NO.: F074986

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIFTH APPELLATE DISTRICT

WILLIAM E. DAVIS, an individual, and CITIZENS FOR CONSTITUTIONAL GOVERNMENT, a California unincorporated association,

Plaintiffs and Appellants,

v.

BOARD OF SUPERVISORS OF COUNTY OF MARIPOSA, et al.

Defendant and Respondent.

On Appeal From the Superior Court of California, County of Mariposa
County of Mariposa Case No. 10600
Judge: Hon. Gerald Sevier

AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANT AND RESPONDENT BOARD OF SUPERVISORS OF COUNTY OF MARIPOSA

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I. INTRODUCTION

Appellants request this Court to decide a matter that was neither timely filed in the Superior Court nor timely appealed to this Court, in contravention of the Validating Proceedings Statutes, and to convince this Court to create new law governing the imposition of assessments pursuant to Proposition 218 and various assessment statutes. *Amici* explain below why this Court should not allow Appellants to upend the law, which would undermine cities' and counties' ability to engage in sound, stable and legal fiscal practices.

II. DISCUSSION

A. This Court Should Protect the Public's Rights Under the Validating Proceeding Statutes by Rejecting this Untimely Suit and Appeal.

Defendant and Respondent Board of Supervisors of Mariposa County ("County") indisputably imposed assessments pursuant to the Fire Suppression Assessments Act (Gov. Code §§ 50078 – 50078.20). Appellants contend the County's action violated Proposition 218.

Government Code section 50078.17 provides that the Validating Proceeding Statutes, sections 860 – 870.5 of the Code of Civil Procedure, apply to "any judicial action" challenging the assessments.[1]

"[A] central theme in the validating procedures is speedy

[1] A validation action is an *in rem* proceeding which can be initiated either by a public agency or by an interested person. (Code Civ. Proc. §§ 860, 863.) Through the validation proceeding, the public agency and/or interested persons can conclusively determine, in "'a single dispositive final judgment,'" the legality of certain governmental actions. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842 (quoting *Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197-98).)

determination of the public agency's action." (*Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1497; see also *Friedland*, 62 Cal.App.4th at 843.)

Here, that theme is reflected in (1) Code of Civil Procedure sections 860, 863, and 869, which require a suit to be filed within 60 days or for any challenge to be forever barred, and (2) section 870(b), which provides for a 30-day appeal period.

It is beyond dispute that the suit was not initiated within 60 days and that the appeal was not filed within 30 days. Thus, Appellants may not proceed with their challenge.

For the Court to countenance Appellants' untimely filing of this suit and appeal would not only patently contradict statutory and case law authority, it would undermine cities' and counties' ability to properly and stably manage their finances (a principal purpose of the Validating Proceedings Statutes), as well as the subject property owners' associated rights. Indeed, the majority of the assessed property owners twice voted in favor of the assessments, by weighted voting under Proposition 218 (or the assessments could not have been imposed). Yet a small group of challengers seeks to undo the property owners' vote and to invalidate the Board of Supervisors' decision based on an untimely suit and appeal, for which no court has recognized an exception or an excuse.

This Court should uphold the 60-day statute of repose and 30-day appeal period of the Validating Proceedings Statutes.

B. Longstanding Law, Including the Fire Suppression Assessments Act, Has Authorized the Imposition of Assessments to Pay for Public Improvements and Services that Specially Benefit Property.

Since the founding of the State of California, local governments have assessed property owners for the provision of public improvements and services that specially benefit their properties. (See, e.g., *Burnett v.*

City of Sacramento (1859) 12 Cal. 76 (rejecting challenge to assessments imposed for street improvements).) The long-standing rationale: a local government may charge property owners for public improvements and services that increase the beneficiaries' property values, and which provide benefits over and above those provided to the general public. As the Supreme Court explained:

> A special assessment is levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement. [Citation.] The rationale of special assessment[s] is that the assessed property has received a special benefit over and above that received by the general public.

