**E081996**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION TWO**

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COACHELLA VALLEY WATER DISTRICT,

*Defendant, Appellant, and Cross-Respondent*

v.

HOWARD JARVIS TAXPAYERS ASSOCIATION,

*Plaintiff, Respondent, and Cross-Appellant.*

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From the Superior Court in and for the County of Riverside
Case No. RIC 1905897, Hon. Sunshine S. Sykes, Hon. Sharon Waters, and Hon. Craig Riemer, Judges Presiding

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# APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, ET AL., FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT COACHELLA VALLEY WATER DISTRICT; AMICI 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.

DATED: October 28, 2024 HANSON BRIDGETT LLP

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## APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

## IDENTITY OF AMICI CURIAE

The League of California Cities, Association of California Water Agencies, California Special Districts Association, California State Association of Counties, and California Association of Sanitation Agencies collectively are "Amici" that respectfully request permission under rule 8.200(c) of the California Rules of Court to file an amici curiae brief in support of Appellant Coachella Valley Water District.[1]

The League of California Cities, or 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. A Legal Advocacy Committee, which comprises twenty-five city attorneys from all regions of the State, advises Cal Cities. The Committee monitors litigation of concern to municipalities, and identifies cases that have statewide or nationwide significance. This is one of those cases.

The Association of California Water Agencies, or ACWA, is the largest coalition of public water agencies in the country. Its

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[1] The League of California Cities, Association of California Water Agencies, California Special Districts Association, California State Association of Counties, and California Association of Sanitation Agencies certify that no person or entity other than Amici and their counsel authored or made any monetary contribution intended to fund the preparation or submission of this brief. (See Cal. Rules of Court, rule 8.200(c)(3).)

460 members include small irrigation districts and some of the largest water wholesalers in the world. These members are collectively responsible for about 90 percent of the water delivered to cities, farms, and businesses in California. ACWA is dedicated to ensuring a high-quality and reliable water supply by sharing reliable scientific and technical information, tracking and shaping state and federal water policy, advocating for sound legislation and regulation, and facilitating cooperation and consensus among interest groups.

California Special Districts Association, or CSDA, is a nonprofit corporation with a membership of over 1,000 special districts throughout California that was formed to promote good governance and improve core local services through professional development, advocacy, and other services for all types of independent special districts. Independent special districts provide various public services to urban, suburban, and rural communities. CSDA is advised by its Legal Advisory Working Group, which consists of attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA monitors litigation of concern to special districts and identifies cases that are of statewide significance. This is one of those cases.

The California Association of Sanitation Agencies, or CASA, is a nonprofit mutual benefit corporation composed of over 125 public agencies that collect, treat, and recycle wastewater and biosolids to millions of residents, businesses, industries, and institutions throughout California. CASA advocates on behalf of these clean-water agencies and their proactive approaches on

clean-water sustainability and renewable resource issues. It too has identified this case as one of statewide significance.

California State Association of Counties, or CSAC, is a nonprofit corporation whose members include the fifty-eight California counties. CSAC sponsors a Litigation Coordination Program that the County Counsels' Association of California administers and that the Association's Litigation Overview Committee oversees. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

## STATEMENT OF INTEREST

Amici and their members are responsible for constructing, operating, and maintaining critical water supply and wastewater infrastructure on which 39 million Californians depend. To pay increasing costs to provide safe and reliable public water supply and wastewater services, Amici and their members undertake fee-setting, planning, and budgeting processes throughout California, and the decision here could impact these processes. Amici appreciate that there are many issues for the Court to consider. By focusing on the statewide impact the decision here could have on important planning and budgeting issues in a way that the parties cannot, Amici provide unique perspective on the practical negative implications of the Howard Jarvis Taxpayers Association's ("HJTA") arguments.

Amici submit this brief because the issues raised in this appeal threaten to disrupt those processes statewide and to compromise the financial stability of Amici's members and the

critical public services they provide. Amici's members' interests focus on limiting relief to the Government claim and the inappropriateness of a refund remedy.

Amici respectfully request that this Court reverse the trial court's judgment, which granted relief that went beyond HJTA's notice under the Government Claims Act. The judgment also wrongly granted a refund for alleged Proposition 26 violations. Because a writ of mandate, declaratory relief, or injunctive relief can adequately remedy any violation of Proposition 26, a refund remedy is unavailable and inappropriate. A refund remedy would create an unworkable burden on public water suppliers that must raise fees and charges on current and future payers so it may refund prior payers. That process would result in perverse outcomes by undermining the principle of proportional and reasonable allocation of costs.

Amici aim to aid this Court's review by providing broader public policy considerations on the issues. Their counsel have examined the parties' merits briefs and are familiar with the issues. Amici thus respectfully request that the Court grant them leave to file the brief included with this application.

DATED: October 28, 2024 HANSON BRIDGETT LLP

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**BRIEF OF AMICI CURIAE LEAGUE OF CALIFORNIA CITIES, ASSOCIATION OF CALIFORNIA WATER AGENCIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA ASSOCIATION OF SANITATION AGENCIES**

## INTRODUCTION

If upheld, the trial court's judgment would set a problematic precedent by allowing recovery of damages through refunds for Proposition 26 violations, even when plaintiffs fail to comply with the Government Claims Act (GCA). The trial court's decision upends a public agency's dispute resolution and financial planning process in two ways.

First, the trial court awarded HJTA a refund for the Fiscal Year (FY) 2021 Replenishment Assessment Charge (RAC), despite the undisputed fact that HJTA failed to present a claim for money or damages for that year pursuant to the GCA. The GCA serves an important public purpose by providing notice to the public entity of claims, which allows the public entity to assess the claims, resolve them prior to litigation where possible, and engage in appropriate fiscal planning. Failure to comply with the GCA should have barred relief to HJTA for FY2021. Awarding damages for fiscal years not raised in a pre-suit notice ignores the GCA's claim-presentation requirements, paving the way for future litigants to seek damages in court that were not presented to the local government for potential early resolution.

