

No. S281001

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

MANOHAR RAJU, ET AL.,
Plaintiffs and Appellants,

vs.

**THE SUPERIOR COURT OF THE CITY AND
COUNTY OF SAN FRANCISCO, ET AL.,**
Defendants and Respondents.

First Appellate District, Division Four, Case No. A164736
Contra Costa County Superior Court, Case No. MSRA21-0005
The Honorable Edward Weil

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
AND
PROPOSED BRIEF OF *AMICI CURIAE* AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN CALIFORNIA AND
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Summer Lacey (SBN 308614)
slacey@aclusocal.org
ACLU FOUNDATION OF
SOUTHERN CALIFORNIA
1313 W. 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-9500

Neil K. Sawhney (SBN 300130)
nsawhney@aclunc.org
Emi MacLean (SBN 319071)
emaclean@aclunc.org
ACLU FOUNDATION OF
NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Amici Curiae

TABLE OF CONTENTS

Table of Authorities	3
Application for Leave to File <i>Amici Curiae</i> Brief	7
Brief of <i>Amici Curiae</i>	9
Introduction.....	9
Argument.....	11
I. The “larger legal context” demonstrates that taxpayers have standing to sue state-government defendants, including courts.....	12
A. Since its inception, the purpose of taxpayer standing has been to allow citizens to hold the government accountable for unlawful actions that would otherwise go unchallenged.	12
B. The common-law history and the law of other states confirm that taxpayer standing applies equally to state and local government action.....	16
II. Applying traditional tools of statutory construction, this Court should hold that section 526a authorizes taxpayer suits against state courts.	19
A. The statutory text supports the plaintiffs’ interpretation of section 526a.	21
B. Permitting taxpayer suits against state courts is consistent with legislative history and intent.....	24
III. As <i>amici</i> ’s recent litigation illustrates, eliminating taxpayer actions against the courts would have serious, negative consequences for government accountability and Californians’ civil rights and liberties.	29
Conclusion	38
Certificate of Word Count.....	40
Proof of Service.....	41

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Associated Home Builders etc., Inc. v. City of Livermore</i> , (1976) 18 Cal.3d 582.....	13
<i>Blair v. Pitchess</i> , (1971) 5 Cal.3d 258.....	passim
<i>Carsten v. Psychology Examining Com.</i> , (1980) 27 Cal.3d 793.....	17
<i>Christmas v. Warfield</i> , (1907) 105 Md. 530.....	18
<i>Common Cause v. State</i> , (Me. 1983) 455 A.2d 1.....	18
<i>Dunn v. Sharp</i> , (1894) 4 Idaho 98 [35 P. 842].....	18
<i>Gogerty v. Coachella Valley Jr. College Dist.</i> , (1962) 57 Cal.2d 727.....	17
<i>Grosset v. Wenaas</i> , (2008) 42 Cal.4th 1100.....	11
<i>Grosz v. California Dept. of Tax & Fee Administration</i> , (2023) 87 Cal.App.5th 428	17
<i>Harman v. City and County of San Francisco</i> , (1972) 7 Cal.3d 150.....	11, 13, 22
<i>Jones v. Lodge at Torrey Pines Partnership</i> , (2008) 42 Cal.4th 1158.....	28
<i>Kimble v. Marvel Entertainment, LLC</i> , (2015) 576 U.S. 446	20
<i>Larkin v. Workers’ Comp. Appeals Bd.</i> , (2015) 62 Cal.4th 152.....	21

<i>Lawson v. Super. Ct.</i> , (2010) 180 Cal.App.4th 1372	24
<i>Little v. Jayne</i> , (1888) 124 Ill. 123 [16 N.E. 374].....	18
<i>Livermore v. Waite</i> , (1894) 102 Cal. 113.....	17
<i>Los Altos Property Owners Assn. v. Hutcheon</i> , (1977) 69 Cal.App.3d 22	17
<i>Lynn v. Polk</i> , (1881) 76 Tenn. 121 [1881 WL 4428]	18
<i>People for the Ethical Operation of Prosecutors & Law Enforcement v. Spitzer</i> , (2020) 53 Cal.App.5th 391	<i>passim</i>
<i>People v. Garcia</i> , (2016) 62 Cal.4th 1116	22, 23
<i>People v. Murphy</i> , (2001) 25 Cal.4th 136	20
<i>People v. Walker</i> , (2002) 29 Cal.4th 577	21
<i>Peterson v. City of Long Beach</i> , (1979) 24 Cal.3d 238.....	24
<i>Pitts v. County of Kern</i> , (1998) 17 Cal.4th 340	35
<i>Presbyterian Camp & Conf. Centers, Inc. v. Super. Ct.</i> , (2021) 12 Cal.5th 493	19
<i>Serrano v. Priest</i> , (1971) 5 Cal.3d 584.....	17
<i>Socialist Party v. Uhl</i> , (1909) 155 Cal. 776.....	13

<i>Stanson v. Mott</i> , (1976) 17 Cal.3d 206.....	17
<i>Stiavetti v. Clendenin</i> , (2021) 65 Cal.App.5th 691	7, 36
<i>Thompson v. Spitzer</i> , (2023) 90 Cal.App.5th 436	37, 38
<i>Van Atta v. Scott</i> , (1980) 27 Cal.3d 424.....	14
<i>Weatherford v. City of San Rafael</i> , (2017) 2 Cal.5th 1241	<i>passim</i>
<i>Wheaton v. Peters</i> , (1834) 33 U.S. 591	19
<i>Wheeler v. Herbert</i> , (1907) 152 Cal. 224.....	17
<i>White v. Davis</i> , (1975) 13 Cal.3d 757.....	8, 9, 12
<i>Wirin v. Parker</i> , (1957) 48 Cal.2d 890.....	8
<i>Wishnev v. The Northwestern Mutual Life Ins. Co.</i> , (2019) 8 Cal.5th 199	23
Statutes	
Cal. Const., art. VI, §§ 1, 4	22
Code Civ. Proc., § 526a	<i>passim</i>
Elec. Code, § 9019	36
Gov. Code, § 811.2.....	24
Pen. Code, § 417.....	32
Pen. Code, § 488.....	32
Rev. & Tax. Code, § 17041.5.....	28

Other Authorities

Assem. Bill No. 2376 (2017-2018 Reg. Sess.) 25, 26, 27, 28

Authority, Black’s Law Dict. (11th ed. 2019)..... 22

Dept. of Finance, Enrolled Bill Rep. on A.B. 2376 (2017-2018 Reg. Sess.) prepared for Governor Brown (Sept. 4, 2018) 28

Hershkoff, *State Courts and the “Passive Virtues”: Rethinking the Judicial Function* (2001) 114 Harv. L.Rev. 1833 18, 19

Jaffe, *Standing to Secure Judicial Review: Public Actions* (1961) 74 Harv. L.Rev. 1265 19

Public, Black’s Law Dict. (11th ed. 2019)..... 21

Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2376 (2017-2018 Reg. Sess.) as amended July 5, 2018..... 26, 27, 28

Sen. Bill No. 759 (2017-2018 Reg. Sess.) 36

Taxpayers’ Suits As A Means of Controlling the Expenditure of Public Funds (1937) 50 Harv. L.Rev. 1276 14, 15

Taxpayers’ Suits: A Survey and Summary (1960) 69 Yale L.J. 895*passim*

**APPLICATION FOR LEAVE TO FILE
AMICI CURIAE BRIEF**

Pursuant to Rule 8.520(f) of the California Rules of Court, proposed *amici curiae* respectfully request leave to file the accompanying Proposed *Amici Curiae* Brief in Support of Plaintiffs-Appellants.