(*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 442 (quoting *Knox v. City of Orland* (1992) 4 Cal.4th 132; internal quotation marks omitted).)[2]

The State Legislature has adopted scores of statutes that authorize local agencies to impose assessments, including in (1) principal acts creating, and other acts authorizing g and governing, special districts,[3] and

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[2] Local governments impose assessments pursuant to their "general power of taxation." (*City Council v. South* (1983) 146 Cal.App.3d 320, 334-35). However, an assessment is not itself a tax. (*Ibid.*; see also *Silicon Valley Taxpayers*, 44 Cal.4th at 442.) Rather, an assessment pays for public improvements and services that increase the property values of those specially benefitted, over and above the benefit provided to the general public. (*Silicon Valley Taxpayers*, 44 Cal.4th at 442; see also *Spring Street Co. v. City of Los Angeles* (1915) 170 Cal. 24, 29 ("a special assessment is not, in the constitutional sense, a tax at all").)

[3] See, e.g., *Solvang Mun. Improvement Dist.*, 112 Cal.App.3d at 548, fn. 1 (referring to the district's special legislation); Wat. Code, App. § 120-455 (Stanislaus County Flood Control Enabling Act); Wat. Code, App. § 83-188 (Shasta County Water Agency Act); Wat. Code, App. § 136-57 (Antelope Valley Storm Water Conservation and Flood Control District); Wat. Code, App. § 114-379 (Tahoe-Truckee Sanitation Agency); Wat. Code, App. § 127-703 (Colusa Basin Drainage District); Wat. Code, App.

(2) generally-applicable statutes that date back more than one hundred years which authorize assessments for categories of improvements and services. As to the latter, the generally-applicable statutes include the following:

- The Municipal Improvement Act of 1911 (Sts. & Hy. Code §§ 5000 – 6794), which authorizes assessments for public right-of-way, flood protection, water and sewer system, and other public improvements and services. (See, e.g., Sts. & Hy. Code § 5101.)
- The Municipal Improvement Act of 1913 (Sts. & Hy. Code §§ 10000 – 10706), which also authorizes assessments for public water systems, gas systems, lighting, transportation facilities, and other public improvements and services. (See, e.g., Sts. & Hy. Code §§ 10100, 10100.5.)
- Landscaping and Lighting Act of 1972 (Sts. & Hy. Code §§ 22500 – 22679), which authorizes assessments for landscaping, lighting and park improvements, among other things. (See, e.g., Sts. & Hy. Code § 22525.)
- Benefit Assessment Act of 1982, Gov. Code §§ 54703 – 54720), which authorizes assessments for flood control and drainage improvements, among other things. (See, e.g., Gov. Code § 54710.)
- Fire Suppression Assessments Act (Gov. Code §§ 50078 – 50078.20), the statute at issue in this case, which authorizes assessments for fire protection services, and was utilized by the County of Mariposa with respect to the challenged assessments. (See, e.g., Gov. Code § 50078.)[4]

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§ 97-46 (Mojave Water Agency Law); Wat. Code, App. § 21-6 (Knight's Landing Ridge Drainage District); Wat. Code, App. § 126-701 (Placer County Flood Control and Water Conservation District); Wat. Code § 47100 (California Water Storage District Law); Wat. Code, App. § 31-12 (Drainage District Improvement Act of 1919).

[4] In addition, the Community Services District Law (Gov. Code §§ 61000 – 61250) generally authorizes community service districts to impose assessments for operation and maintenance costs. (Gov. Code § 61122.)

C. Proposition 218 Tightened the Definition of Special Benefits and Revised the Standard of Review, But It Did Not Repeal or Alter the Underlying Authority to Impose Assessments.

As the Supreme Court discussed in *Silicon Valley Taxpayers*, Proposition 218 tightened the definition of special benefits and modified the standard of review, without repealing or altering the underlying authority to impose assessments. (*Silicon Valley Taxpayers*, 44 Cal.4th at 450-58; *Citizens Ass'n of Sunset Beach v. Orange County Local Agency Formation Commission* (2013) 209 Cal.App.4th 1182, 1192 (Prop. 218 is to be harmonized with earlier statutes if possible).)

As to the definition of "special assessment," Proposition 218, adopted in 1996, "tighten[ed] the definition of the two key findings necessary to support an assessment: special benefit and proportionality." (*Silicon Valley Taxpayers*, 44 Cal.4th at 443.) As the Court summarized the textual modifications to the definitions:

> An assessment can be imposed *only* for a "special benefit" conferred on a particular property. (Art. XIIID, §§ 2, subd. (b), 4, subd. (a).) A special benefit is "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." (Art. XIIID, § 2, subd. (i).) The definition specifically provides that "[g]eneral enhancement of property value does not constitute 'special benefit.'" (*Ibid.*) Further, an assessment on any given parcel must be in proportion to the special benefit conferred on that parcel: "No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel." (Art. XIIID, § 4, subd. (a).) "The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided." (*Ibid.*) Because only special benefits are assessable, and

> public improvements often provide both general benefits to the community and special benefits to a particular property, the assessing agency must first "separate the general benefits from the special benefits conferred on a parcel" and impose the assessment only for the special benefits. (Art. XIIID, § 4, subd. (a).)

