SUPREME COURT
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Case No. S247095

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY DEPUTY SHERIFF'S ASSOCIATION et al.,
Petitioners and Appellants,
v.
ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. AND BD OF THE ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. et al.,
Defendants and Respondents;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, et al.,
Interveners;

After a Decision by the Court of Appeal, First Appellate District, Case No. A141913, Contra Costa County Superior Ct. Case No MSN12-1870 (Coordinated with Alameda Superior Ct. Case No. RG12658890 and Merced Superior Ct. Case No. CV003073)

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I.
INTRODUCTION

This Court has long recognized the "unique importance of pension rights" to public employees. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28; *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 390 ["The right to a pension is ... clearly 'favored' by the law."].) Such rights are protected, once vested upon commencement of employment, as an enforceable contractual obligation of the employer. (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863.)

The California Rule, providing generally that disadvantages imposed on existing vested pension rights must be offset with "comparable advantages," is the foundational legal doctrine protecting the contractual promise made to countless public servants in this state that the pensions offered to them in exchange for a career in public service would remain intact when that promise came due. (*Allen v. Bd. of Admin.* (1983) 34 Cal.3d 114, 120 ["Allen II"].)

Amici League of California Cities ("League") and Business Roundtable (collectively "*Amici*") explicitly urge this Court to jettison this long-standing precedent. While *Amici* put forth a myriad of reasons as to why they believe this Court should abandon the California Rule, or otherwise rule against the claims of the Unions in this case, this Answering brief will address only a few issues raised in their briefs. The Unions have exhaustively briefed the merits of this case and will not repeat that discussion here. A few points, however, should be considered by the Court when reviewing the arguments put forth by *Amici*.

First, a pension is fundamentally a contractual agreement for deferred compensation between an employer and an employee, in exchange for a commitment to provide future services. The California legislature,

when enacting pension statutes that are incorporated into those employment contracts, does not retain the unfettered authority to "establish" or "revise" the terms of employment for the county employees in this case. This is so because the state legislature never had such authority in the first place. Counties have the constitutional authority to set the compensation of their employees – not the state legislature, as erroneously asserted by *Amici*. Accordingly, the California Rule does not unlawfully restrict the state legislature's authority in this regard.

Second, the pension statutes referenced by and incorporated into those employment contracts include an inherent element of exchange. This is why this Court has never required public employees to demonstrate any contractual intent by the legislative body enacting a pension statute. Such an intent is reasonably presumed from the very nature of the benefit offered. *Amici's* assertion that the California Rule is unlawful because it creates contractual rights without any evidence of legislative intent is out of place in the pension context and out of step with this Court's clear precedent.

Third, *Amici* ask this Court to overturn decades of established pension law by ignoring the reason for offering pension benefits in the first place – to induce competent persons to accept and maintain employment. This objective is accomplished by deferring a portion of the employees' compensation to the end of their careers, thereby encouraging their commitment to provide future services. This is fundamentally why employees "earn" the right to accrue *future* pension benefits immediately upon commencement of employment, which *Amici* find particularly offensive. In disregarding this basic principle, *Amici* ignore the purpose for which pensions are offered and why pensions provide value for both employers and employees. Because the incentive only works because of the

continuing validity of the California Rule, disposing of it now will thwart the purpose of offering the benefit.

Fourth, the California Rule sets the contractual expectations of the pension benefits agreed to between employers and employees, and has done so for decades. It does not upend these expectations. Because employers and employees have entered into these contractual arrangements knowing they are subject to the California Rule, that legal framework is incorporated into pension contracts and quite reasonably sets the expectations of the obligations owed. Remarkably, both *Amici* argue against this fairly straight-forward understanding by asserting that the California Rule somehow frustrates the contractual expectations of the parties.