INTERESTS OF AMICI CURIAE ¹

The American Civil Liberties Union (“ACLU”) is a nationwide, non-partisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws. The ACLU of Northern California and ACLU of Southern California are regional affiliates of the national ACLU.

Both ACLU California affiliates have regularly represented taxpayer plaintiffs in cases of great public interest and constitutional significance—and continue to do so today. (See, e.g., *People for the Ethical Operation of Prosecutors & Law Enforcement v. Spitzer* (2020) 53 Cal.App.5th 391; *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691; *UFW Foundation v. County of Kern* (Super. Ct. Kern County, filed May 8, 2023, No. BCV-23-101419).) The ACLU California affiliates have also repeatedly appeared, both as counsel to the parties and as *amici*, before this

¹ Pursuant to Rule 8.520(f)(4), *amici* state that no counsel for a party authored this brief in whole or in part, and no other person or entity, other than *amici curiae*, its members, or its counsel, made any monetary contribution to the preparation or submission of this brief.

Court in cases implicating the scope of California's taxpayer-standing doctrines. (See, e.g., *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241; *White v. Davis* (1975) 13 Cal.3d 757; *Wirin v. Parker* (1957) 48 Cal.2d 890.)

For these reasons, *amici* respectfully request leave to file the accompanying proposed brief.

Dated: April 2, 2024

Respectfully submitted,



Neil K. Sawhney (SBN 300130)
Emi MacLean (SBN 319071)
ACLU FOUNDATION OF
NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Amici Curiae

BRIEF OF *AMICI CURIAE*

INTRODUCTION

Taxpayer standing is a critical tool to ensure that Californians' government, at every level, fulfills its obligations to the public. Its “primary purpose,” this Court has held, is to “enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts.” (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267–268 (*Blair*).)¹ And, for more than a century, taxpayer standing has provided “a general citizen remedy for controlling illegal governmental activity.” (*White v. Davis* (1975) 13 Cal.3d 757, 763 (*White*).)

The need for this vital remedy does not disappear at the courthouse doors. Like other government institutions, courts sometimes adopt unconstitutional or unlawful policies and practices. Judicial officials sometimes illegally spend public funds or engage in corruption. When these regrettable events come to light, taxpayers have long had the right to bring an action demanding that the court or judicial officer cease the illegal activity and comply with the law. Indeed, as detailed below, in just the last two years, *amici* have brought multiple taxpayer suits against superior courts and their personnel to remedy systemic rights violations—from the operation of an unlawful fast-track misdemeanor “plea mill” to policies authorizing unconstitutional wealth-based detention.

¹ Unless otherwise indicated, all internal citations and quotation marks are omitted.

The defendants here seek to overturn this long-settled understanding. They argue that this Court should recognize, for the first time, a “state court” exception to taxpayer standing. But their theory is even more far-reaching: The defendants also contend that California’s taxpayer-standing statute, Code of Civil Procedure section 526a, does not apply *at all* to state agencies and officials. That would mean, for example, that taxpayers would lack standing under section 526a to sue the Secretary of State for unlawful election-related actions, the Director of the Department of State Hospitals for unconstitutional delays in treatment access, or a district attorney (a state official for taxpayer-standing purposes) for implementing brazenly unconstitutional policies. Put differently, it would mean that a vast array of state actions that courts have long considered to be proper targets of taxpayer suits would now be beyond section 526a’s reach.

The defendants’ unprecedented theory must be rejected. It cannot be reconciled with more than a hundred years of precedent, dating back to taxpayer standing’s common-law roots, which makes no distinction between state and local defendants. It conflicts with the statutory text and the Legislature’s intent that the law be read broadly and liberally. Most importantly, it would seriously undermine the fundamental rationale of taxpayer standing: to hold the government—all of it—accountable to the people.

ARGUMENT

The California Constitution contains no “case-or-controversy” requirement. (*Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117, fn. 13.) Instead, a party’s standing to bring suit in state courts derives from a multifaceted array of statutory and common-law sources. Importantly, standing is not only a function of the plaintiff’s stake in a case; it is also a “measure of the ‘intensity of the plaintiff’s claim to justice.’” (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 159 (*Harman*).)

Like all statutory-construction questions, questions about standing may involve analysis of statutory text. (See *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247 (*Weatherford*).) Often, however, “the text read in isolation can be insufficient to adequately capture the other prudential and separation of powers considerations that have traditionally informed the outer limits of standing.” (*Id.* at pp. 1248–1249.) So, when analyzing standing, this Court has held that it is especially critical to consider the “larger legal context—a context encompassing the evolution of standing in California from its common law roots to its various statutory incarnations.” (*Id.* at p. 1247.)

Thus, unlike in typical statutory-interpretation cases, “sensitivity to the larger context” plays a key role in this Court’s decisions evaluating the scope of standing. (*Weatherford, supra*, 2 Cal.5th at p. 1249.) Factoring in the broader history and context “is not only a method to better effectuate the Legislature’s purpose in providing certain statutory remedies, but also marks a recognition of the sometimes competing interests at issue when

considering whether a party may seek a judicial remedy against government officials.” (*Ibid.*)

For these reasons, *amici* first explain below why the “larger legal context”—the history and purposes of the taxpayer-standing doctrine in both California and other jurisdictions—supports the plaintiffs’ argument that taxpayers have standing to sue the superior courts. In the following sections, we discuss why the statutory text and broader policy considerations compel the same conclusion.

I. The “larger legal context” demonstrates that taxpayers have standing to sue state-government defendants, including courts.

A. Since its inception, the purpose of taxpayer standing has been to allow citizens to hold the government accountable for unlawful actions that would otherwise go unchallenged.

1. This Court has long recognized that taxpayer standing serves as “a general citizen remedy for controlling illegal governmental activity.” (*White, supra*, 13 Cal. 3d at p. 763.) More than half a century ago, this Court explained that the “primary purpose” of California’s taxpayer-standing doctrine 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, supra*, 5 Cal.3d at pp. 267–268, quoting Comment, *Taxpayers’ Suits: A Survey and Summary* (1960) 69 Yale L.J. 895, 904 (“*Taxpayers’ Suits: A Survey*”).)

