

OCT 03 2018

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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Jorge Navarrete Clerk  

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Deputy

ALAMEDA COUNTY DEPUTY SHERIFF'S ASSOCIATION, et al.,

*Petitioners and Appellants,*

v.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
AND BOARD OF THE ALAMEDA COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, et al.

*Defendants and Respondents;*

and

THE STATE OF CALIFORNIA,

*Intervener and Respondent.*

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Appeal from the Court of Appeal, First Appellate District,  
Division Four Civil Case No. A141913  
Contra Costa County Superior Court Case No. MSN12-1870  
The Honorable David Flinn, Presiding Judge  
Alameda County Superior Court Case No. RG12658890

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
AND BRIEF OF LOS ANGELES COUNTY EMPLOYEES  
RETIREMENT ASSOCIATION IN SUPPORT OF  
NEITHER PARTY**

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**GREINES, MARTIN, STEIN & RICHLAND LLP**

Timothy T. Coates, State Bar No. 110364

5900 Wilshire Boulevard, 12th Floor

Los Angeles, California 90036

Email: [tcoates@gmsr.com](mailto:tcoates@gmsr.com)

Telephone: (310) 859-7811

Facsimile: (310) 276-5261

Attorneys for Amicus Curiae

LOS ANGELES COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION

Supreme Court Case No. S247095

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**GREINES, MARTIN, STEIN & RICHLAND LLP**  
Timothy T. Coates, State Bar No. 110364  
5900 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90036  
Email: tcoates@gmsr.com  
Telephone: (310) 859-7811  
Facsimile: (310) 276-5261  
Attorneys for Amicus Curiae  
**LOS ANGELES COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION**

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
OF LOS ANGELES COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION IN SUPPORT OF NEITHER PARTY**

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Pursuant to Rule 8.520(f), California Rules of Court, Los Angeles County Employees Retirement Association (“LACERA”) requests permission to file the attached amicus curiae brief in this case, *Alameda County Deputy Sheriff’s Association, et al v. Alameda County Retired Employees’ Association, et al*, Supreme Court Case No. S247095.

**INTEREST OF APPLICANT**

Pursuant to the County Employees Retirement Law of 1937, Government Code § 31450 et seq. (“CERL”), LACERA administers defined retirement plan benefits for the employees of Los Angeles County and outside districts. LACERA is an entity that is separate and distinct from the County (*Traub v. Board of Retirement of the Los Angeles County Employees Retirement Assn.* (1983) 34 Cal.3d 793, 798-799) and does not set the benefits—that is done by the governing bodies of the County and districts. The three primary duties of LACERA are: 1) fiduciary responsibility for investments of the retirement funds, 2) setting employer contributions, and 3) providing member services to more than 165,000 members, including close to 62,000 benefit recipients. LACERA’s core mission is to produce, protect, and provide the promised benefits.

The California Constitution gives public pension trustees plenary power over administration of the system and confirms that a “retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.” (Cal. Const., art. XVI, § 17(b).) Article XVI, section 17(e) gives public retirement boards “the sole and exclusive power

to provide for actuarial services in order to assure the competency of the assets” of the system. CERL mandates that the retirement Board set contribution rates of members and plan sponsors based on an actuarially reasonable funding methodology and schedule. (Gov. Code, § 31453.)

In the course of performing these duties, LACERA manages assets that, as of June 20, 2017, totaled \$52.7 billion. That amount represents the assets available for future payments to retirees and their beneficiaries. The primary sources that finance the promised benefits LACERA provides are investment income and the collection of member (employee) and plan sponsors (employers) retirement contributions.

