

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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No. S262634

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**Robert Zolly, Ray McFadden,  
and Stephen Clayton**  
Plaintiffs and Appellants,

vs.

**City of Oakland**  
Defendant and Respondent

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**Opposition to Request for Judicial Notice  
of the Legislature of the State of California**

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After a Published Decision from the Court of Appeal  
First Appellate District, Division One, Appeal No. A154986  
Alameda County Superior Court Case No. RG16821376

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**LEGAL DISCUSSION**

This court should not consider the California Legislature’s request for judicial notice. California Rules of Court, rule 8.520(g) provides, “To obtain judicial notice by the Supreme Court under Evidence Code section 459, a *party* must comply with rule 8.252(a).” (Italics added.) And the California Legislature is an amicus curiae, not a party. (See Cal. Rules of Court, rule 8.520(a) & (f) [differentiating between briefs by parties versus amici curiae].) Thus, the Legislature is not authorized to file a request for judicial notice.

This limitation coincides with the basic principle that “[i]n civil litigation a nonparty who has not formally intervened ordinarily cannot make a motion (*Difani v. Riverside County Oil. Co.* (1927) 201 Cal. 210, 214; *Marshank v. Superior Court* (1960) 180 Cal.App.2d 602, 605; see generally 6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without

Trial, § 4, p. 430.)” (*People v. Martinez* (2009) 47 Cal.4th 399, 419, fn. 2.) A request for judicial notice is one such type of motion that is off-limits to nonparties. (See Cal. Rules of Court, rule 8.252(a) [describing the “motion” procedures a “party” must follow “[t]o obtain judicial notice by a reviewing court”].)

### CONCLUSION

Because the California Legislature is not a party, this court should deny the Legislature’s request for judicial notice.

Respectfully submitted,  
**Katz Appellate Law PC**

Dated: April 5, 2021

By \_\_\_\_\_ /s/ \_\_\_\_\_

Paul Katz  
Attorney for Appellants

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **ZOLLY v. CITY OF  
OAKLAND**

Case Number: **S262634**

Lower Court Case Number: **A154986**

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4/5/2021

Date

/s/Paul Katz

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