The history of California’s taxpayer-standing statute, Code of Civil Procedure section 526a, reflects this same fundamental concern with government accountability. The law was enacted in

1909, the same year that the Legislature enacted direct primary elections (see *Socialist Party v. Uhl* (1909) 155 Cal. 776, 795), and two years before the initiative, referendum, and recall were established. (See generally *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591; Starr, *Inventing the Dream: California Through the Progressive Era* (1985).) Like the direct primary, the initiative, referendum, and recall, section 526a's taxpayer action promotes public-minded citizen participation in keeping government actors accountable to the people. In this vein, the statute enables concerned citizens to challenge unlawful or corrupt government actions that were beyond their reach under then-existing standing jurisprudence. (See *Weatherford, supra*, 2 Cal.5th at p. 1249 [explaining that section 526a "represents a legislative decision to create judicial access for parties that would not otherwise be eligible to seek relief under sections 367 or 1086"]; *Taxpayers' Suits: A Survey, supra*, 69 Yale L.J. at p. 900 [explaining that the development of taxpayer standing "coincided with the upsurge in Populist-Progressive sentiment which, because of its distrust of entrenched officials and vested interests, gave rise to such other means of challenging governmental action as the initiative, referendum, and recall"].)

In light of section 526a's primary focus on holding government accountable to the people, this Court has repeatedly held that the law demands an "expansive interpretation of the taxpayer's standing." (*Harman, supra*, 7 Cal.3d at p. 160, fn. 1; see *Blair, supra*, 5 Cal. 3d at p. 268 [observing that "California

courts have consistently construed section 526a liberally to achieve this remedial purpose”].) “[T]o achieve the ‘socially therapeutic purpose’ of section 526a,” this Court has explained, “ ‘provision must be made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered.’ ” (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 449–450.)

2. The defendants conspicuously avoid grappling with taxpayer standing’s primary purpose of government accountability. Instead, throughout their briefing, they attempt to reconceptualize the doctrine as a limited device “analogous to shareholder derivative actions” to support its cramped view of taxpayer standing. (OBM at pp. 13; see also RBM at pp. 10, 18.) This Court should reject that flawed and “imperfect” analogy. (*Taxpayers’ Suits: A Survey, supra*, 69 Yale L.J. at p. 903.)

To be sure, as the defendants suggest (OBM at pp. 25–27), some early authorities justified municipal taxpayer standing with reference to actions against private corporations by corporate shareholders. Even by the early 20th Century, however, it was clear that “this analogy” suffered from “several obvious defects.” (*Taxpayers’ Suits As A Means of Controlling the Expenditure of Public Funds* (1937) 50 Harv. L.Rev. 1276, 1276–1277 (“*Taxpayers’ Suits As A Means*”).) Indeed, as one early commentator observed, “[a]ll efforts to find a consistently applicable justification for granting relief in these cases *merely on the basis of status of the taxpayer* have been unsuccessful.” (*Id.* at p. 1283, italics added.)

That is because there are critical (and obvious) differences between taxpayers and private shareholders. To start, whereas “[t]he private corporation is organized primarily for the benefit of its stockholders and is, generally, subject to their ultimate control,” local and state governments are “organized for the benefit of those within its limits”—some of whom are not taxpayers—“and governed by officials elected by them.” (*Id.* at pp. 1276–1277.) Next, a taxpayer’s “taxes are not voluntary contributions for a co-operative venture but exactions imposed by virtue of the power of the municipality.” (*Id.* at p.1276; see also *Taxpayers’ Suits: A Survey, supra*, 69 Yale L.J. at pp. 903–904.) Finally, “the functions” of local and state governments, which “affect many aspects of a taxpayer’s life and give rise to a great variety and volume of litigation,” are not “comparable to those of a corporation, which touch a stockholder's pocketbook only.” (*Id.* at p. 903.)

Accordingly, by the mid-20th Century, nearly everyone recognized that taxpayer standing could not be understood as a public-sector “analogue” to private shareholders’ actions. To the contrary, “[t]he taxpayers’ suit must . . . be understood . . . as a governmental device to safeguard the legal restrictions on state and local governments, which, if not subjected to the careful scrutiny of the individual taxpayer, might well become dead letters.” (*Taxpayers’ Suits As A Means, supra*, 50 Harv. L.Rev. at pp. 1283–1284.) Or as another commentator put it, taxpayer standing “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,” thus affording the citizenry with “a means of mobilizing the self-interest of individuals within the body politic to challenge legislative programs, prevent illegality, and avoid corruption.” (*Taxpayers’ Suits: A Survey, supra*, 69 Yale L.J. at p. 904.)

Commentators agree, in other words, that the “need for taxpayers’ suits arises from the absence of alternative means of correcting illegal practices of government officials which would otherwise be irreparable.” (*Taxpayers’ Suits: A Survey, supra*, 69 Yale L.J. at p. 910.) That, of course, is precisely the government-accountability rationale for taxpayer standing that this Court expressly adopted in *Blair* and other cases. (See *Blair, supra*, 5 Cal.3d at pp. 267–268.) And this need, as explained below, does not diminish when *state* officials, not local officials, are responsible for the challenged illegal practices.

B. The common-law history and the law of other states confirm that taxpayer standing applies equally to state and local government action.

Nothing about taxpayer standing’s accountability rationale turns on whether the challenged action is performed by a state or local government. That is reflected in the doctrine’s “common law roots” (*Weatherford, supra*, 2 Cal.5th at p. 1247), which made no distinction between state and local defendants. And it is also consistent with the law in nearly all other states, which allows taxpayers to sue state as well as local defendants,

1. Prior to the enactment of section 526a, this Court repeatedly resolved common-law taxpayer suits against state-

government defendants. (See, e.g., *Wheeler v. Herbert* (1907) 152 Cal. 224, 227 [state commissioners]; *Livermore v. Waite* (1894) 102 Cal. 113, 114–115 [secretary of state].) None of these cases expressed any doubt that taxpayer standing applied equally to state and local defendants.

To the contrary, by the mid-20th Century, it was well-established in this state’s courts that “th[e] common law theory applies not only to municipalities but *to all* governmental bodies.” (*Los Altos Property Owners Assn. v. Hutcheon* (1977) 69 Cal.App.3d 22, 26, italics added; see, e.g., *Gogerty v. Coachella Valley Jr. College Dist.* (1962) 57 Cal.2d 727, 730.) Indeed, this Court recognized in 1980 that, “[a]s a broad proposition, *state* taxpayers have standing to challenge the legality of the expenditure of public funds by *any* governmental agency.” (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 798, italics added.)

