

*In the Supreme Court of the State of California*

**Cal Fire Local 2881, et al.,**  
**Petitioners and Appellants,**  
**v.**  
**California Public Employees' Retirement**  
**System (CalPERS),**  
**Defendant and Respondent,**  
**and**  
**The State of California,**  
**Intervener and Respondent.**

Case No. S239958

SUPREME COURT  
**FILED**

APR 24 2018

Jorge Navarrete Clerk

Deputy

First Appellate District Division Three, Case No. A142793  
Alameda County Superior Court, Case No. RG12661622  
The Honorable Evelio Martin Grillo, Presiding Judge

**INTERVENER AND RESPONDENT STATE OF CALIFORNIA'S  
CONSOLIDATED ANSWER TO AMICI CURIAE BRIEFS**

PETER A. KRAUSE  
Legal Affairs Secretary  
\*REI R. ONISHI  
Deputy Legal Affairs Secretary  
State Bar No. 283946  
Office of Governor Edmund G. Brown Jr.  
State Capitol, Suite 1173  
Sacramento, CA 95814  
(916) 445-0873  
[Rei.Onishi@gov.ca.gov](mailto:Rei.Onishi@gov.ca.gov)  
*Attorneys for Intervener and Respondent  
State of California*



## ANSWER TO AMICUS CURIAE BRIEFS

The arguments of amici supporting Cal Fire Local 2881 and several of its members (together, the Union) are oddly untethered to the issues presented in this case. Most are solely dedicated to urging this Court to reverse *Marin Association of Public Employees v. Marin County Employees' Retirement Association* (2016) 2 Cal.App.5th 674, review granted Nov. 22, 2016 (S237460). References to “*Marin*” and the *Marin* court’s reasoning are far more numerous than to “airtime” or to the actual reasoning of the Court of Appeal in this case.

Indeed, with the exception of two of the briefs, amici supportive of the Union do not even *address* the threshold issue of whether the option to purchase airtime is a vested pension right in the first instance, let alone argue in favor of the Union’s position on that issue. (See, e.g., CalSTRS Br. at p. 1 [“The Board does not express an opinion as to the threshold question of whether the option to purchase airtime service credit is a vested pension benefit”].) As a result, the analysis of those amici regarding whether the contract clause allowed the Legislature to withdraw the option to purchase airtime is conspicuously divorced from any assessment of what the Legislature actually intended and promised to employees in this case. In the context of arguing a contract clause violation, this defect is fundamental. (Cf. *Allen v. Board of Administration* (1983) 34 Cal.3d 114, 124 [no violation of contract clause in absence of impairment of parties’ reasonable expectations].) In the end, amici invite this Court to embrace dogma, not careful legal analysis. For the reasons given in the State’s merits briefs, the Court should decline this invitation.

Within the last two years alone, three separate appellate panels have expressly rejected the strict comparative advantages test advanced by the unions. (See *Alameda County Deputy Sheriffs' Association v. Alameda County Employees' Retirement Assn.* (2018) 19 Cal.App.5th 61, 121

[“Much of *Marin*’s vested rights analysis—including its rejection of the absolute need for comparable new advantages when pension rights are eliminated or reduced—is not controversial, and we do not disagree with it”]; *Cal Fire Local 2881 v. CalPERS* (2016) 7 Cal.App.5th 115, 130-131; *Marin County, supra*, 2 Cal.App.5th at pp. 697-699.) After searching for and failing to find where this Court has adopted such an inflexible rule, these courts have all recognized that the so-called “California Rule” is more incantation than established legal principle. These courts have also noted the detrimental effects of adopting far-reaching rules that would tie the Legislature’s hands for decades and bar lawmakers from responding to changing circumstances.

In response to these arguments, amici spend hundreds of pages decrying the supposed abandonment of the “California Rule.” Yet, for all those hundreds of pages and case citations, amici—like the Union—cannot identify a single case in which this Court rejected a modification rationally related to the theory and successful operation of a pension system solely on the ground that it did not provide comparative new advantages. This underscores the hollowness of amici’s “California Rule” arguments.

As amici supportive of the State methodically demonstrate, California’s public pension systems require flexibility to address a crisis that is increasingly crowding out funding for education, access to justice, affordable housing, and the state’s infrastructure, while also reducing the salaries and benefits of newer generations of public employees. (See, e.g., *California League of Cities Br.* at pp. 18-24; *California Business Roundtable Br.* at pp. 57-60.) Adopting some version of the “California Rule,” as amici in support of the Union urge, would only divest lawmakers of the power to safeguard critical investments and maintain the pension system for the benefit of future generations of workers. Nor, as amici inadvertently show, is such an extreme rule necessary to protect public

employee pensions from unreasonable reductions, in light of both political safeguards and competitive market forces. (See AFSCME Br. at pp. 34-35 [pointing out strong incentives leaders in even bankrupt cities have to preserve pension benefits].)

For the reasons stated in its answer brief on the merits, this Court should affirm the Court of Appeal's judgment.

Dated: April 23, 2018

Respectfully submitted,

PETER A. KRAUSE  
Legal Affairs Secretary

A handwritten signature in black ink that reads "Rei Onishi". The signature is written in a cursive, slightly slanted style.

REI R. ONISHI  
Deputy Legal Affairs Secretary  
*Attorneys for Intervener and  
Respondent State of California*

## CERTIFICATE OF COMPLIANCE

I certify that the attached Intervener and Respondent State of California's Answer Brief on the Merits uses a 13 point Times New Roman font and contains 684 words.

Dated: April 23, 2018

PETER A. KRAUSE  
Legal Affairs Secretary

A handwritten signature in black ink that reads "Rei Onishi". The signature is written in a cursive style with a large, prominent "R" and "O".

REI R. ONISHI  
Deputy Legal Affairs Secretary  
*Attorneys for Intervener and  
Respondent State of California*

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Cal Fire Local 2881 v. California Public Employees' Retirement System**  
No.: **S239958**

I declare: I am employed in the Office of Governor Edmund G. Brown Jr. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of Governor Brown for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of Governor Brown is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 23, 2018, I served the attached **INTERVENER AND RESPONDENT STATE OF CALIFORNIA'S CONSOLIDATED ANSWER TO AMICI CURIAE BRIEFS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of Governor Brown at State Capitol, CA 95814, addressed as follows:

Gary M. Messing  
Gregg McLean Adam  
Messing Adam & Jasmine LLP  
235 Montgomery Street, Suite 828  
San Francisco, CA 94104

Clerk  
California Court of Appeal  
First Appellate District, Division 3  
350 McAllister Street  
San Francisco, CA 94102

Preet Kaur  
CalPERS Legal Office  
P.O. Box 942707  
Sacramento, CA 94229-2707

County of Alameda  
Administration Building  
Superior Court of California  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Nelson R. Richards  
California Attorney General's Office  
2550 Mariposa Mall, Room 5090  
Fresno, CA 93721

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 23, 2018, in Sacramento California.

\_\_\_\_\_  
Claire Sullivan-Halperin  
Declarant

\_\_\_\_\_  
  
Signature

