Case No. S286264

IN THE SUPREME COURT OF CALIFORNIA

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
Superior Court for the County of Los Angeles
Case No. 21STCP03475 (Hon. James C. Chalfant)

PLAINTIFF AND APPELLANT'S ANSWER TO THE CALIFORNIA STATE ASSOCIATION OF COUNTIES' AMICUS CURIAE BRIEF

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INTRODUCTION

This appeal involves Los Angeles County's assertion of two types of authority: (1) the authority to control classifications for retirement system employees; and (2) the authority to set the salaries of those employees. The County insists it has the sole and exclusive power to classify employees and set their salaries, notwithstanding Article XVI, Section 17 of the California Constitution, as amended by Proposition 162 ("Prop. 162"), and the County Employees Retirement Law of 1937 ("CERL"). By contrast, the County's lone amicus—the California State Association of Counties ("CSAC")—focuses on counties' salary-setting power, while giving conspicuously scant attention to their power to classify employees.

CSAC's inability to muster an argument about the latter power makes clear that the prerogative to manage a retirement system's organizational chart lies with the system's fiduciary boards, which owe paramount duties of loyalty and care to the system's members. And CSAC's arguments about compensation confirm that those fiduciary boards have salary-setting authority as well. CSAC offers no plausible alternative interpretation of Prop. 162's grant of "plenary authority and fiduciary responsibility" over "administration of the system," which plainly encompasses the power to decide how much system employees are paid. CSAC nowhere acknowledges the original consensus about Prop. 162's meaning, nor does it cite contemporaneous dissenting views from *any* of its 58 member counties. CSAC does not even mention that Prop. 162 governs "*[n]otwithstanding* any other provisions of law or [the California] Constitution to the

contrary." (Cal. Const., art. XVI, § 17, italics added.) In fact, CSAC inexplicably ignores Prop. 162 almost entirely, despite the provision's centrality to this appeal.

CSAC misses the mark on CERL as well. CSAC omits the operative statutory text. And CSAC ignores the original consensus about the meaning of the CERL provisions at issue, which was joined by numerous California counties when those provisions became law. CSAC also fails to address retirement boards' exclusive statutory power to budget all expenses from its own investment earnings. The only CERL argument that CSAC meaningfully presents relies on developments occurring *three decades later*. Those subsequent developments shed no light on the original intent of the relevant CERL provisions, which make clear that retirement boards have sole authority to determine the staffing needed to support their necessary work.

LACERA's answer brief on the merits demonstrated why Prop. 162 and CERL establish a sensible legal rule that places key administrative determinations, including employee classifications and salary-setting, in the hands of independent boards bound by a fiduciary duty of loyalty to serve the best interests of system participants and their beneficiaries. Since then, a wide range of amici have reinforced LACERA's legal and policy points, including: (1) interest groups representing around 200,000 retirees who rely on county retirement systems for their pension and medical benefits; (2) a national, non-profit trade association representing around 500 public pension funds that collectively manage around $6 trillion in assets; (3) sixteen

unions representing more than 85,000 active-employee members of LACERA; and (4) nearly twenty retirement systems managing over $150 billion for approximately 500,000 members, including fourteen CERL systems serving over 300,000 current and former public employees and their beneficiaries. CSAC has no persuasive response to the arguments advanced by LACERA and its numerous amici.

This Court should affirm.

ARGUMENT

I. CSAC'S ARGUMENTS ABOUT THE POWER TO SET EMPLOYEE SALARIES ARE UNPERSUASIVE

In asserting that county officials can dictate the salaries of retirement system personnel, CSAC ignores the operative text and relevant enactment history of both Prop. 162 and CERL. CSAC's vague policy arguments in support of its atextual and ahistorical position are likewise unpersuasive.

A. CSAC's Constitutional Arguments Lack Merit

Like Los Angeles County, CSAC turns Prop. 162 on its head. CSAC repeats the County's remarkable assertion that "County Boards of Supervisors" have "plenary authority over [the] compensation" of retirement system employees. (Brief of Amicus Curiae California State Association of Counties ["CSACB"], pp.7-8; see County Reply Brief, p.1.) But Prop. 162 says the opposite. It commands that *retirement boards*, not the county officials, have "plenary authority and fiduciary responsibility" over "administration of the system."

