Case No. S242034

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

CATHERINE A. BOLING, T.J. ZANE and STEPHEN B. WILLIAMS

Petitioners

v.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent

CITY OF SAN DIEGO; SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION; DEPUTY CITY ATTORNEYS ASSOCIATION; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 127; and SAN DIEGO CITY FIREFIGHTERS LOCAL 145

Real Parties in Interest

After a Decision of the Court of Appeal, Fourth Appellate District, Division One, Consolidated Case Nos. D069626 and D069630

COMBINED ANSWER BY CATHERINE A. BOLING, T.J. ZANE AND STEPHEN B. WILLIAMS TO PETITIONS FOR REVIEW BY THE PUBLIC EMPLOYMENT RELATIONS BOARD AND THE UNION REAL PARTIES IN INTEREST

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COMBINED ANSWER TO PETITIONS FOR REVIEW BY THE PUBLIC EMPLOYMENT RELATIONS BOARD AND THE UNION REAL PARTIES IN INTEREST

Petitioners, Catherine A. Boling, T.J. Zane and Stephen B. Williams ("Proponents/Petitioners") respectfully submit this combined Answer to Petitions for Review requesting that this Court deny the requests for review — by Respondent, California Public Employment Relations Board ("PERB" or "Respondent") and Real Parties in Interest, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, and San Diego City Firefighters Local 145 (collectively "Charging Parties" or "Real Parties") — of the Decision of the Court of Appeal, Fourth Appellate District, Division One, published in Case No. D069626 (consolidated with D069630), hereinafter referred to as *Boling v. Public Employment Relations Bd.* (2017) 10 Cal.App.5th 853 ("*Opinion*").

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 8.500(a), Proponents respectfully request that this Court leave the *Opinion* in place. By separate Petition filed May 19, 2017, and now pending before this Court, Proponents further request that they be awarded "private attorney general" attorneys' fees for vindicating substantial public rights, or that this Court send the attorneys' fee matter back to the Fourth District for consideration.

PERB and the Charging Parties seek review of the *Opinion* annulling PERB's Administrative Decision, issued on December 29, 2015 ("PERB Decision") in a consolidated case involving four PERB Unfair Practice Charge complaints filed by the Charging Parties[1], invalidating the Citizens'

[1] San Diego Municipal Employees Association ("MEA") (Case No. LA-CE-746-M) (AR 3:13:000572-000573); Deputy City Attorneys Association of San Diego ("DCAASD") (Case No. LA-CE-752-M (AR

Pension Reform Initiative (CPRI or Proposition B) — a voter-approved, citizen-circulated initiative measure — based on the erroneous finding that the City failed to comply with the Meyers-Milias-Brown Act (MMBA); which is not applicable to citizen-circulated initiative measures

Ignoring the uniformity established by the *Opinion's* answer to the question posed by the Third Appellate District, in Footnote 8 of *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, PERB and the Charging Parties, purport to seek "uniform" application of a deferential standard of review to PERB's legal determinations relating to citizen's initiatives. , this request seeks to strip California citizens of their fundamental constitutional rights and should not be entertained.

The Record clearly shows CPRI was a legitimate citizen-sponsored initiative, not a "sham", under California election laws. (*i.e.* AR 3:26:00731) (*Opinion*, at 41-43.) PERB's Decision found "no evidence" that the Proponents were agents of the City, the only grounds listed in each Unfair Practice Charge filed with PERB. In addition, the PERB decision specifically finds that there was no evidence of control of the CPRI campaign by the Mayor. (AR 10:156:002660.)

When PERB could not find evidence to support the "sham" theory that the CPRI was not a citizen-sponsored initiative, it shifted gears to develop a new theory out of whole cloth that the Mayor was an "agent" of the City Council in his private campaigning activities. (*Id.*) However, the Record is devoid of any agency relationship between the Mayor and the

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3:27:000835-000836); TAB 48: American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 ("AFSCME Local 127") (Case No. LA-CE-755-M) (AR 5:48:001180-0001183) and San Diego City Fire Fighters LAFF, Local 145 ("San Diego Local 145") (Case No. LA-CE-758-M) (AR 4:33:000934-000937).)