Finally, the inevitable disruption caused by abandoning the California Rule cannot be overstated. Perhaps tens of thousands of current individual public employees have arranged their professional lives in no small part on the certainty of knowing the pension benefits promised to them will be there at the end of their public service careers. Unquestionably, public employers and collective bargaining associations have relied on this certainty when negotiating other terms and conditions of employment, including the extent of immediate and future salary adjustments. The California Rule is deeply ingrained in the framework by which public employees are recruited, retained, and compensated. Because neither *Amici* have put forth a "special justification" for departing from this precedent, this Court should reject the invitation to do so. (*Golden Gateway Ctr.v. Golden Gateway Tenants Assn.* (2001) 26 Cal.4th 1013, 1022.)

II.
ARGUMENT

A. The California Legislature Does Not Have the Unfettered Authority to Establish the Compensation of County Employees.

The California Legislature's authority to "establish or revise the terms and conditions of *state* employment" is not implicated in this case. (Business Roundtable Brief, p. 33, emphasis added.) The Public Employee Pension Reform Act's ("PEPRA") amendments to the County Employees Retirement Law ("CERL") – the issues implicated here – do not concern the terms and conditions of *state* employment because CERL's members are county employees, not state employees.

Both cases relied on by Business Roundtable concerned terms of employment for state employees, and make clear that the authority to set employee salaries is a legislative function residing with the legislative body of the particular employer at issue. (*Prof'l Engineers in Cal. Gov't v. Schwarzenegger* (2010) 50 Cal.4th 989, 1015 ["[T]he ... authority to set salaries [of public employees] has traditionally been viewed as a legislative function, with ultimate authority residing in the legislative body,"] citations omitted; *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 188 ["the actual authority to set salaries has traditionally been viewed as a legislative function, with ultimate authority residing in the legislative body."].)

The Constitution confers upon county legislative bodies, as the employing entities, the authority to provide for the compensation of their employees. Those county legislative bodies decide whether to offer pension benefits under a CERL pension system to their employees– not the state legislature. (Cal. Const. Art. XI, § 1(b) ["The governing body shall provide for the number, compensation, tenure, and appointment of employees."]; *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 338

["the county, not the state … shall provide for the compensation of its employees."]; Gov. Code § 31500 ["A retirement system is established in any county for eligible officers and employees by the adoption of an ordinance…."].) Pension rights are "an integral portion" of that compensation. (*Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853, citations omitted.) In this case, the county employers provided their employees with pension benefits by entering into contracts with their employees to provide pension benefits based on the statute in effect when their employment commenced. (*Miller v. State of California* (1977) 18 Cal.3d 808, 817 ["upon acceptance of public employment plaintiff acquired a vested right to a pension based on the system then in effect."].)

Because the California Legislature is not the governing body for county employees who are members of a CERL system, the Legislature does not have the unfettered authority to establish or revise the terms of their compensation. Rather, it must refrain from unlawfully impairing the existing pension contracts between the employers and employees implicated in this case. The assertion that the California Rule somehow improperly "restricts" the California Legislature's authority in this regard misapprehends the fundamental nature of pension benefits as a contract between public employees and their public employers.

B. An Intent to Create Contractual Pension Rights Is Inherent In Pension Legislation.

The California Rule does not offend any "bedrock principle" requiring a "clear[] and unequivocal[]" expression of legislative intent to create contractual rights because pension benefits inherently include an element of exchange – deferred compensation in return for an employee's commitment to provide future services. (Business Roundtable Brief, pp. 34-37; League Brief, pp. 21-26.)

Pension statutes are unique in this regard, and California courts have long understood this fact. (*Kern, supra,* 29 Cal.2d at p. 853; *Betts, supra,* 21 Cal.3d at p. 863 ["A long line of California decisions has settled the principle … [a] public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment."]; *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 505 ["A statute offering pension rights in return for employee services expresses an element of exchange and thereby implies these rights will be private rights in the nature of contract."]