1. The Court of Appeal and LACERA explained why Prop. 162's broad grant of administrative authority encompasses

the power not just to control employee classifications—that is, to decide how many employees are needed, what work they should do, and to whom they will report—but also the prerogative to set their salaries. (See Petn. for Review, Attachment A ["Op."], pp.31, 36, 40-42, pub. opn. at *Los Angeles County Employees Retirement Assn. v. County of Los Angeles* (2024) 102 Cal.App.5th 1167; LACERA Answer Brief ["LAB"], pp.28-34.) Prop. 162 gives retirement boards sole and complete power (i.e., "plenary authority") over managing the work of the organization (i.e., "administration of the system"). (See Op.33-37; LAB, pp.29-31.) Prop. 162 pairs its exclusive grant of authority with a "fiduciary responsibility" not shared by county officials. (See Op.38-39; LAB, pp.40-44.) And crucially, Prop. 162 further makes clear that this allocation of authority governs "[n]otwithstanding any other provisions of law or this Constitution to the contrary." (See Op.31, 52-53; LAB, p.31.)

Because Prop. 162 controls no matter what other statutory or constitutional provisions say, the Court of Appeal's opinion and LACERA's brief focused on analyzing the text, structure, and history of Prop. 162—and on explaining why thinly supported and wildly overbroad language in *Westly v. California Public Employees' Retirement System Board of Administration* (2003) 105 Cal.App.4th 1095, should not be followed. (See Op.31-51; LAB, pp.28-40.) The submissions from LACERA's amici do the same. (See Brief of Amici Curiae Retired Employees of Los Angeles County and California Retired County Employees Association ["RELACB"], pp.14-20; Brief of Amici Curiae

Coalition of County Unions and Service Employees International Union Local 721 ["CCUB"], pp.12-31; Brief of Amici Curiae Boards of Retirement of Fourteen County Employees' Retirement Associations ["CERAB"], pp.10-18; Brief of Amici Curiae Los Angeles Water and Power Employees' Retirement Plan et al. ["WPERPB"], pp.16-18.) Yet CSAC does not engage in *any* analysis of Prop. 162.

By failing to meaningfully address Prop. 162, CSAC ignores the central issue in this case. CSAC does not attempt to provide a coherent understanding of the plain meaning of "plenary authority and fiduciary responsibility" over the "administration of the system." It does not grapple with Prop. 162's enactment history, much less suggest that *any* of the 58 counties CSAC represents originally agreed with CSAC's current position when Prop. 162 was enacted. CSAC also fails to mention the written opinion of Los Angeles County's Counsel supporting LACERA's interpretation of Prop. 162, which guided the County's conduct in approving LACERA's classification and salary decisions for over twenty years. (See LAB, pp.39-40; 1AA161-165.) And it does not acknowledge Prop. 162's overarching goal of ensuring that independent fiduciaries, not elected politicians, will manage the system's funds, operations, and expenses in the best interest of system members and their beneficiaries. (See LAB, pp.40-42; Brief of Amicus Curiae National Conference on Public Employee Retirement Systems ["NCPERSB"], pp.11-32.)

Despite CSAC's efforts to deny its plain meaning, Prop. 162 is comprehensive in granting retirement boards "plenary

authority" over "the administration of the system," "notwithstanding any other provision of law or this Constitution to the contrary." That broad language encompasses all areas of board decision-making and allows no exception for personnel decisions. All administrative authority, including setting the classifications and salaries of the staff retirement boards rely upon to implement their fiduciary decisions, belongs exclusively to those boards.

2. Rather than grapple with the constitutional provision that matters most—Prop. 162—CSAC instead focuses on Article XI, Section 1(b), which sets forth counties' home-rule authority and states that a county's "governing body shall provide for the number, compensation, tenure, and appointment of employees." (See CSACB, pp.7-10.) Taking as a given that "LACERA's personnel" are "County employees" for all purposes, CSAC argues that Article XI, Section 1(b) gives counties salary-setting authority for retirement system personnel by establishing that "the Board of Supervisors has plenary authority over county employee compensation," which, in CSAC's view, "cannot be delegated." (*Id.* at pp.7-8.)