CPRI campaign. PERB found that the Mayor never controlled or directed the CPRI campaign. (*Id.*) In footnote 18 of the Fourth District's *Opinion*, the Court noted:

> Curiously, although PERB concluded common law agency principles permitted PERB to charge City with Sanders's conduct in promoting and campaigning for the CPRI, PERB also concluded the evidence showed the **Proponents of the CPRI (who paid to have the CPRI drafted and who ran the signature effort and campaign for passage of the CPRI) were not Sanders's agents because they undertook their actions outside of Sanders's control.** (*emphasis added*) (*Opinion* at p. 19, n. 18.)

Since the Mayor neither controlled the independent campaign nor received any public funds, PERB could not legally link the City Council, through the Mayor, to a private initiative campaign. CPRI was a citizen's initiative, controlled by citizens. With no link to official actions of the City, it could not be a "sham" or part of an "agency" link to the City Council. Both the "sham" and "agency" arguments fail as a matter of law.

Thereafter, every act by the City related to CPRI was ministerial under California election law. The Clerk issued a title and summary and, after the measure was circulated and submitted, counted the signatures. Once the Clerk certified that it had sufficient signatures, the CPRI was submitted to the City Council to place on the ballot at the next election as Proposition B. Proposition B was approved by the voters. The City submitted it to the Secretary of State and implemented the new law on a prospective basis. No party denies these steps took place.

Despite these ministerial actions, PERB sought to deny citizens their constitutional right to petition because the Mayor and two of seven council members also supported and campaigned for CPRI. California law

recognizes the right of its elected officials to participate in campaign activity. (Gov. Code § 3209.) The Record contains several *amicus* briefs highlighting the free speech, associational and petitioning rights of elected officials.

PERB's application of MMBA to the petitioning activity of private citizens was unprecedented. MMBA's "meet and confer" obligations only apply to a "governing body". (Gov. Code §§ 3504.5 and 3505.) Proponents are not a "governing body". (Cal. Const. Art. XI, § 3(c).) In their Petitions for Review, PERB and the Charging Parties ask this Court to ignore this distinction and change the law to apply MMBA to citizen initiatives. They seek to establish new law that impairs and impedes the constitutional rights of Proponents.

Starting with their attempts to keep CPRI off the June 2012 ballot, PERB and the Charging Parties have failed and refused to recognize the constitutional, statutory and charter rights of Proponents. These latest Petitions filed by PERB and the Charging Parties represent the culmination of an administrative agency's five-year attempt to significantly expand its jurisdiction and power at the expense of the Reserved Power of the People.[2]

II. BACKGROUND FACTS

A. The Proponents' Initiative

On April 4, 2011, City Clerk Elizabeth Maland received Proponents' "Notice of Intent to Circulate-Request for Title and Summary". (AR 3:26:000681-000696.) During signature gathering, Real Party San Diego Municipal Employees Association ("SDMEA") asked to "meet and confer"

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[2] The Court of Appeal *Opinion* denied the PERB's Motion to Dismiss Proponents as Real Parties in Interest in the City of San Diego Writ. (*Opinion* at p. 22.) With the determination of the Court of Appeal that the City's Writ should be issued, the Court was able to avoid ruling on the reserved power/constitutional issues raised in the Proponents' Writ. (*See generally, Ashwander v. Tennessee Valley Auth.* (1936) 297 U.S. 288, 347.) Granting either Petition would resurrect those arguments.

on the "Pension Reform Ballot Initiative". (AR 1:1:000019-000020.) They did not ask to discuss a competing measure or any actions the City could legally take at that time. The City did not agree to bargain over CPRI. (AR 1:1:000022-000024.)

On September 30, 2011, Proponent T.J. Zane delivered to the City Clerk a petition containing 145,027 signatures. (AR 3:26:000697-000699.) On November 11, 2011, the City Clerk received a letter from the County Registrar of Voters certifying that Proponents had submitted the requisite number of signatures to qualify the CPRI for the ballot. (AR 3:26:000731-000733.) On December 5, 2011, the City Council adopted a resolution declaring its intent to submit the CPRI to the voters (San Diego Resolution R-307155 (December 5, 2011)). (AR 3:26:000734-000738.) On January 30, 2012, the City Council introduced and adopted an ordinance that set CPRI on the Tuesday, June 5, 2012 ballot as Proposition B. (San Diego Ordinance O-20127.) (AR 3:26:000739-000759.)

