D083322

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION ONE

RICHARD BECK

Plaintiff and Respondent,

v.

CITY OF CANYON LAKE

Defendant and Appellant.

On Appeal from the Superior Court for the State of California,
County of Riverside, Case No. CVRI 22 02608, Hon. Godofredo Magno,
Judge Presiding

Application of League of California Cities and California State Association of Counties to File *Amicus Curiae* Brief in Support of Appellant City of Canyon Lake; *Amicus Curiae* Brief

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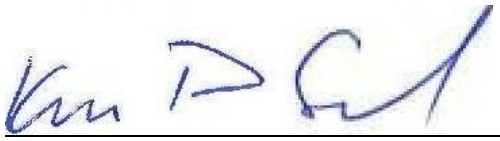
CERTIFICATE OF INTERESTED

ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208—except, arguably, consumers of utility services subject to the utility user taxes at issue in this case.

Dated: May 29, 2024

BURKE, WILLIAMS & SORENSEN, LLP

By: 

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APPLICATION TO FILE *AMICUS CURIAE* BRIEF

I. INTRODUCTION

Pursuant to California Rules of Court, rule 8.200(c)(1), *Amici Curiae* League of California Cities ("Cal Cities") and California State Association of Counties ("CSAC") (collectively, "Local Government *Amici*") respectfully request permission to file an *amicus curiae* brief in support of Defendant and Appellant City of Canyon Lake.

This application is timely made within 14 days after the filing of the reply brief on the merits. (Rules of Court, rule 8.200, subd. (c)(1).)

II. INTEREST OF *AMICI CURIAE*

Local Government *Amici* represent cities and counties throughout California.

Cal 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.

CSAC is a non-profit corporation having a membership consisting of all 58 California counties.

The Local Government *Amici* members provide innumerable services that benefit residents across the State of California, paid for through taxes such as the Utility User Tax at issue in this case.

Each of the Local Government *Amici* has a process for identifying cases, such as this one, that warrant their participation.

Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 city attorneys from all regions of the State. The Legal Advocacy

Committee monitors litigation of concern to municipalities, identifying those cases that have statewide or nationwide significance.

CSAC sponsors a Litigation Coordination Program, which is administered by the California County Counsels' Association. CSAC's Litigation Committee monitors litigation of concern to California's counties.

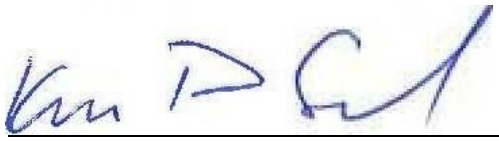
Local Government *Amici* have determined that this case is of significance to their members. *Amici* have reviewed the parties' principal briefs and conclude that additional argument would assist the Court. They desire to provide points and authorities to explain their views regarding the constitutional, statutory, and case law at issue and the implications of the various arguments presented to this Court, and to assist this Court in evaluating the issues.

III. CONCLUSION

Local Government *Amici* respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: May 29, 2024

BURKE, WILLIAMS & SORENSEN, LLP

By: 

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AMICUS CURIAE **BRIEF OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES**

I. INTRODUCTION

Two overarching principles articulated by the Supreme Court provide apt guidance for this case. First, it is a "long standing principle that the power to raise revenue for local purposes is not only appropriate but, indeed, absolutely vital for a municipality." (*Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392.) Second, in order to properly interpret a ballot measure and advance voter intent, courts must thoroughly evaluate, not only the language of the measure, but also the ballot materials and context in which the measure was voted on. (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)

Here, when the voters adopted Proposition 218, they expressed an intent to preserve and enhance their right to vote on taxes. They neither expressed any intent to eliminate or narrow their right to approve utility user taxes, nor did they adopt any language to take away their right to approve utility user taxes. Instead, the voters expressed an intent to limit public agencies' authority to impose *non-tax* fees on property-related services, and they adopted language to expressly effectuate that intent. For these and other reasons discussed below, the subject language of Proposition 218—specifically, Section 3 of Article XIIID of the California Constitution—did not surreptitiously eliminate the voters' right to impose general taxes on property-related utility services.