Even if all that were correct, CSAC's argument would still be beside the point. Whatever Article XI, Section 1(b) says about a county's general authority, Prop. 162 controls in the specific context of retirement systems "[n]otwithstanding any other provisions of law *or this Constitution* to the contrary." (Italics added; see Op.52-53; LAB, pp.69-70.) CSAC does not devote a single word of its brief to this language. Further, as the Court of

Appeal pointed out, Article XI itself limits a county's authority "to create and operate their own local government" to that which is "*within the limits set out by the Constitution*"—including Prop. 162. (Op.55, quoting *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1206.) As a result, and as explained, this case turns on the proper scope of Prop. 162's express grant of "plenary authority and fiduciary responsibility" over "administration of the system" to retirement boards. (Op.52-53; LAB, pp.29-33.) On that key issue, CSAC's brief adds nothing. It fails to address retirement boards' fiduciary duties. And it ignores the adverse impact that its narrow focus on County rights will have on the ability of boards to perform their responsibilities in the interest of system members and their beneficiaries

At any rate, CSAC's argument regarding Article XI, Section 1(b) is wrong, even without resorting to the "notwithstanding" clause. The argument rests on the assumption that "[a]ll parties in this action agree" that the individuals who work at LACERA are County employees for all purposes, including under Article XI. (CSACB, pp.7-8.) But the opposite is true. As the Court of Appeal held, as LACERA has consistently maintained, and as the County itself once agreed, retirement system employees are statutorily designated as county employees only for "limited purposes," including ensuring that they can enjoy "civil service protection" and "participate in the retirement system" themselves. (Op.58-60; see LAB, pp.49-50; 1AA163.) And as County Counsel originally acknowledged, LACERA personnel are still "governed by those who hire them" and "who

control their administration"—i.e., retirement boards. (1AA156; see 1AA163.) LACERA, not the County, is responsible for hiring, firing, and disciplining system employees—and for negotiating collective bargaining agreements that govern their relationship with LACERA—all responsibilities that would be greatly diminished without the ability to set salaries. (See, e.g., 1AA171, 173; 6AA1182-1183; see LAB, pp.39-40.) And LACERA, not the County, concededly pays the salaries for LACERA personnel (County Opening Brief, p.66), all of whom are—at the County's request—part of LACERA-specific classifications. (LAB, pp.39-40; 1AA171, 173.) Accordingly, LACERA employees are not "employees of the county for purposes of article XI." (Op.60.)

Even assuming otherwise, CSAC's argument still does not hold up. CSAC admits that Article XI, Section 1(b) gives a county's "governing body" the "authority to *provide for* the compensation of county employees." (CSACB, p.7, italics added.) And it further acknowledges that the "provision implementing Section 1(b) is Government Code Section 25300," which directs that the "board of supervisors" shall "provide for" the compensation of county employees. (*Id.* at p.9.) That phrasing contrasts sharply with the immediately preceding clause, which states that the board of supervisors must "prescribe" the compensation for elected officials. (*Id.*) The relevant provisions' use of "provide" in the context of employees connotes a delegable duty. (See LAB, pp.71-72.) Here, the County delegated salary-setting authority to LACERA's independent boards by voluntarily creating LACERA under CERL—and thereby "'provided' for" the

compensation of LACERA personnel. (*Id.* at p.72; see L.A. County Code, § 5.20.010; Gov. Code, § 31501.)

