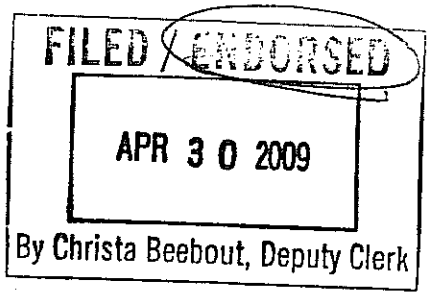


SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

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| CALIFORNIA REDEVELOPMENT ASSOCIATION, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, MADERA REDEVELOPMENT AGENCY and JOHN F. SHIREY, an individual,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>MICHAEL C. GENEST, Director of the Department of Finance, and ROBERT E. BRYD, Auditor-Controller of the County of Riverside on his own behalf and as the representative of all other County Auditors in the State of California, and Does 1 through 30,<br><br>Respondents and Defendants.<br>_____/ | No. 34-2008-00028334-CU-WM-GDS<br>Department 33<br><br>RULING ON SUBMITTED MATTER |

Petitioners challenge the constitutionality of Health and Safety Code sections 33685 through 33689, statutory provisions requiring each California redevelopment agency to transfer a specified amount of its funds to the Educational Revenue Augmentation Fund ("ERAF") in its county. Petitioners contend that these statutory provisions are unconstitutional on their face and as applied. In particular, petitioners contend that the statutory provisions violate article XVI, section 16 of the California Constitution which authorizes the Legislature to provide for the financing of redevelopment projects with property tax increment revenues; the prohibition on the impairment of contractual obligations under article I, section 9 of the California Constitution and

article I, section 10 of the United States Constitution; and the prohibition on the taking of property without just compensation in violation of article 1, sections 7 and 19 of the California Constitution and the Fifth Amendment to the United States Constitution. Petitioners seek declaratory, mandamus and injunctive relief preventing respondents from implementing and enforcing sections 33685 through 33689.

BACKGROUND

The California Redevelopment Law ("CRL"; Health and Safety Code section 33000 et seq.)[1] provides for the redevelopment of blighted urban areas by an agency specially formed for that purpose by the legislative body of a local government, including a city council and a county board of supervisors. (§§ 33030 et seq., 33100 et seq.) Among the purposes of the CRL are an expansion of the supply of low- and moderate-income housing; an expansion of employment opportunities for jobless, underemployed and low-income persons; and the provision of an environment for social, economic, and psychological growth and well-being of citizens. (§ 33071.)

To finance its redevelopment projects, a redevelopment agency redevelopment agency ("RDA") may obtain grants or loans from any public or private source, issue bonds, and invest moneys held in reserves or sinking funds or not required for immediate disbursement. (§§ 33600, 33601, 33602, 33603, 33640 et seq.) An RDA lacks the power to levy taxes for the purpose of raising revenues to repay the indebtedness it incurs in redevelopment activities, but it may use tax increment revenues pursuant to article XVI, section 16 of the California Constitution ("section 16") and the statutory provisions implementing section 16 in sections 33670 et seq. of the CRL.

Tax increment financing has been a part of the California Constitution since November 1952 when it was adopted by voters as former section 19 of article VIII, to be later renumbered as section 16 of article XVI. (See Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibits 9, 10.) Section 16 provides a method of financing

[1] All further statutory references are to the Health and Safety Code unless otherwise noted.

redevelopment with tax revenues derived from increases in the assessed value of real property within a redevelopment project area. The method is "self-liquidating" and avoids burdens on the general funds of local governments or increases in property tax rates to pay for redevelopment. (*Ibid.* See Exhibit 8 (Report of the Joint Senate-Assembly Interim Committee on Community Redevelopment and Housing Problems, June 13, 1951, p. 22.)

