Case No. S247095

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY DEPUTY SHERIFFS' ASSOCIATION et al.,

Plaintiffs and Appellants,

v.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. and BD. of the ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. et al.,

Defendants and Respondents,

and

THE STATE OF CALIFORNIA,

Intervenor and Respondent.

On Review from the Court of Appeal for the First Appellate District, Division Four, No. A141913

APPLICATION TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONERS AND APPELLANTS

FILED BY
THE PERALTA RETIREES ORGANIZATION, [redacted], THE CALIFORNIA COMMUNITY COLLEGES INDEPENDENTS' ORGANIZATION, THE FACULTY ASSOCIATION OF THE CALIFORNIA COMMUNITY COLLEGES

Robert J. Bezemek, SBN 058740
David Conway, SBN 253903
Law Offices of Robert J. Bezemek, Prof. Corp.
1611 Telegraph Avenue, Suite 936, Oakland, CA 94612
rjbezemek@bezemeklaw.com; (510) 763-5690
Attorneys for Proposed Amici

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Regulations and Rules of Court

Other

APPLICATION TO FILE AMICI CURIAE BRIEF

I. INTEREST OF *AMICI CURIAE*

Pursuant to California Rules of Court 8.520(f) we respectfully request leave to file the attached brief of amici curiae in support of Plaintiffs and Appellants the Alameda County Deputy Sheriffs' Association *et al.*. This application is timely made within 30 days after filing of the last merits brief on August 22, 2018.

The Peralta Retirees Organization ("PRO") represents more than 450 retired academic and classified employees of the Peralta Community College District, located in Alameda County, Ca. These retirees include former teachers and counselors, building trades and clerical employees, and administrators, and confidential employees who earned pensions as members of CalSTRS or CalPERS. Many of PRO's members also earned contractually vested, lifetime, district-paid retiree health benefits through collective bargaining agreements or district policies.

The California Community Colleges Independents ("CCCI") is a federation whose membership consists of 13 faculty unions that together represent more than 15,000 faculty in 13 California community college districts, most of whom are members of the California State Teachers

Retirement System and have earned pensions for their service.[1] The 13 faculty unions have been certified by the California Public Employment Relations Board as the exclusive bargaining agents for bargaining units of academic employees at the respective community college districts.

The Faculty Association of the California Community Colleges ("FACCC") is a membership organization of more than 11,000 faculty members most of whom are employed at one or more of the colleges within the California Community College System. FACCC traces its origins to 1953 and since then has been a primary supporter of rights for community college faculty. Together, these organizations represent more than 15,000 community college faculty, CCCI has filed amicus briefs in *Retired Employees Assn. of Orange County v. County of Orange* (2011) 52 Cal.4th 1171, and *Santa Monica College Faculty Assn et al. v. Santa Monica Community College District* (2015) 243 Cal.App.4th 538.

---

[1] These are Allan Hancock Faculty Association, Chabot-Las Positas Faculty Association, Contra Costa United Faculty, Foothill-De Anza Faculty Association, Mira Costa College Faculty Assembly, United Faculty of Ohlone, Pasadena Community College Faculty Association, Rancho Santiago Faculty Association, Redwoods Faculty Organization, Santa Barbara Instructors' Association, Santa Monica Faculty Association, Santa Rosa All Faculty Association, and Yosemite Faculty Association. These 13 associations represent the faculty of 13 community college districts which in the aggregate operate 19 community colleges, and numerous other sites.

II. THE BRIEF OF *AMICI CURIAE* WILL ASSIST THE COURT IN DECIDING THE CASE

Amici Curiae are familiar with the issues before this Court and the scope of their presentation. Two of the Amici retirees' associations have litigated issues awaiting decision here, particularly the criteria which the courts have applied in determining whether a public employer has impaired contractually-vested retirement benefits. The members of CCCI and the retirees associations have earned contractually-vested retirement benefits to pensions and/or retiree health benefits. These benefits are an integral part of their contracts of employment of members of CCCI's 12 affiliated unions. Vested pension benefits have been earned by most of the members of CCCI's affiliated unions, through CalSTRS. Vested health benefits have been earned by many of the members of CCCI's affiliated unions, and by members of PRO. CCCI and FACCC have been in the forefront of protecting the rights of their public employees in regard to these contractually-vested retirement benefits. CCCI, FACCC, and PRO are vitally interested in the questions presented in this case regarding the standard applied by the judiciary when legal action is necessary to preserve and protect these benefits. This court's answer is likely to directly affect benefits received or anticipated by CCCI's affiliates', FACCC's members, and future members of and PRO.

The employee organizations which belong to the CCCI represent thousands of community college faculty throughout California. Most of CCCI's affiliated labor unions have negotiated lifetime, employer-paid retirement health benefits. Similarly, many of their members have earned pension benefits.

Undersigned Counsel Bezemek, the principal author of this Amicus brief, has pursued numerous petitions for writs of mandate to enforce the contractually-vested rights of California public sector employees, including an action by the Contra Costa Community Colleges' Retirees Association to protect vested rights, in which the college district's failure to comply with the reasonable modification doctrine was an important and decisive issue. CCCCRA's members filed suit against the Contra Costa Community College District on October 15, 1991, and prevailed in protecting these lifetime retirement health benefits as a result of the application of the very standards disputed here, in a decision issued on September 28, 1993. Counsel has pursued similar actions against the Fresno Unified School District, the Richmond (West Contra Costa) Unified School District, the Fresno Unified School District, the San Leandro Unified School District and San Ramon Valley Unified School District, and other public employers.

III. NEED FOR FURTHER BRIEFING

The proposed amici curiae are familiar with the issues before this court and the scope of their presentation. The amici believe that further briefing is necessary to address matters not fully addressed by the parties' briefs.

IV. CRC 8.200(c)(3) DISCLOSURE

No party or counsel for a party in the pending appeal authored the proposed brief or made a financial contribution intended to fund the preparation or submission of the brief. No person or entity made a financial contribution intended to fund the preparation or submission of the proposed brief, other than the amici curiae herein.

V. CONCLUSION

For the foregoing reasons, the amici curiae respectfully request that the court accept the accompanying brief for filing in this case.

Dated: September 20, 2018

Respectfully submitted,

Law Offices of Robert J Bezemek, P.C.

By: _____

Robert J. Bezemek
David Conway
Attorneys for Proposed Amici Curiae

BRIEF OF THE AMICI CURIAE

I. INTRODUCTION

The decision in *Marin Association of Public Employees v. Marin County Employees' Retirement Association* (herein "*Marin*")(2016) 2 Cal.App.5th 674 (*rev. granted* Nov. 22, 2016), hit the community of California public employees, retiree associations, and retirement systems, like an earthquake. Issued at the pleading stage, and relying extensively on disputed and highly charged polemics concerning the present value of the future cost of retirement benefits, and claims that retirement benefit enhancements conferred on public employees by their public employers amounted to pre-retirement "spiking," the appeals court proceeded to throw half a century of consistent Supreme and appellate legal authority out the window. In essence it concluded that this Court, and more than 20 appellate panels, had historically misunderstood or misapprehended one of the seminal tests to be applied when a public entity created disadvantageous changes to promised and earned retirement benefits, the "reasonable modification doctrine."

The instant matter, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (herein "*Alameda County*") (2018) 19 Cal.App.5th 61 (*rev. granted* March 28, 2018), involves

several of the issues present in *Marin*, a decision which lies at the core of much of *Alameda*'s reasoning. *Id.* at pp. 119-121. Hence this amicus will directly address the underlying, relied-upon *Marin* analysis, arguing that it is legally unjustified.

The *Alameda* court explained it agreed with *Marin*'s startling decision to eliminate the long-standing requirement that allowed changes pension plan provisions, provided the disadvantageous changes were balanced by comparable new advantages. *Alameda* explained:

> "... the *Marin* court focused on the question of whether, to be reasonable, the elimination or reduction of an anticipated pension benefit *must* be counterbalanced by a comparable new advantage ... After tracing the origin of the 'must' language to a 1969 appellate court decision and establishing that it has never again been reiterated by the Supreme Court, *Marin* makes, we feel, a convincing argument that the use of must in *Allen II*[2] was 'not intended to herald a fundamental doctrinal shift.' [citation] Thus, according to *Marin*, the high court's vested rights jurisprudence generally requires only that detrimental pension modifications *should* (i.e. ought) to be accompanied by comparative new advantages – in effect, 'a recommendation, not ... a mandate.'(*Id.* at p. 699, 206 Cal.Rptr.3d 365." (*Alameda* at p. 120)

Alameda also parted ways with *Marin*, finding that *Marin* erred in relying on an increased salary and a "general sense of what a reasonable pension might be," to conclude that there was no impairment of vested rights. *Alameda* ordered the case returned to the trial court, replacing *Allen*

---

[2] *Allen v. Board of Administration* (1983) 34 Cal.3d 114.

v. City of Long Beach's[3] long-standing comparability test with this: "... the application of detrimental changes to legacy members can only be justified by *compelling* evidence establishing that the required changes 'bear a material relation to the theory ... of a pension system,' and its successful operation. [citing *Allen I* and *Allen II*, and *Wallace v. City of Fresno* 42 Cal.2d 180, 185]."

