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George Lefcoe

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University of Southern California Law School
Los Angeles, CA 90089-0071

Redevelopment in California: Its Abrupt Termination and A Texas-Inspired Proposal for A Fresh Start

George Lefcoe*

Introduction

This paper describes how redevelopment in California came to an end with the California Supreme Court's decision in California Redevelopment Association v. Matosantos¹ and how redevelopment could be resuscitated. The media grasped instantaneously the likely impacts of that anxiously awaited decision. The Court "threw hundreds of redevelopment agencies out of business in a ruling that will benefit state budget coffers but hobble local economic development and housing programs."²

The first part of the paper highlights the precipitating events leading up to the case: California's unique property tax history, the successes and drawbacks of redevelopment, how redevelopment is financed, and the text and politics of Proposition 22, the state constitutional predicate for the Court's opinion.

The second section describes the arguments and outcome of the case in which the Court upheld a statute dissolving redevelopment agencies (RDAs) and simultaneously struck down a companion bill that would have enabled cities and counties to preserve their RDAs by pledging local funds to the state—a "pay-to-stay" law, we call it.

A concluding section proposes that California legislators consider a new redevelopment enabling law, modeled along the lines of Texas's tax increment reinvestment zones (TIRZs). Such a statute would conform to the guidelines for constitutionality from the concluding paragraph of the Court's opinion in Matosantos, and it would be fiscally responsible because it limits the use of tax increment financing.

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* Florine and Ervin Yoder Professor of Real Estate Law, Gould School of Law, University of Southern California. The author gratefully acknowledges the indispensable research and editing assistance of Katharine Allen and Amaras Zargarian, research assistants, summer 2012.

¹ Cal. Redevelopment Ass'n v. Matosantos, 267 P.3d 580 (Cal. 2010).

² Maura Dolan et al., *California High Court Puts Redevelopment Agencies Out of Business*, L.A. TIMES, Dec. 29, 2011, <http://articles.latimes.com/2011/dec/29/local/la-me-redevelopment-20111230>.

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I. Highlights of the Precipitating Context

A. The Property Tax History

The events leading up to *CRA v. Matosantos* will be familiar to those who have followed California's budget crises over the years. During recession years, Sacramento lawmakers struggle to break recurrent deadlocks in coming up with deficit-free budgets.³ To fill some of the revenue gap, the state, unable to pay its own way, has repeatedly commandeered tax sources previously reserved for local governments.⁴ These are nothing more than bookkeeping transfers of tax dollars from local governments to the state,⁵ yielding no new money for public goods and services.⁶

An aspect of public finance unique to California is that the state government is empowered to dictate the distribution of property taxes among local government entities—cities, counties, schools, and special districts.⁷ In other states, each local government adjusts its own property tax rate annually to raise sufficient revenues for its projected expenditures. This was once true in California as well; in 1910, the state constitution was amended to grant to local governments exclusive access to the real property tax.⁸ However, local government control of the property tax ended in California in 1978. A little-noticed by-product of Proposition 13⁹ conferred unfettered

³ Nicholas Riccardi and Chris Megerian, *Brown Stymied by Same Budget Dysfunction That Plagued Predecessors*, L.A. TIMES, May 16, 2012, <http://www.latimes.com/news/local/la-me-jerry-brown-20120516,0,242552.story> (“Brown is stuck between Republicans who refuse tax hikes, Democrats who resist cuts and a tangle of special interests and voter-mandated budget requirements that make it politically easier to push the problem down the road. That’s what Brown has started to do.”).

⁴ *Matosantos*, 267 P.3d at 590 (noting that the legislature created county ERAFs “[i]n response to . . . rising educational demands on the state treasury.”).

⁵ Brief of Amicus Curiae Cnty. of Riverside in Support of Petitioners at 6, *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Riverside Cnty. Brief*], available at <http://www.courts.ca.gov/documents/25-s194861-acb-county-riverside-100311.pdf>.

⁶ “While this diversion of funds would not reflect a direct augmentation of the school fisc, it would alleviate a strain on the state’s General Fund, thereby freeing up revenues to be spent on other state costs, such as health and human services, higher education, the judicial system, and other state-funded operations.” Application of the L.A. Unified Sch. Dist. and the Cal. Sch. Bd. Ass’n for Leave to File Amicus Curiae Brief in Support of Respondents at 12 *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861), available at <http://www.courts.ca.gov/documents/30-s194861-acb-la-unified-school-dist-100511.pdf>.

⁷ See CAL. REV. & TAX. CODE § 97.3 (West 2008) (describing distribution of property tax).

⁸ *Matosantos*, 267 P.3d at 588 (citing CAL. CONST., art. XIII, former § 10, enacted by Sen. Const. Amend. No. 1, Gen. Elec. (Nov. 8, 1910)).

⁹ See CAL. CONST. art. XIII A (West 2012).

discretion upon the state to allocate property taxes among local government entities. The property tax was no longer within the control of local governments.¹⁰

Proposition 13 capped local property tax rates at one percent (plus sums sufficient to repay any bonded indebtedness).¹¹ This meant that local taxing entities could no longer meet their annual budgets by increasing local property tax rates at will.¹² Proposition 13 could have specified how that one percent should be divided among the various taxing entities, as Oregon voters ensured in 1990 when they approved a tax limitation comparable to Proposition 13.¹³ Instead, Proposition 13 called for property taxes to be allocated “according to law to the districts within the counties.”¹⁴ By this vague phrase, and with no other guidance, the Legislature was empowered to dictate the allocation of property taxes among cities, counties, schools and special districts, essentially converting “a nominally local tax to a de facto state-administered tax subject to a complex system of intergovernmental grants.”¹⁵ Over the years, the state legislature has tried out various formulas for allocating that one percent among local taxing entities.¹⁶

Actually, the California courts had begun the erosion of local control of property taxes in the 1970s. That was when the California Supreme Court, declaring education to be a “fundamental right,” applied equal protection norms to invalidate the exclusive use of local property taxes to support schools.¹⁷ Prior to this monumental decision, applying the same tax rate, property-rich

¹⁰ “For the first time in the state’s history, the state was put in charge of allocating the proceeds of the locally levied property tax, with the rate and base defined by statewide initiative.” JEFFREY I. CHAPMAN, PUB. POLICY INST. OF CAL., PROPOSITION 13: SOME UNINTENDED CONSEQUENCES 3, 21, Sept. 1998, available at http://www.ppic.org/content/pubs/op/op_998jcop.pdf; see also THE 2012–2013 BUDGET: UNWINDING REDEVELOPMENT, LEGISLATIVE ANALYST’S OFFICE, Feb. 17, 2012, [hereinafter UNWINDING REDEVELOPMENT] available at http://www.lao.ca.gov/analysis/2012/general_govt/unwinding-redevelopment-021712.aspx (noting that Proposition 13 “significantly constrained local authority over the property tax and most other local revenues sources.”).

¹¹ *Matosantos*, 267 P.3d at 589.

¹² See UNWINDING REDEVELOPMENT, *supra* note 10.

¹³ Called Measure 5, it is Article XI, Section 11 of the Oregon Constitution. Besides dividing up the property tax among local government entities, Measure 5 shifted responsibility for school finance entirely to the state and specified the portion of the property tax that was to be available for schools. Margaret Hallock, *Oregon’s Tax System and the Impact of Measure 5*, 13 LERC MONOGRAPH SER. 75, 75 (1994); see also Alvin D. Sokolow, *The Changing Property Tax and State–Local Relations*, 28 PUBLIUS 165, 175 (1998).

¹⁴ CAL. CONST., art. XIII A, § 1(a).

¹⁵ *Matosantos*, 267 P.3d at 589.

¹⁶ CAL. STATE ASS’N OF COUNTIES, THE PROPERTY TAX ROLLERCOASTER: EXPLANATIONS FOR VARIATIONS IN COUNTY PROPERTY TAX REVENUES (2004). The allocation measure, AB 8 “is continually tweaked to take into account particular exigencies of local jurisdictions—for example, cities with low or no property taxes or enterprise and nonenterprise special districts. In addition, the numbers within the nine-step AB 8 property tax allocation formula, over time, become extraordinarily difficult to track, and thus reliability is sometimes questionable.” CHAPMAN, *supra* note 10, at 15. For a detailed discussion of California’s property-tax history, see Daniel L. Simmons, *California Tax Collection: Time for Reform*, 48 SANTA CLARA L. REV. 279 (2008).

¹⁷ *Serrano v. Priest*, 487 P.2d 1241 (1971) (*Serrano I*); *Serrano v. Priest*, 557 P.2d 929 (1976) (*Serrano II*). See also Art Coon, *Separate And Unequal: Serrano Played an Important Role in Development of School-District Policy*, FINDLAW, available at <http://library.findlaw.com/1999/Dec/1/129939.html>

school districts could raise far more money per pupil than property-poor ones.¹⁸ To equalize school expenditures per pupil, the state had to take an active role, supplementing the financial resources of poorer school districts while restraining local school expenditures in wealthy districts.¹⁹

State aid to schools depends on the financial strength of each school district.²⁰ All school districts receive a constitutionally mandated amount of basic aid. Less affluent districts receive state subventions tied mainly to attendance and enrollment. For these districts, the state is obligated to backfill any losses that result from redevelopment agencies taking what would have been the school's share of property taxes.²¹ As the Court in *CRA v. Matosantos* observes: "a 'Byzantine' system of financing evolved in which the state became the principal financial backstop for local school districts."²²

Since the state is ultimately responsible for school finance, but not for the financial well-being of the other local taxing entities, the state has increased the percentage of property taxes effectively diverted from local governments and allocated to schools.²³ Via special funds established county-wide, known as Educational Revenue Augmentation Funds (ERAFs),²⁴ these revenues

(calling *Serrano* "at best incomplete and arguably a failure at accomplishing equality in education."); William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & Pol. 607 (1996).

¹⁸ "[D]ifferent school districts could levy taxes and generate vastly different revenues; because of the difference in property values, the same property tax rate would yield widely differing sums in, for example, Beverly Hills and Baldwin Park." *Matosantos*, 267 P.3d at 588–89 (citing *Serrano I*, 487 P.2d at 1246–1248).

¹⁹ *Matosantos*, 267 P.3d at 589.

²⁰ "Professor Chapman lists the five major factors in calculating school aid formulas: General Fund revenues, state population, personal income, local property taxes, and K–12 average daily attendance." CHAPMAN, *supra* note 10, at 16.

²¹ Application for Leave to File Brief as Amicus Curiae and Amicus Curiae Brief of the Santa Clara Unified Sch. Dist. in Support of Respondents at 3–4 Cal. Redevelopment Ass'n v. *Matosantos*, 267 P.3d 580 (No. S194861) [hereinafter *Santa Clara Unified Brief*], available at <http://www.courts.ca.gov/documents/26-s194861-acb-santaclara-unified-school-100311.pdf>.

²² 267 P.3d at 589 (internal citations omitted).

²³ *Id.* at 592. The influence of the California Teachers Association is not to be underestimated. The CTA is the largest campaign contributor to political campaigns in California. *California's Top Political Donors*, SACRAMENTO BEE, June 4, 2012, http://www.sacbee.com/2012/06/04/4535729_a4535637/elite-donor-roster-swaps-many.html (noting that the CTA spent \$120.7M on contributions between 2001 and 2011, outspending the second-largest donor by \$49.1M). In 2010, the CTA spent \$3,250,656 supporting Jerry Brown's campaign for governor, and an additional \$3,000,423 opposing Meg Whitman in the same election. *Cal. 2010, Independent Spending: California Teachers Association*, NAT'L INST. ON MONEY IN STATE POLITICS, <http://www.followthemoney.org/database/StateGlance/iespender.phtml?ie=6819&so1=i> (last visited June 4, 2012).

²⁴ The League of California Cities outlined the impacts of these ERAF takeaways, including cuts in human services such as parks and libraries; deferred maintenance of public infrastructure; greater pressure for increases in local taxes, fees, and assessments; greater reliance on debt financing instead of using cash for capital improvements; and reduced reserves. LEAGUE OF CAL. CITIES, FACT SHEET: THE ERAF PROPERTY TAX SHIFT (2010), <http://www.californiacityfinance.com/ERAFFacts.pdf>.

are declared to be part of the state General Fund to satisfy the state's legal obligations for financing schools.²⁵

Eventually, local governments fought back by mounting several successful voter initiative campaigns that resulted in state constitutional amendments to bar future state raids on local tax revenues.²⁶ Proposition 22 was the most recent of these efforts, closing various gaps that previous anti-raid legislation had left open. It included a provision to safeguard the tax increment funds of local redevelopment agencies (RDAs) from being taken by the state, basically to finance schools.²⁷

Blocked by Proposition 22 from re-directing tax increments from RDAs to the state General Fund for schools, the Governor, in formulating the 2011–12 budget, came up with another way of reaching RDA revenue sources and assets. He proposed dissolving RDAs and transferring their uncommitted resources, including future tax increments, to other government entities, explaining in his State of the State message: “[R]edevlopment funds come directly from local property taxes that would otherwise pay for schools and core city and county services such as police and fire protection and care for the most vulnerable people in our society. So it is a matter of hard choices and I come down on the side of those who believe that core functions of government must be funded first.”²⁸

The Legislature narrowly defeated the Governor's proposal to dissolve redevelopment agencies.²⁹ Instead, by slim majorities, it enacted two statutes to accommodate the state's urgent need for revenue while avoiding the dissolution of redevelopment.³⁰ In AB X1 26,³¹ Legislators voted to dissolve RDAs entirely. In a second statute, AB X1 27,³² Legislators offered cities and counties a way to keep their redevelopment agencies open for business. They could “pay to stay” by agreeing to make certain state-mandated payments.

The League of California Cities and the California Redevelopment Association (a trade group representing local RDAs) filed suit challenging the constitutionality of these two statutes.

²⁵ *Matosantos*, 267 P.3d at 590.

²⁶ See, e.g., Proposition 65, Official Voter Information Guide, California General Election (Nov. 2004) (unenacted), available at <http://vote2004.sos.ca.gov/voterguide/propositions/prop65-title.htm>; Proposition 1A, 2004 Cal. Legis. Serv. Prop. 1A (Res. Ch. 133 [S.C.A. 4]) (West); Proposition 22, 2010 Cal. Legis. Serv. Prop. 22 (West). See also 267 P.3d at 593 (reviewing the history of these initiatives).

²⁷ Proposition 22, 2010 Cal. Legis. Serv. Prop. 22 (West).

²⁸ Application of Cal. Teachers Ass'n to File Brief Amicus Curiae In Opposition to Petitioners Cal. Redevelopment Ass'n et al.; [Proposed] Brief Amicus Curiae at 9 Cal. Redevelopment Ass'n v. *Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Cal. Teachers Ass'n Brief*], available at <http://www.courts.ca.gov/documents/24-s194861-acb-ca-teachers-assoc-100311.pdf> (quoting Edmund G. Brown, Jr., State of the State Address, Jan. 31, 2011).

²⁹ The proposal required some tax shifting of funds previously reserved for redevelopment, and this required a two-thirds vote. The Governor was one vote shy. UNWINDING REDEVELOPMENT, *supra* note 10, at 9.

³⁰ Amicus Brief of the Cmty. Redevelopment Agency of the City of L.A., et al. at 13–16 Cal. Redevelopment Ass'n v. *Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861), available at <http://www.courts.ca.gov/documents/27-s194861-acb-comm-redev-agency-100311.pdf>.

³¹ 2011 Cal. Legis. Serv. 1st Ex. Sess. Ch. 5 (A.B. 1X 26) (West).

³² 2011 Cal. Legis. Serv. 1st Ex. Sess. Ch. 6 (A.B. 1X 27) (West).