Specifically, section 16 authorizes the Legislature to enact and implement a method of financing redevelopment projects with tax increment revenues in the following manner: When a redevelopment project is approved and the assessed value of taxable property in the project area increases as a result of redevelopment activities, the taxes levied on such property are divided between the taxing agency and the RDA. (See *Craig v. City of Poway* (1994) 28 Cal.App.4th 319, 325, citing *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, 259 and *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27.) The taxing agency receives the taxes levied and collected on the assessed value of the property at the time the project is approved, and the additional taxes generated by the increase in the assessed value of the property -- the tax increment -- is deposited in a special fund for use by the RDA in repaying indebtedness incurred in financing the project. (*Ibid.*)

As explained in the 1952 ballot pamphlet materials for section 16's predecessor (Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 10), the constitutional provisions are permissive in character and become effective only by the acts of the Legislature and the legislative body of an RDA. The provisions empower the Legislature to provide for the division of tax revenues in a redevelopment area and to enact those laws necessary to enforce that division. (*Ibid.*) The provisions empower an RDA to use the tax increment provisions separately or in combination with other powers granted by the CRL and other laws pertaining to RDAs. (*Ibid.*)

In implementing section 16 since 1952, the Legislature seeks to fulfill the intent of the voters approving section 16 whenever the provisions of section 16 require the allocation of money between agencies. (§ 33670.5.) In that context, the Legislature has regulated the use of tax increment revenues by RDAs in various ways. In particular, the Legislature has:

- limited the time period for repayment of indebtedness with tax increment revenues (§§ 33333.2, 33333.6) and the amount of bonded indebtedness repayable with tax increment revenues (§ 3334.1);
- required RDAs to pay tax increment revenues to taxing agencies burdened by redevelopment projects (§§ 33607.5, 33607.7);
- authorized county auditors to deduct their costs of assessing, collecting and allocating property tax revenues for other jurisdictions, including tax increment for RDAs, from the allocations of the other jurisdictions (Rev. & Tax. Code § 95.3; *Community Redevelopment Agency v. County of Los Angeles* (2001) 89 Cal.App.4th 719);
- required RDAs to use 20 percent of their tax increment revenue to increase , improve, and preserve low- and moderate income housing (§ 33334.2).

In a number of fiscal years since 1992, including the 2008-2009 fiscal year at issue in this proceeding, the Legislature has required RDAs to transfer specified amounts of their legally available funds to their county ERAF. (See former § 33681 (1992-1993), former § 33681.5 (1993-1994, 1994-1995), § 33681.7 (2002-2003), § 33681.9 (2003-2004), § 33681.12 (2004-2005, 2005-2006), § 33685 (2008-2009).) The total amount to be transferred by RDAs during the 2008-2009 fiscal year is, as determined by respondent Director of Finance, the greater of $350,000 or five percent of the tax increment revenue apportioned to RDAs. (§ 33685, subd. (a)(2)(A).) This total amount is apportioned among the RDAs by the Director of Finance pursuant to specified formulas (§ 33685, subd. (a)(2)(B)-(J)), and he notifies each RDA, legislative body and county auditor of the amount to be transferred by the RDA to the county's ERAF on or before May 10, 2009. (§ 33685, subd. (a)(2)(K).) The amount is declared to be an indebtedness of the redevelopment project to which it relates, payable from tax increment revenues allocated to the RDA until paid in full. (§ 33685, subd. (e).)

An RDA may make the ERAF transfer required by section 33685 in the 2008-2009 fiscal year using any funds that are "legally available and not legally obligated for other uses, including . . . reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest and other earned income." When the RDA has insufficient funds to make

the full ERAF transfer, it may borrow up to 50 percent of the amount to be allocated to low- and moderate-income housing under sections 33334.2, 33334.3 and 33334.6 in specified circumstances; borrow from its legislative body; or borrow from a joint powers agency. (§ 33685, subds. (b) and (d), § 33686, § 33688.) The obligation to make the transfer is subordinate to the lien of any pledge of collateral securing the payment of the principal or interest on any bonds of the RDA, including bonds secured by a pledge of tax increment revenues. (§ 33685, subd. (a)(3).)