Second, even for the years in which HJTA did comply with the GCA, the trial court should not have granted a refund for any Proposition 26 violation. The Constitution does not authorize a

refund for such violations. And granting one carries significant unintended consequences that risk disrupting critical public services like providing drinking water and wastewater services. A refund, by example, would require that many public agencies charge *future* payers more to pay for the *prior* payers' refund—punishing future payers to benefit prior payers.

Proposition 26 requires that public agencies set fees and charges in an amount that allocates the reasonable costs of providing the government service in a way that bears a fair or reasonable relationship to the payor's burden on, or benefits received from, the governmental activity. Each agency must therefore make policy decisions on how to proportionally allocate costs among payers to collect system-wide revenue sufficient to meet the agency's expenses. This process for setting fees and charges is generally a zero-sum exercise, in which a fee or charge reduction to one class of customers will logically lead to a fee or charge increase to another class so the agency can meet its annual revenue requirement in a given fiscal year. A refund remedy would disrupt that process by going back in time to adjust fees and charges, which will necessarily require future payers to pay more than their fair or reasonable burden on the system.

Prohibiting refund remedies for Proposition 26 violations, however, does not leave plaintiffs without adequate remedies. Prospective remedies such as writs of mandate, declaratory relief, and injunctive relief adequately cure the violation by directing the agency to reform their fees and charges approach going

forward. Such remedies balance the financial responsibilities of the agency with correcting the invalid fee or charge.

A refund remedy, by contrast, operates retroactively. Since public agencies set their charges to merely recover costs and receive no profit or windfall from the fees or charges imposed, it is unclear how a public agency would pay for a refund. They cannot make up the difference by going back in time to charge more to the payers that were purportedly undercharged. That uncertainty is particularly acute with water districts that typically generate relatively minimal unrestricted non-fee revenues.

Even if this Court accepts the policy quagmire of having, by example, fee and charge hikes on residents who were not living in the district during a violation period, the refund remedy remains problematic as it exposes the agency to a separate challenge by those new residents. If agencies were to charge future payers more to fund the past refund, would that charge also be a non-proportional overcharge? Without a clear and clearly constitutional way to pay for it, a refund to remedy a Proposition 26 violation could threaten the solvency of local public agencies throughout California.

With those concerns in mind, Amici implore the Court to reverse the judgment below awarding a refund. In *Katzberg v. Regents of University of California*, the Supreme Court of California established the conditions under which constitutional claims authorize refund remedies. (*Katzberg v. Regents of Univ. of Cal.* (2002) 29 Cal.4th 300 (*Katzberg*).) This precedent requires

analyzing the intent of the constitutional provision; the remedies available for a violation of the provision; the nature and significance of the constitutional provision; legislative judgment; policy consequences; issues of proof for the damages; and the court's competence to assess particular types of damages. Under the *Katzberg* legal framework, a refund is not authorized here.

Aside from being impracticable and unsupported, a refund remedy also would invite a violation of the separation of powers. Trial courts would step into the legislative fee-setting shoes of agencies, exercise their discretion, and determine what fees or charges the trial court believes the agency should have imposed. Amici request that this Court not sanction this judicial usurping of legislative fee-setting power.

The trial court's judgment threatens to establish precedent that clashes with the expectations of hundreds of water agencies throughout California in setting their fees and budgets. The Court should consider these concerns and reverse the judgment.

## ARGUMENT

### I. THE TRIAL COURT ERRED BY NOT LIMITING RELIEF TO THE SCOPE OF THE DEMAND IN THE PRE-SUIT GOVERNMENT CLAIM NOTICE.

Amici request that this Court reverse the trial court's judgment because it undermines the GCA's purpose of providing public agencies with fair notice of the claims and potential relief sought against them.

Before filing any lawsuit for "money or damages" against a public entity, the GCA requires that the plaintiff present a

written claim. (Gov. Code, § 945.4.) Although the GCA should not be interpreted to "snare the unwary," claimants must provide some basic information to allow the public entity to investigate the claim. (*Elias v. San Bernardino County Flood Control Dist.* (1977) 68 Cal.App.3d 70, 74 (*Elias*).) This, in turn, allows public agencies to evaluate potential liabilities and, in the context of Proposition 26 challenges, alter their fees and charges to mitigate further liability.

Here, HJTA did not submit a claim for money or damages related to the FY2021 RAC. Yet the trial court entered judgment granting monetary relief for FY2021 RAC. That judgment was in error. While claimants enjoy some flexibility in showing compliance with the pre-suit notice requirements under the GCA, omitting an entire fiscal year in a lawsuit challenging annual budgets is a bridge too far. That failure substantially impairs any public agency's ability to meaningfully investigate and mitigate liability. This Court should not entertain such a departure from the GCA.

### A. The Government Claims Act allows prosecution only of those claims fairly described in pre-suit notices.

Key to any agency's dispute resolution process is that claimants may not sue them for money or damages unless the claimants first comply with the GCA's claims filing procedures. (Gov. Code, § 945.4.) That pre-suit notice must state the "date, place and other circumstances of the occurrence or transaction

which gave rise to the claim asserted" and describe the injury or damages. (Gov. Code, § 910, subds. (c)-(d).)

