

DAVID P. MASTAGNI
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ANDREW R. MILLER
ERIN M. DERVIN
KYLE A. WENDE
EDWARD W. LESTER
KENNETH A. BACON

Sacramento Office
1912 I Street
Sacramento, CA
95811-3151
(916) 446-4692
Fax (916) 447-4614
Tax ID #94-2678460



Ontario Office
3400 Inland Empire Blvd STE 101
Ontario, CA
91764-5577
(909) 476-3560

Chico: (530) 895-3836
San Jose: (408) 292-4802
Stockton: (209) 948-6158

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GREGORY G. GOMI
ACE T. TA
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JOSHUA A. OLANDE
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www.mastagni.com
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March 10, 2017

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

Re: CAL FIRE LOCAL 2881 (formerly known as CDF Firefighters), et al. v. California Public Employees' Retirement System – Alameda County Sup. Ct. Case No. RG12661622, First Appellate Dist. Case No. A142793 – Letter in Support of Petition for Review filed by CAL FIRE LOCAL 2881 (formerly known as CDF Firefighters)

Dear Chief Justice Cantil-Sakauye and Associates Justices:

This letter brief in support of granting review is submitted on behalf of Amici Curiae, the Deputy Sheriffs' Association of Alameda County; El Dorado County Deputy Sheriff's Association; Los Angeles Airport Peace Officers' Association; Kern County Firefighters, IAFF Local 1301; Los Angeles City Attorneys' Association; Sacramento Area Firefighters, IAFF Local 522; Stockton Police Officer's Association; Ontario Police Officers' Association; Sacramento Police Officers Association; Sacramento County Deputy Sheriff's Association; San Bernardino County Public Attorneys Association; Monterey County Deputy Sheriffs' Association; Vallejo Police Officers' Association; Mountain View Firefighters, IAFF Local 1965; and Yuba County Probation Peace Officers' Association. Amici Curiae urge this Court to grant Petitioner CAL FIRE Local 2881's petition for review in the above-referenced case, to correct the appellate court's unjustified reliance on the flawed reasoning set forth in *Marin Association of Public Employees, et al.* (2016) 2 Cal.App.5th 674 ("*MAPE.*")

The appellate court's decision echoed the opinion in *MAPE*, which upended nearly 70 years of jurisprudence since *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, recognizing that public employees' contractual right to pension benefits vests upon acceptance of employment, and that any subsequent modifications resulting in a

disadvantage to employees must be offset by comparable new advantages. The appellate court approved the rule set forth in *MAPE*, ruling the State may reduce pension benefits without providing employees any new offsetting advantages. (Opinion, p.14; *see also Marin Association of Public Employees v. Marin County Employees' Retirement Association* (2016) 2 Cal.App.5th 674, 698, review filed (Sept. 26, 2016) (“*MAPE*”).) This Court has granted review of the appellate court’s ruling in *MAPE*.

Amici asks the Court to grant review in this case to reaffirm the decades of jurisprudence protecting the vested rights of employees’ pension benefits. Alternatively, Amici ask the Court to de-publish the appellate court’s decision.

I INTEREST OF AMICI CURIAE

The Amici Curiae are labor organizations representing thousands of state and local public safety employees who will be adversely impacted by the erosion of their constitutional protections under the Contracts Clause. Amici Curiae and their members are frequent targets of public entities’ efforts to redirect revenues from funding promised benefits to more glamorous spending priorities under the auspices of “pension reform.” Public agencies have tried to impair Amici’s members’ pension through a variety of schemes, such as declaring “fiscal emergencies,” submitting ballot measures to cut pensions, amending the California Contracts Clause, and eliminating cost of living adjustments to retiree health benefits.

