IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 3

No. A167472

CALIFORNIANS FOR EQUAL RIGHTS FOUNDATION, et al.,
Plaintiffs and Appellants,

v.

COUNTY OF ALAMEDA, et al.,
Defendants and Respondents.

On Appeal from the Superior Court of Alameda
(Case No. 22CV014956, Honorable Stephen Kaus, Judge)

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Respondents Alameda County and its General Services and Public Works Agencies (the County) cannot continue their illegal and unconstitutional racial discrimination simply because they first began to discriminate many years ago. The United States and California Constitutions—as well as established case law—overwhelmingly reject the argument that the time to bring a facial challenge to ongoing unconstitutional behavior runs from the enactment of the authorizing statute or ordinance. To the contrary, centuries of American and California law make plain that government is not permitted to act unconstitutionally simply because its unconstitutional actions were not immediately challenged.

The County claims that because the Appellants (Taxpayers) in this case are taxpayers, they cannot bring an as-applied challenge to its facially discriminatory contracting programs, and that any facial claims are time-barred. Resp't Br. 14-22. The County also claims that there is nothing in its actions that could trigger California's accrual doctrines. Resp't Br. 27-35. The County fails on all fronts.

The County's myopic fixation on the type of challenge as the basis to start the accrual clock running has simply no basis in law. The timeliness of a taxpayer suit is not dependent on whether the taxpayer brought facial claims, as-applied claims, or both. Under Cal. Code Civ. Proc. Section 526a, both facial and as-applied claims accrue once a taxpayer "has paid[] a tax that funds the defendant local agency." Cal. Code Civ. Proc. § 526a(a). The plain language of Section 526a is unequivocal, and the County's conjured exception for facial challenges under Section 526a has no support in the law. But even if their vision of Section 526a had legal support, California's continual wrong accrual doctrines would apply to ensure that the Taxpayers' claims are not time-barred. The trial court's order granting the County's Motion for Judgment on the Pleadings and its judgment of dismissal should be reversed.

ARGUMENT

I. The Taxpayers Brought Both Facial and As-Applied Claims, but the Type of Claim Brought Has No Bearing on Timeliness

The County argues that because only as-applied claims would be timely in this case, the Taxpayers' facial claim must be dismissed. Resp't Br. 14-19. In response to the Taxpayers'

position—raised in its opening brief—that the distinction between facial and as-applied claims does not determine timeliness, the County cites a regulatory takings case to claim that the distinction is "critical." AOB 18-19; Resp't Br. 24-26 (citing *Travis v. Cnty. of Santa Cruz*, 33 Cal. 4th 757, 767-71 (2004)). The County is wrong both factually and legally.

Factually, the Taxpayers' complaint here is fairly characterized as lodging both facial and as-applied claims. JA009-021; *see also Thompson v. Spitzer*, 90 Cal. App. 5th 436, 453 (2023) (taxpayer suits seek "an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past"). Legally, the distinction between facial and as-applied challenges has no bearing on the timeliness of a Section 526a taxpayer suit. *See Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16, 29 (2001) ("[n]o showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit" in a challenge to discriminatory contracting statutes brought long after enactment); *see also Cal. DUI Lawyers Ass'n v. Cal. Dep't of Motor Vehicles*, 20 Cal. App. 5th 1247, 1262 n.4 (2018)

(explaining that the as-applied/facial distinction in taxpayer suits is a red herring).

A. The Taxpayers' Complaint raises an as-applied challenge to the programs

The parties agree that the Taxpayers brought facial claims in this case, but the County contends that the Taxpayers failed to bring an as-applied claim, which renders their action untimely. Resp't Br. 15-16. This is incorrect.

Taxpayers allege here that they pay taxes in Alameda County and that their tax dollars are being spent unconstitutionally, through spending on contracts and through the County's ongoing enforcement of the programs' requirements. JA006-016. They also challenge the County's *application* of the unconstitutional programs through the County's continued enforcement and illegal spending. JA016-022. As explained throughout Plaintiffs' complaint, subcontractors are subject to unconstitutional barriers by the Construction Compliance Program. JA009-012; JA017-018; JA020. Subcontractors are also discriminated against on projects that must comply with the Enhanced Construction Outreach Program. JA012-015; JA019-021. These unconstitutional *applications* of the ordinances are

plainly challenged in the Taxpayers' complaint. In Section 526a suits, taxpayer plaintiffs are not required to plead individualized harm to *themselves*. *Thompson*, 90 Cal. App. 5th at 453. Instead, taxpayer actions may be brought to challenge ordinances on their face or in their applications, and taxpayer plaintiffs bring as-applied challenges when they seek to enjoin an ordinance's future application against someone else. *Id.*[1]