Moreover, to endorse Respondent Richard Beck's expansive interpretation of the language of Section 3 would have huge, negative repercussions for cities and counties. Appellant City of Canyon Lake is not

an outlier. Over 150 cities and counties in California have utility user taxes, and over 110 of those taxes are imposed on property-related services (water, sewer, and garbage services). Most of these taxes are general taxes. Wiping out local governments' right to collect such taxes—especially for residential-only cities like Canyon Lake that have limited tax bases—would have tremendously negative effects on local governments' ability to provide services for their residents, businesses, and visitors.

Accordingly, Local Government *Amici* urge this Court to reverse the Superior Court, thereby preserving state voters' intent when they adopted Proposition 218 and the taxes local voters thereafter approved, and protecting local governmental revenue from the negative effect of the Superior Court's unwarranted, expansive interpretation of Article XIIID, section 3.

II. DISCUSSION

A. Over 110 Utility User Taxes Are Imposed by Cities and Counties on Water, Sewer, and Garbage Services.

As of 2021, 158 cities and four counties imposed utility user taxes ("UUTs") on transactions between utility service providers and the property owners and tenants who are their customers. (See California Local Government Finance Almanac, Utility User Tax Facts, p. 1 [https://californiacityfinance.com/UUTfacts21.pdf (visited 05/28/2024)].) These 162 cities and counties impose UUTs on a variety of utility services, including water, sewer, waste-hauling, telecommunications, electricity, and gas services. (*Id.* at 1.)

As to taxes imposed on customers' payments for property-related utility services: 85 cities and one county impose UUTs on water service; 14

cities and one county impose UUTs on sewer services; and 13 cities impose UUTs on garbage services (again, as of 2021), which total more than 110 UUTs on property-related services. (*Ibid.*)

Most of these are general taxes. (*Ibid.*) Between 2002 and 2020 alone, city and county voters approved or extended UUTs in 96 jurisdictions, of which at least 85 were general taxes. (*Id.* at 3.)

Charter cities impose UUTs pursuant to their constitutional home rule authority. (Cal. Const., art. XI, § 5, subd. (a); *Weekes*, 21 Cal.3d at 392). General law cities and counties impose UUTs pursuant to statutory authority. (Gov. Code § 37100.5 and Rev. & Taxation Code § 7284.2, respectively; see also *Eastern Mun. Water Dist. v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, 29 [discussing cities' authority to impose UUTs and other taxes].)

Public and private utilities collect the UUTs from their customers, and remit the taxes to the city or county that levied them. (See *Edgemont Community Services Dist. v. City of Moreno Valley* (1995) 36 Cal.App.4th 1157, 1161.)

UUTs provide critical funding for cities and counties to provide governmental services. Cities' UUTs provide, on average, 12-15% of their general-purpose revenue. (California Municipal Revenue Sources Handbook, League of California Cities (2019), p. 45;[1] California Local Government Finance Almanac, Utility User Tax Facts, p. 1 [https://californiacityfinance.com/UUTfacts21.pdf (visited 05/28/2024)].)

[1] The relevant pages of the Handbook appear in the record at 1 AA000281-290. They are also attached to Appellant's Opening Brief.

In approximately 20 cities, UUTs provide approximately 20% or more of general purpose revenue. (California Municipal Revenue Sources Handbook, League of California Cities (2019), p. 46.)[2] Canyon Lake receives 19.6 percent of its general revenues from its UUT. (California Local Government Finance Almanac, Utility User Tax Facts, p. 1 [https://californiacityfinance.com/UUTfacts21.pdf (visited 05/28/2024).) The tax rates range from 1% to 11%, with 5% being the most common rate and 5.4% the mean. (*Id.* at 3.)

The four counties that rely on UUTs—Alameda, Los Angeles, Sacramento and San Francisco—serve millions of Californians. (California Municipal Revenue Sources Handbook, League of California Cities (2019), p. 45.)