This common-law understanding has long informed California courts’ interpretation of section 526a. As the plaintiffs explain (ABM at pp. 22–30), more than fifty years of precedent uniformly holds that section 526a allows taxpayers to sue state and local governments alike. (See, e.g., *Stanson v. Mott* (1976) 17 Cal.3d 206, 223; *Serrano v. Priest* (1971) 5 Cal.3d 584, 618 & fn. 38; *Grosz v. California Dept. of Tax & Fee Administration* (2023) 87 Cal.App.5th 428, 439; *Los Altos Property Owners Assn.*, *supra*, 69 Cal.App.3d at pp. 27–28 [collecting cases].) That makes good sense: It both reflects the doctrine’s common-law history and central government-accountability rationale. As one court

recently observed in a case against a district attorney—a *state* official—“[t]he *raison d’être* of taxpayer standing . . . is to confer standing on *the public at large* to hold *the government* accountable to fulfill its obligations to the public.” (*People for the Ethical Operation of Prosecutors & Law Enforcement v. Spitzer* (2020) 53 Cal.App.5th 391, 395–396, italics added.) The doctrine’s fundamental purpose would therefore be obviated if taxpayers lacked standing to sue state defendants.

2. The absence of a state-local distinction in California’s taxpayer-standing doctrine is consistent with the vast majority of other jurisdictions, which permit taxpayers to sue state-government defendants.

Virtually all states recognize some form of taxpayer standing. (See Hershkoff, *State Courts and the “Passive Virtues”: Rethinking the Judicial Function* (2001) 114 Harv. L.Rev. 1833, 1854.) And “the great majority of states permit their taxpayers to sue to enjoin illegal expenditures by state officials.” (*Common Cause v. State* (Me. 1983) 455 A.2d 1, 8.) In fact, multiple state-court decisions *before* 1909 recognized that taxpayers could sue state agencies under “settled principles” of the common law. (*Lynn v. Polk* (1881) 76 Tenn. 121, 156 [1881 WL 4428]; see also, e.g., *Little v. Jayne* (1888) 124 Ill. 123 [16 N.E. 374]; *Dunn v. Sharp* (1894) 4 Idaho 98 [35 P. 842]; *Christmas v. Warfield* (1907) 105 Md. 530 [66 A. 491].) These decisions inform California’s understanding of “the existing common law” at the time, which in turn constitutes the “backdrop” against which the Legislature

enacted section 526a in 1909. (See *Presbyterian Camp & Conf. Centers, Inc. v. Super. Ct.* (2021) 12 Cal.5th 493, 505.)

Even as far back as the 1960s, nearly three-quarters of states allowed taxpayer suits against state defendants, and the “trend” was only in favor of that number increasing. (See Jaffe, *Standing to Secure Judicial Review: Public Actions* (1961) 74 Harv. L.Rev. 1265, 1278.) That’s because “no overriding considerations . . . make review of state action less desirable than review of the affairs of local government.” (*Taxpayers’ Suits: A Survey, supra*, 69 Yale L.J. at p. 902.) Thus, by 2001, the idea that taxpayer-standing doctrines applied to *both* local and state actions was “for the most part uncontroversial.” (Hershkoff, *supra*, 114 Harv. L.Rev. at p. 1855.) The defendants offer no reason for this Court to depart from this uncontroversial—and overwhelming—consensus.

II. Applying traditional tools of statutory construction, this Court should hold that section 526a authorizes taxpayer suits against state courts.

The history and precedent discussed above are strong support for holding that Californian taxpayers have standing under section 526a to sue state-government agencies and officials, including courts.² *Amici* therefore agree with the

² To be clear, the history and precedent is *all* that is needed to hold that the plaintiffs have taxpayer standing under the common law. After all, “the decisions of courts of justice *are* the evidence of what is common law.” (1 Blackstone, Commentaries p. 71, italics added; see, e.g., *Wheaton v. Peters* (1834) 33 U.S. 591, 659 [“The judicial decisions, the usages and customs of the

plaintiffs that this Court should uphold that interpretation simply as a matter of “statutory stare decisis.” (See ABM at pp. 22–23, 37; *cf. Kimble v. Marvel Entertainment, LLC* (2015) 576 U.S. 446, 456 [holding that “*stare decisis* carries enhanced force when a decision . . . interprets a statute,” even when the “decision has announced a ‘judicially created doctrine’ designed to implement [the] statute”].)

Nevertheless, traditional statutory construction only confirms that the plaintiffs’ understanding of section 526a is correct. In interpreting a statute, this Court “begin[s] by considering the statute’s language and structure, bearing in mind that [its] fundamental task in statutory interpretation is to ascertain and effectuate the law’s intended purpose.” (*Weatherford, supra*, 2 Cal.5th at p. 1246.) This requires, as an initial matter, “examining the statute’s words, giving them a plain and commonsense meaning.” (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

The Court “do[es] not, however, consider the statutory language ‘in isolation,’” but rather “look[s] to ‘the entire substance of the statute . . . in order to determine the scope and purpose of the provision.’” (*Ibid.*) “If the statutory language in question remains ambiguous after we consider its text and the statute’s structure, then we may look to various extrinsic sources, such as legislative history, to assist us in gleaning the

respective states, must determine how far the common law has been introduced, and sanctioned in each.”].)

Legislature’s intended purpose.” (*Larkin v. Workers’ Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 158.) The court “strive[s] to select the construction that comports most closely with the Legislature’s apparent intent, with a view to promoting rather than defeating the statutes’ general purposes.” (*People v. Walker* (2002) 29 Cal.4th 577, 581.)

A. The statutory text supports the plaintiffs’ interpretation of section 526a.

We begin with the text. Section 526a authorizes taxpayers to bring “[a]n 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 local agency,” which is defined as “a city, town, county, or city and county, or a district, *public authority*, or any other political subdivision in the state.” (Code Civ. Proc., § 526a, subds. (a) & (d)(1), italics added.) The statute thus expressly authorizes claims against “public authorities,” which can reasonably be read to include judges and courts, considering both the standard definition and extrinsic aids. At a minimum, the statute is ambiguous as to whether it authorizes claims against superior courts.