As in the case of required ERAF transfers by RDAs in previous fiscal years since 1992-1993, the ERAF transfers required during the 2008-2009 fiscal year are based on legislative findings and declarations in subdivision (a) of section 33680 regarding the relationship between redevelopment purposes and adequately funded school operations : "[T]he effectuation of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private commercial investments, the physical and social improvement of residential neighborhoods, and the provision and maintenance of low- and moderate-income housing, is dependent upon the existence of an adequate and financially solvent school system which is capable of providing for the safety and education of students who live within both redevelopment project areas and housing assisted by redevelopment agencies. The attraction of new businesses to redevelopment project areas depends upon the existence of an adequately trained work force, which can only be accomplished if education at the primary and secondary schools is adequate and general education and job training at community colleges is available. The ability of communities to build residential development and attract residents in redevelopment project areas depends upon the existence of adequately maintained and operating schools serving the redevelopment project area. The development and maintenance of low- and moderate-income housing both within redevelopment project areas and throughout the community can only be successful if adequate schools exist to serve the residents of this housing." [2]

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[2] For purposes of the CRL, "community" is defined as "a city, county, city and county, or Indian tribe, band, or group wich is incorporated or which otherwise exercises some local governmental powers." (§33002.) The community of an RDA is the city, county or city and county whose legislative body has organized the RDA. (See §§ 33100-33101.)

The ERAF transfers for the 2008-2009 fiscal year are further based on legislative findings and declarations in subdivision (d) of section 33680 which are similar to legislative findings and declarations with respect to ERAF transfers required during previous fiscal years: "(1) Because of reduced funds available to the state to assist schools that benefit and serve redevelopment project areas during the 2008-2009 fiscal year, it is necessary for redevelopment agencies to make additional payments to assist the programs and operations of these schools to ensure that the objectives stated in this section can be met. [¶] (2) The payments to schools pursuant to Section 33685 are of benefit to redevelopment project areas."

Reflecting the foregoing legislative findings and declarations, subdivision (f) of section 33685 states the intent of the Legislature that the RDAs' ERAF transfers during the 2008-2009 fiscal year "directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment project pursuant to section 16 of Article XVI of the California Constitution."

Petitioner Community Redevelopment Agency of the City of Moreno Valley has mentioned legislatively required ERAF transfers by RDAs in the discussion of risk factors associated with tax allocation bonds secured by tax increment revenues and issued in 2007 to fund various redevelopment activities. (See Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 20, pp. 10-13, 27-28.) The indenture for the 2007 bonds states: "Tax Revenues received by the Agency may be reduced by specific legislative shifts in property tax allocations. . . . [¶] Based on the foregoing, investors should assume that there may be reductions in Tax Increment Revenues available to the Agency, which will in turn reduce those moneys available as Tax Revenues. The magnitude of such reductions cannot be quantified at this time, but it may be substantial and affect multiple years." (*Id.*, pp.27-28.)

Similarly, petitioner Madera Redevelopment Agency has specified a risk for owners of tax allocation bonds it issued in 2008 and secured by tax increment: "Given the level of the State's budget deficit problems, it is possible that tax increment available for payment of the Bonds may be reduced in the future by actions of the State Legislature and the Agency's ability

to pay debt service on the Bonds may be impaired. (See Second Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibits 32, pp. 16ff.; Exhibit 34.)

ANALYSIS OF CONTENTIONS[3]

Section 16

Petitioners contend that section 16 creates a special fund for tax increment revenues which secure bonds and other forms of indebtedness issued by RDAs to finance projects for the elimination of urban blight pursuant to the CRL. According to petitioners, the transfers of tax increment revenues to ERAF required by sections 33685 through 33689 impermissibly divert their function as a source of security and repayment for RDAs' bonds and other forms of indebtedness, thereby jeopardizing repayment of the indebtedness, severely reducing or eliminating the marketability of the bonds, and depriving the RDAs of the stable, long-term source of revenues intended by section 16 for the financing of redevelopment projects.

