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Taxpayers Association, a California non-profit corporation.

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 THE PEOPLE OF THE STATE OF  
CALIFORNIA on the RELATION of SAN  
13 JOSE POLICE OFFICERS' ASSOCIATION,

14 *Plaintiff,*

15 v.

16 CITY OF SAN JOSE, and CITY COUNCIL OF  
17 SAN JOSE,

18 *Defendants.*

CASE NO.: 37-2014-00000217-CU-MC-CTL

**REPLY OF STEVEN HAUG AND SILICON  
VALLEY TAXPAYERS ASSOCIATION IN  
SUPPORT OF APPLICATION FOR  
INTERVENTION**

Judge: McGowen

Dept. 7

Date: April 5, 2016

Time: 9:00 a.m.

19  
20 Proposed Intervenors Steven Haug and Silicon Valley Taxpayers Association, a California  
21 non-profit corporation (jointly referred to as "Taxpayers") respectfully submit the following Reply in  
22 support of their Application for Intervention.  
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**I. INTRODUCTION**

The Oppositions filed by the City of San Jose (“City”) and Relator, San Jose Police Officers’ Association, (“Relator”), demonstrate a vigorous effort to prevent Taxpayers from defending their right to vote on changes to the City Charter. Taxpayers and Peter Constant (“Constant”) demonstrated in their joint Opening Brief, as further discussed in the Constant’s Reply incorporated herein by reference to avoid repetition and to facilitate judicial economy, they have a direct and immediate interest in the outcome. The Application is timely and does not enlarge the issues.

On March 8, 2016, the City completely abandoned its defense of Measure B by executing the Stipulated Writ purportedly filed with the Court on that same date. (Supplemental Request for Judicial Notice (“Supp. RJN”), Exhibits B, C and D.) City raised defenses to the action in its Answer that were relied upon by Intervenors denying any collective bargaining violations. (City of San Jose Answer to Quo Warranto Complaint (“City Answer”), filed June 28, 2013, *i.e.* ¶¶ 64 and 65, p. 9, 12-19; Code Civ. Proc. §§ 128.7 and 446; Supp. RJN Exhibit E.) City also filed exceptions to the PERB ruling cited by City and Relator which contested its findings and prevented it from becoming citable as precedent<sup>1</sup>. The City abandoned its effort to defend the Measure approved by the 70% of the voters, ignoring its duty to defend Measure B and taking away the right to vote on changes to retirement benefits.

**II. TAXPAYERS MEET THE STANDARD FOR INTERVENTION**

**A. THE INTEREST OF TAXPAYERS/VOTERS IS DIRECT: THEY WILL EITHER GAIN OR LOSE BY OPERATION OF THE JUDGMENT IN THIS CASE.**

City and Relators assert that Taxpayers’ interest in this action is too remote to sustain intervention. They are mistaken. Measure B “was specifically designed to protect these individuals,” and “they allege a potential injury from the judgment that the law was specifically enacted to prevent,” supporting intervention. (*CCSF. v State of California* (2005) 128 Cal. App. 4th 1030, 1041.) Intervenors’ interest is both legal and equitable. (*Dietzel v. Anger* (1937) 8 Cal.2d 373, 376.)

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<sup>1</sup> See, Supp. RJN, Exhibit A, list of “PERB PROPOSED DECISIONS ISSUED 7/1/2014 to 6/30/2015, showing that Exceptions were filed on February 3, 2015 in PERB Case SF-CE-00969-M *IAFF LOCAL 230 v. CITY OF SAN JOSE EJC* and PERB Case No. SF-CE-00996-M *IFPTE, LOCAL 21, AFL-CIO v. CITY OF SAN JOSE EJC*.”