Judges and courts fit comfortably within the ordinary and common meaning of “public authority.” The term “public” means “[o]f, relating to, or involving an entire community, state, or country.” (*Public, adj.*, Black’s Law Dict. (11th ed. 2019); see *Coldwell v. Board of Public Works of City and County of San Francisco* (1921) 187 Cal. 510, 520 [explaining that “[t]he word ‘public’ is defined in both the Standard and Webster’s dictionaries

as ‘of, pertaining to, or affecting, the people at large or the community”].) Meanwhile, “authority” is defined as “[a]n official organization or government department with particular responsibilities and decision-making powers.” (*Authority*, Black’s Law Dict. (11th ed. 2019), definition 3 [noting that this definition is sometimes “also termed *public authority*”].) A “public authority” is thus a governmental organization or department with particular responsibilities and decision-making powers relating to and involving the community. That precisely describes the superior courts: They exercise the “judicial power of this State” in “each county.” (Cal. Const., art. VI, §§ 1, 4.)³

This interpretation is also consistent with the words surrounding it, as all the terms defining “local agency” describe governmental entities with public-service functions. However, to avoid reading the language as surplusage, a “public authority” should “generally possess some characteristics” of the other terms while remaining distinct. (See *People v. Garcia* (2016) 62 Cal.4th 1116, 1124.) Superior courts fit the bill: They are a government entity tasked with the public service of adjudicating legal matters and administering justice in communities but are not “a city, town, county, [] city and county, [] district, . . . or any other

³ The defendants passingly argue that section 526a only “authorizes taxpayer actions against individuals, not public entities.” (OBM at p. 32.) That argument cannot be squared with this Court’s decisions repeatedly upholding taxpayer suits involving no individual-officer defendants. (See, e.g., *Weatherford*, *supra*, 2 Cal.5th 1241; *Harman*, *supra*, 7 Cal.3d at p. 160.)

political subdivision in the state.” (Code Civ. Proc., § 526a, subd. (d)(1); cf. *Garcia, supra*, at p. 1124 [“Canons of construction—such as the *noscitur a sociis* canon underscoring the value of considering terms in a list in their statutory context—are not mechanical devices, but instead tools that can help us do what we always aspire to do when construing a statute: avoid redundancies, reach a reasonable conclusion about the meaning of terms, and give effect to the Legislature’s purpose”].)⁴

The defendants have no persuasive response to the argument that courts and judges are “public authorities” within the meaning of section 526a. They first assert that this cannot be the case because superior courts are “a separate branch of government,” but do not explain why a separate branch cannot also be a “public authority.” (RBM at pp. 13–14.) For good reason: No court has ever suggested that taxpayer standing varies based on which branch of government the defendant agency occupies. Similarly, the defendants resist the analogy to school districts—agencies of the state—by arguing that superior courts, unlike school districts “are not, and never were, political subdivisions.”

⁴ Likewise, the fact that other entities listed in section 526a definition of “local agency” are not state actors should not result in a narrowing of the entities that can be subject to taxpayer standing suits to exclude courts or other state actors. “*Ejusdem generis* is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.” (*Wishnev v. The Northwestern Mutual Life Ins. Co.* (2019) 8 Cal.5th 199, 213–218 [“Maxims of statutory construction, including the doctrine of *ejusdem generis*, are not immutable rules but instead are guidelines subject to exceptions.”].)

(*Id.* at p. 14.) But that misses the point: No one contends that superior courts are “political subdivisions” for purposes of section 526a. Rather, the plaintiffs argue that superior courts are “public authorities” under the statute—which has to mean something different from “political subdivisions.” On that interpretive question, the defendants have no answer.

Notably, the term “public authority” has been used elsewhere in statutory language—alongside “public agency” and “public entity”—to include state, and not only local, actors. (See, e.g., Gov. Code, § 811.2 [defining “public entity” to include a “public authority,” “public agency,” “the state,” and state actors]; *id.*, § 53050 [defining “public agency” to include “public authority” and state actors though expressly not the state or a county]; *Lawson v. Super. Ct.* (2010) 180 Cal.App.4th 1372, 1396 [the definition of public entity “include[s] every kind of independent political or governmental entity in the State”]; *Peterson v. City of Long Beach* (1979) 24 Cal.3d 238, 244 [“public entity” includes “every form of public authority” (italics omitted)].)

In sum, section 526a’s inclusion of “public authorities” can reasonably be read to cover superior courts and judges. At the very least, the meaning of that textual phrase is ambiguous. And, as we next explain, the broader statutory purposes and legislative history support such an interpretation.

B. Permitting taxpayer suits against state courts is consistent with legislative history and intent.

Understanding courts as “public authorities” subject to taxpayer suits is consistent with section 526a’s legislative intent

of providing broad access to taxpayers to raise grievances against public officials. As discussed, “[t]he primary purpose of this statute, originally enacted in 1909, 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, supra*, 5 Cal.3d at pp. 267–268.) As a result, California courts have “always construed section 526a liberally—though not in a manner inconsistent with the explicit statutory limits it imposes on taxpayer standing—in light of its remedial purpose.” (*Weatherford, supra*, 2 Cal.5th at p. 1251.)

The statute’s original 1909 text allowed California taxpayers to bring an action against “officers and agents of any county, town, city, or city and county in said state.” (Stats. 1909, ch. 348, § 1, p. 578.) As explained, although that text did not specifically provide for suits against the state, courts still overwhelmingly held that it did so. (See ABM at pp. 22–30 [collecting cases].) The subsequent legislative history only further confirms that the courts’ uniform interpretation is right. Two amendments, including the 2018 amendment on which the defendants rely, expressly expanded the scope of the statute. (Stats. 2018, ch. 319 (A.B. 2376); Stats. 1911, ch. 71, § 1, p. 87.) And the Legislature has never acted to narrow the statute’s reach.⁵

⁵ The 1911 amendment—which prevented courts from ordering the certain sale or issuance of municipal bonds as injunctive relief—was the only time that the Legislature arguably restricted the statute in any way. But even then, the Legislature expanded who had the authority to bring claims,

The Legislature’s intent in its 2018 amendment was to broaden, and not constrain, the parties capable of bringing and being subject to a taxpayer suit. It did so in three ways, by (1) expanding the public actors subject to taxpayer actions; (2) elaborating the broad array of taxes that confer standing; and (3) authorizing noncitizens to bring claims.⁶

Most relevant here, the defendants rely heavily on the “local agency” language introduced for the first time in section 526a through this 2018 amendment. (OBM at pp. 32-34, 36; RBM at pp. 12-14.) Contrary to defendants’ intimation, however, this change was intended to *broaden* the scope of those made subject to a taxpayer suit, not limit it. (See Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2376 (2017-2018 Reg. Sess.) as amended July 5, 2018. [“Senate Bill Analysis, A.B. 2376”].) At the time of the amendment, section 526a authorized taxpayer suits against any “officer,” “agent” or

expressly authorizing corporations to bring taxpayer claims. (Stats. 1911, ch. 71, § 1, p. 87.) The 1967 amendment allowed taxpayer actions to take precedence in civil matter calendars and did not alter in any way the parties who could sue or be sued. (Stats. 1967, ch. 706, § 1, p. 2080.)

⁶ See A.B. 2376, stat. 2018, ch. 319, Legislative Counsel’s Digest [elaborating goals of the amendment to 1) “allow any resident . . . to maintain an action” against a proper defendant, and define resident; 2) “clarify that a tax that funds the defendant local agency is sufficient to confer standing”; and 3) “*expand* the scope of an action . . . by permitting the action to be maintained against a ‘local agency,’ defined as a city, town, county, or city and county, or a district, public authority, or any other political subdivision in the state” (emphasis added)], *available at* <https://legiscan.com/CA/text/AB2376/id/1803704>.