The pre-suit notice requirement is not merely a "needless formality" imposed by the Act, but rather it reflects the Act's underlying purpose "to provide the public entity sufficient information to enable it to investigate claims adequately and to settle them, if appropriate, without the expense of litigation." (*City of San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 455 (*City of San Jose*); see also *Alliance Fin. v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 647 (*Alliance Fin.*).) Through its notice provisions, the Act allows "the public entity to engage in fiscal planning for potential liabilities; and to avoid similar liabilities in the future." (*TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742 (*TrafficSchoolOnline*).)

Thus, a pre-suit notice outlining the theories of liability, and the facts supporting them, is a prerequisite to maintaining a lawsuit for money or damages against any public entity. (*State of Cal. ex rel. Dept. of Transp. v. Super. Ct.* (1984) 159 Cal.App.3d 331, 334-335 (*Dept of Transp.*).) And when a complaint includes a cause of action premised on a different factual basis than what was described in the pre-suit claim, that variance is "fatal" to the complaint. (*Fall River Joint Unified Sch. Dist. v. Super. Ct.* (1988) 206 Cal.App.3d 431, 435; see also *Dept. of Transp.*, *supra*, at p. 336 [holding courts consistently interpret the GCA to bar further prosecution of claims not reflected in a pre-suit notice].)

While strict, courts have interpreted this requirement to ensure it does not "snare the unwary where its purpose has been

satisfied." (*Elias, supra,* 68 Cal.App.3d at p. 74.) The California Supreme Court has explained that a claim "need not contain the detail and specificity required of a pleading, but need only 'fairly describe'" what the public entity has done wrong. (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Auth.* (2004) 34 Cal.4th 441, 446 (*Stockett*), quoting *Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1426.) A plaintiff may build on and add specificity to the facts raised in their written claim. (*Id.* at p. 447.) But those added facts must "merely elaborate[ ] or add[ ] further detail to a claim" that "is predicated on the same fundamental actions or failures to act by the defendants…." (*Ibid.*, citing *White v. Super. Ct.* (1990) 225 Cal.App.3d 1505, 1510-1511 (*White*).) They must not hinge on an "entirely different set of facts" than those raised in the pre-suit notice. (*Ibid.*, quoting *Stevenson v. San Francisco Housing Auth.* (1994) 24 Cal.App.4th 269, 278.) Courts will bar prosecution if there is a complete shift in allegations from the written claim to the complaint. (*Ibid.*, citing *Blair v. Super. Ct.* (1990) 218 Cal.App.3d 221, 226.)

Courts provide some flexibility to disregard technical deficiencies in form when the claim otherwise meets all other statutory requirements. (*Nguyen v. Los Angeles County Harbor/UCLA Med. Center* (1992) 8 Cal.App.4th 729, 733, *modified* (Sept. 4, 1992); *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713 (*Santee*).) That flexibility, however, will not "cure [the] omission of essential facts necessary to constitute a valid claim." (*Lopez v. S. Cal.*

*Permanente Med. Group* (1981) 115 Cal.App.3d 673, 677.) That limitation protects the GCA's core purpose of providing public entities with the information they need to investigate, address, and resolve liabilities without the expense of litigation. (*City of San Jose*, *supra*, 12 Cal.3d at p. 455; *Alliance Fin.*, *supra*, 64 Cal.App.4th at p. 647; *TrafficSchoolOnline*, *supra*, 112 Cal.App.4th at p. 742.)

In short, courts have established carefully limited flexibility to ensure that the GCA's purposes are fulfilled without preventing legitimate, fairly noticed claims from proceeding.

### B. Awarding a refund on claims not mentioned in the pre-suit notice undermines the Government Claims Act's purpose.

Here, the trial court ignored the careful balance that appellate courts have struck in applying the GCA by awarding a refund to HJTA for the FY2021 RAC—a year for which it did not submit a government claim.

Public entities like Coachella Valley typically establish RAC on five-year schedules. (See AR001255.) Each budget year within that schedule, however, is discrete. And the fees and charges for any given year depend on the costs and expenses for that year. If costs and liabilities increase more than originally anticipated in one year, the schedule of fees and charges will need to be adjusted accordingly to address these external factors. Proposition 26 requires such an adjustment for fees and charges to remain "fair or reasonable" to a customer's burden on, or benefit received from, the services. (Cal. Const., art. XIII C, § 1.)

Without a pre-suit notice that describes the nature of the claim, public entities cannot assess how to best address the claim. The public entity lacks sufficient information to determine whether to litigate or settle the claim, or prospectively change its behavior to limit potential liability. Understanding the scope of a claim is critical to a public entities' decisionmaking process, and thus scope of the agency's liability. Identifying the year with the problematic fees or charges is part of the "basic information" an agency needs to evaluate the claim. (*Elias*, *supra*, 68 Cal.App.3d at p. 74.) Otherwise, the public entity cannot fairly evaluate the scope of the claim and determine how to adjust fees and charges to comply with Proposition 26.

The trial court's rationale for awarding a refund as to the FY2021 RAC conflicts with the GCA and its purpose. The court acknowledged that HJTA did not submit a claim for money damages related to the FY2021 RAC (the complaint in the FY2021 action asserted a single claim, for reverse invalidation), yet nonetheless awarded a refund for that year. (AA003192.) The trial court proffers three reasons for doing so, none of which excuses HJTA's noncompliance with the GCA:

First, the trial court determined that the GCA places limitations on what a plaintiff must do before it brings suit for money or damages. (AA003193.) Since the FY2021 action was not for money or damages, HJTA did not need to follow the Act's procedures. The trial court is correct that claims that do not seek money or damages do not need to comply with the GCA—but the

logical conclusion of this ruling is that no money damages can be awarded to such claims.

