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October 13, 2016

Supreme Court of California
350 McAllister Street
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Re: **Letter in Support of Petition for Review and/or Depublication of *Marin Association of Public Employees, et al. v. Marin County Employees' Association, et al.* by Amicus Teamsters Joint Council No. 7**
Supreme Court No. S237460 (Ct. of Appeal No. A139610)

To the Honorable Justices of the California Supreme Court:

Teamsters Joint Council No. 7 ("Teamsters") is a council of labor unions affiliated with the International Brotherhood of Teamsters, Change to Win. Teamsters and its affiliated local unions represent over 100,000 employees in Northern California, the Central Valley and Nevada, of which approximately 25,000 are employed by local agencies, governments and other subdivisions of the state of California. Teamsters' public sector members participate in county plans governed by the County Employees Retirement Law (CERL), the California Public Employees Retirement System (CalPERS) through local agency contracts, the University of California Retirement Plan, and in pensions systems administered by local districts and charter cities. Regardless of the particular pension system, the Court of Appeal's decision in *Marin Association of Public Employees, et al., v. Marin County Employees' Association, et al.*, affects all such members because it re-writes California constitutional law applicable to public employees whose terms of employment include participation in a public pension system.

Teamsters therefore has a strong interest in the Court's review of the Court of Appeal's decision, namely, the extent to which a pension plan may be amended with respect to active employees. For the following reasons Teamsters joins in Petitioners' request for review of the Court of Appeal's decision.

1. The Court of Appeal Has Overturned Supreme Court Precedent

The decision of the Court of Appeal, First Appellate District, establishes a new standard under which a public employer's modifications to a pension system are to be evaluated under the California Constitution's contracts clause. The decision is an improvident departure from longstanding precedent, and should be reviewed by the Justices. Although the Court of Appeal's decision concedes that a public employees' entitlement to receive the pension offered at the time she accepts employment is a "vested right" protected from impairment by the contracts clause, its reasoning proceeds to unravel that right by permitting modifications to employees' pensions provided the adverse effects sustained by the employees fall short of "abolishing" or "destroying" the pension. (Slip Op. p. 28).

The Court of Appeal's conclusion is contrary to this Court's precedent, which holds that modifications to pension plans are permissible if they are reasonable, and the litmus test to establish whether a modification is reasonable is whether it does not result in an impairment. Thus modifications have been permitted provided the value of the pension being earned by an employee will match the value received at retirement. In that regard -- and in order to ensure a modification does not result in a substantial impairment – this Court has long held that any detriment occasioned by a modification must be offset by a "commensurate advantage," as described in the Petition for Review.

The doctrine is long-standing, practical, and necessary to ensure employees are not deprived of the benefit of the bargain they made in their younger years when, ultimately, the contract right matures in the autumn of their productive lives. The Court of Appeal described this concept dismissively as a "quid pro quo" theory (Slip. Op. pp. 26 & 36), however, the rule is necessary to ensure the value of a promised pension is maintained

over successive decades - and potentially through successive modifications – and through the employees' career and retirement.

This doctrine, overturned by the Court of Appeal, is derived from the law of contracts. The contracts clause enshrines the obligation on the part of the government to adhere to its contractual commitments when dealing directly with private citizens, including its employees. The Court of Appeal's decision contains several errors of law, most of which derive from its failure to appreciate the contractual nature of public employee pensions.

2. Contractual Nature of Public Pension Rights

The Court of Appeal's error is revealed in its approach to the constitutional question, to which it applies a statutory rather than a contract analysis. This Court has often stated that "[p]ension rights, ha[ve] long been characterized as within the domain of contract." (*California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 50). California jurisprudence has been consistently firm on this point, repeatedly characterizing public pensions in contract language such as inducement, bargain and exchange:

> In addition to providing subsistence for the old-age or disability of individual employees and their dependents, public pension plans serve the public purpose of *inducing* qualified persons to enter and continue in public service.

(*Phillipson v. Board of Administration* (1970) 3 Cal.3d 32, 49 (emphasis added); *Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1020 ["The pension system serves as an inducement to enter and continue in the state service."].)