(*Id.* at 443.)

Consistent with its description of Proposition 218 as tightening the definitions (rather than imposing an entirely new assessment construct), the Supreme Court approvingly cited its pre-Proposition 218 decision in *Knox v. City of Orland* to describe the essential nature of a special assessment:

> We explained the nature of a special assessment in *Knox v. City of Orland* (1992) 4 Cal.4th 132, 14 Cal.Rptr.2d 159, 841 P.2d 144, (*Knox*), a pre-Proposition 218 case. A special assessment is a " ' " 'compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein....' " [Citation.]' [Citation.] In this regard, a special assessment is 'levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.' [Citation.] 'The rationale of special assessment[s] is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public. [Citation.]' [Citation.].

(*Silicon Valley Taxpayers*, 44 Cal.4th at 441-42.)

Thus, while Proposition 218 no doubt made important modifications to the law governing special assessments, it does not represent a fundamental change in the nature of what constitutes a lawful assessment (as Appellants incorrectly assert, as discussed below).

Proposition 218 also changed the standard of review for challenges

to special assessments. Historically, the courts deferred to local governments' legislative decisions that the assessments were justified based on the legislative body's findings that the improvements and services provided special and proportional benefits to the assessed properties. (*Silicon Valley Taxpayers*, 44 Cal.4th at 443-44 (discussing the standard of review the Court had announced in *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676).) The "courts presumed an assessment was valid, and a plaintiff challenging it had to show that the record before the legislative body 'clearly' did not support the underlying determinations of benefit and proportionality." (*Id.* at 444.)

Proposition 218 shifted the burden to the local government: "In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." (Cal. Const., art. XIIID, § 4(f); see also *Silicon Valley Taxpayers*, 44 Cal.4th at 444.) The standard of review adopted by Proposition 218 requires the court to exercise its independent judgment as to whether the local government satisfied the burden set forth in section 4(f). *Silicon Valley Taxpayers*, 44 Cal.4th at 450.) However, independent judgment is not *de novo* review. It begins with the assumption the legislation under review is valid. As our Supreme Court explained in *Fukuda v. City of Angeles* (1999) 20 Cal.4th 805, 817: "a trial court must afford a strong presumption of correctness concerning the administrative findings" and must affirm unless convinced "the administrative findings are contrary to the weight of the evidence".

Thus, while Proposition 218 modified the requirements for justifying special assessments, it did not create a new construct as to what constitutes

a lawful assessment or alter the nature of independent judgment review of agency action.

D. Appellants Incorrectly Contend that, as a Matter of Law, Proposition 218 Prohibits (1) Agency-Wide Assessments for Fire Protection Services and (2) Agency Contributions of General Funds to Subsidize Special Benefits.

Amici acknowledge that Proposition 218 increased the burden on public agencies to justify special assessments, requiring that special assessments be imposed only for "particular and distinct benefit[s] over and above general benefits conferred on real property located in the district or to the public at large," requiring that assessments not "exceed[] the reasonable cost of the proportional special benefit conferred on that parcel," and imposing upon public agencies the burden of proving compliance with these standards. (Cal. Const., art XIIID, § 2(i), § 4(a), and § 4(f).) Thus, the County was tasked with proving that it satisfied these standards.

However, Appellants present fundamental, legal challenges to public agencies' authority (1) to impose special assessments and (2) to use discretionary, general funds to subsidize special benefits provided to property owners. Neither challenge survives scrutiny.

1. Proposition 218 Does Not Prohibit Agency-Wide Assessments.

Appellants contend that the subject assessments necessarily violate Proposition 218 because they are imposed countywide for fire protection services. The argument is misguided.