The appellate opinion invites future efforts to erode the vested rights doctrine and to conjure up new methods of reducing pension obligations. Unless corrected, the lower court’s reliance on *MAPE* to justify the reduction of a vested right will create uncertainty in the efficacy of this Court’s ruling in *Allen v. Board of Administration* (1983) 34 Cal.3d 114 and the court’s grant of review in *MAPE*. Should this Court reverse *MAPE*’s repudiation of *Allen*, this opinion will confuse the vested rights jurisprudence. Many of the Amici have already urged this Court to grant review in *MAPE* and uphold *Allen*. Accordingly, Amici have a strong interest in seeking review in this case to confirm this Court’s jurisprudence holding 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.” (*Id.* at 120.)

Additionally, Amicus Deputy Sheriffs Association of Alameda County (“ACDSA”) and several of its members are petitioners in a case currently pending before the First District Court of Appeal, seeking to invalidate changes to the pension formulae used to

calculate Alameda County employees' pension benefits. [*Alameda County Deputy Sheriff's Association et al. v. Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees Retirement Assn. et al.*, Case No. A141913]. In granting review in *MAPE*, this Court deferred further action in the case pending the First Appellate District's decision in the Alameda case.

II PROCEDURAL HISTORY

The Petitioners are state employees, and their labor union, whose pension benefits are administered by the Respondent, the California Public Employees' Retirement System ("PERS.") They filed this case in 2013, after the Legislature enacted the Public Employees Pension Reform Act ("PEPRA.") PEPRA repealed Government Code section 20909, a pension statute, which previously allowed state and local employees to purchase additional service credit towards their retirement benefits.

Petitioners sued, seeking to compel PERS to allow future purchases of service credits for qualifying employees who were employed prior to the enactment of PEPRA. The trial court held a hearing on the petition in February 2014, and issued a final order on the petition in June, 2014, denying it. The Petitioners subsequently appealed the matter to the First District Court of Appeal.

The appellate court upheld the trial court's ruling, finding that the employees did not have a vested right to purchase service credit under Section 20909. The court went on to discuss whether the Contracts Clause would bar the State from eliminating the opportunity to purchase service credit without providing a new offsetting advantage. In so doing, the court acknowledged with approval the appellate decision in *MAPE*, asserting that the Contracts Clause did not require the State to provide an offsetting new advantage when it modified employees' pension benefits. (Opinion, p. 14.)

III REVIEW IS NECESSARY TO SETTLE IMPORTANT LEGAL QUESTIONS AND ENSURE UNIFORMITY OF DECISION

Review is proper when necessary to secure uniformity of decision or to settle an important question of law. (Cal. Rules of Court, rule 8.500(b)(1).)

The lower court refused to adhere to this Court's precedent by reducing the requirement to offset new disadvantages in a pension modification to a mere suggestion.

In so doing, the court created confusion as to the circumstances in which pensions may be cut, causing irreconcilable conflicts of law.

In this case, the appellate court followed its own decision in *MAPE*, which effectively overturned *Allen v. Board of Administration, supra*, and its progeny based on its assertion that this Court did not understand or intend for its use of the term “must” to be afforded its “literal” meaning. (*See, MAPE, supra*, 2 Cal.App.5th. at 698.) Over sixty years ago, this Court held “[t]o be sustained as reasonable, alterations of employees’ pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.” (*Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131.) Consistent with its authority, in 1983 this Court confirmed that the provision of comparable new advantages was mandated when pension changes resulted in new disadvantages to employees. (*Allen v. Board of Administration, supra*, 34 Cal.3d at 120.) Despite over two decades of ensuing case law upholding this jurisprudence, an inferior appellate court purports to have corrected this Court and has contravened its *stare decisis*.

