Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff and Appellant/Petitioner,

v.

CITY OF SAN RAFAEL, et al.,

Defendants and Respondents.

On Review of the Published Decision of the Court of Appeal, First District, Division One, Wheatherford v. City of San Rafael (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

APPLICATION OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF RESPONDENTS CITY OF SAN RAFAEL AND COUNTY OF MARIN; PROPOSED BRIEF

THOMAS B. BROWN, State Bar No. 104254
MATTHEW D. VISICK, State Bar No. 258106
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, California 94612
Telephone: 510.273.8780
Facsimile: 510.839.9104
Attorneys on behalf of League of California Cities, California State Association of Counties, and California Special Districts Association

Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff and Appellant/Petitioner,

v.

CITY OF SAN RAFAEL, et al.,

Defendants and Respondents.

On Review of the Published Decision of the Court of Appeal, First District, Division One, Wheatherford v. City of San Rafael (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

APPLICATION OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF RESPONDENTS CITY OF SAN RAFAEL AND COUNTY OF MARIN

THOMAS B. BROWN, State Bar No. 104254
MATTHEW D. VISICK, State Bar No. 258106
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, California 94612
Telephone: 510.273.8780
Facsimile: 510.839.9104
Attorneys on behalf of League of California Cities, California State Association of Counties, and California Special Districts Association

TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520(f) of the California Rules of Court, the League of California Cities (the "League"), the California State Association of Counties ("CSAC"), and the California Special Districts Association ("CSDA") (collectively, "*Amici*") respectfully apply for permission to file the accompanying brief *amicus curiae* in support of Respondents City of San Rafael and County of Marin. The brief has been prepared and is submitted concurrently with this application.

INTEREST OF *AMICI*

The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California

and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSDA is a California non-profit corporation consisting of in excess of 1,000 special district members throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including water supply, treatment and distribution; sewage collection and treatment; fire suppression and emergency medical services; recreation and parks; security and police protection; solid waste collection, transfer, recycling and disposal; library; cemetery; mosquito and vector control; road construction and maintenance; pest control and animal control services; and harbor and port services. CSDA monitors litigation of concern to its members and identifies those cases that are of statewide significance. CSDA has identified this case as being of such significance.

AMICI ARE FAMILIAR WITH THE ISSUES IN THIS CASE

Amici and its counsel are familiar with the issues in this case, have examined the briefs on file, and do not seek to duplicate that briefing. As statewide organizations with considerable experience in this field, *Amici* believe they can provide important perspective on the issue before the Court. Counsel for *Amici* has represented public agencies in a broad range

of cases in which plaintiffs asserted taxpayer standing under Code of Civil Procedure section 526a. *Amici* confirm, pursuant to California Rule of Court 8.520(f)(4), that no one and no party other than *Amici* and their counsel of record made any contribution of any kind to assist in the preparation of this brief or made any monetary contribution to fund the preparation of this brief.

POINTS TO BE ARGUED BY *AMICI*

If permission to file the accompanying brief is granted, *Amici* will address the following issue:

> May a plaintiff who has neither been assessed a tax by, nor paid a tax to a local agency, claim standing to challenge that local agency's expenditure of tax proceeds under Code of Civil Procedure section 526a?

Amici will urge the Court to affirm the decision of the Marin County Superior Court and the Court of Appeal.

Accordingly, the League, CSAC, and CSDA respectfully request this Court to grant this application to file the accompanying brief *amicus curiae*.

Dated: May 21, 2015

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

Thomas B. Brown
Matthew D. Visick
Attorneys on Behalf of
League of California Cities, California State Association of Counties, and California Special Districts Association

Case No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff and Appellant/Petitioner,

v.

CITY OF SAN RAFAEL, et al.,

Defendants and Respondents.