1 By enacting Charter Amendment Measure B, San Jose voters took back from the City Council  
2 authority over much of the City's pension system. Measure B specifically found "The City's ability  
3 to provide its citizens with Essential City Services has been and continues to be threatened by budget  
4 cuts caused mainly by the climbing costs of employee benefit programs, ...," and that the measure  
5 was "designed to ensure that future retirement benefit increases be approved by the voters." (Measure  
6 B, § 1501-A.) Accordingly, Section 1504-A reserved to San Jose voters authority to "consider any  
7 change in matters related to pension and other post-employment benefits." (Emphasis added.) On  
8 March 8, 2016, the City abdicated its duty to defend Measure B.

9 The right of initiative is the People's "reserved power" that is to be "jealously guarded" by  
10 the Courts. (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal. 3d 810, 821;  
11 *Martin v. Smith* (1959) 176 Cal.App.2d 115, 117.) Here, the City Council asked the People to decide.  
12 The People to exercised their "reserved power." The City Council now wants to walk away from the  
13 election results. It has switched course at a Closed Session on March 8, 2016 and given up without a  
14 fight. (*Contra*, City Answer paras. 64 & 65, 9:12-19; Code Civ. Proc. §§ 128.7 and 446, Supp. RJN  
15 Exhibit E.) Without Intervenors, the Court cannot "jealously guard" the initiative process. This right  
16 applies to Voters as well as Proponents and has been stated as follows:

17  
18 These decisions highlight the different perspectives regarding the  
19 validity or proper interpretation of a voter-approved initiative measure  
20 often held by the official proponents of the initiative measure **and by**  
21 **the voters who enacted the measure into law**, as contrasted with  
22 those held by the elected officials who ordinarily defend challenged  
23 state laws.... (*Perry v. Brown* (2011) 52 Cal. 4th 1116, 1151.)  
(*emphasis added.*)

22 The harm is not academic. With the elimination of Measure B, the voters will lose the right  
23 to vote on future retirement changes.

24 **B. THE CITY'S DECISION NOT TO DEFEND THE PROCEDURES BY WHICH**  
25 **MEASURE B WAS ENACTED AND THEREBY DOOM MEASURE B TO**  
26 **INVALIDATION RENDERS PROPOSED INTERVENOR'S INTEREST DIRECT.**

26 While at the commencement of this case, Proposed Intervenors' interest might fairly be  
27 characterized as "consequential" because Measure B was vigorously defended by the City, the City's  
28

1 decision to abandon the defense changes Proposed Intervenors' interest to one that is direct and  
2 supports intervention. It is black letter law in California "what would otherwise be a consequential  
3 interest not justifying intervention may become a direct interest permitting it when ... the assertion  
4 by all parties to the litigation of claims adverse to the party seeking to intervene, ... impossibility of  
5 asserting a position that should be presented in the litigation, or similar circumstances render strict  
6 definition of direct interest likely to result in injustice." (*Continental Vinyl Products Corp. v. Mead*  
7 *Corp.* (1972) 27 Cal.App.3d 543; *Eggers v. National Radio Co.* (1929) 208 Cal. 308, 314  
8 [stockholders permitted to intervene when corporation fails to defend against action despite statutory  
9 prohibition to their participation in the litigation]; *Kobernick v. Shaw* (1977) 70 Cal.App.3d 914, 918-  
10 919 [limited partner permitted to intervene when general partners fail to defend action despite  
11 statutory prohibition to their participation in the litigation]; *Fireman's Fund Ins. Co. v. Gerlach* (1976)  
12 56 Cal.App.3d 299, 303-305 [defendant's creditor permitted to intervene when defendant in default  
13 over normal conclusion that intervention not warranted].)

