Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 4/22/2025 2:08:50 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/22/2025 by Biying Jia, Deputy Clerk

IN THE SUPREME COURT OF CALIFORNIA

Case No. S286264

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION,
Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES and BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES,
Defendants and Respondents.

After a Decision by the Court of Appeal
Second Appellate District, Division Seven, Case No. B326977

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS COUNTY OF LOS ANGELES AND BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES

Jennifer Bacon Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7535
jhenning@counties.org

Attorney for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

Legislative Materials

I. INTRODUCTION

For most retirement systems under the County Employees Retirement Law of 1937 (Gov. Code, §§ 31450-31899.10 ("CERL" or "37 Act"), the constitutional and statutory scheme provides for a balance between the retirement system and the counties. The Retirement Boards have sole authority over management and investments of the retirement system's funds and assets. The employees performing work for the retirement systems, however, are in most cases county employees, with the County Board of Supervisors having ultimate authority over salaries and other aspects of the civil service system to which these employees belong.

Despite this straightforward division of authority between the Retirement Boards and the Boards of Supervisors, which has been confirmed by case law for two decades, the Court of Appeal concluded that the Board of Supervisors merely plays an administrative role in approving by ordinance whatever civil service positions and salaries are requested by a retirement board. (*Los Angeles County Employees Retirement Association v. County of Los Angeles* ("Opinion")(2024) 102 Cal.App.5th 1167, 1202.) The Opinion below not only finds that LACERA has authority to set salaries for county employees working for a retirement association, leaving the Board of Supervisors with nothing more than a pro forma role, but it goes further, concluding that a retirement board's authority is "*complete* and *absolute*, subject only to the terms of Proposition 162 and judicial review."

This is in error. The Opinion rests on an overly broad reading of the plain language and intent of Proposition 162 with significant real-world consequences. In addition to unnecessarily impeding on the well-established plenary authority of County Board of Supervisors to provide for

the number, compensation, tenure, and appointment of employees, the Opinion leaves retirement boards unconstrained from the various limitations imposed on its conduct by statute and case law. This reading of the law has created uncertainties that impact both CERL and CalPERS Counties.

In addition, though LACERA frames the issue as pitting "fiduciary retirement boards" against "non-fiduciary county politicians free to subordinate the interests of participants to political or bureaucratic concerns" (Answer Br., p. 12), the reality is that the process in place prior to the Opinion creates balance and works well. In practical terms, it results in something of a meet-and-confer process where the needs of both the retirement system and the county are taken into account, with the Board of Supervisors having the ultimate decision-making authority, as required by the California Constitution. This process plays out regularly across the State, and legislative attempts to upend this balance have been rejected.

Regrettably, the Opinion creates disruption in this system in a way that is unnecessary and unconstitutionally infringes on the nondelegable authority of the Board of Supervisors to set salaries for its employees. For these reasons, Amicus Curiae CSAC urges this Court to reverse the Court of Appeal and reinstate the trial court ruling below denying LACERA's Petition for Writ of Mandate and holding that Los Angeles County acted properly in setting salaries for the county employees performing work for LACERA.

/ / /

/ / /

/ / /

II. ARGUMENT

A. County Boards of Supervisors have plenary authority over compensation for county employees that cannot be delegated.

All parties in this action agree that LACERA's personnel are statutorily designated as County employees. (Gov. Code, §§ 31522.1, 31522.2, 31522.3.) Section 1(b) of article XI of the California Constitution gives the governing body of each California county the plenary authority to provide for the compensation of county employees. The provision reads:

> The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. **The governing body shall provide for the number, compensation, tenure, and appointment of employees**.

(Cal. Cont., art. XI § 1(b) ("Section 1(b)" (emphasis added).)

For charter counties, including Los Angeles County, the Constitution requires that the charter provide for: "The **fixing and regulation by governing bodies**, by ordinance, **of the appointment and number of** assistants, deputies, clerks, attachés, and other **persons to be employed**, and for the **prescribing** and regulating **by such bodies of** the powers, duties, qualifications, and **compensation** of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal." (Cal. Const., art. XI §4(f) (emphasis added).)

