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September 30, 2016

Honorable Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Amici Curiae* Letter in Support of Petition for Review of *Marin Association of Public Employees, et al. v. Marin County Employees' Retirement Association, et al.* Court of Appeal Case No. A139610, California Supreme Court Case No. S237460

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

This letter is written pursuant to California Rule of Court 8.500(g) in support of the Petition for Review ("Petition") filed by Petitioners Marin Association of Public Employees, et al., in *Marin Association of Public Employees, et al. v. Marin County Employees' Retirement Association, et al.* (2016) 2 Cal.App.5th 674 ("*Marin*"), and is submitted on behalf of the public employee associations identified below.¹ *Amici* urge the Court to grant review and overturn

¹ Oakland Police Officers Association, Contra Costa County Deputy Sheriffs Association, Fresno Police Officers Association, San Diego Deputy Sheriffs Association, Organization of SMUD Employees, San Francisco Deputy Sheriffs Association, BART Police Management Association, Kern Law Enforcement Association, Anaheim Police Association, Berkeley Police Association, Richmond Police Officers Association, Pasadena Police Officers Association, Stockton Professional Firefighters – Local 456, Hemet City Firefighters Association – Local 2342, Daly City Firefighters – Local 1879, San Luis Obispo Deputy Sheriffs Association, San Leandro Police Officers Association, San Mateo Police Officers Association, Milpitas Police Officers Association, Palo Alto Police Officers Association, Union City Police Officers Association, Rohnert Park Police Officers Association, Santa Cruz Deputy Sheriffs Association, Santa Clara County District Attorney Investigators Association, Antioch Police Officers Association, Pleasant Hill Police Officers Association, Santa Clara Public Safety Non-Sworn Employees Association, Whittier Police Officers Association, Huntington Beach Police Officers Association, Garden Grove Police Association, Brea Police Association, Los Alamitos Police Officers Association, Corona Police Officers Association, Los Gatos Police Officers Association, Salinas Police Officers Association, Butte Deputy Sheriffs Association, Huntington Park Police Officers Association, Hayward Police Officers Association, Bakersfield Police Officers Association, Fontana Police Benefit Association, Santa Rosa Police Officers Association, Emeryville Police Officers Association, Humboldt Deputy Sheriffs Organization,

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Marin in order to reaffirm the *Amici* association members' rights to the pension entitlements promised to and secured by them in exchange for their valuable services as public employees.

Amici Curiae Interests

Amici associations represent over fourteen thousand public employees serving cities, counties, and special districts from all major geographic regions of this state. *Amici* associations are charged with representing their members in all matters of employee-employer relations with their respective public entity employers, including bargaining for their members' compensation and benefits. *Amici* associations' members are current (active) members, and expected retired beneficiaries, of the California Public Employees' Retirement System, county employee retirement associations operating under the County Employees Retirement Law of 1937 ("CERL"), Government Code section 31450 *et seq.*, and independent local retirement systems operating pursuant to state law. These dedicated public servants have worked and made financial contributions and concessions throughout their entire careers as public servants in order to receive the expected pension benefits advertised by their employers and recognized by the courts as "defined" benefits substantially protected by the Contract Clauses of the state and federal constitutions.

Amici associations have an interest in protecting their members' expected pension benefits by assuring that the long-standing legal protections for those benefits, which *Marin* seeks to eviscerate, are upheld and preserved.

Should the Petition be granted, *Amici* associations intend to submit a brief urging this Court to overturn *Marin* and reestablish uniformity in the law by affirming that the pension benefits promised to their members upon acceptance and commencement of employment remain fully protected by the Contracts Clauses of the state and federal constitutions.

Eureka Police Officers Association Foster City Police Officers Association, Ukiah Police Officers Association, Vacaville Managers Organization, Madera County Deputy Sheriffs Association, Pittsburgh Police Officers Association, San Diego Schools Police Officers Association, Brentwood Police Officers Association, Concord Police Association, Daly City Police Officers Association, Livermore Police Officers' Association, Novato Police Association, San Rafael Police Association, San Ramon Police Officers' Association, Sonoma County Deputy Sheriffs Association, South San Francisco Police Officers Association.

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This Court's Review of *Marin* is Necessary to Restore *Amici* Association Members' Rights to the Pension Benefits Promised Them Upon Acceptance and Commencement of Employment

For almost seventy years, California courts have consistently held that the “defined” pension benefits promised to active public employees cannot be reduced without providing an off-setting “comparable new advantage.” Widely known as the “California Rule,” this Court has stated that “[w]ith respect to active employees, we have held that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages.” (*Allen v. Bd. of Retirement* (1983) 34 Cal.3d 114, 120, emphasis added.)

Allen's reiteration of the California Rule followed decades of judicial interpretations that consistently required a “comparable new advantage” whenever promised pension benefits were to be reduced or substantively modified to any employee's disadvantage. The requirement operated to reliably and substantially maintain expected pension benefits at the levels that existed when employees accepted and commenced their public employment. (*Allen v. City of Long Beach* (1955) 45 Cal.2d 128; *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438; *Betts v. Board of the Public Employees' Retirement System* (1978) 21 Cal.3d 859; *Olson v. Cory* (1980) 27 Cal.3d 532.) This Court continued to affirm the requirement of a comparable new advantage to offset reductions in promised pension benefits after *Allen*: “the state as employer is permitted to make reasonable modifications to the pension system during the employment relationship, so long as employees receive ‘comparable new advantages’ in return for any substantial reduction in benefits.” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 520, emphasis added.)