B. Proposition 218 Did Not Repeal or Limit Voters' Authority to Approve Utility User Taxes.

1. The Voters Protected Their Right to Vote on Taxes Through Approval of Propositions 13, 218, and 26.

a. The Voters Declared Their Intent to Preserve and Enhance Their Right to Vote on Taxes.

Beginning in 1978, California voters enacted a series of initiatives codifying their right to vote on proposed taxes, and limiting the circumstances in which local governments may raise revenue by means other than taxes, e.g., fees and assessments, which do not require voter approval. (See *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 257-60.)

[2] Statewide, cities' UUTs generated approximately $2 billion per year prior to the post-pandemic spate of inflation. (California Municipal Revenue Sources Handbook, League of California Cities (2019), p. 44.)

Through these initiatives—including Proposition 13 (1978), Proposition 218 (1996), and Proposition 26 (2010)[3]—the voters expressed their intent to protect and enhance their right to vote on taxes, and advanced that intent by limiting the means by which local governments may avoid their obligations to secure voter approval by classifying revenue-raising measures as fees or assessments, rather than as taxes. (See *Jacks*, 3 Cal.5th at 257-60; *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1322-23.)

Proposition 218 includes an express statement of the voters' intent to protect their right to vote on taxes, in both Proposition 218 and Proposition 13, its predecessor:

> The People of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases…. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

(Proposition 218, Section 2, Uncodified Findings and Declarations, 1996 Cal. Legis. Serv. Prop. 218 (WEST).)

The ballot argument in favor of Proposition 218 also explained to the voters that Proposition 218 would enshrine their right to approve taxes:

> Proposition 218 does NOT prevent government from raising and spending money for vital services like police, fire and education. If

[3] Proposition 13 added Article XIIIA to the California Constitution. Proposition 218 added Articles XIIIC and XIIID. Proposition 26 amended Articles XIIIA and XIIIC.

> politicians want to raise taxes they need only convince local voters that new taxes are really needed.

(1 AA00220.)

In 2010, when the voters adopted Proposition 26, they reiterated in Section 1 the purposes for which they had approved Propositions 13 and 218. (Proposition 26 [Uncodified Findings and Declarations], 2010 Cal. Legis. Serv. Prop. 26 (Prop. 26) (WEST).) Section 1 then states, in subdivisions (e) and (f), reasons the voters approved Proposition 26:

> (e)… the Legislature and local governments have disguised new taxes as "fees" in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements.…
>
> (f) In order to ensure the effectiveness of these constitutional limitations, this measure also defines a "tax" for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on increasing taxes by simply defining new or expanded taxes as "fees."

(Proposition 26, Uncodified Findings and Declarations, 2010 Cal. Legis. Serv. Prop. 26 (Prop. 26) (WEST).)

b. The Voters Did Not Express any Contrary Intent to Repeal or Limit Their Longstanding Authority to Approve Utility User Taxes.

As discussed in Section II-A above, charter cities have inherent, constitutional authority to tax utility users' payments, general law cities have such authority pursuant Government Code section 37100.5, and counties have such authority pursuant to Revenue & Taxation Code section

7284.2. The Legislature authorized general law cities and counties to impose such taxes in 1982 and 1990, respectively—prior to the adoption of Proposition 218. (See West's Ann. Gov. Code § 37100.5 and West's Ann. Rev. & Tax. Code § 7284.2 (formerly codified at Section 7285); see also Statutes 1990, chapter 466 (S.B.2557), § 6.)

The drafters of initiatives, and the voters who approve (or reject) them, are deemed to have been aware of such existing legislation. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 283; cf. *College v. Board of Trustees* (1979) 92 Cal.App.3d 672, 677 [voters presumed to know of statutes that had created public agency and authorized issuance of bonds].)