As one of the largest public employee defined benefits administrators in the state, LACERA has a direct interest in legal issues that impact the administration of retirement benefits. Most specifically, LACERA requests permission to file an amicus curiae brief in support of neither party, but simply to provide the Court with insight concerning administrative and fund management issues that will be directly affected by the issues the Court addresses in this case. In addition, LACERA is a party to *Hipsher v. Los Angeles County Employees Retirement Association et al.*, S250244, which involves the scope of the “California Rule,” as articulated in the Court’s decisions in *Allen v. City of Long Beach* (1955) 45 Cal.2d 128 (“*Allen I*”) and *Allen v. Public Employees’ Retirement System* (1983) 34 Cal.3d 114 (“*Allen II*”), i.e., whether impairment of a vested pension right must be offset by comparable new advantages. Indeed, this Court has deferred further action in *Hipsher* pending disposition of this case.

In the amicus brief, LACERA will explain why the California Rule should be retained and the impact that abandonment of the Rule would have

on defined benefit plan administrators such as LACERA. Specifically, LACERA will show that the California Rule allows for reasonable adjustment of pension benefits in a stable fashion that avoids volatility in calculating and planning for payment of pension benefits for organizations such as LACERA.

### CONCLUSION

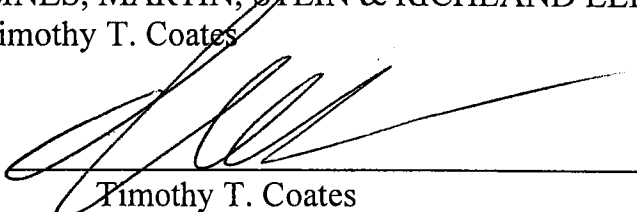
For all the foregoing reasons, LACERA respectfully requests permission to file the attached amicus curiae brief.

Respectfully submitted,

DATED: September 24, 2018

GREINES, MARTIN, STEIN & RICHLAND LLP  
Timothy T. Coates

BY:

  
\_\_\_\_\_  
Timothy T. Coates  
Attorneys for Amicus Curiae LOS ANGELES  
COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION

**CERTIFICATE OF AUTHORSHIP**

In accordance with Rule 8.520(f)(4), the undersigned hereby states that the proposed amicus brief was authored solely by counsel for Los Angeles County Employees Retirement Association and no person or entity outside of Los Angeles County Employees Retirement Association made any monetary contributions to assist its preparation.

DATED: September 24, 2018

GREINES, MARTIN, STEIN & RICHLAND LLP  
Timothy T. Coates

BY: 

Timothy T. Coates

Attorneys for Amicus Curiae LOS ANGELES  
COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION

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**BRIEF OF AMICUS CURIAE LOS ANGELES COUNTY  
EMPLOYEES RETIREMENT ASSOCIATION (“LACERA”) IN  
SUPPORT OF NEITHER PARTY**

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**ARGUMENT**

**THE COURT SHOULD REAFFIRM THE CALIFORNIA RULE,  
WHICH ALLOWS REASONABLE ADJUSTMENT OF VESTED  
PENSION BENEFITS WHILE AVOIDING VOLATILE  
DISRUPTIONS WHICH MAKE IT DIFFICULT FOR DEFINED  
BENEFIT ADMINISTRATORS TO PERFORM THEIR CORE  
FUNCTIONS**

For over 60 years, public employee pension benefits have been governed by the California Rule, initially articulated by this Court in *Allen I* and further refined in *Allen II*. Specifically, in *Allen I*, the court noted that vested pension benefits could only be reduced consistent with the contracts clauses of the state and federal Constitutions, to the extent the alteration bears “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.” (45 Cal.2d at p. 131.)

In *Allen II*, the court stated that principle in even stronger terms, noting:

A constitutional bar against the destruction of such vested contractual pension rights, however, does not absolutely prohibit their modification. With 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.

(34 Cal.3d at p. 120, emphasis added.)

In deciding this case, the Court may reach the issue of whether the reduction of benefits under PEPPRA would or would not require that some offsetting advantage be conferred on employees in order to avoid running afoul of the contracts clauses of the state and federal Constitutions. As a plan administrator with broad responsibilities to manage pension assets, set contribution rates and apprise members of the nature and extent of the benefits and funds to secure their payment, LACERA submits that the stability provided by the California Rule counsels against its rejection.