B. The Redevelopment Debate

The Governor’s dissolution proposal “launched a major debate within the Legislature regarding the role of redevelopment.”³³ To appreciate why a bare majority of the Legislators voted to preserve redevelopment, and other Legislators welcomed its demise, consider the main points made in debates about redevelopment, and in the briefs and Court opinion.

Urban redevelopment, the *Matosantos* majority opinion reminds us, began “in the aftermath of World War II . . . in order to remediate urban decay.”³⁴ That is when the move to the suburbs that began with street-car lines accelerated with the construction of interstate highways (freeways), imperiling the future of older city centers.³⁵ By 2011, the Court majority observed, redevelopment had become “a principal instrument of economic development, mostly for cities, with nearly 400 redevelopment agencies now active in California.”³⁶

Chief Justice Cantil-Sakauye summarized the accomplishments of redevelopment: “When faithfully administered and thoughtfully invested in the interests of the community, a redevelopment agency can successfully create jobs, encourage private investment, build local businesses, reduce crime and improve a community’s public works and infrastructure.”³⁷ Redevelopment can result in the productive transformation of underutilized urban space, such as the conversion of closed military bases into regional parks and planned new communities.³⁸

Long-time residents of Los Angeles, San Francisco, San Diego, San Jose, and many other California cities have seen their downtown areas transformed. Places once unsafe, best avoided especially on weekends or evenings, are now teeming with crowds drawn to bustling regional entertainment venues, fashionable restaurants and bars, sports stadiums and museums, and new apartments and condos—many featuring high quality modernist designs.³⁹

Cities, small towns, and large-scale suburban communities have all utilized redevelopment to achieve what William H. Frey, a demographer at the Brookings Institution, calls “a new city

³³ UNWINDING REDEVELOPMENT, *supra* note 10, at 9.

³⁴ Cal. Redevelopment Ass’n v. Matosantos, 267 P.3d 580, 590 (Cal. 2010).

³⁵ See SCOTT BOTTLES, LOS ANGELES AND THE AUTOMOBILE: THE MAKING OF THE MODERN CITY 3–7 (1991).

³⁶ *Matosantos*, 267 P.3d at 590.

³⁷ *Id.* at 623 (Cantil-Sakauye, C.J., concurring and dissenting); see also Brief of Amicus Curiae Long Beach Cent., W. and N. Project Area Comms. in Support of Petitioners’ Petition at 12–15 Cal. Redevelopment Ass’n v. Matosantos, 267 P.3d 580 (Cal. 2010) (No. S194861), available at <http://www.courts.ca.gov/documents/23-s194861-acb-long-beach-100311.pdf> (describing how redevelopment projects can “provide solutions to local infrastructure issues” using “an alternative taxing mechanism to generate the revenue . . .”).

³⁸ See, e.g., Amicus Curiae Brief of the City of Irvine, Cal. in Support of the Petition for Writ of Mandate of the Cal. Redevelopment Ass’n, et al., Cal. Redevelopment Ass’n v. Matosantos, 267 P.3d 580 (Cal. 2010) (No. S194861), available at <http://www.courts.ca.gov/documents/22-s194861-acb-city-irvine-100311.pdf> (describing use of redevelopment in the reuse of Marine Corps Air Station, El Toro).

³⁹ The Chief Justice identified some of the most notable achievements of California redevelopment: “[T]he restored Public Market building in downtown Sacramento, the Bunker Hill project in downtown Los Angeles, Horton Plaza and the Gaslamp Quarter in downtown San Diego, HP Pavilion in San Jose, and Yerba Buena Gardens in downtown San Francisco.” 267 P.3d at 623 (Cantil-Sakauye, C.J., concurring and dissenting).

ambience” featuring “walkable urbanism,” where shops, housing, schools, parks and workplaces are built within walking distance or transit of one’s home.⁴⁰ City planners expect these features to appeal especially to young adults in knowledge-based jobs, the core market for which cities aspiring to “superstar” status compete these days.⁴¹

Through redevelopment, many formerly struggling areas adjacent to downtowns have been transformed into walkable communities where property values, once much lower than their suburban rivals, are now considerably higher.⁴² Christopher Leinberger, a Washington, D.C.-based land use consultant and developer studied property values in the D.C. region and found that “real estate values increase as neighborhoods became more walkable, where every day needs, including working, can be met by walking, transit or biking.”⁴³ He quips, “[w]alking isn’t just good for you. It has become an indicator of your socioeconomic status.”⁴⁴

Even successful redevelopment efforts are often implemented with a jaw-dropping lack of financial transparency, accountability, and oversight of RDAs.⁴⁵ “The late, unlamented agencies

⁴⁰ Examples abound. Here are two from San Antonio and Houston: San Antonio favors TIFs for “[i]nfill development and the development of compact, walkable neighborhoods . . . to reduce NOX and VOC emissions” CITY OF SAN ANTONIO, TEXAS, TAX INCREMENT FINANCING PROGRAM POLICY AND IMPLEMENTATION MANUAL 3 (2008), *available at* <http://www.sanantonio.gov/planning/tif/pdfs/TIFManual.pdf>. The Houston Midtown Tax Increment Reinvestment Zone is another good example of RDA efforts to enhance the attractiveness of areas near the urban core to support “walkable urbanism.” *See* Midtown Houston, Midtown Redevelopment Auth./TIRZ No. 2, <http://www.houstonmidtown.com/midtown.cfm?a=cms,c,16> (last visited May 23, 2012). “By fully redeveloping Midtown, Houston would leverage its investment in light rail to improve the city’s competitiveness in the global market; develop a vibrant and valuable city tax base; create a major Houston destination to attract both young professionals and entrepreneurial businesses; reduce the pressure to develop large areas of natural lands; and support development without creating additional runoff to Houston’s storm drains and bayous.” ICF INT’L, BUILDING HOUSTON’S COMPETITIVE EDGE: TRANSIT-ORIENTED DEVELOPMENT FOR THE ENSEMBLE/HCC STATION 1 (2006), *available at* <http://www.epa.gov/dced/pdf/houston.pdf>.

⁴¹ George Lefcoe, *Competing for the Next Hundred Million Americans*, 43 URB. LAW. 427, 430 (2011). *See also* Sabrina Tavernise, *A Gap in College Graduates Leaves Some Cities Behind*, N.Y. TIMES, May 30, 2012, <http://www.nytimes.com/2012/05/31/us/as-college-graduates-cluster-some-cities-are-left-behind.html?ref=todayspaper> (“[A] small number of metro areas vacuum up a large number of college graduates, and the rest struggle to keep those they have. The winners are metro areas like Raleigh, N.C., San Francisco and Stamford, Conn. where more than 40 percent of the adult residents have college degrees. . . . Metro areas like Bakersfield, Calif., Lakeland, Fla., and Youngstown, Ohio, where less than a fifth of the adult residents have college degrees, are being left behind. The divide shows signs of widening as college graduates gravitate to places with many other college graduates and the atmosphere that creates.”).

⁴² Christopher B. Leinberger, *Now Coveted: A Walkable Convenient Place*, N.Y. TIMES, May 27, 2012, <http://www.nytimes.com/2012/05/27/opinion/sunday/now-coveted-a-walkable-convenient-place.html>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The lack of state administrative oversight, and insufficient enforcement of redevelopment laws, has led to widespread criticism of redevelopment in California. *See, e.g.,* Jeff Gottlieb, *Bell’s Rizzo Used Low-Income Housing Funds to Boost His Pay, Audit Says*, L.A. TIMES, Oct. 21, 2010, <http://articles.latimes.com/2010/oct/21/local/la-me-bell-audit-20101021> (criticizing “dubious spending” of redevelopment funds and noting that the City Council “failed to provide ‘any meaningful oversight.’”).

were best understood as ‘secret governments’ that piled on billions in debt and handed out subsidies to favored developers without much scrutiny or accountability.”⁴⁶ “The old system, because it was largely invisible, had major abuses along with successes—such as subsidizing big-box chain retail, shopping malls and auto dealerships. And in the Big Kahuna of abuses, Palm Desert allocated \$16.7 million to the luxury Desert Willow Golf Resort to renovate golf greens and build a hotel – far afield from what redevelopment should be about.”⁴⁷

School-district briefs in *Matosantos* cited golf-course greens rehab among several examples of RDA extravagance in times of fiscal stress for other public agencies.⁴⁸ Another example the two school district briefs mentioned was “an enormous fish tank” over the top of the Dive Bar in Sacramento, “spanning its length, in which mermaids (and the occasional mermen) swim and cavort to entertain the bar’s patrons.”⁴⁹ As mermaids performed, schools were being forced to send out lay-off notices to teachers.⁵⁰

Redevelopment critics also adamantly dispute the claimed benefits of redevelopment, and cite numerous studies showing that redevelopment projects have “a minimal effect on property

However, a leading industry trade association, the Council of Development Finance Agencies (CDFA), has strongly recommended project-specific guidelines local governments should use to avoid squandering these public funds. These “best practice” guidelines allow local governments to articulate why TIF is needed and develop a plan to use the funds efficiently. See COUNCIL OF DEV. FIN. AGENCIES, TAX INCREMENT FINANCE BEST PRACTICES REFERENCE GUIDE 16 (2007), available at <http://www.icsc.org/government/CDFa.pdf>. See also Application for Leave to File and Brief Amicus Curiae of Ctr. for Constitutional Jurisprudence and Cal. Alliance to Protect Private Prop. Rights at 16–17, *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Ctr. for Const. Jurisprudence Brief*], available at <http://www.courts.ca.gov/documents/31-s194861-acb-center-const-juris-100511.pdf> (pointing out that no state agency presently oversees redevelopment agencies, and accountability is left to local city councils whose members are also typically the board members of the redevelopment agency).

⁴⁶ Ben Boychuk and Pia Lopez, *Head to Head: What Should Be the Future of Redevelopment in California?*, SACRAMENTO BEE, Jan. 11, 2012, <http://www.sacbee.com/2012/01/11/4178469/what-should-be-the-future-of-redevelopment.html#storylink=cpy>.

⁴⁷ *Id.*

⁴⁸ *Cal. Teachers Ass’n Brief*, *supra* note 28, at 6.

⁴⁹ *Id.* at 4.

⁵⁰ *Id.* Note that there is a dispute whether TIF funds were used on the Dive Bar; according to John F. Shirey, City Manager of Sacramento and former executive director of the California Redevelopment Association, “[n]o tax increment was spent on the Dive Bar and the two businesses beside it.” Email from John F. Shirey, City Manager of Sacramento, to author (June 4, 2012, 11:48 AM) (on file with author). Another typical criticism of RDA mismanagement: “There were instances when I shook my head at deals in Ceres that may have been legal but were a ‘stretch’ in reducing blight. For starters, spending over \$400,000 to re-roof the police department with energy-saving materials? How is that reducing blight? The council and CRA board (one in the same) justified the expense in this way: By having RDA money spent on the roof, the city saves future electrical dollars which could be spent on cop salaries which in turn keeps down crime which in turn reduces blight. That’s a major stretch since I don’t remember hearing the city say they’d layoff cops in order to pay for a new roof.” Jeff Benziger, *Abuses Aided State in Killing Off RDAs*, CERES COURIER, Feb. 15, 2012, <http://cerescourier.com/Main.asp?SectionID=3&SubSectionID=4&ArticleID=59314>.

values; provide little, if any increase in economic activity;⁵¹ and sometimes have had a negative impact on a municipality's aggregate property tax growth.⁵²

C. Redevelopment Financing

Tax increment financing (TIF) is the main source of revenue for redevelopment.⁵³ As the label suggests, the tax increment is the difference between the tax-assessed valuations of real property within a redevelopment project area in the base year before the project begins, and the values in each year after that, multiplied by the applicable tax rate. For repayment, bond investors financing redevelopment count on the anticipated increase in property tax revenues.⁵⁴

With the property tax yield in California limited by Proposition 13, cities, counties, special districts, and schools districts find themselves competing against each other for scarce property tax dollars⁵⁵ in “a kind of shell game among local government agencies for property tax funds.”⁵⁶ “The only way to obtain more funds was to take them from another agency. Redevelopment proved to be one of the most powerful mechanisms for gaining an advantage in the shell game.”⁵⁷

Perhaps the most problematical aspect of redevelopment financing in California is that RDAs are allowed to retain the tax increments from all the other taxing entities to pay the costs of redevelopment.⁵⁸ On average, California cities are entitled to about 17 percent of all property taxes.⁵⁹ The rest is divided among schools (38 percent), counties (2 percent), and special districts (8 percent).⁶⁰ So a sponsoring city entitled to no more than 17 percent of the property tax receives \$5.88 in tax increments for every dollar of its own source revenue it commits to redevelopment.⁶¹

⁵¹ *Ctr. for Const. Jurisprudence Brief*, *supra* note 45, at 12.

⁵² *Id.* (citing Richard F. Dye and David F. Merriman, *The Effects of Tax Increment Financing on Economic Development*, 46 J. OF URB. ECON. 306, 328 (1999)).

⁵³ See Mark Skidmore and Russ Kashian, *On the Relationship Between Tax Increment Finance and Property Taxation*, 40 REG'L SCI. & URB. ECON. 407, 407 (2010) (calling TIF a “critical component of local government development policy nationwide.”).

⁵⁴ Skidmore and Kashian, *supra* note 53, at 408. For a detailed explanation of tax increment financing, see *id.* and Jan K. Brueckner, *Tax Increment Financing: A Theoretical Inquiry*, 81 J. OF PUB. ECON. 321, 322–24 (2001).

⁵⁵ *Cal. Redevelopment Ass'n v. Matosantos*, 267 P.3d 580, 590 (Cal. 2010).

⁵⁶ *Id.* at 592 (quoting Fulton & Shigley, *Guide to California Planning*, 263–64 (3rd ed. 2005)).

⁵⁷ *Id.*

⁵⁸ CAL. HEALTH & SAFETY CODE § 33670 (West 2012).

⁵⁹ LEGISLATIVE ANALYST'S OFFICE, CALIFORNIA'S PROPERTY TAX 3–4 (2012), http://www.lao.ca.gov/handouts/state_admin/2012/CA_Property_Tax_4_11_12.pdf. The state mandated that redevelopment agencies make certain pass-through payments to school districts, special districts, and cities or counties to hedge against the possibility that not all of the increment may be attributable to the RDA effort. See MICHAEL DARDIA, PUB. POLICY INST. OF CAL., SUBSIDIZING REDEVELOPMENT IN CALIFORNIA 33, 36–38 (1998); see also discussion, *infra* Part III.B. (describing the statutory pass-through payments). RDAs were also required to contribute 20 percent of the increment for affordable housing. CAL. HEALTH & SAFETY CODE § 33334.2 (West 2012).

⁶⁰ CALIFORNIA'S PROPERTY TAX, *supra* note 59, at 3–4.

⁶¹ In other words, if the legal obligations of an RDA (including redevelopment debts and other contractual obligations) exceed property tax revenues for a given year, the RDA can retain 100 percent of tax

Sponsoring cities and counties are tempted to divert tax increments to cover deficits in meeting their routine municipal expenses. Most city-sponsored RDAs use tax increments to pay significant percentages of the salary and fringe benefits of mayors, council members, and city staff.⁶² RDA defenders will claim that the percentages contributed represent reasonable allocations of the time that public officials dedicate to RDA business. RDA critics see this as one of the ways that sponsoring cities or counties shift a portion of their normal operating expenses to other taxing entities. This drains much needed tax revenues from schools, community colleges, special districts, and counties.⁶³ It also diminishes the incentive for the sponsoring city or county to spend as carefully as they would their own future tax revenues, every dollar of which they could have spent for local police, fire fighters, parks, or libraries.⁶⁴

Tax increment financing is championed as “in the end, self-supporting,” a catalyst for reversing deterioration in blighted areas.⁶⁵ Critics assert that the notion of TIF-funded redevelopment being self-supporting is illusory because RDAs claim credit for “all increases in tax increment [within the project area] whether [or not] they had anything to do with generating them.”⁶⁶ Redevelopment agencies tend to select project areas that can be turned around quickly.⁶⁷ They need to demonstrate their usefulness to the elected officials that created them by pumping up

increments for that year, diverting revenues from the other taxing entities. Thus, if a sponsoring city's \$1 redevelopment investment represents 17 percent of the tax increment, \$5.88 would represent the full 100 percent that the RDA/sponsoring city would be entitled to retain.