B. Initiation of the PERB Action

On January 20, 2012, SDMEA filed its Unfair Practice Charge (No. LA-CE-746-M) with PERB. (AR 1:1:000002-000237.) On January 31, 2012, SDMEA filed a request for injunctive relief with PERB, which PERB granted. (AR 2:4:000246-000249.) PERB then filed a superior court action seeking to enjoin the City from placing CPRI on the ballot. (*San Diego Municipal Employees Assn. v. Superior Court* (2012) 206 Cal.App.4th 1447, 1452-1453.) Proponents and the Charging Parties participated in the election campaign while litigation continued to challenge CPRI on procedural grounds. Proponents raised only private funds to conduct their campaign. (AR 21:198:005432-005456.)

On June 5, 2012, the voters of the City of San Diego approved CPRI with a 65.81% affirmative vote. (AR 16:193:004058; 16:193:004096.) No substantive challenges to CPRI were filed in the aftermath of the public vote.

In a writ proceeding brought by SDMEA, the Court of Appeal issued a writ allowing PERB to hold hearings on CPRI. In issuing the Writ, the Court of Appeal stated, in part, as follows:

> (SD)MEA contended the meet and confer procedures applied to the CPRI because the CPRI was a "sham device" used by City officials to circumvent the meet and confer obligations imposed on City by the MMBA. (*San Diego Municipal Employees Assn. v. Superior Court* (2012) 206 Cal.App.4th at 1452, 1463.)

The essence of SDMEA's "sham" claim was that the Proponents were merely the City's agents, making Proposition B the City's measure. The "sham" was the direct opposite of the agency theory before the Court of Appeal, in which PERB and the Charging Parties argued that the support of the mayor, as the alleged agent of the City, corrupted the CPRI.

PERB held an administrative hearing before Administrative Law Judge Ginoza ("ALJ") on July 17, 18, 20, and 23, 2012. (AR 11:186:003047.) Testimony at the hearing showed that the Mayor and two Council Members considered their own plans but ultimately supported the San Diego County Taxpayers Association ("SDCTA") plan. (AR 11:186:003060-003063 (Sanders/Falconer plan); 11:186:003064 (Councilmember DeMaio plan); 11:186:003065-003070 (SDCTA/Proponents private pension reform plan ("CPRI").) And uncontradicted testimony by Counsel for the Proponents, showed that Lounsbery Ferguson Altona & Peak prepared the initiative for the Proponents, and SDCTA, who paid for the work; not the City. (AR 15:192:003994, line 13-15:192:003995, line 11.)

C. The Proposed Decision

Following the hearing, the ALJ issued a Proposed Decision on February 11, 2013. (AR 10:157:002613-002675.) The Proposed Decision

found that the City's actions had nullified the "private" initiative. (AR 10:156:002667.)

On March 6, 2013, the City filed a Statement of Exceptions objecting to the Proposed Decision. (AR 10:159:002685-002724.) Proponents also applied to PERB to submit exceptions to the Proposed Decision, but their request was denied. (AR 10:178:002891-10:179:002897.) Instead, on September 20, 2013, the PERB granted Proponents the right to submit an "informational" brief, limiting the scope of Proponents' appearance despite acknowledging that Proponents were "interested individuals" in the proceeding. (AR 10:178:002891-10:179:002897.) Proponents filed a Brief objecting to the impropriety of PERB's jurisdiction over a Citizen Sponsored Initiative and objecting to the very procedures and Regulations PERB cited in the Motions to Dismiss filed by PERB before the Court of Appeal, because PERB improperly and unconstitutionally excluded these Proponents from defending CPRI. (AR 11:180:002899-002927.)

D. PERB's Decision

The PERB Decision at the center of this appeal was not issued until December 29, 2015, thirty-three plus months after the Proposed Decision. (AR 11:186:002979-003103.) It abandoned the "sham" argument. Rather, the final decision weaved the Mayor's support of the CPRI into a new and different agency theory. PERB based its conclusion on the following summary of the administrative hearing finding:

> Because the ALJ found that **the impetus for the pension reform measure originated within the offices of City government**, he rejected the City's attempts to portray Proposition B ("CPRI") as a ***purely "private" citizens' initiative*** exempt from the MMBA's meet-and-confer requirements." (AR 11:186:002986) (*emphasis added.*)

When the "sham" argument failed, PERB gave itself authority to determine the quality of a citizen initiative. PERB claimed that elected officials thought of the idea for pension reform and this bound the Proponents. It prevented them from using this "idea". Even though the Court of Appeal found jurisdiction vested in PERB to determine if the measure was a city measure, using city resources and authority, PERB expanded its reach to include citizen measures that are not "pure" enough.