As indicated in this case, in *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674 (“Marin”), review granted November 22, 2016, S237460, and in *Cal Fire Local 2881 v. California Public Employees' Retirement System*, review granted April 12, 2017, S239958, the California Rule is regarded as an impediment to significant downward adjustments to the pension benefits of active employees. The contention is, that by sidestepping the rule, it would be easier to make substantial reduction of pension benefits. However, such ready reductions to pension benefits will have a direct adverse impact on the manner in which LACERA and other organizations that administer defined benefit plans perform their core functions.

First, the California Constitution provides that “the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the

system” and shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. (Cal. Const., art. XVI, § 17.) If the promised benefit is easily modified it creates havoc on retirement systems that are responsible for investing to pay a defined benefit in the future. In other words, if the “promised” benefit is constantly fluctuating it makes it very difficult for retirement boards to set forth investment strategies to pay benefits.

Aside from investment income, the primary source of those benefits consists of retirement contributions by member employees and employers. LACERA is funded on an actuarial basis. As a result, determinations of contribution rates relate to determination of benefits. Government Code § 31453 set forth the Board’s authority to perform actuarial valuations in order to determine what the County’s yearly contribution rate to the pension fund will be. Sound financial planning requires some degree of certainty as to what contributions will be on an ongoing basis. To the extent that pension benefits may be frequently adjusted, this creates volatility that makes it even more difficult to engage in the sort of long-term financial planning that allows LACERA and other organizations that administer defined retirement plans to assure that there are adequate assets to meet projected needs.

Second, LACERA has a fiduciary duty to communicate to its members concerning the nature and extent of benefits, as well as factors that may impact those benefits. (*Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 392-394.) If the nature and amount of pension benefits effectively becomes a “moving target” due to the ability

of local entities to constantly adjust them downward, it makes it extremely difficult for LACERA and other plan administrators to fulfill this duty, given an ever-shifting landscape of what benefits may be provided.

Finally, the litigation that is inevitably spawned by the downward adjustment of pension benefits necessarily creates uncertainty that directly impacts both short-term and long-term financial planning by plan administrators. For example, in this case, the *Marin* case, and the *Cal Fire* case, the propriety of the benefit adjustment has been in litigation for almost five years, which necessarily makes it extremely difficult to determine precisely what the ultimate defined benefit will be for the affected employees, thus greatly complicating, if not making impossible, the plan administrator's task of projecting what, if any, payments will need to be made, and ensuring sufficient assets to pay the benefits. Given that elimination of the California Rule will likely spawn broader attempts to reduce pension benefits across the state, with each adjustment spawning its own set of litigation, uncertainty in plan administration will soon become a state-wide concern.<sup>1/</sup>

The California Rule does not bar reduction of pension benefits when the reduction is both reasonable and necessary, and its requirement that some comparable benefit be provided requires that any adjustment be made only after careful consideration. Abandonment of this long-standing rule in

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<sup>1/</sup> Indeed here, the Court of Appeal concluded that the reasonableness of the pension adjustment had to be assessed not simply on a system-by-system basis, but also with an eye towards the particular reduction as to the particular employee, which underscores the fact that such proceedings will likely be lengthy and protracted, thus increasing the duration of uncertainty in determining what final benefits will be.

favor of an approach that allows frequent and substantial reduction in benefits, ultimately creates uncertainty in the nature and extent of benefits, which makes infinitely more difficult, the long-term planning and clear communication with members that plan administrators must engage in while fulfilling their fiduciary duties to their members. For this reason, LACERA respectfully submits that the Court should not abandon the California Rule.

### CONCLUSION

For the foregoing reasons, amicus curiae Los Angeles County Employees Retirement Association respectfully requests that the Court should preserve the California Rule.