⁶² For example, the city of Westminster, south of Los Angeles, laid off 30% of its staff—police, managers and administrators—whose salaries it had been paying from redevelopment funds. All 10 square miles of the city had been declared a redevelopment zone. Bobby White, *Agency Closings Pinch California Cities*, WALL STREET J., May 31, 2012,

<http://online.wsj.com/article/SB10001424052702304065704577422231620711726.html>. See also, *Cal. Teachers Ass'n Brief*, *supra* note 28, at 4 n. 6 (citing STATE CONTROLLER, SELECTED REDEVELOPMENT AGENCIES, REVIEW REPORT, ANALYSIS OF ADMINISTRATIVE, FINANCIAL AND REPORTING PRACTICES at 14 (Mar. 7, 2012)).

⁶³ Counties can be redevelopment sponsors, too. See JOHN CHIANG, CAL. STATE CONTROLLER, REDEVELOPMENT AGENCIES ANNUAL REPORT, FISCAL YEAR 2010–2011 at 2, *available at* http://www.sco.ca.gov/Files-ARD-Local/LocRep/RDA_publication_2011.pdf

⁶⁴ See Christopher E. Bartells and Jeremy L. Hall, *Exploring Management Practice Variation in Tax Increment Financing Districts: Toward an Administrative Theory of Performance*, 26 ECON. DEV. QUAR. 13 (2012), *available at* <http://edq.sagepub.com/content/26/1/13.full.pdf+html>

⁶⁵ Brief for A Coal. of Cities, Redevelopment Agencies, and Private Parties as Amicus Curiae Supporting Petitioners and Raising Additional Arguments at 8, *Cal. Redevelopment Ass'n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Coal. of Cities Brief*], *available at* <http://www.courts.ca.gov/documents/29-s194861-acb-coalition-cities-100511.pdf>.

⁶⁶ Application for Leave (for Affordable Hous. Advocates) to File Amicus Curiae Brief and Amicus Curiae Brief in Support of Respondents at 4 *Cal. Redevelopment Ass'n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861), *available at* <http://www.courts.ca.gov/documents/20-s194861-acb-housing-advocates-100311.pdf>.

⁶⁷ George Lefcoe, *Finding the Blight That's Right for California Redevelopment Law*, 52 HASTINGS L.J. 991, 1003–04 (2001) (describing the ideal project site as “either vacant . . . or easily cleared[,]” and one “upon which private redevelopers are ready to build immediately.”).

property values very quickly. So they tend to stretch definitions of blight to acquire sites that were already attractive to private developers.⁶⁸

Redevelopment agencies have also been caught hastily drawing or extending project boundaries to benefit from newly slated private developments, completely unrelated to any efforts by an RDA, just to capture the tax increment.⁶⁹ Sometimes, increases in property values within the project area come at the expense of declining values elsewhere.⁷⁰ Similarly, increased employment in the project area often results from jobs having been shifted from elsewhere in the city.⁷¹ Retailers within the same market area compete with each other for clientele—cannibalization, it is sometimes called.⁷² Cities, desperate for property and sales taxes, offer generous subsidies to retailers, “going easy on design and planning standards for big box discounters and monolithic shopping malls.”⁷³

Cities sponsoring TIF-funded redevelopment projects have no incentive to question whether the projects they finance would have been built without their assistance either within the project

⁶⁸ “Despite decades of incremental improvements to the law, cities still find ‘blight’ where there is none. They have used redevelopment to do anything and everything because the law has allowed them to and they have felt they had no other options.” William Fulton, Op-Ed., *Getting Real About Redevelopment in California*, L.A. TIMES, Jan. 12, 2012, <http://articles.latimes.com/2012/jan/12/opinion/la-oe-fulton-redevelopment-20120112>. RDAs have a significant financial incentive to stretch the definition of blight because they can condemn private property and then hand it over to a private development firm. *Ctr. for Const. Jurisprudence Brief*, *supra* note 45, at 10 (citing Colin Gordon, *Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 308 (2004)). *See also*, e.g., *Norwood v. Horney*, 853 N.E.2d 1115, 1123 (2006) (holding that, although economic factors may be considered in evaluating a site’s level of “blight,” a standard that merely requires a “deteriorating area” is too vague to constitute a permissible definition of blight).

⁶⁹ E.g., *Regus v. City of Baldwin Park*, 70 Cal App. 3d 968, 981–82 (1977) (“[B]oth the administrative transcript of the public hearings before the council and the facts presented in the redevelopment report clearly demonstrate that the key motivation for the Project in its present form is to capture \$126,640 in tax revenues from new construction in the South Baldwin Park site in order to carry and make profitable development in both sites of the Project area.”).

⁷⁰ *See, e.g., Beach-Courchesne v. City of Diamond Bar*, 95 Cal. Rptr. 2d 265 (Ct. App. 2000). “As a California appellate judge noted over three decades ago, when a city tries to attract consumption-based businesses such as hotels and shopping centers through redevelopment, rather than seeking out businesses engaged in production, the city is not increasing ‘the total wealth of a region as a whole but merely redistribut[ing] the existing supply by capturing business from rival communities. The success of such strategy assumes the absence of effective countermeasures by rival communities targeted for displacement.’” George Lefcoe, *After Kelo, Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 TUL. L. REV. 45, 94 (2008).

⁷¹ *Ctr. for Const. Jurisprudence Brief*, *supra* note 45, at 13 (quoting Paul F. Bryne, *Does Tax Increment Financing Deliver on Its Promise of Jobs? The Impact of Tax Increment Financing on Municipal Employment Growth*, 24 ECON. DEV. Q. 13 (2010), available at <http://edq.sagepub.com/content/24/1/13>).

⁷² E.g., Alain Bultez et al., *Asymmetric Cannibalization in Retail Assortments*, 65 J. OF RETAILING 153, 154 (1989) (“‘[C]annibalism’ denotes retailers’ concern for the multiple forms that substitution effects may take within their departments: between brands, either within or across variety-types; and vice versa between variety-types, either within or across brand lines.”).

⁷³ *Ctr. for Const. Jurisprudence Brief*, *supra* note 45, at 18 (quoting George Lefcoe, *Redevelopment Takings After Kelo: What’s Blight Got to Do With It?*, 17 S. CAL. REV. L. & SOC. JUST. 803, 807 (2008)).

area, or elsewhere in the counties, school districts, or special districts from which they are taking tax increments. A study by the California Redevelopment Association (CRA), typical of the poor quality of evaluation done by most economic development agencies, claimed that redevelopment had created 304,000 jobs statewide.⁷⁴ California's Legislative Analyst, answering the question "Should California End Redevelopment?" faulted the CRA's study for failing to address this crucial question: but for the redevelopment agency's efforts, would the project have been built anyway, either within the project area or elsewhere within the county or state?⁷⁵ Another shortcoming of the CRA study was its failure to concede that other taxing entities might have put tax increments to productive use if they hadn't been diverted into redevelopment agency coffers.⁷⁶

RDAs automatically reap increased tax increments from inflation and rising real estate values.⁷⁷ That happened from 1979 to 2009 when California house values rose 8.1 percent per year, and commercial and industrial property 8.4 percent.⁷⁸ Conversely, tax increments shrink despite the best efforts of RDAs when property tax revenues are flat or declining, mirroring real estate market conditions.⁷⁹ By 2011, commercial and residential property values in California had fallen for more than two consecutive years for the first time since 1933.⁸⁰ "If redevelopment projects account for all the incremental increase in property values in a given area," asks Professor Ken Stahl, "can we also blame those projects when property values collapse? The

⁷⁴ Press Release, Cal. Redevelopment Ass'n, Governor's Proposal Eliminating Redevelopment Is More Budget Smoke and Mirrors That Will Bring Little Financial Benefit to State But Will Cause Significant Harm to California's Economy (Jan. 10, 2011) (on file with author).

⁷⁵ MAC TAYLOR, CAL. LEGISLATIVE ANALYST'S OFFICE, THE 2011-2012 BUDGET: SHOULD CALIFORNIA END REDEVELOPMENT AGENCIES? 7 (2011),

http://www.lao.ca.gov/analysis/2011/realignment/redevelopment_020911.pdf

⁷⁶ *Id.*

⁷⁷ Proposition 13 limits inflation related increases to 2 percent a year. Re-assessments for property tax purposes occur based on acquisition prices and new construction (not exceeding fair market value). CAL. CONST. art. XIII A, § 2(b) (West 2012). Before January 1, 1994, other taxing entities were entitled to inflation-related increases in property assessments up to the 2 percent limit. UNWINDING REDEVELOPMENT, *supra* note 10.

⁷⁸ CAL. TAXPAYERS' ASS'N, CAL-TAX RESEARCH BULLETIN: PROPOSITION 13 REVISITED (2009), <http://www.caltax.org/Proposition13Revisited12-7-09.pdf>

⁷⁹ Bondholders secured by tax increments insist upon a debt service coverage ratio of more than 1, typically 1.15 to 1.25, because property tax yields will decline as property values fall. *E.g.*, CITY OF CINCINNATI, CITY OF CINCINNATI TIF POLICY 3-4 (2007), http://www.cincinnati-oh.gov/cdap/downloads/cdap_pdf40753.pdf (requiring minimum DSCR of 1.25). *See also* STONE & YOUNGBERG, THE STONE & YOUNGBERG GUIDE TO LAND-SECURED FINANCE 74-78 (2008), http://www.syllc.com/Templates/media/userfiles/2008%20rev.%20Land-Secured%20Guide_11-08.pdf (suggesting a value-to-lien ratio of 3:1). According to the California Board of Equalization, "California property tax levies for fiscal year 2009-10 totaled \$49.2 billion, a decrease of 1.2 percent from the previous year's total of \$49.8 billion. County-assessed property values fell \$86 billion during 2009-10 to reach \$4.3 trillion for the 2010-11 tax year." CAL. STATE BD. OF EQUALIZATION, ANNUAL REPORT 2009-2010 at 11, *available at* <http://www.boe.ca.gov/annual/annualrpts.htm>.

⁸⁰ *Id.*

reality is that while improvements are certainly capitalized to some degree in local property values, other factors also affect changes in property value.”⁸¹

Another vulnerable aspect of redevelopment financing is that RDAs squirreled away billions of dollars in tax increment dollars,⁸² a fact not widely appreciated by the general public but well-known to state officials searching for funds to cover state deficits. RDA reserves attracted the covetous attention of state officials hungry for ready cash.⁸³

By law, RDAs are entitled to collect as much in tax increments as will be necessary to repay agency obligations on bonds and contracts.⁸⁴ Nothing prevented them from accumulating reserves well in excess of annual debt service requirements.⁸⁵ RDAs could also accumulate reserves by not spending the mandated affordable housing set aside of 20 percent of their tax increment.⁸⁶ For RDAs contemplating new projects, ample reserves could also help reduce the need to borrow as much for land acquisition and development (“A&D”) activity.⁸⁷ All RDAs benefited from accumulating reserves because they earned interest on these funds.⁸⁸

D. The Text and Politics of Proposition 22

⁸¹ Ken Stahl, *The Future of Redevelopment in California*, LAND USE PROF BLOG (Jan. 3, 2012), http://lawprofessors.typepad.com/land_use/2012/01/the-future-of-redevelopment.html.

⁸² “For a variety of reasons, some RDAs retained large balances in their housing fund. RDAs’ annual reports to the Department of Housing and Community Development (HCD) show that the unencumbered balances have grown over time to \$2.2 billion in 2009–10 There is some uncertainty about this figure.” UNWINDING REDEVELOPMENT, *supra* note 10.

⁸³ Benziger, *supra* note 50 (“[S]tate officials, seeing shrinking tax revenues, started taking notice to the unused stockpiles of RDA cash.”).

⁸⁴ CAL. HEALTH & SAFETY CODE § 33670 (West 2012); *see also* *Matosantos*, 267 P.3d at 591.

⁸⁵ *Matosantos*, 267 P.3d at 599–600.

⁸⁶ *See, e.g.*, Anthony York, David Zahniser, and Jessica Garrison, *California Cities Seek Restoration of Some Redevelopment Spending*, L.A. TIMES, Jan. 1, 2012, <http://articles.latimes.com/2012/jan/01/local/la-me-redevelopment-20120101> (noting that, in 2010, “dozens of cities spent hundreds of millions of dollars earmarked for affordable housing without building a single unit.”); Jessica Garrison, Kim Christensen, and Doug Smith, *Cities Often Give Short Shrift to Affordable Housing*, L.A. TIMES, Oct. 3, 2010, <http://articles.latimes.com/2010/oct/03/local/me-redevelop-housing-20101003> (noting that “[c]ities across California have skirted or ignored laws requiring them to build affordable homes and in the process mismanaged hundreds of millions in taxpayer dollars.”).

⁸⁷ Email from Philip S. Lanzafame, Cmty. Dev. Dep’t, City of Glendale, to author (May 24, 2012, 9:53 PST) (on file with author). “[W]hy didn’t redevelopment agencies only get enough tax increment to pay their *annual* obligations (the amount due in that year) instead of every year getting as much as was available up to the total outstanding debt? The answer is that is the way the law is drafted but it allowed the accrual of dollars that could be set aside in reserve earning interest until being deployed for a project at some future date. It is the reason that agencies could save year-to-year and then deploy at one time when the project was ready rather than having to borrow.” *Id.* Projects in these early stages are risky; many never come to fruition. The high risks make A&D loans hard to come by and quite expensive when available. *See generally* OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMERCIAL REAL ESTATE AND CONSTRUCTION LENDING: COMPTROLLER’S HANDBOOK (1998) (providing an overview of the risks associated with acquisition, development, and construction loans), *available at* <http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/realcon.pdf>

⁸⁸ Email from Philip S. Lanzafame, *supra* note 87.

The primary thrust of Proposition 22 was to safeguard from state expropriation the local governments' share of the gas and other transportation-related taxes,⁸⁹ hence the title: "Local Taxpayer, Public Safety, and Transportation Protection Act of 2010."⁹⁰ As one of the amicus briefs pointed out, "[a]lmost all of its terms and the ballot arguments in its favor addressed transportation funding."⁹¹

The uncodified portions of the Proposition (the parts that did not amend or change the law) referred broadly to the earlier voter initiatives that local governments had succeeded in adopting as a means of resisting state raids on the traditional revenue sources of local governments.⁹² Scattered throughout the proposition were more than a dozen significant but highly technical amendments codified into the state constitution.⁹³ Constitutional additions were shown in italic type. Deletions to the present constitution appeared in strike out type.

A Proposition 22 voter in a hurry could easily have overlooked the single pertinent five-line passage concerning redevelopment.⁹⁴ It was summarized as follows by the League of Women Voters: "Proposition 22 would prohibit the state from requiring redevelopment agencies to transfer any of their property-tax increment funds to the schools or any other state agency."⁹⁵

As many social scientists have long observed, voters deciding on initiatives and referenda rely more on the media than on ballot language or the official arguments for and against that appear

⁸⁹ Proposition 22, 2010 Cal. Legis. Serv. Prop. 22 (West).

⁹⁰ CAL. CONST. art. XIII, §25.5(a)(7); Proposition 22, 2010 Cal. Legis. Serv. Prop. 22 (West).

⁹¹ Application for Leave to File Amicus Curia Brief Pursuant to C.R.C. 8.25 (b) (3); and Amicus Curia Brief in Support of Respondents at 5 Cal. Redevelopment Ass'n v. Matosantos, 267 P.3d 580 (Cal. 2010) (No. S194861), *available at* <http://www.courts.ca.gov/documents/28-s194861-acb-municipal-officials-100411.pdf>.