Thus, when they approved Proposition 218, the voters were aware that cities and counties were authorized to tax utility users' payment transactions. And, of course, the voters were also aware that approval of Proposition 218 would codify their right to approve such taxes, either as general taxes by majority approval, or as special taxes by super majority-approval.

By contrast, Proposition 218 neither declared nor stated that Proposition 218 would eliminate voters' right to approve taxes on any payment transactions for utility services.

2. As a Counterpart to the Protection of Their Right to Vote on Taxes, the Voters Limited the Circumstances in Which Local Governments May Impose Fees, as Opposed to Taxes, on Property-Related Utility Services.

a. Proposition 218 Imposed Procedural and Substantive Requirements on the Adoption of Property-Related Fees and Assessments, Which Protect But Do Not Affect Voters' Right to Approve UUTs.

The voters also codified means to advance their intent to protect their right to vote on taxes by adopting, and later narrowing and refining, the circumstances in which local governments may avoid voter approval by adopting property-related fees and assessments.

In Proposition 218, the voters specified two circumstances in which local governments may impose charges on parcels or on persons as an incident of property ownership, without voter approval—property-related fees and assessments—but only if the local government satisfies certain procedural and substantive requirements. For completeness, we summarize the property-related fee and assessment approval process below.

As to fees, Proposition 218 authorizes local governments, without voter approval, to impose fees "upon a parcel or upon a person as an incident of property ownership," which fees must not exceed the costs of the property-related service, not exceed the proportional costs of the service, and only be used for the subject service. (Cal. Const., art. XIIID, § 2, subd. (e), and § 6, subd. (b), respectively.) The local government must provide the affected property owners a right to participate in a noticed public hearing and to object to the proposed fees. (Cal. Const., art. XIIID, § 6, subd. (a).) As to water, sewer, and refuse fees subject to Proposition

218, the local government may impose the fees unless a majority of the affected property owners protest. (Cal. Const., art. XIIID, § 6, subd. (c).) As to other fees imposed upon a parcel or upon a person as an incident of property ownership, the local government may impose the fees, at the conclusion of the noticed public hearing, upon majority approval of the affected property owners; alternatively, the local government may seek two-thirds voter approval of the electorate. (Cal. Const., art. XIIID, § 6, subd. (c).)

As to assessments, Proposition 218 authorizes local governments, without voter approval, to impose assessments on real property to pay "for a special benefit conferred upon the real property," which must be "over and above the benefits conferred on the public at large." (Cal. Const., art. XIIID, § 2, subd. (e), and § 4, subd. (f), respectively.) The local government must provide the affected property owners an opportunity to participate in a noticed public hearing and to object to the proposed assessments, through submission of ballots weighted according to the affected owners' proportional obligation to pay the assessments. Unless a majority of the weighted ballots is against the imposition of the assessments, the local government may impose the assessments. (Cal. Const., art. XIIID, § 4, subds. (a), (c), (e).) Proposition 218 further provides that the local government may impose such assessments without voter approval only if, and to the extent that, the properties subject to the charge "receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." (Cal. Const., art. XIIID, § 4, subds. (g).)

Thus, to protect and enhance voters' right to vote on taxes, Proposition 218 specified, in Article XIIID, the foregoing two processes for property-related fees and assessments by which local governments may impose charges on property owners without seeking voter approval. Where the local government has not followed and complied with the rules for adopting property-related fees and assessments, a property-related charge necessarily qualifies as a tax, which is subject to voter approval.

Accordingly, Proposition 218's imposition of procedural and substantive requirements in imposition of property-related fees and assessments protects, but does not affect (e.g., narrow, limit, or modify) the voters' right to approve taxes on the purchase of utility services, irrespective of whether the utility services are for property-related services.

b. Proposition 26 Confirms that a Fee or Other Charge Is a Tax, Unless Excepted from the Definition of Tax, and Thus Subject to Voter Approval.