First, it is not factually accurate. The assessment excludes properties served by the Mariposa Public Utilities District and parcels not improved by structures, served by Cal. Fire. That all owners of properties in the County improved with structures are subject to assessment reflects that the County cannot recover more than the cost of serving any parcel owner to make up for a decision to assess fewer than all who benefit. (Cal. Const.,

art. XIIID, § 4(a) ("no assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefited conferred on that parcel").)

Nor is it a correct statement of law even if it had the facts right. Proposition 218 includes no language proscribing the imposition of assessments that span the entirety of the public agency's jurisdiction. Nor has any court suggested the existence of any such proscription. Indeed, in *Silicon Valley Taxpayers*, the problem with the countywide assessment district was not that it was *per se* prohibited, but that the Santa Clara County Open Space Authority had not assessed property owners only for peculiar and distinct benefits, over and above general benefits, in amounts that did not exceed the proportional special benefits conferred on parcels. (*Silicon Valley Taxpayers*, 44 Cal.4th at 452-57.) Similarly, in *Beutz v. County of Riverside*, the issue was not that all parcels in what is now the City of Wildomar were assessed, but that the engineer's report did not distinguish parcels based on proximity to parks to be maintained by the assessment. (*Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516, 1533-34, 1536-37.) In short, the proper scope of assessment is a mixed question of law and fact, not a question of law regarding whether countywide assessments may ever be imposed.

Indeed, in analyzing this mixed question of law and fact, the Supreme Court focused on the substantive standards, even favorably citing pre-Proposition 218 cases such as *City of San Diego v. Holodnak* (1984) 157 Cal.App.3d 759, in which the City of San Diego lawfully imposed assessments under the Fire Suppression Assessments Act to pay for fire stations. (*Silicon Valley Taxpayers*, 44 Cal.4th at 455; *City of San Diego v.*

Holodnak (1984) 157 Cal.App.3d 759, 763.)[5] Thus, Appellants make a misguided legal argument that the subject assessments are illegal because they will pay for countywide fire protection services for properties that are developed with structures.

Further support for the foregoing is found within the text of Proposition 218. First, consider section 6(b)(5) of article XIIID, which concerns property-related fees. It provides that "[n]o fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, **where the service is available to the public at large in substantially the same manner as it is to property owners**." (Cal. Const., art. XIIID, § 6(b)(5), emphasis added.) Appellants propose such a rule for assessments, excluding the limiting language emphasized here. No similar provision is included in the Proposition 218 provisions governing assessments, sections 4 and 5 of article XIIID, even in the limited form the framers of Proposition 218 considered appropriate for property-related fees. If the voters had intended

[5] Appellants note that Westlaw marks *City of San Diego v. Holodnak* with a red flag, and they suggest that the Court should thus not consider this precedent at all. But the red flag merely directs the reader to *Silicon Valley Taxpayers*, in which the Supreme Court positively described *City of San Diego v. Holodnak* as a case that "involved specific, identified improvements that directly benefited each assessed property and whose costs could be determined or estimated and then allocated to the properties assessed." (*Silicon Valley Taxpayers*, 44 Cal.4th at 455.) Moreover, the Court neither declared nor suggested that the assessments in *City of San Diego v. Holodnak* would not have satisfied Proposition 218.

Thus, *City of San Diego v. Holodnak* and other pre-Proposition 218 cases and statutes are part of the fabric of special assessment law, including of course the provisions of Proposition 218 that tightened the requirements. This Court should thus reject Appellants' suggestion that pre-Proposition 218 law has been abrogated and cannot not be considered as part of the context of the evolving assessment standards. (Cf. *Citizens Ass'n of Sunset Beach*, 209 Cal.App.4th at 1192 (citing Prop. 13-era cases to construe Prop. 218).)

to prohibit any and all assessments for fire protection services, that prohibition would have been included in sections 4 and 5 in broader terms than appear in article XIIID's section 6, subdivision (b)(5). But they did not. "Just as the silence of a dog trained to bark at intruders suggests the absence of intruders, this silence speaks loudly. It is indicative of a lack of voter intent" to preclude any assessments for fire protection services, which are authorized pursuant to a pre-Proposition 218 statute—Gov. Code § 50078. (See *Citizens Ass'n of Sunset Beach*, 209 Cal.App.4th at 1191 (absence of language in Proposition 218 requiring an election to approve the imposition of taxes within lands to be annexed by city "is indicative of a lack of voter intent to affect annexation law"); cf. *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 283 ("Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of existing law"; citation and internal quotation marks omitted); *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1085 ("We assume the electorate, when enacting Measure Y, was aware of preexisting related laws and intended to maintain a consistent body of rules that harmonizes and gives effect to both").)

