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9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 **LOS ANGELES COUNTY EMPLOYEES**
12 **RETIREMENT ASSOCIATION, an**
13 **independent agency,**

14 **Petitioner/Plaintiff,**

15 **v.**

16 **COUNTY OF LOS ANGELES and**
17 **BOARD OF SUPERVISORS OF THE**
18 **COUNTY OF LOS ANGELES,**

19 **Respondents/Defendants.**

20 **Case No. 21STCP03475**

21 **APPLICATION FOR LEAVE TO FILE**
22 **AMICUS CURIAE BRIEF AND PROPOSED**
23 **AMICUS CURIAE BRIEF BY CALIFORNIA**
24 **STATE ASSOCIATION OF COUNTIES IN**
25 **SUPPORT OF RESPONDENTS /**
26 **DEFENDANTS COUNTY OF LOS ANGELES**
27 **AND BOARD OF SUPERVISORS OF THE**
28 **COUNTY OF LOS ANGELES**

Petition filed: October 18, 2021
Hearing Date: November 22, 2022
Time: 1:30 p.m.
Location: Dept. 85

29 The California State Association of Counties (CSAC) requests permission to
30 submit the attached amicus brief in support of Respondents/Defendants County of Los
31 Angeles and the Board of Supervisors of the County of Los Angeles in the above-entitled
32 matter.¹

33 ¹ An amicus brief may be filed in a matter pending in Superior Court at the court's
34 discretion. See CEB, *California Civil Appellate Practice*, § 14.66. See also *In re*
35 *Veteran's Industries, Inc.* (1970) 8 Cal.App.3d 902, 924; *People v. City of Long Beach*
36 (1960) 183 Cal.App.2d 271, 276.

1 **STATEMENT OF INTEREST**

2 CSAC is a non-profit corporation. The membership consists of the 58 California
3 counties. CSAC sponsors a Litigation Coordination Program, which is administered by
4 the County Counsel’s Association of California and is overseen by the Association’s
5 Litigation Overview Committee, comprised of county counsels throughout the state. The
6 Litigation Overview monitors litigation of concern to counties statewide and has
7 determined that this case is a matter affecting all counties.

8 CSAC and its constituent counties, particularly those within a 37 Act Retirement
9 System, have a substantial interest in this litigation as it addresses the relationship
10 between retirement boards and counties as it relates to classification and salaries of
11 county employees performing work for retirement boards. Even more fundamentally,
12 however, it addresses the plenary authority that Boards of Supervisors are granted by the
13 California Constitution to determine the wages for county employees, and whether, as
14 Petitioner suggests, that authority can essentially be delegated to a body other than the
15 Board of Supervisors.

16 This issue has statewide significance notwithstanding that it is pending in Superior
17 Court. Other retirement systems, through the State Association of County Retirement
18 Systems, monitor pending cases, including trial court rulings (i.e., in addition to appellate
19 and Supreme Court cases), the outcomes of which can impact future actions by other
20 retirement systems.

21 No party or counsel for a party in this case authored any part of the accompanying
22 amicus curiae brief. No party or party’s counsel made any monetary contribution to fund
23 the preparation of the brief. Counsel for Defendants/Respondents have consented to the
24 filing of this application and proposed amicus brief. Counsel for Petitioner/Plaintiff does
25 not oppose the application and filing of the proposed brief.

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ISSUES TO BE ADDRESSED BY PROPOSED AMICUS BRIEF

As more fully addressed in the proposed amicus curiae brief below, the Board of Supervisors has exclusive authority to set compensation for county employees. The brief explains how, in other similar contexts, courts have concluded that the delegation to the Board is exclusive because of the constitutional authority granted to counties to manage their local affairs, including specific constitutional and statutory authority to set county employee compensation.

The proposed brief will also provide additional background of the legislative intent of the applicable statutory provisions, and will provide context to the court on how the process is designed so that the two entities – retirement boards and counties – work together to set compensation for the county employees performing work at for the retirement systems.

CONCLUSION

Because the decision in this case will have wide-reaching impact on counties, CSAC requests leave to submit the attached amicus curiae brief for due consideration by this Court.

DATED: October 12, 2022

By: s/ Jennifer Bacon Henning
JENNIFER BACON HENNING
Attorney for Proposed Amicus Curiae
California State Association of Counties

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I.
INTRODUCTION

For most retirement systems under the County Employees Retirement Law of 1937 (Gov. Code, §§ 31450-31899.10 (“CERL” or “37 Act”), the constitutional and statutory scheme provides for a balance between the retirement system and the counties. The Retirement Boards have sole authority over management and investments of the retirement system’s funds and assets. The employees performing work for the retirement systems, however, are in most cases county employees, with the County Board of Supervisors having ultimate authority over salaries and other aspects of the civil service system to which these employees belong.