On Review of the Published Decision of the Court of Appeal, First District, Division One, Wheatherford v. City of San Rafael (May 22, 2014) 226 Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California, County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

AMICUS CURIAE BRIEF ON BEHALF OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

THOMAS B. BROWN, State Bar No. 104254
MATTHEW D. VISICK, State Bar No. 258106
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, California 94612
Telephone: 510.273.8780
Facsimile: 510.839.9104
Attorneys on behalf of League of California Cities, California State Association of Counties, and California Special Districts Association

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Other Authorities

INTRODUCTION

Amici Curiae League of California Cities (the "League"), California State Association of Counties ("CSAC"), and California Special Districts Association ("CSDA") (collectively, "*Amici*") respectfully submit this brief in support of the arguments advanced by the City of San Rafael (the "City") and the County of Marin (the "County"). We urge this Court to uphold the Legislature's intent in enacting Code of Civil Procedure section 526a ("Section 526a"). We also write to emphasize the importance and value of maintaining the requirement that a plaintiff asserting standing to sue a local public agency under Section 526a has paid, or been assessed to pay, a tax to that agency. Furthermore, we write to emphasize the significant negative effect that a contrary rule would have for local agencies and the judiciary.

POINT TO BE ARGUED BY AMICI

> May a plaintiff who has neither been assessed a tax by, nor paid a tax to a local agency, claim standing to challenge that local agency's expenditure of tax proceeds under Code of Civil Procedure section 526a?

STATEMENT OF FACTS

Amici adopt the statement of facts provided in the City's Answer Brief.

ARGUMENT

A plaintiff may assert standing under Section 526a *only if* he or she has paid, or been assessed, a tax. As the courts have consistently recognized for twenty years, any other result would be inconsistent with the clear text of Section 526a. Petitioner seeks to disrupt this settled precedent on the

basis that requiring a plaintiff to be a taxpayer contravenes the legislative intent behind Section 526a and unfairly discriminates on the basis of wealth. However, Petitioner fails to address the actual legislative history of the statute, which shows that the Legislature intended Section 526a to limit the range of plaintiffs who could assert taxpayer standing. Moreover, to read the taxpayer requirement out of the statute would effectively do away with the need to establish standing in *every* action against a public entity. That extreme result was clearly not what the Legislature contemplated when it enacted Section 526a, and it would seriously threaten the ability of local agencies and the courts to meet their existing obligations to the public. Finally, as explained below, Petitioner's argument that requiring plaintiffs to be taxpayers precludes all but the wealthy from asserting standing under Section 526a is simply without merit.

I. THE PLAIN LANGUAGE OF SECTION 526A LIMITS STANDING TO A PLAINTIFF WHO "IS ASSESSED FOR . . . OR . . . HAS PAID, A TAX."

As Appellant recognizes in her Opening Brief, the Court's task when interpreting a statute is to give effect to the intent of the Legislature, and the first points of reference for the Court when establishing that intent are the words that the Legislature adopted. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) As Appellant also recognizes, when the meaning of those words is plain, the Court must look no further in gauging the Legislature's

intended meaning. (*Ceja v. Rudolph & Sletten* (2013) 56 Cal.4th 1113, 1119 ("*Ceja*").)

Turning to Section 526a, the relevant portions of the statute state that "[a]n action . . . may be maintained . . . either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein."[1] The language of the statute is clear. To establish standing, one must either be assessed and liable to pay a tax, or have paid a tax, within the jurisdiction within one year of bringing her claim.

Given the plain language of the statute, and the fact that Petitioner has neither paid, nor been assessed to pay, a tax to the City or the County,

---

[1] The full text of Section 526a provides:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.
>
> An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

Petitioner does not fall within the category of plaintiffs to whom the Legislature intended to provide standing through Section 526a. (*Ceja*, *supra*, 56 Cal.4th at 1119.)

II. FOR TWENTY YEARS, EVERY COURT THAT HAS CONSIDERED THE QUESTION HAS FOUND THAT A PLAINTIFF MUST BE ASSESSED FOR OR PAY A TAX TO CLAIM STANDING UNDER SECTION 526A.