⁹² For instance, here is the first of five declarations that appear near the top of the ballot initiative. "In order to maintain local control over local taxpayer funds and protect vital services like local fire protection and 9-1-1 emergency response, law enforcement, emergency room care, public transit, and transportation improvements, California voters have repeatedly and overwhelmingly voted to restrict state politicians in Sacramento from taking revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services." Proposition 22, 2010 Cal. Legis. Serv. Prop. 22, § 2(a) (West).

⁹³ *See* Proposition 22, 2010 Cal. Legis. Serv. Prop. 22 (West).

⁹⁴ These lines amended the California Constitution to read: "Require a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (i) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of the Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008, or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost." CAL. CONST. art. XIII, § 25.5(a)(7).

⁹⁵ *In Depth on Measure Prohibits the State from Borrowing or Taking Local Government Funds*, League of Women Voters of Cal., <http://www.cavotes.org/vote/election/2010/november/2/ballot-measure/prohibits-state-borrowing-or-taking-local-government-funds/more?device=mobile>.

in state-distributed materials.⁹⁶ Media messages spearheading the Yes on 22 campaign urged voters to “[p]rotect local services” and “[s]top State Raids!”⁹⁷

A reporter for the Orange County Register described the unlikely assortment of supporters and opponents drawn to Proposition 22.⁹⁸ Local government officials including mayors and city council members—Democrats and Republicans alike—tended to support Proposition 22, hoping that “[i]f passed Prop. 22 would ban the state from raiding local funds to pay state costs.”⁹⁹

Opponents included liberal Democrats in the Legislature, because the measure would “‘lock in’ constitutional protections for redevelopment agencies to retain the bountiful tax increment funds they collected without having to share any of it with schools and special districts.”¹⁰⁰ Meanwhile, “[s]ome Republicans didn’t like Proposition 22 because they saw redevelopment agencies as the antithesis of the free market.”¹⁰¹ An Orange County Republican assemblyman opposed Proposition 22 because “[r]edevlopment agencies have encumbered the state of California with about \$100 billion in bonded indebtedness and none of that was approved by a vote of the people, which is the normal case with bonded indebtedness.”¹⁰²

Recalling the bitter confrontation symbolized by the widely publicized case of *Kelo v. City of New London*,¹⁰³ some conservatives disliked redevelopment because “under law [redevelopment agencies] have the right [to] seize private property through eminent domain.”¹⁰⁴

On the eve of the Court’s opinion in *CRA v. Matosantos*, political activists and the general public were widely divided on redevelopment.

II. The Potential Outcomes and Determinative Arguments in *CRA v. Matosantos*

A. The Four Possible Outcomes and Their Implications

There were four possible outcomes to the *Matosantos* case:

- (1) The Court could declare both statutes unconstitutional;
- (2) The Court could find both statutes constitutional;

⁹⁶ See, e.g., Jane S. Schacter, *The Pursuit of “Popular Intent”: Interpretive Dilemmas in Direct Democracy*, 105 YALE L.J. 107, 131 (1995) (noting that “[t]he most comprehensive studies of voter behavior in ballot campaigns demonstrate that media communications and political advertising are the most important sources shaping how voters understand the initiative proposals on which they are asked to vote.”).

⁹⁷ *Yes on 22, Yes on 22/Californians to Protect Local Taxpayers and Vital Services*
<http://www.savelocalservices.com/>

⁹⁸ Brian Joseph, *Prop. 22 Draws Strange Array of Supporters/Opponents*, ORANGE CNTY. REGISTER, Oct. 15, 2010, updated Nov. 2, 2010, <http://www.oregister.com/articles/redevelopment-271419-local-prop.html>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Kelo v. City of New London*, 545 U.S. 469 (2005); see also Lefcoe, *Redevlopment Takings After Kelo*, *supra* note 73.

¹⁰⁴ Joseph, *supra* note 98.

(3) The dissolution statute could be found unconstitutional and the “pay-to-stay” statute constitutional; or

(4) The dissolution statute could be found constitutional and the “pay-to-stay” statute unconstitutional.

(1) The best outcome for redevelopment agencies, and the worst for schools, would have been for both measures to have been declared unconstitutional. This outcome would have decisively protected redevelopment property tax funds against further state incursions. It would also have added \$1.7 billion to the state budget deficit, falling hardest on the K–12 school system.¹⁰⁵

(2) Redevelopment would have survived in California if the Court had concluded that both AB X1 26 and AB X1 27 were constitutional. This would have preserved the “pay-to-stay” option for cities, counties and their RDAs. For schools, this outcome would have been satisfactory, according to the California Teachers’ Association.¹⁰⁶ Assuming most RDAs survived, schools would have received \$1.7 billion in 2011-12, and \$340 million every year thereafter, “no small amount to a public school system that has frozen new textbook adoptions since 2009 due to a lack of funding.”¹⁰⁷

(3) The friends of redevelopment could have breathed easily if the Court had invalidated AB X1 26, removing the threat of dissolution, and validated AB X1 27, which would have become a toothless tiger. For schools, the results would probably have been the same as if both measures had been declared unconstitutional.

(4) The actual outcome was the doomsday scenario for redevelopment. “[O]nce RDA dissolution occurs, agencies will be unable to complete existing projects; financially strapped cities will face massive new and unanticipated liabilities; RDA assets will be sold; RDA employees will leave; and existing obligations under federal and state grants will be breached, requiring the return of grant funds.”¹⁰⁸

This result was good for schools.¹⁰⁹ Dissolved RDAs had been receiving over five billion dollars a year in property tax revenues that would become available for “cities, counties, special

¹⁰⁵ *Cal. Teachers Ass’n Brief*, *supra* note 28, at 14.

¹⁰⁶ *Id.* at 11–12.

¹⁰⁷ *Id.*

¹⁰⁸ Informal Reply in Support of Petition for Writ of Mandate and Application for Temporary Stay at 9–10, *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Petitioners’ Reply*], available at <http://www.courts.ca.gov/documents/4-s194861-pets-informal-reply-support-of-pwfo-07-29-11.pdf>; see, e.g., Justin Scheck, *San Jose Strategy to Lure A’s Hits Snag*, WALL STREET J., May 9, 2012, <http://online.wsj.com/article/SB10001424052702304451104577390132245853476.html> (reporting that California’s redevelopment dissolution stalled the Oakland Athletics’ plan to move to San Jose).

¹⁰⁹ *Santa Clara Unified Brief*, *supra* note 21, at 1. This brief makes the point that the Legislature’s first choice was the validation of both ABX1 26 and ABX1 27. But if ABX1 27 succumbed to constitutional challenges, dissolution was the Legislature’s clear second choice in its policy hierarchy, evidenced by the severability provisions in these statutes. *Id.* at 8–9.

districts, and school and community college districts” after deducting sums necessary to meet RDA legal obligations and administrative costs.¹¹⁰

Counsel for the League of California Cities and the California Redevelopment Association (CRA) understood the risk of a split decision,¹¹¹ and had re-assured their clients that “the risk was minimal.”¹¹² Redevelopment officials “bet the ranch” on the lawsuit, and lost.¹¹³ As one litigant aptly put it, “[t]his is a nightmare of CRA’s own making.”¹¹⁴ The CRA had championed Proposition 22, which boxed the Governor into proposing dissolution to reach RDA assets. Then, the CRA, instead of settling for the “pay-to-stay” option, challenged it under Proposition 22, and won, putting itself and the California redevelopment industry out of business.

B. The Constitutionality of Dissolving RDAs

The Court opinion upholding the dissolution statute (AB X1 26) was in line with well-established tenets of state constitutional law.¹¹⁵ A bedrock principle of state constitutional law is that state governments possess absolute discretion to create and dissolve local governments,¹¹⁶ subject only to explicit limitations in the state constitution.¹¹⁷ It takes a very explicit state

¹¹⁰ ABX1 26, § 1(j)(3).

¹¹¹ “The worst of all possible worlds for my clients—that the court would uphold ABX1 26 and invalidate ABX1 27 for attempting to redirect property tax revenue[.]” Thomas Brom, *Circling the Drain*, CAL. LAWYER, Jan. 2012 (quoting Steven L. Mayer, counsel for the League of California Cities and the California Redevelopment Association), <http://www.callawyer.com/clstory.cfm?eid=919806>.

¹¹² Counsel believed the risk was minimal “in light of the clear purpose of the people in recently enacting Prop. 22, the extensive evidence of clear violations of Prop. 22 in the legislation, other strong constitutional flaws of ABX 26, clear evidence the Legislature did not intend to eliminate agencies, and the Court’s traditional deference to initiatives.” Memorandum from Chris McKenzie, Exec. Director, League of California Cities, to California City Officials (Jan. 5, 2012) (on file with author).

¹¹³ Deputy Attorney General Ross C. Moody, representing the California Department of Finance, explained: “The redevelopment agencies took a gamble on this lawsuit . . . They could have just accepted the new fiscal reality that we’re all living in. Instead, they came to court, and they said these statutes are unconstitutional.” Brom, *supra* note 111.

¹¹⁴ Brom, *supra* note 111 (quoting Christopher Sutton, a Pasadena attorney who filed an amicus brief in *Matosantos* on behalf of MORR (Municipal Officials for Redevelopment Reform)).

¹¹⁵ Even counsel for the League of California Cities and the California Redevelopment Association encountered difficulty with this point in oral argument. “Do you dispute that the Legislature has the power to dissolve the redevelopment agencies?” Justice Goodwin Liu asked. ‘It all depends,’ Mayer said. The ‘vice’ of the new legislation, he emphasized, ‘is not that it dissolves the redevelopment agencies per se, but that it dissolves them and transfers property tax revenue to schools and special districts.’ Justice Marvin Baxter asked, ‘Is there anything in Prop. 22 that purports to give the redevelopment agencies perpetual existence?’ Well, no, Mayer replied.” Brom, *supra* note 111.

¹¹⁶ “The number, nature and duration of the powers conferred upon these [municipal] corporations and the territory over which they shall be exercised rests in the absolute discretion of the State . . . The State, therefore, at its pleasure may modify or withdraw all such powers . . . extend or contract the territorial area, unite the whole or a part of it with another municipality, [or] repeal the charter and destroy the corporation.” *Matosantos*, 267 P.3d at 597 (quoting *Hunter v. Pittsburgh*, 207 U.S. 161, 178–179 (1907)).

¹¹⁷ For instance, county boundaries may not be changed by the Legislature without an election in the affected county. CAL. CONST. art. XI, § 1(a). On the other hand, cities “are mere creatures of the state and exist only at the state’s sufferance.” Informal Opposition to Petition for Writ of Mandate; Request for Issuance of Alternative Writ and for Order Expediting Briefing at 8, *Cal. Redevelopment Ass’n v.*

constitutional exception to empower a court to deny the state plenary control over local government entities, including RDAs. Petitioners imagined they detected such limitations implicit in the original initiative authorizing the establishment of TIF-funded redevelopment and in Proposition 22. A unanimous Court faulted the “smoke and mirrors” quality of the petitioners’ argument by pointing out that neither initiative even mentioned the possibility of RDA dissolution, nor did either statute explicitly guarantee perpetual existence to RDAs.¹¹⁸

C. The Dispute Over the Plain Meaning of Proposition 22 Applicable to AB X1 27

On the issue of whether Proposition 22 invalidated the “pay-to-stay” law, there was ample basis for disagreement. The Court’s arguments for striking down the second statute (AB X1 27)¹¹⁹ provoked an extensive dissent by Chief Justice Cantil-Sakauye, resulting in a 6–1 split on this issue.

The Legislature had enacted AB X1 27 as an exemption from RDA dissolution for cities and counties if they agreed to make specified payments for the benefit of schools and special districts.¹²⁰ The payment amount was to be calculated annually by the state Director of Finance based on the percentages of statewide tax increments that each redevelopment agency had received in prior years.¹²¹

The authors of ABX1 27 were well aware of the provisions of Proposition 22, and sought to draft around them. Read literally, Proposition 22 only barred the state from requisitioning transfers of *property taxes from redevelopment agencies*. The financial burden had to be assumed directly by *sponsoring cities and counties*, not their redevelopment agencies. Also, the statute prescribed no

Matosantos, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Respondents’ Opposition*] (quoting Bd. of Supervisors of Sacramento Cnty. v. Local Agency Formation Comm’n, 3 Cal. 4th 903, 914 (1992)), available at <http://www.courts.ca.gov/documents/3-s194861-resp-matosantos-and-chiang-informal-opp-to-pfwof-07-27-11.pdf>.

¹¹⁸ *Matosantos*, 267 P.3d at 601–02. The Court noted that the language in the 1952 constitutional provision was permissive, authorizing the Legislature to enact enabling legislation allowing local governments to establish tax-increment-funded redevelopment agencies, leaving the Legislature free to endow local governments with such authority, or not, as it chose, and to remove it at will. *Id.* at 598. Nothing in the constitutional text guaranteed that once a redevelopment agency was established, “it had an absolute right to continued existence.” *Id.* at 600. Proposition 22 contained no mention at all of dissolution. *Id.* at 601. Its authors overlooked the possibility that the Legislature might someday dissolve redevelopment agencies as an indirect way to squeeze tax increments from them. *Id.*

¹¹⁹ “I think the Supreme Court decision is the [worst] decision I’ve ever seen them make. As a court of equity they issued an opinion that put the petitioner in a worse position than if they never filed the case. They issued an order that neither the plaintiff nor defendant asked for. Everyone lost and no one won. To be sure redevelopment lost; but they were poised to give the State checks totaling \$1.7 billion the week after the Court decision, money that was never paid. And here we are less than two months from the end of the fiscal year whose deficit supposedly prompted all this, and the State, as far as I know, hasn’t received a dime from AB 26 to date (they may get a small amount on June 1, but far less than they thought).” Email from Murray Kane, Kane, Ballmer and Berkman, to author (May 4, 2012, 15:28 PST) (on file with author).

¹²⁰ *Matosantos*, 267 P.3d at 594; 2011 Cal. Legis. Serv. 1st Ex. Sess. Ch. 6 (A.B. 27) (West).

¹²¹ *Matosantos*, 267 P.3d at 594.

particular revenue source for making the requisite payments for the benefit of the state. Cities or counties could choose any revenue source, including rental income, lease income, interest income, sales of government-owned assets, sales of bonds, investment income, and fines, fees, and penalties.¹²²

Chief Justice Cantil-Sakauye pointedly observed that because the constitutional challenge to AB X1 27 was facial, and not “as-applied,” under familiar principals of adjudication, the petitioner would have to show that there were no imaginable circumstances under which the statute could possibly be valid.¹²³ True, a city that chose to make its AB X1 27 payments from redevelopment agency tax increments would probably be violating Proposition 22.¹²⁴ But no such case was before the court. Cities or counties would not necessarily tap into redevelopment agency tax increment funds for these payments. The Chief Justice cited a declaration from the executive director of the California Redevelopment Association that “the tax increment funds of most redevelopment agencies are tied up with existing debt, and that, as a result, ‘many redevelopment agencies will be unable to fund the required payments.’”¹²⁵ Cities had other ways to finance their payments to the state, and would probably use them. Hence, the Chief Justice was able to conclude that “on its face, nothing in AB X1 27 compels community sponsors to violate Proposition 22.”¹²⁶

The majority understood perfectly well that AB X1 27 had been drafted to call for promises from sponsoring cities and counties, not redevelopment agencies, and that the requisite payments could come from any revenue source, not necessarily tax increments.¹²⁷ To depart from the “plain meaning” of Proposition 22, the rules of construction require an ambiguity in the text to legitimize a broader judicial foray into voter intent for interpretive guidance.¹²⁸ The Court found that ambiguity in the word “indirectly.”¹²⁹

A coalition of cities and their redevelopment agencies contended in an amicus brief that these payments were almost certainly going to come from redevelopment agency tax increments.¹³⁰ The statute allowed each sponsoring community to enter an agreement with its redevelopment agency to finance the required annual remittances to the state from tax increments.¹³¹ Most cities and counties would have no other way to make the payments. Certainly, the state was not going to provide supplemental sources of funding, and local government financing was in a “dismal state.”¹³² The Court concluded that Proposition 22 should be read as encompassing payments nominally made by sponsoring cities because local governments would ultimately reimburse

¹²² *Id.* at 618 (Cantil-Sakauye, C.J., concurring and dissenting).