CSAC's lead cases—*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, and *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278—do not suggest otherwise. As CSAC admits, both cases involved "legislative interference" in setting salaries for county employees by "requir[ing] mandatory interest arbitration after a county and bargaining unit reached an impasse." (CSACB, p.8.) Those cases stand only for the modest proposition that no one, including the Legislature, can "*compel* a county" to relinquish salary-setting authority "*involuntarily*." (*County of Riverside*, *supra*, 30 Cal.4th at p.284.) They are thus consistent with the main thrust of Article XI's home-rule authority, which is to "depriv[e] the [State] legislature, by laws general in form, to interfere in the government and management" of municipal affairs. (*Weekes v. City of Oakland* (1979) 21 Cal.3d 386, 399.) And they did not decide "what [a] county may itself do" on its own accord, rendering them irrelevant here. (*County of Riverside*, *supra*, 30 Cal.4th at p.284.) As just explained, the County has willingly delegated its salary-setting authority to LACERA. (See LAB, p.72.)[1]

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[1] CSAC also claims that Section 25300's "specific reference to 'board of supervisors' rather than a generic reference to a legislative body is strong evidence" of non-delegable authority. (CSACB, p.9.) Not so. All of CSAC's supporting cases address an entirely unrelated issue—under what circumstances "a statutory reference to action by a local legislative body indicates a legislative intent to preclude" voter initiatives "on the same

CSAC resorts to arguing that—notwithstanding the use of "provide for" in Article XI, Section 1(b) and Government Code Section 25300—the board of supervisors for "a charter county like Los Angeles" (unlike a general law county) "has constitutional authority to 'prescribe' (rather than 'provide') for the compensation of county employees" under Article XI, Section 4(f). (CSACB, pp.8-9.) But CSAC acknowledges that Article XI, Section 1(b) and Government Code Section 25300 apply to charter counties, in addition to general law counties. (*Id.* at pp.7-9.) And while Article XI, Section 1(b) has an express carveout stating that the "compensation" for "members" of a charter county's board of supervisors is governed by "subdivision (b) of Section 4," there is no comparable exception for the "compensation" of charter county "employees." Subdivision (h) of Section 4 further confirms that "[c]harter counties shall have all the powers" that general law counties enjoy, which necessarily includes the power to delegate salary-setting authority.

Against all this, CSAC is wrong to claim that the word "prescribe" in Article XI, Section 4(f) changes anything. (CSACB, pp.8-9.) Section 4 *expands* the powers of charter counties by giving them greater autonomy over municipal affairs than general law counties. (Compare Cal. Const., art. XI, § 1 with Cal. Const., art. XI, § 4.) It thus makes little sense to read Section 4 as creating a uniquely *restrictive* rule for charter counties that precludes a board of supervisors from delegating salary-setting

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subject." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501.)

authority for retirement system employees pursuant to CERL. A retirement board setting the salaries of system personnel is fully consistent with Article XI, Section 4(f).

B. CSAC's Statutory Arguments Also Lack Merit

CSAC also offers no persuasive response to the thorough analysis of CERL advanced by LACERA and adopted by the Court of Appeal.

1. Start with CERL's text. Salary-setting authority necessarily comes with the retirement boards' exclusive power under Section 31522.1 to determine what "work" is "necessary," the number and type of personnel "required to accomplish" that work, and who should be "appointed" to perform those roles. (See Op.62-63; LAB, pp.45-46.) Section 31522.1 gives the "board of supervisors" only the ministerial duty that it "shall" include retirement boards' salary decisions in "the salary ordinance"—not the right to override them. (See Op.63-64; LAB, pp.47-48.) Section 31580.2 confirms as much by providing that retirement boards "shall annually adopt a budget covering the entire expense of administration of the retirement system"—over 70% of which comprises employee salaries for LACERA—and that such expense "shall be charged against the earnings of the retirement fund," not paid out of county coffers. (See Op.46; LAB, pp.46-47, 63.) CERL also codifies the same exclusive fiduciary responsibilities that are set forth in Prop. 162. (Gov. Code, § 31595; see *id.* § 31459.1, subd. (a)(4).)

CSAC does not engage with any of this statutory text or the history of the County interpreting CERL as supporting the exclusive authority of LACERA's boards over personnel decisions.

(See LAB, pp.45, 48-49; 1AA164.) Nor does it address Section 31580.2's budgetary power, let alone the senselessness of excluding salary-setting authority from that power when salaries make up the vast majority of a retirement system's budget. And CSAC completely glosses over the irreconcilable conflict that its interpretation of CERL creates between (1) Government Code Section 31522.1's express grant of the power to "appoint" system employees, and (2) Article XI, Section 1 and Government Code Section 25300's requirement that the board of supervisors provide for the "appointment" of county employees. (See Op.57-58; LAB, p.71.) CSAC has no response to this inescapable problem with its position.