Despite the clear wording of the statute, would-be plaintiffs have repeatedly claimed standing under Section 526a—as Petitioner attempts to do here—despite the fact that they were not themselves legally liable to pay a tax or had not themselves paid a tax. (*Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035 ("*Torres*") (sales tax is paid by the retailer not the consumer); *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865 ("*Reynolds*") (same); *Cornelius v. Los Angeles County MTA* (1996) 49 Cal.App.4th 1761 (*"Cornelius"*) (sales and gas taxes are paid by the retailer, not the consumer).) Indeed, Petitioner is not the first to argue that the courts should ignore the taxpayer requirement because it would further the statute's remedial purpose. (*Reynolds*, *supra*, 223 Cal.App.4th at 872.) However, while the courts have read Section 526a broadly, they have always held firm on the requirement that a plaintiff actually be the person or entity that paid the tax at issue. (*Torres*, *supra*, 13 Cal.App.4th at 1047; *Reynolds*, *supra*, 223 Cal.App.4th at 872-73; *Cornelius*, *supra*, 49 Cal.App.4th at 1777-78.)

Under this unbroken line of decisions, local agencies throughout the state have known that any plaintiff challenging their policies would have some "skin in the game" (i.e., they would either have had the policy applied to them, or their tax dollars would have been used to fund the agency who adopted the policy). As the court in *Torres* correctly concluded after surveying the cases that applied Section 526a liberally, "[n]onetheless, a plaintiff must establish he or she is a taxpayer to invoke standing under Section 526a or the case law." (*Torres*, *supra*, 13 Cal.App.4th at 1047; see *Reynolds*, *supra*, 223 Cal.App.4th at 872-73 (requiring taxpayer status despite court's conclusion that complaint fell within government oversight purpose of Section 526a).)[2]

---

[2] Appellant makes much of the Supreme Court's decision in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, and suggests that it calls the holdings in *Torres*, *Cornelius*, and *Reynolds* into doubt. However, the passages from *Tobe* on which Appellant relies are not authority for the proposition that Section 526a provides standing to non-taxpayers. The context for these statements was a discussion of whether the plaintiffs had mounted an as-applied challenge (as the Court of Appeal had understood), or whether they had asserted a facial claim (as the plaintiffs argued in their briefs). (9 Cal.4th at 1083-86.) The Court concluded, without *any* substantive discussion, that the plaintiffs were "taxpayers" with standing under Section 526a, and that it need not consider whether they had a beneficial interest required to bring a writ of mandate. (*Id.*, at 1086.) The Court never considered what kind of tax was necessary to qualify as a "taxpayer," nor did it explain the type of tax the plaintiffs paid. It is well-established that cases are not authority for propositions they do not actually consider. (*Environmental Charter High School v. Centinela Valley Union High School* (2004) 122 Cal.App.4th 139, 150; *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.)

Petitioner attempts to ignore these decisions by arguing that they wrongly looked to whether the plaintiffs paid the taxes at issue "as a matter of law and technical niceties." (Petitioner's Opening Brief, at 38.) She claims that she is a "taxpayer" in the commonly-understood sense of the word, and argues that "the Court of Appeal and this Court have repeatedly strayed beyond the literal language of Section 526a to further its remedial purpose." (Petitioner's Opening Brief, at 38-39 (emphasis in original).) However, Petitioner fails to acknowledge that Section 526a does not confer standing on "taxpayers" generally; it specifically limits standing to one "who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax" in the jurisdiction he or she seeks to sue.[3] (Section 526a.) Moreover, to accept Petitioner's construction of Section 526a would do far more than stray beyond the literal language of the statute, as Petitioner suggests. To interpret Section 526a to provide standing to anyone who pays money to a merchant some portion of which is eventually used to pay a tax would effectively remove all standing requirements to sue a local agency—a drastic result the Legislature certainly

[3] Interestingly, Petitioner would not meet her own definition of "taxpayer" as it too requires payment of, or liability for, a tax. (Petitioner's Opening Brief, at 38-39.). Petitioner's argument that she is the true taxpayer because the retailer is merely an agent of the Board of Equalization, has already been considered and rejected by the courts. (*Santa Barbara County Coalition Against Auto. Subsidies v. Santa Barbara County Assoc. of Governments* (2008) 167 Cal.App.4th 1229, 1236 ("*Santa Barbara*").)

never intended. (See *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171, citing *Whitman v. American Trucking Assns.* (2001) 531 U.S. 457, 468 ("The legislature 'does not, one might say, hide elephants in mouseholes.'")