It is true that *Alameda* cited several factors which heighten a public body's burden for imposing disadvantages on a pension system. Those it cited included that an analysis of benefit reductions "must focus on the impacts of the identified disadvantages on the specific legacy members at issue;" if "financial stability" is the justification for the changes "whether the exemption of legacy members from the identified changes" would cause the pension system to have difficulty meeting its pension obligations with respect to those members; and that "mere speculation", "rising costs alone", and the continuation of the benefits for legacy members "may not have a significant impact on the system, especially if such benefits have already actuarially accounted for" their payment. (*Id.* at p. 123.) The consideration of these criteria does not equate to nor justify rejecting the simpler, long-relied upon, and more appropriate comparability examination, one

---

[3]*Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131 ("*Allen I*)

repeatedly approved by this Court and appellate courts, from 1955 to 2015.

The *Alameda* and *Marin* decisions, and their recent companions,[4] all address the subject of contractually-vested pension rights and the application of the Contract's clause to changes in such rights implemented by public employers and pension boards. The "decisive issue," as observed by *Marin*, is whether implementation of a particular legislative act (Assembly Bill 197) "constitutes an unconstitutional impairment of plaintiffs' contracts of employment and concomitant pension benefits." *Marin*, *supra.*, at p. 692. The arguments of several parties and interests would have this Court apply a far more deferential analysis of a public employer's diminution of promised retirement benefits, than permitted by the " reasonable modification doctrine," or even the altered version articulated by the *Alameda* court. The *Alameda* court concluded that much of "... *Marin*'s vested rights analysis – including its rejection of the absolute need for comparable new advantages when pension rights are eliminated or reduced – is not controversial," and did not disagree with it. We argue that several aspects of the *Marin* decision, as adopted by

---

[4] *CalFire Local 2881 v. California Public Employees' Retirement System* (2017) 7 Cal.App.5th 115 (*rev. granted*), *Hipsher v. Los Angeles County Employees' Retirement Association* (2018) 24 Cal.App.5th 740 (*rev. granted*), *McGlynn v. State* (2018) 21 Cal.App.5th 538 (*rev. granted* June 27, 2018)

Alameda, especially the rejection of the comparability test, are contrary to the law of vested rights as it has developed since 1917, and still exists, and should be rejected by this Court.

Marin and *Alameda* not only misunderstand the reasonable modification doctrine, they mistakenly cede far too great authority to the "potency" of governmental power and the "essential attributes of sovereign power," minimizing judicial controls identified over the last half a century as crucial to balancing the government's twin roles, as both employer and sovereign. *Marin* went off course when it failed to embrace the constitutional doctrines relevant to vested rights which this Court has previously recognized, and which have guided scores of judicial decisions, more than 20 appellate rulings, and the actions of thousands of public employers and pension boards, over the last seven decades.[5] We begin our discussion with a bit of history concerning vested rights and the Contracts clause, as this history is important in dealing with the issues posed by the *Marin* and *Alameda* decisions.

---

[5] Given the likely number of California public jurisdictions providing contractually-vested rights, and the number of reported appellate decisions concerning alleged impairments, one can fairly imagine that the overwhelming number of systems have not impaired the contractually-vested rights of their employees.

II. THE ISSUES ADDRESSED

A. Whether the reasonable modification doctrine should be weakened by eliminating the requirement that disadvantageous modifications be balanced by the advantages of comparable new benefits?

B. Whether the *Marin* and *Alameda* decisions ignored binding and viable precedent?

III. THE EVOLUTION OF CONTRACTUALLY-VESTED RETIREMENT RIGHTS

Law professor and arbitrator Clyde Summers once wrote, in deciding a pension case, that "[M]en [and women] do not labor for chances on a roulette wheel and employers do not...pay wages with lottery tickets."[6] But not if the decisions in *Alameda* and *Marin* are allowed to so radically modify California law. These cases, and others now before the Court, dispense with some of the most important principles which have guided the courts' jurisprudence applying the Contract Clause to protect the vested rights promised to and earned by hundreds of thousands of California public employees during decades of loyal service.

That employees and pensioners depend on promised pension compensation, while public employers compensate their employees with the

---

[6] See *Roxbury Carpet Co.* 73-2 Lab. Awards, CCH par. 8521, at p. 4938-4939 (Clyde Summers 1973)

assurance of a binding pension promise, and the deferred compensation which flows from it. The law which has developed over nearly a century is grounded in the law of contracts, and not as the Respondents seem to believe, in statutory analysis. Public pensions are integral to the employment contract between the government and its public employees. As this Court recognized 71 years ago, and is possibly even more crucial today, "one of the primary objectives in providing pensions to public employees ... is to induce competent persons to enter and remain in public employment." *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 856, citing *inter alia*, *Whitehead v. Davis* (1926) 189 Cal. 715, 717; *Board of Directors of Women's Relief Corps Home Assoc. of California v. Nye* (1908) 8 Cal.App. 527, 545. The court in *Women's Relief* explained,

> "Such legislation is founded upon the theory that to hold out such a reward to those engaged in certain branches of the public service, especially those branches in which the service required is beset by perils and danger to the lives and health of those performing it, has a tendency to enhance the efficiency of such service and is consequently in the interest of the public welfare." *Id.*

The disastrous consequences that flow from disregarding promised retirement benefits concerned this Court a century ago,

> "It is obvious that this purpose would be thwarted if a public employee could be deprived of pension benefits and the promise of a pension annuity would either become ineffective as an inducement to public employees or it would become merely a snare and a delusion to the unwary." *Kern v. City of Long Beach* (1947) 29 Cal.2d 848,

citing *Gibson v. City of San Diego*, (1945) 25 Cal.2d 930, 934-935 and *England v. City of Long Beach*, (1945) 27 Cal.2d 343, 348.

Yet Respondents ask this Court to radically revamp the enormously effective judicial tests which have been invoked on numerous occasions over nearly a century to protect vested, deferred compensation of California public employees.

While this case, and two additional cases of similar import focus on only a snapshot of public sector vested rights, this Court's anxiously awaited decisions may very well have a much broader application. Hence it is particularly important to emphasize how the current system of analysis came to be, and why it remains vibrant and appropriate to the task.

A. As the Law of Pensions Developed Between the 1880's and the 1950's, Court's Recognized that Pensions were an Integral Part of a Public Employee's Contract of Employment, and Should Be Liberally Construed to Further Their Beneficent Purpose

A brief review of the development of California's protection of contractually vested pension and other employment benefits, reveals the significant role that a liberal construction of these benefits plays in cases considering disadvantageous modifications of such benefit. As we briefly relate the development of this judicial protection, it is well to keep in mind that the *Marin* and *Alameda* decisions minimize this factor to the point that it no longer carries the impact that it should.

The California courts have come a long way since deciding pension disputes in the 1800s. In those days, pension-like benefits (e.g. death benefits, disability payments) for public employees were considered mere gifts. *Taylor v. Mott* (1899) 123 Cal. 497; *Pennie v. Reis* (1889) 80 Cal. 266, *affd. Pennie v. Reis* (1889) 132 U.S. 464 (1989).[7] *Pennie* illustrates the court's peculiar viewpoint. The case involved legislation which gave the estates of deceased San Francisco police officers a death benefit of $1,000. After San Francisco police officer Edward Ward died on March 13, 1889, the administrator of his estate, one James Pennie, applied for Ward's death benefit. Unfortunately, just 9 days earlier, the legislature had repealed the existing death benefit law, at the same time adopting a new one which offered Ward no benefits. Pennie's lawsuit argued that Ward's estate had suffered a denial of due process. The suit failed. Although Pennie had not included a contract's clause argument, the Court ruled that "salaried public officers created by the legislature are not held by contract," that the legislature had full control over such officers, and unless restricted by the constitution, the government was entitled to "reduce their salaries." *Id.* at 268. It added that an officer accepts the office with the direct understanding

---

[7] See also, *Burke v. Board of Trustees of Police Relief and Pension Fund* (1906) 4 Cal.App.235, 238-239.

that during his term of office the legislature may modify or amend the "acts concerning fees of office", "without impairing any legal right acquired by him by virtue of his election and entry upon the duties of his office. [citations omitted]." The Court explicitly held that the March 9, 1889 legislation that repealed the act benefitting Ward, just days before he died, did not interfere with any vested right, holding that the officer "had a mere expectancy, which could have none of the elements of a vested right until the contingency contemplated by the statute had happened." Adding that the officer accepted employment with the direct understanding that during his term of office the legislature "may modify or amend the acts concerning fees of office, without impairing any legal right acquired by him by virtue of his election and entry upon the duties. [citation omitted]." *Id.* at p. 269.

It would not be until 1917 that the courts began to recognize that public employment was held by contract. The first noteworthy California case is *O'Dea v. Cook* (1917) 176 Cal. 659. Edward O'Dea was a San Francisco police officer who suffered serious injury, which led to his death two and one-half years later. When injured, the City provided a pension benefit to an officer's widow. But after he was injured, and before he died, the City amended its rules to limit the pension to widows of officers who died within one year of their work-related injury.

O'Dea's widow sued on the grounds her rights as a pension beneficiary were a vested right. Rejecting decades of contrary precedent, including *Pennie* and *Mott*, this Court recognized for the first time that a pension for a public employee was not a gratuity or gift, that pension provisions become part of the "contract of employment itself," and that "it is a firmly established principle of judicial construction that pension statutes serving a beneficial purpose are to be liberally construed." *Id.* at 6561-662.

O'Dea was followed by *Aitken v. Roche* (1920) 48 Cal.App. 753 which held that the right to a pension became vested when one entered into public service, recognized that a public employee will contemplate enhancement of benefits through future employment, and for the first time applied the rule of *liberal construction* of pension statutes.

