Case No. S242034 No Fee (Gov. Code § 6103)

In The Supreme Court Of The State Of California

CATHERINE A. BOLING, ET AL. and CITY OF SAN DIEGO
Petitioners,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION; DEPUTY CITY ATTORNEYS ASSOCIATION; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 127; SAN DIEGO CITY FIREFIGHTERS, LOCAL 145, IAFF, AFL-CIO,

Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE, CONSOLIDATED CASE NOS. D069626 AND D069630

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; BRIEF IN SUPPORT OF PETITIONER CITY OF SAN DIEGO BY AMICI CURIAE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to California Rules of Court, Rule 8.520(f), the amici identified below respectfully request permission to file the attached brief in support of Petitioner City of San Diego. This application is filed within 30 days after the filing of the reply brief on the merits and is therefore timely pursuant to Rule 8.520(f)(2).

THE INTEREST OF *AMICI CURIAE*

The League of California Cities

The League of California Cities ("LOCC") is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The LOCC is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties

The California State Association of Counties ("CSAC") is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California, and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this is a matter with the potential to affect all California counties.

The International Municipal Lawyers Association

The International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan professional organization comprising local

government entities, including cities, counties and subdivisions thereof, as represented by their chief legal officers, state leagues, and individual attorneys. Established in 1935 and consisting of more than 2,500 members, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country.

IMLA has identified this case as implicating fundamental local government principles that apply across the United States, and that overturning the Court of Appeal's decision would be harmful to local government.

THE NEED FOR FURTHER BRIEFING

Amici curiae LOCC and CSAC represent the interests of local governments throughout California, and are therefore uniquely situated to present their views and analysis related to this case. Amicus curiae IMLA represents the interests of local government throughout the United States, and this Court should benefit from its perspective and analysis.

Amici believe strongly that reversing the Court of Appeal's decision would create a very harmful precedent for local agencies throughout California and across the Country, as key democratic principles are at stake – including the right of initiative; the power of local boards in the executive branch to thwart the outcome of bona fide elections; and the right of public officials to advocate and express their own views on the merits of proposed legislation.

Amici are hopeful that this Court will benefit from their broader perspective regarding these and other issues implicated by the decision below.

ABSENCE OF PARTY ASSISTANCE

Pursuant to California Rules of Court, rule 8.520(f)(4), all amici confirm that no party or their counsel authored this brief in whole or in part. Nor did any party, their counsel, person, or entity make a monetary contribution to the preparation or submission of this brief.

CONCLUSION

Amici LOCC, CSAC and IMLA respectfully request that the Court grant this application for leave to file an amicus curiae brief.

Dated: December 1, 2017

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITIONER CITY OF SAN DIEGO BY AMICI CURIAE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

I. INTRODUCTION

The California Public Employment Relations Board ("PERB") has been consistently hostile to local ballot measures, methodically striking them down on both substantive and procedural grounds. *E.g., City & County of San Francisco*, PERB Decision No. 2540-M (October 20, 2017) (striking down interest arbitration reform initiative measure passed by voters); *City & County of San Francisco*, 2013 WL 2368606 (ALJ Decision); *City of Palo Alto,* PERB Decision No. 2388-M (August 6, 2014) (striking down ballot measure repealing interest arbitration passed by voters); *County of Santa Clara,* PERB Decision No. 2114-M (June 8, 2010) (striking down prevailing wage measure); *County of Santa Clara,* PERB Decision No. 2120-M (June 25, 2010) (same); *City of San Jose*, 2014 WL 6680081 (ALJ decision striking down pension reform measure); *City of San Jose*, 2014 WL 6680079 (same).

In the course of these decisions, PERB has posited legal interpretations in areas obviously outside its specialized sphere of expertise, such as election law, general and local charter municipal law, the California Constitution, First Amendment rights, common law, local statutory systems, pension law and vested rights, and more. PERB argues that its interpretations are entitled to deference, unless they are "clearly erroneous."

