas of Public Health, 110 Am J Public Health. 3 (Mar. 2020).

government was common, perhaps characterized best by *Stockton and Visalia R. Co. v. Common Council of City of Stockton*, upholding the Legislature's demand that Stockton fund construction of a privately owned railroad, the owner of which apparently had the Legislature's ear. (*Stockton and Visalia R. Co. v. Common Council of City of Stockton* (1871) 41 Cal. 147 ["*Stockton*"].) How ironic that the City of Stockton is among the advocates of local soda taxes the Penalty Provision silences some 150 years later.

Deep distrust in the Legislature — and the Southern Pacific Railroad once thought to control it — colors the California Constitution of 1879. Many provisions of our Constitution protect local autonomy, most importantly XI, section 5 which grants local government "home rule" over "municipal affairs." Charter cities maintain the constitutional authority to adopt and enforce their own ordinances on municipal affairs to the exclusion of State laws, allowing each city to express its own political and legal identity. (Cal. Const., art. XI, § 5.) Home rule prevents the State from micromanaging local governments, guaranteeing their autonomy and adaptability. It also prevents a temporary political victory in the Capitol from squelching debate — and policy innovation — everywhere in our diverse state of some 40 million people.

Local taxes are largely municipal affairs. Home rule empowers local governments to control their own revenue and to finance local activities without legislative micromanagement.

(*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 224–225 ["*Amador*"].) The Legislature has stated (but not always evidenced) intent to "preserve home rule and local autonomy respecting the allocation and expenditure of […] tax revenues." (*Id.* at p. 226.) Courts have recognized that levying taxes for local purposes is a municipal affair. (*West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 524 ["No doubt is entertained upon the proposition that the levy of taxes by a municipality for revenue purposes […] is strictly a municipal affair"]; *City of Bellflower v. Cohen* (2016) 245 Cal.App.4th 438, 451 [citing Cal. Const., art. XIII, § 24, subd. (b)] ["There is no dispute that the sales, use, and property taxes are 'levied by [the] local government solely for the local government's purposes.' "].) But the Revenue and Taxation Code requires local governments to contract with CDTFA to administer sales and use taxes to avoid duplicating tax administration regimes and to promote a statewide retail marketplace. CDTFA administers the taxes, collects their proceeds, and remits revenues to local governments. (Rev. & Tax. Code, § 7202, subds. (d), (h)(4), § 7204, §7204.3.) Even though such taxes are municipal affairs, statute unavoidably involves state government in their administration. However, our Constitution does not allow the Legislature to leverage that participation to the detriment of article XI, section 5's home rule principle.

Nor did solicitude for local autonomy end in 1879. Approved in 2004, Proposition 1A amended our Constitution to "prevent[] the state from statutorily reducing or altering the existing allocations of property tax among cities, counties, and special districts" without a two-thirds vote. (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 249 [referencing Cal. Const., art. XIII, § 25.5, subds. (a)(1), (3)].) As Proposition 1A aimed to prevent "the Legislature from raiding local property tax allocations to help balance the budget," its approval further weighs toward preventing state interference with local revenues. (*California Redevelopment Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457, 1467.) Proposition 1A also strengthened local sales and use taxes, forbidding the Legislature from "restrict[ing] the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley-Burns Uniform Local Sales and Use Tax Law." (Cal. Const., art. XIII, § 25.5, subd. (a)(2)(A).) Proposition 1A enforced the policy that local sales and use tax revenue should be allocated to local governments without the Legislature's interference. (Proposition 1A Ballot Measure Summary, p. 6 [JA326].)