Despite this fairly straightforward view of the division of authority between the Retirement Boards and the Boards of Supervisors, Petitioner/Plaintiff takes the position that the Board of Supervisors plays merely an administrative role in approving by ordinance whatever civil service positions and salaries are requested by a retirement board. In essence, Petitioner/Plaintiff assert that the authority to set salaries for county employees working for a retirement association has been delegated to the retirement boards. This position is in error. The courts have been quite clear that the Board of Supervisors has plenary authority over the salaries of counties employees and that such authority cannot be delegated to an entity other than the Board of Supervisors.

The applicable statutes designate these employees as county employees, and thereby give the Board of Supervisors the authority to set their salaries. That role must mean something beyond a rubber stamp of any salary and position requests submitted to it by a retirement system. Petitioner/Plaintiff and its amicus curiae may have policy concerns with this division of authority, but that is an issue for the Legislature, not the courts, to resolve.

Indeed, as explained in Respondents/Defendants’ brief and more fully described below, the Legislature has acted to change the structure for three retirement associations so that some or all of their staff are employees of the retirement associations and not the

1 County. These changes were specifically intended to give those three CERL retirement
2 systems control over staff salaries. An effort to make a similar change for all 37 Act
3 retirement systems was vetoed by the Governor. This is clear evidence of the legislative
4 intent that the salary of these county employees is determined by the Board of
5 Supervisors.

6 Generally, this is a process that creates balance and works well. In practical terms,
7 it results in something of a meet-and-confer process where the needs of both the
8 retirement system and the county are considered, with the Board of Supervisors having
9 the ultimate decision-making authority, as required by the California Constitution. This
10 process plays out regularly across the State, and should not be upended here simply
11 because Petitioner/Plaintiff is disappointed that its request in this instance was not
12 granted by the Los Angeles County Board of Supervisors.

13 For these reasons, Amicus Curiae CSAC urge this court to deny the Petition for
14 Writ of Mandate and hold that Respondents/Defendants acted properly in setting salaries
15 for the county employees performing work for Petitioner/Plaintiff.

16
17 **II.**
18 **COUNTY BOARDS OF SUPERVISORS HAVE PLENARY AUTHORITY OVER**
19 **COMPENSATION FOR COUNTY EMPLOYEES THAT CANNOT BE**
20 **DELEGATED**

21 All parties in this action agree that the individuals who work at the
22 Petitioner/Plaintiff Retirement Association are County employees. (Gov. Code, §§
23 31522.1, 31522.2, 31522.3.) Section 1(b) of article XI of the California Constitution
24 gives the governing body of each California county the plenary authority to provide for
25 the compensation of county employees. The provision reads:

26 The Legislature shall provide for county powers, an elected county sheriff,
27 an elected district attorney, an elected assessor, and an elected governing
28 body in each county. Except as provided in subdivision (b) of Section 4 of
this article, each governing body shall prescribe by ordinance the

1 compensation of its members, but the ordinance prescribing such
2 compensation shall be subject to referendum. The Legislature or the
3 governing body may provide for other officers whose compensation shall
4 be prescribed by the governing body. **The governing body shall provide
5 for the number, compensation, tenure, and appointment of employees.**

6 (Cal. Cont., art. XI § 1(b) (“Section 1(b)” (emphasis added).)

7 The courts have found that the Board of Supervisors has plenary authority
8 over county employee compensation. (*County of Sonoma v. Superior Court* (2009)
9 173 Cal.App.4th 322; *County of Riverside v. Superior Court* (2003) 30 Cal.4th
10 278.) In these cases, the courts reviewed State legislative efforts to require
11 mandatory interest arbitration after a county and bargaining unit reached impasse.
12 In both cases, the court concluded that such attempts at legislative interference
13 were impermissible because of the Board of Supervisors’ exclusive authority over
14 employee compensation. (*Ibid.*)

15 Plenary authority in the Board of Supervisors over employee compensation
16 should similarly be found in this case. Petitioner/Plaintiff relies on the language of
17 Government Code section 31522.1 as authority that it has salary setting authority. Even if
18 this were an accurate interpretation of the statute, which it is not, the statute itself would
19 be unconstitutional.

20 First, as the California Supreme Court noted, the history of Section 1(b) shows the
21 voters’ intent to vest control over compensation with the “Board of Supervisors.”
22 (*County of Riverside, supra*, 30 Cal.4th at p. 285-286.) Specifically, the Supreme Court
23 found that Section 1(b)’s predecessor, the former article XI, section 5, was amended in
24 1933 to “transfer control over compensation of most county employees and officers from
25 the Legislature to the *boards of supervisors.*” (*Voters for Responsible Retirement v.*
26 *Board of Supervisors* (1994) 8 Cal.4th 765, 772 (emphasis added).) “According to the
27 Supreme Court, the purpose of the 1933 amendment was ‘to give greater local autonomy
28 to the setting of salaries for county officers and employees, removing that function from
the centralized control of the Legislature.’ Thus, under section 1, subdivision (b) ‘the

1 county, not the state, *not someone else*, shall provide for the compensation of its
2 employees.’ ” (*County of Sonoma, supra*, 173 Cal.App.4th at p. 338, citing *County of*
3 *Riverside, supra*, 30 Cal.4th at p. 285, (emphasis added).)