If the original allegations of "sham" were true, those involved would have other sanctions besides PERB. Any payments by the City would have been a violation of law. (*See*, Gov. Code § 54964; Penal Code § 424.) The expenditures by the City would have been subject to an injunction and criminal sanctions. No appropriations were found.

E. The Appeal

Proponents filed their Petition for Writ of Extraordinary Relief with the Fourth District Court of Appeal on January 25, 2016, challenging PERB's Decision, and the City filed its Petition the next day. PERB filed a motion to dismiss Proponents' writ petition on January 29, 2016, which Proponents opposed. On March 9, 2016, the Court of Appeal issued its order on the Motion to Dismiss stating that the motion to dismiss will be considered concurrently with the writ petition. Proponents filed an opening brief in their writ petition on May 9, 2016. PERB and the unions requested an extension of time to file their opposition briefs and the Court's permission to file an oversized brief, which the Court granted. After opposition and reply briefs were filed, the Court issued the writ of review on August 17, 2016. The oral argument was held on March 17, 2017.

Subsequently, the Court consolidated Proponents' Writ Petition with that of the City and issued its Opinion on April 11, 2017. Both PERB and the Charging Parties filed rehearing petitions with the Court, seeking the Court's reconsideration of its Opinion, which the Court denied. On May 10,

2017 Proponents filed their Motion for Attorneys' fees, which was returned by the Court on May 12, 2017. Thereafter, the respective parties filed their Petitions for Review.

III. THE *OPINION* IS CONSISTENT WITH AND ADVANCES THE LAW DISCUSSED BY THE THIRD DISTRICT COURT OF APPEAL.

In *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* ("*Seal Beach*") (1984) 36 Cal.3d 591, the Third District Court of Appeal addressed the applicability of the MMBA to an initiative measure impacting employee compensation. The Court ruled, quite understandably, that such terms of an election measure, when initiated by the City Council, had to be the subject of the meet and confer requirements of the MMBA as a condition precedent to proper enactment. In Seal Beach, the initiative measure in question was drafted by and proposed for election by the local legislative body, the very entity statutorily bound by the terms of the MMBA.

However, in a moment of prescience, the *Seal Beach* Court, in footnote number eight, said "[n]eedless to say, this case does not involve the question whether the meet-and-confer requirement was intended to apply to charter amendments proposed by initiative." (*Seal Beach*, at 599, fn. 8; see *Opinion,* at pp. 30-35.) Exercising admirable judicial restraint, the *Seal Beach* Court fell short of RULING that the MMBA does not apply to a citizens' initiative measure. It observed that its ruling of applicability applied to a City sponsored initiative but questioned whether it applied to a citizen's initiative. Yet, the die was cast. The foundation was clearly laid for the Court of Appeal herein to close the loop on the issue, which it has done. (*Opinion,* at pp. 30-34.) As hinted at by the Third District in *Seal Beach*, a citizens' initiative is not the work product of a legislative body. Rather, it is the result of the citizenry exercising a constitutional right over which the statutory

constraints of the MMBA have no control. In the *Opinion*, the Fourth District has locked down the law.

PERB and the Charging Parties claim that the ruling of the Court of Appeal herein departs from established law and charts a new and contradictory legal course. The claim is wrong. The *Opinion* is a natural extension of – an affirmation of – the Third District's ruling in the *Seal Beach* case. Indeed, it expressly closes the question so pointedly raised by the *Seal Beach* Court. (*Opinion,* at pp. 30-34.) There is no basis for review of this case based upon a claim of a conflict between the rulings of the Appellate Courts.

IV. THE COURT OF APPEAL APPLIED THE PROPER STANDARD OF REVIEW.

A. PERB'S Factual Determinations Showed No City/ Proponents Link and PERB'S Legal Conclusions Regarding Election Procedure were Clearly Erroneous.

PERB and the Charging Parties argue that this Court should grant review because the Court of Appeal was wrong to apply the *de novo* standard set forth in *Yamaha Corp. of America v. State Bd. of Equalization ("Yamaha")* (1998) 19 Cal.4th 1, instead of the more deferential "clearly erroneous" standard set forth in *Banning Teachers Assn. v. PERB ("Banning")* (1988) 44 Cal.3d. 799[3].