The Constitution of 1879 also provides the Legislature "may not impose taxes for local purposes but may authorize local governments to impose them" and 2010's Proposition 22 provides it "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 (a), (b).) By threatening collection of local sales and use taxes, the Legislature turns necessary common administration into a tool to subvert many provisions of our Constitution. Even though the State splits hairs to argue that "not collecting" revenue differs from "withholding" it (Appellants' Opening Brief, p. 28), the claim cannot persuade. If the Penalty Provision is lawful, essential sales and tax revenue is denied charter cities if they defy the Legislature's current opposition to soda taxes. In effect, the Legislature restricts local revenue.[8] (*White v. State* (2001) 88 Cal.App.4th 298, 309 ["the board has the obligation to transmit those revenues back to the [entities] pursuant to contract or state law"].) And for what? The trial court writ did not invalidate the balance of Revenue & Taxation Code section 7284.12. A charter city must still defend a soda tax against the industry's well-funded argument that soda taxes are somehow a matter of statewide concern and not a municipal affair. But we can expect one to do so when the extortionate threat of the Penalty provision is removed.

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[8] Answer to the Complaint, p. 9 [JA034] [The Department admitted the first sentence of paragraph 66 of the Petition: "[b]ecause Bradley-Bums requires sales and use taxes levied under it to be collected by the CDTFA, requiring the CDTFA to stop collecting a city's sales and use tax will deprive that city of those revenues."].

Home rule without the means to fund local government is an empty promise. Accordingly, our Constitution reflects a strong policy of protecting local governments' revenue powers, and "a legislative objective [that restricts local powers of taxation] would be directly at odds with the home rule of charter cities guaranteed by California Constitution, article XI, section 5; it would represent, in effect, a desire to nullify this constitutional guarantee to charter cities." (*Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, 129.) True, there are rare exceptions when taxes touch on larger economic regulation. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 [business license tax on thrift institution preempted by statute enabling them to compete with tax-exempt federally chartered competitors].) But absent rare exception, State interference in local revenues is barred to give substance to our Constitution's promise of home rule.

IV. STATE INTRUSION ON HOME RULE AUTHORITY UNDERMINES LOCAL DEMOCRACY

Statutes like that in issue here undercut Home Rule. So-called "punitive preemption" is not unique to either the Penalty Provision or to California, but a growing — and troubling — phenomenon.

Punitive preemption occurs when a higher level of government punishes a lower level that enacts or enforces

disfavored policy.[9] Such punishments could include fines, removal from office (as Florida's Governor recently did for elected prosecutors who stated their intent to decline enforcing abortion penal statutes),[10] withholding revenue, and civil liability, all of which add a punitive element beyond nullification of a local law. (E.g., Ariz. Rev. Stat. Ann. § 41-194.01 [withholding of funds], found unconstitutional by *City of Phoenix v. State*, 2021 WL 7279673 (Ariz. Super.).) Punitive preemption greatly chills the local government's

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[9] Several academic papers and articles discuss punitive preemption, but the phrase has not yet appeared in judicial opinions. (E.g., Nat'l League of Cities, *Principles of Home Rule for the 21st Century* (2020) < https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf > (as of Nov. 27, 2022); Richard Briffault, Punitive Preemption: An Unprecedented Attack on Local Democracy, Local Solutions Support Center (July 2018) < https://www.abetterbalance.org/wp-content/uploads/2018/10/Punitive-Preemption-White-Paper-FINAL-8.6.18.pdf > (as of Nov. 27, 2022); and Rachel Proctor May, *Punitive Preemption and the First Amendment* (2018) 55 San Diego L. Rev. 1; Rachel Simon, *The Firearm Preemption Phenomenon* (2022) 43 Cardozo L. Rev. 1441; Paul A. Diller, *Is Enhanced Judicial Review the Correct Antidote to Excessive State Preemption?* (2022) 100 N.C. L. Rev. 1469.

[10] < https://www.nbcnews.com/nbc-out/out-news/desantis-sued-florida-prosecutor-removed-abortion-rcna43701 > (as of Nov. 27, 2022).

ability to challenge state law or to express a different view. (See *Creek v. Village of Westhaven* (7th Cir. 1996) 80 F.3d 186, 193 ["There is at least an argument that the marketplace of ideas would be unduly curtailed if municipalities could not freely express themselves on matters of public concern"].) Even if dissent is the will of city residents, punitive preemption can chill local governments from voicing that will. (*Ibid.* ["To the extent, moreover, that a municipality is the voice of its residents […] a curtailment of its right to speak might be thought a curtailment of the unquestioned First Amendment rights of those residents"].) Even if there is motivation to challenge preemptive state policy (as there is here), many local governments lack the funding and resources to risk suit. This curtails judicial review, too. Punitive preemption ends the usual dialog about state preemption and local control by silencing opposing viewpoints. Those who disagree are not just wrong, but dangerous, such laws seem to say.