In Proposition 26, the voters revised Article XIIIC (added by Proposition 218) to further protect their right to vote on taxes. Proposition 26 specifies that " 'tax' means any levy, charge, or exaction of any kind imposed by a local government," unless the charge satisfies one of seven exemptions. (Cal. Const., art. XIIIC, § 1(e).) Among the exceptions are "[a]ssesments and property-related fees imposed in accordance with the provisions of Article XIIID." (Cal. Const., art. XIIIC, § 1(e)(7).) Thus, the default rule is that a charge is a tax, subject to voter approval, unless the charge falls within one of seven exceptions, such as for assessments and property-related fees adopted in accordance with Article XIIID. (See also *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373, 377.)

Accordingly, the voters have made clear that they have a right to vote on taxes, and that only if a charge qualifies for an exception from the definition of a tax, e.g., as a property-related fee or assessment under Article XIIID, is the charge not a tax. (See, e.g., *Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396, 406-08 [households hazardous materials fee was lawfully imposed under Article XIIID, section 6, and thus was not a tax for which voter approval would have been required]; *Zolly v. City of Oakland* (2022) 13 Cal.5th 780, 784 [to the extent franchise fees imposed on waste hauling franchisees do not fall within one of the seven exemptions from the definition of a tax in Article XIIIC, the lack of voter approval renders them illegal taxes].)

C. The Superior Court Misinterpreted Article XIIID, Section 3 to Take Away Voters' Authority to Approve General Taxes on Transactions Between Utility Service Providers and Property Owners.

1. Article XIIID, Section 3 Does Not Eliminate Voter Authority to Approve General Taxes on Property-Related Utility Services.

Having provided the context within which Canyon Lake's voters approved the subject taxes, we now consider whether the Superior Court properly ruled that Article XIIID, section 3 (added by Proposition 218) eliminated the voters' right to approve the subject UUTs.

According to the Superior Court, Section 3 prohibited the voters from imposing general taxes on transactions between utility service providers and property owners, to the extent property-related utility service is at issue. The Superior Court misinterpreted Section 3.

Section 3 provides that "[n]o tax, assessment, fee, or charge shall be

assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except" where one of four exceptions applies. (Cal. Const., art. XIIID, § 3, subd. (a).)

The Superior Court ruled that the subject UUTs qualify as taxes imposed "upon any parcel of property or upon any person as an incident of property ownership" pursuant to subdivision (a) of Section 3, and was illegal because it neither qualifies as a special tax (the second exception) nor as a fee for a property-related services as provided in Article XIIID (fourth exception).

The Court erred by ruling that Canyon Lake's UUTs are imposed upon parcels of property or persons as an incident of property ownership, as we explain next.

a. The Language of Section 3 Does Not Prohibit the Voters from Imposing UUTs, as General Taxes, on Payment Transactions for Property-Related Services.

Third parties, not Canyon Lake, provide the property-related utility services, for which the local government third parties charge property-related fees pursuant to Section 6 of Article XIIID.[4] Canyon Lake's voters separately imposed taxes on transactions between the utility providers and the property owners, not on the parcel or on a person as an incident of property ownership. Thus, the first clause of Section 3 does not encompass the UUTs. Rather, the third-party utility providers charge fees (e.g., for water, sewer, and garbage services), and Canyon Lake charges a tax on payments for those services.

[4] Not all of the third-party utility providers are local governments.

Further, even if Canyon Lake provided the property-related utility services, the tax would not qualify as a tax imposed "upon any parcel of property or upon any person as an incident of property ownership." The tax is separately imposed on a transaction, not upon the parcel itself (e.g., as a parcel or property tax), or upon a person as an incident of property ownership (e.g., merely due to ownership). (See, e.g., *Apartment Ass'n of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 841-42.)

Reading Section 3 alongside Section 6 of Article XIIID confirms this conclusion. Under Section 6, public agencies that provide property-related services may only charge customers amounts that satisfy the standards set forth in subdivision (b). This, of course, protects the customers from paying more than their fair share of the cost for such services. In turn, Section 3 expressly acknowledges that such charges are permitted, stating in its fourth exception that "[f]ees or charges for property related services as provided by this article [XIIID]" are permitted. (Cal. Const., art. XIIID, § 3, subd. (a)(4).) Section 3 does not say that taxes on payment transactions for such services are prohibited.