Thus, sections 4 and 5 of Proposition 218 do not prohibit any and all assessments for fire protection services nor even the narrower set of assessments akin to the fees prohibited by article XIIID, section 6(b)(5), which fund services provided to property owners and the general public on equivalent terms. Instead, they prohibit assessments for fire protection services that do not provide special benefits to property, over and above general benefits — a standard comparable to that of article XIIID, section 6(b)(5). Accordingly, public agencies may continue to impose special benefits for fire protection services if they meet their burden to prove the

benefits are particular, distinct and proportional.[6]

Moreover, to accept Appellants' contention would be tantamount to ruling that Proposition 218 impliedly repealed the Fire Suppression Assessments Act. Since the 1980s, the Act has authorized local agencies to impose assessments "for the purpose of obtaining, furnishing, operating, and maintaining fire suppression equipment or apparatus or for the purpose of paying the salaries and benefits of firefighting personnel, or both, whether or not fire suppression services are actually used by or upon a parcel, improvement, or property." (West's Ann. Gov. Code § 50078.) Appellants contend, however, that the provision of fire protection services is necessarily a general benefit. The contention is contrary to the law.

The Fourth District Court of Appeal considered an analogous issue regarding whether Proposition 218 impliedly repealed a statute. At issue was Proposition 218's requirement that taxes may only be imposed if approved by the electorate. The City of Huntington Beach sought to annex Sunset Beach, an unincorporated community in Orange County. A group of Sunset Beach residents demanded that the Local Agency Formation

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[6] Appellants repeatedly assert that the subject assessments provided "enhanced" general benefits and thus violate Proposition 218. But Proposition 218 does not refer to "enhanced" general benefits, and neither do the courts. Proposition 218 and the courts refer to "special benefits" and "general benefits," and require the public agency to demonstrate that the assessments are imposed only for proportional special benefits. (See, e.g., Cal. Const., art. XIIID, §§ 2(b), 2(i), 4(a), 4(f); *Silicon Valley Taxpayers*, 44 Cal.4th at 452-57; *Dahms v. Downtown Pomona Property* (2009) 174 Cal.App.4th 708, 715-25; *Beutz*, 184 Cal.App.4th at 1530-37; *City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1222-25; *Golden Hill Neighborhood Assn, Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 436-39; *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1076-85.)

Thus, the issue at bar remains whether the County met its burden to establish that it satisfied the special benefits requirements, and this Court should decline Appellants' suggestion to rewrite Proposition 218.

Commission reject the annexation or condition it upon a favorable vote pursuant to Proposition 218 regarding the taxes to which the newly annexed residents would be subjected. (*Citizens Ass'n of Sunset Beach*, 209 Cal.App.4th at 1185-88.) Central to the challengers' contention was Proposition 218's requirement that taxes may not be imposed, extended, or increased absent such a vote. (*Id.* at 1189.)

But the Court held that City of Huntington Beach could annex Sunset Beach and impose pre-existing taxes in this new territory without providing its newly-taxed subjects the right to vote on the taxes. As the Court described the rule against implied repeal:

> There is … a rule of construction—well known prior to the passage of Proposition 218—that courts are required to try to harmonize constitutional language with that of existing statutes if possible. (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 174–78, 74 P.2d 252 [refusing to find implied repeal of 1918 statutory usury law by 1934 constitutional amendment]; *Metropolitan Water District v. Dorff* (1979) 98 Cal.App.3d 109, 114, 159 Cal.Rptr. 211 (*Dorff*).) Put another way, the implied repeal of statutes by later constitutional provisions is not favored. Accordingly, if it is possible to reconcile the language of Proposition 218 with the annexation statutes existing at the time of its passage, we must do so. (See *Dorff, supra,* 98 Cal.App.3d at p. 114, 159 Cal.Rptr. 211.)

(*Citizens Ass'n of Sunset Beach*, 209 Cal.App.4th at 1192.)

The Court reviewed pre-Proposition 218 annexation statutes and determined that, if the challengers were correct, the statutes would impliedly have been repealed. But rather than deem the annexation statutes to have been repealed, the Court harmonized their provisions with Proposition 218 in order to effectuate legislative intent. (*Id.* at 1192-99.)

