

No. S239958

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

CAL FIRE LOCAL, 2881 (formerly known as CDF Firefighters), et al.

Petitioners and Appellants,

v.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS),

Defendant and Respondent,

And

THE STATE OF CALIFORNIA,

Intervener and Respondent.

On Review from the Court of Appeal, First Appellate District, Division 3,

Civil No. A142793

After an Appeal from the Superior Court for the State of California, County of Alameda,

Case Number RG12661622, Hon. Evelio Grillo, Presiding Judge

**APPLICATION OF
THE COUNTY OF SONOMA AND THE COUNTY OF SOLANO TO JOIN
BRIEF AS AMICUS CURIAE**

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To the Honorable Chief Justice:

The Counties of Sonoma and Solano (Sonoma and Solano) respectfully request that the Supreme Court permit Sonoma and Solano Counties to join in the brief of amicus curiae submitted in the above-entitled action by the League of California Cities pursuant to Rule 8.520(f) of the California Rules of court. This application is timely made within 30 days after the filing of the reply brief on the merits and is therefore timely pursuant to Rule 8.520(f)(2). This joinder application is being made on the following grounds:

1. Applicants Sonoma and Solano are both Northern California Counties and political subdivisions of the State of California.
2. Applicants believe that the decision in the above-entitled appeal will have a substantial impact on counties in the same manner as it impacts cities, which is described in the League brief.
3. Applicants believe that there is a need for additional argument by Sonoma and Solano on the points raised in Respondent’s Opening Brief as explained in the Application submitted to this Court by the League below, as follows:
4. Sonoma County:
 - (a) Sonoma County’s pension system is a defined benefit plan established in 1946 under the County Employees Retirement Law of 1937 (“CERL”). Benefits are set by the Board of Supervisors with the plan administered by the Sonoma County Employees’ Retirement Association (“SCERA”).
 - (b) The SCERA Pension Plan is a qualified defined benefit plan funded by three sources: the employee, the employer, and investment earnings of the retirement fund. As of the December 31, 2015 valuation (which sets the contribution rates effective July 1, 2017 through June 30, 2018) the average employee rate is 11.72% and the average employer rate is 20.38%, with investment income covering close to 60% of the benefits and all of the investment/administrative expenses paid by SCERA.

- (c) SCERA is presently 85.5% funded on a valuation value and 86% funded on a market value basis. This is a reduction since 1996 when the plan was 100% funded and when there was no unfunded actuarial accrued liability (UAAL). For 2016, Sonoma County has a UAAL of four hundred and eight million, two hundred twenty-seven thousand dollars (\$408,227,000).
- (d) Pension costs have increased dramatically and, as trending, are not sustainable. In the 10 years preceding 2017, County contributions to SCERA have escalated from almost 32 million dollars to over 57 million dollars causing the Sonoma County Board of Supervisors to embark on an effort to address the growing cost impact of employee pensions. Tools to address employer obligations are insufficient. To be effective in addressing pension fiscal impacts and maintaining appropriate levels of public services, counties need more flexibility to define, and work with employees, to determine sustainable prospective benefit levels. Further, in 2015 the Board of Supervisors formed an expert Ad Hoc Independent Citizens' Advisory Group on Pension Reform. One key recommendation of the Advisory Group was identifying a sustainable level of pension cost to reduce costs, free resources and reduce risks.
- (e) The percentage of total salaries and benefits paid toward pension costs has risen from 11.88% in Fiscal Year 07/08 to 17.46% in Fiscal Year 16/17.
- (f) A key component of the ongoing pension reform efforts is a reexamination of the law governing the modification of pension benefits known as the "California Rule," and the flexibility to enact changes on a going forward basis, under a clear set of standards, in order to ensure the health and sustainability of the pension system.

5. Solano County:

- (a) Solano County provides employees retirement benefits offered through the California Public Employees' Retirement System (CalPERS). Retirement benefits are provided under three tiers through one of two plans: safety plans for county sheriff officers and peace officers, and "miscellaneous" plan for all non-safety employees.
- (b) County sheriff officers' safety benefits are provided to deputy sheriffs, and higher ranks, for employees hired before January 17, 2011, a 3% at age 50 retirement formula; for employees hired after January 17, 2011, a 3% at age 55 formula; and for new members as of January 1, 2013, a 2.7% at age 57 formula as established under the California Public Employees' Pension Reform Act of 2013 (PEPRA or the Pension Reform Act; Gov. Code, § 7522 et seq.)
- (c) County peace officers' safety benefits are provided to other safety employees, such as correctional officers or probation officers, for employees hired before May 4, 2012, a 2% at age 50 formula; for employees hired after May 4, 2012, a 2% at age 55 formula; and for new members as of January 1, 2013, a 2% at age 62 formula under PEPRA.
- (d) Non-safety employees receive retirement benefits under a miscellaneous formula for employees hired before May 4, 2012, a 2.7% at age 55 formula; for employees hired after May 4, 2012, a 2% at age 60 formula; and for new members as of January 1, 2013, a 2% at age 62 formula under PEPRA.
- (e) The safety plan is presently 70.5% funded and for 2016, the County's Unfunded Accrued Liability (UAL) is \$130,762,088. The Safety Employer Rate is projected to increase from 19.3% in FY 2012/13 to 41.6% in FY 2022/23. The miscellaneous plan is presently 71.0% funded and for 2016, the County's UAL is \$414,506,778. The Miscellaneous Employer

Retirement Rate is projected to increase from 15.20% in FY 2012/13 to 31.1% in FY 2022/23.

