No. S219567
(Court of Appeal No. A138949)
(Marin County Superior Court No. CIV 1300112)
(The Honorable Roy Chernus)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff and Appellant,

v.

CITY OF SAN RAFAEL, ET AL.,

Defendants and Respondents.

APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, WESTERN CENTER ON LAW AND POVERTY, LEGAL AID ASSOCIATION OF CALIFORNIA, AND AARP FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF PETITIONER AND BRIEF AMICI CURIAE

ARNOLD & PORTER LLP
STEVEN L. MAYER (No. 62030)
steve.mayer@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
ALAN L. SCHLOSSER (No. 49957)
aschlosser@aclunc.org
39 Drumm Street
San Francisco, CA 94111
Telephone: 415.621.2493
Facsimile: 415.255.8437

Attorneys for Amici Curiae
Additional counsel listed on next page

Additional Counsel

RICHARD A. ROTHSCHILD (NO. 67356)
WESTERN CENTER ON LAW AND POVERTY
rrothschild@wclp.org
3701 Wilshire Boulevard, Suite 208
Los Angeles, CA 90010
Telephone: 213.235.2624

AARP FOUNDATION LITIGATION
BARBARA A. JONES (NO. 88448)
bjones@aarp.org
200 South Los Robles, Suite 400
Pasadena, CA 91101
Telephone: 626.585.2628

Pursuant to California Rule of Court 8.520(f), proposed amici, the American Civil Liberties Union of Northern California ("ACLUNC"), the Western Center on Law and Poverty ("WCLP"), the Legal Aid Association of California ("LAAC"), and AARP, hereby respectfully apply to this Court for leave to file the accompanying Brief of Amici Curiae in Support of Plaintiff and Appellant (Petitioner in this Court) Cherrity Wheatherford in the above-captioned case.[1]

Each of the amici has a strong interest in the issues before this Court. ACLUNC is the regional affiliate of the American Civil Liberties Union ("ACLU"), a nationwide, nonprofit, nonpartisan organization of more than 500,000 members, including approximately 100,000 members in California. Throughout its 95-year history, the ACLU has been dedicated to preserving and protecting the principles of liberty and equality embodied in the United States and California Constitutions and cognate federal and state statutes. In California, the ACLU has represented taxpayer plaintiffs and used the taxpayer suit statute to bring to the courts issues of great public interest and constitutional significance, including the seminal cases of *Wirin v. Parker*, 48 Cal. 2d 890 (1957), and *White v. Davis*, 13 Cal. 3d 757 (1975).

For nearly 50 years, WCLP has brought major litigation designed to enforce the rights of large numbers of California poor people to housing, health care, public benefits, and other survival needs. Before 1993, when *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035 (1993), severely restricted taxpayer standing, WCLP included taxpayer standing allegations

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[1]No party or counsel for any party authored any portion of the brief. No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the amici curiae, their members and their counsel made a monetary contribution intended to fund the preparation or submission of the brief. CAL R. CT. 8.520(f)(4).

in complaints to assure that governments could be prohibited from illegal conduct harming all their residents, not just the individual plaintiffs. *See, e.g.*, *Serrano v. Priest*, 5 Cal. 3d 584, 618 (1971) (suit ultimately resulting in invalidation of California school finance system as violating equal protection principles); *Blair v. Pitchess*, 5 Cal. 3d 258, 267–68 (1971) (taxpayers had standing to successfully challenge former claim and delivery statute); *Hansen v. Dep't of Social Servs.*, 193 Cal. App. 3d 283, 287 n.2 (1987) (taxpayers had standing to prevent state welfare officials from denying emergency shelter to homeless children). But *Torres* has prevented WCLP from invoking taxpayer standing. While almost all of our clients pay a substantial percentage of their income in sales tax, virtually none of them owns real property or pays income tax. *Torres* and its progeny should be disapproved to put WCLP clients on equal footing with more affluent citizens throughout the State interested in preventing illegal government activity.

LAAC is a statewide membership association of more than eighty public interest law nonprofits, which provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. This case has broad implications for the rights of the thousands of low-income Californians served by LAAC's members. The decision of the Court of Appeal prevents lower income individuals from seeking needed redress against municipalities. LAAC is interested in the rights of these tax-paying individuals to challenge governmental action in the same manner as wealthier tax payers.

AARP is a nonprofit, nonpartisan organization with a membership that helps people turn their goals and dreams

into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities, and protection from financial abuse. As the leading organization representing the interests of people age 50 and older, AARP advocates for improved access to the civil justice system so that older people can seek legal redress when they have been injured. Given the high cost of home ownership in California many older people do not own homes but still pay significant gasoline, sales and income tax and are directly impacted by local government decisions.

All amici share a common interest in providing broad access to the courts for Californians who seek to use the courts to challenge unlawful government conduct, waste or corruption. Code of Civil Procedure Section 526a, the statute at issue in this case, has been a primary vehicle for ordinary citizens to raise such claims on behalf of themselves and their fellow taxpayers. The amici believe that Respondents' position in this case—that only property owners and business owners can use the taxpayer suit statute—is inconsistent with the statute's text, the statutory purpose as enunciated clearly by this Court, and the historical context.

Amici are familiar with all the briefs that have been previously filed in this case. Amici have experience with the legal issues of this case, and also with the impact of taxpayer actions on low-income Californians. Amici believe their experience in these issues will make their proposed brief of assistance to this Court in deciding the important issue raised. Amici therefore respectfully request leave to file the attached

amici curiae brief presenting additional authorities and discussion in support of Petitioner's arguments.

DATE: May 21, 2015.