Here, in striking down yet another ballot initiative, PERB offered interpretations regarding whether San Diego's Mayor had a Constitutional right to advocate on behalf of a citizen's initiative and, if so, the limitations on that right; how San Diego's government is structured under its charter, and whether common law agency principles apply in a charter city. PERB

argued that the Court of Appeal should defer to its interpretations, and again invoked the "clearly erroneous" standard of review.

The Court of Appeal correctly rejected PERB's expansive view of its authority to interpret State and municipal laws. The "clearly erroneous" standard does not square with this Court's decision in *Yamaha Corp. of America v. State Board of Equalization*, 19 Cal. 4th 1 (1998) ("*Yamaha*"), and this Court should now take the opportunity to re-set the standard of review and confirm that the degree of deference accorded to PERB's interpretations is "situational," dependent on the circumstances, consistent with *Yamaha*.

Finally, briefing by the labor unions and PERB has confused and made overly complicated a key issue now before the Court – whether and to what extent an agency must meet and confer under the MMBA when a citizen's initiative qualifies for an election. This issue was expressly left open in this Court's decision in *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach* ("*Seal Beach*") 36 Cal. 3d 591 (1984). Amici believe the answer to this question is simple and compelling: Logically, there can be no duty to meet and confer over the content of a citizen's initiative, as this right belongs to citizens and not government; if labor unions wish to propose an alternate initiative, they are free to do so consistent with existing law; and with respect to any effects or impacts of the initiative on MMBA negotiable issues, the duty of public agencies to meet and confer in good faith with affected labor unions arises only upon request after the initiative is duly adopted by the electorate.

II. ALL ISSUES IN THIS CASE MUST BE CONSIDERED AGAINST THE BACKDROP OF CALIFORNIA'S CONSTITUTION

There are at least two core Constitutional principles central to this case.

First, the California Constitution provides that "[a]ll political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." Cal. Const., art. II, § 1. Among the powers that Californians have reserved for themselves in the Constitution are the powers of initiative and referendum. Cal. Const., art. II, § 11 (a).

Because the right of initiative is fundamental, courts go to great lengths to protect that right. Consistent, longstanding judicial policy has been "to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled." *Fair Political Practices Com. v. Superior Court*, 25 Cal. 3d 33, 41 (1979); *see also Associated Home Builders etc. Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976) (describing the right of initiative as a fundamental right that the voters have reserved to themselves, a right that the courts must "jealously guard."). All presumptions favor the validity of initiative measures, which "must be upheld unless the unconstitutionality clearly, positively, and unmistakably appears." *Legislature v. Eu*, 54 Cal. 3d 492, 501 (1991) (emphasis added).

Second, the California Constitution provides that: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." Cal. Const., art. I, § 2(a). This provision parallels the United States Constitution. *See* U.S. Const., 1st Amendment ("Congress shall make no law...abridging the freedom of speech.").

Elected officials do not relinquish this right while serving in office. Public officials are permitted to speak out, support and otherwise opine on the merits of any legislation, including legislation by initiative. *See, e.g., Wood v. Georgia*, 370 U.S. 375, 395 (1962) ("the role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.");

Bond v. Floyd, 385 U.S. 116, 135-36 (1966) ("the manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy" [and] "the central commitment of the First Amendment... is that 'debate on public issues should be uninhibited, robust, and wide-open.'").[1]

Amici are very concerned that PERB's decision, if permitted to stand, would likely impinge on the free speech rights of elected officials. There is no dispute that San Diego's Mayor politically supported the underlying initiative. By concluding that the Mayor acted on behalf of the City, and not privately, PERB was able to invoke settled law under *Seal Beach, supra,* that the City must meet and confer before placing a charter amendment on the ballot. PERB thereby sidestepped the free speech implications.

But as the Court of Appeal correctly found, PERB simply misunderstood the municipal laws governing the authority of the City of San Diego to act, including placing measures on the ballot. Legislative powers in San Diego are vested in the City Council, not the Mayor, and the Council may only act as a body. (*See* San Diego City Charter, art. III, §§ 11 and 15; art. XV, § 270(c).). The Mayor had no authority to place a charter measure on the ballot unilaterally.