For this reason, public pensions are central to the employment contract between the state and its, and its subdivisions', employees. As summarized by the Court of Appeal in *Santin v. Cranston* (1967) 250 Cal.App.2d 438, 444:

> Pensions for public employees are based upon the theory that such a pension is an *integral* part of the employee's compensation *under his contract of employment*, and that one of the primary purposes of

> offering a pension, as additional compensation, is to *induce* competent persons to enter and remain in public service.

(emphasis added; citing *Kern v. City of Long Beach*, 29 Cal.2d 848, 851-853, 855, 856; *French v. French*, 17 Cal.2d 775, 777; *Dryden v. Board of Pension Com'rs of City of Los Angeles*, 6 Cal.2d 575, 579; and *Packer v. Board of Retirement*, 35 Cal.2d 212, 215.)

In the instant case, the Court of Appeal ignored this precedent by blithely describing pensions as creatures of statute and therefore subject to revision at the whim of the legislature through exercise of its police power (Slip Op. at p. 35 ["The Legislature's involvement would obviously take statutory form, which is relevant because the terms and conditions of public employment are fixed by statute and not by contract."]; internal notations omitted).)

To be sure, the terms of pension plans, when offered by the government, are contained in statutes, ordinances or charters but that does not render the rights generated creatures of statute rather than contract. That point was made plain in *Kern v. City of Long Beach*, 29 Cal.2d 848, 852: "The pension provisions of a city charter are an *indispensable* part of the *contract of employment between a city and its employees*, creating a right to pension benefits as an integral part of compensation payable *under such contract*, which vests upon acceptance of employment." (emphasis added). Clearer still, is this Court's formulation in *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 351:

> [A] charter city, possessed of plenary power to adopt a pension system imposing upon it a general obligation, cannot escape liability for those pension payments which it has led its employees reasonably to expect. *In this respect it is no different than any other employer or public service institution which induces reliance upon a contract which may reasonably be interpreted to afford that protection which has been impliedly promised.*

(*Id.*, at 352; see also *Carmon v. Alvord* (1982) 31 Cal.3d 318, 325 n.4 ["Public pension benefits are created to serve as an inducement to enter and continue in public employment and to provide *agreed* subsistence to retired

public servants who have *fulfilled their employment contracts*."]; emphases added.)

When properly understood as a contractual obligation involving employee compensation, the circumstances under which the terms of a pension system may be changed as to existing employees is exceedingly narrow.

3. Public Employee Pension Laws are Not General Regulations

The Court of Appeal revised this Court's precedent through reliance on a formulation of the contracts clause applicable to laws of general regulation that may have he incidental effect on upending private contracts. That doctrine is distinct, and hardly implicates contracts clause doctrine applicable here which, as indicated above, involves the state's own contracts with its employees.

At pages 29-31 of its decision, the Court of Appeal set forth its reasoning on this point, providing citations intended to establish the state's power to dramatically modify pension laws as to existing employees, that exclusively entail amendments to general regulatory laws. For example, it relied on *Griffith v. State of Conn.* (1910) 218 U.S. 563, 569 (at Slip Op. p. 31) which involved general regulation of interest rates. *Griffith* itself indicates it does not support application here, noting: "It is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of a state for the use of money loaned within the jurisdiction of the state is one within the police power of such state." Similarly, the Court of Appeal relied on *Stephenson v. Binford* (1932) 287 U.S. 251, 265, which involved a regulation of public highways that affected private common carriers. The Court of Appeal also cited *Stone v. State of Mississippi* (1879) 101 U.S. 814, 817–18, which involved the revocation of a public charter of a public corporation, a lottery commission, which was permitted because the contracts clause does not apply to the relationships between or among governmental subdivisions of the state. (*Id.*) Further, the Court of Appeal's citations to *National Ice etc. Co. v. Pacific F. Exp. Co.* (1938) 11 Cal.2d 283 and *Western Contracting Corp. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 341, are also misplaced

because those cases involve the power to tax, which of course does not implicate a state's own contracts.

Later, at page 35 of its opinion, to justify its holding, the Court of Appeal again returns to the concept of the Legislature's reserved power to regulate stating: "Restricting their unyielding focus to only their 'vested rights' has led plaintiffs to pay insufficient attention to the ever-present possibility of legislative involvement, one of the 'essential attributes of sovereign power' that is always to be consulted," (Slip Op. at p. 35), citing *Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 435. However *Home Building* involved general legislation adopted following the Great Depression that enacted longer timelines before banks could foreclose on mortgages, it did not involve the state's own contractual obligations.