¹²³ *Id.* at 612.

¹²⁴ If a RDA agreed to reimburse its city or county for the voluntary payments, it had to use property tax increments for this purpose. CAL. HEALTH & SAFETY CODE § 34194.2.

¹²⁵ *Matosantos*, 267 P.3d 622 (Cantil-Sakauye, C.J., concurring and dissenting).

¹²⁶ *Id.* at 612.

¹²⁷ *Id.* at 588 (noting that ABX1 27 “condition[ed] further redevelopment agency operations on additional payments by an *agency’s community sponsors . . .*”) (emphasis added).

¹²⁸ *Id.* at 603.

¹²⁹ *Id.* at 603–604.

¹³⁰ *Coal. of Cities Brief*, *supra* note 65, at 18.

¹³¹ *Id.* (citing CAL. HEALTH & SAFETY CODE § 34194.1(a) and § 34194.2).

¹³² *Id.*

themselves for their AB1X 27 payments “indirectly” from tax increment funds allocated to redevelopment agencies, as counsel for the California Redevelopment Association claimed in its brief to the Court that they were likely to do.¹³³

Instead of deferring a decision on the constitutionality of AB1X 27 until this actually happened and was challenged in an “as applied” case, the Court majority expanded the meaning of “indirectly” to include payments from any source made to the state by any sponsoring city or county. The majority justified this broad reading of Proposition 22 by noting that past statutes raiding local funds had been indifferent regarding whether the funding source was the local government or its redevelopment agency.¹³⁴ “The Legislature had no particular reason to care where ERAF payments might come from, and no reason to preclude local governments and redevelopment agencies from deciding in a given year whether the agency or its community sponsor might be better positioned to make payment.”¹³⁵

From this, the majority inferred that Proposition 22 was meant to prohibit any mandatory state re-allocation of local funds for the benefit of the state.¹³⁶ The petitioners supported this expansive reading of Proposition 22, pointing to its stated purpose: “to conclusively and completely prohibit” the Legislature “from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with” revenue dedicated to local government.”¹³⁷

The Chief Justice explained why this reading of Proposition 22 was incorrect: the phrase “directly or indirectly” modified “to pay, remit, loan or otherwise transfer”. It did not purport to modify the explicit codified wording that mentioned only redevelopment agencies and their tax increments.¹³⁸ The Chief Justice could find nothing in the text of Proposition 22, or the accompanying voter guide, to signal to voters that Proposition 22 was meant to bar the state from reaching “any funds that are legally available,” whether allocated to redevelopment agencies or to their sponsoring cities or counties.¹³⁹ “Given the specificity with which Proposition 22 expressly curtails the Legislature’s ability to seize and/or borrow local government revenue, it is far more reasonable to conclude that Proposition 22 was narrowly intended to protect specific redevelopment agency revenues and not, expansively, to cover ‘any funds that are legally available for’ funding” the AB XI 27 payments.¹⁴⁰

Further, the Court was dead wrong in claiming that all past ERAF statutes were indifferent regarding the source of payment. The Chief Justice looked closely at the revenue shifting legislation of 2009 that had actually precipitated Proposition 22.¹⁴¹ There had been four statutes

¹³³ *Petitioners’ Reply*, *supra* note 108, at 1. *See also*, *Brief for Riverside Cnty.*, *supra* note 5, at 24 (indicating that Riverside County did not have sufficient funds to make the ransom payment, and would use its 20 percent affordable housing set aside from tax increments because most of its other tax increment money is already obligated to debt service).

¹³⁴ *Matosantos*, 267 P.3d at 604.

¹³⁵ *Id.*

¹³⁶ *Id.* at 605.

¹³⁷ *Petitioners’ Reply*, *supra* note 108, at 1.

¹³⁸ *Matosantos*, 267 P.3d at 604.

¹³⁹ *Id.* at 620 (Cantil-Sakauye, C.J., concurring and dissenting) (noting that the legislature “had every opportunity to draft such language, but they did not.”).

¹⁴⁰ *Id.* at 622.

¹⁴¹ *Id.* at 616–19.

in all. The first three “clearly targeted redevelopment agencies and their tax increments as the funding source” for the revenue shift to benefit schools.¹⁴² Each statute also permitted the redevelopment agency to make its forced payments to benefit schools from any funds that would otherwise have been directly or indirectly allocated to assist in financing redevelopment projects.¹⁴³ A third statute from the 2009 batch allowed redevelopment agencies to borrow money from their sponsoring city or county for the state mandated payments, as long as the loan was repayable solely from redevelopment agency revenues.¹⁴⁴ This explains the language of Proposition 22 prohibiting the use of RDA loans for making transfer payments.¹⁴⁵

The fourth statute was quite different from the first three. It didn’t require the use of redevelopment agency funds. The local “legislative body” could make this payment from any legally available funding source, whether related to redevelopment or not.¹⁴⁶ Proposition 22 was written to bar only statutes like the first three but not the fourth, the Chief Justice noted, as long as the local government elected to use non-redevelopment resources for the transfer payment.¹⁴⁷

The Chief Justice found nothing ambiguous about the word ‘indirectly’ as it was placed in the statute, and nothing that would license the Court majority to re-draft Proposition 22, substituting “local government body” for “community redevelopment agency,” and allowing payments to be made not only from funds allocated to the redevelopment agency but from any legally available funds.¹⁴⁸

The irony was not lost on the Chief Justice of the Court interpreting “the very measure that was crafted to protect financing for new redevelopment projects . . . in a manner that effectively ends all financing for new redevelopment projects. This cannot be a necessary result intended by the proponents of Proposition 22 concerning redevelopment.”¹⁴⁹ Indeed, it is difficult to imagine a cadre of voters favoring Proposition 22 who would prefer the complete dissolution of redevelopment agencies to the pay-to-stay option.

Perhaps there is an element of poetic justice in the broad reading the Court gave Proposition 22. Proposition 22 was sold “to the public as a means to stop Sacramento politicians’ raids on local road funds.”¹⁵⁰ And the two organizations that had been instrumental in formulating the redevelopment provisions of Proposition 22 were in court vigorously challenging every argument that would have justified validating AB X1 27.¹⁵¹

To the claims of amici brief filers that Proposition 22 could “ultimately produce grave, undesirable consequences[,]” counsel for the Community Redevelopment Agency (CRA)

¹⁴² *Id.* at 617.

¹⁴³ *Id.* at 617–18.

¹⁴⁴ *Id.* at 618.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 618, 620.

¹⁴⁸ *Id.* at 620.

¹⁴⁹ *Id.* at 623.

¹⁵⁰ Steven Greenhut, *A Victory for Property Rights in California: The California Supreme Court Stands Up Against Government Abuse*, REASON.COM (Jan. 9, 2012), <http://reason.com/archives/2012/01/09/a-victory-for-property-rights-in-califor>.

¹⁵¹ *Matosantos*, 267 P.3d at 587 (majority opinion).

answered: “Until the electorate sees fit to repeal or modify Proposition 22, courts must enforce it conscientiously, in light of its text and stated purposes. That is all petitioners ask the Court to do in this case.”¹⁵² Well, if the CRA could live with the disastrous consequences of the Court declaring AB X1 27 invalid, why couldn’t the Court?

The core of petitioners’ argument was that the Legislature had only one pervasive goal in enacting this pair of statutes—to divert funds from redevelopment agencies to schools under threat of dissolution, while evading Proposition 22. Under these circumstances, why should the Court have felt constrained by the precise wording of the constitutional provision? Who understood the meaning of Proposition 22 better than its main sponsors, these two petitioners?¹⁵³ The lead petitioners never advanced any rationale by which the Court could have validated AB X1 26 without invalidating AB X1 27.

D. Proposition 22 Only Applies During the Normal Operation of Redevelopment Agencies, Not in the Shadow of Their Dissolution or Their Escape from Dissolution

In the preceding section we observed the lines of argument between the majority and the dissent over whether Proposition 22 was meant to bar all the previous means by which the state had mandated transfer payments from redevelopment agencies, or only some of them. Here, we consider a related but different aspect of presumptive voter intent.

Until 2011, redevelopment advocates never considered the possibility that the state would respond to the limitations of Proposition 22 by dissolving redevelopment agencies and then enacting a law to exempt them from dissolution for a price.¹⁵⁴ The drafters of Proposition 22 only anticipated that the Legislature would enact more of the same sort of remittance statutes as it had before. The Court majority, in reviewing AB X1 26, concluded that Proposition 22 was

¹⁵² Petitioners’ Answer to the Amici Briefs at 2, *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (Cal. 2010) (No. S194861) [hereinafter *Petitioners’ Answer*], available at <http://www.courts.ca.gov/documents/35-s194861-resp-acb-pet-100711.pdf>.

¹⁵³ Petitioners were confronted by amicus California Professional Firefighters asserting that the executive directors of the California Redevelopment Association and the League of California Cities in a pre-election hearing on Proposition 22 had told members of the state Senate that the proposition did not remove Legislative authority to eliminate redevelopment agencies. Petitioners countered that this misrepresented what the executive directors had actually said. And even if they had made such statements, their opinions even as drafters of the Proposition cannot be taken as evidence of voters’ intent unless voters can be shown to have understood and been influenced by drafters’ statements. *Id.* at 19.

¹⁵⁴ Redevelopment advocates strongly supported Proposition 22, calling its passage “encouragement to continue efforts to increase the public’s awareness of redevelopment by building coalitions in communities throughout California.” John F. Shirley, Executive Director, CRA, *Proposition 22 Passes*, CALIFORNIA REDEVELOPMENT ASSOCIATION (Nov. 2, 2010), <http://www.calredevelop.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=341>. As one critic of redevelopment phrased it, “The CRA, the League of California Cities and the foolhardy Republicans, such as Sen. Bob Huff were outsmarted. . . . They were so arrogant that they tripped over their own clever plans. They passed Prop. 22, which then forbade the one mechanism that would have saved redevelopment from the ash bin of history.” Steven Greenhut, *RDAs Hoisted On Own Petard*, CAL WATCHDOG (Dec. 29, 2011), <http://www.calwatchdog.com/2011/12/29/rdas-hoisted-on-own-petard/>.

only meant to apply during the ordinary operation of redevelopment agencies, and had no applicability in the shadow of dissolution.¹⁵⁵

One aspect of the dissolution statute that appeared to violate the plain meaning of Proposition 22 is that it froze the use of tax increments from the date of the law's enactment, except to the extent necessary for redevelopment agencies to repay prior obligations.¹⁵⁶ The plaintiffs in *California Redevelopment Association v. Matosantos* assailed this freeze as a de facto transfer of funds indirectly from redevelopment agencies to the state in apparent contravention of Proposition 22 because all the tax increment that redevelopment agencies would be entitled to collect in fiscal year 2011-12, \$5.2 billion, "must necessarily be attributable to 'additional, future debt[,]'" or the agencies would have had no right to these funds under law.¹⁵⁷ Redevelopment agencies are entitled to continue collecting tax increments until all their debts are paid, petitioners argued.¹⁵⁸ Under the freeze provision, redevelopment creditors could no longer anticipate agencies accumulating funds as reserves to secure eventual repayment. The freeze shifts agency obligations into a "pay only when due" situation.¹⁵⁹ For bond creditors, this could raise sufficient uncertainty as to prompt credit rating downgrades.¹⁶⁰

It is hard to deny that the fiscal result of the freeze would be to flout a literal reading of Proposition 22 based on the language of the text. The freeze would divert billions of dollars in tax increments from redevelopment agencies to the benefit of the state in its capacity as the guarantor of school finance. The Court admitted as much by defending the freeze as incidental to the Legislative right to terminate redevelopment.¹⁶¹ Nothing in Proposition 22 evidenced voter intent to modify or weaken the Legislature's right to dissolve redevelopment agencies. Indeed, the Court emphasized the plenary nature of state authority over local governments,¹⁶² a principal of state constitutional law so fundamental that it could only be modified by clear constitutional language,¹⁶³ manifestly lacking in Proposition 22.¹⁶⁴

None of those earlier statutes shifting funds from local revenue sources to the state had been accompanied by the threat of dissolution. So the Court agreed with the argument of *Matosantos* that Proposition 22 was only meant to apply "during the operation" of redevelopment agencies,

¹⁵⁵ *Matosantos*, 267 P.3d at 601.

¹⁵⁶ *Id.* at 594. The freeze was Part 1.8 of AB1X 26, CAL. HEALTH & SAFETY CODE §§ 34161-34165.

¹⁵⁷ *Petitioners' Answer*, *supra* note 152, at 8.

¹⁵⁸ *Id.* at 11.

¹⁵⁹ *Id.* at 12.

¹⁶⁰ *Id.* at 16.

¹⁶¹ *Matosantos*, 267 P.3d at 602 ("The power to abolish an entity necessarily encompasses the incidental power to declare its ending point.").

¹⁶² *Matosantos*, 267 P.3d at 596.

¹⁶³ "[T]he federal Constitution is a *grant of* enumerated powers upon which all exercises of federal power must be based." ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* 3 (Oxford, 2009). The opposite is true of state constitutions. The sovereign powers of the states to govern themselves, and the local governments within them, are plenary except for specific limitations embedded in the state's or the federal constitution.

¹⁶⁴ *Matosantos*, 267 P.3d at 601 (noting "[t]he principle of *inclusio unius est exclusio alterius* applies here[.]" meaning essentially that, if the voters had intended to eliminate the Legislature's ability to dissolve RDAs, they would have done so explicitly).

not pending their dissolution.¹⁶⁵ Simply put, voters enacting Proposition 22 were not thinking about the possibility of the dissolution option at all.

Assume the Court is correct, and Proposition 22 has no application to AB X1 26 for this reason. Then why would it be applicable to AB X1 27? After all, both laws contained previously unimagined dissolution scenarios. The asymmetry is puzzling since both statutes are, essentially, about redevelopment fund transfers, incident to dissolution or its avoidance.

E. Was the Sanction of Dissolution for Nonpayment Qualitatively Different From Previous Sanctions for Nonpayment of State Mandated Transfers?

Matosantos representing the state contended that AB X127 eluded Proposition 22 because unlike past fund transfer laws, it was voluntary. Entitled “Voluntary Alternative Redevelopment Program,” AB X1 27 did not *require* any payments at all.¹⁶⁶ AB X1 26 would dissolve the redevelopment agency of any sponsoring city or county that elected not to make the requisite payments. But AB X1 27 imposed no monetary payment obligation upon any city, county or redevelopment agency content to dissolve. “Admittedly, this may not be a desirable choice for a city or county, but it is a choice nonetheless.”¹⁶⁷

Counsel for the California Redevelopment Association saw nothing voluntary in penalizing RDAs for a city or county not acquiescing. “The Legislature may not use its power to regulate and, assertedly, dissolve the RDAs to accomplish indirectly what it could not do directly: keeping RDAs in existence while redirecting a substantial portion of their tax increment to other government bodies.”¹⁶⁸

According to the Court, taking funds directly from local governments by statute was no different than killing them off for not paying the ransom.¹⁶⁹ “The difference is only a change in the sanction for nonpayment,” a “distinction without a difference.”¹⁷⁰

It is challenging to imagine how the Court majority could have reached this conclusion. Undoubtedly, some cities and counties would have elected dissolution; California Redevelopment Association’s best estimate was that one-third or more of the 400 redevelopment agencies would close up shop because they could not afford to make the “ransom payments.”¹⁷¹ Redevelopment agency personnel who lost their jobs as a result of the Court’s ruling would certainly not describe this difference in sanctions as “a distinction without a difference,” nor would the lead plaintiff in this case, the California Redevelopment Association, which is now

¹⁶⁵ *Id.* at 602.