The Penalty Provision is of this ilk. Our Constitutional commitment to noisy, messy democracy with ample room for disparate views cannot tolerate it.

Allowing punitive preemption in this instance invites further resort to the technique either by the Legislature or those who may force the Legislature's hand as "the Octopus" did in Stockton in the 19th Century.[11] Curtailing municipal expression, judicial review, and

[11] In the late nineteenth century, Californians and the railroad

the marketplace of ideas by holding essential revenues hostage is fundamentally inconsistent with the democracy we have inherited from the generations that fought for it. Our own generation's need to engage that fight seems to be upon us.

CONCLUSION AND DISPOSITION

The Penalty Provision is an unconstitutional interference with the local control afforded by article XI, section 5 and corrodes our democracy by allowing political influence at one point in our

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industry were often at odds. The conflict pitted Californian ranchers, farmers, and municipal governments against the railroad industry, its wealthy owners, and state and federal political allies. The industry was referred to as the Octopus by detractors, who compared the stranglehold on shipping and freight—as well as the grasp on politics — in California to tentacles. (See Robert A. Jones, Long live the Octopus, Los Angeles Times (July 10, 1996) < https://www.latimes.com/archives/la-xpm-1996-07-10-me-22810-story.html > as of Dec. 11, 2022.) The Octopus induced state officials to compel local governments to subscribe to bonds to develop railroads, leading to article XVI, § 6 barring the lending of State or local credit to private parties (*Stockton and Visalia R. Co. v. City of Stockton* (1876) 51 Cal. 328; *People ex rel. Cent. Pacific R. Co. of California v. Coon* (1864) 25 Cal. 635 [discussing 1863 statute requiring San Francisco to subscribe to bonds to fund railroad]) overruled by *In re Philbrook* (1895) 108 Cal. 14.)

pluralistic society to quell differing policies everywhere else. Cal Cities and CSAC respectfully request the Court to affirm the judgment below and allow the trial court writ to issue.

DATED: December 12, 2022

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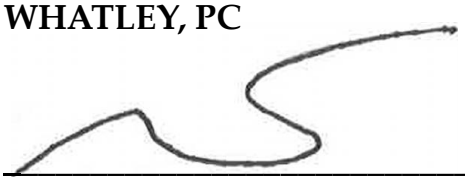
CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204

I certify that, under rule 8.204(c)(1) of the California Rules of Court, this Amicus Brief is produced using 13-point type and contains 3,572 words including footnotes, but excluding the application for leave to file, tables, and this Certificate, fewer than the 14,000 words permitted by the rule. In preparing this Certification, I relied upon the word count generated by Microsoft Word 365 MSO.

DATED: December 12, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC



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PROOF OF SERVICE

Cultiva La Salud et al. v. State of California et al.
Third District Court of Appeal Case No. C095486

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. My email address is: ALloyd@chwlaw.us. On December 12, 2022, I served the document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICI LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFFS AND RESPONDENTS** on the interested parties in this action addressed as follows:

SEE ATTACHED LIST FOR METHOD OF SERVICE

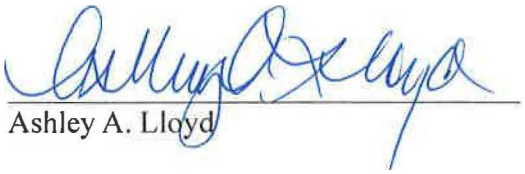
☒ **BY MAIL**: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Grass Valley, 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**: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on December 12, 2022, from the court authorized e-filing service at TrueFiling.com. No electronic message or other indication that the transmission was

unsuccessful was received within a reasonable time after the transmission.

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

Executed on December 12, 2022, at Grass Valley, California.



Ashley A. Lloyd

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Third District Court of Appeal Case No. C095486

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