Respectfully,

ARNOLD & PORTER LLP
STEVEN L. MAYER

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
ALAN L. SCHLOSSER

WESTERN CENTER ON LAW AND POVERTY
RICHARD. A. ROTHSCHILD

AARP FOUNDATION LITIGATION
BARBARA JONES

By: /s/
STEVEN L. MAYER

By: /s/
ALAN L. SCHLOSSER

Attorneys for Amici Curiae

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STEVEN L. MAYER (No. 62030)
steve.mayer@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

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ALAN L. SCHLOSSER (NO. 49957)
aschlosser@aclunc.org
39 Drumm Street
San Francisco, CA 94111
Telephone: 415.621.2493
Facsimile: 415.255.8437

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Additional counsel listed on next page

Additional Counsel

RICHARD A. ROTHSCHILD (NO. 67356)
WESTERN CENTER ON LAW AND POVERTY
rrothschild@wclp.org
3701 Wilshire Boulevard, Suite 208
Los Angeles, CA 90010
Telephone: 213.235.2624

AARP FOUNDATION LITIGATION
BARBARA A. JONES (NO. 88448)
BJones@aarp.org
200 South Los Robles, Suite 400
Pasadena, CA 91101
Telephone: 626.585.2628

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INTRODUCTION

California's taxpayer suit statute, Code of Civil Procedure Section 526a, was enacted in 1909 in the midst of California's Progressive Era.[1] In that same legislative session, "the Progressives lobbied into law an all-important direct primary law" (KEVIN STARR, INVENTING THE DREAM: CALIFORNIA THROUGH THE PROGRESSIVE ERA 252 (1985)), which empowered voters, rather than party bosses, to choose candidates for elective office. Two years later, in 1911, the signature reforms of the Progressive era were enacted, providing for the initiative, referendum and recall.[2]

Like the direct primary, and the initiative, referendum and recall, the taxpayer suit statute provides a means for public-minded citizens to challenge public officials involved in unlawful, wasteful or corrupt activity. This Court has repeatedly relied on this broad public purpose in defining the statute's scope. "To achieve the 'socially therapeutic purpose' of section 526a, 'provision must be made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered.'" *Van Atta v. Scott*, 27 Cal. 3d 424, 449–50 (1980) (citations omitted).

Respondents ask this Court to retreat from this unbroken line of precedent. They seek a narrowing construction that would deny standing under Section 526a to persons who pay the sales or gasoline tax. Indeed, according to Respondent

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[1]Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

[2]*See* KEVIN STARR, INVENTING THE DREAM: CALIFORNIA THROUGH THE PROGRESSIVE ERA ch. 7 ("Reforming California") and ch. 8 ("Progressivism and After") (1985) (placing the initiative, referendum, direct primary elections, and the recall in the broader context of sweeping Progressive era reforms); Oakland Museum of California, "Progressive Era: 1890–1920s: Progressive Political Reform," https://museumca.org/picturethis/timeline/progressive-era-1890-1920s/progressive-political-reform/info (same).

City of San Rafael, only those who own property or a business could file a taxpayer suit against a local entity. City Answering Brief on the Merits ("ABM") 16–17.

It would be hard to imagine a less "socially therapeutic" definition of taxpayers' suits, as the facts of this case demonstrate. Both the County of Marin and the City of San Rafael levy a variety of taxes, but except for the sales and use tax, *all* of them are based on property or business ownership. Accordingly, if Respondents' construction were accepted, and payment of the sales or use tax did not provide standing under Section 526a, a long-time resident of the City or County such as Petitioner would be precluded from challenging the legality of any local action by those entities merely because she rents rather than owns her home. In contrast, her landlord—no matter where he lives—could file such a challenge solely because of his ownership of property.

Respondents want this Court to redefine "taxpayer" as membership in a private club that only property and business owners can join. At a time of great public concern over economic inequality, it would be ironic if a statute enacted to provide a means to challenge government illegality and waste were construed as the exclusive preserve of property and business owners.

Respondents' claims have no basis in either fact or law. While they blithely contend that property ownership is a "lifestyle choice" (County ABM 33), their attitude reflects a blinkered view of the economic facts of life for many Californians. And their legal arguments distort the statutory language, undermine the statutory purpose of providing a broad citizen remedy to challenge governmental conduct, and conflict with the common law tradition permitting any taxpayer to seek an injunction against the unlawful use of public funds.

ARGUMENT

I.

SECTION 526a GRANTS STANDING TO ANY TAXPAYER THAT PAYS A TAX.

A. The Text Of Section 526a Gives Standing To Any Person Or Entity That "Has Paid" A Tax.

The relevant part of Section 526a provides:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, *or*, within one year before the commencement of the action, has paid, a tax therein. (Emphasis added)

This statute is at least potentially susceptible to two different meanings. In broad terms, the statute grants standing to two different groups of taxpayers: (1) those who have paid a tax to the defendant in the past year ("present taxpayers"); and (2) those who will pay taxes to the defendant in the future ("future taxpayers"). However, the statute is ambiguous as to whether "assessed for and is liable to pay" applies to both groups of taxpayers.

The two Respondents' Answer Briefs illustrate this ambiguity. On the one hand, the City says that the word "assessed" applies to both future *and* present taxpayers.[3] In contrast, the County twice acknowledges that the word

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[3]City ABM 12 ("Section 526a thus provides standing to two classes of individuals who have been assessed taxes: (1) a person who is assessed for and is liable to pay a tax, and (2) a person who within one year before commencement of the action is assessed for and has paid an assessed tax") (emphases in original).

"assessed" applies only to future taxpayers and not present ones.[4] The latter interpretation of Section 526a is also supported by the commentators.[5]

There are several reasons why this ambiguity should be resolved by interpreting the statutory text so that the "assessed for and liable to pay" language applies only to future taxpayers. To begin with, this is the most sensible interpretation of the statutory text. *See, e.g.*, *People v. Canty*, 32 Cal. 4th 1266, 1277 (2004) ("We therefore apply the principles that pertain where statutory ambiguity exists, adopting the interpretation that leads to a more reasonable result"). Because future events are inherently uncertain, the class of future taxpayers is necessarily indeterminate. The Legislature therefore had a good reason to limit taxpayer standing to future taxpayers who were already, at the time of

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[4] *See* County ABM 12:

> [T]he statute is written so as to provide taxpayer standing to two classes on individuals: (1) the individual who is assessed for and liable to pay a tax; and (2) the individual who within one year before the commencement of the action, has paid a tax." (Emphases in original.)

And, again, at page 13:

> "[S]ection 526a, on its face, affords taxpayer standing only to those individuals (1) who have had imposed on them (assessed for) and are legally obligated to satisfy (liable to pay) a charge by the government (tax), or (2) who, within the past year, have satisfied (have paid) a charge by the government (tax)." (Emphases in original.)

