No. B305134

In the Court of Appeal, State of California

SECOND APPELLATE DISTRICT, DIVISION ONE

ANGELA KIMBALL and DIANA LEJINS,
Plaintiffs and Respondents

vs.

CITY OF LONG BEACH,
Defendant and Appellant.

Appeal From the Superior Court of the State of California
County of Los Angeles. Case No. 18 STCP 02628
Honorable James C. Chalfant, Judge Presiding

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT

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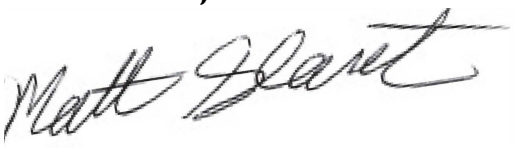
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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

Customers of the City of Long Beach's water and sewer utilities. (Cal. Rules of Court, rule 8.208.)

DATED: July 1, 2021

COLANTUONO, HIGHSMITH & WHATLEY, PC



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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

To the Honorable Presiding Justice Rothschild and Associate Justices of the Court of Appeal of the State of California, Second Appellate District, Division One:

Pursuant to California Rules of Court, rule 8.200(c), the League of California Cities ("Cal Cities") respectfully requests permission to file the attached amicus curiae brief in support of Appellant City of Long Beach ("Long Beach"). 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 enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State, which monitors litigation of concern to municipalities and identifies cases of statewide or nationwide significance. The Committee has identified this case as such a case. This application is timely made within 14 days of the reply brief on the merits.

Cal Cities and its member cities have a substantial interest in the outcome of this case because it raises an important question concerning the proper interpretation of articles XIII C and XIII D of

the California Constitution[1] that has the potential to significantly impact California cities:

- Does article XIII D of the California Constitution prohibit cities from imposing general taxes on the use of water, sewer, garbage, and other "property-related" services to support core municipal functions such as police and fire service, parks, and libraries, even when the tax has been approved by a majority of voters under article XIII C, section 2, subdivision (b) of the California Constitution?

In its amicus curiae brief, Cal Cities contends that general taxes on the use of property-related services are constitutional if approved by a majority vote, with very limited exceptions. Articles XIII C and XIII D, both added to our Constitution by 1996's Proposition 218, together limit how cities and counties may levy taxes **without voter approval**. Respondents Angela Kimball and Diana Lejins, however, ask this Court to read article XIII D to ban every general tax on the use of a property-related service, whether or not approved by voters. Were that the law, taxes levied by 100 cities and counties throughout California would be invalid. This extreme position is not required by articles XIII C and XIII D, and undermines Proposition 218's central purpose to empower voters to tax, or not, as they think best.

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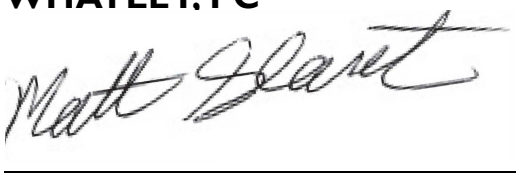
[1] Unspecified references to "articles" are to the California Constitution.

Cal Cities' amicus brief discusses the potential impact on California cities should the judgment below be affirmed despite the recent decision in *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373. Undersigned counsel have carefully examined the parties' briefs and represent that Cal Cities' brief, while consonant with Long Beach's arguments, highlights points worthy of further analysis. Accordingly, Cal Cities respectfully asks the Court grant leave to file this brief.

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

DATED: July 1, 2021

COLANTUONO, HIGHSMITH & WHATLEY, PC



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I. INTRODUCTION

Some 100 California cities and 4 counties tax the use of water and sewer utilities to fund essential services. When voters adopted Proposition 218 in 1996, ballot materials assured them the proposition would not limit their power to approve such taxes. Yet, Appellees Angela Kimball and Diana Lejins (together, "Kimball") argue that article XIII D, sections 3, subdivision (a) and 6, subdivision (b) forbid taxes on water and sewer services notwithstanding that article XIII C, section 2 preserves voters' power to tax. They read article XIII D to override article XIII C, even though Proposition 218 adopted both, and despite our Supreme Court's holding in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 (*Upland*) that restrictions on voters' power must be express.

Kimball's reading would invalidate **all** utility users taxes, those which appear on bills (most common) and those embedded in utility rates, as here and in *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373, which upheld that city's tax against an identical challenge brought by Kimball's counsel. Yet the Legislative Analyst's analysis of Proposition 218 assured voters they could continue to approve utility taxes after its approval.

The Court's duty here is to harmonize the provisions of Proposition 218 — article XIII C with article XIII D — and not, as the

trial court did, and Kimball urges, to read the latter as an implied limit to the former.

II. STATEMENTS OF FACTS AND OF THE CASE

Cal Cities adopts the facts and procedural history as discussed in Long Beach's Opening Brief pursuant to California Rules of Court, rule 8.200(a)(5).)

III. ARGUMENT

A. UTILITY USERS TAXES HAVE LONG FUNDED CALIFORNIA LOCAL GOVERNMENTS

A utility users tax is a "[t]ax imposed on utility services" authorized by:

1. the home rule power of charter cities like Long Beach (Cal. Const., art. XI, § 5, subd. (a));
2. Government Code section 37100.5 as to general law cities (allowing general law cities to impose any tax a charter city can); and
3. Revenue & Taxation Code section 7284.2 as to counties (authorizing "a utility user tax on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services").

(League of California Cities, The California Municipal Revenue Sources Handbook (2014), 2 AA/521.) Such taxes are levied by a city or county, collected by utilities (public and private) from their

customers, and remitted to the taxing agency. (*Ibid*.; *Edgemont Community Services Dist. v. City of Moreno Valley* (1995) 36 Cal.App.4th 1157 (*Edgemont*) [special district obliged to collect UUT], cited favorably by *City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.5th 536, 544 [state universities obliged to collect tax on those who pay to park on campus].)