Petitioners further contend that the legislative findings and declarations in sections 33680 and 33685, specifying that the achievement of CRL purposes depends on adequately funded school operations and declaring that the ERAF transfers of tax increment benefit redevelopment projects, are false and do not warrant the presumption of correctness usually accorded legislative findings. In petitioners' view, the ERAF transfers do not serve any redevelopment purpose in accordance with the requirements of section 16; rather the transfers are actually intended to reduce the state's obligation to fund schools imposed by Proposition 98 during a period of severe budgetary constraints, while the procedures used to distribute the transferred funds from ERAFs to schools under Government Code section 97.3 provide no

[3] As a preliminary matter, respondent Genest concedes that petitioner Shirey has taxpayer standing to assert a facial challenge to the constitutionality of sections 33865 through 33869 but denies that petitioners Moreno Valley RDA, Madera RDA and California Redevelopment Association have standing to assert any claim under the holding of *San Miguel Consolidated Fire Protection District v. Davis* (1994) 25 Cal.App.4th 134, 143-145. Because the court resolves this case on the facial challenge to sections 33865 through 33869 which petitioner Shirey has standing to bring, the court may proceed to address the challenge whether or not petitioners Moreno Valley RDA, Madera RDA and California Redevelopment Association also have standing. The court notes, however, that a public agency like an RDA may have standing to challenge the constitutionality of a statute where the statute has a significant and direct effect on the agency's performance of its duties. (See, e.g., *Selinger v. City Council* (1989) 216 Cal.App.3d 259; *Jefferson Union School Dist. v. City Council* (1954) 129 Cal.App.2d 264, 267.) Here, sections 33685 through 33689 directly impact tax increment financing which is critical to the operations of the Moreno Valley and Madera RDAs and the members of the California Redevelopment Association.

assurance that the funds will be distributed to schools serving students within the redevelopment project area or will otherwise benefit the project. Petitioners argue that the Legislature could similarly and improperly require RDAs to transfer tax increment revenues to local governments for the provision of other public services like law enforcement on the basis of arbitrary claims that the achievement of redevelopment purposes depend on the adequate funding of such other services and that tax increment revenues are needed for adequate funding of the services.

Finally, petitioners contend that the required ERAF transfers do not constitute "indebtedness" of the RDAs payable or repayable with tax increment revenues under the terms of section 16 and case law which construes section 16 indebtedness to include all obligations incurred by the RDAs under executory contracts, performed contracts, or repayment provisions of the RDAs' bonds and loans. (See *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1082.)

Section 16 gives the Legislature broad authority and discretion to enact laws implementing and enforcing its provisions. That authority and discretion, however, is not unbounded. The Legislature must implement section 16 in a manner consistent with the terms of section 16 and the intent of the voters when they approved the section, to provide a method of financing redevelopment projects with tax increment revenues. (See § 33670.5; Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 10.) Acting consistent with that intent, the Legislature may enact laws to govern the handling and use of tax increment revenues to finance redevelopment projects under the CRL, but it may not enact laws allocating tax increment revenues for purposes unrelated to redevelopment. In contrast to the Legislature's authority under article XIII A of the California Constitution (Proposition 13) to allocate local property tax revenues among local governments and schools as it deems reasonable (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281-1282, citing *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 208, 226-227, *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1457, and *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 453), the Legislature

cannot properly dispense with the constitutional allocation of tax increment revenues to the financing of redevelopment projects pursuant to section 16.