The trial court relies on the stipulation between the parties as the basis for allowing monetary relief for the FY2021 RAC. (AAAA003193.) Amici do not address the effect of the stipulation on the GCA's pre-suit notice requirements, which is already addressed in detail by Coachella Valley. (Appellant's Reply Brief and Cross-Respondent's Brief ["ARB/XRB"] at p. 36-37.) Amici request that if this Court finds that the stipulation is a suitable basis to uphold the refund of the FY2021 RAC, it should make that explicit in its opinion.

Second, the trial court determined that Coachella Valley forfeited its right to have the FY2021 claim presented by not requiring a formal amendment of the complaint and not requiring that a claim be presented before the amended complaint was filed. (AA003193.) But the GCA does not place any burden on a public agency like Coachella Valley to require a claimant like HJTA to revise its otherwise defective claims—this burden starts and remains with HJTA. A claimant that fails to comply with the claims presentation rules generally has its claims barred. (See *Plata v. City of San Jose* (2022) 74 Cal.App.5th 736, 748-749.)

Third, the trial court determined that compliance with the GCA for the FY2021 RAC would serve "absolutely no purpose whatsoever," given the related actions and consolidation of actions. (AA003193.) But the claims presentation requirements serve a significant purpose in this context: it provides public agencies like Coachella Valley with the necessary information to

know which years are being targeted, the claimant's reasoning for why the fees or charges in that particular fiscal year are invalid, and what refunds the agency may need to pay (if allowed). This information is critical to Coachella Valley's financial planning and fee-setting process.

The trial court's ruling sets a dangerous precedent for public agencies statewide by rendering the government claim superfluous. Such an expansion of the GCA runs counter to both the spirit and text of the law, and undermines the ability of public agencies to make informed decisions on whether and how best to respond to claims. The trial court erred by awarding a refund to HJTA for the FY2021 RAC, when these charges were not presented in any GCA claim.

## II. A REFUND IS NOT AN APPROPRIATE REMEDY FOR A VIOLATION OF PROPOSITION 26.

Amici encourage this Court to deny a refund for a violation of Proposition 26. HJTA relies on *Coziahr v. Otay Water District* (*Coziahr*) to argue that a refund is an appropriate remedy in this case. But this Court is not bound by decisions of other courts of appeal. And to the extent that the Proposition 218 analysis in *Coziahr* applies, this Court should recognize critical deficiencies in its analysis and not extend it to this Proposition 26 case.

As this Court is aware, there is no horizontal stare decisis in California Courts of Appeal. (*Sarti v. Salt Creek Ltd.* (2008) 167 Cal.App.4th 1187, 1193.) This doctrine is particularly true when precedent reflects errors in its analysis. Stare decisis "does not shield court-created error from correction but permits [courts]

to reconsider and ultimately depart from, [its] own prior precedent in appropriate cases." (*Cohen v. Superior Ct.* (2024) 102 Cal.App.5th 706, 720 [quotations removed].) Because of its errant analysis, this Court is not bound by *Coziahr* and should not follow its precedent.

Remedies for a Proposition 26 violation should be prospective—either by writ of mandate, declaratory relief, or injunction. By contrast, refunds operate retroactively. Given the nature of setting fees and charges, refunds inappropriately disrupt public finances and budgeting, and unfairly burden future payers with increased fees or charges necessary to restore agency revenue and reserves. Permitting claimants like HJTA to pursue a refund remedy would undermine government fiscal policy and create an overly burdensome precedent.

Monetary damages like refunds are available only for certain constitutional violations. As *Coziahr* recognized, *Katzberg v. Regents of University of California* sets forth the framework "for determining the existence of a damage action to remedy an asserted constitutional violation." (*Katzberg, supra,* 29 Cal.4th at p. 317.)

At the first step under *Katzberg*, the party seeking damages must provide "evidence from which [the court can] find or infer, within the constitutional provision at issue, an affirmative intent" to permit or preclude damages as a remedy. (*Katzberg, supra,* 29 Cal.4th at p. 317.)

"Second, if no affirmative intent either to authorize or withhold a damages remedy is found," then a court must consider

the following "relevant factors": (a) "whether an adequate remedy exists," (b) "the extent to which a constitutional tort action would change established tort law," and (c) "the nature and significance of the constitutional provision." (*Katzberg*, *supra*, 29 Cal.4th at p. 317.)

If those "relevant factors" weigh against recognizing a "constitutional tort," the inquiry ends.

If not, then the court must further consider "any special factors counseling hesitation in recognizing a damages action, including deference to legislative judgment, avoidance of adverse policy consequences, considerations of government fiscal policy, practical issues of proof, and the competence of courts to assess particular types of damages." (*Katzberg*, *supra*, 29 Cal.4th at p. 317.)

The court's reasoning in *Coziahr* should not be followed because each step of this *Katzberg* analysis shows why a refund is not an appropriate remedy for a violation of Proposition 26.

### A. Proposition 26 does not contain any affirmative intent to authorize a refund remedy.

The *Katzberg* framework begins with the language of the constitutional provision. If a plaintiff seeks damages for a constitutional violation that is not otherwise based on common law or statute, courts must first inquire whether the provision provides "an affirmative intent either to authorize or to withhold a damages action to remedy a violation." (*Katzberg*, *supra*, 29 Cal.4th at p. 317.) A court may consider "the language and history of the constitutional provision at issue, including whether

it contains guidelines, mechanisms, or procedures implying a monetary remedy" when making this determination. (*Ibid.*)

Nothing in Proposition 26 affirmatively permits or requires recovery of a refund. (See Cal. Const., art. XIII A, C.) Proposition 26 amended articles XIII A and C to expand the definition of a tax; require a two-thirds vote of the Legislature to approve laws increasing taxes; and shift to the state or local government the burden of demonstrating that any charge, levy or assessment is not a tax. (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1322 (*Schmeer*).) It did not, however, broaden the available remedies by explicitly authorizing recovery of a refund. (*County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354, 367 ["The change that Proposition 26 effected was an expansion in the definition of a tax—not an expansion in long-established principles governing who may sue for a refund of that tax."].)