Pension benefits have long been held deferred compensation. (*Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1606-7.) Public employees obtain a vested contractual right to earn retirement benefits upon accepting employment. (*Betts v. Board of Administration*, 21 Cal.3d 859, 864; *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853; *Miller v. State of Cal.* (1977) 18 Cal.3d 808, 817; *Carman v. Alvord* (1982) 31 Cal.3d 318, 325.) They are entitled to continue earning additional retirement benefits through continued service under the terms originally promised by the employer. (*See Legislature v. Eu* (1991) 54 Cal.3d 492, 530; *Pasadena Police Officers Assn. v. City of Pasadena* (“*Pasadena*”) (1983) 147 Cal.App.3d 695.) Public employees also have a vested right to any additional retirement benefits established during their employment. (*County of Orange v. Assn. of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 41-42.)

Pension benefits are an “element of compensation” and a “vested contractual right” that cannot be removed “without impairing a contractual obligation of the employing public entity.” (*Betts, supra*, at 863-64.) Once vested, the employer can only make reasonable modification to the pension benefits. (*Maffei v. Sacramento County Employees’ Retirement System* (2002) 103 Cal.App.4th 993, 999-1000.) To be sustained as reasonable, alterations of employees’ pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in a disadvantage to employees must be accompanied by comparable new advantages. (*Allen, supra*, 34 Cal.2d at 131; *Betts, supra*, 21 Cal.3d at 864; *Maffei, supra*, 103 Cal.App.4th at 999-1000.) Thus, under the California Constitution, vested retirement

benefits can be increased, but not reduced. (See *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619.)

In upholding PEPRA's elimination of air time, the appellate court gratuitously reversed *Allen* by adopting the vested rights reasoning of *MAPE* despite this Court granting review. Just as it did in *MAPE*, the appellate court in this case parsed the language of *Allen* to nullify its holding that any changes to pensions that result in a disadvantage be offset by comparable new advantages. The appellate court adopted the analysis set forth in *MAPE*, which hinged on the fact that the *Allen* Court said "changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." (*MAPE, supra*, 2 Cal.App.5th at 697, *citing Allen, supra*, 45 Cal.2d at 131.) According to the appellate court, the Court's use of the word "should" did not require detrimental changes to be offset by comparable advantages. To pigeonhole its intended outcome, the court even opined that the word "must" was should not be given its normal and ordinary meaning when construing this Court's precedent.

To the extent the appellate court relies on *MAPE*, it failed to account for this Court's subsequent citation to the *Allen* opinion as *requiring* disadvantages to be offset by comparable advantages. In 1983, this Court required detrimental changes to be offset by corresponding advantages to be sustained as reasonable. (*Allen v. Board of Administration*, 34 Cal.3d 114, 120.) Likewise, the appellate court's decision bolsters the conflict regarding pension benefit modifications within the First District – a fact the court acknowledged in *MAPE*. (*MAPE, supra*, 2 Cal.App.5th. at 699 ("We do not deem ourselves bound by expressions in Court of Appeal opinions – including our own in *In re Retirement Cases*.")) In fact, these cases are also incompatible with the appellate court's previous decision in *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619, where the court struck down a ballot measure making cost of living adjustments for pension benefits contingent on the retirement system being fully funded. In that case, the court found the funding requirement could not be sustained as reasonable because "no comparable advantage was offered to pensioners or employees in return." (*Id.* at p. 630.) That conclusion cannot be reconciled with this opinion's ratification of *MAPE*.

The lower court's attempt to buttress its defective reasoning in *MAPE* represents a radical departure from the last seventy years of California jurisprudence on pensions by allowing the State to change pension rights without providing any new advantages. The court provides no appreciable guidance on the limits of the new impairment powers it bestowed public entities in this case and *MAPE*. Review is necessary to restrain this activist ruling.

Re: Amici Curiae Letter in Support of Petition for Review filed February 18, 2017 by Petitioners CAL FIRE
LOCAL 2881, *et al.*, California Supreme Court Case No. S239958
March 10, 2017

CONCLUSION

For the forgoing reasons, Amici respectfully ask this Court to grant the Petition for Review to secure uniformity of decision and to settle these important questions of law. (Cal. Rules of Court, rule 8.500(b)(1).) Alternatively, Amici ask the Court to de-publish the appellate court's opinion in this case.