Theoretically, utility users taxes ("UUTs") can be general or special — funding general government services, or funding only particular services. (Cal. Const., art. XIII C, § 1, subds. (a) [defining "general tax"] and (d) [defining "special tax"]; 2 AA/521.) However, most UUTs predate the 1986 adoption of Proposition 62, and are therefore general taxes. (*Ibid*.; Gov. Code, § 53723.)[2] As of 2014, "all city UUT levies in California [were] general taxes. Statewide, city and county utility user taxes generate nearly $2 billion per year."[3] (2 AA/521.)

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[2] Proposition 62 does not apply to charter cities like Long Beach. (*Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37.)

[3] No case involving UUTs involved a special tax, confirming Cal Cities' observation that practically none exist. (E.g., *Gonzales v. City of Norwalk* (2017) 17 Cal.App.5th 1295 (*Norwalk*) [amendment to telephone tax did not require voter approval]; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132 [Bradley-Burns Uniform State and Local Sales and Use Tax Law did not preempt UUT], disapproved on other grounds in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1; *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107 [very high due process standard to overturn telephone tax election]; *Edgemont, supra*, 36 Cal.App.4th at p. 1163.) Cal Cities is

> Because most large cities have UUTs, roughly half of California residents and businesses pay a utility user tax. … The UUT is a vital element in the funding of critical city services. On average, the UUT provides 15 percent of general-purpose revenue in cities that levy it. In some cities, the UUT provides as much as one-third of the General Fund.

(2 AA/522.)

Thus, if Proposition 218 entirely forbids UUTs, or requires two-thirds of voters to approve them as special taxes, it eliminates billions of dollars in local tax revenue. Yet not a word in its text or context — including the Legislative Analyst's fiscal analysis — suggests voters intended that result. (*California Chamber of Commerce v. State Air Resources Bd.* (2017) 10 Cal.App.5th 604, 625 ["The Legislature does not, one might say, hide elephants in mouseholes"], (cleaned up)[4] (*Cal. Chamber*).)

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aware of only two municipalities that impose UUTs which are, arguably, a special tax. (See Portola Valley Municipal Code, § 3.32.070; Santa Barbara Municipal Code, § 4.24.190.)

[4] By "cleaned up," we mean internal quotations and citations omitted. (Cf. *Brownback v. King* (2021) ___ U.S. ___, 141 S.Ct. 740, 748.)

B. BALLOT MATERIALS ASSURED VOTERS THEY COULD APPROVE UTILITY USERS TAXES

Were there any doubt voters may pass UUTs as general taxes, Proposition 218's legislative history eliminates it. "The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue." (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418 (*Richmond*).) When analyzing Proposition 218, the intent of the voters who approved it is controlling. (*Id.* at pp. 418–420.)

First, the history of Proposition 218 nowhere suggests voters intended it to bar UUTs. For example, Proposition 218's Impartial Analysis details its expected fiscal impacts, without mention of invalidating then-existing utility users taxes (all of which were general taxes) or prohibition of future such taxes, although utility taxes provide significant revenue to local governments. (2 AA/456–58; see also *Re Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Gov't Entities on Pub. Utilities* (1989) 32 Cal. P.U.C. 2d 60 [Cal. P.U.C. Dec. No. 89-05-063] ["utility users' tax revenue [was the] third largest source of city tax revenue" in 1989].) Had the drafters of Proposition 218 — and voters — intended to eliminate billions of dollars of revenue relied upon by 100+ local governments across the state, they would have said so plainly. (*Cal. Chamber, supra,* 10 Cal.App.5th at p. 625 [significant legislative policies are not merely implicit].)

Rather, the "Yes" argument on Proposition 218 demonstrates voters' intent to reserve the right to approve general taxes on utility use. That argument promised voters:

> Proposition 218 does NOT prevent government from raising and spending money for vital services like police, fire and education. If politicians want to raise taxes they need only convince local voters that new taxes are really needed.

(2 AA/459, original emphasis.) The ballot arguments similarly emphasize that cities and counties had imposed "[n]on-voted taxes on electricity, gas, water, and telephone services" and assured voters that "Proposition 218 will allow you and your neighbors — not politicians — to decide how high your taxes will be." (*Ibid.*) Nothing in the ballot argument suggests an intent to place UUTs beyond voters' reach. Quite the opposite: "Proposition 218 guarantees your right to vote on taxes imposed on your water, gas, electric, and telephone bills." (*Ibid.*) Kimball argues, and the trial court accepted, that despite no mention in the legislative or ballot materials of eliminating UUTs, and emphasis that voters reserved the right to approve them, voters should nevertheless be understood to have intended Proposition 218 to ban general taxes on water and sewer services. This argument offers voters an unfair bait-and-switch, and the judgment adopting it should be reversed.

C. THE TRIAL COURT AVOIDED FUNDAMENTAL ISSUES

Ballot materials did not alert voters that Proposition 218 would bar UUTs or require they be approved as special taxes by two-thirds of voters. The trial court's contrary conclusion disserves both the presumption that voters do not surrender their reserved powers except expressly and the canons of construction that require constitutional provisions to be harmonized and disfavor implied repeal. (*Upland*, *supra,* 3 Cal.5th 924 [voters powers may be limited only by very clear language]; *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105 [*expressio unius* canon]; *Citizen Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182, 1192, fn. 15 (*Sunset Beach*) [applying canon disfavoring implied repeal to Prop. 218].) "Courts construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results." (*Carman v. Alvord* (1982) 31 Cal.3d 318, 327.) Although Measure M does not describe its transfer payments to the general fund as a "general tax," it operates as one in effect, by authorizing an obligation of the water and sewer utilities that may be recovered through Long Beach's utility rates, like any other obligation imposed on the utilities, including state and local taxes. In fact, Measure M **expressly authorizes** Long Beach to recover the cost of the transfer payments in its rates. (AOB at pp. 18–23.) Thus, the trial court's obligation was to harmonize article XIII C, section 2 with Article XIII D, sections 3 and 6.