Proposition 26 also does not imply an intent to grant a refund remedy. The proposition is silent as to remedies altogether, affirming that the purpose of the initiative was only to "close perceived loopholes in Propositions 13 and 218." (*Schmeer*, *supra*, 213 Cal.App.4th at p. 1322.)

The court in *Coziahr* inferred from similar silence on remedies a clear statement that money damages are available under Proposition 218. (*Coziahr*, *supra*, 103 Cal.App.5th at p. 824-25 ["Otay contends that because the ballot materials do not reference damages, this suggests that 'no monetary remedy was intended.' But Otay does not establish those materials mention

declaratory, injunctive, or mandate relief either.") But that analysis flips *Katzberg* on its head. If Proposition 26 does not address remedies, then under *Katzberg* that silence should warrant against a monetary remedy. At a minimum, silence should not support a monetary remedy.

Additionally, since *Coziahr*, the California Legislature confirmed what is current law: that refunds are not appropriate remedies in the water fee-setting process. Senate Bill 1072 (Padilla)[2] codified Government Code section 53758.5, which explicitly prohibits refunds for violations of Proposition 218. To the extent that Proposition 218 is persuasive in this Proposition 26 case, this Court should recognize that refunds are disfavored by the Legislature.

### B. The "Relevant Factors" under *Katzberg* weigh against recognizing a refund remedy for a Proposition 26 violation.

Because nothing in Proposition 26 suggests an affirmative intent to authorize a refund remedy, the Court should next consider *Katzberg*'s "relevant factors." These factors "are whether an adequate remedy exists, the extent to which a constitutional tort action would change established tort law, and the nature and significance of the constitutional provision." (*Katzberg*, *supra*, 29 Cal.4th at p. 317.) Each of these factors demonstrate that a

[2] SB 1072 is available for viewing at <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1072> (as of October 28, 2024).

refund is not an appropriate remedy for a Proposition 26 violation.

### 1. Prospective declaratory and injunctive relief are available and appropriate remedies for Proposition 26 violations.

The first "relevant factor" is whether an adequate remedy exists. The remedy need not be perfect—so long as it is "meaningful," the lack of a "complete" alternative remedy will not weigh in favor of a refund. (*Katzberg*, *supra*, 29 Cal.4th at p. 309, citing *Bush v. Lucas* (1983) 462 U.S. 367, 386.) Parties challenging a fee or charge's validity under Proposition 26 may obtain declaratory and injunctive relief. These remedies are carefully crafted to correct and prevent the constitutional violation without depriving the public agency of money needed to pay for the costs of providing essential service.

The court in *Coziahr* dismisses this factor, finding that nonmonetary relief is not always sufficient and that all judgments against public entities may impact revenues. (*Coziahr*, *supra*, 103 Cal.App.5th at p. 825.) Even if that might be sometimes true, prospective remedies have been and remain meaningful remedies for Proposition 26 violations.

When a local public agency's fee or charge violates Proposition 26, a court will invalidate it. The remedy that safeguards against a public agency imposing and collecting an invalid levy must be prospective. On that basis, the available remedies for a violation should be limited to only a writ of mandate, injunctive relief, or declaratory relief. (See *Howard*

*Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 927.) These remedies have been adequate thus far, and there is no reason why they will not remain so.

HJTA wants more, claiming dissatisfaction with prospective remedies that may not redress the alleged past violations. (See Respondent's Brief and Cross-Appellant's Opening Brief ["RB/XOB"] at p. 101. [a refund "restores money paid"].) But California law does not require a remedy that is "complete" or retroactive, just that the available remedies are "meaningful." (*Katzberg*, *supra*, 29 Cal.4th at p. 309.)

There is no question that prospective relief satisfies this "meaningful" standard. Prospective relief corrects the defective fees or charges without punishing payers and the water system as a whole. There is no need nor any basis to expand the available remedies to include a retroactive refunds when voters did not expressly or clearly provide one when adopting Proposition 26.

### 2. No court has affirmatively held that refunds are an appropriate remedy for Proposition 26 violations.

The second "relevant factor" asks whether awarding a damages remedy would change established law. Amici are not aware of any case in which a court of appeal has affirmatively held that a refund is authorized under Proposition 26.[3] Amici found only one Proposition 26 case where the trial court allowed a refund, but the Court of Appeal made clear that it did not

[3] *Coziahr* was limited to the Proposition 218 context.

"consider the propriety of the remedy the trial court granted" because the agency "raises no claim of error on that point." (*Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.) So if this Court analyzes and awards a refund for a Proposition 26 violation, it would be the first court of appeal to affirmatively do so.

Courts will generally bar a refund remedy when no constitutional or statutory provision authorizes one. (e.g., *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524 (*Capistrano*).) In *Capistrano*, a payer sued a water district for a refund of a sewer connection fee under the Mitigation Fee Act. The Mitigation Fee Act, however, expressly authorizes refund claims for the unexpended portions of the fees imposed on a "development project." (Gov. Code, § 66001.) The Fourth District found that a water district's sewer connection fees were not fees for a "development project" and the Mitigation Fee Act did not apply. (*Capistrano*, *supra*, at pp. 529–530.)

Rather, a different section of the Government Code—section 66013—controlled the district's sewer connection fees. Unlike the Mitigation Fee Act, section 66013 did not authorize a refund for connection fees. (*Id.* at p. 528.) Section 60016 instead provided "for a reduction of future connection fees if earlier fees created 'revenues in excess of actual cost.'" (*Ibid.*, quoting Gov. Code, § 60016, subd. (a).) "A refund remedy was not included in the statute." (*Ibid.*) Absent a statutory remedy for a refund of an excessive sewer connection fee, the court affirmed the judgment

for the water district and barred a refund action over the sewer connection fees. (*Id.* at p. 530.)