PERB's decision would effectively chill the right of elected officials to communicate and offer their opinions about legislation and other issues affecting their respective communities. PERB's holding would leave elected officials with an unworkable and ambiguous roadmap about how to express their political views. Any expressions of support or opposition on a labor-related initiative could be viewed as somehow attributable to the formal

[1] The California Elections Code specifically codifies the right of elected officials to publish their opinions in voter pamphlets. *See, e.g.,* Cal. Elections Code §§ 9282(a), (b); 9162(a); and 9315.

position of the agency, and could be used to invalidate otherwise lawful citizen's initiatives.

Amici recognize the various limitations on the use of public funds to promote partisan campaign positions. But PERB mistakenly believes that in the context of political expression, when a public official crosses the line and advocates inappropriately by using public resources in a partisan election, this means the official was acting as an "agent" of the city and therefore the city must suffer the consequences. This is flatly incorrect. When a public official misuses public resources, the public official suffers the consequences as an individual. *See, e.g., People v. Battin*, 77 Cal. App. 3d 635 (1978) (county supervisor's diversion of county staff time for improper political purposes constituted criminal misuse of public monies under Penal Code section 424). Contrary to PERB's position, a public official's misconduct in this arena does not make the official an "agent" of the entity – in fact, just the opposite.

Amici urge the Court to reaffirm the right of public officials to express their political and policy opinions about all pending legislation, consistent with the California and United States Constitution, and whether supported by labor or not.

III. THE COURT OF APPEAL CORRECTLY DETERMINED THAT THE CORRECT STANDARD OF REVIEW DEPENDS ON THE CIRCUMSTANCES, AND IS NOT AUTOMATICALLY SUBJECT TO A "CLEARLY ERRONEOUS" STANDARD

The colloquy during oral argument with PERB counsel at the Court of Appeal sheds light on the problem with the "clearly erroneous" standard.

> COURT: I'm a little lost here. If we've conducted *de novo* review, we not only have to decide that PERB is wrong, but really, really, really wrong. Is that what you're saying?
>
> ***

> COURT: I'm asking you a question. If we review PERB's legal decision and decide that it's wrong, are you telling me that's not enough. There needs to be a greater wrong? Or even if we think it's wrong, if PERB thought it's right, we should nevertheless uphold a wrong decision? (RT, pp. 37-39.)

In response to these questions, PERB simply referred back to precedent where this Court and other courts have applied the clearly erroneous standard. *E.g., Banning Teachers Ass'n v. PERB*, 44 Cal. 3d 799 (1988). But *Banning* simply states the principle, with no real analysis as to its meaning or practical application.

The evolution of the standard of review involving agency determinations is somewhat confused. As one commentator, UCLA Law Professor Michael Asimow, noted:

> The mainstream California rule is that a court exercises independent judgment when it reviews an agency's legal interpretation. It need not accept an agency's interpretation with which it disagrees, even if the legal text being interpreted is ambiguous and the agency's interpretation is reasonable. The same rule holds regardless of whether the interpretation is contained in a regulation, an adjudication, or in some other form of agency action. (M. Asimow, The Scope of Judicial Review of Decisions of California Administrative Agencies, 42 UCLA L. Rev. 1157, 1193 (1995) (citing numerous California cases at note 129).)

This is consistent with *Yamaha, supra,* as well as the California Constitution's reservation of judicial power to the judicial branch of government. *See* Cal. Const., art VI, § 1 ("The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record.")

