

S249792

SUPREME COURT  
**FILED**

MAR 07 2019

Jorge Navarrete Clerk

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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Deputy

JAMES GUND, et al,  
Plaintiffs, Appellants & Petitioners,

v.

COUNTY OF TRINITY, et al.,  
Defendants and Respondents.

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After a Decision by the Court of Appeal,  
Third Appellate District, Case No. C076828  
(TCSC No. 11CV0080)

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**PETITIONERS' OPPOSITION TO MOTION FOR JUDICIAL NOTICE OF  
AMICI CURIAE RURAL COUNTY REPRESENTATIVES OF CALIFORNIA  
AND LEAGUE OF CALIFORNIA CITIES**

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Attorneys for Petitioners, James Gund and Norma Gund

**TABLE OF AUTHORITIES**

**CALIFORNIA CASES**

*In re Marriage of Bouquet*  
16 Cal.3d 583 (1976) ..... 1

*California Teachers Assn. v. San Diego Community College Dist.*  
28 Cal3d 692 (1981) ..... 1

*Cruz v. County of Los Angeles*  
173 Cal.App.3d 1131 (1985) ..... 2

*Kearny v. Salomon Smith Barney, Inc.*  
39 Cal.4th 95 (2006) ..... 1

*Mangini v. R.J. Reynolds Tobacco Co.*  
7 Cal4th 1057 (1994) ..... 2

*People v. Alexander*  
49 Cal.4th 846 (2010) ..... 2

*People v. Hamilton*  
60 Cal.2d 105 (1963) ..... 2

*Sosinsky v. Grant*  
6 Cal.App.4th 1548 (1992) ..... 2

**CALIFORNIA STATUTES**

Evidence Code section 452(c) ..... 1

Labor Code section 3366 ..... 1

**OTHER AUTHORITIES**

1 Witkin, Cal. Evidence (5<sup>th</sup> ed. 2012 §21, p. 128 ..... 3

**TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME  
COURT OF CALIFORNIA:**

The Court should deny the motion for judicial notice of several items requested by amici curiae (collectively “RCRC”) in support of respondent County of Trinity.

**1. Exhibit “H:” The letter to the Governor from an individual member of the Legislature is not a proper source to determine legislative intent.**

The first item as to which the court should deny the motion for judicial notice is a letter to Governor Brown from Senator James Cobey, author of SB 47 (1962-1963 Reg. Sess.), which enacted Labor Code section 3366. The letter, identified by RCRC as Exhibit “H,” urging the Governor to sign the bill into law, is apparently the only document claiming that a purported rationale for section 3366 was the protection of public entities from catastrophic judgments. Nothing in the official legislative history materials that may properly be considered indicates that any other legislators agreed with Senator Cobey on this issue.

Notwithstanding the aberrant content of Senator Cobey’s letter, a statement from a single legislator is not an appropriate source from which to discern the legislative intent of a statute, even when the legislator was an author of the enacting bill. Judicial notice of such a statement is therefore improper. ““In construing a statute we do not consider the motives or understandings of individual legislators who cast their votes in favor of it.”” (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699-701 [“CTA”], quoting *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589-590; *Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 120, fn. 13 [letter from bill’s principal author].)

A statement from an individual legislator does not assure that other legislators shared his or her view. (*CTA, supra*, at p. 700.)

**2. Exhibits “K” through “O:” The statistical reports amici curiae offer, which constitute new evidence, may not be used to establish the truth of their contents.**

RCRC requests judicial notice of statistical information from various public entities for the express purpose of enhancing the record with additional evidence. RCRC identified these records as Exhibits “K” through “O.” Judicial notice of these records would be improper. Although Evidence Code section 452, subdivision (c) allows a court to take judicial notice of official documents, the court does not take judicial notice of the truth of matters stated in the documents. (*Mangini v. R.J.Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)

“[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom.” (*Id.* at pp. 1063-1064, quoting *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134; *cf.*, *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565, 1568 [court may take judicial notice of judicial findings in a prior case but may not take judicial notice of the truth of those findings].)

Furthermore, in that these documents state information gleaned from other sources, they are inadmissible hearsay, even double hearsay—i.e., out-of-court statements of matters stated by third parties. (*People v. Hamilton* (1963) 60 Cal.2d 105, 131; *People v. Alexander* (2010) 49

Cal.4th 846, 876.) “Judicial notice of the authenticity and contents of an official document does not establish the truth of all recitals therein, nor does it render inadmissible matter admissible.” (1 Witkin, Cal. Evidence (5th ed. 2012) § 21, p. 128. That is precisely what RCRC asks the Court do here.

**3. Conclusion.** For the reasons stated above, the Court should deny RCRC’s motion for judicial notice of the referenced documents.

Dated: March 5, 2019

BRAGG, MAINZER & FIRPO, LLP

By:         /s/    
BENJAMIN H. MAINZER  
Attorneys for Petitioners,  
James and Norma Gund

*Gund, et al., v. County of Trinity, et al.*  
Supreme Court Case No. S249792  
Court of Appeal, Third District, Case No. C076828  
Trinity County Superior Court Case No. 11CV0080

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**DECLARATION OF SERVICE**

I am a citizen of the United States and a resident of Humboldt County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 804 Third Street, Eureka, California.

On the date indicated below, I served the following:

**PETITIONERS' OPPOSITION TO MOTION FOR JUDICIAL NOTICE OF  
AMICI CURIAE RURAL COUNTY REPRESENTATIVES OF CALIFORNIA  
AND LEAGUE OF CALIFORNIA CITIES**


BY MAIL. I am familiar with this company's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mailbox in the City of Eureka, California after the close of the day's business.

BY ELECTRONIC SERVICE. Submitted via e-submission through the court's electronic filing system.

BY OVERNIGHT DELIVERY. I caused such document to be delivered overnight to the office of the person(s).

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed at Eureka, California, on March 5, 2019.

  
Signature

Joni L. Aitken  
Printed Name

## SERVICE LIST

<p>John R. Whitefleet Porter Scott 350 University Avenue, Suite 200 Sacramento, CA 95825</p> <p><i>Attorneys for Respondents</i></p> <p><b>Vis U.S. Mail</b></p>	<p>Arthur J. Wylene Rural County Representatives of California 1215 K Street, Suite 1650 Sacramento, CA 95814</p> <p><i>Attorneys for Amici Curiae</i></p> <p><b>Via U.S. Mail</b></p>
<p>Hon. Dennis Murray &amp; Hon. Richard Schueler Trinity County Superior Court Post Office Box 1258 Weaverville, CA 96093</p> <p><b>Via U.S. Mail</b></p>	<p>California Court of Appeal Third Appellate District 914 Capitol Mall, 4<sup>th</sup> Floor Sacramento, CA 94102</p> <p><b>Via U.S. Mail</b></p>
<p>California Supreme Court 350 McAllister Street San Francisco, CA 94102</p> <p><b>Via Overnight Mail and E-Submission Original and Nine Copies (One to be conformed and returned)</b></p>	