PERB and the Charging Parties' argument disregard's the Court of Appeal's conclusion that PERB's application of agency principles to convert

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[3] Charging Parties' Petition implies that the Court of Appeal applied a less deferential standard *sua sponte*, without giving the parties an opportunity to brief the issue. (Charging Parties Petition, p. 17.) Charging Parties attempt to sweep under the rug Proponents' argument in their Opening Brief before the Court of Appeal that the *de novo* standard applied to legal questions. (Proponents' Opening Brief, Case No. D069626 pp. 26-27.)

CPRI "from a citizen-sponsored initiative on which no meet-and-confer obligations were imposed into a City Council-sponsored ballot proposal to which section 3504.5's meet-and-confer obligations became applicable..." was "**legally erroneous.**" (*Opinion*, at p. 65; emphasis added.)

The fundamental flaw in PERB's and the Charging Parties' Petition's "standard of review" argument is that deference does not require a reviewing court to ignore fatal legal flaws in an argument. Although finding that there was no control by the Mayor over the CPRI campaign ("sham" argument), PERB erroneously declared that the "agency" of the Mayor applies to a citizen-circulated initiative over which he had no control. (AR 10:156:002660.) The PERB Decision stated as follows:

> Here the element of control is lacking. After the negotiations with representatives from the Lincoln Club and the San Diego Taxpayers Association, the Mayor was asked and did agree that Zane could run the initiative campaign from the Lincoln Club. **There is no evidence the Mayor retained authority to run the campaign.** (AR 10:156:002660.) (*emphasis added.*)

Ignoring its own findings, PERB attempted to apply "agency" theory to a City Council that was under a mandatory duty to place the charter measure on the ballot, without alteration, under content neutral election laws.

The *Opinion* defers to PERB's dispositive factual findings. (*Opinion*, at p. 22) The Court of Appeal expressly states that "the evidence was undisputed (and PERB did not conclude to the contrary) the charter amendment embodied in the CPRI was placed on the ballot because it qualified for the ballot under the "citizens' initiative" procedures for charter amendments" (*Opinion*, at p. 41). The *Opinion* goes on to note, that "there was no evidence, and PERB did not find, that the charter amendment embodied in the CPRI was placed on the ballot because it

qualified as a ballot measure sponsored or proposed by the governing body of City." (*Opinion*, at p. 42).

Based on those undisputed factual findings, the Court of Appeal evaluated,

> whether PERB's decision, which appears to rest on the theory that the participation by a few government officials and employees in drafting and campaigning for a citizen-sponsored initiative somehow converted the CPRI from a citizen-sponsored initiative into a governing-body-sponsored ballot proposal, **is erroneous under applicable law.** (*Opinion*, at p. 42-43; emphasis added; see also p. 65.)

The Court of Appeal's analysis resulted in its conclusion that "PERB's determination was error" (*Opinion,* at p. 43)

Thus, in addition to correctly applying the *de novo* standard of review, the Court of Appeal held that PERB's Decision was "clearly erroneous." Therefore, although *Banning* is not controlling in this matter, the holding that the PERB Decision is "clearly erroneous" demonstrates the very deference that PERB and the Charging Parties complain is lacking in the *Opinion.* PERB's and the Charging Parties' objections on the grounds that the Court should have applied the "clearly erroneous" standard of review, is therefore without basis and should not be entertained by this Court.

B. The Court of Appeal Correctly Applied the *De Novo* Standard of Review to PERB's Decision.

i. *Banning Teachers Assn. v. PERB* is not Controlling in this Matter.