The Taxpayers satisfied their pleading obligations for an as-applied challenge. They allege that the County applies the ordinance by awarding contracts on the basis of race, and taxpayer suits can be maintained to prevent the unconstitutional application of the ordinance to others. JA006-022. That is what an as-applied challenge looks like in a taxpayer suit: it's a claim that the County is spending tax dollars illegally when it applies the statute. *Thompson* states clearly that an as-applied claim in a

[1] The *Thompson* Court explained this with respect to a hypothetical surveillance program. *Thompson*, 90 Cal. App. 5th at 455. A taxpayer could challenge the surveillance program facially, arguing that it is unconstitutional in all respects. But a taxpayer could also challenge the program as-applied by arguing that the otherwise constitutional surveillance program was in fact targeting individuals on the basis of race. *Id.* Both are taxpayer actions. In neither scenario is special damage to the taxpayer required. In neither scenario is the triggering event for the statute of limitations the adoption of the policy. *Id.*

taxpayer suit happens "where taxpayers are asserting an agency is *generally applying a program unconstitutionally*." 90 Cal. App. 5th at 455 (emphasis added). There is no requirement, and the County cites none, that a taxpayer complaint must "focus on any specific contracting decision, much less attempt to keep it from recurring," Resp't Br. 18, or that taxpayer plaintiffs must join third-party contractors to raise sufficient as-applied claims. *Id.* *Thompson* rejects this argument expressly. 90 Cal. App. 5th at 454-55. The very idea that taxpayer plaintiffs would need to plead such allegations goes against the very purpose of taxpayer suits. *See Blair v. Pitchess*, 5 Cal. 3d 258, 268-69 (1971) (even the time county officials spent enforcing an illegal program suffices for pleading a taxpayer claim)*; see also Connerly*, 92 Cal. App. 4th at 28-31.

B. The Taxpayers' facial claim is timely

In any event, an as-applied claim is not required in this case because the Taxpayers' facial suit fulfills the elements of Section 526a: they seek to enjoin two facially discriminatory, continuously enforced government contracting programs, and they have paid county taxes within the past year. Code Civ. Proc. § 526a. This is precisely the type of lawsuit the legislature

contemplated when it enacted Section 526a, which was to "provide a general citizen remedy for controlling illegal governmental activity." *Connerly*, 92 Cal. App. 4th at 29. The Legislature's goal in passing Section 526a was "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*, 5 Cal. 3d at 267-68 (cleaned up). Section 526a is construed liberally to achieve this remedial purpose. *Id.* at 268. The County's argument that the Taxpayers' facial action under Section 526a is time-barred, Resp't Br. 15-22, is meritless.

The County argues that distinguishing between facial and as applied claims is "critical" for determining when a limitations period begins. But the County simply fails to understand the Supreme Court's *Travis* decision. Resp't Br. 25-26 (citing *Travis*, 33 Cal. 4th at 767-71). *Travis* involved two sets of plaintiffs who challenged permit conditions imposed upon them by the County of Santa Cruz. One plaintiff's claim was timely; the others' claim was not. 33 Cal. 4th at 767. *Both* sets of plaintiffs alleged the permit conditions were *facially* invalid. *Id.* ("[P]laintiffs' legal challenge to the Ordinance is properly characterized as facial.").

The difference between the two was that the timely plaintiff received a permit denial within the statute of limitations period, the untimely plaintiff did not. *Id.* The facial nature of the claims had *absolutely nothing* to do with the triggering event for calculating the statute of limitations. As the court noted in *Travis*, "[f]uture generations, too, have a right to challenge [unconstitutional activity]." *Id.* at 770 (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 627 (2001)).

Travis does talk about cases—like *Hensler v. City of Glendale*, 8 Cal. 4th 1 (1994)—where the triggering event *may be* the enactment of an ordinance. *Travis*, 33 Cal. 4th at 767-69. *Hensler*, for its part, involved a claim that a particular land use regulation effected a taking of the plaintiff's property. In such a scenario, the triggering event for the takings claim *was* the enactment of the ordinance. *Hensler*, 8 Cal. 4th at 24-25. That triggering event is, however, unique to the claim raised: a takings claim. It has nothing to do with the manner of challenge be it facial or as-applied. Even the *Hensler* Court recognized that if the plaintiff challenged a particular adjudicatory decision made pursuant to the ordinance, the claim would still be timely (assuming the plaintiff exhausted his administrative remedies).