The Legislature was clearly cognizant of and sought to comply with this constitutional allocation of tax increment revenues when it enacted sections 33685 through 33689 and amended section 33680. Through the findings and declarations in subdivisions (a) and (d) of section 33680, the Legislature sought to link the achievement of the primary economic and residential development purposes of the CRL with the required payments by RDAs to county ERAFs for distribution to schools serving students who live in redevelopment project areas and in housing assisted by the projects. Similarly, in subdivisions (e) and (f) of section 33685, the Legislature characterized the required ERAF transfers as indebtedness of the redevelopment projects to be repaid in full with tax increment revenues received by the RDAs, and expressed its intent that the ERAF transfers directly or indirectly assist in the financing of redevelopment projects pursuant to section 16.

These legislative findings and declarations are entitled to judicial deference. Generally, a legislative determination of facts justifying specific enactments "must not be set aside or disregarded by the courts unless the determination is clearly and palpably wrong and the error appears beyond reasonable doubt from facts and evidence which cannot be controverted and of which the court may properly take notice." (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 461-462. See *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1219-1221.) If the reasonableness of legislative findings is fairly debatable rather than palpably arbitrary on the face of the findings and on the basis of judicially noticeable facts, the court cannot review and question their factual adequacy. (*Ibid.*)..This standard of judicial deference is particularly appropriate where, as here, the legislative findings and declarations implicate the Legislature's taxing and budgeting authority. (*Schabarum v. California Legislature, supra*, 60 Cal.App.4th at 1220-1221.) Contrary to petitioners' assertions, the independent judicial review of legislative findings sanctioned in *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 568-569, 572-573, and *Spiritual Psychic Science Church v. City of Azusa* (1985) 39 Cal.3d 501, 514, has no application here where no constitutional mandate, right of free

speech or other fundamental right is involved. As stated in the ballot pamphlet materials for the predecessor of section 16 (former section 19 of article XIII), the Legislature's authority under section 16 to enact laws to govern the handling and use of tax increment revenue for the financing of redevelopment projects is permissive in character. (See Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 10, pp. 19-20.)

Here, many of the findings and declarations providing the Legislature's justification for the required transfers by RDAs to county ERAFs are at least reasonably debatable. The court cannot dispute the existence of some relationship between the achievement of economic and residential redevelopment purposes and the adequate funding of school programs and operations to educate students living within redevelopment project areas and housing assisted by RDAs. The relationship may be considerably more attenuated and indirect than the relationship between redevelopment purposes and the required set-aside of tax increment revenues for low- and moderate income housing (§ 33334.2) or the required payments to "affected taxing entities" burdened by redevelopment projects (§§ 33607.5, 33607.7), but the relationship nonetheless has a conceivable basis in fact and logic to reasonably relate ERAF transfers and redevelopment purposes. That the transfers may also assist the State in meeting its educational funding obligations under Proposition 88 in times of budgetary constraints does not undermine the legislative findings and declarations of the relationship between the achievement of redevelopment purposes and adequately funded school operations: the ERAF transfers may serve redevelopment purposes while also helping to meet Proposition 88 educational funding requirements.

Also not reviewable or disputable by the court are the characterizations of the required ERAF transfers in subdivisions (e) and (f) of section 33685 as indebtedness of redevelopment projects to be fully paid by tax increment revenues received by RDAs and as a means of financing development projects pursuant to section 16. Petitioners give an unduly narrow meaning and scope to the term "indebtedness" under section 16 by relying exclusively on *Marek v. Napa Community Redevelopment Agency, supra*, 46 Cal.3d 1070. In *Marek*, a county auditor had refused to recognize an RDA's executory contractual obligations as indebtedness

payable under section 16 with tax increment revenues; the court concluded that indebtedness under section 16 included the RDA's executory obligations and that the auditor was required to pay the RDA tax increment for such indebtedness, a result consistent with the intent of section 16 to provide a reliable source of funds to pay all indebtedness incurred in the process of redevelopment. (*Id.* at p. 1082, 1087.) The court in *Marek* had no occasion to consider whether "indebtedness" within the meaning and intent of section 16 properly includes requirements for the use of tax increment revenues imposed on RDAs by the Legislature pursuant to its authority under section 16, including such requirements that RDAs set aside tax increment for low- and moderate housing, make payments of tax increment to agencies burdened by redevelopment projects, or incur indebtedness payable with tax increment revenues for payments to their county ERAFs.