Respectfully submitted,

DATED: September 24, 2018

GREINES, MARTIN, STEIN & RICHLAND LLP  
Timothy T. Coates

BY: 

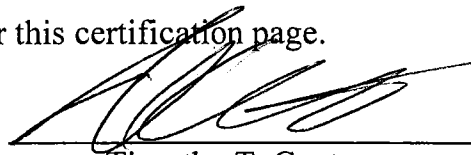
Timothy T. Coates

Attorneys for Amicus Curiae LOS ANGELES  
COUNTY EMPLOYEES RETIREMENT  
ASSOCIATION

**CERTIFICATE OF COMPLIANCE**

Counsel of record hereby certifies that pursuant to rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, the **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION IN SUPPORT OF NEITHER PARTY** contains 1,099 words, not including the tables of contents and authorities, the caption page, the verification page, signature blocks, or this certification page.

DATED: September 24, 2018



Timothy T. Coates

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On September 24, 2018, I hereby certify that I electronically filed the foregoing **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION IN SUPPORT OF NEITHER PARTY** on the interested parties in this action by serving:

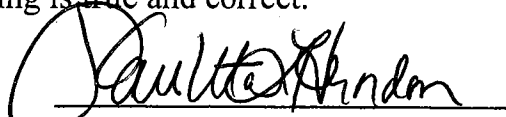
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Executed on September 24, 2018 at Los Angeles, California.

(✓✓) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Pauletta L. Herndon

**SERVICE LIST**

California Supreme Court Case Number S247095

Isaac S. Stevens, Esq.  
David E. Mastagni, Esq.  
David P. Mastagni, Esq.  
MASTAGNI HOLSTEDT, APC  
1912 "T" Street  
Sacramento, California 95811

***Attorneys for Plaintiffs and Appellants Alameda County Deputy Sheriff's Association; Jon Rudolph; Rocky Medeiros; James Nelson; and Darlene Hornsby***

Harvey L. Leiderman, Esq.  
Maytak Chin, Esq.  
Jeffrey R. Rieger, Esq.  
REED SMITH LLP  
101 Second Street, Suite 1800  
San Francisco, California 94105-3659

Robert L. Gaumer, Esq.  
ALAMEDA CITY  
EMPLOYEES' RETIREMENT  
ASSOCIATION  
475 14th Street, Suite 1000  
Oakland, California 94612-1916

1999 Harrison Street, Suite 2400  
Oakland, California 94612-3572

***Attorneys for Defendants and Respondents Alameda County Employees' Retirement Association; Contra Costa County Employees' Retirement Association; Board of Retirement of the Contra Costa County Employees' Retirement Association; and Board of Retirement of the Alameda County Employees' Retirement Association***

Ashley K. Dunning, Esq.  
Natasha A. Saggar Sheth, Esq.  
NOSSAMAN LLP  
50 California Street, 34th Floor  
San Francisco, California 94111

***Attorneys for Defendants and Respondents Merced County Employees' Retirement Association Board of Retirement; and Merced County Employees' Retirement Association***

Anne I. Yen, Esq.  
WEINBERG, ROGER & ROSENFELD  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501

***Attorneys for Plaintiffs and Intervenors Service Employees International Union, Local 1021; and Building Trades Council of Alameda County***



Linda M. Ross, Esq.  
Randy Riddle, Esq.  
RENNE PUBLIC LAW GROUP  
350 Sansome Street, Suite 300  
San Francisco, California 94104

Kenton L. Alm, Esq.  
MEYERS, NAVE, RIBACK,  
SILVER & WILSON  
555 12th Street, Suite 1500  
Oakland, California 94607

**Attorneys for Real Party in Interest and Respondent *Central Contra Costa Sanitary District***

Rei R. Onishi, Esq.  
OFFICE OF GOVERNOR EDMUND G. BROWN JR.  
State Capitol, Suite 1173  
Sacramento, California 95814-7004

