

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA
CASE NO. S283978

VENTURA COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION,
Plaintiff and Respondent

v.

CRIMINAL JUSTICE ATTORNEYS ASSOCIATION OF
VENTURA COUNTY, ET AL., Defendants and Appellants

Second Appellate District, Division Six
Court of Appeal Case No. B325277
Santa Barbara Superior Court Case No. VENCI00546574

**VENTURA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION'S ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

Appellants Criminal Justice Attorney’s Association of Ventura County and Ventura County Professional Peace Officers’ Association’s (collectively, “Appellants”) Petition for Review (the “Petition”) offers no basis for this Court to grant review of the Court of Appeal’s decision below. This Court has already settled the questions presented by the Petition in *Alameda County Deputy Sheriff’s Association, et al. v. Alameda County Employees’ Retirement Association, et al.* (2020) 9 Cal.5th 1032 (“*Alameda*”), the Court of Appeal’s decision followed this Court’s analysis, and there are no other opinions that conflict with *Alameda* or with the Court of Appeals on these issues.

This lawsuit began when Respondent Ventura County Employees’ Retirement Association (“VCERA”) initiated a declaratory relief action in Ventura County Superior Court to confirm that it had correctly applied *Alameda* as to a particular issue: whether VCERA correctly limits the leave cashouts included in its legacy members’ retirement benefit calculations to the amount that such members are permitted by their applicable terms of employment to earn and receive in cash in each calendar year. VCERA understood that *Alameda* had answered this question in the affirmative, and the trial court agreed. The Court of Appeal affirmed in a published opinion that closely analyzed and clearly followed this Court’s *Alameda* decision. There are no conflicting decisions on this issue, and no need for the Court to settle this question further. VCERA thus requests that the Court decline to review the Court of Appeal’s decision.

II. BACKGROUND

A. The Legislature enacts PEPRA in 2012, amending the definition of “compensation earnable” in Section 31461.

VCERA is a public employees’ retirement system governed by Article XVI, section 17, of the California Constitution, the County Employees Retirement Law of 1937 (Gov. Code § 31450¹ et seq.) (“CERL”), the Public Employees’ Pension Reform Act of 2013 (§ 7522, et seq.) (“PEPRA”),² and various other laws. VCERA’s primary responsibility is to provide lifetime retirement benefits to eligible VCERA members employed by the County and other participating employers pursuant to the retirement statutes.

CERL, as amended by PEPRA, governs the calculation of certain³ VCERA members’ retirement allowance based on a statutory formula that considers, among other variables, a member’s “compensation earnable” during a Final Average Compensation (“FAC”) Period. These members are known as

¹ All statutory references hereinafter are to the California Government Code, unless otherwise stated.

² *Alameda* uses the term “PEPRA” also to describe amendments to CERL that the legislature made when it was enacting Section 7522. (See *Alameda*, 9 Cal.5th at p. 1051, n. 1.)

³ This case exclusively concerns “Legacy” members: VCERA members who joined the system before January 1, 2013, or who joined after that date but were eligible for reciprocity so as to be Legacy members. Non-Legacy members—i.e., members who joined on or after January 1, 2013 and were not eligible for reciprocity—are “PEPRA” members, and PEPRA members are not at issue in this case. Notably, PEPRA members are prohibited from having *any* leave cashouts included in their retirement allowance calculations. (§ 7522.34, subd. (c)(5).)

“Legacy” members. Section 31461 defines Legacy members’ “compensation earnable” as “the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” (§ 31461, subd. (a).) PEPRA amended this statute by adding subdivision (b), which excludes certain items from “compensation earnable.” Excluded pay items include, but are not limited to, the following:

“(1) Any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system. . . .

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and **payable in each 12-month period** during the final average salary period, **regardless of when reported or paid. . . .**

(4) Payments made **at termination of employment**, except those payments that do not exceed what is earned and **payable in each 12-month period** during the final average salary period, **regardless of when reported or paid.”**

(§ 31461, subds. (b)(1), (2), (4), emphasis added.)

B. Before PEPRA’s enactment, VCERA included “straddled” leave cashouts that exceeded Annual Cashout Limits in “compensation earnable.”