4 Indeed, the ballot argument in favor of the 1933 amendment made clear that the
5 measure “‘gives the board *complete authority* over the number, method of appointment,
6 terms of office and employment, and compensation of all deputies, assistants, and
7 employees.’” (*County of Riverside, supra*, 30 Cal.4th at p. 286, citing Ballot Pamp.,
8 Special Elec. (June 27, 1933) argument in favor of Prop. 8, p. 10 (italics in original).)
9 Thus, the history of the constitutional provision shows that the public understood the term
10 “governing body” for purposes of setting employee compensation to mean the Board of
11 Supervisors, and the initiative power may therefore not be used to set compensation.

12 The statutory provision implementing Section 1(b) is Government Code section
13 25300. This section states: “*The board of supervisors* shall prescribe the compensation of
14 all county officers and shall provide for the number, compensation, tenure, appointment
15 and conditions of employment of county employees...” (Gov. Code, § 25300 (emphasis
16 added).) As noted by numerous courts, the specific reference to “board of supervisors”
17 rather than a generic reference to a legislative body is strong evidence of exclusive
18 delegation. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 512;
19 *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th
20 357, 373; *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 834; *Pettye v. City*
21 *and County of San Francisco* (2004) 118 Cal.App.4th 233, 242; *City of Burbank v.*
22 *Burbank-Glendale-Pasadena Airport Auth.* (2003) 113 Cal.App.4th 465, 476.)

23 The fact that the county has representation on the retirement boards is not a
24 sufficient replacement for the ultimate authority of the Board of Supervisors. The Board,
25 and the Board alone, sets county employee compensation. That authority cannot be
26 delegated by statute to the retirement boards, leaving the Board of Supervisors with no
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1 power to determine salaries, but only a ministerial obligation to adopt what has already
2 been approved.

3 Petitioner/Plaintiff’s reading of the relevant statutes as requiring the Board of
4 Supervisors to approve a salary ordinance put forward by the Retirement Board as a
5 ministerial act would impermissibly delegate salary setting authority of county employees
6 to a body other than the Board of Supervisors, and would be unconstitutional. This Court
7 has an obligation to interpret statutes to avoid unconstitutional results. (*Younger v.*
8 *Superior Court* (1978) 21 Cal.3d 102, 113.) The County’s interpretation of the statute that
9 provides ultimate authority over county employee salaries would do just that.

10 Nothing in article XVI, section 17 of the California Constitution changes this
11 analysis. As the courts have previously determined, “[t]he primary purposes of article
12 XVI, section 17 are to grant retirement boards the sole and exclusive power over the
13 management and investment of public pension funds and to ensure that the assets of
14 public pension systems are used to provide benefits and services to participants. (*Westley*
15 *v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1099-1100.) Thus, “the
16 ‘plenary authority that is granted over the ‘administration of the system’ goes to the
17 management of the assets and their delivery to members and beneficiaries of the system,
18 not to the remuneration of those who administer it.” (*Id.* at p. 1110.)

19 Both the history of Section 1(b) and its implementing legislation demonstrate an
20 intent to exclusively delegate the authority to set employee compensation to the Board of
21 Supervisors, and this Court should rule accordingly.

22 **III.**
23 **THE HISTORY OF THE LEGISLATURE’S ACTIONS ON THIS ISSUE SHOWS**
24 **A CLEAR INTENT THAT BOARDS OF SUPERVISORS HAVE AUTHORITY**
25 **TO SET THE SALARIES FOR COUNTY EMPLOYEES WORKING FOR**
26 **RETIREMENT SYSTEMS**

27 There is no better evidence that the Board of Supervisors has the authority to set
28 retirement association staff salaries than the special exceptions that have been granted to
four retirement associations to designate staff as employees of the retirement association

1 rather than the county. (See Gov. Code, § 31522.5 [San Bernardino County retirement
2 system senior staff are employees of the retirement system and not the County]; Gov.
3 Code, § 31522.11 [same for the Orange County retirement system]; Gov. Code, §
4 31522.10 [same for Ventura County]; Gov. Code, § 31522.9 [an even broader exemption
5 for Contra Costa County retirement system, specifying that all staff, not just senior level
6 staff, are employees of the retirement system and not the county].) It is a long-standing
7 rule of statutory interpretation that “where exceptions to a general rule are specified by
8 statute, other exceptions are not to be implied or presumed.” (*Wildlife Alive v. Chickering*
9 (1976) 18 Cal.3d 190, 195; *Burgos v. Superior Court* (2012) 206 Cal.App.4th 817, 837.)