[5] *See* Ronald K.L. Collins & Robert M. Myers, *The Public Interest Litigant in California: Observations on Taxpayer Actions*, 10 LOYOLA L.A. L. REV. 329, 334 (1977) ("Section 526a expressly confers standing upon four different classes of litigants: (1) upon a citizen resident who is 'assessed' a tax; (2) upon a corporation which is 'assessed' a tax; (3) upon a citizen resident who 'has paid a tax'; and (4) upon a corporation which 'has paid a tax'").

commencing their lawsuit, "assessed for and liable to pay" a tax in the future. But the Legislature would have had no reason to impose a similar limit on present taxpayers, where the fact of payment could be easily determined. For such plaintiffs, standing flows from the fact of payment, and who is "assessed for and liable to pay" the tax is irrelevant.

Indeed, applying this language to both future and present taxpayers leads only to more statutory ambiguity. For example, the City says "[t]he ordinary definition of the word 'assessed' . . . requires both valuation of property and imposition of a tax based on the property value." City ABM 13. If this were correct, the only people who would have standing to challenge a local entity's unlawful actions would be the owners of real property in that jurisdiction. And the City asserts at one point in its brief that only property taxpayers have standing to sue under Section 526a. *See id.* at 16 ("The Legislature Intended to Limit Application of Section 526a to Persons Subject to Payment of Taxes on Real or Personal Property") (capitalization in original). However, elsewhere in its brief, the City says that "assessed" simply means "imposed," an interpretation that would extend standing to persons and entities that are liable to pay taxes other than the property tax. *See* City ABM 12 ("The meaning of the term 'assessed' . . . requires that the tax be imposed on a person who is legally bound to pay it"). And, indeed, the city concedes that business owners in a city or county have standing under Section 526a even if they are not property owners. *See* City ABM 16 ("[I]n this case, property and business owners in the City who are assessed taxes may challenge the City's vehicle towing policy") (emphasis added). The City never explains how "business owners" can have standing under Section 526a if—as it sometimes argues—a tax must involve assessment of property to come within the statute.

In contrast, once the Court recognizes that the "assessed for and liable to pay" language does not apply to present taxpayers, the statute is no longer ambiguous as to which taxes or taxpayers it applies to. For, under this reading, Section 526a grants standing to (1) future taxpayers who "are assessed for and liable to pay" a tax to the defendant in the future; and (2) present taxpayers who have paid a tax to the defendant in the last year. No more is required. Accordingly, because "the statute does not specify the *kind* of tax . . . required, the statutory language should be construed to include the payment of all forms of taxes, such as license, gasoline, cigarette, sales, utility and various business or city income taxes." Ronald K.L. Collins & Robert M. Myers, *The Public Interest Litigant in California: Observations on Taxpayer Actions*, 10 LOYOLA L.A. L. REV. 329, 335–36 (1977) (emphasis in original). Under this interpretation Respondents' focus on who is legally liable to pay sales and gasoline taxes—retailers rather than consumers—is irrelevant. Only the *first* prong of the statute grants standing to people who "are liable" for taxes. The second prong, in contrast, grants standing to people who *pay* taxes.[6]

To escape the consequence of the statutory language granting standing to any person or entity that "has paid" a tax, the County asserts that "payment" is inextricably linked to a legal obligation. It contends—without citing a single case or dictionary definition—that "[t]o pay means to make satisfaction for something, and a payment is a full or partial

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[6]It bears mentioning that the sales tax is as important as the property tax in supporting local governments. For example, the sales tax accounts for 30% of San Rafael General Fund revenue while the property tax accounts for only 23%. San Rafael City Council Agenda Report, Agenda Item No. 4.c re City-Wide Budget Fiscal Year 2014–2015, at 5 (June 16, 2014), *available at* http://cityofsanrafael.granicus.com/MetaViewer.php?view_id=2&clip_id=590&meta_id=49025.

discharge of an obligation." County ABM 13. This is only half right. To "pay" can, indeed, mean "to discharge indebtedness." Merriam-Webster Online Dictionary, retrieved May 13, 2015, from http://www.merriam-webster.com/dictionary/pay. But it can also mean "to make a disposal or transfer of (money)." *Id.* For example, a donor pays money to a charity every time he or she makes a charitable donation, even though the donor has no legal obligation to do so. And there is no indication that the Legislature used the word "pay" as linked to, or limited by, a pre-existing legal obligation. Indeed, such an interpretation would violate the rule that, "[w]hen interpreting statutes, we begin with the plain, commonsense meaning of the language used by the Legislature." *Riverside County Sheriff's Dep't v. Stiglitz*, 60 Cal. 4th 624, 630 (2014) (internal quotation marks omitted). Accordingly, the Court must assume that the Legislature used the word "pay" in its "plain, commonsense meaning" of transferring money. Indeed, the people of California who pay extra money earmarked for the sales tax every time they go out to eat, or buy something from Amazon, or fill their cars with gasoline, would be surprised to learn that they do not, in fact, "pay" those taxes because the retailer or gasoline dealer bears the tax burden in the first instance.

Several Courts of Appeal have held that a consumer's payment of the sales tax does not provide standing under Section 526a. *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035, 1048 (1993); *Cornelius v. Los Angeles Cnty. Metro. Transp. Auth.*, 49 Cal. App. 4th 1761, 1779 (1996); *Reynolds v. City of Calistoga*, 223 Cal. App. 4th 865, 876 (2014). But none of these cases recognize that the "assessed for and liable to pay" language applies only to future, and not to present,

taxpayers. Indeed, none of these cases makes any attempt to parse the statutory language at all.[7]

Interpreting Section 526a to grant standing to anyone who pays a tax, regardless of its legal incidence, is the most natural reading of the statutory language. And, as we now demonstrate, an inclusive reading of Section 526a is also consistent with the statute's purpose and its common law backdrop.[8]

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[7]The conclusion that consumers of goods or gasoline have standing under Section 526a does not mean that retailers or gasoline dealers don't. After all, as discussed above, the word "pay" has at least two distinct meanings: (1) to satisfy a legal obligation; and (2) to transfer money. Retailers and gasoline dealers come within the first definition because the legal incidence of the sales or gasoline tax falls on them. They also come within the second definition because they pay money directly to the tax collector. In contrast, consumers come only within the second definition, because they pay sales or gasoline taxes as a matter of economic reality and/or agreement with the retailer or gasoline dealer.