That precedent guides the remedy analysis here. Both section 66013 and Proposition 26 relate to how a public agency may impose and use fees or charges. Connection fees, like the RAC charges at issue here, are not property related fees and charges. Both are subject to Proposition 26 and limit the amount of a fee or charge vis-à-vis the cost for providing the related service. (Cal. Const. art. XIII C, § 1 [a fee or charge must be no more than necessary to cover the reasonable cost of the service, and must bear a fair or reasonable relationship to the payor's burden for the service]; Gov. Code, § 66013, subd. (a) [a water or sewer connection fee or charge must not exceed the reasonable cost of providing the service].) And neither provides a remedy for a refund. Instead, the remedy under both is prospective relief only.

Without either a constitutional or statutory authorization for a refund, the Fourth District's holding in *Capistrano Beach Water District* compels the same outcome here: There is no refund remedy for water service fees or charges that violate section 1 of article XIII C.

HJTA misstates the GCA by arguing that "the statutory authority for monetary awards" is the GCA itself. (RB/XOB at p. 104.) The GCA's intent was "not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act

are satisfied." (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838.) In other words, the Act does not create liability; it limits it. Under the GCA, a public agency remains immune for injuries "[e]xcept as otherwise provided by statute." (Gov. Code, § 815, subd. (a).) Any authority for damages or a refund to remedy violations of the Constitution's proportionality requirements must exist independent of the GCA.

If the GCA authorized monetary damages for any constitutional violations, then the Supreme Court's *Katzberg* framework would be meaningless. Enacted decades before *Katzberg*, the Supreme Court was aware of the GCA. So when it decided *Katzberg* to resolve whether an individual may sue a public agency for money damages on a constitutional violation "in the absence of a statutory provision," it could have found that the GCA provides that generalized authority. (*Katzberg*, *supra*, 29 Cal.4th at p. 303.) But it did not. That outcome underscores why the authority for a refund or damages must arise outside the GCA.

Amici ask this Court not to award a refund remedy here. Any other result would create new precedent under Proposition 26 and conflict with *Katzberg*.

### 3. Declaratory and injunctive relief are consistent with the nature and significance of Proposition 26.

The third *Katzberg* factor—the nature and significance of the constitutional provision at issue—also weighs against a refund remedy. Using this factor, courts have generally found

that monetary damages are not authorized unless the lawsuit involves a fundamental or bedrock constitutional protection, such as the right to free speech. (See *Katzberg*, *supra*, 29 Cal.4th at p. 328; *MHC Fin. Ltd. P'ship Two v. City of Santee* (2010) 182 Cal.App.4th 1169, 1187.) The right protected under Proposition 26 is to redefine "tax" to limit the power of public agencies to impose fees and charges without approval from taxpayers; it does not implicate fundamental constitutional protections like First Amendment protections. (Cf. *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431. 448.) Though significant, the right under Proposition 26 can be adequately protected by diligent plaintiffs seeking prospective relief, as discussed above. This factor weighs in favor of not creating a refund remedy.

### C. The "Special Factors" under *Katzberg* also weigh against recognizing a refund to remedy a Proposition 26 violation.

The "relevant factors" weigh against creating a refund remedy for Proposition 26 violations, so the inquiry into whether Proposition 26 permits a refund should end there.

But even if the inquiry were to continue, the *Katzberg* "special factors" reinforce why there should not be a refund remedy under Proposition 26. Of the "special factors" that courts may consider,[4] several militate against creating a refund remedy:

[4] The "special factors counseling hesitation in recognizing a damages action … [include] deference to legislative judgment, avoidance of adverse policy consequences, considerations of governmental fiscal policy, practical issues of proof, and

(1) avoiding adverse policy consequences; (2) considerations of government fiscal policy; and (3) practical issues of proof and the competence of courts to assess particular types of damages.

### 1. A refund remedy would create the adverse policy consequence of penalizing public agencies that did not benefit from any disproportionate amount charged.

Serious adverse practical implications will result if courts impose refund remedies for Proposition 26 violations. A refund remedy cannot be "contrary to the policy that the public should not be deprived of revenue necessary for the performance of governmental functions." (*Simms v. Los Angeles County* (1950) 35 Cal.2d 303, 315 (*Simms*).) Moreover, a refund remedy cannot unlawfully penalize public agencies. (See Gov. Code, § 818 [prohibiting punitive or exemplary damages against public agencies].) The general rule is that public agencies are not liable for punitive or exemplary damages because the cost of penalizing them "would fall upon the innocent taxpayers." (*State Dept. of Corr. v. Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885, 888, quoting Recommendations Relating to Sovereign Immunity, No. 1-Tort Liability of Public Entities and Public Employees, 4 Cal. Law Revision Com. Rep. (Jan. 1963) p. 817.) This same rationale applies here. A refund remedy also would punish the innocent future payers by imposing financial obligations on public agencies

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competence of courts to assess particular types of damages." (*Katzberg*, *supra*, 29 Cal.4th at p. 329, internal citations omitted.)

that could be funded only by those future payers. The Government Code forbids such adverse policy consequences.

HJTA's allegations against Coachella Valley underscore the refund's punitive nature. The trial court awarded a refund in the amount of "the difference between what each AOB paid (or will pay) during the three fiscal years at issue and what they would have paid had the district-wide costs of replenishment during those years been allocated district-wide, plus pre-judgment interest." (AA003195.) How will a public agency like Coachella Valley pay that difference?

