

SUPREME COURT COPY

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.

SUPREME COURT
FILED

OCT 05 2018

Jorge Navarrete Clerk

Deputy

On Review From The Court Of Appeal For the First Appellate District,
Division Three, 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

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Petitioners file this Supplemental Brief in compliance with Rule 8.520, subd. (d) in order to call this Court's attention to new authority not available in time to be included in Petitioners' prior briefing.

The relevant new authority is Senate Bill ("SB") 1085 (2017–2018 Reg. Sess.). SB 1085 is appropriately raised in a supplemental brief because it was approved by the Governor and chaptered by the Secretary of State on September 28, 2018, and was therefore unavailable before Petitioners' Reply Brief was filed on January 22, 2018, or when their Consolidated Answer to Amici Curiae was filed on April 23, 2018. (Cal. Rules Court, rule 8.520(d) ["A party may file a supplemental brief limited to . . . new legislation, or other matters that were not available in time to be included in the party's brief on the merits."])

SB 1085 directly refutes arguments made by the Governor as Intervener/Respondent in the merits briefing filed before this Court.

SB 1085 created Government Code section 3558.8, subd. (e), which permits public employees to earn "full service credit" during time they spend not working for the State because they are serving their labor unions as stewards or officers. This undermines the Governor's argument that withdrawing the offer to purchase Additional Retirement Service Credit ("ARSC") was "critical to restor[e] the severed link between pension benefits and public service." (Ans. Br. at p. 45.) Petitioners are not arguing that representation of fellow employees on a union-leave sabbatical is not

public service. On the contrary, where our labor relations statutes recognize the integral part “peaceful employer-employee relations” play in ensuring labor peace (Ralph C. Dills Act, Gov. Code § 3512; see also Meyers-Milias-Brown Act, Gov. Code § 3500), such endeavors are quintessentially public service.

But in its Answer Brief, the State adopted the trial court’s claim that ARSC had “broke[n] the link between work performed and benefits earned,” and rejected Petitioners’ argument that ARSC was but one of many instances in which pension system credit was accumulated without performing work for the State. (Ans. Br. at pp. 45-46 [citing JA 392])

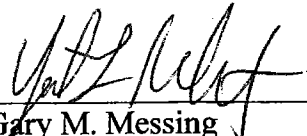
The link had never been severed, and the recent decision to create new, alternative means to accrue service credit demonstrates that the Governor’s litigating position is purely opportunistic. The theory of a pension system does not require that pension service credit be exclusively linked to time spent working for the State – there are any number of service-credit enhancements that the Legislature has created to which employees can earn vested rights. (See SB 1085 [creating Gov. Code § 3558.8 sub. (e)]; Petitioners Opening Br. at pp. 11-12, [citing Gov. Code §§ 21032, 21033, 21020, 21024, 20898, 20902.5].) The Legislature created these opportunities for pension service enhancements – be they ARSC, military service credit, union leave credit, or any other credit cited above –

because the Legislature believed they were, on balance, beneficial to the State.

Therefore, the Governor's argument that ARSC needed to be eliminated in order to restore faith in the pension system and to ensure that pensions were linked to time spent working for the State should not be credited.

DATED: October 5, 2018

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**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA
RULES OF COURT RULE 8.504(d)(1)**

Pursuant to California Rules of Court Rule 8.504(d)(1), I certify that according to Microsoft Word the attached brief is proportionally-spaced, has a typeface of 13 points and contains 515 words.

DATED: October 5, 2018

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PROOF OF SERVICE

**CAL FIRE Local 2881, et al. v. CalPERS (State of California)
California Supreme Court, Case No. S239958**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery St., Suite 828, San Francisco, CA 94104.

On October 5, 2018, I served true copies of the following document(s) described as **SUPPLEMENTAL BRIEF OF PETITIONERS AND APPELLANTS** on the interested parties in this action as follows:

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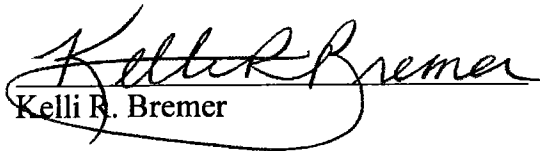
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BY FIRST CLASS MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and in the attached Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Messing Adam & Jasmine LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

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

Executed on October 5, 2018 at San Francisco, California.


Kelli R. Bremer

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California Supreme Court, Case No. S239958**

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