The County argues that payment of the sales tax or gas tax can't give rise to standing because "the vendor . . . could retain all of the profits from the sale . . . , including those amounts that were in theory charged to the customer to help offset tax debt, and later fail to discharge their tax obligation . . . ." County ABM 14. But any vendor who did that would be acting illegally vis-à-vis the taxing authorities (*see* REV. & TAX. CODE §§6481–6488), and might be liable as well for fraud vis-à-vis the purchasers. The County does not explain why it would be wrong to assume that retailers or gasoline dealers who make their customers pay the sales tax or the gas tax will do what they are legally obligated to do—*i.e.*, give the money to the taxing authorities.

[8]Despite the foregoing showing, the City nevertheless contends that the Legislature "could not have intended the statute to apply to the payment of sales or gasoline taxes, as such taxes did not exist in 1909." City ABM 17. To state this proposition is to refute it. Inclusive statutes apply to subjects that did not exist when the statute was enacted. *See, e.g.*, *Apple Inc. v. Superior Court*, 56 Cal. 4th 128, 137 (2013) ("In construing statutes that predate their possible applicability to new technology, courts have not relied on wooden

(continued . . .)

B. Granting Standing To Anyone Who "Has Paid" A Tax Best Furthers The Statutory Purpose Of Enabling A Large Class Of Persons To Challenge Illegal Government Activity.

This Court's Section 526a precedents have consistently relied on the statute's underlying purpose as the critical factor in interpreting the statutory language and scope. That purpose is to provide a "general citizen remedy for controlling illegal governmental activity." *White v. Davis*, 13 Cal. 3d 757, 763 (1975). Accordingly, the statute's "primary purpose . . . is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." *Blair v. Pitchess*, 5 Cal. 3d 258, 267–68 (1971) (internal quotation marks omitted).

"To achieve the 'socially therapeutic purpose' of section 526a, 'provision must be made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered.'" *Van Atta*, 27 Cal. 3d at 449–50. For that reason, this Court has repeatedly given an expansive interpretation to Section 526a, going beyond its literal language when a narrow interpretation would interfere with its

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(. . . continued)
construction of their terms. Fidelity to legislative intent does not 'make it impossible to apply a legal text to technologies that did not exist when the text was created. . . . Drafters of every era know that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances they could not possibly envision.'") (quoting ANTONIN SCALIA & BRYAN GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 85–86 (2012)); *see also O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1461, 1466 (2006) (online news magazine constitutes a "periodical publication" for purposes of California's journalism shield law, which was enacted well before the advent of "digital magazines"); *Ni v. Slocum*, 196 Cal. App. 4th 1636, 1649–51 (2011) (use of electronic signature qualifies as "'personally affix[ing]' [the] signature" on an initiative petition as that phrase is used in the Elections Code).

underlying purpose of providing "a general citizen remedy for controlling illegal governmental activity." For example:

1. Taxpayer plaintiffs need not show any personal interest or special injury in the challenged government action to have taxpayer standing. Unlike the restrictive federal doctrine,[9] it is sufficient if the plaintiff has paid a tax and seeks to challenge governmental action that the plaintiff believes to be unlawful or wasteful. *White*, 13 Cal. 3d at 764. Because "[i]t is elementary that pubic officials must themselves obey the law" (*Wirin v. Parker*, 48 Cal. 2d 890, 894 (1957)), the interest of the taxpayer plaintiff in challenging unlawful government conduct is sufficient to provide standing.[10]
2. Although the statutory language refers to "illegal expenditure of, waste of, or injury to" public funds or property, taxpayer plaintiffs do not have to show that the challenged government action wasted any taxpayer funds or cost the taxpayers money. "It is immaterial that the amount of the illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds." *Wirin*, 48 Cal. 2d at 894.
3. The presence of potential plaintiffs who have been directly injured by the governmental action does not bar a taxpayer

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[9]This Court has made it explicit that the "narrow doctrine of justiciability" that bars the federal courthouse door to plaintiffs who have not suffered a direct harm from the governmental activity "does not apply to taxpayer suits" in state courts. *White*, 13 Cal. 3d at 763–65. Similarly, the even stricter standing requirements for federal taxpayer suits are completely irrelevant, and antithetical to, state taxpayer cases. *See Flast v. Cohen*, 392 U.S. 83, 102–03 (1968).

[10]Because taxpayer plaintiffs "occupy no different position that other taxpayers of the city or county" (*Price v. Sixth Dist. Agric. Ass'n*, 201 Cal. 502, 513 (1927)), taxpayer suits are brought "in a representative capacity," and accordingly, "[j]udgments in representative taxpayer actions are binding on all other taxpayers . . ." (*Gates v. Superior Court*, 178 Cal. App. 3d 301, 307 (1986)).

plaintiff from challenging the law under Section 526a. "California courts have consistently construed section 526a liberally to achieve its remedial purpose. *Accordingly*, the existence of individuals directly affected by the challenged governmental action . . . has not been held to preclude a taxpayers' suit." *Van Atta*, 27 Cal. 3d at 447 (emphasis added).

4. Although Section 526a authorizes taxpayers "to obtain a judgment . . . *restraining* and *preventing* any illegal expenditure" of public funds, this Court has rejected the argument that the statute provides only for injunctive relief. As the Court stated in *Van Atta*, while the statutory "language clearly encompasses a suit for injunctive relief, taxpayer suits have not been limited to actions for injunctions. Rather, in furtherance of the policy of liberally construing section 526a to foster its remedial purpose, our courts have permitted taxpayer suits for declaratory relief, damages and mandamus." 27 Cal. 3d at 449–50 (footnotes omitted).
5. Although the statute only refers to suing officers of a "county, town, city or city and county," this Court has held that taxpayer suits may be brought against the State. *Serrano v. Priest*, 5 Cal. 3d 584, 618 n.38 (1971); *Blair v. Pitchess*, 5 Cal. 3d at 268.