¹⁶⁶ *Respondents’ Opposition*, *supra* note 117 at 4.

¹⁶⁷ Respondent County of Santa Clara’s Return by Answer to Petition for Writ of Mandate; Memorandum of Points and Authorities in Support of Return at 17, *Cal. Redevelopment Ass’n v. Matosantos*, 267 P.3d 580 (No. S194861), *available at* <http://www.courts.ca.gov/documents/10-s194861-nontitle-resp-sharma-and-santa-clara-county-written-return-09-09-11.pdf>.

¹⁶⁸ *Petitioners’ Answer*, *supra* note 152, at 2.

¹⁶⁹ *Matosantos*, 267 P.3d at 607.

¹⁷⁰ *Id.*

¹⁷¹ Memo from League of California Cities executive director Chris McKenzie to California City Officials, January 5, 2012, Background on CRA et al v. Matosantos.

defunct.¹⁷² With 250 active members, the California Redevelopment Association would almost certainly still be with us, smaller but alive.

F. The Severability Issue

Matosantos, arguing to uphold the Legislation, threw out a lifeline to the redevelopment advocates when she had proposed that the Court consider only the constitutionality of AB X1 26, without deciding the constitutionality of AB X1 27. She contended the two measures should be viewed as “stand alone” acts.¹⁷³

Counsel for the California Redevelopment Association rejected this strategy, one that might have saved their client. They advanced an array of arguments against severing the two laws, premised on the assumption that the Legislature was only using the threat of dissolution under AB X1 26 to extract tax increments from redevelopment agencies under AB X1 27. “The Legislature expected that most or all of the RDAs would continue operating under AB X1 27. Accordingly, it could not affect more than a handful of agencies.”¹⁷⁴

The inseverability argument advanced by counsel for the California Redevelopment Agency would have been a hedge against disaster, had the Court accepted it. Suppose the Court had found AB X1 27 invalid, and AB X1 26 valid—but inseverable from AB X1 27. That would have been tantamount to finding both laws invalid. This would have cleared the slate for the Legislature to enact a stand-alone dissolution measure if that were truly its intent all along.¹⁷⁵

The Court rejected this line of reasoning by noting that each of these bills was “complete in itself such that it can be enforced notwithstanding” the other.¹⁷⁶ A severability clause in AB1X 27, section 2, made clear the Legislative preference to retain the dissolution law even if the continuation payment program were invalidated.¹⁷⁷

III. One Possible Way Forward

In the aftermath of this opinion, could the Legislature reinstate redevelopment, consistent with Proposition 22 and “something the state could afford”?¹⁷⁸ The answer is yes, on both counts—the Legislature could enact a new redevelopment enabling statute that would be constitutional and affordable to the state.

A. The Court’s Constitutional Criteria for a Redevelopment Revival Statute

The last paragraph of the majority opinion offers three guiding principles for new redevelopment enabling legislation. First, the Legislature retains plenary power to establish and dissolve local governments as it sees fit. Second, if it elects to allow such agencies, it may but need not enable them to receive tax increments. Third, if it authorizes such agencies, and empowers them to

¹⁷² The CRA was a trade organization representing redevelopment agencies.

¹⁷³ *Petitioners’ Reply*, *supra* note 108, at 3.

¹⁷⁴ *Petitioners’ Answer*, *supra* note 152, at 32.

¹⁷⁵ *Id.* at 37.

¹⁷⁶ *Matosantos*, 267 P.3d at 608.

¹⁷⁷ *Id.* at 609.

¹⁷⁸ UNWINDING REDEVELOPMENT, *supra* note 10.

collect tax increments, it may not thereafter reallocate such tax increments to benefit schools or other entities.¹⁷⁹

In sum, the Court extends to the Legislature the chance for a fresh start in re-formulating the basic norms applicable to redevelopment in California. This could be a good thing. According to William Fulton, one of the leading scholars of California redevelopment and a former mayor of the City of Ventura, “The system was so broken that I thought the best way to achieve reform was to blow up redevelopment and start over with a more straightforward and targeted tax-increment financing system.”¹⁸⁰

The Legislative Analyst’s Office anticipated that some lawmakers might want to revive redevelopment and expressed concerns about the potential costs.¹⁸¹ Those costs are well within the power of the Legislature to control by the taxing prerogatives it grants or withholds in the enabling statute. As the *Matosantos* Court observed, the state is not obliged, and never was, to allow redevelopment agencies to capture the tax increments. The enabling provision in the state constitution was entirely permissive.¹⁸² The Legislature could preclude newly authorized RDAs from reaching any tax increments except those of the sponsoring city or county. It could also place limitations on the extent to which a sponsoring city or county could commit its own future tax increments to redevelopment.¹⁸³

B. Tax Increment Reinvestment Zones (TIRZ) in Texas

Many states have TIF-based redevelopment statutes that could serve as models for California.¹⁸⁴ One of the most interesting and successful of those laws can be found in Texas where any city, town, or county may establish a redevelopment project area. These are called Tax Increment Reinvestment Zones (TIRZ). They are authorized by state enabling laws and local ordinances to utilize tax increment financing for infrastructure improvements within the zone.¹⁸⁵ Funding can come from real property tax increments, sales tax increments¹⁸⁶ or both.¹⁸⁷

¹⁷⁹ *Matosantos*, 267 P.3d at 610.

¹⁸⁰ Fulton, *supra* note 68.

¹⁸¹ UNWINDING REDEVELOPMENT, *supra* note 10.

¹⁸² “[C]onsistent with the text’s use of the permissive “may,” the Legislative Counsel explained that the proposed amendment was intended simply to “authorize”—but not require—the Legislature to provide for tax increment financing for redevelopment. (Proposed Amendments to Constitution: Propositions and Proposed Laws, Gen. Elec. (Nov. 4, 1952) Legis. Counsel’s analysis of Assem. Const. Amend. No. 55, p. 19.)” *Matosantos*, 267 P.3d at 598.

¹⁸³ “I think based on the decision the legislature could readopt tax increment provisions, but simply put a limit on the percentage of the tax increment redevelopment agencies get. In a sense they had done that in the past with statutory pass-through payments and tax increment limits required for redevelopment plans.” Email to author from Murray Kane, Kane, Ballmer and Berkman, to author (May 4, 2012, 15:28 PST).

¹⁸⁴ See, e.g., Tax Increment Financing Act, TEX. TAX CODE ANN. § 311 (West 2011).

¹⁸⁵ These are special zones created by the city to attract new investment to areas that would “not attract sufficient market development in a timely manner.” *Tax Increment Reinvestment Zones (TIRZ)*, CITY OF HOUSTON, [hereinafter *Houston TIRZ*], <http://www.houstontx.gov/finance/ecodev/tirz.html>.

¹⁸⁶ The basic state sales tax rate in Texas is 6.25 percent. Local governments (cities, counties, transit authorities and special purchase districts) can increase the tax by 2 percent for a total rate not to exceed

Cities and counties throughout Texas have created TIRZ zones.¹⁸⁸ Each of the larger cities—Austin,¹⁸⁹ Dallas,¹⁹⁰ El Paso,¹⁹¹ Houston,¹⁹² and San Antonio¹⁹³—boasts numerous TIRZ project areas.

The initiative for a TIRZ can come from a city or county. Private property owners can also start a TIRZ with city council approval of a petition signed by owners of 50 percent or more of the land within the proposed zone, measured by appraised value.¹⁹⁴ As a consequence of this governance arrangement, redevelopment in Texas cities is highly decentralized. Each TIRZ zone is governed by its own board of directors. Most of the directors are designated by the sponsoring initiator, either a city or private property owners. Each participating taxing entity (school, special purpose district, county) is also entitled to name one board member.¹⁹⁵

There are limits to the authority of TIRZ boards. For instance, they must secure city approval of their boards of directors, of project plans, and of reinvestment zone financing plans.¹⁹⁶ Staffing

8.25 percent. SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, 2012 TEXAS SALES AND USE TAX RATES iv (April 2012), available at <http://www.window.state.tx.us/taxinfo/local/apr12rates.pdf>.

¹⁸⁷ See § 311.0123. Sales Tax Increment, TEX. TAX CODE ANN. § 311.0123(e)(2) (West 2012) (allowing for sales and use taxes to be deposited—along with property tax increments—into the tax increment fund and used to pay project costs for a reinvestment zone).

¹⁸⁸ The Texas Comptroller of Public Accounts listed over 100 cities and counties as having participated in at least one TIRZ in 2005. CITIES, COUNTIES AND SCHOOL DISTRICTS REPORTING TIRZ TO THE PVS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS (2005), available at <http://www.window.state.tx.us/taxinfo/proptax/registry06/districts.pdf>.

¹⁸⁹ As of May 2012, there were three active Tax Increment Financing Reinvestment Zones in the city of Austin. *Mayor Pro Tem's Committees*, AUSTINTEXAS.GOV, THE OFFICIAL WEBSITE OF THE CITY OF AUSTIN, <http://www.austintexas.gov/department/mayor-pro-tems-committees>. See also *Opportunity Austin*, AUSTIN CHAMBER OF COMMERCE, <http://www.austinchamber.com/the-chamber/opportunity-austin/>. Through a project called “Opportunity Austin,” a five-year, five-county economic development initiative, 123,400 new jobs have been added to Austin's regional economy since 2004. *Id.*

¹⁹⁰ As of December 2009, there were 18 Tax Increment Financing Districts in the city of Dallas. RESEARCH & INFORMATION DIVISION, DALLAS ECONOMIC DEVELOPMENT, TAX INCREMENT FINANCING DISTRICTS (2009), available at http://www.dallas-ecodev.org/SiteContent/66/documents/Resources/Maps/TIFs_all.pdf.

¹⁹¹ The City of El Paso is working on Tax Increment Reinvestment Zone Number 5. *Boards & Commissions, Tax Increment Reinvestment Zone Number 5*, THE CITY OF EL PASO, TEXAS, http://www.elpasotexas.gov/muni_clerk/detail.asp?id=85.

¹⁹² As of 2012, there were 22 TIRZs in Houston. TAX INCREMENT REINVESTMENT ZONES, FISCAL YEAR 2012 BUDGET, CITY OF HOUSTON, available at http://www.houstontx.gov/budget/12budprop/XIV_TAX.pdf.

¹⁹³ The City of San Antonio administers 25 active TIRZs. *TIF Frequently Asked Questions*, CITY OF SAN ANTONIO DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT, <http://www.sanantonio.gov/planning/tif/FAQ.aspx>.

¹⁹⁴ TEXAS TAX CODE ANN. § 311.005(a)(4) (West 2011).

¹⁹⁵ See TEX. TAX CODE ANN. § 311.009 (West 2011).

¹⁹⁶ TEX. TAX CODE ANN. § 311.010 (West 2011) (describing the powers of and limitations on TIRZ boards).

of TIRZ boards is provided by the sponsoring city or county on the basis of promulgated fee schedules.¹⁹⁷

Statutory Criteria for TIRZ. Statutory criteria in Texas for establishing TIF-subsidized reinvestment zones are expansive¹⁹⁸ and go well beyond the narrow definition of “blight” found in California and many other states.¹⁹⁹ In Texas, tax increment money can be used to upgrade marginal areas near downtown that are already showing signs of gentrifying, to facilitate high density transit oriented development, and even in solidly middle income areas,²⁰⁰ as long as city councils finds property within the project area to be underutilized, and not likely to attract “sufficient market development in a timely manner.”²⁰¹ The statutory limitation is only that: “The area’s present condition must substantially impair the city’s growth, retard the provision of housing, or constitute an *economic or social liability to the public health, safety, morals or welfare.*”²⁰² (emphasis added).

Readers may be puzzled at how business-friendly, regulation-averse Texas would enact such broad enabling legislation for redevelopment.²⁰³ One possible answer is that the business community supports the use of tax increments for economic development and civic improvements,²⁰⁴ business leaders participate actively in redevelopment projects, often initiate them as Texas law allows, and routinely sit on TIRZ boards.²⁰⁵

¹⁹⁷ TAX INCREMENT FINANCING POLICY AND PROGRAM MANUAL, CITY OF SAN ANTONIO, TEXAS 6 (2008).

¹⁹⁸ See TEX. TAX CODE ANN. § 311.005 (West 2011) (listing criteria for reinvestment zones).

¹⁹⁹ George Lefcoe, *Redevelopment Takings After Kelo: What's Blight Got to Do With It?*, 17 S. CAL. REV. L. & SOC. JUST. 803 (2008).

²⁰⁰ See Toshiyuki Yuasa & Richard D. Thomas, *Efficiency-Equality Consequences in City Redevelopments: Assessing the “Devil-in-the-Details” of Tax Increment Financing in Houston*, 2006 Annual Meeting of the Midwest Political Sci. Assoc., 16-21 (Apr. 19–23, 2006), available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/3/6/9/4/pages136948/p136948-1.php.

²⁰¹ *Houston TIRZ*, *supra* note 185.

²⁰² *Tax Increment Financing Registry*, WINDOW ON STATE GOVERNMENT (Dec. 2004), <http://www.window.state.tx.us/taxinfo/proptax/registry04/zone.html>.

²⁰³ See, e.g., BERNARD H. SIEGAN, *LAND USE WITHOUT ZONING* (1972) (about the lack of use zoning in Houston); Joel Kotkin, *California Suggests Suicide; Texas Asks: Can I Lend You a Knife?*, FORBES (Nov. 15, 2010, 10:36 AM), <http://www.forbes.com/sites/joelkotkin/2010/11/15/california-suggests-suicide-texas-asks-can-i-lend-you-a-knife/> (attributing economic prosperity in Texas to the state’s lax regulatory scheme and business-friendly climate). Of the Fortune 500 companies, Texas now has 58, New York 55 and California 52. Texas has no state income tax, unlike New York and California, and a much lower rate of overall taxation per capita. Bill Peacock, *Going to Texas*, TEXAS PUBLIC POLICY FOUNDATION (Apr. 1, 2009), http://www.texaspolicy.com/commentaries_single.php?report_id=2540 (Mr. Peacock is Director for the Center for Economic Freedom with the Texas Public Policy Foundation.).

²⁰⁴ See, e.g., *TIRZ Business Support Center*, CITY OF SAN ANTONIO, DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT, <http://www.sanantonio.gov/planning/TIF/initiative.aspx>. This program includes computer centers “to provide technology and training access for low-to-moderate- income Latinos”. “Welcome to the TIRZ Business Support Center! The mission of this initiative is to help businesses located in our city-initiated TIRZ to thrive.”

²⁰⁵ This can lead to conflicts of interest which Texas cities attempt to avoid on TIRZ boards. See, e.g., *Financial Disclosure Reporting*, CITY OF SAN ANTONIO, OFFICE OF THE CITY CLERK,

A second reason that some states limit redevelopment to severely blighted properties is to preclude local governments from taking unblighted property for the benefit of private redevelopers.²⁰⁶ In Texas, eminent domain reform has not resulted in restriction of the scope of condemnation but has instead focused on improving acquisition procedures to enhance property owners' chances of being adequately compensated when government does force them to sell.²⁰⁷

A third answer may be that restrictive definitions of "blight" often find their way into state law at the behest of other taxing entities, trying to protect their property tax bases against proliferating intrusions from redevelopment agencies.²⁰⁸ As we shall see, this is not a concern for taxing entities in Texas.