Pension benefits offered by an employer – with reference to and incorporation of an existing pension statutory scheme – operate similarly to an offer of a unilateral contract for which the commencement of services functions as an acceptance of those terms to which the employer is bound. (Second Restatement of Contracts, Section 45 ["(1) Where an offer invites an offeree to accept by rendering a performance and does not invite a promissory acceptance, an option contract is created when the offeree tenders or begins the invited performance or tenders a beginning of it. (2) The offeror's duty of performance under any option contract so created is conditional on completion or tender of the invited performance in accordance with the terms of the offer."]; *State v. Agostini* (1956) 139 Cal.App.2d 909, 914 ["[I]f an offer for a unilateral contract is made, and *part of* the consideration requested in the offer is given *or tendered* by the offeree in response thereto, the offeror is bound by a contract, the duty of immediate performance of which is first conditional on the full consideration being offered or tendered." citations omitted.].) In the employment context, this arrangement confers benefits for both sides of the bargain. (*Newberger v. Rifkind* (1972) 28 Cal.App.3d 1070, 1076 ["make the employees more content and happier in their jobs, cause the employees

to forego their rights to seek other employment, assist in avoiding labor turnover," to the "advantage to both the employer and the employees."].)

This inherent element of considered exchange is fundamentally different than almost any other type of legislative enactment because statutes generally are not intended to afford employers the ability to induce long-term employment commitments. Pension statutes, on the other hand, are intended to accomplish this precise objective. (*Kern, supra,* 29 Cal.2d at p. 856 ["one of the primary objectives in providing pensions for government employees … is to induce competent persons to enter and remain in public employment."].) Indeed, the language of CERL itself unambiguously identifies this intent as the statute's purpose. (Gov. Code § 31451 ["The purpose of (CERL) is to recognize a public obligation to county and district employees … by making provision for retirement compensation … as *additional elements of compensation for* ***future services…*** " emphasis added.].)

Accordingly, this Court did not "error" in *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131 ("Allen I") and for more than 60 years thereafter, by recognizing the inherent element of exchange present in pension statutes. (Business Roundtable Brief, pp. 35-36.) Rather, this Court correctly acknowledged the fundamental nature of pension statutes as part of the employment contract between an employer and an employee, conferring additional elements of compensation in consideration for a commitment of future services. The California Rule does not run afoul of any relevant legal principle by acknowledging this fact.

C. The California Rule Has Set the Contractual Expectations of Employers and Employees for Decades.

The California Rule does not upend the reasonable expectations of employers and employees because the rule itself has been incorporated into pension contracts for the past six decades, and operates to maintain the

value of those contracts for both parties. (Business Roundtable Brief, pp. 37-41; League Brief, pp. 18-19.)

This Court has long made clear that employees earn a vested right to the pension offered to them when they commence employment. (*Miller, supra,* 18 Cal.3d at pp. 815, 817; *Carman v. Alvord* (1982) 31 Cal.3d 318, 325; *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619, 628.) In keeping with the intent of pension statutes to provide incentive for continued employment by offering deferred compensation for a commitment of *future* services, this vested right includes the employees' "right to earn future pension benefits through continued service" based on the system in effect when the pension contract was executed. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 528; Gov. Code § 31451.)

An innumerable number of individual pension contracts, including the contracts at issue in this case, have been executed between individual employees and their employers with these legal principles incorporated into the terms. (See *Swenson v. File* (1970) 3 Cal.3d 389, 394 [Parties are presumed to have existing law in mind when they execute contracts.].) Thus, it would be unreasonable for the parties to expect employees to earn pension benefits in any other way. Business Roundtable tacitly acknowledges this fact by admitting that "[i]n the absence of the California Rule," the parties would expect a different result. (Business Roundtable Brief, p. 39.) But this case concerns contracts that included the California Rule when executed. For this simple reason, *Amici's* assertion that the parties should have expected a contractual relationship premised on a contrary application of established law is fundamentally flawed.

And, *even* in the absence of the long-standing California Rule, neither party would reasonably expect pension benefits to be earned as

immediate salary because that would undermine the initial purpose of the offered benefit as an inducement to enter and *remain* in public service by holding aside some of the offered compensation as deferred. (*Kern, supra,* 29 Cal.2d at p. 856.) A pension's ability to induce long-term employment commitments is founded upon certainty – an assurance to the employee that future compensation will be earned on the terms originally offered in exchange for the employee's continued commitment to the employer. If the terms of the contracts allowed for unilateral substantive modification to the manner in which further pension benefits are earned through continued service, at any time prior to the employee's completion of the requested performance, the value of the promised opportunity to earn additional pension rights would be illusory. The incentive for employees would shift from long-term loyalty to their current employers towards an incentive to continually seek the maximum immediate salary offered by any employer, thereby frustrating the benefit to employers of a stable and competent workforce.