Nonetheless, Respondent Beck urges the Court to hold that the UUTs are imposed on parcels or persons as an incident of property ownership. But UUTs are one step removed, as they are not imposed for any property-related service, but on the payment for that service. Thus, the Court should reject Respondent's interpretation, and hold that Section 3 of Article XIIID did not eliminate voters' right to approve utility user taxes on payment transactions for property-related services.

b. To Effectuate Voter Intent, the Court Should Interpret Section 3 as Not Prohibiting Voters from Imposing General Taxes on Property-Related Utility Service Transactions.

i. Canyon Lake's and Local Government *Amici's* Analysis Is Consistent with Supreme Court Guidance.

The California Supreme Court's interpretive analysis in another ballot measure case supports the analysis advanced by Canyon Lake and Local Government *Amici*.

In *Hodges v. Superior Court*, the Court reviewed a provision of Proposition 213 that "precludes recovery of 'non-economic losses'" by an uninsured motorist " 'in any action to recover damages arising out of the operation or use of a motor vehicle.' " (*Hodges*, 21 Cal.4th at 111, quoting Civ. Code § 3333.4.) The issue was whether the phrase "any action to recover damages arising out of the operation or use of a motor vehicle" includes an action for product liability. (*Id.* at 111, 113.) The trial court ruled that it did, which was consistent with the literal text. The Supreme Court reversed. (*Id.* at 112-13.)

The Court's goal, of course, was to determine the voters' intent by considering the text of the measure and the ballot materials, and their language within the "*legal and broader culture*." (*Id.* at 114, citation and internal quotation marks omitted; italics in original.) Unless the meaning of the language is indisputably clear and direct, the courts must examine these materials and the context in which they arise to ensure that voters "get what they enacted, not more and not less." (*Id.* at 114.)

In *Hodges*, the provision enacted by the voters, read literally, would

encompass non-economic "damages arising out of the operation or use of a motor vehicle" caused by a defective product. Indeed, the phrase includes neither exception nor qualification nor equivocation. Nonetheless, the Supreme Court found the phrase to be neither "pellucid" nor "transparent." (*Hodges*, 21 Cal.4th at 113.) Thus, the Court considered the circumstances to which the electorate must have intended the phrase to apply. Did the electorate intend to prohibit non-economic recovery by uninsured motorists in products liability cases? Or did the electorate intend the prohibition only to apply to claims between motorists, even though the legislation includes no express limitation? (*Ibid.*)

The Court examined the proposition's statement of purpose and ballot arguments. These materials demonstrated that the voters were concerned about uninsured motorists recovering non-economic damages from law-abiding motorists. (*Id.* at 115-18.)

The Court also examined preexisting public policy which favored requiring manufacturers of defective products to bear the costs of damages they caused, and no evidence of voter intent to change that policy. (*Id.* at 118.) Therefore, "[i]n the absence of a clear expression of such intent, **we decline to adopt a broad literal interpretation** of the initiative that would raise such 'substantial policy concerns.' " (*Hodges*, 21 Cal.4th at 118, emphasis added.)

Here, Respondent Beck offers a plausible interpretation of Section 3, broadly interpreting it to preclude any general taxes imposed on property-related-utility services, even though Section 3 does not expressly say so.

However, the purposes for which the voters adopted Proposition 218, and the context in which the voters considered it, supports a contrary

conclusion. As discussed, the purpose of Proposition 218 was to protect and enhance the voters' right to vote on taxes, not to pare back or eliminate that power. The voters were deemed to be aware of local governments' authority to impose utility user taxes, and they neither expressly nor implied expressed any intent to roll back that authority (as long as the tax was approved by the voters). Thus, this Court should interpret Section 3 of Article XIIID as leaving intact voters' authority to approve general taxes on payment transactions for property-related services, just as the Supreme Court in *Hodges* left intact uninsured motorists' right to recover non-economic damages for defective products that occurred while driving a motor vehicle, despite literal language to the contrary.

ii. Proposition 26 Supports Canyon Lake's and Local Government *Amici's* Analysis.