As these cases demonstrate, Section 526a must be interpreted to further, rather than thwart, its underlying purpose of providing broad access to the courts. Indeed, providing a ready means of challenging unlawful or wasteful government action is "'not only a means of vindicating individual rights,'" but is also a "'device to safeguard the legal restrictions on state and local governments, which, if not subjected to the careful scrutiny of individual taxpayers, might well become dead letters.'" *Ahlgren v. Carr*, 209 Cal. App. 2d 248, 253 (1962) (quoting Note, *Taxpayers' Suits as a Means of*

Controlling the Expenditure of Public Funds, 50 HARV. L. REV. 1276, 1283-84 (1937)). Accordingly, both courts and commentators have understood that taxpayer suits are an important component of broad participation in our democratic system of government:

> [T]he judicial process is the only means by which the individual citizen is guaranteed an influence on official conduct. In the end, the foundation of democratic government rests in the individual. If he is unable to do no more than ratify in the voting booth political decisions that have already been made or support with his vote some general policy trend that he favors, he is left without the ability to influence the day-to-day affairs of state. These daily decisions determine how far and in what direction our society will advance. Consequently, the individual citizen must be able to take the initiative through taxpayers' suits to keep government accountable on the state as well as on the local level. (*Farley v. Cory*, 78 Cal. App. 3d 583, 589 (1978) (quoting Note, *California Taxpayer Suits: Suing State Officers Under Section 526a of The Code of Civil Procedure*, 28 HASTINGS L.J. 477, 508 (1976)))[11]

Taxpayer suits have a long history in California. Many such suits have raised issues of great public interest and fundamental constitutional significance.[12] But the ability of

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[11] *See also* Note, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895, 904 (1960): "Such litigation allows the courts, within the framework of traditional notions of 'standing,' to add to the controls over public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts. Taxpayers' suits also extend the uniquely American concept of judicial review of legislative action by allowing minorities ineffective at the ballot box to invalidate statutes or ordinances on constitutional grounds. Because the motive of a plaintiff-taxpayer is viewed as irrelevant, taxpayers' suits afford a means of mobilizing the self-interest of individuals within the body politic to challenge legislative programs, prevent illegality, and avoid corruption."

[12] *See, e.g.*, *Wirin v. Parker*, 48 Cal. 2d 890 (1957) (challenge to police surveillance using concealed microphones in residences); *Lundberg v. Cnty. of Alameda*, 46 Cal. 2d 644

(continued . . .)

taxpayer plaintiffs to bring these challenges would be frustrated under Respondents' reading of the statute.

This case provides a telling example. As noted above, *all* of the taxes levied by Respondents are based either on property ownership or ownership of a business.[13] The same is true of many other jurisdictions.[14] Yet, under Respondents' interpretation, Section 526a would provide standing to

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(. . . continued)
(1956) (constitutional challenge to tax exemption only for religious or nonprofit schools); *Serrano v. Priest*, 5 Cal. 3d 258 (1971) (constitutional challenge to state's method of funding schools); *Van Atta v. Scott*, 27 Cal. 3d 424 (1980) (constitutional challenge to San Francisco's pre-trial release and detention system); *White v. Davis*, 13 Cal. 3d 757 (1975) (police surveillance in University classroom violates state constitutional right to privacy and freedom of speech; *Love v. Keays*, 6 Cal. 3d 339 (1971) (equal protection challenge to county's refusal to grant statutory exemptions for attachment of personal property to evicted tenants); *Folsom v. Butte County Ass'n of Gov'ts*, 32 Cal. 3d 668 (1982) (challenge by taxpayers, who are "elderly, disabled, of limited means and, hence, transit-dependent," challenging failure of city and state officials to allocate adequate funds for public transit); *Sundance v. Municipal Court*, 42 Cal. 3d 1101 (1986) (constitutional challenge to procedures used to incarcerate public inebriates under the State drunk-in-public statute); *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069 (1995) (challenge to city's ban on camping and storage of personal property); *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809 (2001) (challenge to utility user tax enacted without voter approval).

[13]Marin County levies a property tax, various parcel taxes, sales and use taxes, a business license tax, a transient occupancy tax and a real property transfer tax. MARIN CNTY. CODE tit. 3 (Revenue and Finance) and tit. 5, ch. 5.54 (Business Licenses) (2015). San Rafael levies most of the same taxes, including its own parcel taxes. SAN RAFAEL MUN. CODE tit. 3 (Finance and Taxation) and tit. 10 (Business, Professions, Occupations, Industries and Trades) (2015).

[14]This is not accidental. Local entities cannot impose taxes without a vote of the electorate (and, in many cases, a two-thirds vote is required). *See, e.g.*, CAL. CONST., art. XIII A, §4; *id.* art. XIII C, §§1(e), 2.

challenge local government action in these jurisdictions only to property or business owners. This would turn the statute on its head—by limiting standing to those classes of people and entities who are already well represented in the political process. But there is no legal or factual basis for imposing on non-property taxpaying residents an irrebutable presumption that they do not have a sufficient nexus to their local government to be interested in, or worthy of, challenging governmental action and public wrongs.[15]

Arrieta v. Mahon, 31 Cal. 3d 381 (1982), provides a real-world example of the inequity that would flow from limiting taxpayer suits to property taxpayers. Plaintiff was a tenant who was threatened with eviction but had not been named in the eviction papers. She challenged the legality and

[15]Importantly, excluding those who do not own property from bringing Section 526a claims also prohibits legal services organizations from bringing claims in the majority—or, for some organizations, perhaps all—of the instances in which their clients have very strong interests. The marginalized populations represented by amicus Western Center on Law and Poverty and other California legal services programs arguably have the *greatest* interest in preventing the government's illegal use of funds. Yet, the Court of Appeal decisions restricting taxpayer standing to property taxpayers have effectively prohibited these organizations from bringing taxpayer suits because their clients are by definition low-income. *See, e.g.*, BUS. & PROF. CODE §6213(d) (clients of programs eligible to receive state-regulated IOLTA funds generally must have income below 125% of the federal poverty guideline). After all, it is often renters who have a low income or no income. *See, e.g.*, *Quick Facts: Resident Demographics, National Multifamily Housing Council*, http://www.nmhc.org/Content.aspx?id=4708%20 (survey showing median household income of all U.S. market rate renters in 2011 was $34,787). Therefore, refusing to grant standing under Section 526a to those who do not own property excludes claims that could otherwise be brought under the statute to effect its broad purpose, and affects "the relative ability of individuals to exercise their fundamental rights." *See Hartzell v. Connell*, 35 Cal.3d 899, 926 (1984) (emphasis omitted).