Sincerely,

MASTAGNI HOLSTEDT, APC
DAVID E. MASTAGNI
ISAAC S. STEVENS

By: 

David E. Mastagni

Attorneys for Amici Curiae

CC: See attached Proof of Service

PROOF OF SERVICE (C.C.P. §1013a)

Cal Fire Local 2881 et al. V. California Public Employees' Retirement System, et al.
California Supreme Court Case No. S239958
[Court of Appeal, First Appellate District, Division 3
Case No. A142793]

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, CA 95811.

On **March 10, 2017**, I served the below-described document(s) described as **AMICUS LETTER IN SUPPORT OF PETITION FOR REVIEW** on the parties in this action (listed below) by placing a copy of the document in an envelope addressed as follows:

ADDRESSES OF SERVICE:

PARTY	ATTORNEY
CAL FIRE Local 2881, formerly known as CDF Firefighters: Plaintiffs and Appellants	Amber Lynn Griffiths Carroll Burdick & McDonough 44 Montgomery Street, Suite 400 San Francisco, CA 94104 Gary Marc Messing Messing Adam & Jasmine 235 Montgomery Street, Suite 828 San Francisco, CA 94104 ✓BY U.S. FIRST-CLASS MAIL
Shaun Olsen: Plaintiff and Appellant	
Monty Phelps: Plaintiff and Appellant	
Sam Davis: Plaintiff and Appellant	
Paul Van Gerwen: Plaintiff and Appellant	

<p>California Public Employees' Retirement System (CalPERS): Defendant and Respondents</p>	<p>Preet Kaur CalPERS P.O. Box 942707 Sacramento, CA 94229-2707</p> <p>Gina Michelle Ratto CalPERS Lincoln Plaza North 400 Q Street Sacramento, CA 94814</p> <p>✓BY U.S. FIRST-CLASS MAIL</p>
<p>The State of California: Intervenor and Respondent</p>	<p>Kamala D. Harris, Attorney General of California Douglas J. Woods, Sr., Asst. Attorney General Tamar Pachter, Supervising Deputy Attorney General Rei R. Onishi Department of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 95814</p> <p>Nelson Ryan Richards California Attorney General's Office 2550 Mariposa Mall Rm 5090 Fresno, CA 93721</p> <p>✓BY U.S. FIRST-CLASS MAIL</p>
<p>Ventura County Professional Firefighters' Association: Amicus Curiae for Appellant</p>	<p>Stephen H. Silver Jacob Ariel Kalinski Rains Lucia Stern St. Phalle & Silver, PC 1428 2nd Street, Suite 200 Santa Monica, CA 90401</p> <p>✓BY U.S. FIRST-CLASS MAIL</p>
<p>International Federation of Professional and Technical Employees Local 21, Amalgamated Transit Union: Amicus Curiae for Appellant</p>	<p>Peter Warren Saltzman Leonard Carder LLP 1330 Broadway - Suite 1450 Oakland, CA 94612</p> <p>✓BY U.S. FIRST-CLASS MAIL</p>

Trial Court/Trial Judge	Alameda County Superior Court Attn: Hon. Evelio M. Grillo 1225 Fallon Street Oakland, CA 94612-4293 (510) 891-6012 ✓ ✓ BY OVERNIGHT DELIVERY
	Clerk, California Court of Appeal First Appellate District, Division 3 350 McAllister Street San Francisco, CA 94102 Tel: (415) 865-7300 ✓ ✓ BY OVERNIGHT DELIVERY
Counsel for Amici Curiae IFPTE Local 21, et. al.	Peter W. Saltzman Kate Hallward LEONARD CARDER, LLP 1330 Broadway - Suite 1450 Oakland, CA 94612 ✓BY U.S. FIRST-CLASS MAIL

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on **March 10, 2017**, at Sacramento, California.



 LELIA R. JACKSON