In addition to this Court's unambiguous precedent applying the California Rule, numerous appellate courts have relied upon it to invalidate reductions and substantive disadvantageous modifications in pension benefits that were not offset by comparable new advantages. Most notably, the same appellate district that issued *Marin* recently affirmed *Allen*'s requirement for an offsetting comparable new advantage. (*Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619, 628-629 [“With respect to active employees, ... any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, *and, when resulting in a disadvantage to employees, must be accompanied by comparable new advantages.*” Original italics and underline added].)

Marin jettisoned the long-standing California Rule and did so in a remarkably result-oriented manner. *Marin*, without question, is the first and only case to conclude that “the word ‘must’ was [not] intended to be given the literal and inflexible meaning attributed to it” by this

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Court and decades of appellate court opinions. (*Marin, supra*, 2 Cal.App.5th at p. 698.) Instead, *Marin* finds that the California Rule, despite almost seventy years of consistent understanding and application, was seemingly misunderstood. According to *Marin*, “[s]o long as the Legislature’s modifications do not deprive the employee of a ‘reasonable’ pension, there is no constitutional violation.” (*Id.* at p. 680, emphasis added.) Notably, the *Marin* court uses the phrase “so long as” to convey the legal requirement of “a reasonable pension.” This Court did the same in *Legislature v. Eu* (1991) 54 Cal.3d 492, 529, to convey the legal requirement of a comparable new advantage.

Marin represents an abrupt and extremely disruptive misapplication of the law. For this reason alone, this Court should grant the Petition to secure uniformity in existing case law on this important issue and alleviate the confusion and instability that has ensued. (California Rule of Court 8.500(b)(1).)

Securing uniformity in this matter requires overturning *Marin* and reaffirming the rights of public employees to the pension benefits they were promised and rightly expected based on the existing state of the law. Because those employees’ “contractual pension expectations are measured by benefits which [were] in effect not only when employment commence[d], but which [were] thereafter conferred during the [] subsequent tenure” (*Olson, supra*, 27 Cal.3d at 540), *Marin* is flatly wrong in asserting that the public employees represented by the Petitioners in *Marin* had their pension benefits reduced to a level that was “reasonably to be expected from the contract.” (*Marin, supra*, 2 Cal.App.5th at 701.) Contrary to *Marin*, public employees could reasonably expect, based on established legal precedent, to receive the pension benefits promised to them upon acceptance and commencement of their employment and thereafter conferred during their employment.

Not only does *Marin* unwind decades of basic pension jurisprudence, it exposes the defined pension benefits promised to public servants to an undefinable and unworkable standard of “reasonableness.” This risk results from *Marin*’s failure to offer a coherent definition of what a “reasonable” pension may be or a framework for making such a determination. *Marin*’s only attempt at guidance on this foundational issue sets the lowest boundary of reasonableness at slightly above “actual abolition, a radical reduction of benefits, or a fiscally unjustifiable increase in employee contributions.” (*Marin, supra*, 2 Cal.App.5th at 702.) It is difficult to imagine how any public employee could maintain a “reasonable expectation” to any level of future pension benefits based on such an approach. More importantly, this standard simply ignores prior pronouncements by this Court that substantive reductions in pension benefits are reasonable only where they are off-set by comparable new advantages for employees. (*Betts, supra*, 21 Cal.3d at 864 [“[t]o be sustained as reasonable...changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages”] quoting *Allen, supra*, 45 Cal.2d at 131; *International Assn. of Firefighters v. City of San Diego* (1983) 34 Cal.3d 292, 301

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[“such modifications should be reasonable,’ and to be sustained as such...‘changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.’”].)

And of course, *Marin's* approach operates to disadvantage only one side of the employer-employee relationship. Surely no employer would agree to compensate its full-time employees at a defined rate for a “reasonable” amount of services. However, *Marin* forces employees to provide services in exchange for a pension benefit that may be readily adjusted to an amount deemed amorphously “reasonable.” This exposes public employees to the unilateral power of politically-governed bodies to modify, reduce or eliminate promised compensation in the form of pension benefits for no reason other than political expediency. Such an outcome does not resemble a “contract” under any definition in American jurisprudence. In fact, the likely result from tipping the scales so drastically in favor of the employer will be the inability of any public employer to hire and retain the most competent and qualified individuals to serve the public interest.

Amici associations urge this Court to grant the Petition and overturn *Marin*, to reaffirm the rights of California’s public employees to the pension benefits promised to them in return for their dedication to a career of public service.

Respectfully submitted,

RAINS LUCIA STERN, PC



Rockne A. Lucia, Jr.

RAL:msv

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PROOF OF SERVICE BY REGULAR MAIL

I declare that I am employed in the County of Contra Costa, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2300 Contra Costa Boulevard, Suite 500, Pleasant Hill, CA 94104. On September 30, 2016, I served the enclosed:

LETTER IN SUPPORT OF PETITION FOR REVIEW

on the parties in said cause (listed below) by placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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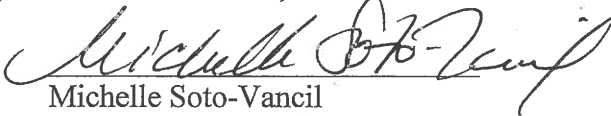
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I declare under the penalty of perjury that the foregoing is true and correct, and that this declaration of executed on September 30, 2016 at Pleasant Hill, California.


Michelle Soto-Vancil