10 There would have been no need for these statutory exemptions if the then-existing
11 statutes already allowed the retirement boards to determine the salaries for these
12 employees, and the Board of Supervisors had merely a ministerial duty to approve –
13 unchanged – whatever was submitted to them. Indeed, the legislative history of the
14 adoption of the exemptions supports the understanding that they were created specifically
15 to allow the retirement boards ultimate authority over salaries so they could have the
16 flexibility needed to recruit and retain specially trained professionals. (See, e.g., Assem.
17 Floor Analysis, 3d reading analysis of Assem. Bill No. 1992 (2001-2002 Reg. Sess.),
18 2002, par. 5²; Sen. Com. on Pub. Employment and Retirement, Analysis of Sen. Bill No.
19 1291 (2015-2016 Reg. Sess.) as amended May 27, 2015, par. 3³ [noting that making the
20 retirement association the employer was done for “purposes of determining [the
21 employees’] compensation and benefits”].)

22 Another legislative effort underscoring the general rule that the Board of
23 Supervisors controls county employee salaries, including those who work for retirement
24 associations, is AB 1853 (2016). That bill would have allowed retirement staff to be
25 employees of the retirement system in all 37 Act counties, acknowledging that impetus

26
27 ² Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200120020AB1992#

28 ³ Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1291#

1 for the bill was to eliminate the current process, which leaves the ultimate control over
2 staff structure and compensation to the Board of Supervisors. (See Assem. Floor
3 Analysis, Concurrence in Senate Amendments of Assem. Bill No. 1853 (2015-2016 Reg.
4 Sess.) as amended June 20, 2016, par. 5.⁴) Governor Brown ultimately vetoed AB 1853,
5 concluding that it was too far-reaching, and that any instances of removing Board of
6 Supervisors authority over the salaries of retirement system personnel should only be by
7 agreement between the county and the retirement system. “This more collaborative
8 approach better serves the public interest.” (Governor’s veto message to Assem. on
9 Assem. Bill No. 1853 (Sept. 23, 2016) Recess J. No. 15 (2015-2016 Reg. Sess.) p.
10 6632.)⁵

11 If the role of the Board of Supervisors is merely to approve, without changes, any
12 staffing and salary requests submitted by the retirement association, there would be no
13 need for any of these legislative acts. The retirement boards could simply create positions
14 and set salaries for those positions, and then submit an ordinance to the Board of
15 Supervisors to “rubber stamp” it. The fact that some retirement boards have been
16 exempted from the need to defer to Board of Supervisor salary authority, and that an
17 effort to allow all to do the same was rejected, clearly establishes the intent of the statutes
18 applicable to this case to vest the Board of Supervisors with authority over compensation.

19 **IV.**
20 **THE STATUTORY SCHEME PROVIDES FOR COORDINATION, BALANCE**
21 **AND ACCOUNTABILITY IN RETIREMENT SYSTEM STAFFING AND**
22 **COMPENSATION**

23 The process for employee classification and compensation is designed so that the
24 county and retirement systems must work together through a meet-and-confer process
25 prior to presentation to the Board of Supervisors. The "take it or leave it" approach
26 sought by LACERA would undermine this process. For this reason, CSAC opposed AB

27 ⁴ Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1853#

28 ⁵ Available at: https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB_1853_Veto_Message.pdf

1 1853, noting, among other things, that a “lack of review or oversight by the county Board
2 of Supervisors regarding the hiring, pay and benefits of employees and the increase in
3 system administrative costs that would be incurred by the county is problematic.”

4 Indeed, both sides have a vested interest in effective administration of the
5 retirement system, and any disputes in classification or compensation are usually resolved
6 in a manner that meets the needs of both organizations. This cooperative process works
7 well for ensuring that retirement system staff are classified and compensated on par with
8 other county staff, while allowing retirement boards to carry out their fiduciary duties to
9 the retirement system.

10 In any event, regardless of how one views the relative merits of this cooperative
11 system, it is the policy determination made by the Legislature. The Legislature has made
12 exceptions for individual retirement systems, making clear that in those systems only,
13 certain staff are employees of the retirement system rather than county employees.
14 However, the Legislature has not done so here, and so long as these employees remain
15 county employees, the constitution requires that the Board of Supervisors retain plenary
16 authority over their compensation.

17 **V.**
18 **CONCLUSION**

19 For all of these reasons, Amicus Curiae CSAC urge this Court to deny the Petition
20 for Writ of Mandate and rule that the Board of Supervisors has authority to set
21 compensation for county employees, including those performing work for
22 Petitioner/Plaintiff.

23 DATED: October 12, 2022

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