Kimball's reading of these provisions is not sensible given Proposition 218's larger scheme. First, her reading impairs article XIII D, section 6, subdivision (c), which requires two-thirds voter approval for property-related fees "[e]xcept for fees or charges for sewer, water, and refuse collection services … ." Kimball's interpretation makes the two-thirds requirement apply generally, rendering the above language surplusage, and would also prevent any fee from being "approved by a majority vote of the property owners of the property subject to the fee or charge," as article XIII D, section 6, subdivision (c) allows.

Further, why may property-related fees not recover Measure M's general tax on the Long Beach utilities, when they may recover state and local sales, use and other taxes, as demonstrated *infra*? Or fund conservation mandates, as allowed in *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 193 (*Paradise Irrigation Dist.*)? Neither Proposition 218's text nor legislative history supports exempting ratepayers from some, but not all, lawful costs of utility operations.

Just like Measure M, the economic incidence of these taxes falls initially on public utilities, but ultimately on ratepayers. (Rev. & Tax Code, §§ 6005, 6015, 7202, subd. (b)(1).) As to use taxes, the legal incidence is on the utilities, too. Like all governments, Long Beach's utilities pay sales taxes, which are legally incident on sellers and imposed by both the State and local governments. (*McClain v.*

Sav-On Drugs (2019) 6 Cal.5th 951, 957 (*McClain*) [sales tax incident on seller, though often passed on to buyer]; Rev. & Tax Code, § 6001 [Sales and Use Tax Law imposes state sales tax]; Rev. & Tax Code § 7200 et seq. [Bradley-Burns Uniform Local Sales and Use Tax Law authorizes local sales and use taxes]; Rev. & Tax Code, § 6005, subd. (a) [governments "persons" who pay sales and use tax].) Utility operators do not have to bear lawful services costs, including the local 1 percent sales tax, with no ability to recover them via service charges.

If Long Beach's utilities may use rate proceeds to pay state and local sales taxes — a point Kimball does not contest — what language in Proposition 218 or its legislative history suggest they may not pay the Measure M tax, too? Even if Proposition 218's text allowed a distinction between state and local taxes (it does not), the sales taxes reimbursement Long Beach's utilities pay include the 1 percent local sales tax imposed by City ordinance. (Long Beach Municipal Code, chs. 3.60, 3.62 [imposing City's Bradley-Burns sales and use tax and its transactions and use tax, respectively].) There is no basis to distinguish local from state and federal taxes in this context or the Bradley-Burns sales and use tax from other local excise taxes.

But Kimball argues article XIII D, section 6, subdivision (b) impliedly limits the taxing power conferred by article XI, sections 5 [home rule power of charter cities] and 7 [police power of cities and

counties], and restricted by article XIII C, section 2. (RB at pp. 19, 23–24, 26–28, 36–37.) Cal Cities has two points in reply:

First, the Constitution has not resorted to implication to limit the taxing power. When it does so, it does so expressly — as by these initiative amendments to our Constitution, which are in pari materia with Proposition 218:

a. Article XIII A, section 3, subdivision (a) — adopted by Proposition 13 in 1978 to bar the Legislature from imposing a sales or transaction tax on the sale of real property or an ad valorem tax on property in excess of the 1 percent permitted by article XIII A, section 1.
b. Article XIII A, section 4, also adopted by Proposition 13, is to the same effect as to local governments.
c. Government Code section 53725 was adopted by 1986's Proposition 62, an initiative statute, and is to the same effect as to the local governments it affects. (*Trader Sports Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 49 [Prop. 62 not applicable to charter cities].)
d. Article XIII, section 24, adopted by the Constitution of 1879 and essentially unchanged since, forbids the Legislature from adopting a state tax for local purposes.
e. Article XIII, section 34 forbids the Legislature from imposing sales tax on food and arose from 1992's

> Proposition 163, a reaction to a so-called "snack tax" used to close a budget deficit in 1991.

Second, article XIII D, section 2, subdivision (e)'s definition of the "property related fees" governed by Article XIII D, section 6 include two distinct types of revenue measures — a "levy other than … [a tax or assessment] imposed by an agency upon a parcel or upon a person as an incident of property ownership" and "a user fee or charge for a property related service." Article XIII D, section 3, subdivision (a)'s introductory phrase uses the first of these two tests (imposed "as" an incident of property ownership) and not the latter ("a user fee or charge for a property related service"). Thus, that section should be construed to exclude utility users taxes (i.e., taxes on the use of a property related service) from its prohibition on impositions on property owners. (*Ibid*.)

Kimball contends this construction renders meaningless article XIII D, section 6, subdivision (b), "because no surcharge (tax, in lieu fee, assessment, etc.) could ever be characterized as a fee for a property-related service in the strictest sense." (RB at p. 36.) According to Kimball, "section 2, subdivision (e)'s definition of 'fee' or 'charge' **includes** general taxes by implication; this is because it explicitly excludes special taxes." (RB at p. 37, original emphasis.)

However, viewed as Kimball does, Proposition 218 requires the Court to make surplusage either of "including a user fee or charge for a property related service" in article XIII D, section 2,

subdivision (e)'s definition of "property related service," or of article XIII D, section 3, subdivision (b)'s statement that "f]or purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership." If fees for property related services are not imposed "as an incident of property ownership" rather than "on" such an incident, there would be no need for the latter exception. (See *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 936–938 (*Apartment Assn.*) [noting crucial distinction of impositions "on" and "as" incidents of property ownership].)