III. READING THE TAXPAYER REQUIREMENT OUT OF SECTION 526A WOULD ELIMINATE ALL STANDING REQUIREMENTS TO SUE A LOCAL AGENCY, A RESULT THE LEGISLATURE NEVER INTENDED.

While Petitioner suggests that the legislative intent behind Section 526a is furthered by interpreting it to provide standing to every member of the public, the reality is that the Legislature has always taken a far more restrictive view.[4]

Standing is "'a jurisdictional issue that . . . must be established in some appropriate manner.'" (*Chiatello v. City and County of San* Francisco (2010) 189 Cal.App.4th 472, 480 ("*Chiatello*").) A plaintiff has standing to sue "if his stake in the resolution of the complaint assumes the proportions necessary to ensure that he will vigorously present his case." (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 160 ("*Harman*").) As a general rule, a party can only demonstrate such an interest by showing that he or she is "beneficially interested in the controversy, that is, he or she

[4] There is no need to address legislative history or canons of statutory interpretation in this case because the legislative intent behind Section 526a is clear from the language of the statute. (*Ceja*, *supra*, 56 Cal.4th at 1119.) However, it is worthwhile to note that Petitioner's radical interpretation of Section 526a finds no support in either the legislative history or canons of statutory interpretation.

must have 'some special interest to be served or some particular right to be preserved and protected over and above the interest held in common with the public at large.'" (*Chiatello*, *supra*, 189 Cal.App.4th at 480.)

Before the enactment of Section 526a, this Court applied a more liberal standing doctrine to taxpayers based on the conclusion that a taxpayer has a sufficient interest in the expenditure of her tax dollars to have standing to sue to prevent an illegal action that would affect her burden of taxation. (*Winn v. Shaw* (1891) 87 Cal. 631, 636 ("*Winn*") ("we are of the opinion that a tax-payer of a county has such an interest in the proper application of funds belonging to the county that he may maintain an action to prevent their withdrawal from the treasury in payment or satisfaction of demands that have no validity against the county").) For example, in *Gibson v. Board of Supervisors of Trinity County*, this Court found that a county taxpayer had standing to sue to compel an accurate determination of the results of an election to issue bonds for bridge construction. ((1889) 80 Cal. 359, 366 ("*Gibson*").) Similarly, in *Winn v. Shaw*, this Court found a county taxpayer had standing to sue a county auditor to prevent him from drawing a warrant to pay for land where the county had not provided the required legal notice of the purchase, and the contract to purchase the land was therefore void. (*Winn*, *supra*, 87 Cal. 631 at 636-37.)

But in 1909, the Legislature adopted Section 526a to restrict the plaintiffs who could assert taxpayer standing. (*Thomas v. Joplin* (1910) 14

Cal.App. 662, 664-65 ("*Thomas*").) Before the adoption of Section 526a, any taxpayer could bring an action to restrict an illegal payment of public funds. (*Id*; *Winn*, *supra*, 87 Cal. at 636.) Section 526a limited the range of potential taxpayer plaintiffs who have standing to sue "to citizens who are residents, or corporations, liable to pay a tax within the [jurisdiction], or who have paid such a tax within one year prior to the bringing of the action." (*Thomas*, *supra*, 14 Cal.App. at 664-65.)

Given that the Legislature adopted Section 526a to *narrow* the range of plaintiffs who could establish standing based upon their status as taxpayers, there is no credible argument that the Legislature intended Section 526a to allow limitless standing. Even the judicially-created taxpayer standing doctrine that preceded Section 526a (the doctrine the Legislature sought to narrow) required that the plaintiff be a taxpayer, and relied upon the plaintiff's interest as a taxpayer to ensure that he or she would have a significant personal stake in the litigation. (*Winn*, *supra*, 87 Cal. at 636; *Gibson*, *supra*, 80 Cal. at 365.) There is no support in the language of the statute or its legislative history for the proposition that the Legislature meant to do away with standing requirements altogether when plaintiffs brought suit against governmental entities. Rather, as this Court has explained, the Legislature intended that Section 526a would "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the [individualized

injury] standing requirement." (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267 ("*Blair*").) That intent is furthered by interpreting Section 526a to require a plaintiff to be a taxpayer whose tax dollars fund the governmental agency at issue.[5]