While Proposition 26 restricts how public agencies may impose and use fees and charges, a violation does not create a windfall for the public agencies. After a public agency corrects a fee or charge misalignment, it does not lead to any less—or any more—revenue received; it is just reallocated in different proportions to payers. For Coachella Valley, the zero-sum outcome means all groundwater producers will have to pay high fees or charges in the future to restore the necessary reserves. (Appellant's Opening Brief ["AOB"] at p. 77.) There is no loss or gain in revenue to the public agency.

A fee or charge misalignment's incidental beneficiary is not the public agency defendant, but the payer who underpaid and is not a party to the lawsuit. Yet claimants like HJTA do not pursue refunds from those who underpaid. It instead seeks to win that money from the public agency, which has not benefitted from the misalignment and, as discussed below, has at best a limited ability to pay it.

Since the public agency receives no surplus revenue from violating Proposition 26's "fair or reasonable" allocation requirement for a particular area of benefit, it must resort to paying that refund from its general-fund (i.e., non-fee) revenue (if any). This means that, for cities and other local agencies that have discretionary sources of revenue, a refund results in less revenue for general governmental services, like fire, police, and other social services. But for special districts with little or no general-fund revenue and therefore no alternative source to pay for a refund, a refund remedy could prove fatal.

### 2. Agencies whose main source of revenue is from fees and charges lack the financial resources to absorb the cost of refunding past violations of Proposition 26.

Another practical consequence of imposing refunds for Proposition 26 violations is its impact on governmental fiscal policy. As mentioned, a refund violates public policy if it deprives agencies of revenue needed for performing their governmental functions. (*Simms*, *supra*, 35 Cal.2d at p. 315.) This public policy is born from a practical concern about ensuring "that governmental entities may engage in fiscal planning based on expected tax revenues." (*Woosley v. State of California* (1992) 3 Cal.4th 758, 789.)

A refund intending to remedy a public agency's violation of Proposition 26 would defy that policy. Again, a local public agency that violates Proposition 26 receives no monetary windfall. So if a court orders a public agency to issue a refund to those who overpaid, the agency cannot "return" the excess

amount collected. It must instead pay the refund out of its operating funds, which reduces revenue available to pay costs of operating and maintaining critical infrastructure. That is a substantial financial burden, particularly for agencies with few—if any—revenue sources other than what they collect from fees and charges. Unable to absorb that financial burden, a Proposition 26 refund could lead to bankruptcy or dissolution of a local agency providing critical infrastructure services, like drinking water supply and wastewater collection and management.

Water agencies are particularly vulnerable to this outcome. Most of the revenue generated by water-related public agencies is from special districts. (See Public Policy Institute of California, *Paying for Water in California* (March 2014) Technical Appendix B, Table B3, p. 6 [finding that special districts generated $8.375 billion in revenue, as compared to $4.358 billion and $1 billion by cities and counties, respectively].) The sole purpose of many of these special districts is to provide water-related service. And most of their revenue sources are from charges:

| Share of Revenue Sources<br>Revenue Sources for Local Water-Related Public Agencies<br>(2008-11 Average) | | | | | |
|---|---|---|---|---|---|
| **Water Supply** | **Sales & Service Charges (%)** | **Property Taxes (%)** | **Assessments & Special Taxes (%)** | **Gov't Grants (%)** | **Other (%)** |
| County | 64 | n/a | n/a | 0 | 36 |
| City | 90 | n/a | n/a | 1 | 9 |
| Special Districts | 80 | 5 | 6 | 2 | 8 |
| **Total** | **83** | **3** | **4** | **2** | **8** |

(Public Policy Institute of California, *Paying for Water in California* (March 2014) Technical Appendix, B, Table B3, p. 6.)[5]

Proposition 26 limits how these special districts impose and use fees and charges, requiring them to earmark this revenue for specific, intended uses. (See, e.g., Cal. Const., art. XIII C, § 1 [imposing burden on local government to show that they allocated a levy, charge, or other exaction to a payor in accordance with the benefits they received from the governmental activity]; *id.*, art. XIII D, § 6, subd. (b)(2) [requiring that local governments not use revenue from fees or charges for any purpose other than that for which they imposed them].) Having calibrated their fees and charges to ensure that "costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits from, the government activity"

[5] The Technical Appendices for *Paying for Water in California* are found at <https://www.ppic.org/content/pubs/other/314EHR_appendix.pdf> (as of October 28, 2024), and the full report can be accessed at <https://www.ppic.org/publication/paying-for-water-in-california/> (as of October 28, 2024).

(see Cal. Const., art. XIII C, § 1), special districts generally have little to no other money to subsidize the cost of a refund related to a successful proportionality challenge. And the agencies have no mechanism to recover the needed funds from past payers who underpaid under the invalidated fee or charge structure. In the absence of additional revenue sources, it is unclear how some agencies would pay for a court-ordered refund—and if they could, it would be to the detriment to the public as a whole.

For special districts, the harm from a refund is existential. That concern reflects the risk with refunds generally, under both Propositions 26 and 218. And if courts begin imposing refunds to cure Proposition 26 violations, then that remedy could result in the bankruptcy or dissolution of any local government faced with a claim it violated Proposition 26. This is not the intent of Proposition 26 and must be avoided. The best solution is to encourage the swift and diligent prosecution of fee and charge challenges by mandate.

### 3. Determining the amount of a refund remedy would require courts to usurp agencies' legislative fee-setting authority and would overwhelm the resources of courts and agencies.