Neither the terms nor legislative history of section 16 suggests that specific legislative requirements for the use of tax increment revenues have been improperly characterized by the Legislature as indebtedness under section 16 or are otherwise inconsistent with the intent of section 16. Petitioners' contention that the ERAF transfers will deprive the RDAs of the stable, long-term source of revenues intended by section 16 for the financing of redevelopment projects is largely based on speculation. Without any indication that ERAF transfers during past fiscal years have reduced or eliminated the marketability of bonds secured by tax increment, petitioners speculate that the required ERAF transfers could significantly impair tax increment revenues as a source of security and repayment for RDAs' bonds and other indebtedness.[4] In addition, petitioners do not take into account various safeguards for tax increment financing provided by the Legislature in the course of requiring the ERAF transfers: subordinating the ERAF transfers to the lien of tax increment revenues securing RDAs' bonds (§33685, subd. (a)(3)); deeming the ERAF transfers themselves to be an indebtedness fully

[4] The relatively small amount of the total ERAF transfers of tax increment required during the 2008-2009 fiscal year -- 350 million dollars -- is suggested by the figures in the State Controller's Community Redevelopment Agencies Annual Report for the fiscal year ending June 30, 2007, attached as Exhibit 22 to petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint. Total outstanding long-term debt in the form of tax allocation bonds was 17 billion dollars.

payable with tax increment revenues (§ 33685, subd. (e)); and permitting those RDAs unable to make the full amount of the ERAF transfers may borrow from their tax increment revenues allocated to low- and moderate income housing, from their legislative bodies and from joint powers agencies. (§ 33685, subds. (b) and (d), § 33686, §33688.) And petitioners speculate that the Legislature might require the RDAs to transfer substantially larger amounts of tax increment to their county ERAFs or that the Legislature might require RDAs to transfer tax increment to local taxing agencies for the funding of such public services as law enforcement and fire protection -- hypothetical legislation which is not before the court and may never materialize.

Petitioners are correct in contending, however, that the required payments by RDAs to their county ERAFs during the 2008-2009 fiscal year are inconsistent with the intent of section 16 to use tax increment revenue for the financing of redevelopment projects insofar as tax increment revenues paid into the ERAFs are unlikely to be distributed from the ERAFs for educational purposes related to the redevelopment projects.[5]

Under the provisions of the Revenue and Taxation Code, each county has an ERAF into which the county, city and county, cities within the county and special districts are required to annually deposit certain amounts of their property tax revenues. (Rev. & Tax. Code §§ 97.2, 97.3, subd. (d)(1).) During the 2008-2009 fiscal year, any redevelopment agency of the county and any redevelopment agency of cities within the county are required by subdivision (a) of section 33685 to contribute certain amounts to their county ERAFs. The amount of revenue in the county ERAF from any source is then allocated pursuant to subdivision (d)(2) of section 97.3 to school districts within the county in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and to the county office of education on the

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[5] Although, as respondent Genest observes, RDAs may use any legally available funds other than tax increment revenues to pay their ERAF obligations under subdivision (a) of section 33685 (§ 33685, subd. (c)), tax increment revenues are the RDAs' primary source of financing their activities, hence a likely component of their ERAF obligations. (See, e.g., *Marek, supra*, 46 Cal.3d at 1082; *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 451.) In addition, because the RDAs' ERAF obligations are deemed to be indebtedness payable with tax increment revenues (§33865, subd. (e)), the RDAs' ERAF obligations have a direct connection with and impact on the tax increment revenues received by RDAs pursuant to section 16 and section 33870. Finally, subdivision (f) of section 33685 express the legislative intent that the ERAF payments contribute directly or indirectly to the financing of the community's redevelopment project pursuant to section 16, the constitutional provision establishes a method of using tax increment revenues to finance redevelopment.

basis of the historical split of base property tax revenue between the county office of education and school districts within the county. Any ERAF funds remaining after these allocations, are distributed to special education programs within the county.