2. CSAC also completely ignores the legislative history of the relevant CERL provisions. Before CERL was amended in 1973, counties across California—including Los Angeles County—opposed the amendments because they understood that the amendments would transfer authority over retirement systems' management and budgets from county officials to retirement boards. (See Op.66-67; LAB, pp.16, 48.) CSAC cannot point to *any* disagreement with that consensus view at the time from its 58 members, even though counties had every incentive to offer an alternative reading. That California counties "long acquiesced" in this "contemporaneous interpretation" of CERL powerfully confirms retirement boards' salary-setting authority under the statute. (*People v. S. Pac. Co.* (1930) 209 Cal. 578, 594; accord *Amalgamated Transit Union, Local 276 v. San Joaquin*

Regional Transit Dist. (2019) 36 Cal.App.5th 1, 10.) CSAC says nothing to refute that fundamental point.

Instead, CSAC jumps to developments that occurred long after the relevant CERL provisions were enacted. Like the County, CSAC claims "[t]here is no better evidence" of the meaning of the 1973 CERL amendments than four county-specific statutes enacted between 2002 and 2021, along with a failed bill from 2016. (CSACB, pp.14-16.) In truth, the actions "of a later Legislature"—whether enacted legislation or a failed bill—merit "little weight" in determining the original intent of Sections 31522.1 and 31580.2. (*Peralta Cmty. Coll. Dist. v. Fair Emp. & Hous. Com.* (1990) 52 Cal.3d 40, 52; see *Granberry v. Islay Invs.* (1995) 9 Cal.4th 738, 746 [unpassed bills have "little value"].) And like the County, CSAC has no good answer for the obvious justifications for these subsequent county-specific statutes that render them irrelevant in this case: (1) They went well beyond authorizing retirement boards to establish employee classifications and salaries, by exempting system personnel from civil service rules entirely, to address local issues and circumstances; and (2) they were necessary because of the legal uncertainly created by *Westly*. (See Op.76-78; LAB, pp.67-68.) The Court of Appeal and LACERA's brief emphasized all of this. (*Ibid.*) CSAC acknowledges none of it.

The bottom line is that the 1973 CERL amendments gave retirement boards the power to set salaries for system personnel, and their grant of salary-setting authority has not been amended or repealed, as the County and its County Counsel agreed for

many years before the change in position that led to this lawsuit. (LAB, pp.44, 48-49; 1AA164.) Nothing that has happened since changes anything.

C. CSAC's Vague Policy Arguments Do Not Withstand Scrutiny

CSAC's brief also includes a short policy section touting the supposed benefits of a scheme requiring "counties and retirement systems [to] work together through a meet-and-confer process prior to presentation to the Board of Supervisors." (CSACB, pp.11-13.) Crucially, CSAC does not point to any provision of California law that so much as hints at a mandatory "meet-and-confer" process—because there is none. And CSAC does not attempt to reconcile its purported system of negotiation and compromise with retirement boards' "plenary authority" and "exclusive fiduciary responsibility" under Prop. 162. That is reason enough to reject CSAC's policy argument. But the truth is that CSAC's preferred approach is *not* a "meet-and-confer" process. CSAC wants to give counties "ultimate decision-making authority" over salaries for system personnel. (CSACB, p.6; accord, *id.*, p.5 ["plenary authority"].) On that view, a retirement board's request for salary changes is akin to a request from a subordinate to a superior, not an invitation for compromise among equals. CSAC offers no sound reason to think such a scheme would be superior to the one that Prop. 162 and CERL actually establish. Consistent with trust law principles, fiduciary boards—not county politicians—are tasked with key decisions affecting fund governance and administration.

Like the County, CSAC offers no justification for injecting political considerations into classification and salary decisions, nor does it address the adverse consequences that inevitably flow from such considerations, as documented in this case. (See LAB, pp.42-44.)