Id. at 25. And that claim, of course, could be *either* facial (like *Travis* was) or as-applied. *Travis*, 33 Cal. 4th at 770.

Tobe v. City of Santa Ana, 9 Cal. 4th 1069 (1995), is completely consistent with this understanding, but again, the County misunderstands the case. *Tobe* concerned two taxpayer challenges to a Santa Ana ordinance that was alleged to violate the homeless' right to travel (among other constitutional claims). *Id.* at 1083. The Court held that although the facial claims were properly pled, the as-applied claims were not. Even though the statute had been applied to these particular plaintiffs, the allegations of those plaintiffs did not support an unconstitutional application of the ordinance. *Id.* at 1089 (the taxpayer plaintiffs "simply did not demonstrate that the ordinance had been enforced in a constitutionally impermissible manner against homeless persons"); *id.* at 1093 ("[T]here was no evidence that the ordinance had been applied to any person in a constitutionally impermissible manner.").

Here, by contrast, the Taxpayers will have no trouble whatsoever showing the County applies the statute in an unconstitutional manner. Indeed, utterly absent from any of the County's papers or arguments is a discussion that they are

applying the program in a way that does not violate the United States or California Constitution. What is noteworthy about *Tobe* is the lack of any concern or discussion that the statute of limitations turns on whether the taxpayer suit raised a facial or as-applied claim. Both could be brought. Both would be timely. Taxpayers may challenge an ordinance under either legal theory—the triggering event is the same on both fronts.

In all events, the court should look to the thing that triggers the cause of action. The triggering event for a Section 526a case is when the taxpayer pays her taxes. At that moment the clock begins ticking for a taxpayer suit alleging that the government is spending the funds illegally. Cal. Code Civ. Proc. § 526a. This is why the Taxpayers cannot sue over the misuse of their 1975 tax dollars. But once that triggering event happens, the taxpayer can bring either a facial or as-applied claim. Here, the taxpayers can challenge that unconstitutional activity because they have paid taxes "one year before the commencement of the action." Cal. Code Civ. Proc. § 526a; s*ee also Thompson*, 90 Cal. App. 5th at 453-55; *Connerly*, 92 Cal. App. 4th at 28-31.

II. Taxpayers' Claims Accrued Within the Statutory Period and Are Not Time-Barred

The County claims that the Taxpayers' claims are time-barred because they accrued more than two years ago,[2] then wrongly accuse Taxpayers of advancing a Section 526a "'taxpayer' exception" to the statute of limitations. Resp't Br. 22-24. Taxpayers do no such thing. AOB 13-16. Instead, because Taxpayers meet the requirements for Section 526a, and because they seek to enjoin two presently enforced,[3] racially

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[2] In its Motion for Judgment on the Pleadings, the County claimed that the four-year statute of limitations in Cal. Code Civ. Proc. § 343 barred the Taxpayers' claims. JA197. It now claims that the applicable statute of limitations is two years under Cal. Code Civ. Proc. § 335.1. Resp't Br. 14. Regardless of which statute applies, the Taxpayers paid taxes within the past year, so their claims are timely.

[3] The treatment of taxpayer plaintiffs in other federal and state courts reflects the principle that municipal taxpayers are harmed when the government engages in illegal spending. *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 5 (D.C. Cir. 1988) ("The injury—misuse of public funds—is redressed by an order prohibiting the expenditure."); *Goldston v. North Carolina*, 637 S.E.2d 876, 881 (N.C. 2006) ("[T]he right of a citizen and taxpayer to maintain an action in the courts to restrain the unlawful use of public funds to his injury cannot be denied.") (quoting *Teer v. Jordan*, 59 S.E.2d 359, 362 (N.C. 1950)). This is because "[t]he interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate." *D.C. Common Cause*, 858 F.2d at 3 (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 486 (1923)).

discriminatory contracting programs, and paid county taxes within the past year, their facial and as-applied claims accrued within the applicable statutory period. Cal. Code Civ. Proc. § 526a; *see also Blair*, 5 Cal. 3d at 269-70 (recognizing that taxpayers have an interest in enjoining illegal government activity); JA006-022; AOB 16.