Proposition 26 supports this conclusion. The voters amended Article XIIIC, section 1, to specify that a charge is, by default, a tax. Only if one of seven exceptions applies is the charge not a tax. (Cal. Const, art. XIIIC, § 1, subd. (e) ["As used in this article, 'tax' means any levy, charge, or exaction of any kind imposed by a local government, except the following …."].) Further, "[t]he local government bears 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, subd. (e).)

The seventh exception is for "[a]ssessments and property-related fees imposed in accordance with the provisions of Article XIIID." (Cal. Const, art. XIIIC, § 1, subd. (e)(7).) Appellant Canyon Lake agrees that its UUT does not meet one of the exceptions, including the seventh exception for assessments and fees since the taxes are not imposed for property-

related services.

Thus, the UUTs are taxes imposed on transactions between utility providers and property owners, not "upon any parcel of property or upon any person as an incident of property ownership." (Cal. Const, art. XIIID, § 3, subd. (a).)

Accordingly, the Superior Court overreached when it ruled that Section 3 surreptitiously rolled back voters rights to approve general taxes on payments for water, sewer, and garbage services.

2. *Wyatt* and *Palmer* Support Reversal; *Lejins* and *Tesoro* Are Inapt.

The Third District's decision in *Wyatt v. City of Sacramento* supports reversal. At issue was whether the voters had properly approved, after adoption of Proposition 218, a general tax imposed on city utility rates for property-related services. (*Wyatt*, 60 Cal.App.5th at 376, 386-87.) Specifically, the voters approved the transfer of funds from the city's utility enterprise to the general fund, which funds were in excess of revenue the utility enterprise could lawfully collect from its customers for property-related services under Article XIIID, section 6. (*Id.* at 378-79, 383.) The Court distinguished between the payment of fees for the property-related services from the payment of taxes, in an amount excess of the fees, as approved by the voters. (*Id.* at 383, 386-87.) The Court so held even though the taxes approved by the voters were not imposed as separate charges on utility customers' bills, but were instead passed along from the utility enterprises revenue to the city's general fund. (*Id.* at 378, 379.)

Wyatt thus supports the City of Canyon Lake's position that its voters may approve UUTs on property-related services. In each case, the

utility customers pay funds to the utility providers, a portion of which is ultimately destined for the city's general fund. Indeed, the case at bar is even easier than *Wyatt* in that the subject UUTs are separately imposed as taxes on the payment of property-related services, provided by third parties, rather than embedded in the charges imposed by Canyon Lake for the costs it incurs to provide utility services.

The Fourth District's decision in *Palmer v. City of Anaheim* also supports reversal. There, as in *Wyatt*, the voters had approved a charter amendment authorizing the transfer of funds from the city's utility provider to the city's general fund. (*Palmer v. City of Anaheim* (2023) 90 Cal.App.5th 718, 721, 724-25.) Because the funds transferred were not imposed to pay for the costs of utility services, but were instead imposed by the voters for charges in excess of service-related charges, the voters had approved taxes pursuant to their authority under Article XIIIC. (*Id.* at 726-27.) *Palmer* thus supports the City's position that the voters retain rights to approve taxes separate and apart from charges for the utility services themselves.

The Second District's decision in *Lejins v. City of Long Beach*, is inapt. There the voters had approved a ballot measure to amend the Long Beach City Charter to authorize the city to transfer funds paid by water-service customers, in such amounts as exceeded lawful water-service fees, into the general fund. (*Lejins v. City of Long Beach* (2021) 72 Cal.App.5th 303, 310-11, 320.) The so-called surcharge was not separately itemized on the customers' water bills. (*Id.* at 311.) Thus, the surcharge was imposed as an unjustified property-related fee, in violation of Article XIIID, section 6, and the City of Long Beach could not remedy that unlawful imposition

by voter approval of a transfer of those unlawful fees into the general fund. (*Id.* at 320-21.) By contrast, Canyon Lake's voters directly authorized the imposition of taxes on utility service payments. Thus, *Lejins* is inapt.