Another practical consequence of imposing a refund remedy is the trouble in proving its amount. No one disputes that the Constitution imposes on public agencies the burden to prove compliance with its limitations on taxes, assessments, fees, and charges. (See Cal. Const., art. XIII C, § 1 ["The local government bears the burden … ."]; *id*., art. XIII D, § 6, subd. (b)(5) ["… the

burden shall be on the agency to demonstrate compliance with this article."].) But the burden to prove compliance is different from the burden to prove damages. The latter burden remains with the party claiming damages. And that party must prove their damages "with reasonable certainty." (See *Carpenter Found. v. Oakes* (1972) 26 Cal.App.3d 784, 799 ["It is elementary that a party claiming damage must prove that [they have] suffered damage and prove the elements thereof with reasonable certainty."].)

Similar to Proposition 218, a refund remedy for a Proposition 26 violation would be impractical because no plaintiff could prove with any "reasonable certainty" the amount of the refund required. A party seeking a refund must account for each customer's payment and compare that amount with the amount that should lawfully have been charged. (See *Simms*, *supra*, 35 Cal.2d at pp. 316-317 [holding that recovery for taxes paid under protest limited to difference between tax paid and amount that should have been exacted]; *Macy's Dept. Stores, Inc. v. City and County of San Francisco* (2007) 143 Cal.App.4th 1444, 1447, 1450 (*Macy's*) [holding tax refund is limited to the difference between the amount paid and the amount lawfully charged].)

The trial court here effectively ordered Coachella Valley to average its groundwater replenishment expenses across all three AOBs and refund the difference between the averaged expenses and the RAC paid. (AOB at p. 81 [citing AA003195].) Determining such a remedy forces the judicial branch to usurp

the legislative fee-setting authority and discretion of local public agencies.

In *Coziahr*, however, the court claimed that it was not setting rates but was calculating the appropriate refund remedy "based on comparing the lawful rate and the charged rate[.]" (*Coziahr*, *supra*, 103 Cal.App.5th at p. 825.) But the process of determining the "lawful rate," by its very nature, involves exercising the public agency's legislative ratemaking authority. This is particularly true in the Proposition 26 context, where there is not one "lawful" fee or charge that an agency may charge. Rather, all that is required is for fees and charges not to exceed the reasonable cost of service. The proper remedy would have been to remand to the agency for a recalculation.

A court may compel a public agency to exercise discretion, but it may not issue a mandate that controls that discretion. (*San Luis Coastal Unified Sch. Dist. v. City of Morro Bay* (2000) 81 Cal.App.4th 1044, 1051 (*San Luis*), citing *Bayside Auto & Truck Sales, Inc. v. Dept. of Transp*. (1993) 21 Cal.App.4th 561, 570 (*Bayside*).) "Mandate may not order the exercise of discretion in a particular manner unless discretion can be lawfully exercised only one way under the facts." (*San Luis*, at p. 1051, citing *Bayside*, at p. 570.) The Legislature and courts commit matters to an agency's discretion when the matters present "a subject beyond the trial court's and [court of appeal's] common experience and knowledge." (*Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 375, citing Evid. Code, § 801, subd. (a).)

Cost allocation methodologies under Proposition 26 are one such area. Proposition 26 prescribes no allocation method, but provides constitutional guardrails within which agencies must exercise their discretion to act "reasonably." (See *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 647-648; see also *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 196 [holding public agency rate structure is a quasi-legislative action].) Apportionment thus does not involve precise calculations that find an "exact relationship" between the amount levied and the benefit received. (*White*, *supra*, 26 Cal.3d at p. 905.) Without a "one-size-fits-all" method, local agencies—not courts—must exercise discretion to develop an appropriate methodology for allocating their unique costs of providing services like safe and reliable public water service or wastewater service.

But a court-ordered refund necessarily requires courts to determine what fee could lawfully have been charged to each customer. (*Macy's*, *supra*, 143 Cal.App.4th at pp. 1447, 1450.) That determination improperly displaces the agency's legislative authority and discretion with the preferences of judges and litigants, violating our Constitution's separation of legislative and judicial powers. Thus, even if it were possible to determine the amount of a refund with "reasonable certainty," the process for doing so would cause an unconstitutional usurpation of legislative fee-setting power.

For all of these reasons, Proposition 26 does not authorize a refund remedy.

## CONCLUSION

Amici respectfully ask this Court to affirm that remedies against agencies are limited to the claim made under the Government Claims Act and that a refund is unavailable as a remedy in Proposition 26 litigation. Any other outcome would conflict with Proposition 26's purpose while violating the constitutional separation of local legislative fee-setting power from the state judicial power.

DATED: October 28, 2024 HANSON BRIDGETT LLP

By: */s/ Sean G. Herman*

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## CERTIFICATE OF COMPLIANCE

The text of this brief consists of 8,287 words as counted by Microsoft Word, the program used to prepare this brief.

Dated: October 28, 2024

By: */s/ Sean Herman*
Sean G. Herman

## PROOF OF SERVICE

***Howard Jarvis Taxpayers Association v. Coachella Valley Water District***
**Fourth Appellate District Case No. E080870**

**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

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 425 Market Street, 26th Floor, San Francisco, CA 94501.

On October28, 2024, I served a true copy of the following document described as:

**APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, ET AL., FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT COACHELLA VALLEY WATER DISTRICT; AMICI CURIAE BRIEF**

on the interested parties in this action as follows:

**BY ELECTRONIC MAIL:** By submitting an electronic version of the document to *TrueFiling*, who provides e-serving to all indicated recipients in the Service List through email.

**BY MAIL:** The document was placed in a sealed envelope addressed to the person at the address listed in the Service List. The envelope was placed for collection and mailing, following our ordinary business practices. I am readily familiar with Hanson Bridgett LLP' practice for collecting and processing correspondence for mailing; on the same day that correspondence is placed for collection and mailing, it is deposited with the United States Postal Service, with postage fully prepaid.

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

Executed on October 28, 2024

Delores McCullum

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