A leading California attorney who specializes in municipal and redevelopment law advocates that "the remaking of redevelopment in California" should extend beyond "blight elimination"

<http://www.sanantonio.gov/clerk/boards/> ("The City of San Antonio Ethics Code requires city officials and designated city employees to file an annual Financial Disclosure Report (FDR). Public service is a public trust. To ensure and enhance public confidence in City Government, each city official must not only adhere to the principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times. The FDR identifies possible conflicts of interest.").

Nonetheless, disputes over potential conflicts of interest sometimes arise. *See, e.g.,* Nancy Sarnoff and Bradley Olson, *Development Overhaul of mall prompts lawsuit Manager, owner say rival used their plan to make bid mall: Sharpstown decision defended*, HOUSTON CHRONICLE (Aug. 26, 2009), http://www.chron.com/CDA/archives/archive.mpl?id=2009_4780803 ("R.D. Tanner, a partner in the firm, resigned from the TIRZ board the day his company submitted its vision for the mall. The board voted to support his firm's bid that same day. The board is tasked with overseeing the site's redevelopment and distributing up to \$20 million of public money to assist in that effort.").

²⁰⁶ A strict legislative definition of "blight" is cited by local government defenders as precluding *Kelo*-like situations from arising in California.

²⁰⁷ *Tex. Rice Land Partners Ltd. v. Denbury Green Pipeline*, -- S.W. 3d --, 55 Tex. Sup. Ct. J. 380 (2012) (the Texas Supreme Court invalidated the use of eminent domain for a private pipeline to be owned by an oil company).

²⁰⁸ *See, e.g.,* Memorandum from the Chief Admin. Office of the Cnty. of Los Angeles to Cnty. Supervisors 3-4 (Aug. 15, 2005), *available at* http://file.lacounty.gov/bc/q3_2005/cms1_032595.pdf. ("The pursuit of additional local revenues guarantees that there will continue to be proposals to weaken or dispense with a narrow definition of blight. [...] The County has opposed these and other efforts to weaken AB 1290 over the years. In fact, its State Legislative Agenda contains long-standing policies to: support legislation which continues or extends the redevelopment law reforms established in AB 1290, support measures to strengthen the blight findings requirement to prevent redevelopment abuse, and support measures to close loop-holes that allow agencies to extend the life of projects beyond the statutory time frames established in AB 1290."). Moreover, the Bill Analysis report from the Third Reading of AB-1290 notes that the support of counties, school districts, and other taxing entities for the bill was fluctuating at the time, and that "[a]mendments are forthcoming to take care of schools and temper the counties [sic] opposition." CA B. An., A.B. 1290, California Bill Analysis, Senate Floor, 1993-1994 Regular Session, Assembly Bill 1290, Sept. 9, 1993 (suggesting these other taxing entities were seeking to amend the bill to make redevelopment more difficult).

“to build the constituency for the economic development, job creation, infrastructure investments, sustainable/infill development, catalyst projects and affordable housing”.²⁰⁹

Capping the Use of TIF. One of the reasons California redevelopment became so irresistible a target for state budget planners is that during the past 35 years, redevelopment’s share of property taxes statewide grew six-fold from 2 percent to 12 percent (up to 25 percent in some counties) at the expense of schools, community colleges, and other local governments.²¹⁰ As of 2011, Texas had placed a cap of 15 percent as the maximum amount of a city’s appraised property values that can be included within a reinvestment zone.²¹¹ Without such a constraint, a TIRZ board would have virtually limitless discretion for the amount of future property tax revenue it could requisition for redevelopment.

A property tax cap is worthy of consideration in budget-sensitive California. William Fulton foresees significant hurdles in the implementation of an effective cap: “The state would have to oversee redevelopment more aggressively and ‘allocate’ the ability to use tax-increment funds based on how closely cities hew to redevelopment’s newly targeted purposes. Cities won’t like this, but it’s similar to the system used to allocate low-income housing tax credits, and its common practice in other states.”²¹²

The TIF from Other Taxing Entities. The Texas statute avoids the problem of redevelopment agencies poaching the tax revenues of other taxing entities without their consent. When a TIRZ board asks a county, school district, or special purpose district to share their tax increments for a proposed reinvestment project, these taxing entities are empowered to opt out by just doing nothing.²¹³ Only if they wish to participate must they enter a negotiated contract with the TIRZ board. The contract will specify the percentage of TIF the taxing entity is willing to contribute to the project at hand, and delineate any *quid pro quo* the TIRZ board has promised the taxing entity.²¹⁴

²⁰⁹ Seth Merewitz, *In Case You Missed It: Post-Redevelopment: What’s Next for Local Economic Development*, PUBLICCEO.COM (Jan. 23, 2012), <http://www.publicceo.com/2012/01/post-redevelopment-whats-next-for-local-economic-development/>.

²¹⁰ Mac Taylor, LEGISLATIVE ANALYST’S OFFICE, THE 2011-2012 BUDGET: SHOULD CALIFORNIA END REDEVELOPMENT AGENCIES? 1 (2011), http://www.lao.ca.gov/analysis/2011/realignment/redevelopment_020911.pdf.

²¹¹ TEX. TAX CODE ANN. § 311.006 (West). The statute has since been amended to cap this amount at 25 percent for cities with population of 100,000 or more and 50 percent for cities with a population of less than 100,000.

²¹² Fulton, *supra* note 68.

²¹³ For reinvestment zones created before June 1, 1999, taxing units not wishing to participate had to notify the Board. For zones created after that date, taxing units not wishing to participate “would simply not enter into any agreement to contribute to the tax increment fund.” *Tax Increment Financing Registry*, WINDOW ON STATE GOVERNMENT (Dec. 2004), <http://www.window.state.tx.us/taxinfo/proptax/registry04/zone.html>.

²¹⁴ From 0 percent to 100 percent of their tax increment. TAX INCREMENT FINANCING POLICY AND PROGRAM MANUAL, CITY OF SAN ANTONIO, TEXAS 2 (2008). *See, e.g.*, McKinney Town Center Tax Increment Financing Initiative, TIRZ No. 1, Informational Stakeholders Meeting slides (August 11, 2010) slide 7 (showing county percentage contributions to seven TIRZ projects: 0% (1), 50% (4), 80% (1), 100% (1)).

Most school districts have opted out of the tax zones since 1999.²¹⁵ In that year, the state ceased its earlier practice of reimbursing school districts for property tax revenues relinquished to redevelopment projects.²¹⁶ Since then, school districts have tended to seek professional financial advice before committing their tax increments to proposed projects. Generally, they conclude that these deals are not in their best interest,²¹⁷ except for situations in which the TIRZ is contributing capital for the construction of school facilities.²¹⁸

More than money motivates officials of some taxing entities. One example comes from Harris County, Texas, which only invests in projects that meet “specific guidelines to help stimulate underdeveloped or blighted areas.”²¹⁹

California tried and abandoned a system of RDAs negotiating with other taxing entities for their tax increments. Several factors accounted for its failure. For starters, an “opt-in” default rule applied.²²⁰ Taxing entities that didn’t negotiate were deemed to have surrendered their tax increments.

Most negotiations occurred between city RDAs and counties or special districts; school districts often neglected to negotiate.²²¹ The statutory standards for these negotiations were somewhat murky, referring to inflation-related adjustments and reimbursement for costs the proposed project might impose on schools and special districts.²²² By law, negotiated sums were not to exceed the amounts the other tax entity surrendered in tax increments (that is, the revenues the taxing entity would have received in the absence of redevelopment).²²³

²¹⁵ Robert Crowe, *Goose Creek Officials Cast Wary Eye on TIRZ*, HOUSTON CHRONICLE (Apr. 4, 2002), <http://www.chron.com/neighborhood/pasadena-news/article/Goose-Creek-officials-cast-wary-eye-on-TIRZ-2058144.php>.

²¹⁶ GREG ABBOTT, HANDBOOK ON ECONOMIC DEVELOPMENT LAWS FOR TEXAS CITIES 107–08, excerpt available at https://www.texasedc.org/files/File/TIF/219_ag_tif_summary.pdf.

²¹⁷ *Id.*

²¹⁸ Mike Morris, *Dispute with TEA May Cost District Millions*, ULTIMATE KINGWOOD (May 19, 2010), <http://www.ultimatekingwood.com/stories/2155-dispute-with-tea-may-cost-district-millions>.

²¹⁹ “The county recently rejected two city of Houston tax zone proposals for the Galleria and Memorial City areas.” Crowe, *supra* note 215.

²²⁰ *Sch. Servs. of Cal., Inc., Redevelopment Agency Funds*, 28 FISCAL REPORT 15 (2008), <http://www.sscal.com/fiscal/2008Jul/0718redv.htm>. Even without negotiating, school districts received up to 2 percent of assessed value increases attributable to inflation. *Santa Ana Unified Sch. Dist. v. Orange Cnty. Redevelopment Agency*, 108 Cal. Rptr. 2d 770, 774 (Ct. App. 2001) (holding that a 1984 amendment to Cal. Health & Safety Code § 33676 required that “school districts shall be allocated this increase as a matter of law”).

²²¹ “The K–14 districts typically were not active in these negotiations—in part because, after 1972, the state backfilled them for any property tax losses. Pass-through agreements sometimes were negotiated as part of a settlement of a dispute over the legality of a proposed project area. In these cases, the only property tax revenue that the RDA retained was the K–14 districts’ and city’s share.” UNWINDING REDEVELOPMENT, *supra* note 10. *See also* *Sch. Servs. of Cal., Inc.*, *supra* note 220 (“Prior to the mid-1990s school districts negotiated—or failed to negotiate in many cases—pass-through agreements . . .”).

²²² CAL. HEALTH & SAFETY CODE § 33607.7 (describing tax increment payment structure applicable to pre-1994 redevelopment plans).

²²³ CAL. HEALTH & SAFETY CODE § 33401 (1993).

The negotiated system produced very uneven results. Some counties and special districts negotiated fully compensatory pass-through payments for themselves, sufficient to make up all of their lost tax increments.²²⁴

This system of *ad hoc*, individually negotiated arrangements was replaced in 1994 by a legislated formula of mandatory tax increment “pass-through” payments from RDAs to other taxing entities.²²⁵ “In contrast to the earlier negotiated agreements, post-1993 pass-through payments are distributed to all local agencies and the amount each agency receives is based on its proportionate share of the 1 percent property tax rate in the project area.”²²⁶ In recent years, “pass-throughs” equaled about 20 percent of redevelopment gross revenues.²²⁷ Pass-through amounts bore no relationship to the negotiated outcomes they replaced.²²⁸

The Legislature could follow the Texas example, and make “opt-out” the default position unless the other taxing entities enter revenue-sharing agreements with redevelopment agencies. Alternately, straining under the state’s budget deficits, the Legislature could preclude school districts from sharing any of their future property tax revenues with redevelopment agencies, as a

²²⁴ UNWINDING REDEVELOPMENT, *supra* note 10.

²²⁵ CAL. HEALTH & SAFETY CODE § 33605–33607 (1994). These pass-through payments were calculated after subtracting contributions to affordable housing from gross tax-increment revenue. Dardia, *supra* note 59, at 36 n.14. The Dardia study indicated that only about half the tax increment yield was actually attributable to RDA activity, *id.* at 66, justifying the shift to statutory pass-through payments. Note that the combined affordable housing contribution and pass-through payments equal about half the total tax increment, consistent with the Dardia study conclusion. *See also* 93 Ops. Cal. Att’y Gen. 90 (2010) (explaining how to calculate pass-throughs under CAL. HEALTH & SAFETY CODE §§33607.5(c); 33607.5(d); and 33607.7(b)(2)). This new system greatly affected school-district funding: “Prior to the mid-1990s school districts negotiated—or failed to negotiate in many cases—pass-through agreements that provided dollars to districts to partially compensate for lost property taxes. This was the only way school agencies received anything from the tax increment. AB 1290 (Chapter 942/1993) set up a revenue formula for districts that is much easier to administer. . . . Prior to AB 1290 being enacted, school agencies had negotiated agreements in place that did not necessarily mirror the percentage split in AB 1290 for school districts, county offices of education, and community colleges.” Sch. Servs. of Cal., Inc., *supra* note 220.

²²⁶ UNWINDING REDEVELOPMENT, *supra* note 10. “Seeking to encourage greater local oversight of RDA activities while still requiring RDAs to mitigate their fiscal effects on other local agencies, Chapter 942, Statutes of 1993 (AB 1290, Isenberg) eliminated RDA authority to negotiate pass-through payments and established a statutory formula for pass-through payment amounts.” *Id.* Pre-1994, in the absence of an agreement with the redevelopment agency, school and community college districts were automatically entitled to an inflation adjustment of up to 2 percent (the Proposition 13 limit on annual inflation-related property tax increases). Santa Ana Unified Sch. Dist. v. Orange Cnty. Redevelopment Agency, 108 Cal. Rptr. 2d 770 (Ct. App. 2001). Other taxing entities were presumptively entitled to a comparable inflation adjustment by demand or negotiation. Cal. Health & Safety Code 33656(a).

²²⁷ In 2007-08, pass-throughs equaled 20.9 percent of the tax increment, before deducting the 20 percent that each redevelopment agency was required to set aside to support low and moderate income housing. *See* CAL. STATE CONTROLLER, COMMUNITY REDEVELOPMENT AGENCIES ANNUAL REPORT, 24th ed., at p. xvi, Figure 17.

²²⁸ The negotiated agreements in place before 1994 “did not necessarily mirror the percentage split in AB 1290 for school districts, county offices of education, and community colleges.” Sch. Servs. of Cal., Inc., *supra* note 220.

few other states have done.²²⁹ The Legislature could extend similar prohibitions for other taxing entities, confining the use of tax increments to those of the sponsoring city or county.

Affordable Housing and Redevelopment. In Texas, each city determines the portion of TIRZ funds that should be set aside for affordable housing. In California, the state had mandated a 20 percent set-aside of the tax increment allocated to each redevelopment agency for affordable housing.²³⁰ This was undoubtedly part of the *quid pro quo* for redevelopment agencies being allowed to appropriate the tax increments of other taxing entities.²³¹ Texas cities often elect to dedicate to affordable housing more than 20 percent of the tax increment, but whether to finance affordable housing, and for how much, is a matter for local governments in Texas to decide.²³²

Use of Eminent Domain for Redevelopment or Economic Development. Lawmakers drafting a new California redevelopment enabling statute will hear calls to preclude the use of eminent domain for land scheduled for eventual re-use by private owners.²³³ As one conservative put it, “[t]hat’s what the U.S. Supreme Court’s *Kelo* decision was about—cities using eminent domain to take property and give it to wealthy developers so they could generate more taxes from malls, hotels and big box stores . . . while destroying homes, churches and small businesses.”²³⁴ Property owners are threatened, according to property rights advocates, by the “Costco–Ikea–

²²⁹ School districts in Florida, Kentucky, and New York may not contribute any of their property taxes to redevelopment agencies. Lefcoe, *supra* note 41, at 464.

²³⁰ CAL. HEALTH & SAFETY CODE § 33334.2 (West 2012). Compliance is difficult to ascertain. The state lacks standard accounting procedures and there is insufficient funding for auditing. “The inability of existing data sources to give an accurate account of how the Low and Moderate Income Housing Funds are spent paints a very negative picture of redevelopment agencies.” NATHAN CATALINE AND ROBIN FINNESTEAD, HOUS. CAL., CALIFORNIA REDEVELOPMENT AGENCY DATA COLLECTION PROJECT—APRIL 2011 3 (Karen C. Naungayan ed., 2011),

http://www.housingca.org/site/DocServer/Redevelopment_Final.pdf?docID=721.