A line of California cases do employ the "clearly erroneous" test in defining the scope of judicial review of agency interpretations of law. Those cases declare that a court should affirm the interpretation of a statute by an agency charged with its enforcement if that interpretation is not "clearly

erroneous." This principle is repeated in various cases. *E.g., Banning, supra.* However, this Court has also stated: "We have generally accorded respect to administrative interpretations of a law and, unless clearly erroneous, have deemed them significant factors in ascertaining statutory meaning and purpose." *Nipper v. California Auto. Assigned Risk Plan*, 19 Cal.3d 35, 45 (1977). This language indicates that this Court sees the "clearly erroneous" test as essentially consistent with *Yamaha – i.e.,* administrative interpretations are subject to respect, particularly if the interpretation is within the agency's area of expertise, but they are not determinative. The judicial branch always retains the Constitutional authority to interpret statutes and to develop common law principles. Professor Asimow notes the confusion over the use of the clearly erroneous standard:

> In Washington, the clearly erroneous test was employed from 1972 until it was supplanted by adoption of the 1981 model Act. *Washington judges could not figure out how clearly erroneous differed from substantial evidence.* (42 UCLA L. Rev. at 1190.)

The test "guarantees confusion and conflicting decisions." (*Id.*)

It is perhaps not surprising that an executive branch State agency would argue to preserve a standard of review that would automatically defer to their interpretations unless "clearly erroneous." But here, PERB's foray into municipal, Constitutional and election laws, as well as common law principles, highlights the problem. The agency has no expertise in these areas, and there is no reasonable basis to defer to PERB interpretations regarding these matters.

This case presents an ideal vehicle to re-confirm the principles articulated in *Yamaha Corp. of America v. State Board of Equalization*, 19 Cal.4th 1 (1998) ("The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving

deference to the determination of the appropriate to the circumstances of the agency action.").

The Court of Appeal below faithfully applied the Supreme Court's *Yamaha* standard:

> We construe Yamaha as recognizing that, in our tripartite system of government, it is the judiciary – not the legislative or executive branches – that is charged with final responsibility to determine questions of law...and "[w]hether judicial deference to an agency's interpretation is appropriate and, if so, its extent – the "weight" it should be given – is thus fundamentally situational." (*Boling v. Public Employment Relations Board*, 10 Cal. App. 5th 853, 869 (2017) (quoting Yamaha).)

Amici urge the Supreme Court to clarify and confirm this standard of review with respect to PERB interpretations, and to affirm the Court of Appeal's opinion.

IV. THE COURT OF APPEAL CORRECTLY CONCLUDED THAT THE MMBA DOES NOT COMPEL AGENCIES TO MEET AND CONFER OVER THE CONTENT OF CITIZEN'S INITIATIVES

In *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach* ("*Seal Beach*"), while the Court concluded that agencies were required to meet and confer over charter amendments placed on the ballot by the agency itself, the Court did not resolve "the question whether the meet and confer requirement was intended to apply to charter amendments proposed by initiative." *Seal Beach*, 36 Cal. 3d at 1149, note 8. That question is squarely presented here.

Both PERB and the labor unions make sweeping assertions about the MMBA, and an agency's obligation to meet and confer before implementing employment terms that are within the scope of representation. These general propositions all miss the point.

The issue is simply the one left open in footnote 8 of *Seal Beach*: What are the meet and confer requirements, if any, with respect to citizen

initiatives that impose terms that would otherwise be subject to negotiation if proposed by the agency? Under existing precedent, there is no question that if the City Council of the City of San Diego proposed to change pension benefits, it would be required to negotiate with affected labor unions before the City could adopt legislation making those changes. The initiative process raises an entirely different question because the citizens of San Diego – and not the City Council itself – followed the statutory process to gather signatures and to ensure that the measure qualified for the election. Once determining that all statutory obligations were met, the City had a ministerial obligation to place the measure on the ballot. Cal. Elec. Code § 9255(b)(2); *Save Stanislaus Area Farm Economy v. Bd. of Supervisors*, 13 Cal. App. 4th 141, 149 (1993) ("A local government is not empowered to refuse to place a duly certified initiative on the ballot."). The electors – not the City – acted as the legislature pursuant to Article II, section 1, of the California Constitution.

A. The Distinction Between Bargaining Over Whether to Implement a Term, Versus the Bargaining over the Effects and Implementation of the Term

The Court should be mindful of a critical distinction under the MMBA that should resolve the question regarding the scope of meet and confer obligations in the context of a citizen's initiative. This Court's decision in *International Assn. of Firefighters, Local 188 v. Public Employment Relations Bd.* ("*IAFF Local 188*"), 51 Cal. 4th 259 (2011), illustrates the distinction.