The Court of Appeal's error was to equate a state's own contractual obligations as identical to a state's power to regulate industries. This error is best exemplified by this pronouncement : "[t]he Legislature's involvement [in public pensions] would obviously take statutory form, which is relevant because t]he terms and conditions of public employment are fixed by statute and not by contract" and "The statutory provisions controlling the terms and conditions of [public] employment cannot be circumvented by purported contracts in conflict therewith." (Slip Op. at p. 35).[1]

By relying on cases involving the legislature's "inherent right" to legislate, the Court of Appeal's returns to the outmoded doctrine, long rejected by this Court, that pensions are equivalent to statutes that set compensation or tenures of employment which may be amended at any time. (E.g. *Dodge v. Board of Education of City of Chicago* (1937) 302 U.S. 74, 78–79 ["On the other hand, an act merely fixing salaries of officers creates

[1] On page 36 of its Slip Opinion, the Court of Appeal quoted *Miller*, a pension case as stating pensions are "subject to the implied qualification that the governing body may make reasonable modifications," however the Court of Appeal left out the rest, in which *Miller* defined "reasonable" stating: "To be sustained as reasonable… changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." Thus *Miller* does not support the Court of Appeal's reasoning the Legislature has retained or reserved authority to undermine the values of employees' pension rights.

no contract in their favor, and the compensation named may be altered at the will of the Legislature."])

4. The Court of Appeal Should Have Applied the Public Contract Doctrine

Although the US Supreme Court has reiterated the concept that the "function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal," an important caveat applies with respect to the state's own obligations: "Nevertheless, it is established that a legislative enactment may contain provisions which, *when accepted as the basis of action by individuals*, become contracts between them and the State or its subdivisions within the protection of" the contracts clause. (*State of Indiana ex rel. Anderson v. Brand* (1938) 303 U.S. 95, 100 [Teacher tenure statute created contract right protected by contracts clause.].) As noted above, one of the fundamental purposes of a pension system is to induce action by individuals, namely, to enter public service.

When evaluating a contracts clause challenge to a state's abrogation of its own contract, as opposed to the adoption of generally-applicable laws that may unsettle private contractual commitments, a stricter analysis applies. That analysis accords no deference to the Legislature's prerogative to enact new laws. "[I]mpairments of a state's own contracts ... face more stringent examination under the Contract Clause than would laws regulating contractual relationships between private parties." (*Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 245; *University of Hawai'i Professional Assembly v. Cayetano* (1999) 183 F.3d 1096, 1105 ["the Contract Clause is especially vigilant when a state takes liberties with its own obligations."])

Indeed, "*in almost every case*, the Court has held a governmental unit to its contractual obligations when it enters financial or other markets." (*Energy Reserves Group, Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 412 n. 14 ["In the present case, of course, the stricter standard of *United States Trust Co.* does not apply because Kansas has not *altered its own* contractual obligations."]; emphases added.)

When evaluating the state's impairments of its own contracts,[2] this Court applies *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1. The doctrine applies in the context of public employee pensions and, therefore, reviews of such pension legislation applicable to current employees are reviewed with a skeptical and jaundiced eye and without regard to the inherent authority of the Legislature. In *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, the Court quoted *U.S. Trust* with approval:

> A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

(See also *Pasadena Police officers Assn. v. City of Pasadena* (1983) 147 Cal.App.3d 695, 704, n. 3).

The latitude the Court of Appeal conferred on the State under the contracts clause with respect to modifying or reducing pension benefits was incorrect as a matter of law because the cases involves the state's own contractual relationships with its employees.

Contract law strictly requires those who enter into contracts with the government to abide by their terms as they would with any private party, no matter how onerous the terms may subsequently become. (*Rock Island A. & L.R. Co. v. U.S.* (1920) 254 U.S. 141, 143 ["Men must turn square corners when they deal with the Government."]; *Varljen v. Cleveland Gear Co., Inc.* (6th Cir. 2001) 250 F.3d 426, 430 ["Parties that contract with the

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[2] It matters not that the intervening law here, the Public Employees Pension reform Act of 2013, was enacted by the state but this case involves a county. See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 314 n. 17 (rejecting argument that state statute affecting contract with county was not subject to stricter contracts clause review because "[a]cceptance of this theory would require us to hold that the state may compel a local entity to impair an obligation which the local entity itself would be precluded from breaching under the contract clause.")

government are held to the letter of the contract-irrespective of whether the contract terms appear onerous from an ex post perspective, or whether the contract's purpose could be effectuated in some other way."].)