²³¹ Some California cities eagerly welcomed the opportunity to assist in the development of affordable housing while other cities did their best to avoid it, hoping to put the money to other uses, sometimes surreptitiously and illegally. Redevelopment agencies that neglect to spend their affordable housing reserves within two years or transfer the funds to county housing agencies are subject to monetary sanctions after three years. CAL. HEALTH & SAFETY CODE § 33334.12. “While many redevelopment agencies use their Low and Moderate Income Housing Funds properly and build many affordable homes, the reporting systems do not reliably show how money was spent from these funds . . . [A] lack of overall auditing standards creates an environment for abuse.” CATALINE & FINNESTEAD, *supra* note 230, at 3.

²³² When the city of Houston creates a TIF by petition of the property owners within the zone, one-third of the TIF must be set aside for affordable housing by state law. The Austin city council voted that 40 percent of the TIF will be dedicated to affordable housing that comes from the leasing or sale of public land for redevelopment purposes. A joint Dallas city-county policy requires that in any TIF established after 2005, up to 20 percent of the residential units be set aside for affordable housing. Heather K. Way, *The Texas Two-Step: Local Resources and Regulations That Increase Affordable Housing*, American Bar Association Forum on Housing and Community Development, May 20–22, 2009, available at http://www.utexas.edu/law/clinics/community/The_Texas_Two-Step_Local_Resources_and_Regulations_that_Increase_Affordable_Housing.pdf.

²³³ *E.g.*, Vote “NO” on Prop 22: Stop Eminent Domain Land Grabs, N. Orange Cnty. Conservative Coal., Oct. 19, 2010, <http://www.nocconservatives.org/2010/10/19/vote-%E2%80%9Cno%E2%80%9D-on-prop-22-stop-eminent-domain-land-grabs/>

²³⁴ *Id.*

Home Depot–Redevelopment Agency complex . . . that abuses government power and enriches developers at the expense of other people’s rights.”²³⁵

California legislators could just bypass the issue, and retain the *status quo* by avoiding the mention of eminent domain in the new statute.²³⁶ Alternately, they could significantly restrict the use of eminent domain, precluding local governments from acquiring private property by eminent domain for re-use by private developers.²³⁷ This would still leave untouched the local government’s power of eminent domain for conventional public improvements that are part of a redevelopment project plan—street widening, sidewalks, transit rights of way, public parking structures, parks and other public recreation facilities.²³⁸

In practice, most RDAs use eminent domain very sparingly. Its use is politically unpopular.²³⁹ Many private developers of infill sites do not need local governments to assemble land for them because they are quite adept at assembling sites on their own,²⁴⁰ and often for a lower price than the local government would have paid.²⁴¹

²³⁵ *Kelo and California: How the Supreme Court’s Decision Affects California’s Local Governments: The Summary Report from the Committee’s Informational Hearing*, Aug. 17, 2005, 6 (statement of Timothy Sandefur, staff att’y, Pac. Legal Found.),

<http://senweb03.senate.ca.gov/committee/standing/GOVERNANCE/KELOPUBLICATION.pdf>

²³⁶ *See, e.g.*, *Cnty. Redevelopment Agency of City of L.A. v. Kramer Metals*, No. B208726, 2010 WL 1633817, at *11 (Cal. Ct. App. Apr. 23, 2010) (citing *Kelo* to uphold the eminent domain power of the City of Los Angeles to take plaintiff’s private property for the purpose of building a shopping center).

²³⁷ Over forty states enacted post-*Kelo* reform legislation to curb eminent domain. Ilya Somin, *The Limits of Backlash: Assessing the Political Response to Kelo*, 93 MINN. L. REV. 2100, 2102 (2009). Among the more effective laws were statutes passed by Florida and New Mexico, which abolished condemnations for economic development, as well as all blight condemnations. *Id.* at 2138. South Dakota passed a law prohibiting any takings that transfer property to a private person or non-governmental entity. *Id.* at 2139. Kansas passed a new law banning nearly all private-to-private condemnations. *Id.* at 2140.

²³⁸ Other states that have enacted eminent domain reform legislature in response to the *Kelo* holding have not restricted local governments’ power of eminent domain for conventional public improvements incidental to a redevelopment project. For instance, even in Florida and New Mexico, which have passed “the most sweeping” post-*Kelo* reforms, the new laws say nothing about the power of local governments to use eminent domain for legitimate public improvements; the reforms are limited to the abolishment of condemnations for economic development and blight condemnations. *Id.* at 2138.

²³⁹ “Though relied upon repeatedly, compulsory purchase whether employed for urban renewal or economic development remains fraught with political problems. As policy, it is often considered heavy-handed. Because it is politically unpopular, public-official advocates are put on the defensive from the first announcement of condemnation intentions. . . . While government tends to prevail in contests of condemnation, the process is not without its legal and political costs.” Lynne B. Sagalyn, *Land Assembly, Land Readjustment and Public/Private Redevelopment 1* (Apr. 2007). *See also* Memorandum from Bill White, Mayor Houston, to the Houston City Council 1 (Mar. 11, 2008) (“In cases other than rights of way, we try not to use eminent domain because it is expensive for the taxpayers and can create ill will. It is used as a last resort.”), *available at*

http://blog.chron.com/houstonpolitics/files/legacy/mayor_wulfe_memo.pdf.

²⁴⁰ Private developers typically do not need eminent domain, because they “can prevent holdouts by such noncoercive methods as assembling property in secret and adopting precommitment strategies that prevent holdouts from using their bargaining power.” Ilya Somin, *Controlling the Grasping Hand: Economic Development Takings After Kelo*, 15 SUP. CT. ECON. REV. 183, 184 (2007). Disney used secret

Texas lawmakers in 2011, spurred by an eminent domain ballot measure that passed 81 percent to 19 percent, enacted a major eminent domain reform, Senate Bill 18.²⁴² Though ostensibly responding to *Kelo*, the law made only modest changes in the definition of “public use” governing acquisitions of private property for economic development.²⁴³ As one eminent domain scholar concluded, “Texas’ post-*Kelo* eminent domain reform law includes a very broad definition of ‘blight’ that enables almost any property to be declared blighted and transferred to private parties.”²⁴⁴ In fact, Texas property owners’ groups were less motivated by a desire to avoid condemnation than by a desire for more adequate compensation.²⁴⁵ Much of the new Texas law focused on improving the negotiation process so land owners could achieve better financial outcomes.²⁴⁶

land assembly to acquire the land needed for Disney World, and Harvard University routinely uses secret land assembly to acquire property in the Boston area. *Id.* at 206.

²⁴¹ Several authors have suggested that the open market may often be more efficient than eminent domain, given the high administrative costs associated with an eminent domain proceeding. *See, e.g.*, Nathan Burdsal, Just Compensation and the Seller's Paradox, 20 *BYU J. PUB. L.* 79, 102 (2005). “[I]t is safe to conclude that in a thick market setting, eminent domain is a more expensive way of acquiring resources than market exchange.” Thomas W. Merrill, *The Economics of Public Use*, 72 *Cornell L. Rev.* 61, 77–78 (1986). For an in-depth discussion of the relative merits of eminent domain and private development, *see also* Patricia Munch, *An Economic Analysis of Eminent Domain*, 84 *J. POL. ECON.* 473 (1976), and A. Mitchell Polinsky, *Controlling Externalities and Protecting Entitlements: Property Right, Liability Rule, and Tax-Subsidy Approaches*, 8 *J. LEGAL STUD.* 1 (1979).

²⁴² 2011 Tex. Sess. Law Serv. Ch. 81 (S.B. 18).

²⁴³ “The bill does NOTHING to protect landowners from having their land taken and handed to another private party in the name of a laundry list of ‘public uses,’ the cornerstone of the landmark *Kelo* case from which Texans remain unprotected. SB 18 also fails to protect property owners from eminent domain for economic development and blight, and that’s by design based on what the Legislature had in store later.” Terri Hall, *Texas for Sale: New Laws Sell Texas to Highest Bidder*, *MYSANANTONIO BLOG* (June 6, 2011, 9:28 PM), <http://blog.mysanantonio.com/terrihall/2011/06/texas-for-sale-new-laws-sell-texas-to-highest-bidder>. *See* 21 A.L.R.6th 261, Application of *Kelo v. City of New London, Conn.* to “Public Use” Restrictions in Federal and State Constitutions Takings Clauses and Eminent Domain Statutes.

²⁴⁴ Ilya Somin, *Texas Supreme Court Forbids Taking of Land for Private Pipelines*, *VOLOKH CONSPIRACY* (Sept. 3, 2011, 6:33 PM), <http://volokh.com/2011/09/03/texas-supreme-court-forbids-taking-of-land-for-private-oil-pipeline>.

²⁴⁵ “The Texas Farm Bureau believes the new law created by SB 18 and HB 279 will force companies that use eminent domain to offer landowners realistic compensation for their property. ‘We are not going to get rid of eminent domain,’ Hall said. ‘What Texas has been lagging in is in compensation for the landowner and the ability to recoup legal expenses incurred in protecting our land against companies seeking to attain it through eminent domain.’ Under the current law, critics said, condemning entities have often lowballed landowners, and only those with deep pockets have been able to fight off those attempts to capture their land.” Steve Habel, *Eminent Domain Bill Passes Senate; Critics Doubt Its Efficacy*, *AUSTIN BUS. J.*, Feb. 18, 2011, *available at* <http://www.bizjournals.com/austin/print-edition/2011/02/18/eminent-domain-bill-passes-senate.html?page=all>; *see also* Gideon Kanner, “Fairness and Equity,” or *Judicial Bait-and-Switch? It’s Time to Reform the Law of “Just” Compensation*, 4 *ALB. GOV’T L. REV.* 38, 38 (2011) (discussing the “long-festering problem of inadequacy of “just compensation” payable when private property is taken for public use.”).

²⁴⁶ For instance, the new law requires the taking agency to make an offer based on a certified appraisal made available to the property owner and to send to property owners copies of all appraisals the condemnor receives, whether it uses them or not. Confidentiality agreements are no longer allowed in

The Last Word. Whether the Legislature will re-constitute redevelopment in California is uncertain. The Governor's approval would be needed for a legislative compromise and he seems satisfied with the Court's outcome.²⁴⁷ Hard-core redevelopment critics oppose it.²⁴⁸ Public officials are overwhelmed,²⁴⁹ grappling with the disposition of RDA assets and the resolution of

voluntary purchase and sale agreements between private owners and buyers with the power of eminent domain. There are provisions for attorneys' fees under some circumstances and more generous standards for compensating owners subject to partial takings for diminution in the value of the land not taken. Brad Raffle et al., Pillsbury Winthrop Shaw Pittman, LLP, Client Alert: Texas Eminent Domain Laws Get a Makeover—A Primer on Senate Bill 18, *available at* http://www.pillsburylaw.com/siteFiles/Publications/ELUNRRealEstateAlertTexasEminentDomainLaws060211_final.pdf. See also Randy Ward, Tex. Dep't of Transp., Right of Way Div, SB 18's Impact on Negotiations and Eminent Domain Practices, <http://ftp.dot.state.tx.us/pub/txdot-info/row/sb18/impact.pdf> (explaining in detail the effects of the Texas law).

²⁴⁷ Brad Kuhn, It's the End of Redevelopment As We Know It, JD SUPRA (Jan. 4, 2012), <http://www.jdsupra.com/post/documentViewer.aspx?fid=6fac7bf7-07bd-40d7-9bc0-f3b42fa4424a> (suggesting that, because Governor Brown originally sought to eliminate redevelopment altogether, the Court's ruling is in line with his policy). Governor Brown strongly opposed Senate Bill 659, introduced by some state legislators to postpone the dissolution date for RDAs, saying "I don't think we can delay this funeral," and making it clear he would veto any attempts to undo the process. Anthony York, *Brown Says He Won't Delay Redevelopment "Funeral,"* L.A. TIMES, Jan. 18, 2012, <http://latimesblogs.latimes.com/california-politics/2012/01/brown-says-he-wont-delay-redevelopment-funeral.html>.

²⁴⁸ Timothy Sandefur, Celebrating a Victory for Property Owners in California, PAC. LEGAL FOUND. LIBERTY BLOG (Mar. 7, 2012), <http://blog.pacificlegal.org/2012/celebrating-a-victory-for-property-owners-in-california/> ("Of course, the big danger is that the RDAs will return in some form—or that 'successor agencies' that are supposed to wind down the RDAs will instead replace them with some new version of for-profit eminent domain. MORR's members are heading to the capitol building today to urge officials to make sure that doesn't happen. But it will take oversight and possibly litigation.").

²⁴⁹ City governments and other "successor agencies" have been left with the task of winding down redevelopment operations and transferring assets to other public entities, and local oversight boards and state officials monitor this process. Dan Walters, *Wipeout of California's Redevelopment Continues to Reverberate*, SACRAMENTO BEE, Apr. 27, 2012, <http://blogs.sacbee.com/capitolalertlatest/2012/04/california-redevelopment-association-statement-no-longer-sustainable.html>. The League of California Cities has published a "Redevelopment Dissolution Resources and Information" web page with a "Post Redevelopment Legal Question and Answer" section to assist cities "struggling" with the process of shifting RDA assets and other legal questions associated with the dissolution process. *League Releases Q & A Guide on Post-Redevelopment Legal Issues*, LEAGUE OF CAL. CITIES, March 30, 2012, <http://www.cacities.org/Top/News/News-Articles/2012/March/League-Releases-Q-A-Guide-On-Post-Redevelopment-Le>. See also Natasha Lindstrom, *Future of State Redevelopment Remains Murky: Panel Discusses Aftermath of State Axing Local Agencies*, HIGH DESERT DAILY PRESS, Mar. 1, 2012, <http://www.vvdailypress.com/articles/remains-33167-san-bernardino.html> ("[A]s cities move forward with unloading RDA assets, a number of concerning ambiguities and unintended consequences are emerging. Local government officials are perplexed, for instance, by the state's position that the successor agencies dispose of their properties 'expeditiously' while still maximizing value, with current market prices far below what agencies put into most initial purchases. Realtors also don't want to see the market suddenly flooded with properties.").

claims against RDAs.²⁵⁰ Among all the states, this leaves only California and Arizona without TIF-funded redevelopment.²⁵¹ With the demise of California's redevelopment agencies, economic development officials in municipalities nationwide anticipate being better able to attract businesses to their redevelopment projects.²⁵² Perhaps as commercial and residential real estate markets recover,²⁵³ the complexities of unraveling RDAs are resolved, and California cities turn their attention to attracting jobs and expanding their economies, friends of redevelopment will rally to bring it back. When California cities and counties resume their quest to nurture economic development, they would do well to consider the Texas example.

²⁵⁰ See, e.g., Ursula Hyman and Peter Gutierrez, *With Budget Approved, Gutting of Redevelopment Agencies Begins*, L.A. & S.F. DAILY J., July 19, 2011.

²⁵¹ COUNCIL OF DEV. FIN. AGENCIES, ORIGINAL RESEARCH: TIF STATE-BY-STATE MAP & REPORT (2008), available at [http://www.cdfa.net/cdfa/cdfaweb.nsf/0/8ee94afeece08bc988257936006747c5/\\$FILE/CDFA-2008-TIF-State-By-State-Report.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/0/8ee94afeece08bc988257936006747c5/$FILE/CDFA-2008-TIF-State-By-State-Report.pdf) (listing enabling TIF statutes in 49 states and District of Columbia).

²⁵² White, *supra* note 62.

<http://online.wsj.com/article/SB10001424052702304065704577422231620711726.html>.

²⁵³ Nationwide, commercial real estate values have declined 39 percent since 2007. *The Economy and the Commercial Real Estate Bust*, INVESTORINSIGHT.COM (Sept. 29, 2009), http://www.investorsinsight.com/blogs/forecasts_trends/archive/2009/09/29/the-economy-amp-the-commercial-real-estate-bust.aspx. Hundreds of millions of dollars in commercial real estate loans are coming due in the next five years, secured by properties worth less than the mortgage debts needing to be re-financed. *Id.*