Over the next two decades, the California courts, and this Court in particular, continued to decide disputes where public agencies sought to avoid paying for promised and earned pensions. Among the particularly instructive cases are *Dillard v. City of Los Angeles* (1942) 20 Cal.2d 599, and *McKeag v. Board of Pension Commissioners* (1942) 21 Cal.2d 386. In *Dillard*, a police officer died on duty from effects of a chronic and severe, but heretofore unknown, heart condition. The officer, driving home, suffered a heart attack, which resulted in his colliding with another car and

dying from his injuries. The accident came shortly after he had exerted himself to arrest a suspect who had assaulted him. He was observed to be pale, perspiring and weak after the encounter and was driven by a colleague to pick up his car. Thirty minutes after he got his car, his vehicle collided with another and he died from his injuries. The autopsy found evidence he'd imbibed alcoholic beverages before the collision. The City refused to grant his pension benefits to the officer's widow and child, claiming his death might have resulted from the liquor he'd drunk, not his police service. In rejecting the City's efforts, the Court emphasized that "Pension laws should be *liberally construed and applied to the end that the beneficent policy thereby established may be accorded proper recognition.*" *Id.* at 602. (Emphasis added)

In *McKeag,* the City of Los Angeles sought to restrict the scope of Fire Department employees' qualifying for pensions, arguing they should be limited only to "those who engage directly in the physical act of extinguishing or preventing fires." *Id.* at 390. This Court offered no support, holding that "The language of [the statute] ought not to be interpreted narrowly. Rather, a *liberal construction* is to be given, in accordance with the rule ordinarily used in construing pension legislation [citations]." Besides these cases, numerous other decision emphasize that pension

statutes are to be liberally construed in favor of the pensioner. See, e.g., *McCarthy v. City of Oakland* (1943) 60 Cal.App.2d 546, 551-552; *Gibson v. City of San Diego* (1945) 25 Cal.2d 930, 935. In *Gibson*, the Court elaborated, "In a like progressive spirit both federal and state courts have kept pace and have evinced a firm intention to take a liberal view" of these enactments "in order that their protective purposes may be fulfilled without undue imposition of constitutional limitations or hindrance through narrow judicial construction."[citations omitted]." *Id.* at p. 936.

It was just two years later, and after this Court had decided *O'Dea*, *Dillard, McKeag* and *Gibson*, that the Court issued the seminal decision *Kern v. City of Long Beach* (1947) 29 Cal.3d 848, credited by the *Alameda* court as beginning the "modern law of public pensions." While *Kern* deserves much recognition, the decisions leading to it should not be minimized. In *Kern* the City enacted legislation just 32 days before Henry Kern was eligible to retire with 20 years service, as theretofore permitted by the City charter. The City relied on cases allowing a governing body to modify a pension system "prior to the time for commencement of payment." This defense was rejected by the Court. First it explained that, "The ruling permitting modification of pensions is a necessary one since pension systems must be kept flexible to permit adjustments in accord with

changing conditions and at the same time maintain the integrity of the system and carry out its beneficent policy." *Id.* at 854-855. Then it elaborated,

> "The statutory language is subject to the implied qualification that the governing body may make modifications and changes in the system. The employee does not have a right to any fixed or definite benefits, but only to a substantial or reasonable pension. There is no inconsistency therefore in holding that he has a vested right to a pension but that the amount, terms and conditions of the benefits may be altered." *Id.* at p. 855.

In saying this, the Court did not give governmental entities authorization to reduce pension benefits in any given case. Instead, the Court focused on the role of pensions in inducing governmental service, recognizing that "this purpose would be thwarted if a public employee could be deprived of pension benefits and the promise of a pension annuity would either become ineffective as an inducement to public employees or it would become merely a snare and a delusion to the unwary."

These court rulings which led up to *Allen I* in 1955, serve to emphasize the beneficent purpose of public sector pensions (and other vested rights), and accentuate the skepticism courts need to employ when considering pre-retirement disadvantageous benefit changes. As we discuss below, a consideration of this background underscores, and the importance of this Court confirming that the words "should' and "must", as used in the

"reasonable modification doctrine", and discussed below, are interchangeable when ruling on disadvantageous modifications to contractually-vested pensions and other vested benefits.

B. The Principles Which Developed to Guide the Judicial Analysis of Disadvantageous Modifications of Contractually Vested Retirement Benefits

The legal framework for judicial analysis of disadvantageous modifications of pension benefits which greatly developed after *Kern* is straight-forward. However, important components of it were minimized or ignored by the *Marin* and *Alameda* courts. At the core of the analysis is the Contract Clause of the United States Constitution, Article I, Section 10, which provides "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts ..." Article I, Section 9 of the California Constitution contains a parallel provision: "[a] ... law impairing the obligation of contracts may not be passed."

This legal sanctity granted contracts is a distinctive attribute of the U.S. Constitution. James Madison saw the this clause as the "constitutional bulwark in favor of personal security and private rights," explaining that contract impairment was "contrary to the first principles of the social compact and to every principle of sound, legislation.[8] (*The Federalist*

[8] The clause was designed to prevent endless legislative battles between factions aimed at redistributing property through "legislative

No. 44, at 282, C. Rositer ed. 1961.) It remains true that the constitutional contract clauses are the primary safeguards against public agencies solving their fiscal and political problems by shifting costs onto their retirees through the impairment of retirees' contracts, or succumbing to the changing winds of political opinion. And once retirees have finished their public service, they are left with no bargaining power – so this constitutional protection is essential.

The application of the Contract's clause in cases involving pension and other retirement benefits illuminates several paramount principles. These principles demonstrate that *Marin*'s allowance for pre-retirement disadvantageous modifications without requiring the provision of comparable advantageous changes, is inconsistent with the Contract's clause.

First, an unbroken line of California cases holds that retirement benefits are deferred compensation for public service, protected by the Contract Clause. *Olson v. Cory* (1980) 27 Cal. 3d 532, 538; *Thorning v. Hollister School District* (1992) 11 Cal. App. 4th 1598, 1605 (*rev. den.* 1993); *O'Dea v. Cook* (1917) 176 Cal. 659, 661-662. The Contract Clause protects the *reasonable expectations* of retirees, which are defined by the

---

interferences, in cases affecting personal rights . . . ." *Id.*

terms of the contract between the public employer and the employees. *Allen v. Bd. of Administration* (*Allen II*) (1983) 34 Cal.3d 114, 124.[9] "Once vested, the right to compensation cannot be eliminated without unconstitutionally impairing the contract obligation." *Olson v. Cory*, *supra.*, at p. 538.

Second, employees' receipt of these deferred retirement benefits is protected under the contract clause of the State and federal constitution, even prior to the occurrence of the contingency which makes them payable, because these benefits are "an integral portion of contemplated compensation." *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853 (quoting *Dryden v. Bd. of Pension Comm'rs.* (1936) 6 Cal.2d 575, 579).

Third, a vested contractual right to these benefits accrues upon acceptance of employment. *Betts v. Board of Administration* (1978) 2 Cal. 3d 859, 863. As explained in *Miller v. State of California* (1977) 18 Cal.3d 808, 813, "an employee does not earn the right to a full pension until he has

---

[9] It bears emphasis that the Contract Clause protects other forms of deferred compensation like judicial salaries, *Legislature v. Eu* (1991) 54 Cal. 3d 492, 534; *Olson v. Cory*, 27 Cal.3d at 538; public employee cost of living salary increases, *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296, 304; disability benefits, *Frank v. Board of Administration of PERS* (1976) 56 Cal. App. 3d 236); vacation pay, *Suastez v. Plastic Dress-Up Co.*(1982) 31 Cal. 3d 774, 781; and survivor benefits, *Dickey v. Retirement Board* (1976) 16 Cal. 3d 745, 749.

completed the prescribed period of service, but he has actually earned some pension rights as soon as he has performed substantial services for his employer." Moreover, "[w]hile payment of these benefits is deferred, and is subject to the condition that the employee continue to serve for the period required by statute, the mere fact that performance is in whole or in part dependent upon certain contingencies does not prevent a contract from arising, and the employing governmental body may not deny or impair the contingent liability any more than it can refuse to make the salary payments which are immediately due. [citation]." *Id.*

Fourth, the right to a pension is a fundamental right,[10] and as explained above, it is a "firmly established principle of judicial construction" that laws conferring vested retirement rights serve a beneficial purpose and are to be liberally construed to protect pensioners and their dependents from *economic insecurity*." *Knight v. Bd. of Admin.* (1948) 32 Cal. 3d 400, 402; *United Firefighters of Los Angeles v. City of Los Angeles* (1989) 210 Cal. App.3d 1101, 1102; *O'Dea v. Cook*, 176 Cal. at 662. California favors this liberal construction of *retirement benefit* provisions to "protect the reasonable expectations of those whose reliance is induced." *Bellus v. City of Eureka* (1968) 69 Cal. 2d 336, 340, 348-350.

---

[10] *Strumsky v. San Diego County Employees' Retirement Ass'n* (1974) 11 Cal.3d 28, 45.

Fifth, the Contract Clause protects other forms of deferred compensation such as judicial salaries, *Legislature v. Eu* (1991) 54 Cal. 3d 492, 534; *Olson v. Cory*, 27 Cal.3d at 538; public employee cost of living salary increases, *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296, 304; disability benefits, *Frank v. Board of Administration of PERS* (1976) 56 Cal. App. 3d 236); vacation pay, *Suastez v. Plastic Dress-Up Co.*(1982) 31 Cal. 3d 774, 781; and survivor benefits, *Dickey v. Retirement Board* (1976) 16 Cal. 3d 745, 749. As with pensions, retiree health benefits are an important form of retirement-based deferred compensation, entitled to constitutional protection. *Thorning, supra.*, 11 Cal. App. 4th at 1607.