Well-established canons of statutory construction also counsel against such a broad interpretation of standing under Section 526a. First, those canons forbid interpretation of a statute in a manner that would create an absurd result, such as interpreting a statute that allows limited standing in a manner that would provide unlimited standing. (*Comm'n on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 290 (statutes must not be given a meaning that would result in absurd consequences the Legislature did not intend).) Second, they also forbid interpretation in a manner that would impliedly repeal another legislative enactment, such as the requirement under Code of Civil Procedure section 1086 that a petitioner have a beneficial interest when bringing a petition for writ of mandate. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476-77 (courts must construe statutes in a manner that harmonizes them, and thus does not imply repeal of one by the other).) And finally, the canons direct

---

[5] The Legislature has not amended Section 526a to abrogate the holdings in *Torres*, *Cornelius*, *Santa Barbara*, or *Reynolds*. If these cases were out-of-step with the Legislature's intent in adopting Section 526a, the Legislature easily could have amended the statute at some point in the past twenty years to reflect its actual intention.

that statutes should be interpreted in a manner that does not render any word or provision as surplusage, such as the terms "assessed for" and "has paid" which are applied to the word "tax" in Section 526a. (*Weber v. County of Santa Barbara* (1940) 15 Cal.2d 82, 86 (statutory language shall not be treated as surplusage).)

In short, there is no support—in the language of the statute, in the legislative history, or in canons of statutory interpretation—for the argument that allowing limitless standing under Section 526a furthers the Legislature's intent.

IV. ELIMINATING STANDING REQUIREMENTS TO SUE A LOCAL AGENCY WOULD HAVE SIGNIFICANT AND DELETERIOUS PUBLIC POLICY IMPLICATIONS AND WOULD FURTHER STRAIN THE FINANCES OF LOCAL AGENCIES AND THE COURTS.

The deleterious public policy implications of a rule that eliminated standing requirements when suing public agencies would be profound. In the context of litigation against local agencies, it is particularly important that a plaintiff have a sufficient interest to assure that she will vigorously present her claims. (*Harman, supra*, 7 Cal.3d at 160.) Local agencies regulate activities that touch upon our most fundamental rights and responsibilities. These include freedom of speech, elections, land use, public safety, child welfare, eminent domain, and many others. Were the courts to allow any plaintiff, regardless of her stake in a particular issue, to

challenge the way any local agency regulates in these areas, the courts could not rely on the normally-applicable standing rules to ensure the plaintiff was fit to present her case. (See *Chiatello*, *supra*, 189 Cal.App.4th at 481.) The implications of less than vigorously presented litigation on these fundamental issues could be severe, with precedential implications for future litigants who have a true vested interest in their claims. (*Price v. Sixth Agr. Assn.* (1927) 201 Cal. 502, 514-15 (finding privity between taxpayers in separate taxpayer suits); *Smith v. City of Los Angles* (1961) 190 Cal.App.2d 112, 128 (same).)

Further, this Court has been careful to avoid creating such open-ended standing to sue public entities in the past. Sixty years ago, this Court allowed an exception to the "beneficial interest" showing normally required to bring a petition for writ of mandate to allow the Board of Social Welfare to compel Los Angeles County to issue warrants to elderly individuals who were unable to bring the petition on their own behalf, despite the fact that the Board was not itself beneficially interested in the litigation. (*Bd. of Social Welfare v. Los Angeles County* (1945) 27 Cal.2d 98, 100.) This exception, which has become known as "public interest standing," has been applied to other mandamus petitioners where exceptional circumstances outweighed the rationale behind the beneficial interest requirement. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165-66 (upholding application of the public interest exception to

mandamus petition that sought compliance with the California Environmental Quality Act because broad and long term environmental effects were involved).) However, this Court has been careful to explain that "[n]o party . . . may proceed with a mandamus petition as a matter of right under the public interest exception." (*Id.*, at 170 n.5.) Rather, courts must evaluate whether it is appropriate to allow an exception to the normal standing rules on a case-by-case basis depending on the policy considerations involved. (*Id.*; *McDonald v. Stockton Metropolitan Transit Dist.* (1973) 36 Cal.App.3d 436, 440.)