In *Banning*, this Court determined that the clearly erroneous standard of review applied where PERB was deciding school district related labor matters governed by the Education Employment Relations Act ("EERA"). The Court stated that "The EERA created PERB as an independent board of

three members and vested it with a broad spectrum of powers and duties, including the responsibility to investigate unfair practice charges or alleged violations of the EERA." (*Banning*, at 803-804.) In *Banning*, unlike this case, there was no dispute that the parity agreement between school district and its employees was a labor issue within the scope of EERA, and within PERB's power and expertise. Thus, under the facts of *Banning*, the Court of Appeal's failure to give PERB greater deference "deprived PERB of its statutory function to investigate, determine, and take action on unfair practice charges to effectuate the policy of the EERA." (*Id.*)

Unlike *Banning*, Court of Appeal in this case was being asked to interpret a law outside the expertise of PERB. (*Banning*, at 804.) The issues in this case are not labor law issues the Legislature delegated to PERB to interpret. (Contra, *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 922 and *San Diego Housing Commission v. Public Employment Relations Board* (2016) 246 Cal.App.4th 1, 12, review denied (July 13, 2016).) This is evidenced, among other things, by PERB ignoring the mandatory duty of a "governing body" to place a qualified measure on the ballot because an elected official gave it political support. (Cal. Const. Art. XI, §§ 3(c) and 5(b); *Blotter v. Farrell* (1954) 42 Cal.2d 804; San Diego Municipal Code § § 27.1034, 27.1035[4], 27.2808.[5])

ii.* The Opinion correctly applies the *De Novo* Standard under *Yamaha Corp. of America v. State Bd. of Equalization.

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[4] San Diego Municipal Code § § 27.1034, 27.1035: (http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division10.pdf).

[5] San Diego Municipal Code § § 27.2808: (http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division28.pdf).

The *Opinion* properly applies the *de novo* standard of review, reflected in this Court's holding in *Yamaha.* Quoting *Yamaha*, the *Opinion* states:

> **The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.'"** *Yamaha's* conceptual framework noted that courts must distinguish between two classes of interpretive actions by the administrative body—those that are "quasi-legislative" in nature and those that represent interpretations of the applicable law—**and cautions that "because of their differing legal sources, [each] command significantly different degrees of deference by the courts.** (citations omitted) (*Opinion*, at p. 24, citing *Yamaha*, at 8 and 10.)

The *Yamaha* decision, "recognized that... an agency's interpretation of the law does not implicate the exercise of a delegated lawmaking power but 'instead ... represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts.'" (*Opinion*, at p. 25, quoting *Yamaha* at 11; *see also*, *Azusa Land Partners v. Dep't of Indus. Relations* (2010) 191 Cal. App.4th 1, 14.)

The key distinction made in *Yamaha*, and correctly relied on in the *Opinion*, is that the "expertise" which forms the basis for greater deference to an agency's interpretation of the law, arises when the agency interprets "legal principles within its administrative jurisdiction and, as such 'may possess special familiarity with satellite legal and regulatory issues.'" (*Opinion*, citing *Yamaha* at 11.) The judiciary, as the branch of government "charged with the final responsibility to determine questions of law" must ultimately decide when, and how much, weight will be given to an agency's legal interpretation. (*Opinion*, citing *Yamaha* at 11; see also *Los Angeles*

Unified School Dist. v. Public Employment Relations Bd. (1983) 191 Cal.App.3d 551, 556-557 (no deference when the decision "does not adequately evaluate and apply common law principles" *Opinion* at p. 26, n. 21).)

Accordingly, the *Opinion* finds that,

> ... while *some* deference to an agency's resolution of questions of law may be warranted when the agency possesses a special expertise with the legal and regulatory milieu surrounding the disputed question, **the judiciary accords no deference to agency determinations on legal questions falling outside the parameters of the agency's peculiar expertise.** (*Opinion*, at p. 26, citations omitted; see fn. 21) (emphasis added.)

Here, PERB's Decision was based "almost entirely upon its application of the interplay among City's charter provisions (and Sanders's powers and responsibilities thereunder), common law principles of agency, and California's constitutional and statutory provisions governing charter amendments." It "did not turn upon resolution of material factual disputes (to which the deferential "substantial evidence" standard would apply) or upon PERB's application of legal principles of which PERB's special expertise with the legal and regulatory milieu surrounding the disputed legal principles would warrant deference." (*Opinion*, at pp. 43-44.)

PERB's lack of expertise is demonstrated by its interpretation of "agency" resulting in a Mayor, in his official capacity, becoming the legal representative of a citizen's initiative despite the constitutional separation between citizen and local government. (Cal. Const. Art. XI, § 3(c); see generally *Perry v. Brown* (2011) 52 Cal.4th 1116; *Rossi v. Brown* (1976) 9 Cal.4th 688.) This is not a case where PERB has determined whether a school principal is acting as an agent of a district while on duty on school grounds by applying "agency" principles, under NLRB case law.