constitutionality of the county marshal's policy of enforcing a writ of execution against tenants not named in the writ after an unlawful detainer judgment. Her personal claims became moot with the issuance of a superior court order protecting her rights, but she was allowed to continue her lawsuit because she had included a taxpayer's claim under Section 526a. Rejecting the argument that there was no longer a "case or controversy," this Court recognized that if it required taxpayer plaintiffs to have "'a special, personal interest in the outcome, we would drastically curtail their usefulness as a check on illegal government activity . . . ." *Id.* at 387 (quoting *Blair*, 5 Cal 3d at 269). This Court went on to note a number of other illustrations of "deprivations" that could arise from the challenged eviction policy, and each of the examples involved tenants such as Arrieta. *Id.* at 385 n.4. Under Respondents' position, none of the Court's hypothetical tenants would be able to challenge this unconstitutional government practice with a taxpayer claim if their personal claims became moot.[16]

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[16]The Court's unanimous decision in *Conservatorship of Whitley*, 50 Cal. 4th 1206 (2010), which analyzed another public interest statute, Code of Civil Procedure Section 1021.5 (the "private attorney general" fees statute), is very relevant to this case. In *Whitley*, the respondent argued that the fees statute did not apply because the petitioner's personal non-pecuniary motives barred her from seeking Section 1021.5 fees. In rejecting the narrow view of that statute's scope, this Court relied on the broad statutory purpose and "basic rationale" of Section 1021.5 of, as articulated in *Serrano*, "encourage[ing] the presentation of meritorious constitutional claims affecting large numbers of people." *Serrano*, 20 Cal. 3d at 48; *see also Whitley*, 50 Cal. 4th at 1217–18 (citing *Serrano*). The Court also cited approvingly from the legislative testimony of a State Bar representative:

> Substantial benefits to the general public should not depend upon the financial status of the plaintiff . . . . The legal system will become a more egalitarian instrument by encouraging attorneys to act as citizen

(continued . . .)

C. Granting Standing To Anyone Who "Has Paid" A Tax Is Also Consistent With Section 526a's Common Law Backdrop And The Presumption That Legislatures Do Not Impliedly Alter Common Law Principles.

As this Court recently held in *Verdugo v. Target Corp.*, 59 Cal. 4th 312 (2014) (cert. filed Feb. 27, 2015), "unless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. Accordingly, there is a presumption that a statute does not, by implication, repeal the common law." *Id.* at 326 (citation, alterations, and internal quotation marks omitted).

This presumption is directly applicable here. The County concedes that, by 1909, when Section 526a was adopted, "the right of a taxpayer to maintain an action to prevent the misappropriation of public funds was, as a general rule, widely recognized by courts across the country." County ABM 17. The California courts were no exception to this rule. In 1910, the Court of Appeal held that under the common law "any taxpayer might bring an action to restrain the payment of public money under a claim that such payment, if made, would be illegal." *Thomas v. Joplin*, 14 Cal. App. 662, 664 (1910). This Court had similarly upheld taxpayer standing, without any discussion of whether the plaintiff was a property owner. *See Winn v. Shaw*, 87 Cal. 631, 636 (1891) ("a taxpayer of a county has such an interest in the proper

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attorneys general and to use the courtrooms to broaden the concept of democracy. (*Id.* at 1219 (citation, alterations, and internal quotation marks omitted))

These statements about Section 1021.5 could be applied almost verbatim to Section 526a. At their core, both statutes encourage—and, indeed, enable—citizens to use the courts to challenge governmental action. The public interest nature of both statutes is not well served by narrow statutory interpretations that place the benefits of these statutes beyond the reach of many, if not most, Californians.

application of funds belonging to the county that he may maintain an action to prevent their withdrawal from the treasury in payment or satisfaction of demands which have no validity against the county"); *Yarnell v. City of Los Angeles*, 87 Cal. 603, 610 (1891) (taxpayer could sue to prevent deposit of all of the city's money in a private bank). Moreover, the Court on several occasions had relied on *Winn* to grant judgment for the plaintiff in taxpayer actions with only cursory discussion. *See, e.g.*, *Johnston v. Sacramento Cnty.*, 137 Cal. 204 (1902) (holding that action challenged by taxpayer was unauthorized by statute); *Barry v. Goad*, 89 Cal. 215, 223 (1891) ("The objection that the plaintiff cannot maintain this action, for the reason that he does not show that he will sustain any special injury different from that of the public at large, is untenable"). Understandably, then, the County concedes that, under the common law prior to enactment of Section 526a, "any taxpayer could bring an action to restrain the illegal expenditure of public funds." County ABM 19.

The County attempts to minimize the significance of this concession by arguing that some out-of-state cases mention the particular plaintiff's status as a property taxpayer. *See* County ABM 17–18. But Respondents cite no California authority. Moreover, as we have seen, prior to 1909 this Court had repeatedly granted standing to "taxpayers," without discussing what tax the plaintiff had paid. *See, e.g.*, *Winn*, 87 Cal. at 636; *Yarnell*, 87 Cal. at 610.

The language of Section 526a falls far short of demonstrating that the Legislature meant to repeal the common law principle in favor of inclusive taxpayer standing—particularly since other states such as New York had enacted statutes that explicitly limited taxpayer standing to property owners. *See* County ABM 18 n.7 (quoting New York statute). Accordingly, except where its text compels a contrary result, Section 526a must be interpreted to incorporate, not change,

the common law rule granting standing to all taxpayers, not just those who pay the property tax.[17]

Indeed, this Court's decisions have implicitly recognized the intertwined nature of taxpayer standing under the common law and Section 526a. For example, the statute by its terms does not apply to taxpayer actions against the State. But in 1962, the Court of Appeal held—without mentioning Section 526a—that while "there seems to be a conflict of authority as to whether a taxpayer has the right to enjoin an illegal expenditure by a state official, we believe that the great weight of authority suggests the rule that the taxpayer does have such right." *Ahlgren*, 209 Cal. App. 2d at 252. To prove the point, the court relied on ALR annotations and treatises summarizing the law of multiple jurisdictions. *Id.* at 252–54. Similarly, the next case to affirm the right of state taxpayers to file taxpayer actions held—again, without mentioning Section 526a—that "[p]laintiff taxpayers have standing to maintain *an equity suit* to enjoin allegedly illegal expenditures." *California State Employees' Ass'n v. Williams*, 7 Cal. App. 3d 390, 395 (1970) ("*CSEA*") (emphasis added). And when this Court first recognized in dictum that "taxpayers may sue State officials to enjoin such officials from illegally expending state funds," it cited *CSEA* and *Ahlgren*

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[17] *Irwin v. City of Manhattan Beach*, 65 Cal. 2d 13 (1966), is not to the contrary. There the Court held that the Legislature had intended to change the common law—which permitted any taxpayer to sue—by imposing a residency requirement. *See id.* at 19; *Thomas v. Joplin*, 14 Cal. App. 662, 665 (1910). But in contrast to the statute's express residency requirement, the statute contains no unambiguous language restricting taxpayer standing to persons or entities that pay a property tax or business license tax.