This Court should similarly harmonize the Fire Suppression Assessments Act with Proposition 218 by ruling that assessments for fire

services are still authorized, as long as the local government meets the standards of Proposition 218.[7]

2. Public Agencies May Use General Funds to Subsidize Special Benefits.

Appellants urge this Court to create new law that would prohibit public agencies from using general funds to subsidize special benefits, contrary to the Court of Appeal's decision in *Dahms v. Downtown Pomona Property*. The Court should reject Appellants' suggestion.

Proposition 218 provides that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable costs of the proportional special benefit conferred on that parcel." (Cal. Const., art. XIIID, § 4(a).)[8] Proposition 218 includes no language stating that the local agency must impose assessments in an amount that constitutes the entirety of the special benefit. Accordingly, as the Second District held, "article XIIID leaves local governments free to impose assessments that are less than the proportional special benefit conferred." (*Dahms*, 174 Cal.App.4th at 716.) What the local agency may not do is fund the subsidy from the assessments paid by the other property owners, as that would "cause the assessments

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[7] Moreover, consider that section 5(a) of article XIIID provides that preexisting assessments for certain categories of improvements and services, as varied as sidewalks and vector control, would only be subject to the procedures and approval process of section 4 when increases were proposed. Tellingly, there is no mention of prohibiting or clamping down on the use of agency-wide assessments, which were and are common, e.g., for broadly provided services such as vector control. This further indicates that the voters did not intend to impose a bright-line legal rule prohibiting agency-wide assessments for services that would only be used when an actual need arose (e.g., firefighting or vector control). Rather, the voters merely tightened the requirements.

[8] The proportionality requirement ensures that properties are assessed based on a fair share of the special benefits received, not on an allocation of costs driven by other factors. (*Town of Tiburon*, 180 Cal.App.4th at 1082-83.)

imposed on the remaining parcels to exceed the reasonable cost of the proportional special benefit conferred on those parcels." (*Ibid.*)

Appellants urge the Court to reject this holding in *Dahms*. But to do so would require the Court to read additional language into Proposition 218, language that prohibits local agency from using general funds (e.g., transient occupancy or business license taxes) to subsidize the special benefits to property owners. To add a provision absent from Proposition 218 would contravene a well-established cannon of statutory construction. (See, e.g., *People v. Acosta* (2016) 247 Cal.App.4th 1072, 1079 ("An appellate court should not add provisions to a statute").)

Appellants' proposal would also require the Court to ignore the language of section 4(f) of article XIIID, which states that the public agency bears the burden to demonstrate that the assessment is "no greater than" the special benefits. To do so would violate another canon of statutory construction, that "construction making some words surplusage is to be avoided." (*Dyna-Med, Inc. v. Fair Employment and Housing Commission* (1987) 43 Cal.3d 1379, 1387.)

A recent case holding that a public agency properly imposed regulatory fees in proportion to the payors' burdens and benefits is instructive.

In *Northern California Water Association v. State Water Resources Control Board* ("*NCWA v. SWRCB*"), the plaintiffs challenged annual fees imposed by the State Water Resources Control Board ("SWRCB"). The plaintiffs asserted that the fees were actually taxes, challenging the SWRCB's contention that the fees were imposed at rates proportionate to the burdens and benefits associated with the regulating plaintiffs' water usage, and thus were valid regulatory fees rather than taxes under Propositions 13 (Cal. Const., art. XIIIA, § 4) and 2 (Cal. Const., art. XIIIA, § 3(b)). (*NCWA v. SWRCB* (2018) 20 Cal.App.5th 1204, 1209-10, 1218,

pet. for review filed (Apr. 11, 2018, Case No. S248150).)[9] The plaintiffs asserted that they had been disproportionately charged—which meant the fees were actually taxes—because pre-1914 appropriative water rights holders benefitted from the SWRCB regulations and burden its regulatory system but were not charged any fees (pre-1914 appropriative water rights holders are not subject to SWRCB jurisdiction). (*Id.* at 1212, 1218.)

The Court of Appeal rejected the plaintiffs' contention. The evidence established that the State used general funds to cover the costs that would have been disproportionate if charged to the plaintiffs. (*Id.* at 1210-11, 1221-22.)