However, there is no need to make anything surplus here. Language is often included in initiatives to make politically salient points unmistakable and courts therefore seek voters' intent in a more common-sense way than by punctilious application of the canons of construction. Moreover, the harmonization Cal Cities offers gives force to article XIII D, section 3, subdivision (b). It excludes fees for gas and electric service from the "property related fees" governed by article XIII D under either of article XIII D, section 2, subdivision (e)'s two prongs.

Article XIII D, section 1, subdivisions (b) and (c) bolster the point. Proposition 218 states carve-outs from its property-related fee provisions not only in article XIII D, section 3, which the parties

briefed here, but also in article XIII D, section 1, subdivisions (b) and (c), which state in relevant part:

> Nothing in this article or Article XIII C shall be construed to:
>
> ….
>
> (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
>
> (c) Affect existing laws relating to the imposition of timber yield taxes.

These subdivisions have much the same effect as article XIII D, section 3, subdivision (b) — protecting politically favored public revenues from Proposition 218 to blunt opposition to it. Yet section 1, subdivisions (b) and (c) use language unlike that in article XIII D, section 3, subdivision (b) — perhaps because they serve as exceptions to both Proposition 218's assessment and its property-related fee provisions. Section 1, subdivision (b) speaks of the "imposition of fees or charges as a condition of property development" — a third category — which would seem to be "on" the incident of exercising one's right to develop property. Section 1, subdivision (c) avoids this linguistic puzzle entirely and refers broadly to "laws relating to the imposition of timber yield taxes," which would seem to tax another incident of property ownership — severing trees from land. So, Proposition 218 uses three phrases to describe what, logically, appears to be one type of revenue — levies

imposed on incidents of property ownership, whether harvesting trees, developing property, or receiving utility services. The varied language speaks more to political impact than intended construction, and should be viewed in that light.

Next, case law holds Proposition 218 allows voters to impose above-cost utility rates on ratepayers to achieve policy objectives. (*Capistrano Taxpayers Assn. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1515 (*Capistrano*) [Prop. 218 allows city to charge above-cost utility rates to achieve conservation, provided voters approve the measure as a tax].) Our Supreme Court has made the same point:

> Before the adoption of Propositions 218 and 26, the rule in California was that a municipal utility's "rates need not be based purely on costs." (*Hansen*, *supra*, 42 Cal.3d at p. 1182, 233 Cal.Rptr. 22, 729 P.2d 186.) Article XIII C changed that rule, but it does not operate to require subsidization. Instead, for any service charge to which the article applies, a local government must either charge a rate that does not exceed the reasonable costs of providing the service **or obtain voter approval for rates that exceed costs**.

(*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 18 (*Redding*), emphasis added.) Kimball dismisses these statements in *Capistrano* and *Redding* as dicta, and argues *Redding* did not apply

article XIII D. (RB at p. 44.) But dicta can persuade, especially that of our Supreme Court. (E.g., *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 925 (*Fresno*).) If the Supreme Court did not believe voters could approve rates over costs, it is unlikely it would have stated so in *Redding*. Moreover, Supreme Court precedent is not so easily avoided. (*Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 666 ["The *Palsgraf* rule, for example, is not limited to train stations"], disapproved on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557, fn. 8.)

Kimball further argues that Measure M is unlawful because it does not appear on utility bills, but is instead embedded in water and sewer charges. (RB at p. 16.) What text of Proposition 218 supports this distinction between what might be labelled "wholesale" and "retail" taxes? Kimball elevates form over substance.

Finally, Kimball's logic, and by extension the trial court's, would allow UUTs on investor-owned, but not public, utilities — again, without evidence voters intended that result. Such a system would allow municipalities to tax utilities only by surrendering the public benefits of municipal delivery of utility services. Again, if voters intended such choice, Proposition 218's text or legislative history would more plainly reflect such intent.

D. ARTICLES XIII C AND XIII D ARE READILY HARMONIZED

The trial court's task, of course, was to harmonize articles XIII C and XIII D, not to allow one to trump the other. (E.g., *Fields v. Eu* (1976) 18 Cal.3d 322, 328.) This Court should correct its error, especially as harmonizing the two is not challenging.

Proposition 218 governs taxes (art. XIII C), assessments on real property (art. XIII D, §§ 4, 5) and a newly defined class of "property related fees" (art. XIII D, § 6). To complete its protection of property owners, it provides a closed list of levies which may be imposed on property or on persons as an incident of property ownership:

> Property Taxes, Assessments, Fees and Charges Limited. (a) No 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:
>
> (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.
>
> (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.
>
> (3) Assessments provided by this article.
>
> (4) Fees or charges for property related services as provided by this article.

(Cal. Const., art. XIII D, § 3, subd. (a).)

A review of article XIII D, section 3's exemptions shows that it cannot apply to general taxes on property related services without invalidating all UUTs. We can ignore the first exemption, as neither party contends this case involves the 1 percent ad valorem property tax authorized by Proposition 13's article XIII A, section 1. Kimball has not contended this case involves an assessment on real property, so we can ignore the third. Nor would such a claim persuade. (E.g., *Richmond, supra,* 32 Cal.4th 409, 418–420 [water charges are not "assessments"].)

Thus, only the second and fourth exemptions require further thought. The second allows special taxes receiving the two-thirds voter approval Propositions 218 and 13 require. If this language controls, then Measure M is preempted by our Constitution because it received 54 percent voter approval rather than two-thirds. However, that same conclusion would apply to every UUT in California, of which there are at least 100. (2 AA/524.) If the tax here is "assessed by any agency upon any parcel of property or upon any person as an incident of property ownership" because it is ultimately paid by those who consume "property related services," then every such UUT in California must receive two-thirds voter approval and be dedicated to a specific purpose, or be preempted. Fortunately for hundreds of California local governments and those who depend on them for police, fire, streets, parks, libraries and other essential services, this is not the law. This is so for two reasons

— this tax was not imposed "by an agency" nor "upon a person as an incident of property ownership," as detailed *infra*. The trial court erred to find otherwise.