The Fourth District's decision in *Tesoro Logistic Operations, LLC v. City of Rialto* is also inapt. There, the city imposed a tax directly on persons based on their mere ownership of property, fuel storage tanks, irrespective of whether the tanks were used or empty. (*Tesoro Logistic Operations, LLC v. City of Rialto* (2019) 40 Cal.App.5th 798, 810.) Here by contrast, the tax is not imposed because of mere ownership, but is instead imposed on specific transactions for utility services.

Accordingly, the Third and Fourth District Court of Appeal decisions in *Wyatt* and *Palmer* support reversal of the Superior Court judgment, and the Second and Fourth District Court of Appeal decisions in *Lejins* and *Tesoro* are of no significance here.

D. Affirmation of the Superior Court's Judgment Would Wreak Havoc on Voter-Approved Financing of Local Government.

If this Court were to affirm the judgment of the Superior Court, its decision would have profoundly negative implications for cities and counties across the State of California that rely on UUTs imposed as general taxes on payments for property-related services.

More than 150 California cities and counties have utility user taxes, and over 110 of those taxes are imposed on water, sewer, and garbage services. The vast majority are general taxes that fund critical governmental services for residents, businesses, and their customers. UUTs provide, on average, 12% of the general revenue in cities that impose them, and approximately 20% or more in upwards of 20 cities (and 19.6 percent

for Canyon Lake). A ruling that led to invalidation of these taxes would undoubtedly have substantial, negative impacts on local governments' finances, to the detriment of their residents, businesses, and visitors.

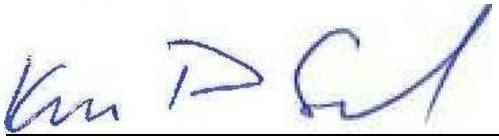
Accordingly, to wipe out cities and counties' ability to rely on these revenues, would not only be contrary to the intent of both the state and local electorates, but harmful to those who rely on and benefit from governmental services.

III. CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Superior Court.

Dated: May 29, 2024

BURKE, WILLIAMS & SORENSEN, LLP

By: 

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CERTIFICATE OF COMPLIANCE

WITH CALIFORNIA RULES OF COURT, RULE 8.204

We hereby certify that, under rules 8.204(c)(1) of the California Rules of Court, this Amicus Brief is produced using 13-point type and contains 4,977 words including footnotes, but excluding the application for leave to file, tables and this Certificate, fewer than the 14,000 words permitted by the rules. In preparing this Certification, we relied upon the word count generated by Microsoft Word.

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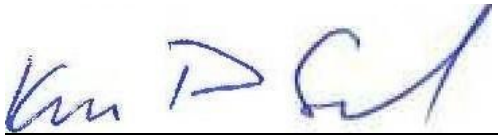
BURKE, WILLIAMS & SORENSEN, LLP

By: 

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CERTIFICATE OF SERVICE

Richard Beck v. City of Canyon Lake
Fourth Appellate District, Division 1,
Case No. D083322

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 1 California Street, Suite 3050, San Francisco, CA 94111-5432.

On May 29, 2024, I served true copies of the following document(s) described as **APPLICATION OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF CANYON LAKE; AMICUS CURIAE BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Burke, Williams & Sorensen, LLP 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 was placed in the mail at San Francisco,

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be 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 also caused a copy of the document(s) to be I electronically transmitted the above document(s) to the person(s) at the e-mail address(es) set forth below from e mail address dzepeda@bwslaw.com to the persons at the e mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on May 29, 2024, at San Francisco, California.

Daniel M. Zepeda

SERVICE LIST

Richard Beck v. City of Canyon Lake
Fourth Appellate District, Division 1,
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