Notably, the ERAF funds are distributed without any procedures to assure that the schools and educational programs receiving funds contributed by the city RDAs are serving students within the redevelopment project areas or communities of the city RDAs or are serving students living in housing assisted by the contributing city RDAs.[6] Similarly, the ERAF funds contributed by the county RDA are distributed without any procedures to assure that the schools and educational programs receiving the funds are serving students living within the redevelopment project areas or community of the county RDA or are serving students living in housing assisted by the contributing county RDA. These circumstances directly undermine the findings and declarations in subdivisions (a) and (d) of section 33680 delineating the benefits provided to redevelopment projects by adequately maintained schools serving students living in redevelopment areas or communities and in housing assisted by RDAs. As a result, the justifications provided by the findings and declarations in subdivisions (a) and (d) of section 33680 for the ERAF payments required by section 33865 are eviscerated. Moreover, the circumstances of the ERAF distributions make it probable that ERAF contributions of the RDAs will be distributed to some schools unrelated to the RDAs' redevelopment projects, in contravention of subdivision (e) of section 33685 declaring the ERAF contributions to be an indebtedness of the related redevelopment projects, payable from tax increment revenues received by the RDAs.[7]

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[6] The "community" of an RDA is the city, county or city and county whose legislative body has organized the RDA. (See §§ 33002, 33100-33101.)

[7] Funds contributed to the county ERAFs by RDAs may be distributed to the county or cities within the county rather than to school districts or county education programs when either the "Triple Flip" under Revenue and Taxation Code section 97.68 or the "Vehicle License Fee Swap" under Revenue and Taxation Code section 97.70 is triggered. These are complex procedures designed to compensate California counties and cities for revenue losses resulting from the state's 0.25 percent suspension of the local sales and use tax authority in the case of the Triple Flip and from the state's reduction in vehicle license fees in the case of the VLF Swap. ERAF funds may be distributed to the counties and cities rather than to school districts and education programs in certain circumstances to compensate them for their revenue losses. The regularity and frequency of such ERAF distributions is not apparent from the statutory scheme.

In sum, the distribution of contributions by RDAs to their county ERAFs in accordance with the requirements of section 33685 can be expected to regularly result in the use of RDAs' tax increment revenues by schools and education programs unrelated to the RDAs' redevelopment projects. Thus, section 33685, in its general and ordinary operation, inevitably conflicts with and violates the terms and intent of section 16, to allocate tax increment revenues to the financing of redevelopment projects.[8]

Constitutional Prohibitions on Impairment of Contracts and Taking of Property

Because the court has determined that the section 33865 is facially unconstitutional, the court need not resolve petitioners' contention that the statute also violates the prohibitions on the impairment of contracts and the taking of property without just compensation under the California and United State Constitutions.

DISPOSITION

The petition is granted in part. Petitioners are entitled to declaratory and injunctive relief invalidating and enjoining the operation of Health and Safety Code section 33875. Counsel for petitioners shall prepare a proposed judgment consistent with this ruling, serve it on counsel for respondents for approval as to form and submit it to the court for processing pursuant to rule 3.1312 of the California Rules of Court.

Dated: April 30, 2009

LLOYD G. CONNELLY

LLOYD G. CONNELLY
Judge of the Superior Court

[8] In facially challenging the constitutionality of a statute, petitioners must demonstrate that the statute's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180–181.) The minimum showing required for a facial challenge is that the statute is unconstitutional "in the generality or great majority of cases" (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 673 .) While the court may not facially invalidate a statute on the basis of a suggestion that constitutional problems may arise in some future hypothetical situation, the court may not facially uphold the statute simply because in some hypothetical situation it might lead to a permissible result." (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 347.)