CSAC represents 58 counties across California. In many of those counties, including Los Angeles County, retirement boards set employee salaries as they saw fit for years, without county officials micromanaging their decisions. (See LAB, pp.19-20; CERAB, p.8.) And in four counties, retirement boards continue to exercise exclusive salary-setting authority pursuant to the county-specific statutes discussed above. (*Supra*, pp.14-15.) Yet CSAC cannot point to *any* concrete example of that regime harming the governance of any county—and certainly not retirement system participants or their beneficiaries.

Nevertheless, CSAC declares a need for "coordination, balance and accountability." (CSACB, p.11.) Those values may be desirable, but giving fiduciary retirement boards the final say on key administrative decisions is far preferable to giving politicians the last word. Indeed, Prop. 162 and CERL *already* provide for coordination, balance, and accountability by giving counties the power to choose a majority of the retirement system's board—and by imposing upon system board members the fiduciary duty of "minimizing employer contributions" and "defraying reasonable expenses." (Cal. Const., art. XVI, § 17, subd. (b); see Gov. Code, §§ 31520.1, 31520.2.) Giving the County veto power would upset this carefully calibrated balance and

"disenfranchise[]" retired and active members of LACERA. (RELACB, p.12; see CERAB, p.15, fn. 3.)[2]

The question here is not whether cooperation is good; it is what should happen when cooperation breaks down, as it has for LACERA and other amici retirement systems. CSAC does not explain why the interests or desires of county officials should prevail when an impasse occurs. And they shouldn't: The assets of a retirement system are "trust funds," so ultimate decision-making authority on these issues must be left to the fiduciary boards with the "sole and exclusive responsibility" to act in the best interests of system "participants and their beneficiaries," not county officials beholden to other interests. (Cal. Const., art XVI, § 17, subds. (a), (b); see Op.38-39; LAB, pp.40-42; NCPERSB, pp.11-32.)

CSAC's emphasis on the County's desire to ensure that system personnel are "compensated on par with other county staff" illustrates the fundamental problem with CSAC's policy arguments: (CSACB, p.12.) They violate bedrock trust law

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[2] Like the County, CSAC is wrong to suggest that the Court of Appeal's reading of Prop. 162 means that retirement boards may disregard "grand jury investigations" or "evade" all generally applicable "law." (CSACB, pp.12-13.) As the Court of Appeal and LACERA explained—and as the County itself once agreed—Prop. 162 is essentially a separation-of-powers provision that guards against interference by non-fiduciary politicians. (See Op.34, 43, 50; LAB, pp.59-61 & fn. 2.) It does not exempt LACERA from statutes defining the parameters of the retirement system, from generally applicable laws that do not impinge on a retirement board's constitutionally protected powers, or from judicial review. (LAB, p.61 & fn. 2.)

principles. (See NCPERSB, pp.11-32.) Maintaining consistency between the salaries of county employees and retirement system employees may be important to county officials, but it has nothing to do with the best interests of system participants or their beneficiaries. (LAB, pp.43, 60; see NCPERSB, p.19.) It is also a false comparison: The County has "no equivalent role" to a "pension fund investment officer," particularly given legal limits mandating that the County make "only simple, low risk, short-term investments, such as U.S. Treasury Bonds." (NCPERSB, pp.27-28.) "A local government professional assigned to manage the County's low-risk and straightforward portfolio of investments simply does not need the equivalent level of expertise and experience as the pension fund investment officer charged with the complex tasks" of managing investments in specialized asset classes, like "private equity" and "real estate." (*Id.* at pp.22, 28; accord WPERB, p.13.)

Accordingly, what serves participants and beneficiaries' best interests is for salary levels to be set by fiduciaries whose sole concern is looking out for them. Permitting salary decisions to be made based on the non-fiduciary interests of elected officials who are accountable to the public at large does not serve those interests—and defies the clearly expressed will of the People and the Legislature. It also subverts the expectations of system participants, who "expect that [retirement systems] will exercise fiduciary responsibility over their pension funds independently from political influences." (CCUB, p.26.)