The County contends that *Irwin* stands for the proposition that Section 526a is "properly applicable to individuals who have paid a directly assessed tax." County ABM 17. This claim is made out of whole cloth, for no such language appears in *Irwin*.

and did not mention Section 526a. *See Blair v. Pitchess*, 5 Cal. 3d at 268 ("Indeed, it has been held that taxpayers may sue *State* officials to enjoin such officials from illegally expending state funds") (emphasis added). In contrast, when the Court first squarely held that state taxpayer standing exists, it cited the statute, as well as these prior common law decisions. *See Serrano*, 5 Cal. 3d at 618 n.38 ("Although plaintiff parents bring this action against state, as well as county, officials, it has been held that state officers too may be sued under section 526a").

This common law backdrop explains the many decisions, from both this Court and the Courts of Appeal, that expressly uphold taxpayer standing without specifying the nature of the tax at issue. Respondents claim that this is the result of sloppy analysis, or repeated inattention to detail. Not so. Neither Section 526a nor the common law distinguishes between taxes for purposes of taxpayer standing. Accordingly, even where the plaintiff's standing was at issue, as it was, for example, in *Harman v. City & County of San Francisco*, 7 Cal. 3d 150 (1972), the Court has expressly held in favor of standing without identifying the precise tax paid by the plaintiff. *See id.* (plaintiff had standing "as a municipal taxpayer seeking to avoid the waste of municipal assets"); *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1086 (1995) (taxpayers, including two homeless individuals, had standing to challenge future expenditure of city funds); *id.* at 1096 (same); *Arrieta*, 31 Cal. 3d at 387 (by satisfying requirements of Section 526a, taxpayer—*a residential tenant*—presented a "true case or controversy" under California law); *McKinny v. Oxnard Union High Sch. Dist. Bd. of Trs.*, 31 Cal. 3d 79, 91 (1982) (parents of school children "have standing as taxpayers" to challenge school district's desegregation activities); *Van Atta*, 27 Cal. 3d at 449 ("taxpayers may maintain an action under section 526a to challenge an illegal expenditure

of funds even though persons directly affected by the expenditure also have standing to sue"); *Lundberg v. Cnty. of Alameda*, 46 Cal. 2d 644, 647 & n.1 (1956) (action by "citizen resident" authorized by Section 526a); *Malone v. Superior Court*, 40 Cal. 2d 546, 551 (1953) ("a resident taxpayer under appropriate circumstances may maintain an action against an officer where there is an illegal expenditure, waste or injury to public funds"); *Simpson v. City of Los Angeles*, 40 Cal. 2d 271, 276 (1953) ("resident citizens and taxpayers" entitled to sue under Section 526a); *Crowe v. Boyle*, 184 Cal. 117, 121 (1920) ("taxpayers" have a right to prevent the illegal expenditure of public funds); *Biggart v. Lewis*, 183 Cal. 660, 664 (1920) ("the plaintiff, as a taxpayer of and resident within the district, has the legal right to invoke the remedy of injunction to restrain the expenditure of the funds of the district if it can be said that such expenditure finds no sanction in the law"); *Riverside Portland Cement Co. v. City of Los Angeles*, 178 Cal. 609, 610 (1918) (reversing order sustaining demurrer to complaint brought by "taxpayer"); *Osburn v. Stone*, 170 Cal. 480, 482 (1915) (referring to Section 526a as "authorizing a taxpayer to maintain an action to restrain an illegal expenditure"). For that reason, to affirm the Court of Appeal this Court would have to overrule numerous decisions that have explicitly upheld the plaintiff's standing without specifying *which* tax the plaintiff had paid.

D. Construing Section 526a To Grant Standing To Anyone Who "Has Paid" A Tax Will Not Lead To Absurd Results.

Respondents claim that providing any taxpayer with standing to sue the entity to which he or she pays taxes leads to an absurd result. County ABM 14; City ABM 8. They posit a situation where a plaintiff passing through town pays a few pennies in sales tax and then files a lawsuit. City ABM 7, 15, 17, 19, 20.

In the first place, there is nothing inevitable about Respondents' "parade of horribles." Section 526a by its terms applies only to "citizens" who are "resident" taxpayers. While this Court invalidated the residency requirement in *Irwin*, the plaintiff in that case owned property within the defendant jurisdiction. *Irwin v. City of Manhattan Beach*, 65 Cal. 2d 13, 16 (1966). Accordingly, the case does not stand for the proposition that residency is always irrelevant under Section 526a. *See Cornelius v. Los Angeles Cnty. Metro. Transp. Auth.*, 49 Cal. App. 4th 1761, 1775 (1996). And the Court has no need to decide in this case whether a non-resident citizen can obtain taxpayer standing by paying the sales tax because Petitioner *is* a resident of both the County of Marin and the City of San Rafael. Pet. OBM 2.

But even if a non-resident taxpayer could sue under these circumstances, it would hardly amount to the calamity that Respondents imagine. In the first place, it is important to remember how narrow Respondents' legitimate interests are. Respondents can have no legally cognizable interest in protecting illegal conduct from being challenged by meritorious taxpayer lawsuits. Consequently, the only serious interest Respondents can assert is the claim that expanding standing under Section 526a will lead to frivolous lawsuits that should never have been brought. There is no evidence to support this fear, and much evidence against it.

Despite the lack of explicit authorization in Section 526a, taxpayers have been able to sue the state for over half a century. *See, e.g.*, *Serrano*, 5 Cal. 3d at 618 n.38; *Blair*, 5 Cal. 3d at 267; *CSEA*, 7 Cal. App. 3d at 395; *Ahlgren*, 209 Cal. App. 2d at 252–54. Millions of taxpayers pay some tax to the State, such as the state income tax. *See* REV. & TAX. CODE div. 2, pt. 10 (§§17001 *et seq.*). Yet the State has not suffered from an onslaught of frivolous lawsuits.