Sixth, public employees are entitled to pension benefits substantially similar to those in effect when they accepted employment, but also to any additional benefits offered later by the public employer. *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866; *Olson v. Cory* (1980) 27 Cal.3d 532, 540.

Seventh, some pre-retirement modifications are permitted, provided they meet certain requirements. This situation is sometimes referred to as the reasonable modification doctrine. *Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 665; *Board of Administration v. Wilson* (1997) 52

Cal.App.4th 1109, 1145. These requirements, now under challenge by *Marin* and *Alameda*, appeared first in *Kern*:

> "The rule permitting modification of pensions is a necessary one since pension systems must be kept flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system and carry out its beneficent policy. The permissible scope of changes in the provisions need not be considered here, because the respondent city, with a minor exception, has repealed all pension provisions." 29 Cal.2d at p. 854-855.

This principle, though vaguely alluded to in *Packer v. Board of Retirement* (1950) 53 Cal.2d 212, 214, was fleshed out in *Allen I*:

> "To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees *should* be accompanied by comparable new advantages. [citations]."*Allen v. City of Long Beach, supra.*, 45 Cal.2d 128, 131.

Since *Allen I* was decided, this Court has returned to this principle in five decisions,[11] and the intermediary appellate courts have employed it more than 15 times.[12] In each of these cases, the court involved applied the

---

[11] *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 448; *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 864; *Olson v. Cory* (1980) 27 Cal.3d 538, 541; *Allen v. Board of Administration* (1983) 34 Cal.3d 114, 120; *Int. Association of Firefighters v. City of San Diego* (1983) 34 Cal.3d 292, 307; and *Legislature v. Eu* (1991) 54 Cal.3d 492, 529.

[12] The published decisions include *Chapin v. City Commission of Fresno* (1957) 149 Cal.App.2d 40; *Wisley v. City of San Diego* (1961) 188 Cal.App.2d 482; *DeCelle v. City of Alameda* (1963) 221 Cal.App.2d 528; *Lyon v. Flournoy* (1969) 271 Cal.App.2d 774; *Amundsen v. Public*

"reasonable modification doctrine" as requiring the court's mandatory comparison between any disadvantageous modifications and the expected and corresponding, comparable advantageous modifications.

But in *Marin*, without so much as a trial of the facts, the court, admittedly influenced by highly polemical views of persons and bodies interested in reining in vested pension benefits for public employees, misapplied the paramount principles listed above. Foremost, the *Marin* court, now followed by *Alameda*, minimized the constitutional protection afforded vested rights, and the rule of liberal construction, thereby substituting a hollow, undefined consideration of reasonableness for the carefully constructed and balanced, multiple test approach worthy of, indeed required by, the constitutional protection afforded contracts. If the comparability requirement is jettisoned, then governmental entities will be free to make changes without balancing them. This will inevitably inspire a

---

Employees' Retirement System (1973) 30 Cal.App. 3d 856; *Frank v. Board of Administration* (1976) 56 Cal.App.3d 236; *Association of Blue Collar Workers v. Wills* (1986) 187 Cal.App.3d 780; *Valdes v. Cory* (1983) 139 Cal.App. 3d 773; *United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095; *Board of Administration of the Public Employees' Retirement System v. Wilson* (1997) 52 Cal.App.4th 1109; *In re Retirement Cases* (2003) 110 Cal.App.4th 426; *Teachers Retirement Board v. Genest* (2007) 154 Cal.App.4th 1012; *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21; *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619. There are also numerous unpublished decisions.

rash of attacks on public pensions and other vested retirement benefits – the record of the period from 1917 to 1955 demonstrates that.

Casting aside any doubt, the Marin court referred to these as "acceptable changes aplenty," discussing approvingly a city's reduction in police officer pensions benefits amounting to 25% of what had been previously promised, and suggesting that changes in the number of years of service required for a pension. See *Marin, supra.*, at p. 702.

Eighth, in order to reduce promised pension benefits, a public entity must prove that such action is necessary to an important purpose. *United Firefighters v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, explained it clearly. "A State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors. [A court] can only sustain [an impairment] if that impairment [is] both reasonable and necessary to serve the ... important purposes claimed by the State." (*Id.* at p. 1110, relying on *New Jersey, supra.*, at p. 29 and *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 307–308, 152 Cal.Rptr. 903, 591 P.2d 1., emphasis added)"

Ninth, when the government deals with its own employees, its decisions to modify promised retirement compensation are not

automatically accepted. This limitation has been recognized by the U.S. Supreme Court, because it involves the government dealing with its own employees: "It is settled that governmental entities are bound by their debt obligations." (*United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 24) Therefore, "[a] governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." *Id. at p.* 26.

Given the perennial financial and political pressures on government, it has also been held that "the existence of an important public purpose is not necessarily enough in itself to justify a substantial contractual impairment," *Valdes v. Cory* (1983) 139 Cal.App.3d 139, relying on *New Jersey, supra.,* at p. 21. The identification of a substantial impairment, and the analysis which flows from it, is more vital now than ever. The Court of Appeal opinion in claimed to recognize an "undeniable valid" yet "fundamentally opposed" "tension" between the government's interest in maintaining pension plan "flexibility" to conform "statutes to current needs" and the interest of public employees in a stable and predictable pension, earned through years of public service. 19 Cal.App. 5th at p. 75.

This description neglects to account for the government's deep and essential interest in adhering to the law of contracts, regardless of the flavor of the moment.[13]

Tenth, "It is the advantage or disadvantage for the particular employee whose own contractual ...rights, already earned, are involved which are the *criteria* by which modifications to pension plans must be measured." *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 449. (Emphasis added)

With these principles in mind, we now discuss the ways in which the *Marin* and *Alameda* courts misapplied California law governing vested pension rights, and why California should not be changed to conform to their analysis.

C. California Courts Have Consistently Treated the *Should* and *Must* Prong of the Comparability Test As Mandatory and Interchangeable.

---

[13] A subtle subtext of the current California debate about public sector pensions, is evident in *Marin*'s reliance on extensive, and sometimes highly charged differences of opinion (*see Marin, supra.*, 2 Cal.App.5th at 680-682) about pension benefits and the law surrounding them. The cited views were identified without the benefit of a trial, such that pension improvements which may have been created by the government to attract and retain needed public servants may subsequently, for a variety of reasons, have been transformed in the political and public opinion process, so that such benefits may now be castigated as "overly generous," lavish, "unsustainable" or part of a "spiking game".

Perhaps the most critical part of the reasonable modification doctrine appears in comparability analysis, which has used both the terms "should" and "must" to explain it process: "To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees *should* be accompanied by comparable new advantages. [citations]." *Allen v. City of Long Beach, supra.*, 45 Cal.2d at p. 131.

The *Marin* court correctly notes that virtually all of the many decisions reciting this proviso have used "should" to describe a public entity's legal duty, while two decisions used "must" in place of should. *Marin* spends considerable time discussing whether the use of "must" formulation, which first appeared in 1983, 25 years after the proviso was first announced, "was intended to herald a doctrinal shift." *Marin* holds it was not. We submit that there has never been a dichotomy between should and must, and should has always had a mandatory meaning. Thus, there could not have been a doctrinal shift by reference to "must" in 1983 – the proviso already required the comparability analysis which *Marin* purports to undo.

A wealth of decisions, issued since 1955 when *Allen I* first

delineated the "should" test, demonstrate that *should* and *must* have been uniformly understood, until the issuance of *Marin*, as having the same mandatory meaning. The present dispute results from the appellate court's unprecedented conclusion in *Marin* that the use of "should" in *Allen I* and its progeny has been misunderstood by courts, public entities, pensioners, retirees, and others, and does not "convey imperative obligation." However, *Marin* and *Alameda* employed a dubious analysis to rule that the use of "should" means only a recommendation, and that balancing disadvantageous changes with advantageous improvements or additions is merely a "good idea," or something which "ought" to be done, and is (*Marin*) or may be (*Alameda*) without consequences to the modification or impairment of vested rights.

Marin invented this rationale out of whole cloth. It does not appear within the Superior Court's perfunctory and non-specific decision. In doing so *Marin* focused mainly on the application of the test in *Allen I*, an anomalous situation involving a legislator's pension plan, ignoring its application by this Court in other cases such as *Betts and Olson*.[14] It also pointedly ignored its treatment by more than 20 appellate panels over a span

---

[14] *Betts v. Board of Administration* (1978) 21 Cal.3d 859; *Olson v. Cory* (1980) 27 Cal.3d 532.

of 60 years. When the use of the test is considered in the context of the decisions applying it, it becomes clear that there was a general, widespread and consistent understanding of the test.