This leaves article XIII D, section 3, subdivision (a)'s fourth exemption — for property related fees under article XIII D, section 6. Long Beach utility customers pay those here, and those utility rates recover state and local taxes on utility operations, including Measure M. The fourth exemption cannot save retail (as opposed to wholesale) utility users taxes, however, as they are not so easily construed as fees for utility services. They are taxes collected on utility bills and based on the amount of fees for utility service.

Thus, article XIII D, section 3, subdivision (a) either precludes Kimball's treatment of Measure M as an illicit fee for utility services or subjects all utility users taxes to the two-thirds voter approval requirement of its second exemption — invalidating nearly all (if not all) of them. Kimball proves too much. Rather, Measure M survives article XIII D, section 3 because it is not imposed on property or on a person due to property ownership alone.

Article XIII D, section 6 restricts property-related fees, including fees for utility services. But it is not read so broadly as to disempower voters to approve and maintain utility users taxes under article XIII C because they are not imposed "upon any parcel of property" or "upon any person as an incident of property ownership … ." (Cal. Const., art. XIII D, § 3, subd. (a)(4); *Apartment*

Ass'n , supra, 24 Cal.4th at p. 838 ["as an incident of property ownership" means "article XIII D only restricts fees **imposed directly** on property owners in their capacity as such"], emphasis added.) And because the utility bears the legal incidence of wholesale taxes, such as Measure M, such taxes are among a utility's "cost(s)" of service — which it may fund from utility rates under article XIII D, section 6. (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 647–648 (*Roseville*) ["Of course, what it costs to provide such services includes all the required costs of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures."]; *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 598 (*Griffith*) [same], disapproved on other grounds by *City of San Buenaventura v. United Water Conservation Dist*. (2017) 3 Cal.5th 1191.)

Moreover, article XIII D, section 2, subdivision (e) excludes special taxes, not general taxes, from its definition of property-related fees:

> (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(Cal. Const., art. XIII D, § 2, subd. (e).)

It does so because it refers to taxes imposed on property per se — i.e., "**as** an incident of property ownership." It then includes "a user fee or charge for a property related service" precisely because such fees are not imposed "as an incident of property ownership" and would otherwise be outside the definition. A general tax imposed on the use of a property-related service is therefore not a "fee" or "charge." Including property related service fees in the phrase "as an incident of property ownership" would make the last phrase of article XIII D, section 2, subdivision (e) achieve a result voters were not alerted to.

Article XIII D, section 1 states it applies "[n]otwithstanding any other provision of law … ." Conversely, article XIII C applies "[n]otwithstanding any other provision of this Constitution." (Cal. Const., art. XIII C, § 2.) If one article is to trump another, it is article XIII C's reflection of voters' power to approve taxes which must control article XIII D.

In any event, article XIII D, section 6 treats service fees "as if" imposed on property, but article XIII C does not. This understanding of article XIII D was affirmed in *Richmond, supra,* 32 Cal.4th at 427. Both *Richmond* and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 215–216 (*Verjil*) read utility fees "as an incident" to property ownership (but did not involve voter approved taxes such as Measure M).

Finally, no matter who bears the economic incidence of a tax, voter approval takes it outside article XIII D, as such a tax is not imposed by an "agency," but by voters. Our Supreme Court has interpreted "agency" as used in article XIII C, section 2 to exclude the electorate, such that taxes adopted by initiative are not subject to that section's requirement that general taxes not appear on special election ballots absent fiscal emergency. (*Upland*, *supra*, 3 Cal.5th at pp. 937–938.) The First and Fifth Districts have, too. (*City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.5th 703 [initiative special tax not subject to two-thirds voter approval Props. 13, 218 imposed on government tax proposals]; *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220 [same].) Although *Upland* did not task it to harmonize article XIII C, section 2 with article XIII D, our Supreme Court noted it would be "quite improbable" to include "voters" within the term "agency" as used in article XIII D. (*Id*. at pp. 939–940.)

The Supreme Court's observation was not gratuitous. Canons of construction require undefined terms in statutes and constitutional provisions in pari materia — as are articles XIII C and XIII D — to have consistent meaning. (E.g., *Verjil, supra,* 39 Cal.4th at pp. 215–216 [construing "fee" as used in articles XIII C and XIII D.) Our Supreme Court recognized this canon when deciding *Upland*; its earlier Proposition 218 precedent applied it. (*Ibid*.)

Moreover, *Upland's* observation that "voters" are not within the meaning of "agency" as used in article XIII D was an obvious response to an argument premised on the harmonization canon. (3 Cal.5th at pp. 939–940 [interpreting "agency" in article XIII C, § 2 consistently with its use article XIII D even though each article provides its own definitions].)

E. *WYATT* PROPERLY DECIDES THIS CASE

Picking up where existing precedent left off and hewing closely to the *Redding* dicta as to voters' power to approve, as taxes, fees otherwise forbidden by Proposition 218, *Wyatt v. City of Sacramento* (2021) 60 Cal.App.5th 373, 274 Cal.Rptr.3d 710, review denied (*Wyatt*), properly decides this case. *Wyatt* involved a tax essentially identical to Long Beach's Measure M's transfer, which a simple majority of Sacramento voters imposed on that city's utilities as a general tax. (*Id.* at pp. 712–713.) *Wyatt* concluded a voter-approved general tax on utility revenue does not violate article XIII D, section 6 even though ratepayers bear its economic burden. (*Id.* at p. 714–720.) Ballot materials told Sacramento voters the tax would be a cost of utility service and voters plainly knew they were increasing their utility rates when they approved it. (*Id.* at pp. 712–713.) The Court's analysis thus began by determining the relevant fee or charge to which article XIII D, section 6 applied. (*Id.* at p. 715.)