Crucially, this obligation to "turn square corners" is bilateral: "It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government." (*U.S. v. Winstar Corp.* (1996) 518 U.S. 839, 886; *Heckler v. Community Health Services of Crawford Cty., Inc.*, 467 U.S. 51, 61, n. 13). This Court has adopted this maxim, noting in *Farrell v. Placer County* (1944) 23 Cal. 2d 624, 628, "If we say with Mr. Justice Holmes, 'Men must turn square corners when they deal with the Government', It is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens."

As a matter of constitutional policy, the government is to be held to its contractual commitments, and for nearly a century this Court has defined public pensions as contractual commitments made to employees to induce entering into the public service. By reaching a determination that permits the government to amend the terms of its own contracts in its favor, the Court of Appeal has departed from these principles and the stringent doctrine applicable to governmental entities that legislate for themselves favorable amendments to their own contracts.

5. Proper Application of the Contracts Clause

A proper application of contracts clause doctrine applicable to public employee pensions would have required a finding that the Petitioners' complaint alleged an impairment of a vested right. Whether such impairment was permissible, as a result of exigent or dire circumstances, is a factual issue the resolution of which is not appropriate on demurrer. The Court of Appeal therefore erred in affirming the trial court's decision to sustain the demurrer.

Indeed, the County and the State face a steep burden in establishing a justification for an impairment. As summarized by the Court of Appeal in a prior decision, "the existence of an important public purpose is not necessarily enough in itself to justify a substantial contractual impairment"

because "[i]t is settled that governmental entities are bound by their debt obligations." (*United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095; Citing cases) And "a desire to reduce costs or limit public spending does not justify the abrogation or impairment of a public entity's contractual obligations notwithstanding the legitimacy of such a public purpose." (*Id.*; citing *Lynch v. United States* (1934) 292 U.S. 571, 580; United States Trust Co. v. New Jersey, supra, 431 U.S. at p. 26, fn. 25, 97 S.Ct. at p. 1519, fn. 25; *Abbott v. City of Los Angeles*, supra, 50 Cal.2d at p. 455; *Larionoff v. United States* (D.C.Cir.1976) 533 F.2d 1167, 1179–1180). By failing to hold the state or the county to its burden, the Court compounded its error of law.

6. Conclusion

The Court of Appeal's decision provide public employers a "free pass" with respect to public employee pension contracts, provided the pension is not "destroyed" or "abolished." The Court of Appeal's holding is a dramatic reformulation of this Court's precedent. Worse is that the decision is predicated on a misunderstandings of constitutional law and foundational precedent.

For the foregoing reasons, Teamsters respectfully urges the Court to depublish or grant review of the Court of Appeal's decision in *Marin Association of Public Employees v. Marin Co*unty Employees Retirement System.

Respectfully Submitted,

Teague P. Paterson

TPP/tg
Attachment: Certificate of Service

cc: Rome Aloise, Joint Council 7

PROOF OF SERVICE

I declare that I am employed in the City of Oakland, County of Alameda, California. I am over the age of eighteen years and not a party to the within cause. My business address is 483 Ninth Street, Suite 200, Oakland, California 94607. On October 13, 2016, I served the enclosed:

Letter in Support of Petition for Review and/or Depublication of *Marin Association of Public Employees, et al. v. Marin County Employees' Association, et al.* by Amicus Teamsters Joint Council No. 7
Supreme Court No. S237460 (Ct. of Appeal No. A139610)

by mail to the parties in said cause (listed below) by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail. Mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

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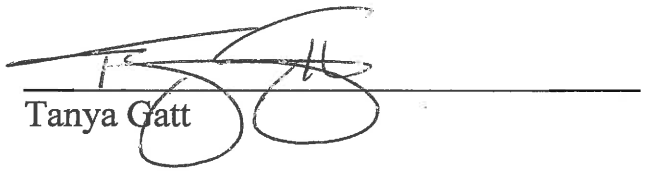
I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 13, 2016, at Oakland, California.



Tanya Gatt