Travis does not contradict Taxpayers' position. Resp't Br. 25-26. The California Supreme Court held that a plaintiff's claim was not time-barred because his facial challenge to the zoning ordinance at issue was triggered by the adjudication of his permit. *Travis*, 33 Cal. 4th at 767. Here, Taxpayers similarly brought a timely challenge to the enforcement of an unconstitutional act. The County's illegal discrimination didn't begin and end on the day the challenged programs were enacted—it continues to be enforced today. JA006-016. And the Taxpayers brought a timely challenge to that discrimination because they met the requirements of Section 526a and filed suit within the statutory period. JA016-022.

The County attempts to distinguish *People for Ethical Operation of Prosecutors and Law Enforcement v. Spitzer* (*PEOPLE*), 53 Cal. App. 5th 391 (2020), on the basis that the

program there was "clandestine." Resp't Br. 21. That argument finds no support in the case, which unequivocally explains that "[p]lainly the statute cannot have run to restrain a violation that is ongoing." *PEOPLE*, 53 Cal. App. 5th at 411. So too in this case; the Taxpayers' complaint seeks to enjoin the County's ongoing violations of the federal and state constitutions. JA006-022. Their claims are timely because they were brought within the applicable statute of limitations and the violations are ongoing.

The County laments that "[i]f Plaintiffs' theory were correct, individuals directly harmed by constitutional violations would face short limitations periods in pursuing their claims, but taxpayers never would." Resp't Br. 26. But, again, the Taxpayers are not arguing that there is a general exception to the statute of limitations. If a taxpayer action under Section 526a accrued, and then the applicable limitations period expired, that challenge would indeed be time-barred. Taxpayers cannot, for example, challenge the illegal expenditure of their 2010 tax dollars on this program, even though the Defendants were bound by the California Constitution back then. Nor could a separate set of taxpayers challenge a one-time expenditure that has long since passed. But that isn't what is happening here. The Taxpayers'

claims accrued within the limitations period because they paid taxes within the past year and seek to enjoin illegal spending that is ongoing. Those are the elements of Section 526a. So long as the County continues spending tax dollars illegally, new claims will accrue next year too. And the year after that. So long as the County continues spending tax dollars illegally, taxpayers can bring claims under Section 526a to restrain it.

The County cites cases in which taxpayer claims were time-barred, but none of those apply and for obvious reasons. Both *Coachella Valley Water Dist. v. Superior Ct. of Riverside Cnty.*, 61 Cal. App. 5th 755 (2021), and *McLeod v. Vista Unified Sch. Dist.*, 158 Cal. App. 4th 1156 (2008), were validation challenges to taxes. The plaintiffs tried to avoid the strict 60-day statute of limitations for validation actions by tacking on a taxpayer suit. The courts were rightly not convinced. *Coachella Valley*, 61 Cal. App. 5th at 770-75 (because taxpayer claims could have been brought in a validation action, the validation statute of limitations applies); *McLeod*, 158 Cal. App. 4th at 1164-70 (taxpayer suit was an end run around statute of limitations in validation actions). The County's citation to *Nolan v. Redevelopment Agency*, 117 Cal. App. 3d 494 (1981), is

particularly perplexing. That case *reversed* the trial court's finding of a statute of limitations problem and has nothing to say whatsoever about the County's argument. *Id.* at 503. And *Plunkett v. City of Lakewood*, 44 Cal. App. 3d 344 (1975), concerned another bait-and-switch. The taxpayer tried to get around the 60-day statute of limitations for challenging redevelopment plans by tacking on a taxpayer suit.

The County's authority is plainly off-point. It has no authority that says a statute of limitations runs on a taxpayer suit the moment an ordinance is adopted. This is because none exists. The very argument goes against the purpose of Section 526a, the way claims accrue in normal everyday law, and common sense. The Taxpayers' claims are timely.

III. Alternatively, Even if the Taxpayers' Claims Accrued When the Programs Were Enacted, the Continual Wrong Accrual Doctrines Apply

As the taxpayers explain in their opening brief, even if their claims would otherwise be time-barred on the grounds that they accrued when the ordinance was enacted, they are still timely under California's continual wrong accrual doctrines. AOB 21-26. In response, the County argues that there is no ongoing or recurring obligation on its part which would trigger continuous

accrual. It also argues that the continuing violation doctrine does not apply because the adoption of the County's programs is independently actionable, not part of a "nonseverable wrong." Resp't Br. 27-35. These arguments are wrong.