14 Even if the City believes it is acting in the best interest of its residents, it does not change the  
15 result. "The direct interests of intervening parties may be harmed or even defeated as surely by  
16 judgment following compromise as by judgment following trial." (*People v. Superior Court of*  
17 *Ventura County* (1976) 17 Cal.3d 732, 737.) In the *Ventura County* case, the Attorney General on  
18 behalf of investors was prosecuting an action for fraud and unfair business practices against a  
19 corporation seeking civil penalties and restitution. A group of investors, also seeking restitution, was  
20 denied intervention. The Attorney General negotiated a settlement with the corporation, which agreed  
21 to pay substantial penalties and a much smaller amount for restitution. Over the strenuous objection  
22 of the Attorney General, the California Supreme Court held it was error to deny intervention noting  
23 the intervenors' direct interest was based on the risk that the settlement proceeds would be used  
24 primarily to pay statutory penalties, with the result that the People's action, ostensibly brought to  
25 "protect consumers," will deprive intervenors of the fruit of their venture.

26 In the *Ventura County* case, the People's "good faith" in defense of consumer rights did not  
27 alter the result. The Attorney General, supported by numerous amici, determined the best interests  
28 of the People were served by settling the *Ventura* litigation. The Attorney General's position was

1 rejected. “After all, those protected by the legislation should hardly be excluded from the very action  
2 brought to vindicate their interests unless circumstances compel exclusion. We find none.” (*People*  
3 *v. Superior Court of Ventura County supra*, 17 Cal.3d. at 737.) Here, Measure B protects the interests  
4 of City’s employees with sustainable, post-employment benefits and voters through fiscal discipline  
5 and control.

6 The City’s attempts to limit intervention by right using insurance and subrogation questions  
7 are not appropriate. (*Bailey v. Reliance Ins. Co.* (2000) 79 Cal.App. 4th 449; *Hodge v. Kirkpatrick*  
8 *Develop. Inc.* (2005) 130 Cal.App. 4th 540.) The *Bailey* case, discussing the California Labor Code,  
9 held that intervention was a method for an employer to get reimbursement for damages paid to an  
10 employee injured by a third party. (*Bailey* at 454.) Likewise, the *Hodge* court addressed intervention  
11 as a means for an insurer to recover from a third party the sums paid to the insured for the injury or  
12 loss caused by the third party. (*Hodge* at 548-549.) The facts in these cases bear no relationship to  
13 this action and therefore cannot be persuasive or controlling. Measure B protects the rights of the  
14 electorate that passed the measure by a 70% margin to make pension changes and retain the right over  
15 future changes.

16 The City also argues that *Socialist Workers 1974 Cal. Campaign Comm. v. Brown* (1976) 53  
17 Cal.App.3d 879 supports the proposition that Intervenor’s interest is not sufficiently direct to  
18 intervene in this case. In *Brown*, the intervenors were not directly affected by a judgment in a case  
19 brought to enjoin enforcement of campaign disclosure provisions. (*Id.* at 1040.) That is distinct from  
20 the present case where intervenors face direct impacts on pension benefits and voters’ rights granted  
21 by Measure B.

22 Relator’s Federal cases are likewise inapposite. Intervenor’s constitutional rights are not a  
23 remote or “undifferentiated, generalized interest.” (*Public Serv. Co of N.H. v. Patch* (1st Cir. 1998)  
24 136 F. 3d 197, 205; *Westlands Water Dist. v. US* (9th Cir. 1983) 700 F. 2d 561, 563; *Medical Liability*  
25 *Mut. Ins. Co. v. Alan Curtiss, LLC* (8th Cir. 2007) 485 F. 3d. 1006, 1008.) Taxpayers are protecting  
26 their constitutional rights and taxpayer dollars. Intervenor’s meet the standards under Code Civ. Proc.  
27 § 387(a).