CSAC next points to a potential "increase in system administrative costs" if retirement boards can set salaries as they see fit. (CSACB, p.12.) CSAC ignores that Prop. 162 already imposes on retirement board members a fiduciary duty to act in the best interests of members and minimize employee contributions. (See Cal. Const., art XVI, § 17, subds. (a), (b); see also NCPERSB, p.16 [explaining that fiduciary duties "act as built in constraints to hold trustees accountable"].) CSAC also ignores the statutory command that LACERA keep expenses below 0.21% of the accrued actuarial liability of the retirement system. (See Gov. Code, § 31580.2, subd. (a)(1).) Those robust checks and balances ensure that system administrative costs will be managed responsibly.

It is true that elite talent may command higher salaries, particularly given fierce competition from the private sector. (NCPERSB, pp.26-27; WPERB, pp.13-14.) But if the right personnel are hired, any such increases will be offset (and then some) by better investment returns. (See NCPERSB, pp.17, 30-31; CERAB, pp.11-12.) Retirement boards are best situated to determine whether the potential increased investment returns justify additional personnel costs. (*Ibid.*) Prop. 162 and CERL allow them to make those decisions without weighing extraneous considerations, such as county budgets, competition for county employees, or myriad other political priorities. CSAC also forgets that system administrative costs are paid out of the system's investment earnings, not county coffers. (LAB, pp.18-19; see RELACB, pp.11-12.) CSAC's "penny-wise-pound-foolish"

approach overlooks these realities. (CERAB, p.12; see *id.* at p.14, fn. 2.)

CSAC also claims that the "cooperative process" it advocates "works well" as a practical matter. (CSACB, p.12.) That is, until it doesn't. On the County's view, counties can always "reject[] a County Retirement Board's stated classification and compensation needs without justifications tied to the successful operation of the retirement system." (CERAB, p.8.) LACERA's amici point to multiple examples of retirement system sponsors stonewalling requests by retirement systems to create new positions and refusing to "reclassify positions for recruitment, retention, and succession planning purposes" out of fear of introducing "pay equity issues" with other employees. (WPERPB, pp.12, 14-15.) And, of course, this case itself provides a stark illustration of the pitfalls of CSAC's supposedly "cooperative process." LACERA has been trying for years to work cooperatively with the County, explaining over and over again why certain salary increases are needed to attract and retain personnel capable of successfully managing a major global investment fund like LACERA. (LAB, pp.21-24.) Yet the County has persistently rebuffed those efforts for concededly non-fiduciary reasons, hindering LACERA's ability to administer the system effectively. (*Ibid.*)[3]

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[3] Furthermore, "[e]ven when a county [ultimately] cooperates with a retirement board"—as with the proposed DCIO classification here—"the process of getting a county to sign off on a change can take many months," causing costly inefficiencies and missed opportunities. (CERAB, pp.13-14.)

As a direct result of the County's refusal to raise salaries, LACERA has struggled to recruit personnel for high-level executive positions, and has even been forced to hire contractors to do work that salaried staff could perform far more cheaply. (LAB, pp.24-25.) In addition, the County's refusal to establish new classifications and modify several existing ones—which CSAC does not seriously defend, *infra*, pp.25-27—has undercut LACERA's efforts to implement key strategic projects and ease high burdens on key executives. (LAB, pp.24-25.) The County *admittedly* overrode LACERA's fiduciary boards on all of these key administrative decisions. (See *ibid.*) And it did so not to serve the best interests of LACERA members, but to prevent "poaching" of county employees, navigate "politically hot" relationships, and enforce its warped view of "equal pay" for "equal work" (with the County acting as the sole arbiter of what constitutes "equal," despite the glaring absence of any comparable county positions). (See *id.* at pp.19-22; NCPERSB, pp.26-29; WPERB, pp.12-13.)

LACERA is all for cooperation and coordination, as extensive attempts to cooperate with the County demonstrate. (LAB, pp.20-24.) What LACERA cannot tolerate is subordinating the fiduciary duties of its board members to the conflicting interests of elected officials who, even if "well-intentioned," are "responsible for, and accountable to, a far wider group of constituencies." (WPERB, p.10; see also NCPERSB, p.20; *Sweda v. Univ. of Pa.* (3d Cir. 2019) 923 F.3d 320, 329 [observing that "[t]he law expects more than good intentions" from fiduciaries].)