Legacy members receive cash payments for accrued but unused hours of annual leave through a process referred to as

“leave cashouts.” VCERA includes certain leave cashouts made during a member’s FAC Period (which may be one year or three, depending on the CERL rules to which the member is subject) into that member’s compensation earnable. VCERA members’ terms of employment—the County of Ventura’s Management Resolution or a Memorandum of Agreement— limit the number of hours that VCERA members may cash out in a calendar year, prior to their termination of employment. The parties to this litigation have stipulated to refer to this limitation as the “Calendar Year Allowance for Leave Cashouts,” and for briefing purposes VCERA shortens that term to “Annual Cashout Limit.” Annual Cashout Limits differ among employers and/or labor unions, and may even differ among employees of the same employer and/or members of the same labor union, depending on their date of hire and classification. Many VCERA members accrue annual leave in excess of their Annual Cashout Limit.

Because FAC Periods are not tied to calendar years and need not align with them, a one-year FAC Period may include portions of, or “straddle,” two calendar years (e.g., August 1 of Year 1 to July 31 of Year 2). Similarly, a three-year FAC Period may include portions of four calendar years, thereby “straddling” the first and fourth calendar years. When a one-year FAC Period includes two calendar years, or a three-year FAC Period includes four calendar years, VCERA refers to that period as “straddled,” as the FAC Period straddles calendar years. VCERA members with straddled FAC Periods may cash out more than their Annual Cashout Limit during that period. For example, if a

VCERA member with a one-year FAC Period had accrued 368 hours of leave per year, had an Annual Cashout Limit of 200 hours, and an August–July straddled FAC Period, that member could cash out 400 hours of leave during their FAC Period: 200 hours in December of Year 1 and 200 hours in July of Year 2. VCERA previously included straddled leave cashouts that exceeded Annual Cashout Limits in compensation earnable.⁴

C. In litigation challenging the constitutionality of the PEPRA amendments, this Court holds that the PEPRA amendments exclude “straddled” leave cashouts that exceed Annual Cashout Limits.

Shortly after PEPRA’s enactment and implementation by various CERL systems, labor organizations around the state filed lawsuits challenging the constitutionality of the PEPRA amendments to Section 31461. That litigation culminated in this Court’s *Alameda* decision, announced on July 30, 2020. In *Alameda*, this Court upheld the constitutionality of the PEPRA amendments and further held that there was no common-law

⁴ In this hypothetical, VCERA’s pre-*Alameda* practice would have been to include 288 hours of leave cashouts, not 400, in the member’s compensation earnable. This is because of the details of the members’ terms of employment: the members at issue in this litigation are only able to cash out leave if they have used 80 hours of leave within the previous 12 months. Thus, while this hypothetical member accrues 368 hours of leave annually, VCERA, under its previous policies, would include 288 hours in that member’s compensation earnable. This is because, pre-*Alameda*, VCERA included the lesser of the leave actually cashed out by a member or their annual leave accrual amount (here, 368 hours) minus the amount of leave that the member was required to use to be eligible for cashouts (80 hours). In this hypothetical,

basis prohibiting retirement systems from implementing them. (*Alameda, supra*, 9 Cal.5th at p. 1103.) The Court further addressed the role of county retirement systems and their boards in the broader administrative scheme, holding that “the duty of a county retirement board is to administer [the pension statutes] as enacted by the Legislature.” (*Id.* at p. 1069.) Given this duty, retirement systems and their boards “have no authority to act inconsistently” with the retirement statutes, and “have no authority to disregard . . . amendments” to those statutes. (*Id.*) Specifically, the Court held that county retirement boards could not ignore PEPRA’s amendments to CERL no matter their systems’ past policies, practices, or agreements with members. In other words, any policies, practices, and agreements that are inconsistent with the PEPRA amendments are, as a matter of law, unenforceable as to members who retire on or after PEPRA’s effective date of January 1, 2013. (*Id.* at p. 1070 [“County employees can have no express contractual right to the continued adherence to interpretations of CERL that are now, as a result of PEPRA, contrary to the statute.”].) The Court further held that pre-PEPRA policies and practices provide “no basis for estopping the county boards from adjusting their policies in response to the PEPRA amendment, as they are required by law to do.” (*Id.* at p. 1074.)

In addition to these broader holdings, this Court held that the PEPRA amendments prohibit including more leave cashouts in compensation earnable than a member’s Annual Cashout

that process would yield 288 hours.