The unlimited standing urged by Petitioner stands in stark contrast to the Courts' deliberate and exceptional application of the "public interest standing" doctrine. Under Petitioner's construction of Section 526a, there would be no judicial weighing of whether compelling policy interests trump the requirement that the plaintiff be personally interested in her claims (whether as a party who sustained actual injury or as a taxpayer interested in the expenditure of her tax dollars). Any case against a public entity, regardless of how little public benefit it might provide, could move forward without any assurance that the plaintiff would vigorously and fully present the issues to the court. The Court's carefully applied "public interest standing" exception would become the rule applicable in every case.

Moreover, the potential for lawsuits initiated by plaintiffs without any actual stake in their claims threatens not only the orderly development

of the law, but also the public fisc. While it is difficult to anticipate the number of additional lawsuits that would follow if there were no standing requirements to sue public agencies, there is good reason to believe that it would be significant. (*Commonwealth of Massachusetts v. Mellon (Frothingham)* (1923) 262 U.S. 447 (considering the volume of litigation that would follow if taxpayers could litigate every expenditure of public funds); see *Taxpayers' Suits: A Survey and Summary* (1960) Yale L. J. 895, 904-905, n.47 (discussing private motivations to bring taxpayer suits).) As the courts have recognized, taxpayer actions "could be used for improper reasons such as 'challeng[ing] political decisions' or 'constant harassment of officials' leading to 'vexatious litigation' that 'may plague the courts when state taxpayers' suits are brought before them.'" (*Chiatello*, *supra*, 189 Cal.App.4th at 496.) The additional burden that such litigation would place on local agencies would have profound administrative and financial implications. Local agencies would be forced to divert scarce public resources from core functions to defend litigation brought by entities who would not qualify under well-established standing rules. Similarly, the Courts would have to dedicate scarce resources to the adjudication of disputes involving litigants with no personal stake in the litigation.

Far from advancing the public interest—as Petitioner suggests—an interpretation of Section 526a that would grant standing to anyone would

threaten the ability of local agencies and the courts to apply their already strained resources to current public needs.

V. PETITIONER'S CLAIM THAT A TAXPAYER REQUIREMENT ALLOWS ONLY THE WEALTHY TO SUE IS A RED HERRING.

Not only is there no evidence of legislative intent to eliminate standing requirements when suing local agencies, it is simply untrue that maintaining the taxpayer requirement makes Section 526a standing unavailable to all but the wealthy. Petitioner argues that the requirement that a plaintiff be a taxpayer "limits [the] reach [of Section 526a] to citizens who own real property or a business and are generally among the wealthiest Californians." (Petitioner's Opening Brief, at 62.) However, an examination of taxes paid by average citizens under the City's Municipal Code and the County Code illustrates how standing under Section 526a is accessible to a broad range of potential plaintiffs to allow them to challenge allegedly unlawful expenditures of their tax dollars, just as the Legislature intended.

In addition to property and sales taxes, both the City and the County levy broadly applicable business license taxes that apply to individuals from many walks of life. For example, the City's business license tax applies to "professions, trades, occupations, operation and/or ownership of an apartment, hotel, rooming house, or other living accommodations, and all other callings, whether or not carried on for profit and livelihood." (Motion for Judicial Notice in Support of Amicus Curiae Brief on Behalf of League

of California Cities, California State Association of Counties, and California Special Districts Association ("Motion for Judicial Notice"), at Exh. A, §§ 10.04.105; 10.04.010(E).) The entities subject to the tax are not limited to the retail businesses mentioned by Petitioner. The business license tax also applies to landscapers, taxi cab operators, barbers/hairstylists, auto mechanics, solicitors, contractors, bookkeepers, and dry cleaners, among others. (Motion for Judicial Notice, Exh. A, § 10.04.010(E).) The County's business license tax is just as broad. (Motion for Judicial Notice, Exh. B, §§ 5.54.020 (business tax imposed), 5.54.010 ("business" defined), 5.54.120 (tax schedule by business type).) These are taxes that average working citizens engaged in commerce would pay, including those who rent their homes.