The first application after *Allen I* was *Chapin v. City Commission of the City of Fresno* (1957) 149 Cal.App.2d 40. Albert Chapin became a Fresno police officer in 1915, and was involuntarily retired 37 years later as assistant chief of police, by order of the City's pension board. Five years after he was hired, the City approved a pension for retired officers with 30 years service, at 2/3 of one's salary in the year prior to retirement. But in 1928, the City enacted a salary cap, which it maintained and later modified somewhat. The cap limited Chapin's pension below what he had been promised in 1920, and had earned, so he sued in mandate. In rejecting the City's defense that it had the power to impose the cap, the court cited directly to *Allen I*, *Kern* and other pension precedents, and then stated,

> "In the instant case it is clear that the change in the method of computing benefits from a fluctuating amount equal to two-thirds of the salary currently attached to the rank held by Chapin to a limited maximum amount results in a substantial disadvantage and detriment to him, as is apparent from a computation of the trial court in its findings. It is also apparent that such disadvantage and detriment are not accompanied by comparable new advantages. The provisions of the ordinances of the city limiting the maximum amount of pension to be granted to Chapin therefore constituted an attempted unreasonable, ineffective and illegal modification of his vested contractual rights." *Id.* at p. 44.

It is readily apparent that the City's failure to not accompany the "disadvantage and detriment" by "comparable new advantages," was the decisive factual. The decision treated "should" in *Allen I* as mandatory.

Abbott v. City of Los Angeles (1958) 50 Cal.2d 438 involved hundreds of plaintiffs, many of them widows of fire or police department employees, who expected to receive pensions based on fluctuations in active employees' salaries, but were instead given fixed pensions at lower amounts. The City relied on Charter amendments added after the officers or widow's husbands were hired by the City, acquiring their vested pension rights. After relating the facts and citing the "should" rule from *Allen I*, the court immediately shows it viewed that language as mandatory:

> "In the present case it appears that section 187.2 [the amendment] substantially decreases plaintiffs' pension rights without offering any commensurate advantages, and there is no evidence or claim that the changes enacted bear any material relation to the integrity or successful operation of the pension system established by section 187 of the charter ..."

The City of Los Angeles plainly shared the court's understanding, arguing it had made "new" and "overall advantages"; the court emphasized that it was the advantages or disadvantages to the affected employees which mattered, and that benefits added in 1923 had "no bearing upon the reasonableness of the detriments resulting from the 1925 and 1927 amendments." *Id.* at p. 449. The opinion goes on to dismiss, with particular citations to the facts,

other "improvements" relied on by the City, noting "And of course, contrary to defendants' contention, salary increases to members of the police and fire departments which became effective in 1926 could not compensate for the detriment flowing from the change to a fixed from a fluctuating pension ..." *Id.* at p. 452. After further discussion of the City's defense claims, the court again confirmed the mandatory meaning of *Allen I*:

> "... *under the holding of the Allen case* the substitution of a fixed for a fluctuating pension is not permissible *unless accompanied by commensurate benefits-benefits which are not shown to have been granted in the present case.*" *Id.* at p. 454, emphasis added.

It is impossible to accept *Marin*'s analysis when it is confronted with the contemporaneous understandings of the *Allen I* test by the courts of the 1950s, including this court. Just as contemporaneous understanding informs the interpretation of a statute, it should be afforded convincing, if not decisive impact here.[15]

In the 1960s, the *Wisley* decision, again involving the impairment of pension benefits of police and fire employees, confirms the interpretation of *Allen I* by the courts, employees/retirees, and public jurisdictions. *Wisley v. City of San Diego* (1961) 188 Cal.App.2d 482. There, after their hiring, the City began imposing on employees higher pension contributions from their

---

[15] *Rizzo v. Bd. of Trustees* (1994) 27 Cal. App. 4th 853, 861; *Aptos Seascape Corp. v. County of Santa Cruz* (1982) 138 Cal. App. 3d 484, 497.

salaries. "The trial court found that none of the amendments which increased the amount and percentage of the salary deductions was accompanied by the addition of any corresponding or commensurate advantages of any kind." *Id.* at p. 484. The court explained the City's defense, "The defendants contend that the plaintiffs had the burden of proving that the charter amendments which increased the amount and percentage of the salary deductions were unreasonable and unconstitutional and that, as a matter of law, the plaintiffs have not sustained their burden of proof." *Id.* at p. 485. With clockwork, the appeals court alluded to *Abbott*, and came to the same conclusion:

> "The defendants have not shown, nor have they attempted to show, that any of the alleged benefits were actually beneficial to any of the plaintiffs involved in these actions, and they have not shown that the amendments increasing the percentage of salary contributions were necessary to preserve the integrity or successful operation of the pension program. In the absence of such a showing, and in the light of the authorities hereinabove cited, it follows that the amendments in question imposed a detriment without a commensurate benefit and therefore cannot be sustained as reasonable as applied to the plaintiffs in these actions. The finding of the trial court in this regard was supported by the evidence and its judgment was in accord with the law." *Id.* at p. 487.

In *DeCelle v. City of Alameda* (1963) 221 Cal.App.2d 528, a City firefighter was fired for insubordination for moonlighting, and then denied his pension based on a policy that made forfeiture of one's earned pension the result of such a dismissal. Naturally the policy had been adopted he

commenced work and his pension rights had vested. He sued relying on *Allen I*, and the City defended, arguing that he had received a benefit, the refund of his many years of pension contributions. So once again the dispute centered on the issue of whether the disadvantage (termination) had been balanced by an alleged improvement, a refund. *DeCelle* won. The discussion again shows the City, the pensioner, the trial court, and the appeals court all understood the issue was the comparable balancing resulting from the command of *Allen I.*

Betts, supra., was issued in 1978, and the Court's opinion was authored by Justice Richardson. Bert Betts had been the Treasurer of the State of California. He sought a writ of mandate to require that his earned pension be based on a fluctuating condition – the salary of future State Treasurers. The State sought to limit his pension to his highest salary. The fluctuating method had been in effect when he served as Treasurer; after he left office, but before he retired, the computation was changed to the fixed formula. The Court's analysis focused on the criteria that the "comparative analysis of disadvantages and compensating advantages must focus on the particular employee whose own vested pension rights are involved." 21 Cal.3d at p. 864. The Court, with some reluctance, nonetheless applied the rule of *Allen I* and based its decision on the mandatory requirements – there

was no comparable benefit provided when the fluctuating pension was withdrawn from Betts' situation, holding that the new fixed pension,

> "... cannot constitutionally be applied to petitioner, because the amendment withdraws benefits to which he earned a vested contractual right while employed. No 'comparable new advantages' to petitioner appear in the plan which can offset the detriment he has suffered by replacement of a 'fluctuating' system of benefit computation with a 'fixed' system. Petitioner is therefore entitled to have his basic retirement allowance computed on the basis of [the law] as it read when he left office in 1967." *Id.* at 867-868.

Which brings us to discussing the 1980s. The decision in *Olson v. Cory* (1980) (as modified) 27 Cal.3d 532, explicitly referred to the comparability methodology of the *Allen I* test, the Court referring to the result in *Betts*: "Since no new comparable or offsetting advantages" appeared in the relevant, modified statute, Betts prevailed. *Olson*, *supra.*, at p. 541. The *Olson* court then engaged in an exhaustive analysis of the various applicable statutes, the dispute centering on the application of a fluctuating pension based on post-retirement salary payments versus a fixed benchmark. This Court ultimately held that Olson was entitled to a fluctuating pension because in the change to a lower-paying pension the State had not shown demonstrated a justification for impairment, nor had it offered "comparable new advantages." *Id.* at 541.

In 1983, Justice Richardson of this court authored two opinions, within a few weeks of each other, in which he applied the principles of

Allen I, *interchangeably* using the word "should" in one case, and "must" in the other. *Allen II*, 34 Cal.3d 114 (1983) was issued first, on July 1, 1983. It notably used the term "must." *Int. Association of Firefighters v. City of San Diego* (1983) 34 Cal.3d 292, 307 came next. Issued on August 15, 1983, it used "should." As is evident, the justices of this court meant the same thing.

The notion that this Court did not fully understand what it was doing by alternately using "should" and "must" is further undermined when one considers who decided these cases. In *Allen II* justices Bird, Kaus, Reynoso and Grodin, and two pro-tem judges concurred in Justice Richardson's opinion. The notion that such an experienced and esteemed panel would misunderstand such a basic test is not believable. For example, Justice Frank Richardson served as Associate Justice since 1974. Previously, he had taught law at McGeorge and served on the Superior Court bench in Sacramento. And before he wrote *Allen II* and *Int. Association of Fire Fighters*, he had written *Olson v. Cory*, where he painstakingly delineated the comparability analysis.

Justice Joseph Grodin, once a labor lawyer, a law professor at Hastings College of Law, a charter member of the Agricultural Labor Relations Board, a justice of the Court of Appeals and later this Court, and

an arbitrator, is well-known for his prescient analysis, his book *In Pursuit of Justice: Reflections of a State Supreme Court Justice*, California Law Review Inc., 1990, and his "ground-breaking efforts in the matter of state constitutions and their corollary, the doctrine of independent state constitutional grounds." See Honoring Justice Grodin, California State Historical Society, vol. 10 (2015) A "Founding Father" of the Doctrine of Independent State Constitutional Grounds, Hon. Ronald M. George.

Justice Otto Kaus was an appellate justice from 1964 to 1981, and a justice of the California Supreme Court from 1981 to 1985. Justice Stanley Mosk referred to him as "one of the finest California legal minds produced in modern times."[16]

Justice Cruz Reynoso was also very experienced. Beginning his legal career as a civil rights lawyer, he served on the court of appeals from 1976 to 1981, and a California Supreme Court justice from 1981 until 1986. Prior to 1976 he had served as a legislative assistant in the California State Senate, an associate general counsel for the Equal Employment Opportunity Commission, deputy director of California Rural Legal Assistance and a law professor.