28

1                   **C. THE APPLICATION FOR INTERVENTION IS TIMELY.**

2           As discussed in the Constant Reply, intervention is timely. On March 8, just one day before  
3 Proposed Intervenors filed their application to intervene, the City had abandoned the interests of its  
4 voters. The City signed and posted to the City’s website a stipulation to the unconditional invalidation  
5 of Measure B with no provision for a ballot measure. (See, Supp. RJN, Exhibits B, C and D,  
6 Stipulated Facts and Proposed Findings, Judgment and Order.<sup>2</sup>) The stipulation is not conditional on  
7 any other settlements with other City unions. On March 25, City pleadings admitted for the first time  
8 that the parties have indeed negotiated a tentative ballot measure containing the limited terms they  
9 decided should be placed before the electorate. The proposed ballot measure is a sham: whether it  
10 passes or not, the City and Relator propose this Court strike Measure B from the City’s Charter  
11 without even one evidentiary hearing paving the way for the PF Settlement Framework to spring to  
12 life while completely cutting the voters out of the process. These Intervenors applied to enter this  
13 action at the appropriate time to protect their interests and the interests of the voters, meeting the  
14 standards of Code Civ. Proc. § 387(a).

15                   **D. INTERVENTION DOES NOT ENLARGE THE ISSUES.**

16           Intervenors do not enlarge the issues in this action, in compliance with Code Civ. Proc. §  
17 387(a). Rather Intervenors attempt to defend the rights of the voters, an issue that should have always  
18 been central to this action. Originally the City defended Measure B. By Verified Complaint, Relator  
19 contended that the City failed to comply with its collective bargaining obligations prior to placing  
20 Measure B on the June 2012 Ballot. The City denied those allegations in its Answer, which was  
21 deemed verified pursuant to Code Civ. Proc. § 446 as a response to a Verified Complaint and was  
22 certified by the City’s counsel as supported by evidence pursuant to Code Civ. Proc. § 128.7(b). (See,  
23 e.g. Defendants City of San Jose’s and City Council of San Jose’s Answer to Verified Complaint in  
24 Quo Warranto, ¶¶ 16, 50, 55, 62 [denying Plaintiffs’ allegations Defendants failed to “meet and  
25 confer”]; Supp. RJN Exhibit E.) “A verified pleading is itself an affidavit and may be considered as  
26 such.” (*In re O’Brien Machinery, Inc.* (1964) 224 Cal.App.2d 563, 569.)

27 \_\_\_\_\_  
28 <sup>2</sup> Relator states the documents have been filed with the Court, but there is no evidence of that. (Rel. Oppo. at p.1, ll. 7-8.)

1 The City abandoned its defense of the Measure on March 8, 2016 when it signed the Proposed  
2 Judgment, Stipulated Facts and Writ. (See, City’s Opposition, p. 13, ll.15- p.14, ll. 25; Supp. RJN  
3 Exhibits B, C and D.) The City stipulated to a bargaining violation, contradicting its “deemed  
4 verified” answer. (See, City of San Jose Answer to Quo Warranto Complaint (“City Answer”), filed  
5 June 28, 2013, *i.e.* ¶¶ 64 and 65, at pp. 9, ll. 12-19; Supp. RJN Exhibit E.)

6 In order to skew the Court’s perception against Intervenors, Relator’s Opposition randomly  
7 selects sections from Intervenors’ Complaint in Intervention and lists them out of context. (Relator’s  
8 Opposition, p.7, ll. 10-28.) Even so, the very first point highlighted by Relator articulates the  
9 Intervenors’ intent to maintain the issues in this action, and the judgment in this action, within the  
10 scope of the leave to sue granted by the Attorney General. (Relator’s Opposition, p. 7, ll. 15-16.) The  
11 Federated Settlement Agreement makes reference to the City acting beyond the scope of the *quo*  
12 *warranto* in its settlement. (See, Request for Judicial Notice in Support of Intervention (RJN) at  
13 Exhibit 6.) The second point Relator highlights, likewise emphasizes Intervenors’ interest in  
14 preventing the judgment in this *quo warranto* action from impermissibly extending to other parties  
15 and other actions, as described in the Federated Settlement Agreement. (Relator’s Opposition, p. 7,  
16 ll. 17-18; RJN Exhibit 6.)