The City and County also impose a transient occupancy tax on hotel patrons. Unlike the sales and gas taxes that Petitioner attempts to rely upon to establish standing, the transient occupancy tax is actually assessed on the patron (the person staying in the hotel) and not the business who operates the hotel. (Motion for Judicial Notice, Exh. C, §§ 3.20.030, 3.20.130; Motion for Judicial Notice, Exh. D, §§ 3.05.030, 3.05.130.) Like the business license tax, the transient occupancy tax is not limited to those who own property or own a retail business.

As these business license taxes and transient occupancy taxes illustrate, local agency taxes reach a broad range of taxpayers. Section 526a

provides these taxpayers standing to sue if they believe their tax dollars are being used unlawfully. As such, Section 526a furthers the legislative intent to "'enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the [individualized injury] standing requirement.'" (*Blair*, *supra*, 5 Cal.3d at 267-68.) However, as discussed above, what Section 526a does not allow, and was never intended to allow, is a blanket standing for *any* potential plaintiff to challenge *any* policy of *any* local agency without the need to show that his or her tax dollars funded that agency.

At bottom, Petitioner's argument is one of policy. While there is no legal argument for extending standing under Section 526a to non-taxpayers—neither the language of Section 526a nor its legislative history nor the policy behind the statute support such an interpretation—Petitioner invites the Court to "stray beyond" the language of the statute to interpret it as providing standing to everyone. (Petitioner's Opening Brief, at 39.) Petitioner misunderstands the role of this Court. (*California Teachers Assn. v. Governing Bd. of Rialto Unified Sch. Dist.* (1997) 14 Cal.4th 627, 633 ("This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed.").) If Petitioner wishes to amend Section 526a to remove all standing requirements to sue public agencies, and allow for all of the deleterious and costly public policy implications that would follow, she must pursue that end through legislative

change rather than judicial fiat. (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53 ("the choice among competing policy considerations in enacting laws is a legislative function").)

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to affirm the decision of the Trial Court and Court of Appeal.

Dated: May 21, 2015

BURKE, WILLIAMS & SORENSEN, LLP

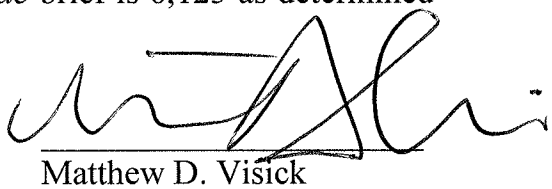
By: _____

Thomas B. Brown
Matthew D. Visick
Attorneys on Behalf of
League of California Cities, California State Association of Counties, and California Special Districts Association

CERTIFICATE OF WORD COUNT
(California Rules of Court, Rule 8.504(d))

In compliance with California Rules of Court, Rule 8.504(d), I certify that the number of words in this *amicus curiae* brief is 6,123 as determined by Microsoft Word software.

Dated: May 21, 2015



Matthew D. Visick

OAK #4837-6718-1347 v9

PROOF OF SERVICE

I, Teresa L. Beardsley, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On May 21, 2015, I served a copy of the within document(s):

APPLICATION OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF RESPONDENTS CITY OF SAN RAFAEL AND COUNTY OF MARIN;

AMICUS CURIAE BRIEF ON BEHALF OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Oakland, California addressed as set forth below.

☒ by placing the document(s) listed above in a sealed GSO envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a GSO agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Mark Todd Clausen
Attorney at Law
769 Carr Avenue
Santa Rosa, CA 95404-2822
Attorneys for Plaintiff and Appellant Cherrity Weatherford

Richard William Osman
Thomas F. Bertrand
Bertran Fox & Elliot
2749 Hyde Street
San Francisco, CA 94109-1222
Attorneys for Defendant and Respondent City of San Rafael

Renee Giacomini Brewer
Valorie R. Boughey
Office of the County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903-4257
Attorneys for Defendant and Respondent County of Marin

Superior Court of California
County of Marin
Attn: Hon. Roy Chernus
3501 Civic Center Drive
San Rafael, California 94903

Clerk
Court of Appeal,
First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102-7421

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 in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 21, 2015, at Oakland, California.

Teresa L Beardsley
Teresa L. Beardsley