“person” acting on behalf of “a county, town, city or county of the state.” (Code Civ. Proc., § 526a, as amended by Stats. 2018, ch. 319, § 1.) The Legislature introduced the term “local agency” and included “public authorities” within the definition of that term, *in addition to* the entities previously identified. State Assemblyman Mark Stone, the amendment’s author, affirmed the Legislature’s intent to expand the statute’s reach, saying “[t]hese *additional entities* would now be subject to suit under this statute.” (Senate Bill Analysis, A.B. 2376, *supra*, p. 6, italics added.)

The Legislature was also well aware at the time that the statute had been interpreted to allow taxpayer actions against state entities in general, and courts in particular. The Senate Rules Committee Floor Analysis even cited to this Court’s decision in *Blair* for the proposition that the 2018 amendment would “ensure[] that courts continue to construe Section 526a liberally to adequately achieve its critical remedial purpose.” (Senate Bill Analysis, A.B. 2376, *supra*, p. 6.) As noted above, in *Blair*, a taxpayer action against county *and court* personnel, this Court expressly recognized that “it has been held that taxpayers may sue *state* officials to enjoin such officials from illegally expending state funds.” (*Blair*, 5 Cal.3d at p. 268, italics in original.) Armed with this knowledge and expressly citing to this case, the Legislature in 2018 further expanded the reach of the statute. There is nothing in either the statutory text or the legislative history that suggests, as the defendants argue, that the Legislature actually meant to *restrict* taxpayer standing.

The primary focus of the 2018 amendment, however, was to respond to this Court’s decision in *Weatherford* and both clearly identify and broaden the set of taxes that confer standing on a plaintiff. (See Senate Bill Analysis, A.B. 2376, *supra*; Dept. of Finance, Enrolled Bill Rep. on A.B. 2376 (2017-2018 Reg. Sess.) prepared for Governor Brown (Sept. 4, 2018), p. 13⁷; see also *Weatherford*, *supra*, 2 Cal.5th at p. 1253.) Notably, even here the Legislature appeared to recognize that taxpayer suits could be brought against state entities. In crafting a nonexhaustive list of the broad array of taxes that confer taxpayer standing, the Legislature expressly included “income tax.” Because income tax is paid *only* to the state and *not* to local entities, this further supports the conclusion that the Legislature endorsed the reach of the statute to allow for taxpayer actions against state, and not only local, actors. (See Rev. & Tax. Code, § 17041.5 [prohibiting cities, counties, and other local entities from collecting income tax].)

In sum, the legislative history of section 526a—and particularly the history surrounding the 2018 amendment—reflects the Legislature’s intent that taxpayer standing should be interpreted liberally to cover a wide range of illegal government activity. The defendants’ interpretation directly conflicts with that intent; it would prohibit taxpayers from challenging a significant array of government actions that, under existing law, is within section 526a’s reach. But “[t]he Legislature does not, one might say, hide elephants in mouseholes.” (*Jones v. Lodge at*

⁷ See *Amici* RJN, Ex. A.

Torrey Pines Partnership (2008) 42 Cal.4th 1158, 1171.) Nothing in the legislative history—especially the 2018 amendment explicitly intended to expand taxpayer standing—supports the defendants’ construction of section 526a. That is further reason to affirm California courts’ longstanding and unanimous interpretation that the statute applies to state agencies and officers. And under that well-settled interpretation, there is no basis to carve out a special exception from the statute for courts and judicial officers.

III. As *amici*’s recent litigation illustrates, eliminating taxpayer actions against the courts would have serious, negative consequences for government accountability and Californians’ civil rights and liberties.

As detailed in Section I, taxpayer standing’s basic rationale is to allow “the public at large to hold the government accountable to fulfill its obligations to the public.” (*People for the Ethical Operation of Prosecutors & Law Enforcement, supra*, 53 Cal.App.5th at pp. 395–396.) Section 526a is a mechanism for persons to ensure the integrity of the public services they pay into. This need for government accountability does not stop at the courthouse door. Courts are not immune from the illegal expenditures of public funds. Nor can they be immune from accountability for systemic violations. Recognizing that taxpayer standing applies no less to courts than to other governmental actors is essential to guarantee accountability for judicial actors, the timely and lawful adjudication of cases, and the protection of rights related to the judicial process.

In fact, in three cases filed in just the last two years, *amici* have relied on taxpayer standing to sue a court or judicial actors in public-interest litigation protecting the rights of vulnerable individuals. The cases each raise systemic challenges. As in the case at bar, the parties in these cases failed to reach resolution to the challenged disputes absent litigation, despite substantial effort. In these and other cases challenging systemic practices involving judicial actors, effective resolution through an individual's case would be inadequate because of inherent limitations including, among other things: the lack of prompt and effective counsel for all criminal defendants, the lack of guaranteed counsel in the civil context and in certain criminal proceedings, and the failure of even successful individual challenges to translate into systemic change. These cases thus illustrate the importance of allowing taxpayers to sue courts and judges, whether under section 526a or the common law.

To start, in *UFW Foundation v. County of Kern*, taxpayers sued the county, superior court, and presiding judge for operating a “fast track” system where the court and county actors extracted uncounseled guilty pleas at misdemeanor arraignment. The taxpayers allege that, for more than fifteen years, the superior court and presiding judge have facilitated a process where probation officers, with no oversight by a prosecutor, provide misdemeanor defendants with plea offers and then pressure the defendants to formally waive their rights and enter uncounseled guilty pleas at arraignment without defense counsel present. In a brief colloquy, the judge confirms the defendant signed the

waiver form before entering the plea presented by the probation officer and sentencing the defendant. Relying on official court data, the plaintiffs allege that these misdemeanor arraignment plea practices have resulted in more than 50,000 uncounseled guilty pleas since 2015.⁸

Of particular relevance here is that all the efforts to change the court's practices short of taxpayer litigation were futile. Individual complaints against judges did not stop these systemic violations.⁹ Nor did post-conviction challenges by individual defendants who suffered immigration or other consequences as a result of their uncounseled pleas.¹⁰ Non-litigation advocacy with

⁸ Compl. ¶¶ 1, 3-4, 22-51, 77-81, *UFW Foundation v. County of Kern* (Super. Ct. Kern County, filed May 8, 2023, No. BCV-23-101419), *available at*: https://www.aclusocal.org/sites/default/files/2023.05.08_filed_kern_misdemeanor_plea_mill_petition_and_complaint_-_corrected_and_without_filing_documents.pdf.

⁹ *See, e.g.*, California Com. on Judicial Performance, Public Admonishment of Judge John L. Fielder, May 14, 2015, at p. 3, *available at*: https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Fielder_Pub_Admon_05-14-15.pdf (noting that judge had been reprimanded in 1997 “for conduct that appeared to be coercive in connection with guilty and no contest pleas [and] failing to advise unrepresented defendants of their right to counsel at arraignment”).