---

[16] See "In Memoriam Justice Otto M. Kaus," Justice Stanley Mosk, 1997, available at: https://law.justia.com/cases/california/supreme-court/4th/14/1283.html (last accessed September 18, 2018)

Finally, Chief Justice Rose Bird, in 1983, had already served seven years as Chief Justice, having previously been a teacher at Stanford School of Law, Secretary of Agriculture, and several positions in the Santa Clara County Public Defenders Office. These same five justices served on both the *Allen II* and *Int. Association of Firefighters* panels. Given these justices backgrounds it is inconceivable that they did not understand their references to the doctrine, using should and must interchangeably, described the same test: a comparison of the disadvantages and expected new advantages when the government sought to modify a pension plan before employees retired.

While *Allen II* and *Int. Association of Firefighters* describe the balancing test of disadvantageous changes versus comparable new advantages, it is evident that neither got to the point of needing to analyze and determine if a disadvantage had been balanced by a comparable advantage. The more appropriate measuring sticks for the comparability test are found in the cases discussed above which actually had to apply a comparability analysis to determine whether a modification was reasonable.

It is also unnecessary to here examine each of the vested rights cases which actually applied the comparability test. Our citation of numerous pension cases decided since 1955 shows a consistent understanding by public entities, pensioners, and the courts that *Allen I* required a

comparability analysis based on whether disadvantages had been accompanied by commensurate benefit improvements. The cases themselves demonstrate this understanding; some of them even note that the rule is settled. For example, in *Board of Administration of the Public Employees' Retirement System v. Wilson* (1997) 52 Cal. App. 4th 1109 the court stated, "Under *settled California law* ... changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." citing *Valdes v. Cory* quoting *Betts, emphasis added*). See also *Valdes v. Cory* (1983) 139 Cal. App.3d 7 ("Under settled California law ... To be sustained as reasonable ... *changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages*." (Italics in original); and *Betts v. Board of Administration, supra.*, 21 Cal.3d at p 864, quoting *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131.). Thus, the rationale of the *Marin* court is indisputably invalid.

It is apparent that the "should" versus "must' formulation is a distinction without a difference. The Supreme Court and appellate courts plainly meant that any disadvantageous changes had to be balanced with offsetting advantages. Just as the "nature and extent of the [government's] obligation are ascertained not only from the language of the pension

provision, but also from the judicial construction of this or similar legislation at the time the contractual relationship was established" (*Kern v. City of Long Beach, supra.*, 29 Cal.2d at p. 950.), judicial construction of the Court's "should" directive may be ascertained by reviewing court treatment of the many post-*Allen I* decisions implementing the "reasonable modification doctrine."

Under the doctrine of *stare decisis*, this Court should reverse the first part of *Alameda*, and hold that courts measuring changes in vested rights must rule based on whether comparable benefits are offered when reasonable modifications are made to a pension system, for the reasons advanced in *Allen I*.

D. Reducing the Test of Comparability to an Optional Recommendation Ignores the Constitutional Basis for the Impairment of Contract Doctrine, and Is Inconsistent with Pension Rights' Character as Fundamental Rights, Entitled to Liberal Construction by the Courts

Given that deferred compensation, here in the form of a pension, is an integral part of the employment contract between a public entity and a public employee, in which the grant of pension benefits is a contractually-vested right and entitled to liberal construction, it is hard to imagine that a public employer would be permitted to reduce promised benefits without the exchange of something of comparable value. After all, the individual

employee has little or no bargaining power and the governmental entity generally has the raw, sovereign power to institute modification, regardless of their necessity. The elimination of the comparable advantages rule would tilt the balance heavily in favor of allowing the exercise of this inherent governmental power at the expense of the individual employee. That is plainly evident in *Marin*, where the court, after concluding the comparable balance required by *Allen I* and its progeny never was meant to command comparability, proceeded to allow the Marin pension systems changes simply because employees would still receive, in the court's judgment, a "reasonable" or "substantial" pension.

Having eliminated one of the principle judicial bulwarks against impairing the employees' contracts, Marin measured the scope of Contract Clause protection by a narrow-minded approach, whether the promised pension had been "destroyed." Through this means, the Court firmly stated that there are "acceptable changes aplenty that fall short of 'destroying' an employee's anticipated pension." (*Marin* at p. 702) In support of this proposition, the court cited a 1938 decision which did *not* apply a comparability analysis to the reduction of pension benefits that followed an injured officer's application for a disability pension. If decided under a comparability analysis, it is questionable the change would be allowed. In

Brooks v. Pension Board (1938) 30 Cal.App.2d 118, the court permitted a reduction of a pension, on the eve of an employee's retirement, from two-thirds to one-half of his salary. Injured and disabled in April 1932, officer Brooks applied for his 2/3 of salary pension in October 1932. The application was denied without prejudice to renewal (the decision not indicating why). In March 1933, the pension entitlement was reduced to ½. Brooks applied again in July 1935, and this time was granted his pension, at the 2/3 rate. In December of 1936, the pension board initiated a "review" of Brooks pension, concluding he should have been limited to the ½ rate, and recouped his "overpayment" in subsequent pension installments. The decision was justified on the ground that Brooks was not really disabled in October 1932, because he could sit at a desk or do "light" work, but was by 1935, after the change to ½ had taken effect. Was the reduction of pension from 2/3 to ½ accompanied by a comparable new benefit of equal value? No such analysis was done, the decision in *Allen II* still 20 years away. Yet *Marin*, in relying on *Brooks*, effectively views, without analysis, that a 25% reduction of a promised pension, is "reasonable." This justification comes out of thin air, which is exactly the problem which will now constantly recur if the mandate of *Allen I,* and its progeny, and the carefully considered comparability test, is eliminated.

If comparability is removed as a critical criteria, this deprives courts of an important test that is essential in order to effectuate the protections of the Contract's clause. This would elevate the importance of reasonableness, but without the corresponding benefits test makes that looser decision more problematic and easily abused.

A standard of reasonableness, divorced from a comparability requirement, is insufficient to protect the legitimate expectations of employees that they will receive their promised benefits, to recognize that their promised benefits are an integral part of their employment agreements, and to vindicate their constitutional rights against contract impairment which employees enjoy under the Contracts clause. Furthermore, as recognized in *California Teachers Association v. Cory, supra.*, 155 Cal. App.3d at p. 509-510, "The teacher who accepts this inducement [of a promised pension] at the outset of a career, e.g. to offset prospects of higher present compensation in alternative employment, gains nothing if the state has a retained power to *periodically modify the agreement.*" In effect, the views of *Marin* and *Alameda*, if permitted to stand, will create a level of uncertainty among public employees and their families, unknown since the days before *O'Dea v. Cook*, *Kern*, and *Allen I* were decided. Allowing such changes, without demanding comparable new advantages, would vitiate

contracts protecting contractually-vested rights, no less than the scheme to diminish promised State Teachers' Retirement System appropriations that was struck down in *California Teachers' Association v. Cory, supra.*

If the reasonable modification doctrine, as it has been applied since 1955, is to be truly respected, then a "reasonableness" based comparison of disadvantageous changes and advantageous modifications is inadequate by itself to protect the constitutional rights of the individual employees.

To substitute an amorphous test of "reasonableness," as the *Marin* and *Alameda* courts would seemingly do, in place of a much more definitive comparison of disadvantages and comparable advantages, is a step backwards, one that pushes judicial inquiry into uncertain terrain. Consider that in the infamous decision in *Lochner v. New York* (1905) 198 U.S. 45, 58, the U.S. Supreme Court struck down wage and hour legislation on grounds that the it was reasonable to prohibit the State from limiting the weekly hours of work of bakers to 60 hours, because that interfered in the individual's right of contract.[17]

---

[17] Some courts have recognized in other contexts that when dealing with important, constitutionally-based employment rights affecting employees, much more than "reasonableness" should be required to impair those rights. For example, in *Oliver v. Kalamazoo Board of Education*, 706 F. 2d 757 (6th Cir. 1985) a court was required to determine appropriate remedies to vindicate student's constitutional rights to equal educational opportunities. The district court, applying a standard of "reasonableness,"

In addition to the implication of constitutional rights stemming from the Contract's clause, there is another aspect of constitutional law which should be considered. The Court in *California Teachers Association v. Cory* explained that any justification for an impairment is subjected to strict scrutiny":

> "United States Trust places the justification for an impairment of a contractual funding obligation under the light of strict scrutiny. (See Tribe, American Constitutional Law (1978) p. 473; fns. omitted.) **It requires the state assert a compelling interest for the impairment**. (See Sonoma County Organization of Public Employees, supra..) United States Trust rules out, as a permissible justification, a legislative purpose simply to expend the obligated money for a purpose deemed a better expenditure. That is the case here. The Governor offers no justification for the breach of the contract save that implicit in the message accompanying his action reducing the budget appropriation to $1; that the 'amount [reduced] can have an immediate and significant impact in other areas of education [exhibiting] more pressing needs ....' (See ante, fn. 5.) This is not a purpose which justifies an impairment. 'If a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.'(Fns. omitted.) (*Id.*, at pp. 25-26; italics added; see also *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 307-309)" *Id.* at 511-512.

Moreover, to allow that a contract for retirement benefits to be

---

concluded that nullification of teachers' seniority rights was appropriate. *Id.* at p.759. However, to protect the strong expectations in the pervasive and important seniority rights, the appellate c court held that the proposed remedy must be "necessary," not merely "reasonable," to vindicate the constitutional rights of the students.

impaired prior to retirement, without the provision of a comparable benefit, would defeat the objective of providing such benefits "which is to induce competent persons to enter and remain in public employment." *Kern, supra.*, 29 Cal.2d at 856.