Limit through the use of FAC Periods that “straddle” the measuring period used to determine the Annual Cashout Limit.⁵ Specifically, the Court held that PEPRA’s amendments to Section 31461, subdivisions (b)(2) and (4), “prevent th[e] practice” of a retiring employee “designating a final compensation year that straddles two calendar years” so that the employee’s compensation earnable exceeds the “limited amount of leave time that could be cashed out in a calendar year.” (*Id.* at pp. 1062–63.)

D. Following *Alameda*, the Board adopts the resolution at issue in this case, which limits leave cashouts included in “compensation earnable” to the Annual Cashout Limit.

Following *Alameda*, the VCERA Board adopted the *Alameda* Implementation Resolution on October 12, 2020. That resolution, adopted after public comment and after rigorous discussion and debate by the Board, implemented the PEPRA amendments to Section 31461 as *Alameda* interpreted them. Under Paragraph 2 of the *Alameda* Implementation Resolution, VCERA excludes from compensation earnable all leave cashouts that exceed members’ Annual Cashout Limits. These exclusions apply to all retirement benefit payments made on or after August 31, 2020 (the first retiree payroll date after *Alameda* became final on August 29) to all VCERA members who retired on or after January 1, 2013—the effective date of the PEPRA amendments to Section 31461. That is, the VCERA Board directed VCERA prospectively to exclude leave cashouts in excess of Annual

⁵ VCERA does not understand *Alameda* to have held that straddled FAC Periods are problematic in and of themselves.

Cashout Limits from the retirement benefit allowances of members who retired on or after January 1, 2013, as of the August 31, 2020 retiree payroll, and not to recoup from retirees any overpayments made before August 31, 2020 that were based on those excess leave cashouts.

E. The trial court and the Court of Appeal confirm that VCERA must exclude “straddled” leave cashouts that exceed Annual Cashout Limits from “compensation earnable” as this Court directed in *Alameda*.

The *Alameda* Implementation Resolution also directed VCERA to seek declaratory relief from the Ventura County Superior Court confirming that VCERA had properly implemented the PEPRA amendments to Section 31461 as *Alameda* interpreted them. After a round of motions challenging pleadings, VCERA, Appellants, and other parties to the trial court proceeding stipulated to two issues for summary adjudication: first, whether VCERA has a duty to exclude leave cashouts in excess of Annual Cashout Limits from Legacy Members’ compensation earnable; second, whether VCERA must make such exclusions for members who retired on or after January 1, 2013 (i.e., PEPRA’s effective date; notably, VCERA also proposed not to recoup overpayments it had made to such retirees before *Alameda*). The parties later stipulated to the Court resolving the matter as a bench trial on the basis of the parties’ briefing and argument. Following this stipulation, the trial court—correctly—ruled in the affirmative as to both questions and, there being no further issues in dispute, issued judgment in favor of VCERA.

Appellants appealed the trial court’s ruling to the Second District Court of Appeal as to the first question. The Court of Appeal unanimously affirmed the trial court on January 4, 2024. In its opinion, the Court of Appeal hewed to this Court’s holdings in *Alameda*:

We follow the Supreme Court's analysis of subdivision (b)(2) and (4) to conclude that amended section 31461 requires exclusion of compensation for leave cashouts that exceed the one (or three) calendar year's limits for such cashouts for purposes of calculating legacy members’ retirement benefits. Designating a 12- or 36-month final average compensation period that straddles multiple years to receive compensation for leave cashouts greater than the amount a member could receive in one or three calendar years, respectively, is the type of manipulation that the PEPRA exclusions sought to eradicate.

(*Ventura County Employees’ Retirement Association v. Criminal Justice Attorneys Association of Ventura County* (2024) 317 Cal.Rptr.3d 317, 323.) The Court of Appeal further concluded that, to the extent that the text of Section 31461 is ambiguous on this point, the clear legislative intent underlying the PEPRA amendments was conclusive: “Allowing members to avoid annual leave cashout limitations by designating a straddled final average compensation period does not comport with the concept of compensation earnable and is inconsistent with the legislative intent behind the PEPRA exclusions.” (*Id.* at p. 324.) Following a request from VCERA, the Court of Appeal certified its opinion for publication on January 26, 2024, and Appellants petitioned this Court for review on February 27, 2024.