¹⁰ In challenges to uncounseled convictions that go back decades, dozens of individuals in Kern County sought post-conviction relief for convictions resulting from this systemic practice, which resulted in lasting and serious harm. (See, e.g., *People v. Martinez* (Super. Ct. Kern County, filed Feb. 26, 2018, No. BM715779A) [motion to vacate conviction of detained father who would have been eligible for adjustment of status to lawful permanent residency but for an uncounseled plea which required mandatory deportation]; *People v. Pacheco* (Super. Ct. Kern

the county and increased public attention to the practices likewise failed to halt them.¹¹

Next, in *O’Neill Rogge v. Fleming*, taxpayers sued Santa Clara Superior Court personnel—the court executive officer, supervising judge of the criminal division, and presiding judge—in their official capacity for a court policy that prevented people subject to an initial arrest warrant from voluntarily scheduling a court appearance to answer the charges against them. The challenged directive prohibited calendaring out-of-custody arraignments for people with unserved arrest warrants unless they could pay bail. The plaintiffs alleged that this policy change resulted in unconstitutional wealth-based detention and unequal access to courts.¹²

County, filed Feb. 25, 2019, No. LM041170A) [motion to vacate conviction of father convicted of Penal Code section 488, for the “petty theft of grapes,” and as a result faced permanent exclusion from the United States]; *People v. Gonzalez* (Super. Ct. Kern County, filed Oct. 19, 2020, No. BM951696A) [motion to withdraw plea to Penal Code section 417(a)(1) where defendant pled at arraignment, unaware of the exact charge or its elements, and believing that the probation officer was his defense counsel] [on file with author].)

¹¹ See, e.g., Letter from Rapid Response Network of Kern, Kern County Criminal Justice Coalition, and ACLU of Southern California to Kern County Board of Supervisors, Re: Kern County Fiscal Year 2021-2022 Budget, July 26, 2021; Swenson, *Misdemeanor cases handled efficiently in Division G*, The Bakersfield Californian (Aug. 10, 2008, updated Sept. 13, 2016) [reporting that judge overseeing the misdemeanor arraignment court at the time estimated 90% of defendants pled guilty or no contest at arraignment under this system].

¹² Compl., *O’Neill Rogge v. Fleming* (Super. Ct. Santa Clara County, filed July 31, 2023, No. 23CV420015), *available at*:

Here too, efforts short of civil litigation failed to resolve the issue. Prior to the filing of this suit, the Public Defender's Office and the Office of Pretrial Services endeavored to resolve this issue informally through discussions with Court administration. When these discussions did not succeed, the Public Defender's Office filed a petition for writ of mandate on behalf of individual clients who were impacted by the policy.¹³ This petition was preliminarily opposed by the Superior Court and was summarily denied, without any discussion of whether the denial was on procedural or substantive grounds.¹⁴ *Amici* subsequently sent a demand letter to the Court identifying the unconstitutionality of its policy, and waited approximately two months to determine if the Superior Court would remedy the policy. When the Superior Court failed to take any public action, the plaintiffs filed suit under section 526a. It was only after the filing of the taxpayer litigation that the court implemented a new procedure whereby people with unserved arrest warrants could calendar out-of-custody arraignments. As a result, in March 2024, the parties reached a settlement in the case.

<https://www.aclunc.org/sites/default/files/07.%2028.31.Santa%20Clara%20Writ%20Petition%20and%20Complaint%20-%20Final.pdf>.

¹³ Pet. for Writ of Mandate or Alternative Relief, *Garcia v. Super. Ct. of Santa Clara County*, No. H050222 (6th App. Dist., filed July 26, 2022).

¹⁴ Order, *Garcia v. Super. Ct. of Santa Clara County* (6th App. Dist., Oct. 12, 2022, H050222).

Finally, in *Debt Collective v. Superior Court*, taxpayers sued the San Mateo Superior Court, its court executive officer, two of the court’s traffic commissioners, the county, and the Judicial Council over a computerized and automatic civil-assessment and collection program that unlawfully resulted in the maximum civil assessment in all cases.¹⁵ Ultimately, the parties reached a settlement and the plaintiffs voluntarily dismissed their claims after the court “abandoned [its]. . . civil assessment programs” and the Judicial Council issued relevant guidance to all courts regarding such assessments.¹⁶ Courts across the state have now been instructed to ensure that judges, not machines, exercise discretion based on individualized facts for civil assessments; and the guidance discourages the reliance on civil assessments generally. And, in response to subsequent litigation demand letters and guidance, 28 courts across the state changed or eliminated their civil-assessment programs.¹⁷ Such systems-wide change is, again, the direct result of the taxpayer

¹⁵ First Am. Compl., *Debt Collective v. Superior Court*, No. 22CV006393 (Super. Ct. Alameda County, May 25, 2022), *available at*: https://www.aclunc.org/sites/default/files/Civil_Assessments_First_Amended_Complaint.pdf.

¹⁶ Notice of Resolution, *Debt Collective v. Super. Ct.* (Super. Ct. Alameda County, April 25, 2023), p. 2, *available at*: <https://lccrsf.org/wp-content/uploads/2023/04/2023.04.25-Debt-Collective-v.-Superior-Court-Request-for-Dismissal.pdf>.

¹⁷ An example of one such change can be seen on the Butte County Superior Court’s website: https://www.butte.courts.ca.gov/system/files/general/bcsc_2022-so-01_standing_order_discontinuing_the_imposition_of_civil_assessments_upon_fta_or_f tp.pdf.

lawsuit. Efforts short of this taxpayer action had proved unsuccessful in remedying these systemic violations. In numerous cases predating the litigation, individuals raised their individual circumstances in their own cases, seeking reduction or voiding of fees due to inability to pay or for other good cause. Although courts accordingly reduced the civil assessments in some individual cases, they failed to fix the systemic issue that these individual factors should have been considered by a court prior to the assessment.

The above cases demonstrate the vital need that taxpayer suits against courts and judges fulfill. But, as explained, the defendants' theory would do more than end taxpayer suits against state courts. It would prevent taxpayers from suing *any* state defendants—from the Secretary of State to district attorneys. (See *Abbott Laboratories v. Super. Ct. of Orange County* (2020) 9 Cal.5th 642, 659 [noting that, “[w]hen a district attorney prosecutes criminal violations of state law, he or she acts in a state rather than a local capacity”]; *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 361, [same].) As this Court is well-aware, taxpayers routinely bring actions against non-judicial state entities and officers to remedy illegal government actions and policies. Again, in just the last few years, *amici* have been involved in several such cases.