E. *Marin* and *Alameda* Misapprehend *Allen II* to Unconvincingly Deprive the Reasonable Modification Doctrine of its Authority

Marin offers five reasons for reading Allen II narrowly, and rejecting a mandate that disadvantageous modifications are accompanied by comparable new advantages. Besides the arguments advanced above, each of the five Marin reasons fails for other reasons.

First, *Marin*'s observed that in its 1983 *Allen II* decision, the Supreme Court cited three earlier decisions in support of the "must," and "that only the least authoritative" used the word "must." Those three cases are *Allen I*, *Abbott v. City of Los Angeles* (1958) 50 Cal. 2d 438, 439, and *Lyon v Flournoy* (1969) 271 Cal.App.2d 774, 782. This rationale is not convincing. Instead, the circumstances and the numerous court decisions discussed above indicate that "should" and "must" were intended and contemporaneously understood to have the same connotation. Hence should and must both mandate that disadvantageous be accompanied by comparable new advantages.

Second, *Marin* relies on Justice Richardson having used "must" in authoring *Allen II*, followed a month later by his use of "should" in *United Firefighters*. Again, as shown above, in view of this Court having conducted the same analysis in *Allen II* and *United Firefighters*, this is a distinction without a difference.

Third, *Marin* notes that *Allen II* involved retirees, who receive a heightened degree of judicial protection. But this observation is irrelevant to the analysis and outcome in *Allen II*, for the decision did not rest on the reasonable modification doctrine. Instead, the court held that the issue at stake, whether the widow of a legislator who had already retired, had a reasonable expectation of receiving the benefit of a new constitutionally-created payment scheme.

Fourth, *Marin* noted that the "must" formulation has never been reiterated by this Court, and has "uniformly employed the "should." Inasmuch as must and should mean the same thing, this distinction is of no consequence.

Finally, after a brief discussion of two inapposite cases which gave their own definitions of should and must, *Marin* claims the most persuasive "circumstantial" evidence is that the respondent Board of Administration won, and if "must" was to have a "literal meaning, the retirees would have

won." Not so. The *Allen II* court's conclusions, strongly supported by the background evidence, found for the respondent because the Plaintiff failed a test that resolved the case before the reasonable modification doctrine comes into play:

> "The essential and critical factor is that neither respondents [former State legislators and their surviving spouses] nor the claimant in *Lyon* reasonably could expect under the terms of their employment contract to obtain retirement allowances computed on the basis of the unique salary increase accomplished by the constitutional revision of 1966 which expressly negated such expectations." *Allen II*, 34 Cal.3d at 124-125.

Thus, the *Marin* rationale should be rejected.

F. The Plain, Ordinary and Popular Meaning of "Should" Supports Reversal of the Alameda Decision

Courts are known to consider terms in accordance with their plain, ordinary and popular meaning, when interpreting a statute, and to consult dictionary definitions for this purpose. *AIU Insurance Co. v. Superior Court* (1990) 51 Cal.3d 807, 834. There is no indication the trial and appellate courts in *Alameda*, and in *Marin*, engaged in that exercise in interpreting the word "should" as used in the vested rights cases. But there was, and is, no good reason to disregard this source of useful information. Upon review, the word "should" is viewed a setting forth an obligation. For example, in the Oxford English on-line, living Dictionary, the word is defined as being "Used to indicate obligation, duty, or correctness, typically when criticizing

someone's actions." See https://en.oxforddictionaries.com/definition/should, last accessed on September 15, 2018.

In *Merriam-Websters' Unabridged Dictionary*, the word "should" is listed as the "past tense of shall," which is, *inter alia*, (1) "used in auxiliary function to express condition." and (2) " used in auxiliary function to express duty, obligation, necessity, propriety, or expediency."[18]

It is, for the reasons outlined herein, apparent that the word *should*, as set forth in *Allen I* and its progeny, is used to express a condition, an obligation, and an express duty. But *Marin* ignores dictionary definitions, instead seeking support from a handful of inapposite decisions, *Lashley v. Koerber, M.D.* (1945) 26 Cal.2d 8, 90, *People v. Webb* (1986) 186 Cal.App.3d 401, 409, and *Cuevas v. Superior Court* (1976) 58 Cal.App.3d 406, 409. *Koerber* involved a lawsuit against a physician for malpractice. The appellate court, in ruling on a non-suit, had to decide the meaning to be given to the defendant's contemporaneous statement that he "should have" had an X-ray taken of an accident victim's crushed finger when she first presented herself for treatment. The court concluded that "should" was spoken by the defendant doctor in reference a doctor's duty of ordinary

---

[18] See http://unabridged.merriam-webster.com/unabridged/should , last accessed on September 19, 2018.

care, and that like "ought", indicated that in context, "should" meant " the "obligation of fitness, propriety, expediency and the like", citing *Webster's 2d International Dictionary*. There is no indication this was the cited dictionary's complete definition, or only that it was one most relevant to a doctor's duty of care in the specific situation at issue. Undoubtedly the case had no relevance to the use of the term by a host of appellate panels over a period of decades, in the situation presented by a contractually-vested right.

Webb was about whether a court "should" have referred a convicted criminal to a probation officer. The court was interpreting the meaning of a provision of the California Rules of Court, 1986 version, which stated, "Regardless of the defendant's eligibility for probation, the sentencing judge should refer the matter to the probation officer for a presentence investigation and report." This case offers no authority, for that edition of the Rules of Court expressly provided that should was advisory only. *Id.* at p. 409.

The last case, *Cuevas*, involved interpretation of a specific Penal Code section which the court concluded was meant to be permissive, not mandatory. In discussing *Cuevas*, a Florida appellate court in *State v. Thomas,* 528 So.2d 1274 (1978) recognized instances in which "should" was found to be mandatory, and others where it is treated as permissive.

The case is useful for confirming that meaning of should is frequently based on the particular circumstances, and that a broad, definitive definition for all contexts, is unlikely. Indeed, the *Thomas* court finds "ought," also used by Marin, as signifying "expressions of necessity, duty, or obligation."

Accordingly, these cases do not undermine the practical usage of should, in the courts' application of the reasonable modification doctrine, as indicating a mandatory balancing of disadvantageous changes with new advantageous modifications.

IV. CONCLUSION

In focusing on a narrow aspect of the *Alameda* decision, the reasonable modification doctrine, Amici do not suggest that other aspects of the decision, the underlying *Marin* decision, or the other pending benefits cases, are unworthy. For instance, *Marin* failed to examine through evidence the question of whether the changes to employees' vested pension rights were necessary and material, a crucial test recognized by the *Alameda* court.

With respect to the established test of comparability, Amici urge the Court to reject the unpersuasive and radical action of *Marin*, and the action of *Alameda* in following *Marin*, and affirm the comparability methodology which has fared well during its long existence, and which fulfills the

purposes of the Contracts Clause in the field of public sector, contractually-vested rights.

Dated: September 20, 2018 LAW OFFICES OF ROBERT J. BEZEMEK, P.C.

By: _____

Robert J. Bezemek
David Conway
Counsel for Amici

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that this brief consists of 12,065 words, as counted by the computer program used to generate the brief.

Dated: September 20, 2018

Law Offices of Robert J. Bezemek, P.C.

By: _____

Robert J. Bezemek
David Conway
Counsel for Amici

PROOF OF SERVICE
Case No. S247095

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1611 Telegraph Avenue, Suite 936, Oakland, California 94612. On September 21, 2018, I served the following documents described as:

APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS AND APPELLANTS

Addressed as follows:

SEE ATTACHED SERVICE LIST

X **BY ELECTRONIC SERVICE:** I certify that all participants in the case are registered TRUEFILING users and that service will be provided this date by TRUEFILING to parties' attorneys of record, pursuant to Local Rule 9(a);

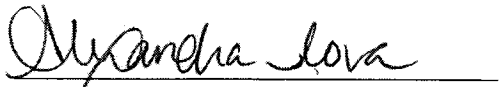
And,

Clerk of the Court of Appeal First District Court of Appeal 350 McAllister Street San Francisco, CA 94102	Clerk of the Superior Court Contra Costa County Superior Court 725 Court Street, Room 103 Martinez, CA 94553
Clerk of the Superior Court Merced County Superior Court 2260 N. Street Merced, CA 95340-3744	Clerk of the Superior Court Alameda County Superior Court René C. Davidson Courthouse 1225 Fallon Street Oakland, California 94612

X **BY U.S. MAIL:** By placing a true copy thereof enclosed in a sealed
envelope(s) addressed as above, and placing each for collection and mailing today, following ordinary business practices. I am "readily

familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Mail, with postage thereon fully prepaid at Oakland, California in the ordinary course of business.

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct and executed on **September 21, 2018**, at Oakland, California.



