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July 20, 2010

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VIA OVERNIGHT MAIL

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

**Re: *Retired Employees Association of Orange County v. County of Orange*
Supreme Court Case No. S184059**

To the Honorable Justices of the Supreme Court of California:

I write on behalf of *Amici Curiae*, the League of California Cities¹ and California State Association of Counties² (collectively, "*Amici*"), in support of Defendant and Appellee County of Orange's request, pursuant to Rule of Court 8.548(e)(1), that the Court grant a hearing in this matter, and to suggest the Court consider reframing the question to more closely mirror the facts of the particular case before the Ninth Circuit.³

There is no doubt that the issue of whether and under what circumstances retiree health benefits can become vested is of enormous importance to California cities and counties. Based upon recent changes in public accounting rules (GASB 43 and 45), it is clear that already fiscally distressed cities and counties could be faced with billions of dollars in additional liabilities if they are not able to make the kinds of adjustments made by Orange County. However, in the

¹ The League of California Cities ("League") is a non-profit 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 League is advised by its Legal Advocacy committee, which is comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide—or nationwide—significance. The Committee has identified this case as being of great significance due to its potential impact on many California cities.

² 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 case is a matter with the potential to affect all California counties.

³ The League and CSAC previously filed an *amicus* brief in the Ninth Circuit in support of Orange County.



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Amici's view, the question posed by this case is less whether such obligations can *ever* be “implied,” but rather, whether they can be implied in the absence of clear, formal *legislative* approval. In the absence of legislative action, cities and counties could be saddled with huge liabilities that were never intended, never properly evaluated and costed, and as to which the public was never given an opportunity to comment or judge its elected officials. Implying a contract in such circumstances would undercut long established principles of public accountability that require major financial commitments, especially in the area of employee compensation, be approved by the governing body. (See 10 McQuillin, *Mun. Corp.* § 29.2 (3d Ed. 2009) [the provisions of law circumscribing a government agency’s contractual powers “exist to protect the citizens and taxpayers....”].)

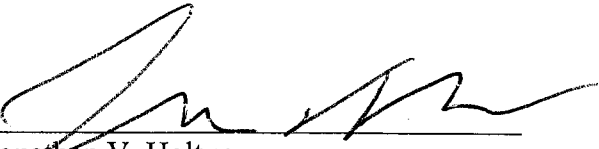
For the above reasons, *Amici* support the restated question proposed in the County’s July 19, 2010 letter. In particular, we believe it is essential that the court’s consideration focus on whether, absent a *clear intention* to do so evidenced by a *legislative act*, a California county and its employees can form an implied contract that confers lifetime vested rights to the manner in which retirees’ medical premiums are determined.

While the California Supreme Court has never addressed this question in the context of medical benefits, we believe the Court should be guided in its resolution of this issue by longstanding case law holding that (1) public employment is by statute, not by contract (*Miller v. California* (1977) 18 Cal. 3d 808, 813); (2) only the governing body may bind a public agency with respect to the compensation of its employees (Cal. Const., art XI, section 1(b); *County of Riverside v. Superior Court* (2003) 30 Cal. 4th 278, 285); (3) and public contracts must be executed through prescribed methods (*Miller v. McKinnon* (1942) 20 Cal.2d 83, 87-88). The Court should be further guided by the express language of the ’37 Act, which expressly provides that such benefits, *even when expressly granted by ordinance*, are not vested. (Gov. Code § 31692.)

Date: July 20, 2010

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By 
Jonathan V. Holtzman

Attorney for *Amici Curiae*
League of California Cities and
California State Association of Counties



CERTIFICATE OF SERVICE

I declare that I am employed or reside in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within entitled cause; my address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 20, 2010, I served the **JULY 20TH LETTER ON BEHALF OF AMICI CURIAE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO THE SUPREME COURT IN SUPPORT OF ACCEPTANCE OF CERTIFICATION** on the parties below by placing the document(s) listed above in a sealed envelope(s) addressed as set forth below, and consigning same on this date to an express mail service for guaranteed delivery on the next business day following the date of consignment.

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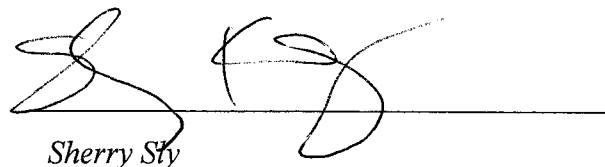
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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 20, 2010 at San Francisco, California.


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