A. Continuous accrual applies because the County has an ongoing obligation to comply with the U.S. and California Constitutions

The County has an ongoing duty under the United States and California Constitutions not to "deny to any person within its jurisdiction the equal protection of the laws," and not to "discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 31. The duty breached in this case is a "continuing one, susceptible to recurring breaches." *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1200 (2013); *see also Howard Javis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809, 823-24 (2001).[4] That duty did not end the day after the

[4] Even if the County is correct that the ongoing obligation triggering continuous accrual is one between "interested entities or individuals," the doctrine still applies. Resp't Brief 28. Citizens

constitutional provisions in question were enacted, nor did it end the day after the County enacted its programs—it continues in the present day. The Taxpayers' attempt to enjoin the County's continued breach of that duty cannot be time-barred under the doctrine of continuous accrual.

The County's attempt to distinguish *Howard Javis* by limiting it to challenges to tax measures fails. Resp't Br. 29-30. Just as the city in *Howard Jarvis* owed a continuing obligation not to tax without voter approval, so too does the County here owe a continuing obligation not to engage in racial discrimination. 25 Cal. 4th at 823; U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 31. None of the cases the County cites as narrowing *Howard Jarvis* involve a continuing constitutional obligation. Resp't Br. 23-30 (citing *Cal. Cannabis Coal. v. City of Upland*, 3 Cal. 5th 924, 945 (2017)) (statutory language limited claims to the initial time of enactment); *Campana v. E. Bay Mun.*

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have an interest in seeing that the government does not discriminate on the basis of race. And taxpayers have an interest in seeing that their tax money is not spent on illegal activity like racial discrimination—that's the premise of Section 526a taxpayer standing. Cal. Code Civ. Proc. § 526a; *Blair*, 5 Cal. 3d at 269 ("[T]he primary purpose of section 526a was to give a large body of citizens standing to challenge governmental actions.").

Util. Dist., 92 Cal. App. 5th 494, 505 (2023) (no ongoing legal obligation); *Coachella Valley Water Dist.*, 61 Cal. App. 5th at 774 (no continuing obligation); *Luke v. Sonoma Cnty.*, 43 Cal. App. 5th 301, 310 (2019) (no continuing obligation).[5]

The County incorrectly cites *Aryeh* to claim that the continuous accrual doctrine "provides redress 'only for those discrete acts occurring with the [limitations period.]'" Resp't Br. 30 (citing *Aryeh*, 55 Cal. 4th at 1199-1200). It is only the *recovery of damages* that is limited to the discrete acts occurring within the statute of limitations. 55 Cal. 4th at 1199-1200. Here, Taxpayers do not seek money damages, so this limitation does not apply.

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[5] The "broader language" referred to by the County and quoted in *Luke* was language, according to the court, "suggesting the limitations period for a challenge to the validity of a tax measure based on a violation of any statute can be brought within three years after any collection of the tax" even without a continuing obligation. *Luke*, 43 Cal. App. 5th at 309 (quoting *Howard Jarvis*, 25 Cal. 4th at 825); Resp't Br. 29-30. *Luke* does not stand for the proposition that taxpayer plaintiffs cannot enjoin an ongoing discriminatory policy simply because that policy began many years ago, as the County claims is the case here. 43 Cal. App. 5th at 309. *Howard Jarvis* applies because the County is in breach of its ongoing obligation not to discriminate in public contracting. 25 Cal. 4th at 823.

B. The programs are a continuing violation because they represent a "nonseverable" course of conduct

The County argues that its programs do not represent a continuing violation because they do not represent an "ongoing *nonseverable* wrong[]." Resp't Br. 32 (quoting *Cnty. of El Dorado v. Superior Ct.*, 42 Cal. App. 5th 620, 627 n.8 (2019)). It claims that the enactment of its discriminatory programs and subsequent approval of contracts "were 'discrete' and 'independently actionable' decisions, not a nonseverable course of conduct that would otherwise evade review." *Id.* This, too, is incorrect. An ongoing policy of discrimination is, by definition, nonseverable. *See Carroll v. City & Cnty. of San Francisco*, 41 Cal. App. 5th 805, 819-22 (2019). Instead, the continuing violation doctrine is appropriate whenever the violations in question constitute a "continuing pattern and course of conduct." *Komarova v. Nat'l Credit Acceptance, Inc.*, 175 Cal. App. 4th 324, 344 (2009) (quoting *Joseph v. J.J. Mac Intyre Cos., L.L.C.*, 281 F. Supp. 2d 1156, 1161 (N.D. Cal. 2003)).