Alexandra Iova

SERVICE LIST

Party	**Attorney**
Alameda County Deputy Sheriff's Association, Jon Rudolph, James D. Nelson, Darlene Hornsby, Robert Brock, Rocky Medeiros: Plaintiffs and Appellants	David E. Mastagni Isaac Sean Stevens Mastagni Holstedt, APC 1912 I Street Sacramento, CA 95811 davidm@mastagni.com istevens@mastagni.com
Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees Retirement Assn.: Defendant and Respondent	Harvey Lewis Leiderman Reed Smith 101 Second Street - Suite 1800 San Francisco, CA 94105-3659 hleiderman@reedsmith.com Robert Lee Gaumer Alameda City Employees' Retirement Association 475 14th Street, Suite 1000 Oakland, CA 94612-1916 rgaumer@acera.org

Service Employees International Union, Local 1021, Amy Dooha, Building Trades Council of Alameda County, Mike Harteau: Interveners and Appellants	Anne I. Yen Weinberg, Roger & Rosenfeld 1001 Marina Village Parkway - Suite 200 Alameda, CA 94501-1091 ayen@unioncounsel.net
Alameda County Management Employees' Association, Kurt Von Savoye, International Federation of Professional and Technical Engineers, Local 21: Interveners and Appellants	Arthur Wei-Wei Liou Leonard Carder 1330 Broadway - Suite 1450 Oakland, CA 94612 aliou@leonardcarder.com
Teamsters Local 856, Hasani Tabari, Daniel Lister: Interveners and Appellants	Katwyn T. DeLaRosa Bennett & Sharpe, Inc. 2444 Main Street, Suite 110 Fresno, CA 93721 ktdelarosa@bennettsharpe.com Robert Bonsall Beeson Tayer & Bodine 483 Ninth Street, Suite 200 Oakland, CA 94607 rbonsall@beesontayer.com
Contra Costa County Deputy Sheriff's Association, Ken Westermann, Sean Fawell: Plaintiff and Appellant	Rockne Anthony Lucia Timothy Keith Talbot Rains Lucia Stern St. Phalle & Silver PC 2300 Contra Costa Blvd., Suite 500 Pleasant Hill, CA 94523 rlucia@rlslawyers.com ttalbot@rlslawyers.com
United Professional Fire Fighters of Contra Costa County, Local 1230: Plaintiff and Appellant	W. David Holsberry McCracken, Stemerman & Holsberry, LLP 595 Market Street, Suite 800 San Francisco, CA 94105 wdh@dcbsf.com

Physicians' and Dentists' Organization of Contra Costa: Intervener and Appellant	William Ira Corman Bogatin Corman & Gold 1330 Broadway, Suite 1203 Oakland, CA 94612 wcorman@bcgattorneys.com
Contra Costa County Employees' Retirement Association, Board of Retirement of the Contra Costa County Employees' Retirement Association: Defendants and Respondents	Harvey Lewis Leiderman Reed Smith 101 Second Street - Suite 1800 San Francisco, CA 94105-3659 hleiderman@reedsmith.com
International Association of Fire Fighters Local 3546, Michael Mohun, David Atkins, Contra Costa County Deputy District Attorneys Association, Paul Graves, Gary Koppel: Interveners and Appellants	Christopher E. Platten Wylie, McBride, Platten & Renner 2125 Canoas Garden Avenue - Suite 120 San Jose, CA 95125 cplatten@wmprlaw.com
Probation Peace Officers Association of Contra Costa County: Intervener and Appellant	Paul Quentin Goyette Goyette & Associates 2366 Gold Meadow Way - Suite 200 Gold River, CA 95670 goyettep@goyette-assoc.com Rockne Anthony Lucia Rains, Lucia & Wilinson 2300 Contra Costa Blvd., Suite 230 Pleasant Hill, CA 94523 rlucia@rlslawyers.com
Service Employees International Union, Local 1021, Peter Barta: Interveners and Appellants	Vincent A. Harrington, Jr. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway - Suite 200 Alameda, CA 94501-1091 vharrington@unioncounsel.net
Public Employees Union, Local No. 1, International Federation of Professional and Technical Engineers, Local 21, David M. Rolley, Peter J. Ellis, Susan Guest: Interveners and Appellants	Arthur Wei-Wei Liou Leonard Carder 1330 Broadway - Suite 1450 Oakland, CA 94612 aliou@leonardcarder.com

Locals 512 and 2700 of the American Federation of State, County and Municipal Employees AFL-CIO: Intervener and Appellant	Robert Bonsall Beeson Tayer & Bodine 483 Ninth Street, Suite 200 Oakland, CA 94607 rbonsall@beesontayer.com
United Chief Officers Association: Intervener and Appellant	Robert James Bezemek 1611 Telegraph Avenue - Suite 936 Oakland, CA 94612 rjbezemek@bezemeklaw.com
Alameda County Medical Center: Interested Entity/Party Wright Lassiter, III, CEO Alameda County Medical Center, 1411 East 31st St. Oakland, CA 94602 wlassiter@acmedctr.com	Pro Per
First 5, Alameda County Children & Families Commission: Intervener and Appellant Mark Friedman, CEO First 5 1115 Atlantic Avenue Alameda, CA 94501 mark.friedman@first5ecc.org	Pro Per
Housing Authority of County of Alameda: Intervener and Appellant	Brian Edward Washington Office of County Counsel 1221 Oak Street - Suite 450 Oakland, CA 94612-4296 brian.washington@acgov.org
Livermore Area Recreation and Park District: Intervener and Appellant	Rod A. Attebery Neumiller & Beardslee 509 West Weber Avenue, 5th Floor P. O. Box 20 Stockton, CA 95201-3020 rattebery@neumiller.com
Alameda County Office of Education: Intervener and Appellant	Pro Per

Sheila Jordan, Superintendent of Schools 313 W. Winton Avenue Hayward, CA 94544 sjordan@acoe.org	
Superior Court of California : Intervener and Appellant Patricia Sweeten, Court Executive Officer 1225 Fallon Stret, Room 209 Oakland, CA 94612 psweeten@alameda.courts.ca.gov	Pro Per
County of Alameda: Intervener and Appellant	Andrea Lynne Weddle Office of the County Counsel Alameda County 1221 Oak Street, Suite 450 Oakland, CA 94612 andrea.weddle@acgov.org
State of California, Dominic Ciotola: Interveners, Appellants and Respondents	Anthony Paul O'Brien Office of the Attorney General 1300 "I" Street - Suite 125 Sacramento, CA 95814 anthony.obrien@doj.ca.gov Rei R. Onishi Office of Governor Edmund G. Brown Jr. State Capitol, Suite 1173 Sacramento, CA 95814 rei.onishi@gov.ca.gov
Rodeo-Hercules Fire Protection District: Intervener and Appellant	Richard Delmendo PioRoda Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 rpioroda@meyersnave.com
Bethel Island Municipal Improvement District: Intervener and Appellant	David Jeffry Larsen Law Office of David J. Larsen 5179 Lone Tree Way Antioch, CA 94531 dlarsen@dlarsenlaw.com

Contra Costa County, Contra Costa County Fire Protection District, Housing Authority of the County of Contra Costa, In-Home Supportive Services Public Authority, Contra Costa Local Agency Formation Commission, Children and Families First Commission: Intervener and Appellant	Thomas Lawrence Geiger Contra Costa County Counsel 651 Pine Street, 9th Floor Martinez, CA 94553-1229 thomas.geiger@cc.cccounty.us
Central Contra Costa Sanitary District: Real Party in Interest and Respondent	Linda M. Ross Renne Public Law Group 350 Sansome Street, Suite 300 San Francisco, CA 94104 lross@publiclawgroup.com Kenton Alm Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 kalm@meyersnave.com
Superior Court of California County of Contra Costa: Intervener and Appellant	Lyle R. Nishimi Judicial Council of California 455 Golden Gate Avenue San Francisco, CA 94102 lyle.nishimi@jud.ca.gov
Attorneys for East Contra Costa County Fire Protection District: Intervener and Appellant	Diane Marie Hanson Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, CA 94105 domalley@hansonbridgett.com
Byron, Brentwood, Knightsen Union Cemetery District: Intervener and Appellant Barbara Fee P.O. Box 551 Brentwood, CA 94513 ucemetery@yahoo.com	Pro Per

Rodeo Sanitary District: Intervener and Appellant	Carl P. Nelson Bold, Polisner, Maddow, Nelson & Judson, PC 500 Ygnacio Valley Road, Suite 325 Walnut Creek, CA 94596-3840 cpanelson@bpmnj.com
San Ramon Valley Fire Protection District: Intervener and Appellant Robert Leete 1500 Bollinger Canyon Road San Ramon, CA 94583	William Dale Ross 400 Lambert Ave. Palo Alto, CA 94306-2219 wross@lawross.com
Contra Costa Mosquito & Vector Control District: Intervener and Appellant Craig Downs 155 Mason Circle Concord, CA 94520	Martin Thomas Snyder Snyder, Cornelius & Hunter 399 Taylor Blvd., Suite 102 Pleasant Hill, CA 94523 mtsnyder@schlawfirm.net
Moraga/Orinda Fire Protection District: Intervener and Appellant Sue Casey 33 Orinda Way Orinda, CA 94563 scasey@mofd.org	Pro Per
American Federation of State, County and Municipal Employees Local 2703, AFL-CIO, Jeffrey Miller, Sandra Gonzalez-Diaz, Merced County Sheriff's Assoc., an Affiliate of International Brotherhood of Teamsters, Local 856: Plaintiffs, Appellants and Respondents	Barry Jay Bennett Katwyn T. DeLaRosa Bennett, Sharpe, Delarosa, Bennett & Licalsi 2444 Main Street, Suite 150 Fresno, CA 93721 ktdelarosa@bennettsharpe.com
Merced County Employees' Retirement Association, Board of Retirement of the Merced County Employees' Retirement Association: Defendant and Respondent	Ashley K. Dunning Nossaman LLP 50 California Street 34th Floor San Francisco, CA 94111 adunning@nossaman.com