The California Rule exists to effectuate the purpose of offering pension benefits by assuring employees receive the benefits promised as part of the original bargain. Without that certainty in the law, "[i]t is obvious" that the purpose of offering the future benefit "would be thwarted," rendering the incentive "either ... ineffective as an inducement to public employees or ... merely a snare and a delusion to the unwary." (*Kern, supra,* 29 Cal.2d at p. 856.)

D. *Amici* Have Not Identified Any "Special Justification" For Disposing of the California Rule.

The doctrine of stare decisis "carries such persuasive force that [the courts] have always required a departure from precedent to be supported by some 'special justification.'" (*Golden Gateway Center, supra,* 26 Cal.4th at p. 1022.) It is "a fundamental jurisprudential policy" "based on the

assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law." (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 504, citations omitted.) "The significance of stare decisis ...has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response." (*Id.*, citations omitted.)

This highlighted significance is elevated even further where existing precedent has induced reliance ordering the manner in which property and contract rights have been established. (*Pearson v. Callahan* (2009) 555 U.S. 223, 233 ["Considerations in favor of stare decisis are at their acme in cases involving property and contract rights, where reliance interests are involved...."].)

In the context of pension rights, the reliance engendered by the California Rule for public employers, employees, and various pension systems in establishing career-inducing pension rights cannot be overstated. An innumerable number of individual employees have made career-defining employment decisions based on the promise of a defined benefit pension made possible by the certainty afforded by the California Rule. Employers rely on that certainty to attract prospective applicants and retain current employees. Those employers enter into contracts with CERL retirement boards to ensure the promised benefits are provided to their employees. The retirement boards, in turn, are legally obligated to pay the promised pensions and conduct actuarial assessments to guarantee sufficient funding for those benefits.

Tens of thousands of current public employees have made professional and personal decisions, at least in part, in reliance on their contractual right to a promised pension benefit made enforceable by the California Rule. Considerations in favor of stare decisis in such situations are at their zenith. (*Pearson, supra,* 555 U.S. at p. 233.)

Neither the League nor the Business Roundtable have put forth a "special justification" for abandoning this precedent. Instead, the Business Round Table merely downplays the fact that pensions are recognized as an inducement for continued public service and the California Rule exists to protect those pension rights once an individual enters and remains in public service. (Business Roundtable Brief, pp. 45-48; Gov. Code § 31451.) Repeated references to judicial decisions from other states and the federal courts are not controlling law for the interpretation of California public employee pension rights and do not provide any special justification for eliminating the California Rule, primarily because the pension contracts at issue in this case incorporate the California Rule rather than legal principles from other jurisdictions. (Business Roundtable Brief, pp. 48-53.)

Nor should this Court dispose of the California Rule based on the alleged costs it has imposed on local government employers en masse. (Business Roundtable Brief, pp. 53-60.) There is no evidence in this case that the challenged amendments to CERL have or will remedy any specific financial hardship for the twenty separate CERL retirement systems, or the particular retirement systems in this case, or that the detriment imposed on any particular employee was or is necessary to avert financial calamity. This Court has made clear that speculative arguments about the rising cost of pension obligations are insufficient to impair and unwind those obligations, let alone dispose of decades of established law protecting those obligations. (*Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 455 [Pleas

"based on speculation only" are "without merit. Rising costs alone will not excuse the city from meeting its contractual obligations, the consideration for which has already been received by it."].)