As it did in the superior court, the County claims that the doctrine applies to a series of small harms that evade notice because the plaintiff is unable to positively identify when the

harm occurred or has risen to a level sufficient to warrant a challenge. Resp't Br. 32. But the continuing violation doctrine is not limited to these circumstances. It also applies when there is an ongoing policy of discrimination, even if that policy is obvious. In *Carroll*, for example, the plaintiff alleged that the city used a fixed policy of discrimination, codified in the city charter, to pay reduced disability benefits to employees on the basis of age. 41 Cal. App. 5th at 810-11. The discriminatory policy had been codified in the city charter, plain for all to see, since 1947. *Id*. at 810 n.2. Instead of holding that the establishment of the policy just after World War II, or subsequent benefit payments, were "independently actionable decisions" that were time-barred, this Court instead applied the continuing violation doctrine. *Id.* at 819-22. It recognized that the plaintiff's claims were timely under the doctrine because she alleged the use of a fixed discriminatory policy to pay reduced benefits and alleged that the City used the policy each month by paying reduced benefits. *Id.*

The same is true in this case. The County launched a fixed, ongoing policy of racial discrimination when it enacted the challenged programs. JA006-015. That policy was clear to all when it adopted the programs. JA009-015. And it has continued

to enforce that policy every day in the years since through enforcement of that discrimination on applicable contracts. JA006-015. The County will not stop enforcing this fixed policy unless enjoined. JA017. In this case—like in *Carroll*—the continuing violation doctrine clearly applies to stop the County evading judicial review of its unconstitutional program.

The County claims that the doctrine does not apply in this case because it almost always arises in the employment discrimination context. Resp't Br. 32-35. But California's courts have already extended the doctrine beyond employment discrimination, and it makes no sense to limit it that way now. *Komarova*, 175 Cal. App. 4th at 330, 344; *see also Young v. Midland Funding LLC*, 91 Cal. App. 5th 63, 101 (2023).

The County is simply incorrect when it claims that "Federal courts have limited the continuing violations doctrine to cases involving discriminatory work environments." Resp't Br. 34 n.6 (citing *Gardner v. City of Berkeley*, 838 F. Supp. 2d 910, 921 (N.D. Cal. 2012)). The Ninth Circuit has applied the continuing violation doctrine in Section 1983 actions involving challenges to regulations on cardroom licensees. *Flynt v. Shimazu*, 940 F.3d 457, 462-63 (9th Cir. 2019). Other federal courts have applied the

continuing violation doctrine against constitutional violations wholly unrelated to discriminatory work environments. *See Kuhnle Bros., Inc. v. Cnty. of Geauga*, 103 F.3d 516, 521-22 (6th Cir. 1997) ("[The plaintiff] suffered a new deprivation of constitutional rights every day that [a county ordinance banning through truck travel on county roads] remained in effect," so the continuing violation doctrine applied.); *Palmer v. Bd. of Educ. of Cmty. Unit Sch. Dist. 201-U*, 46 F.3d 682, 683, 686-86 (7th Cir. 1995) (holding that a racial discrimination claim "arises each day a child is assigned to school under a racially discriminatory policy," and claims were not time-barred because the discrimination was a continuing violation). That is because the Ninth Circuit and other federal courts recognize what the Taxpayers do in this case—that "[w]hen the continued enforcement of a [government policy] inflicts a continuing or repeated harm," challenges to that policy are timely. *Flynt*, 940 F.3d at 462.

CONCLUSION

For the reasons discussed above, this Court should reverse the trial court's order granting the County's Motion for Judgment on the Pleadings and its judgment of dismissal.

DATED: August 21, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPELLANTS' REPLY BRIEF is proportionately spaced, has a typeface of 13 points or more, and contains 4,549 words.

DATED: August 21, 2023.

/s/ Erin E. Wilcox
ERIN E. WILCOX

DECLARATION OF SERVICE

I, Tawnda Dyer, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

On August 21, 2023, a true copy of APPELLANTS' REPLY BRIEF was electronically filed with the Court through Truefiling.com. Notice of this filing will be sent to those below who are registered with the Court's efiling system. Those who are not registered will receive a hard copy via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Roseville, California.

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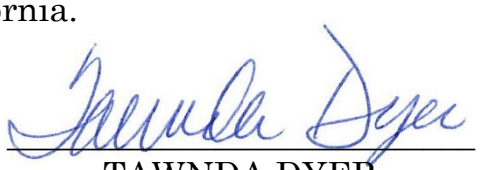
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 21st day of August, 2023, at Roseville, California.



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