The courts have found that the Board of Supervisors has plenary authority over county employee compensation. (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.) In these cases, the courts reviewed State legislative efforts to require mandatory interest arbitration after a county and bargaining unit reached impasse. In both cases, the court concluded that such attempts at legislative interference were impermissible because of the Board of Supervisors' exclusive authority over employee compensation. (*Ibid.*)

The history of Section 1(b) shows the voters' intent to vest control over compensation with the "Board of Supervisors." (*County of Riverside, supra,* 30 Cal.4th at pp. 285-286.) Specifically, the Supreme Court found that Section 1(b)'s predecessor, the former article XI, section 5, was amended in 1933 to "transfer control over compensation of most county employees and officers from the Legislature to the *boards of supervisors.*" (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 772 (emphasis added).) "According to the Supreme Court, the purpose of the 1933 amendment was 'to give greater local autonomy to the setting of salaries for county officers and employees, removing that function from the centralized control of the Legislature.' Thus, under section 1, subdivision (b) 'the county, not the state, *not someone else*, shall provide for the compensation of its employees.'" (*County of Sonoma, supra,* 173 Cal.App.4th at p. 338, citing *County of Riverside, supra,* 30 Cal.4th at p. 285, (emphasis added).) If this is true for general law counties, like Sonoma and Riverside, it is undoubtedly true for a charter county like Los Angeles, which, contrary to LACERA's delegation arguments (Answer

Br., p. 72), has constitutional authority to "prescribe" (rather than "provide") for the compensation of county employees.

Indeed, the ballot argument in favor of the 1933 amendment made clear that the measure "'gives the board *complete authority* over the number, method of appointment, terms of office and employment, and compensation of all deputies, assistants, and employees.'" (*County of Riverside, supra*, 30 Cal.4th at p. 286, citing Ballot Pamp., Special Elec. (June 27, 1933) argument in favor of Prop. 8, p. 10 (italics in original).) Thus, the history of the constitutional provision shows that the public understood the term "governing body" for purposes of setting employee compensation to mean the Board of Supervisors.

The statutory provision implementing Section 1(b) is Government Code section 25300. This section states: "*The board of supervisors* shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees…." (Gov. Code, § 25300 (emphasis added).) As noted by numerous courts, the specific reference to "board of supervisors" rather than a generic reference to a legislative body is strong evidence of exclusive delegation. (*Committee of Seven Thousand v. Superior Court (1988)* 45 Cal.3d 491, 512; *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 373; *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 834; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 242; *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.* (2003) 113 Cal.App.4th 465, 476.)

The Opinion's holding that the Board of Supervisors must approve a salary ordinance put forward by LACERA as a ministerial act

unconstitutionally creates a delegation of salary setting authority of county employees to a body other than the Board of Supervisors. Courts have an obligation to interpret statutes to avoid unconstitutional results. (*People v. Garcia* (2017) 2 Cal.5th 792, 804; *Younger v. Superior Court* (1978) 21 Cal.3d 102, 113.) *Westly v. California Public Employees' Retirement System Bd. of Administration* (2003) 105 Cal.App.4th 1095, avoids this problem by reading the authority granted to a retirement board as "sole and exclusive power over the management and investment of public pension funds and to ensure that the assets of public pension systems are used to provide benefits and services to participants efficiently and promptly," rejecting the argument that retirement boards have "exclusive power to set the salaries of its employees. . . ." (*Id.* at 1109.) This is the correct interpretation based on the history of Proposition 162, as set out in detail the Los Angeles County's briefs. But it also is proper from a jurisprudential standpoint because it harmonizes the authority granted by the voters to both the retirement boards and the Boards of Supervisors, avoiding constitutional concerns. (*See People v. Barasa* (2002) 103 Cal.App.4th 287, 292 [courts should not reach constitutional questions unless absolutely required to do so].)

As discussed more fully below, *Westly's* analysis has proven to be a sensible solution for more than two decades. It requires the retirement board and the Board of Supervisors to coordinate and work together to find staffing solutions that meet the operational needs of both entities.

/ / /

/ / /

/ / /

B. The statutory scheme provides for coordination, balance and accountability in retirement system staffing and compensation.

The process for employee classification and compensation is designed so that counties and retirement systems must work together through a meet-and-confer type process prior to presentation to the Board of Supervisors. The Opinion completely undermines this process by turning the elected Board of Supervisors into nothing more than a rubber stamp for any staffing and salaries that a retirement board presents. This approach has been considered and rejected by the Legislature. Assembly Bill 1853, introduced in 2016, would have allowed retirement personnel to be employees of the retirement system in all 37 Act counties. The intent of the bill was to eliminate the current process, which leaves ultimate control over staff structure and compensation to the Board of Supervisors. (See Assem. Floor Analysis, Concurrence in Senate Amendments of Assem. Bill No. 1853 (2015-2016 Reg. Sess.) as amended June 20, 2016, par. 5.[1])