Under the MMBA, employers do not have to bargain over the decision whether to implement certain matters that impact terms and conditions of employment. *IAFF Local 188* explains this principle in the context of layoffs. There the Court confirmed that under the MMBA an employer may unilaterally decide to lay off employees. In other words, the *decision* itself

to impose layoffs is *not* subject to negotiation. However, the Court also confirmed the corollary principle that there is a duty to meet and confer over the *effects* or *impacts* of the layoffs. *IAFF Local 188*, 51 Cal. 4th at 277.

As set forth below, this recognized distinction provides a pathway for resolving the bargaining obligations in the context of citizens' initiatives.

B. It Would Be Senseless to Require Public Agencies to Negotiate Over Whether to Adopt a Citizen's Initiative, or its Content

It would obviously make no sense to impose any requirement to negotiate over the issue whether to adopt a citizen's initiative. Public agencies have no say in the text or content of initiatives, so there is nothing that even could be negotiated. And the law is clear that once a measure qualifies for the ballot an agency is required as a matter of law to place it on the ballot.

The Unions nevertheless argue directly that the MMBA requires agencies to commence negotiations regarding initiatives before they are adopted. (*See* Union's Op. Br., 59-60.) Needless to say, the Unions are unable to cite any controlling authority that suggests this outcome is required, much less reconcile the irrationality of requiring "bargaining" over a process that is Constitutionally reserved to citizens, who have no legal obligation other than to gather the requisite number of signatures and submit the measure, as drafted, in a timely fashion.

Amici note that labor unions – who are well versed in the political arena – are free to propose their own competing ballot initiatives. In fact,

labor unions regularly utilize the initiative process to obtain benefits that could otherwise be negotiable.[2]

Not surprisingly, the Union's brief is silent as to whether its interpretation of the MMBA creates a reciprocal obligation on the unions to meet and confer on initiatives that they sponsor. Adopting the Union's interpretation would presumably require that all initiatives, including those proposed by unions relating to terms and conditions of employment, would be subjected to the meet and confer process. This is a radical departure from current practice and past precedent.[3]

Faced with this reality, PERB posits a new theory, not contained in its underlying decision. PERB would impose an obligation for the agency to bargain over an alternative ballot measure. (PERB Op. Br., 74.) There is no authority for this argument. And it would make little sense to expend public

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[2] There are numerous examples of union sponsored citizens' initiatives. This list is not exhaustive, but the following are some examples: San Francisco Proposition I, November 1983, setting police and fire fighter salaries (See Request for Judicial Notice ("RJN"), Ex. A); San Francisco Proposition J, November 1982, setting police overtime rate (See RJN, Ex. B); San Francisco Proposition J, November 1983, setting fire fighter overtime rate (See RJN, Ex. C); San Francisco Proposition I, November 1982, setting police retirement benefits (See RJN, Ex. D); San Francisco Proposition B, February 2008, establishing a deferred retirement program (See RJN, Ex. E); Sacramento County Measure A, November 2009, requiring binding arbitration for probation officers and peace officer managers (See RJN, Ex. F); San Francisco Proposition F, June 1990, establishing a minimum staffing level for fire fighters (See RJN, Ex. G).

[3] It is not clear whether the meet and confer obligations suggested by the Unions would include the obligation to bargain to impasse and then engage in impasse resolution procedures, including mediation, fact finding and interest arbitration. *See, e.g.,* Cal. Gov. Code §§ 3505.4, 3505.5 (mandatory factfinding to resolve bargaining disputes). These processes are time consuming, and would interfere with the strict timelines surrounding elections and deadlines for submission of ballot initiatives.

resources bargaining when there is no guarantee the initiative ballot measure will actually pass.[4]

The MMBA cannot trump the California Constitution, and the Constitution is clear that all political power is reserved to the people. Citizens' initiatives are inherently political processes, not controlled by the MMBA in any respect.