**Attorneys for Intervener and Respondent *State of California***

Arthur W. Liou, Esq.  
LEONARD CARDER, LLP  
1330 Broadway, Suite 1450  
Oakland, California 94612

William Corman, Esq.  
BOGATIN CORMAN & GOLD  
1330 Broadway, Suite 1203  
Oakland, California 94612

**Attorneys for Interveners and Appellants *Public Employees Union, Local 1; International Federation of Professional and Technical Engineers, Local 21; Alameda County Management Employees' Association; Physicians' and Dentists' Organization of Contra Costa; David M. Rolley; Petter J. Ellis; and Susan Guest***

Timothy K. Talbot, Esq.  
RAINS LUCIA STERN, ST. PHALLE & SILVER, PC  
2300 Contra Costa Boulevard, Suite 500  
Pleasant Hill, California 94523

**Attorneys for Interveners and Appellants *Contra Costa County Deputy Sheriffs Association; and Ken Westermann***

W. David Holsberry, Esq.  
MCCRACKEN, STEMERMAN & HOLSBERY, LLP  
595 Market Street, Suite 1400  
San Francisco, California 94105

**Attorneys for Intervener and Appellant *United Professional Fire Fighters of Contra Costa County, Local 1230***

Robert P. Bonsall, Esq.  
BEESON, TAYER & BODINE, APC  
520 Capitol Mall, Suite 300  
Sacramento, California 95814

Katwyn T. DeLaRosa, Esq.  
BENNETT, SHARPE,  
DELAROSA, BENNETT &  
LICALSI, INC.  
2444 Main Street, Suite 150  
Fresno, California 93721-2747

***Attorneys for Intervenors and Appellants AFSCME Local 512;  
AFSCME, Local 2700; Teamsters Local 856; Hasani Tabari; Daniel  
Lister; American Federation of State, County, and Municipal Employees,  
Local 2703, AFL-CIO; Merced County Sheriff's Employees' Association,  
affiliate of International Brotherhood of Teamsters; Jeffrey Miller;  
Sandra Gonzalez-Diaz; and Mary McWatters***

Joshua E. Morrison, Esq.  
ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
12800 Center Court Drive South, Suite 300  
Cerritos, California 90703-9364  
***Attorneys for Amicus Curiae Association of California School  
Administrators***

Liliane M. Wyckoff, Esq.  
COLANTUONO, HIGHSMITH & WHATLEY, PC  
420 Sierra College Drive, Suite 140, Suite 850  
Grass Valley, California 95945  
***Attorneys for Amicus Curiae League of California Cities***

Robert J. Bezemek, Esq.  
LAW OFFICES OF ROBERT J. BEZEMEK, PROF. CORP.  
1611 Telegraph Avenue, Suite 936  
Oakland, California 94612  
***Attorneys for Amici Curiae for Appellant Peralta Retirees  
Organization; California Community Colleges Independents'  
Organization; Faculty Association of the California Community  
Colleges; and Contra Costa Community Colleges Retirees Association***

Laurence S. Zakson, Esq.  
REICH ADELL & CVITAN  
2670 North Main Street, Suite 300  
Santa Ana, California 92705  
***Attorneys for Amici Curiae for Appellant Orange County Attorneys  
Association; and Orange County Managers Association***

Clerk/Executive Officer  
California Court of Appeal  
First Appellate District, Division Four  
350 McAllister Street  
San Francisco, California 94102  
**[Case No. A141913]**

Clerk to:  
The Honorable David Flinn  
Contra Costa Superior Court  
725 Court Street  
Martinez, California 94553  
**[Case No. MSN12-1870]**

Clerk to:  
The Honorable Evelio Martin Grillo  
Alameda County Superior Court - Main  
René C. Davidson Courthouse  
1225 Fallon Street  
Oakland, California 94612  
**[Case No. RG12661622]**