Governor Brown vetoed AB 1853, concluding that it was too far-reaching, and that any instances of removing Board of Supervisors authority over the salaries of retirement system personnel should only be by agreement between the county and the retirement system. "This more collaborative approach better serves the public interest." (Governor's veto message to Assem. on Assem. Bill No. 1853 (Sept. 23, 2016) Recess J. No. 15 (2015-2016 Reg. Sess.) p. 6632.)[2] This unsuccessful attempt to amend the law is relevant to understanding the current law's meaning. (*Joannou v.*

---

[1] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1853#

[2] Available at: https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB_1853_Veto_Message.pdf

City of Rancho Palos Verdes (2013) 219 Cal.App.4th 746, 761 ["the legislative history surrounding the unsuccessful attempts to address the issue of gradual earth movements does offer some guidance to our interpretation of the Cullen Act"].)

For similar reasons to those stated by Governor Brown, CSAC opposed AB 1853. CSAC's opposition of AB 1853 was based on concerns about the lack of review or oversight by the county Board of Supervisors regarding the hiring, pay and benefits of employees and the increase in system administrative costs that would be incurred by the county.

Indeed, both sides have a vested interest in effective administration of the retirement system, and any disputes in classification or compensation are usually resolved in a manner that meets the needs of both organizations. This cooperative process works well to ensure that retirement system staff are classified and compensated on par with other county staff, while allowing retirement boards to carry out their fiduciary duties to the retirement system.

The Opinion not only disrupts that balance as it pertains to personnel decisions, but it goes beyond that by finding that "the plenary authority Proposition 162 grants to retirement boards for 'administration of the system" is complete and absolute, subject only to the terms of Proposition 162 and judicial review.'" (Opinion, *supra*, 102 Cal.App.5th 1167, 1202.) This strikingly broad language creates potential impacts for both CERL and CalPERS counties. As the County has repeatedly noted, if Proposition 162 grants absolute plenary authority to retirement boards subject only to the limitations found in the measure's subdivisions, how can the retirement boards be subject to grand jury investigations? (*Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185. [the

county grand jury may investigate complaints of delays by the county board of retirement in processing disability retirement applications of county employees].) What would constrain a retirement board from acting inconsistently with a municipal ordinance when it comes to matters involving the purchase of service credits in the retirement system? (*City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 79-80 [when enabling legislation passed by City for purchase of service credits specifically dictated that the total cost of such purchases would be borne by the employees, retirement board could not charge City for costs of employee purchase of service credit because "while SDCERS had exclusive authority to administer plan assets, it did not have plenary authority to evade the law"].) There is nothing in the Opinion to explain why "complete" and "absolute" plenary authority would not extend to these issues, which prior opinions have held are not covered by Proposition 162, and which would skew the authority of retirement board far beyond the purpose of Proposition 162.

Indeed, if retirement boards have such broad constitutional authority, what would prevent them from interfering with salary and other decisions made by their public agency members, which could have a negative impact on a retirement board's obligations? This view of Proposition 162, which sees the measure as providing limited constraints on otherwise absolute power, as opposed to defining the parameters of a retirement board's authority, creates something akin to a "supercharged" plenary authority, upsetting the balance between retirement board and the public agencies whose employees they serve. There is nothing in the text or history of the measure that supports this result.

C. The history of the Legislature's actions on this issue shows a clear intent that Boards of Supervisors have authority to set the salaries for county employees working for retirement systems.

There is no better evidence that the Board of Supervisors has the authority to set retirement association staff salaries than the special exceptions that have been granted to four retirement associations to designate staff as employees of the retirement association rather than the county. (See Gov. Code, § 31522.5 [San Bernardino County retirement system senior staff are employees of the retirement system and not the County]; Gov. Code, § 31522.11 [same for the Orange County retirement system]; Gov. Code, § 31522.10 [same for Ventura County]; Gov. Code, § 31522.9 [an even broader exemption for Contra Costa County retirement system, specifying that all staff, not just senior level staff, are employees of the retirement system and not the county].) It is a long-standing rule of statutory interpretation that "where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195; *Burgos v. Superior Court* (2012) 206 Cal.App.4th 817, 837.)

There would have been no need for these statutory exemptions if the then-existing statutes already allowed the retirement boards to determine the salaries for these employees, and the Board of Supervisors had merely a ministerial duty to approve unchanged whatever was submitted to them. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 935 ["When the Legislature amends a statute, we will not presume lightly that it 'engaged in an idle act'"].) Indeed, the legislative history of the adoption of the exemptions supports the understanding that they were created specifically to allow the retirement boards ultimate authority over salaries so they could have the

flexibility needed to recruit and retain specially trained professionals. (See, e.g., Assem. Floor Analysis, 3d reading analysis of Assem. Bill No. 1992 (2001-2002 Reg. Sess.), 2002, par. 5[3]; Sen. Com. on Pub. Employment and Retirement, Analysis of Sen. Bill No. 1291 (2015-2016 Reg. Sess.) as amended May 27, 2015, par. 3[4] [noting that making the retirement association the employer was done for "purposes of determining [the employees'] compensation and benefits"].)