17 The remaining “issues” highlighted by Relator are not new, but are issues at the core of this  
18 action. Issues like the City’s duty to defend Measure B, have always been a part of this case, even if  
19 disregarded by the parties. (Relator’s Opposition, p. 7, ll. 18-25; see *infra*; see also, *Perry v. Brown*  
20 (2011) 52 Cal.4th 1116, [demanding that voters be represented if a governing body refuses to do its  
21 duty to defend a measure in court. the rights of the voters and the impact on taxpayers].)

22 Under Section 1504-A, the electorate must consider “any change” in matters related to pension  
23 and post-employment benefits. The City’s Opposition admits the proposed settlement changes  
24 provisions of the San Jose Charter without a vote of the People. (City’s Opposition p. 12, ll.17.) That  
25 section alone makes the rights of the voters central to this case. The parties cannot by stipulation  
26 eliminate from the Charter provisions that require approval by the vote of the people. Intervenors do  
27 not enlarge issues in this case by defending fundamental rights the existing parties have attempted to  
28 ignore and override.

1                   **III.    THE ATTORNEY GENERAL DOES NOT EXERCISE CONTROL OVER**  
2                   **THE COURT, OR THESE INTERVENORS.**

3                   **A.    PROCEDURAL STATUS OF THE PROPOSED SETTLEMENT.**

4                   As discussed in greater detail in the the Reply filed by Proposed Intervenor Constant, the  
5 Proposed Judgment, Stipulated Facts and Writ were allegedly filed with the Court on March 8, 2016,  
6 the day after the Intervenors reserved a Court date for their Motion to Intervene. Although the  
7 Proposed Judgment, Stipulated Facts and Writ were posted on the City’s webpage, they have not  
8 appeared in the list of filings on the Court’s portal. (See, Declaration of James W. Carson.) The City,  
9 for the last year, has been in individual sets of negotiations with its eleven bargaining groups to come  
10 up with a settlement. Each negotiation could have resulted in changes that either required a vote of  
11 the people or kept Measure B intact. According to this Court’s record, no substantive motions have  
12 been brought by either the Relator or the City to seek resolution of whether the City “met and  
13 conferred” in good faith. (Att’y Gen. Op. 12-605 (April 15, 2013).)

14                  City officially abandoned its defense of the Measure on March 8, 2016, when it signed a  
15 Proposed Judgment, Stipulated Facts and Writ. The City pled a defense of the City’s bargaining  
16 actions in its Answer, which could be relied upon by Intervenors, prior to March 8, 2016. Despite its  
17 Answer that denies it violated its “meet and confer” obligations, it now claims that the case is over.  
18 (City’s Opposition, p. 13, ll.15- p.14, ll. 25.) Since March 8, 2016, the parties to this action have  
19 taken no steps to dismiss the case under the settlement or bring a motion to address the modifications  
20 to the City Charter.

21                   **B.    THE ATTORNEY GENERAL CANNOT CONTROL THE COURT.**

22                  Relator and City argue that Code Civ. Proc. § 803 allows the Attorney General to take  
23 jurisdiction away from the Court and impose a settlement. (City Opposition, p. 13, ll.15 through p.  
24 14, ll. 25.) Nothing in Section 803 expands the Attorney General’s authority to both sides of the  
25 dispute. The Attorney General’s control is limited to the Relator granted permission to institute the  
26 *quo warranto* proceeding. (*People ex rel. Warfield v. Sutter S. R. Co.* (1897) 117 Cal 604.) Attorney  
27 General lacks authority to tell the Court the matter is resolved absent a dismissal.  
28

1 *Quo warranto* is subject to procedures contained in Part 2 (Of Civil Actions) of the Code of  
2 Civil Procedure. (*People ex rel. Pennington v. City of Richmond* (1956) 141 Cal.App.2d 107, 117,  
3 questioned on other grounds: *Perham v. City of Los Altos* (1961) 190 Cal.App.2d 808, 809.)  
4 Procedures for judgments are found under Part 2. (Of the Trial and Judgment In Civil Actions, Part  
5 2, Title 8, Code Civ. Proc. §§ 577 *et. seq.*, 664.6.) The *quo warranto* statutes contain no exceptions  
6 to the rules applicable to entry of judgments. Jurisdiction of the Court over the parties and the subject  
7 matter of an action continues throughout proceedings in the action. (Code Civ. Proc. § 410.50(b).)