The League, for its part, asks this Court to apply the federal *Allied Structural Steel* test to this case because the California Rule, it impliedly asserts, is inapplicable where the State is not a party to the contracts at issue and acts in its "regulatory capacity." (League Brief, p. 16.) Unsurprisingly, the League offers no authority for this proposition because this is not the law.[1] The League's sole citation, *Allen I*, contains absolutely no discussion about the appropriate application of the "comparable advantage" requirement when a legislature acts in a regulatory capacity or is otherwise not a party to the contract impaired by legislative action. To the contrary, *Allen I* clearly articulates the "comparable advantage" test as being applicable where employees' pension rights have been altered, as in this case. (*Allen I, supra,* 45 Cal.2d at p. 131 ["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."].)

Allen II similarly does not make the distinction urged by the League. In *Allen II* this Court referenced *Allen I* and *Abbott* when articulating the applicable rule it set forth for pension contract impairment cases. (*Allen II, supra,* 34 Cal.3d at p. 120 ["*With respect to active employees, we have held* that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages." emphasis added].) The

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[1] The League cites *Allen I, supra,* 45 Cal.2d at p. 131. (League Brief, p. 17.)

League's implied assertion that the "comparable advantage" test is inapplicable is baseless. The California Rule should be retained.

III.
CONCLUSION

For the reasons discussed above, and those contained in the Unions' Answer Brief on the Merits, the Unions respectfully ask this Court to uphold the California Rule and otherwise find in their favor.

Date: November 8, 2018

Respectfully submitted,

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The foregoing Answer to Petitions for Review contains 3,514 words, including footnotes, based on the Microsoft word count feature, excluding the Table of Contents, Table of Authorities, Certification of Word Count and the signature block.

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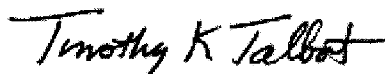

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ANSWER TO AMICI CURIAE BRIEFS FILED IN SUPPORT OF PETITIONERS AND APPELLANTS

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Merced County Employees' Retirement Association; Board of Retirement of the Merced County Employees' Retirement Association	Ashley K. Dunning Nossman, LLP 50 California Street, 34th Floor San Francisco, CA 94111 Email: adunning@nossaman.com
United Chief Officers Association	Robert J. Bezemek Law Offices of Robert J. Bezemek 1611 Telegraph Ave., Suite 936 Oakland, CA 94612-2140 Email: rjbezemek@bezemeklaw.com
League of California Cities	Liliane Marie Wyckoff Colantuono, HIghsmith & Whatley, PC 420 Sierra College Dr., Suite 140 Grass Valley, CA 95945 Email: lwyckoff@chwlaw.us
Alameda County Deputy Sheriffs' Association, Jon Rudolph, James D. Nelson, Darlene Hornsby, Robert Brock, Rocky Medeiros	David E. Mastagni Isaac Stevens Mastagni, Holstedt, Amick, et al. 1912 I Street Sacramento, CA 95811 Email: davidm@mastagni.com istevens@mastagni.com

Cal Fire, Local 2881; California Correctional Peace Officers Association; Peace Officers Research Association of California; California Statewide Law Enforcement Association; San Francisco Police Officers' Association; San Jose Police Officers' Association; Fresno Deputy Sheriffs' Association; Deputy Sheriffs' Association of Santa Clara County; Marin Professional Firefighters, International Association of Fire Fighters, Local 1775; Association of California State Supervisors; San Francisco Municipal Executives' Association; San Francisco Deputy Probation Officers' Association; Sunnyvale Public Safety Officers' Association; Superior Court Professional Employees' Association; Sacramento County Professional Accountants Association; City of Fremont Employees' Association; Redwood City Management Employees' Association; Burlingame Police Officers' Association; and California State Retirees	Gregg Mclean Adam Messing Adam & Jasmine LLP 235 Montgomery St., Suite 828 San Francisco, CA 94104 Email: gregg@majlabor.com
California Business Roundtable	Karen Peckham Hewitt Jones Day 4655 Executive Dr., Suite 1500 San Diego, CA 92121 G. Ryan Snyder Jones Day 325 John H. McConnell Blvd., Suite 600 Columbus, OH 43216 Beth Heifetz Jones Day 51 Louisiana Ave., NW Washington, DC 20001

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

Dated: November 8, 2018

Lesley A. Welch