If the role of the Board of Supervisors is merely to approve, without changes, any staffing and salary requests submitted by the retirement association, there would be no need for any of these legislative acts. The retirement boards could simply create positions and set salaries for those positions, and then submit an ordinance to the Board of Supervisors to "rubber stamp" it. The fact that some retirement boards have been exempted from the need to defer to Board of Supervisors salary authority, and that an effort to allow all to do the same was rejected, clearly establishes the intent of the statutes applicable to this case to vest the Board of Supervisors with authority regarding compensation.

Regardless of how one views the relative merits of the current system requiring cooperation between retirement boards and Boards of Supervisors, it is the policy determination that has been made by the Legislature. The Legislature has made exceptions for individual retirement systems, making clear that in those systems only, certain staff are

---

[3] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200120020AB1992#

[4] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1291#

employees of the retirement system rather than county employees. However, the Legislature has not done so for LACERA, and so long as these employees remain county employees, the constitution requires that the Board of Supervisors retain plenary authority over their compensation.

III. CONCLUSION

For all these reasons, Amicus Curiae CSAC urges this Court to reverse the Court of Appeal and reinstate the trial court ruling.

Dated: April 22, 2025

Respectfully submitted,

/s/ *Jennifer B. Henning*
By _____
Jennifer B. Henning, SBN 193915

Attorney for Amicus Curiae
California State Association of Counties

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,230 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of April 2025 in Sacramento, California.

Respectfully submitted,

/s/ *Jennifer B. Henning*
By: _____
JENNIFER B. HENNING

Attorney for Amicus Curiae
California State Association of Counties

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/22/2025 by Biying Jia, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION v. COUNTY OF LOS ANGELES**
Case Number: **S286264**
Lower Court Case Number: **B326977**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **jhenning@counties.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	LACERA v Co of LA Application to File SCt
BRIEF	LACERA v Co of LA Amicus Brief SCT

Service Recipients:

Person Served	Email Address	Type	Date / Time
Roman Martinez Latham & Watkins LLP Los Angeles 1001100	roman.martinez@lw.com	e-Serve	4/22/2025 2:08:50 PM
Nicholas Rosellini Latham & Watkins LLP 316080	nick.rosellini@lw.com	e-Serve	4/22/2025 2:08:50 PM
Francis Vickers Alameda County Employees Retirement Association (ACERA)	fvickers@acera.org	e-Serve	4/22/2025 2:08:50 PM
Maytak Chin Reed Smith LLP 288155	mchin@reedsmith.com	e-Serve	4/22/2025 2:08:50 PM
Russell Richeda Saltzman & Johnson Law Corporation	rricheda@sjlawcorp.com	e-Serve	4/22/2025 2:08:50 PM
Johnny Tran San Diego City Employees Retirement System	johnnyt@sdcers.org	e-Serve	4/22/2025 2:08:50 PM
Jennifer Henning California State Association of Counties 193915	jhenning@counties.org	e-Serve	4/22/2025 2:08:50 PM
Jeff Rieger Alameda County Employees' Retirement Association (ACERA) 215855	jrieger@acera.org	e-Serve	4/22/2025 2:08:50 PM
Kathryn Bayes	kbayes@reedsmith.com	e-	4/22/2025

Reed Smith LLP 334864		Serve	2:08:50 PM
Uriel Hinberg Latham & Watkins LLP	uriel.hinberg@lw.com	e-Serve	4/22/2025 2:08:50 PM
Bobette Tolmer Renne Public Law Group	btolmer@publiclawgroup.com	e-Serve	4/22/2025 2:08:50 PM
Ryan McGinley-Stempel Renne Public Law Group 296182	rmcginleystempel@publiclawgroup.com	e-Serve	4/22/2025 2:08:50 PM
Linda Ross Renne Public Law 133874	lross@publiclawgroup.com	e-Serve	4/22/2025 2:08:50 PM
Manuel Abascal Latham & Watkins LLP 171301	manny.abascal@lw.com	e-Serve	4/22/2025 2:08:50 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/22/2025

Date

/s/Jennifer Henning

Signature

Henning, Jennifer (193915)

Last Name, First Name (PNum)

California State Association of Counties

Law Firm