Citing *Redding*, *Wyatt* observed the tax was not itself imposed "on a parcel or a person as an incident of property ownership" so as to trigger article XIII D, section 6, because nothing in it requires its cost be imposed on utility users— other utility revenues might fund it. (*Wyatt, supra*, 274 Cal.Rptr.3d at pp. 715–716, citing *Redding*, *supra*, 6 Cal.5th at p. 15. ["[T]he fact that at least part of the tax is included in these [utility] fees and charges does not mean that the tax itself is a fee or charge under article XIII D."].) Moreover, only utility rates, not their use to fund Sacramento's tax — i.e., the city's "budgetary act of **transferring sums**" — may be challenged under Propositions 218 and 26. (*Id.* at p. 716, original emphasis, citing *Redding*, *supra*, 6 Cal.5th at pp. 12, 14–15 and *Webb v. Riverside* (2018) 23 Cal.App.5th 244.) *Wyatt* found that an agency may include in the amount required to provide property-related services any lawful obligations, including any taxes and obligations "akin to a tax", imposed on the agency, which are ongoing costs of providing service. (*Wyatt, supra*, 274 Cal.Rtpr.3d at pp. 716–717.) This conclusion is grounded in our Supreme Court precedent, finding taxes on investor-owned utilities are a cost of service properly recovered from ratepayers. (*Id.* at 717, citing *Southern California Gas Co. v. Public Utilities Com.* (1979) 23 Cal.3d 470, 474 and *City & County of San Francisco v. Public Utilities* (1971) 6 Cal.3d 119, 123 (*SF v. PUC*).)

Wyatt concluded article XIII D has nothing to say about voters' approval of taxes, but speaks only to government impositions on taxpayers and property owners without that approval. (*Wyatt*, *supra*, 274 Cal.Rptr.3d at p. 719.) This relies on *Redding*'s dicta:

> [F]or any service charge to which article XIII C applies, a local government must either charge a rate that does not exceed the reasonable costs of providing the service or obtain voter approval for rates that exceed costs.

(*Ibid*., citing *Redding*, *supra*, 6 Cal.5th at p. 18 (cleaned up).)

This approach appropriately harmonizes article XIII C's voter power to tax with Article XIII D's limits on government's authority to set rates, giving force to every provision in issue. General taxes may be approved under article XIII C and used for any legitimate governmental purpose. (Compare Cal. Const., art. XIII C, § 1, subd. (a) ["general tax" is "imposed for general governmental purposes"] with *id*., subd. (d) ["special tax" is "imposed for specific purposes"].) *Wyatt* also allows for consistent treatment of Long Beach's Measure M with other obligations utilities incur to provide service. As stated *supra,* utilities pay sales and uses taxes, which are legally incident on the utilities and imposed by both the State and local governments. (Rev. & Tax, §§ 6001, 7200 et seq.; *McClain*, *supra*, 6 Cal.5th at p. 957.) They incur costs to satisfy State mandates, too, such as the greenhouse gas limits of 2006's A.B. 32. (*Cal. Chamber, supra,* 10 Cal.App.5th 604 [cap-and-trade fees not taxes under

Prop. 26]; cf. *Paradise Irrigation Dist., supra,* 33 Cal.App.5th 174 [art. XIII D, § 6 does not impair Legislature's power to impose mandates on water utilities that rates must fund].)

There is no principled distinction between these legal obligations and the Measure M tax; all are laws of the State of California. (Art XI, § 5, subd. (a) [charter city ordinances have force of statutes as to municipal affairs]; Art. XI, § 3, subd. (a) ["provisions of a charter are the law of the State"].) If article XIII D, section 6 prohibits one, it prohibits all — requiring underfunding of property-related services, which voters surely did not intend. *Wyatt* is well-reasoned and effectively harmonized Proposition 218's disparate provisions to follow our Supreme Court's precedent and preserve billions of dollars in essential public financing that voters had no inkling would be endangered when they passed Proposition 218.

F. KIMBALL'S AUTHORITIES CANNOT SUSTAIN THE JUDGMENT

Kimball cites *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637 and *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914 to distinguish *Wyatt* and to sustain the judgment. (RB at pp. 32, 48.) However, both are readily distinguishable, as they dealt with in-lieu fees not at issue here. First, *Roseville* did not consider a voter-approved tax, and thus simply did not address the essential question under review — does voter

approval save what would be an illegal general fund transfer if government acted only by its officials?

In *Roseville* voters did approve two measures: Measure U, which received a greater than two-thirds vote but only provided that each city-owned utility was to be financially self-sufficient and should reimburse the city's general fund for the resources it uses; and Measure K, which received simple-majority approval and imposed a 4 percent in-lieu franchise fee. (*Roseville, supra*, 97 Cal.App.4th at p. 649.) *Roseville* "express[ed] no views regarding the validity of Measure K." (*Id.*) In a subsequent case, Roseville's Measure Q, a UUT which received a simple majority and was dedicated solely to fund police, fire, parks and recreation, or library services, was stricken down as a special tax approved by less than two-thirds of voters. (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1185–1190 (*Roseville II*).)

It is not the label "in lieu fee" which distinguishes *Roseville* from *Wyatt* and this case, but the voter approval of a UUT as a general tax here and in *Wyatt*, but not in *Roseville*. The in-lieu fees in *Roseville* were within article XIII D, section 2, subdivision (e)'s definition of "property-related fees," and *Roseville* did not construe article XIII D, section 3. Rather, *Roseville* evaluated the in-lieu fees as claimed cost recovery per se, not as a voter-approved tax treated as a service cost. (*Roseville, supra,* 97 Cal.App.4th at pp. 647–650.) Finally, *Roseville* did not have the benefit of *Upland*'s clarification that voters

are not an "agency" as used in Proposition 218, and that limits on voters' power to impose taxes must be express, not implied. (*Upland, supra*, 3 Cal.5th at pp. 924, 939–940.)