For example, in *La Follette v. Padilla*, *amicus* ACLU of Northern California and a registered voter successfully sued the Secretary of State and the Registrar of Voters, relying in part on taxpayer standing to challenge the constitutionality of former

Elections Code § 9019(c)(2).¹⁸ That statute directed election officials to not count vote-by-mail ballots when there was a signature mismatch on the identification envelope. The trial court affirmed that plaintiffs had standing—and that the ACLU in particular had both taxpayer standing and public interest standing; concluded that the challenged statute violated the constitution; and enjoined the state from rejecting a mismatched signature without notice and an opportunity to cure. After winning before the trial court, the Legislature amended the challenged law to provide plaintiffs the remedy they sought.¹⁹ In another case relying in part on taxpayer standing, *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, family members of individuals deemed incompetent to stand trial and the two *amici* organizations successfully sued the directors of the State’s Department of State Hospitals and Department of Developmental Services for unconstitutional delays in providing treatment to individuals whose criminal proceedings had been suspended due to an incompetency to stand trial determination. The Court of Appeal held that the State had systematically violated the due process rights of individuals deemed incompetent to stand trial languishing in California jails. (See *id.* at pp. 712–730.)

¹⁸ *La Follette, et al. v. Padilla et al.* (Super. Ct. San Francisco, Mar. 5, 2018, No. CPF-17-515931), p. 3, *available at* https://www.aclunc.org/docs/20180305-la_follette_order_granting_writ_of_mandate.pdf.

¹⁹ See Sen. Bill No. 759 (2017-2018 Reg. Sess.) [amending former section 3019(c)(2) to permit voters to cure mismatched signatures prior to election certification].

Taxpayer standing is a particularly valuable tool in holding district attorneys accountable. In fact, the Court of Appeal has permitted multiple taxpayer suits in the last several years against the Orange County District Attorney Office for its unconstitutional and illegal practices. In one, *People for the Ethical Operation of Prosecutors & Law Enforcement v. Spitzer*, *amicus* ACLU of Southern California represents a law enforcement watchdog group that sued the Orange County District Attorney and the Orange County Sheriff to challenge their alleged “operat[ion of] a [confidential informant] program whose principal aim [wa]s to obtain confessions from the accused in defiance of defendants’ statutory and constitutional obligations.” (*People for the Ethical Operation of Prosecutors & Law Enforcement*, *supra*, 53 Cal.App.5th at pp. 395–396.) In the other, *Thompson v. Spitzer*, ACLU of Southern California weighed in as *amicus* in a challenge brought by university professors to prevent the operation of a program in which prosecutors collected DNA samples from persons charged with misdemeanors in exchange for dropped or reduced charges. (*Thompson v. Spitzer* (2023) 90 Cal.App.5th 436, 446.) Of course, the district attorney, as a state actor, is similarly situated to superior courts for purposes of taxpayer standing.

In both cases, the Court of Appeal highlighted the challenges that would exist absent its recognition of standing to bring these claims, despite the lack of a directly affected plaintiff. In *People for the Ethical Operation of Prosecutors & Law Enforcement*, the court recognized that challenges brought by

individual defendants would only have the capacity to produce relief in an individual case, and not the injunctive relief sought by, and available to, the taxpayer plaintiffs. (53 Cal.App.5th at pp. 396, 399–407.) In *Thompson*, the court observed that some types of illegal or unconstitutional government actions—for instance, related to “secretive . . . surveillance programs”—were unlikely to be remedied if taxpayer standing were unavailable, as it would “likely be difficult to identify any person that had been harmed by the program.” (90 Cal.App.5th at pp. 453–456.)

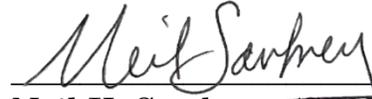
As all these examples highlight, taxpayer standing is a critical and commonly used tool for holding government institutions and officers accountable to the public. That is true regardless of whether the unlawful government action takes place at the state or the local level. And that is also true when the courts and its judicial officers are responsible for violating the people’s rights. There is no reason for this Court to manufacture an exception from taxpayer standing for state courts. Instead, it should reaffirm the doctrine’s fundamental purpose and adhere to nearly a century of unbroken precedent by holding that the plaintiffs have standing to bring this taxpayer action.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to affirm the Court of Appeal’s judgment.

Dated: April 2, 2024

Respectfully submitted,



Neil K. Sawhney (SBN 300130)

Emi MacLean (SBN 319071)

ACLU FOUNDATION OF
NORTHERN CALIFORNIA

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 621-2493

Attorneys for Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed *Amici Curiae* Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 7,453 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File *Amici Curiae* Brief required under Rule 8.520(f), this certificate, and the signature blocks. *See* Rule 8.204(c)(3).

Dated: April 2, 2024

Respectfully submitted,



Neil K. Sawhney (SBN 300130)
Emi MacLean (SBN 319071)
ACLU FOUNDATION OF
NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Amici Curiae

PROOF OF SERVICE

I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is scooksey@aclunc.org. On April 2, 2024, I served the attached,

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

AND

PROPOSED BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA AND AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA IN SUPPORT OF PLAINTIFFS-APPELLANTS

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

OLIVIER & SCHREIBER LLP

Monique Olivier, SBN 190385
Christian Schreiber, SBN 245597
475 14th St., Ste. 250
Oakland, CA 94612
monique@os-legal.com
christian@os-legal.com

MILLER SHAH LLP

James E. Miller, SBN 262554
Casey T. Yamasaki, SBN 335445
1230 Columbia St., Ste. 1140
San Diego, CA 92101
jemiller@millershah.com
ctyamasaki@millershah.com

SAN FRANCISCO PUBLIC DEFENDER

Oliver Kroll, SBN 295333
555 Seventh St.
San Francisco, CA 94103
oliver.kroll@sfgov.org

*Counsel for Plaintiff and
Appellants*

CLYDE & CO US LLP

Alison K. Beanum, SBN 221968
Douglas J. Collodel, SBN 112797
355 S. Grand Ave., Ste. 1400
Los Angeles, CA 90071
alison.beanum@clydeco.us
douglas.collodel@clydeco.us

Kevin R. Sutherland, SBN 163746
4 Embarcadero Ctr, Ste. 1350
San Francisco, CA 94111
kevin.sutherland@clydeco.us

REED SMITH LLP

Raymond A. Cardozo, SBN 173263
Brian A. Sutherland, SBN 248486
Kevin M. Hara, SBN 221604
101 Second St., Ste. 1800
San Francisco, CA 94105-3659
rcardozo@reedsmith.com
bsutherland@reedsmith.com
khara@reedsmith.com

*Counsel for Defendants and
Respondents*

BY MAIL: I mailed a copy of the document identified above by depositing the sealed envelope with the U.S. Postal Service, with the postage fully prepaid.

Clerk of the Superior Court

For: Hon. Edward Weil

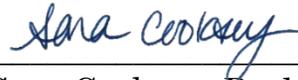
Department 1

Contra Costa County Superior Court

725 Court Street

Martinez, CA 94553

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 2, 2024 in Fresno, CA.



Sara Cooksey, Declarant