8 A plaintiff cannot divest the Court of its jurisdiction by subsequent acts. (*Maloney v. Maloney*  
9 (1944) 67 Cal.App.2d 278, 279-280.) As in *Maloney*, the Relator agreed to the jurisdiction of the  
10 Court. The Relator cannot later claim that its subsequent actions have taken jurisdiction away from  
11 the Court. If a settlement has been reached, the matter should be dismissed or the settlement approved  
12 by the Court. Neither has happened here. The matter is still pending.

13 While the Relator's authority can change, the Attorney General does not have power to divest  
14 the Court of jurisdiction to legally review a stipulated judgment. (Cal. Code. Regs. ("CCR"), Title  
15 11, § 7; Code Civ. Proc. § 664.6.) Parties can stipulate to facts. However, the Court still has  
16 jurisdiction to make legal determinations. (*See, generally, In re Conservatorship of McElroy* (2002)  
17 104 Cal. App. 4th 536, 544; *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 815.)  
18 Intervenors want to prevent a violation of law, not to expand the scope of the case. The City cannot  
19 abandon its defense of the Measure without ever meeting its duty to defend the measure on the "meet  
20 and confer" issue. Given the City's duty to defend, the Court cannot use a stipulation to amend a  
21 charter, without first defending the matter.

22 **C. THE ATTORNEY GENERAL CANNOT EXERCISE CONTROL OVER INTERVENORS.**

23 Nor can the Attorney General control the actions of Intervenor who defends the action, or  
24 prevent intervention by a party that is entitled to intervene under the Code of Civil Procedure. (*People*  
25 *ex rel. Conway v. San Quentin Prison Officials* (1963) 217 Cal.App.2d 182.) Attorney General  
26 control of both sides of a *quo warranto* action would undermine the purpose of a contested action.  
27 Its purpose is to have an even-handed presentation of the matter consistent with the purpose of our  
28 judicial system. Intervenors seek to join to defend their rights and the rights of the voters, to complete

1 the obligation that the City did not fulfill. “A full opportunity to present a defense is an essential  
2 ingredient of due process.” (*Bank of America v. City of Long Beach* (1975) 50 Cal.App.3d 882, 886.)

3 In *quo warranto*, normal intervention rules apply. (*i.e. People ex. Rel. Bledsoe v. Campbell*  
4 (1902) 138 Cal. 11, 14, 23.) Intervention is located in Part 2, Title 3, Chapter 7. (Code Civ. Proc. §§  
5 387-388.) The *quo warranto* statutes contain no restrictions applicable to intervention. (Code Civ.  
6 Proc. §§ 803-811.) The court can grant intervention in a *quo warranto* action where the intervenor  
7 has “an interest in the matter in litigation, and in the success of the defendants ... against the plaintiff”  
8 and seeks to resist “the claims of the Plaintiff”. (*People ex rel. Fogg v. Perris Irrigation Dist.* (1901)  
9 132 Cal. 289, 290-291.) In *Perris*, the court explained that once intervention is granted, the intervenor  
10 becomes a party, “entitled to avail [itself] of all the procedure and remedies to which the defendant  
11 would be entitled for the purpose of defeating the action, or resisting the claim of the plaintiff.” (*Id.*)

12 **D. THE PROPOSED JUDGMENT IS VOID.**

13 Even if intervention is denied, the Proposed Judgment, Stipulated Facts and Writ currently  
14 proposed by Relator and the City are void because the judgment contemplated by the parties is  
15 unconstitutional. A stipulated judgment is void where the Court “has no ‘jurisdiction’ (or power) to  
16 act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of  
17 certain procedural prerequisites. [Citation.]” (*Conservatorship of O’Conner* (1996) 48 Cal.App.4th  
18 1076, 1088, disapproved on another ground in *Donovan v. Rrl Corp.* (2001) 26 Cal.4th 261, 280; see  
19 also, *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653.)