The labor unions in this case were perfectly free (and they remain perfectly free) to propose an alternative initiative. That is the process defined under current law. The Court should not foist a new bargaining obligation, found nowhere in the MMBA, on public agencies.

C. The Bargaining Obligation Extends to Effects

Using the same legal framework that currently exists – i.e., distinguishing between bargaining over decisions versus effects – the Court can properly resolve the unanswered question presented in footnote 8 in *Seal Beach*. Here, the City of San Diego offered to bargain over the effects of the underlying decision. (XX AR 005129.) This is the proper scope of the bargaining obligation. At that juncture the parties can negotiate over timing, effects, potentially mitigating measures and other issues related to effects.

Bargaining over the effects, impact and implementation of new legislation is precisely the process that is currently followed. There are countless examples of legislation that have triggered bargaining. For example, when the Public Safety Officers Procedural Bill of Rights Act became effective in 1977, agencies negotiated with police unions about

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[4] The practical reality that any dispute regarding an initiative or referendum becomes moot if it does not pass in the election is one of the reasons that courts disfavor pre-election challenges. *See, e.g., Stanislaus Area Farm Economy v. Board of Supervisors*, 13 Cal. App. 4th 141, 150 (1993). The same reasoning applies here: why spend resources bargaining over an initiative before knowing whether it will actually be adopted?

implementing the new laws. *See* Cal. Gov. Code §§ 3300, et seq. The same is true when the Firefighters Procedural Bill of Rights Act was enacted in 2007. *See* Cal. Gov. Code §§ 3250, et seq. And the same thing occurred when mandatory drug testing was imposed under federal law on certain classifications of employment. *See, e.g.,* 49 C.F.R. Part 40 ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs"); 49 C.F.R. Part 29 ("Drug-Free Workplace Act of 1988"); Cal. Gov. Code §§ 8350, et seq. ("Drug-Free Workplace Act of 1990). And, when Congress or the Department of Labor issues new regulations for the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., impacts, effects and implementation can be a subject of bargaining. The same is true of judicial decisions, such as the recent case *Flores v. City of San Gabriel,* 824 F.3d 890 (9th Cir. 2016), which affected the overtime rate and spawned bargaining Statewide related to medical in lieu cashout programs.

This exact process would apply to initiatives, which are a form of legislation. Surely the Unions and PERB would not suggest that public agencies are obligated to bargain when they learn that State or Federal legislation is merely being considered, or has been introduced. The obligation to bargain may be triggered *after* the legislation is adopted, but not before.

It is a fundamental rule that courts strive to harmonize provisions of law, so that all enactments may be given effect consistent with the intent of the legislation. *See, e.g., Woods v. Young*, 53 Cal.3d 315, 323 (1991). With its narrow focus on labor law, PERB overlooks this critical principle. Amici believe that by imposing a possible bargaining obligation only *after* an initiative is actually adopted, the Constitutional initiative process can be honored without violating any provisions of the MMBA. After an election occurs and is validated, the parties can then discuss tradeoffs, timing,

compensation adjustments, and myriad other issues within the scope of representation related to the initiative.

V. CONCLUSION

The Court of Appeal correctly annulled the underlying PERB decision. *Amici* urge its affirmance.

Dated: December 1, 2017

Respectfully submitted,

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CERTIFICATION OF WORD COUNT
(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 4,935 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

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PROOF OF SERVICE

Case Name: **BOLING v. PUBLIC EMPLOYMENT RELATIONS BOARD (CITY OF SAN DIEGO)**
Case No.: S242034

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 350, San Francisco, CA 94104.

On December 1, 2017, I served the following document(s):

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; BRIEF IN SUPPORT OF PETITIONER CITY OF SAN CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

✓	By electronic service via TRUEFILING to all registered participants on the attached service list

✓	One Unbound copy hand delivered to the California Court of Appeal, 350 McAllister Street, San Francisco, CA 94102

I declare, under penalty of perjury that the foregoing is true and correct. Executed on December 1, 2017, in San Francisco, California.

Bobette M. Tolmer

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