Kimball's reliance on *Fresno* is similarly misplaced. There, the challenge was to a 4 percent in-lieu fee authorized by a charter provision voters approved almost 40 years before Proposition 218 was adopted and, of course, without knowledge of its requirements. (*Fresno, supra*, 217 Cal.App.4th at p. 917; see *Norwalk*, *supra*, 17 Cal.App.5th at p. 1311 ["[l]acking clairvoyant powers, the voters cannot have intended to incorporate an interpretation of a federal statute that had not yet been promulgated."], emphasis omitted.) Unlike Long Beach's tax here, Fresno's in-lieu fee was not a voter-approved tax; it was not identified as such, voters did not approve it as such, and Fresno's charter forbade the city from deriving general fund revenue from its utilities. (*Fresno*, *supra*, 127 Cal.App.4th at p. 917*; see also, Roseville II*, *supra*, 106 Cal.App.4th at p. 1186 ["[a] charter city may not act in conflict with its charter"].) No similar charter restriction is in issue here.

Fresno's voters approved the fee — not as a tax, but as cost recovery — but Fresno failed to cost-justify that fee when Proposition 218 newly imposed that requirement. (*Fresno*, *supra*, 127 Cal.App.4th at pp. 917, 922, 926.) The Fifth District found its constitutionality — given it was funded by property-related user fees — depended upon demonstration the fee reflected Fresno's

actual costs for utilities' use of general fund services like police, fire, and street maintenance. (*Id*. at pp. 922–923.) Fresno had not attempted that demonstration. Accordingly, its in-lieu fee did not survive Proposition 218 on the record before the Court of Appeal. Finally, *Fresno* simply makes no attempt to harmonize article XIII C, section 2 with article XIII D, sections 3 and 6, the primary task here.

Moreover, Cal Cities wonders whether *Fresno* has withstood the test of time. Why should the order of elections matter as between the 1940's charter provision in issue there and 1996's Proposition 218? (Cf. Cal. Const., art. XIII D, § 5 [reauthorizing assessments passed with a majority vote before passage of Proposition 218].) *Fresno* does not say. *Upland's* admonishment against implicit limits on the right of voters to pass taxes has undermined *Fresno*.

Goodman v. County of Riverside (1983) 140 Cal.App.3d 900 (*Goodman*) is also instructive. That case challenged local taxes to fund the State Water Project, special taxes authorized by voters' 1960 approval of the Porter-Burns Act and which were therefore exempt from 1978's Proposition 13. The challenger there argued Proposition 13 barred the tax because voters never approved the Desert Water Agency's contract with the state Department of Water Resources, which the tax was intended to fund. (*Id*. at p. 909.) *Goodman* concluded debt required voter approval, not the subsequent contract:

> [W]e conclude, when the state's voters approved the [Porter-Burns] Act, that they approved an indebtedness in the amount necessary for building, operating, maintaining, and replacing the [State Water] Project, and that they intended that the costs were to be met by payments from local agencies with water contracts. Further, we conclude that the voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations, and that the ad valorem taxes levied by DWA fall within the exception of section 1, subdivision (b) [of article XIII A].

(*Ibid*.)

Propositions 26 and 218 require taxes be voter-approved and not more. (Cal. Const., art. XIII C, § 1, subd. (e), § 2, subd. (b) & (d).) As *Goodman* found the 1960 approval of Proposition 1 protected local taxes necessary to fund the State Water Project from 1978's Proposition 13, why does not the 1940's approval of Fresno's charter provision similarly protect that revenue measure from 1996's Proposition 218? What matters is voter authorization of the legal obligation to pay — for water deliveries in *Goodman*, a general fund transfer in *Fresno*, and a tax in *Wyatt* and here — not how government subsequently collects those legally mandated costs.

Again, if voter approval of the exact amounts transferred was required to allow Long Beach's utility to use rate proceeds to fund its obligations under Measure M, why not of sales and use taxes? Kimball does not say — nor does she argue that Long Beach utilities may evade state and local sales and use taxes.

Finally, Kimball's reliance on *Tesoro Logistic Operations, LLC v. City of Rialto* (2019) 40 Cal.App.5th 798, 810 (*Tesoro*) and *Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396 (*Crawley*) is simply misplaced. (RB at pp. 33–34.) The tax on storage tanks in *Tesoro* was determined to be a tax on fixtures or improvements to real property, and therefore a preempted tax on bare title to real property. (*Tesoro, supra,* 40 Cal.App.5th at p. 810.) *Crawley* involved a property-related fee imposed on the property tax roll — without voter approval — to fund solid waste services. Thus, it was easily within the language of article XIII D, section 6, subdivision (c). The case does not apply article XIII C. (*Crawley, supra*, 243 Cal.App.4th at 408.)

Neither case harmonized articles XIII C and XIII D and, therefore, neither is of much utility here.

G. TAXES ARE A COST OF SERVICE THAT MAY BE RECOVERED BY RATES

Just as in *Wyatt*, the interfund transfer and cost recovery approved by Measure M operate as a general tax on Long Beach utility ratepayers. A tax imposed as required by law, such as

Measure M, may be recovered as a reasonable cost of service that may be financed from utility rates without offending article XIII D, section 6, subdivision (b). As Proposition 218 does not define the costs of service a utility may charge for property-related services, dictionary definitions suffice. (E.g., *Sunset Beach, supra,* 209 Cal.App.4th at p. 1194, fn. 15 [citing dictionaries to construe Prop. 218].)