20 The Stipulated Judgment proposed by Relator and the City violates the rights of the voters  
21 and Intervenors. The Stipulated Judgment removes Measure B without a vote of the people. This  
22 new City strategy fails to defend Measure B and usurps the constitutional rights of the People of San  
23 Jose; thereby placing this judgment squarely outside the scope of this Court’s jurisdiction. Charter  
24 measures cannot be amended other than by the voters. (Cal Const. Art. XI, § 3(a); Cal. Elections  
25 Code § 9255.) Charter amendments are unique; the Constitution and statutes prohibit a charter city  
26 from delegating amendment authority. (*City and County of San Francisco v. Patterson* (1988) 202  
27 Cal.App.3d 95, 102.) This prohibition has been stated as follows:

1 An ordinance can no more change or limit the effect of a charter than a  
2 statute can modify or supersede a provision of the state Constitution.”  
(*Lucchesi v. City of San Jose* (1980) 104 Cal.App.3d 323, 328.)

3 A similar prohibition applies to the modification of an initiative without a vote of the people.  
4 (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal. App. 4th 1473, 1484, citing  
5 Cal. Const., Art. II, § 11 and *DeVita v. County of Napa* (1995) 9 Cal. 4th 763.)

6 In approving the Proposed Judgment, Stipulated Facts and Writ the Court will violate the  
7 California Constitution. “To give effect to the constitution, it is as much the duty of the courts to see  
8 that it is not evaded as that it is not directly violated.” (*Proposition 103 Enforcement Project v.*  
9 *Quackenbush*, 64 Cal. App. 4th at 1487.) Under the long standing judicial review principles  
10 established by *Marbury v. Madison* (1803) 5 U.S. 137. 180 , the judgment sought by the parties to  
11 this action is void. (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21  
12 Cal. 4th 585, 602.)

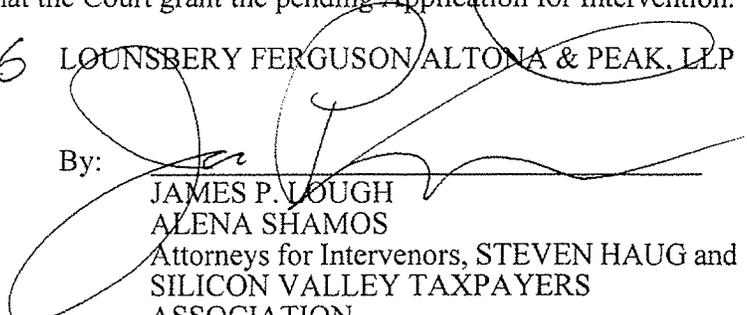
13 **IV. REFERENCES TO PERB ARE MISLEADING**

14 Relator attempts to divert the attention of the Court by raising the issue of PERB rulings, but  
15 there are no final PERB decisions in effect. Proposed Decisions, under PERB’s own regulations, do  
16 not constitute controlling precedent. (C.C.R., Title 8, § 32215; “Unless expressly adopted by the  
17 Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without  
18 precedent...” ) Here, as explained above, the City filed an Exception to the Administrative Law  
19 Judge’s decision. It cannot be cited as precedent. Moreover, Intervenors have no remedy in the PERB  
20 proceeding, as under PERB’s Regulations they have no right to intervene. (C.C.R., Title 8, §§ 32164,  
21 32210, 32410, 32602, 32603 and 33210.)

22 **V. CONCLUSION**

23 Taxpayers respectfully request that the Court grant the pending Application for Intervention.

24 DATED: March 28, 2016 LOUNSBERY FERGUSON/ALTONA & PEAK, LLP

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