The existence of "public interest standing" to obtain a writ of mandate likewise demonstrates that Respondents' fears of broad standing are unfounded. In *Green v. Obledo*, 29 Cal. 3d 126 (1981), this Court held that "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced. The exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Id.* at 144 (citation and internal quotation marks omitted). Consequently, while no plaintiff may "proceed with a mandamus petition as a matter of right under the public interest exception" (*Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 170 n.5 (2011)), public interest standing has been recognized in a wide variety of contexts. *See, e.g.*, *id.* at 169–70 (group of corporations could invoke public interest standing to bring claims under CEQA); *Driving Sch. Ass'n of Cal. v. San Mateo Union High Sch. Dist.*, 11 Cal. App. 4th 1513, 1516–19 (1992) (driving schools had standing to seek writ compelling school district to stop charging high school students tuition for driver training classes offered at adult school); *Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 439–40 (1989) (nonprofit voting rights organizations had standing to seek writ of mandate compelling county to carry out state law voter outreach obligations). In light of the broad availability of citizen standing to obtain mandamus relief, Respondents cannot show that the incremental burden imposed by recognizing taxpayer standing as Petitioner seeks—which, after all, imposes no duty on public agencies other than to defend their actions in court—would be particularly onerous.

Respondents' "sky is falling" arguments also ignore the fact that preparing and filing a lawsuit is no simple task. Even if a taxpayer wanted to challenge some action taken by a local entity with which he or she had only a nominal connection the taxpayer would still have to retain counsel, and either pay counsel on a hourly basis or convince counsel that the case would either provide a contingency fee or a public interest fee award, or was worth doing for other, non-monetary reasons. Then the attorney would have to prepare and file a complaint setting forth a legal theory plausible enough to avoid a sanctions motion under Section 128.7. In other words, "[t]he idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, and not the courtroom." Kenneth E. Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645, 674 (1973). This spectre furnishes no basis to interpret Section 526a in a manner that frustrates, rather than furthers, its purpose of providing a large number of citizens with the ability to challenge illegal government activity in court.

II.

THE SALES TAX ALSO PROVIDES STANDING TO CONSUMERS EVEN IF THE "ASSESSED FOR AND LIABLE TO PAY" LANGUAGE APPLIES TO ALL TAXPAYERS.

For the reasons stated in Part I, above, Section 526a should be interpreted to grant standing to anyone who "has paid" a tax, including consumers who actually pay the sales tax. If, however, the Court disagrees, and holds that the "assessed for and liable to pay" language in Section 526a applied to present, as well as future, taxpayers, consumers who pay the sales tax would still have standing.

Respondents and the Courts of Appeal that have addressed this issue have relied on the fact that the incidence of the sales tax and the gas tax fall on the retailer and the gasoline

dealer, respectively, in the first instance. County ABM 28; City ABM 15; *Torres*, 13 Cal. App. 4th at 1048; *Cornelius*, 49 Cal. App. 4th at 1779; *Reynolds*, 223 Cal. App. 4th at 876. But neither Respondents nor the Courts of Appeal have taken account of Civil Code Section 1656.1. While that statute provides that the retailer's ability to add reimbursement for the sales tax to the price of a product "depends solely upon the terms of the agreement of sale," it also enacts a presumption that the consumer has agreed to pay the sales tax where, inter alia, the tax is shown on the sales receipt. CIV. CODE §1656.1(a)(2). Accordingly, the consumer does have the legal obligation to pay the tax in the vast majority of instances. Thus, even if Section 526a standing is granted only to taxpayers who are "assessed for and liable to pay" a tax, that statutory definition includes consumers who pay the sales tax.[18]

[18]Petitioner does not contend that she has paid the use tax, the legal incidence of which falls on the consumer. *See* REV. & TAX. CODE §6202. Accordingly, the Court need not address the issue of whether payment of that tax would provide standing under Section 526a.

CONCLUSION

Because Petitioner has standing under Section 526a, the Court of Appeal's decision should be reversed, and the case remanded to the Superior Court for further proceedings consistent with the Court's opinion.

DATE: May 21, 2015.

Respectfully,

ARNOLD & PORTER LLP
STEVEN L. MAYER

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
ALAN L. SCHLOSSER

WESTERN CENTER ON LAW AND POVERTY
RICHARD. A. ROTHSCHILD

AARP FOUNDATION LITIGATION
BARBARA JONES

By: /s/
STEVEN L. MAYER

By: /s/
ALAN L. SCHLOSSER

Attorneys for Amici Curiae

35162403F

CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.520(c)

Pursuant to California Rule of Court 8.520(c), and in reliance upon the word count feature of the software used to prepare this document, I certify that the foregoing Brief *Amici Curiae* of the American Civil Liberties Union of Northern California, the Western Center on Law and Poverty, the Legal Aid Association of California, and AARP contains 7,826 words, exclusive of those materials not required to be counted under Rule 8.520(c)(3).

DATED: May 21, 2015.

/s/
STEVEN L. MAYER

PROOF OF SERVICE
Case No. S219567

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Three Embarcadero Center, 10th Floor, San Francisco, California 94111-4024. On May 21, 2015, I served the following document(s) described as:

- **APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, WESTERN CENTER ON LAW AND POVERTY, LEGAL AID ASSOCIATION OF CALIFORNIA, AND AARP FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF PETITIONER**

- **BRIEF AMICI CURIAE OF AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, WESTERN CENTER ON LAW AND POVERTY, LEGAL AID ASSOCIATION OF CALIFORNIA, AND AARP IN SUPPORT OF PETITIONER**

on the interested parties in this action by placing the document(s) in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below:

Mark Todd Clausen
Attorney At Law
769 Carr Avenue
Santa Rosa, CA 95404-2822

Attorneys for Plaintiff and Appellant
Cherrity Wheatherford

Richard William Osman
Bertran Fox & Elliot
2749 Hyde Street
San Francisco, CA 94109-1222

Thomas F. Bertrand
Bertran Fox & Elliot
2749 Hyde Street
San Francisco, CA 94109-1222

Attorneys for Defendant and Respondent City of San Rafael

Renee Giacomini Brewer
Office of the County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903-4257

Valorie R. Boughey
Marin County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903-4257

Attorneys for Defendant and Respondent County of Marin

Clerk of the Court
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

California Court of Appeal
First Appellate District, Division 1
Earl Warren Bldg.
350 McAllister Street
San Francisco, CA 94102-4796

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on May 21, 2015.

/s/
Jay Gresham