Dictionary definitions make clear that **all** a utility's lawful expenditures or expenses are its costs of service. (Black's Law Dict. (11th ed. 2019) ["cost" means "1. The amount paid or charged for something; price or expenditure. Cf. Expense"].) So, too, does existing precedent: "[t]he reasonable costs [of service] include expenditures to generate and acquire electricity and other costs typical of utility operations." (*Redding, supra,* 6 Cal.5th at pp. 15–16 [applying Prop. 26], citing *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1181 [applying Prop. 13].) Many cases so hold, including:

- *Roseville*, *supra*, 97 Cal.App.4th at pp. 647–648 ["Of course, what it costs to provide such services includes all the required costs of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures."];
- *Griffith, supra*, 220 Cal.App.4th at p. 598 [Prop. 218 allows a property related fee to fund the whole cost of providing service,

including stranded debt, capital, maintenance and operation, and planning for future service delivery];

- *Capistrano, supra,* 235 Cal.App.4th at 1501–1502 [capital to construct reclaimed water system properly charged to those who could not use it as a cost to supply them water that would otherwise be used for irrigation];
- *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1145–1146 [allowing water wholesaler to include costs to move water to Southern California in rate for transportation of water within Southern California under Prop. 26].)

Indeed, this is the only definition of "cost" that would prove serviceable — as utility operations must comply with many other laws that impose costs on utilities unrelated to procuring, storing, treating or distributing utility supplies (or collecting them, as to trash and wastewater). (E.g., *Paradise Irrigation Dist., supra,* 33 Cal.App.5th at p. 193.) These include taxes, bad debt, reserves, mandates, public goods, green power mandates, low-income rates, environmental mandates, and fees of the Federal Energy Regulatory Commission.

That Long Beach may recover taxes as costs through rates is well established. Because article XIII D does not define "costs," it is read to incorporate earlier law, which has long recognized a utility may recover tax labilities from rates. (E.g., *American Microsystems,*

Inc. v. City of Santa Clara (1982) 137 Cal.App.3d 1037, 1042–1043 ["cost of service" recognized as one of two basic ratemaking principles imposed on privately-owned utilities under Pub. Util. Code, § 451 but no similar limitation for public utilities before Prop. 218]; see e.g., *SF v. PUC, supra,* 6 Cal.3d at p. 123 [federal income tax liability allowable cost of service under Pub. Util. Code, § 451]; see also, *Pacific Tel & Tel. Co. v. Public Utilities Commission* (1965) 62 Cal.2d 634, 664 [assuming the same as to private utility's state tax liability]; *In re Cal. Water Service Co.* (1982) 10 Cal. P.U.C. 2d 414 at Tbl. 1 [1982 WL 1977458 at *1–*2] [tax liabilities listed as a cost of service justifying water rates].)

Article XIII D, section 6, subdivision (b)(3), uses the term "cost," without limitation, and should be read to include taxes and other financial obligations a utility must pay. (*In re Lance W.* (1986) 37 Cal.3d 873, 89, fn. 11 ["adopting body presumed to be aware of existing laws and judicial construction thereof"].) Where Proposition 218's drafters intended to give new meaning to a term (or to establish a new term of art), they did so — but as to "cost," they did not. (Cal. Const., art. XIII C, § 1 [providing definitions to govern art. XIII C]; art. XIII D, § 2 [same as to art. XIII D].) Nor is there any apparent justification to give "cost of the service" a more restrictive meaning for public, than for investor-owned, utilities. (*Richmond, supra,* 32 Cal.4th at p. 421 ["when a term has been given a particular meaning by a judicial decision, it should be presumed to

have the same meaning in later-enacted statutes or constitutional provisions"].)

Thus, Measure M survives review for this reason, too.

IV. CONCLUSION

Proposition 218 's proponents told California voters that articles XIII C and XIII D would "**NOT** prevent government from raising and spending money for vital services like police, fire, and education. If politicians want to raise taxes they need only convince local voters that new taxes are really needed." (2-AA/459, original emphasis.) Here, Long Beach voters were so convinced, and approved Measure M by a majority vote. The trial court's conclusion that article XIII D prohibits the City to charge utility customers for the cost of the payments Measure M requires distorts Proposition 218's purpose, undermining rather than confirming voter control over local taxes. The lower court's reasoning threatens more than a hundred utility users taxes collected across the State. Cal Cities urges this Court to take a different path, one that respects the considered decision that Long Beach voters made — and the authority our Constitution reserves to them to make that decision.

At bottom, in a democracy, it matters what voters are told their approval will achieve. It mattered when the voters who approved Proposition 218 were assured that, if it passed, they could continue to tax utility use to fund essential municipal services, just as it mattered when they were asked to approve Measure M to do

so. To construe Proposition 218 to do what proponents assured voters it would not subverts our democracy. The trial court erred to impose Kendall's preference on her fellow voters of Long Beach.

Accordingly, Cal Cities respectfully asks that the Court reverse.

DATED: July 1, 2021

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CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204

We certify that, under rule 8.204(c)(1) of the California Rules of Court, this Amicus Brief is produced using 13-point type and contains 8,138 words including footnotes, but excluding the application for leave to file, tables and this Certificate, fewer than the 14,000 words permitted by the rule. In preparing this Certification, we relied upon the word count generated by Microsoft Word 365 MSO.

DATED: July 1, 2021

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PROOF OF SERVICE

Angela Kimball, et al. v. City of Long Beach
Second District Court of Appeals Case No. B305134

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. My email address is: ALloyd@chwlaw.us. On July 1, 2021, I served the document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT** on the interested parties in this action addressed as follows:

SEE ATTACHED LIST FOR METHOD OF SERVICE

☒ **BY MAIL**: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION**: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on July 1, 2021, from the court authorized e-filing service at TrueFiling.com. No electronic message or other indication that the transmission was

unsuccessful was received within a reasonable time after the transmission.

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

Executed on July 1, 2021, at Grass Valley, California.

Ashley A. Lloyd

SERVICE LIST

Angela Kimball, et al. v. City of Long Beach
Second District Court of Appeals Case No. B305134

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