III. ARGUMENT

A. **Review by this Court is unwarranted because this Court already has settled the questions raised in the Petition.**

Appellants seek to relitigate a question that this Court resolved in *Alameda* with an analysis that the Court of Appeal followed below. Appellants' dislike of this result, however, is an insufficient basis for this Court's review.

California Rule of Court 8.500 provides that this Court may review court of appeal decisions "to settle an important question of law." (Cal. Rules of Court, 8.500, subd. (b)(1).) This Court, however, has already settled the questions raised in the Petition by way of its decision in *Alameda*.

In *Alameda*, the Court reached two overarching conclusions: first, that the California Constitution's contract clause did not render the PEPRA amendments unconstitutional; and second, that no common-law or equitable doctrines prevented CERL systems from implementing the PEPRA amendments, and in fact that the systems were *required* to implement those amendments. In evaluating the constitutional question, the Court applied the "California Rule," which determines the constitutionality of the Legislature's changes to retirement statutes such as CERL. As part of that analysis, the Court assessed "whether the legislative body's purpose" was constitutionally permissible, i.e., whether it bore "some material relation to the theory of a pension system and its successful operation." (*Alameda, supra*, 9 Cal. 5th at pp. 1092–93.) Examining PEPRA's amendments to Section 31461, the Court

concluded that subdivisions (b)(2) and (4), “prevent th[e] practice” of a retiring employee “designating a final compensation year that straddles two calendar years” so that the employee’s compensation earnable exceeds the “limited amount of leave time that could be cashed out in a calendar year.” (*Id.* at pp. 1062–63.) The Court later referenced its “examination of the changes made by PEPPRA” when it concluded that the PEPPRA amendments were constitutional. (*Id.* at p. 1095.)

The Court’s analysis of this issue in *Alameda* likewise settled it more than enough for the Court of Appeal to follow below. (*Ventura County Employees’ Retirement Association, supra*, 317 Cal.Rptr.3d at p. 323 [“We follow the Supreme Court’s analysis of subdivision (b)(2) and (4)”].)

The Petition’s two questions presented simply seek to relitigate this issue. Both questions ask this Court to determine whether or not VCERA may include leave cashouts that exceed Annual Cashout Limits in compensation earnable under Section 31461. This Court has already determined that VCERA cannot, and it should thus decline to review this matter.

B. There is already uniformity of decision on the questions presented in the Petition because the Court of appeal correctly applied this Court’s holding in *Alameda*.

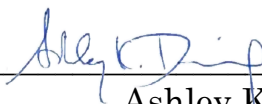
Appellants have also failed to point to any conflicting decisions on the issues presented in the Petition. California Rule of Court 8.500 further provides that this Court may review court of appeal decisions “to secure unanimity of decision.” (Cal. Rules of Court, 8.500, subd. (b)(1).) Decisions on the question presented

in the petition, however, are already unanimous. In *Alameda*, this Court concluded that subdivisions (b)(2) and (4) of Section 31461 “prevent th[e] practice” of a retiring employee “designating a final compensation year that straddles two calendar years” so that the employee’s compensation earnable exceeds the “limited amount of leave time that could be cashed out in a calendar year.” (*Alameda, supra*, 9 Cal.5th at pp. 1062–63.) The trial court applied this holding to conclude that VCERA must exclude leave cashouts in excess of Annual Cashout Limits from compensation earnable. And the Court of Appeal explicitly followed this Court’s analysis to affirm the trial court. (*Ventura County Employees’ Retirement Association, supra*, 317 Cal.Rptr.3d at p. 323.) There are no contrary decisions on this issue anywhere in the state. *Alameda* and the Court of Appeal’s opinion thus provide uniformity on this issue without any need for this Court’s further review.

IV. CONCLUSION

Appellants have not demonstrated any basis for this Court to review the Court of Appeal’s decision, and this Court should thus deny the Petition.

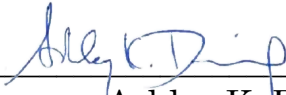
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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.504(d)(1) of the California Rules of court, I hereby certify that this brief contains 2,960 words, including footnotes. I have relied on the word count of the computer program used to prepare this brief.

Dated: March 15, 2024 NOSSAMAN LLP

By: 
Ashley K. Dunning

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Supreme Court of California

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Supreme Court of California

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CRIMINAL JUSTICE ATTORNEYS ASSOCIATION OF VENTURA
COUNTY**

Case Number: **S283978**

Lower Court Case Number: **B325277**

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