Here, Appellants proffer essentially the same theory that the Court of Appeal rejected in *NCWA v. SWRCB*—that charges are not proportionate if certain payors' costs are subsidized by general funds. This Court should similarly reject Appellants' theory.[10]

E. Appellants' Contentions Would Upend Public Agencies' Ability to Impose Assessments on Those Who Specially Benefit, Shifting the Burden to Taxpayers to Pay for Improvements and Services that Specially Benefit Property Owners.

If Appellants were to successfully challenge the subject assessments, thereby upending established law governing the imposition of assessments, then public agencies' ability to charge property owners for benefits specially conferred would be undermined. Cities and counties would have

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[9] Fees imposed "in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes' are valid regulatory fees." (*Id.* at 1219.)

[10] Note also that expending public funds for improvements and services that specially benefit properties is a proper expenditure of public funds for a public use. (See *City of Saratoga v. Hinz*, 115 Cal.App.4th at 1227.) "Special benefit" under Proposition 218 is distinct from "public purpose" for the police power and gift clauses of our Constitution. (Cal. Const., art. XI, § 7, art. XVI, § 6.)

to turn to taxpayers to fund improvements and services that had heretofore been paid by property owners who specially benefit from the improvements and services, and who enjoy associated property value benefits. This Court should not allow Appellants to undermine cities' and counties' ability to responsibly collect and expend revenues, pursuant to statutory and constitutional authorities.

III. CONCLUSION

For the foregoing reasons, this Court should either dismiss the appeal or affirm the Superior Court judgment, thereby protecting the public's and public agencies' rights to rely on the Validating Proceedings Statutes, as well as local agencies' authority to responsibly impose special assessments pursuant to myriad assessment statutes and Proposition 218.

Dated: May 4, 2018

BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Kevin D. Siegel*

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Respondent is produced using 13-point Roman type including footnotes and contains approximately 5,051 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: May 4, 2018

Burke, Williams & Sorensen, LLP

/s/ Kevin D. Siegel
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Attorneys for League of California Cities and California State Association of Counties

PROOF OF SERVICE

William Davis, an individual, and *Citizens for Constitutional Government*, A California unincorporated association *v. Board of Supervisors of County of Mariposa, et al.*

Court of Appeal, Fifth Appellate District Case No. F074986
Mariposa County Superior Court Case No. 10600

I, CELESTINE SEALS, declare:

I am over the age of eighteen years and not a party to the within-entitled action. I am a citizen of the United States and am employed by Burke, Williams & Sorensen, LLP, whose business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501.

On May 4, 2018, I served the foregoing document entitled: **AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANT AND RESPONDENT BOARD OF SUPERVISORS OF COUNTY OF MARIPOSA** on the interested parties in this action

☒ BY MAIL (CCP §§ 1013a, et seq.)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. Postal Service on the same day it is collected 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 served the above-listed document by placing a true and correct copy of same in a sealed envelope for collection and mailing with postage thereon fully prepaid, in the United States mail at Oakland, California. addressed as set forth in the attached Service List.

☒ BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a true copy of the above-listed document(s) to be served on the Supreme Court electronically by sending the copy to the Supreme Court's electronic notification address. I certify that the copy complies with the Supreme Court's requirements and that all reasonable steps were taken to ensure that the copy does not contain computer code, including viruses, that might be harmful to the Court's electronic filing system and to other users of that system.

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 4, 2018, at Oakland, California.

/s/ Celestine Seals
CELESTINE SEALS

SERVICE LIST

Michael G. Colantuono John L. Jones, II Aleks R. Giragosian Colantuono, Highsmith & Whatley, PC 790 E. Colorado Blvd., Ste. 850 Pasadena, CA 91101-2109 Counsel for Respondent Board of Supervisors of County of Mariposa	*Via TrueFiling Submission*
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Richard L. Harriman Harrimanlaw1@sbcglobal.net Law Offices of Richard L. Harriman 1078 Via Verona Drive Chico, CA 95973 -and- James A. Ardaiz Kenneth J. Price J. Jackson Waste Baker Manock & Jensen, PC 5260 North Palm Ave., 4th Flr. Fresno, CA 93704 Counsel for Plaintiffs/Appellants William E. Davis and Citizens for Constitutional Government	*Via TrueFiling Submission*
Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797	*Via TrueFiling Submission*
Clerk, Mariposa County Superior Court The Honorable Gerald Sevier 5088 Bullion Street Mariposa, CA 95338	*First Class Mail*