- (f) CalPERS approved lowering the investment return discount rate assumption from 7.5% to 7.0 % over a phased in 5-year period. The total costs as a result of these changes are estimated to significantly increase the County's retirement costs from \$39.706 million in FY 2015/16 to a projected \$86.186 million in FY 2022/23.
 - (g) Although the number of County employees have remained essentially stable from 3,092 in FY2007/08 to 3,068 in FY2017/18, the benefits costs have increased 70% from \$76,496,569 to \$130,197,943, and the total salary and benefits increased 43% from \$258,502,880 to \$369,788,109.
 - (h) To address this daunting fiscal condition, the Board of Supervisors adopted an aggressive pension policy program, which includes the funding of a pension reserve, with a present balance at \$16.1 million, and the establishment of a 115 (P) trust fund, with a present balance of \$20.3 million.
 - (i) Unless the counties retain the ability to address these escalating costs, they face the unconscionable choice of sacrificing services to the public for providing retirement benefits to the employees.
6. For both counties, public pensions under CERL and PERS have garnered widespread interest and generated significant debate among policy leaders as to rising pension costs and the long-term sustainability of pension benefits and has highlighted that there is a need for statewide reform to provide a measure of local flexibility to ensure that the public retirement systems are sound and fiscally responsible.

7. Applicants believe that the legal issues involved in the appeal are a matter of public interest, extending beyond the interests of the parties to the underlying action.

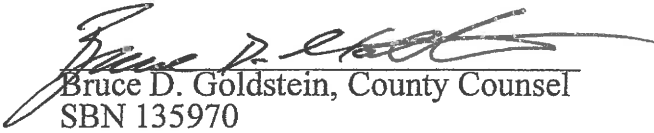
WHEREAS, the County of Sonoma and the County of Solano request leave to join as amicus curiae in the brief submitted by the League in the above-entitled case.

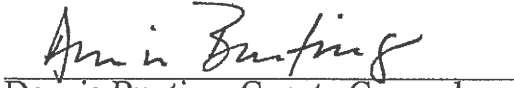
Dated: February 21, 2018

Respectfully submitted,

COUNTY OF SONOMA

COUNTY OF SOLANO


Bruce D. Goldstein, County Counsel
SBN 135970


Dennis Bunting, County Counsel
SBN 55499

PROOF OF SERVICE BY MAIL
(Code Civ. Proc. §§ 1013a(3) and 2015.5)


I am employed in the County of Sonoma, California; I am over the age of 18 years and not a party to the within action; my business address is 575 Administration Dr., Rm. 105A, Santa Rosa, California. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On February 21, 2018, following ordinary business practice, I served the **“APPLICATION OF THE COUNTY OF SONOMA AND THE COUNTY OF SOLANO TO JOIN BRIEF AS AMICUS CURIAE”** on the parties in said cause, by placing on that date at my place of business, a true copy thereof, enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business, addressed as follows:

CAL FIRE Local 2881; Shaun Olsen, Monty Phelps, Sam Davis, Paul Van Gerwen - Petitioners and Appellants	Gary Marc Messing Gregg Mclean Adam Messing Adam & Jasmine 235 Montgomery Street, Suite 828 San Francisco, CA 94104 Amber Lynn Griffiths Carroll Burdick & McDonough 44 Montgomery Street, Suite 400 San Francisco, CA94104
California Public Employees' Retirement System (CALPERS) : Defendant and Respondent	Preet Kaur CalPERS P.O. Box 942707 Sacramento, CA 94229 Gina Michelle Ratto CALPERS Lincoln Plaza North 400 Q Street Sacramento, CA 95811 Wesley E. Kennedy CalPERS

	Lincoln Plaza North 400 Q Street Sacramento, CA 95811
State of California : Intervener and Respondent	Rei R. Onishi State Capitol Suite 1173 Attn. Legal Affairs Sacramento, CA 95814 Peter Andrew Krause State Capitol Suite 1173 Attn. Legal Affairs Sacramento, CA 95814
International Federation of Professional and Technical Employees Local 21, Amalgamated Transit Union Local 1555, Amalgamated Transit Union Local 1225, Alameda County Management Employees Association, Operating Engineers Local Union No. 3, International Brotherhood of Electrical Workers Local 1245, Physicians' and Dentists' Organization of Contra Costa - Pub/Depublication Requestors	Peter Warren Saltzman Leonard Carder 1330 Broadway, Suite 1450 Oakland, CA 94612
Los Angeles Police Protective League, Ventura County Deputy Sheriffs' Association, California Association of Highway Patrol, Garden Grove Police Association, California Statewide Law Enforcement Agency, Orange County Employees' Association, Los Angeles County Professional Peace Officers' Association, Association for Los Angeles Deputy Sheriffs, Deputy Sheriffs' Association of Santa Clara, Fresno Deputy Sheriff's Association, Coalition of Santa Monica City Employees, Antioch Police Officers' Association : Amicus Curiae	Stephen H. Silver Rains Lucia Stern St. Phalle & Silver, P.C. P.O. Box 2161 1428 Second Street, Suite 200 Santa Monica, CA 90406

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 21, 2018 at Santa Rosa, California.


Megan Sweeley