The County has claimed the power to dictate crucial administrative decisions for itself, for whatever reasons it sees fit—regardless of what LACERA's fiduciary boards believe would best serve LACERA members and their beneficiaries. CSAC is wrong to insist that Prop. 162 and CERL leave LACERA at the County's mercy in this fashion.

II. CSAC DOES NOT MEANINGFULLY DISPUTE THAT LACERA HAS AUTHORITY TO CLASSIFY ITS EMPLOYEES

CSAC's brief is laser-focused on who has the authority to set the salaries of retirement system employees. Aside from a few stray references to employee classifications, CSAC does not meaningfully dispute that retirement boards *at least* have the power to manage the system's organizational chart by classifying employees. That silence says a lot: Even an organization representing the interests of 58 California counties and advocating for a regime giving counties "plenary authority" to set salaries for retirement system personnel cannot cobble together a defensible argument that counties may dictate which personnel should perform what work and to whom they should report.

Despite believing that Prop. 162 reserves salary-setting authority to county officials, CSAC does not substantively contest that the provision's grant of "plenary authority and fiduciary responsibility" over "administration of the system" *at least* gives retirement boards the administrative prerogative to determine system employees' duties and reporting lines—i.e., to classify employees. That is unsurprising, as CSAC's abbreviated discussion of Prop. 162 rests on *Westly*, which did not concern

employee classifications. *Westly* rebuffed attempts to "exempt [CalPERS] employees from civil service," "bypass the [State] Controller's duty to issue warrants for the pay of [state] employees," and "issue stipends, salaries, and other payments in excess of" certain statutory caps—on the ground that Prop. 162 supposedly does not concern the "remuneration" of system employees. (105 Cal.App.4th at pp.1099, 1110.)

As for CERL, CSAC's silence regarding employee classifications demonstrates its failure to discern a defensible reading of the statute that gives this power to county officials. That too is unsurprising. As the Court of Appeal and LACERA explained, the first sentence of Section 31522.1 is a textbook grant of the power to classify employees. (See Op.62-63; LAB, pp.45-46.)

CSAC's policy arguments likewise do not implicate employee classifications. As noted, CSAC claims that a "cooperative process" is needed to avoid an "increase in system administrative costs" and to ensure that system personnel are "compensated on par with other county staff." (CSACB, p.12.) CSAC's fear, in other words, is that retirement boards will set salaries that county officials believe are too high. Even if those misplaced concerns about *compensation* decisions were valid, they would not warrant county control over *classification* decisions. And regardless, the Constitution resolves any such concern by imposing a duty on retirement boards to "defray[] *reasonable* expenses of administering the system." (Cal. Const. art. XVI, § 17, subds. (a), (b), italics added.) CSAC does not

address this safeguard, much less plausibly question its effectiveness.

In sum, CSAC's failure to offer any argument as to employee classifications underscores the County's weakness in belaboring the point. And given the text, history, and purpose of Prop. 162 and CERL, the best reading of those provisions places *both* the prerogative to classify employees *and* the authority to set their salaries in the hands of fiduciary retirement boards, not county officials. Fiduciary retirement boards, not elected politicians, must make these decisions in the best interest of system members and their beneficiaries.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in LACERA's answer brief, this Court should affirm the Second District's judgment.

Dated: May 27, 2025

Respectfully submitted,

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I certify pursuant to Rule 8.204(c)(1) of the California Rules of the Court that the foregoing answer contains 5,388 words, including the headings, footnotes, and quotations, but excluding cover information, tables, signature block, certificate of word count, and proof of service.

Dated: May 27, 2025 By: /s/ *Roman Martinez*
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v.
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Defendants/Respondents

California Court of Appeal
Second Appellate District, Division Seven
Case No. B326977

Los Angeles Superior Court
Case No. 21STCP03475

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Lower Court Case Number: **B326977**

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