C093383

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

MARY MITRACOS
Plaintiff and Respondent,

v.

CITY OF TRACY,
Defendant and Appellant, and

SURLAND COMMUNITIES, LLC,
Real Party in Interest and Appellant.

Appeal from the Superior Court of the State of California
County of San Joaquin, Case No. STK-CV-UWM-2018-5531
The Honorable George J. Abdallah, Judge Presiding

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF TRACY; SUPPORTING DECLARATION; PROPOSED AMICUS CURIAE BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C093383
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 154479 NAME: Rick W. Jarvis FIRM NAME: Jarvis, Fay & Gibson, LLP STREET ADDRESS: 555 12th Street, Suite 1630 CITY: Oakland STATE: CA ZIP CODE: 94607 TELEPHONE NO.: (510) 238-1400 FAX NO.: (510) 238-1404 E-MAIL ADDRESS: rick@jarvisfay.com ATTORNEY FOR (*name*): League of California Cities	SUPERIOR COURT CASE NUMBER: STK-CV-UWM-2018-5531
APPELLANT/ PETITIONER: Mary Mitracos RESPONDENT/ REAL PARTY IN INTEREST: City of Tracy, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party *(name*): League of California Cities

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: November 29, 2021

Rick W. Jarvis
(TYPE OR PRINT NAME)

/s/ Rick W. Jarvis
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF TRACY

TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities ("Cal Cities") respectfully requests permission to file the attached amicus curiae brief in support of Defendant and Appellant City of Tracy ("the City"). Cal Cities is an association of 479 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. Cal Cities 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.

Cal Cities and its member cities have a substantial interest in the outcome of this case because it raises important questions concerning the proper interpretation of the development agreement statutes and how they intersect with a city's broad constitutional police power, as well as the proper constitutional role of courts in reviewing the legality of local legislative actions without improperly interfering with a city's legislative discretion. These issues and Cal Cities' interests in them are further summarized in the Introduction to the attached amicus brief, which is incorporated herein by reference.

The attached brief will provide the Court with valuable information about the potential impact to California cities should the judgment below be

affirmed, and Cal Cities believes that its perspective on the issues identified above will assist the Court in its resolution of the City's appeal. The undersigned counsel has carefully examined the briefs submitted by the parties and represents that Cal Cities' brief, while consonant with the City's arguments, will highlight a number of critical points that, in Cal Cities' view, warrant further analysis. Accordingly, Cal Cities respectfully asks that the Court grant its application and accept its brief for filing.

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represents that he authored Cal Cities' brief in its entirety on a pro bono basis; that his firm is paying for the entire cost of preparing and submitting the brief; and that no party to this action, or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief. Because the undersigned counsel previously represented the City of Tracy in prior litigation referenced in this appeal, he includes a supporting declaration providing additional background on this point.

JARVIS, FAY & GIBSON, LLP

Dated: November 29, 2021

By: /s/ Rick W. Jarvis .
Rick W. Jarvis
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

SUPPORTING DECLARATION OF RICK W. JARVIS

I, Rick W. Jarvis, declare as follows:

1. I am a partner in the law firm Jarvis, Fay & Gibson, LLP, counsel of record for Amicus Curiae League of California Cities ("Cal Cities") in the above-captioned appeal. I am a member in good standing of the State Bar of California. I make this declaration in support of Cal Cities' present application for permission to file Amicus Curiae brief in support of Appellant City of Tracy ("the City"). I have personal knowledge of the facts set forth in this Declaration except as to those facts identified as being on information and belief.

2. I specialize in land use and municipal law, and I primarily represent cities and other local public agencies. I have previously represented Appellant City of Tracy in multiple matters dating back to the late 1990s. Among those matters, I represented the City in the prior litigation frequently referenced in the briefs in the present appeal, *Tracy Region Alliance for a Quality Community (TRAQC) v. City of Tracy*, San Joaquin Superior Court Case no. 39-2009-00201854-CU-WM-STK.

3. In addition, my former partner, Daniel Doporto, also provided legal services to the City, through the date he departed our firm (on cordial terms), which was April 30, 2018. I am informed that he continues to provide legal services to the City. Mr. Doporto was the special counsel who advised the City and its City Council during its consideration of the Second Amendment to the 2013 Development Agreement that the Council considered on March 13, 2018, and ultimately approved on April 3, 2018, just before Mr. Doporto departed our law firm. (See, e.g., AR 71:4283-84.)

4. I personally have not performed any legal work for the City since 2016 (and, in the entire calendar year of 2016 I billed less than four hours of time to the City). I do not recall having any conversations with

Mr. Doporto or any other person regarding his work for the City regarding the Second Amendment to the 2013 Development Agreement. I was not aware of the present litigation until I was approached by counsel for the City in July asking if they could suggest me to Cal Cities to draft the amicus brief.

5. I am not aware of any conflicts between the interests of the City of Tracy and Cal Cities, and certainly none that impact my ability to represent Cal Cities as an Amicus Curiae in the present appeal. I have authored this application and Cal Cities' proposed amicus brief in its entirety on a pro bono basis. My law firm is paying for the entire cost of preparing and submitting this brief, and no party to this action, or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief.

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

Executed this 29th day of November, 2021, in Oakland, California.

/s/ Rick W. Jarvis .
Rick W. Jarvis

AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT CITY OF TRACY

I. INTRODUCTION

In 2018, appellant City of Tracy approved an amendment to a 2013 Development Agreement with appellant Surland Communities, LLC ("Surland"). The "2013 DA" applies to Surland's proposed development of a 321-acre site known as the Ellis Specific Plan area. The "2018 DA Amendment" modifies certain deal terms and includes new terms that would allow the 2013 DA to be further amended in the future to apply to additional property, subject to the City's future legislative discretion to approve any such amendment.

The League of California Cities ("Cal Cities") respectfully urges this Court to reverse the trial court judgment mandating that the City of Tracy rescind its legislative approval of the 2018 DA Amendment. The flaws in this judgment include the following:

1. Government Code section 65865(a) authorizes cities to enter into development agreements "with any person having a legal or equitable interest in real property for the development of the property as provided in this article." The trial court erred in finding the 2018 DA Amendment facially invalid merely because it provided for future amendments that would allow the 2013 DA to be applied to additional property as to which Surland does not *presently* have "a legal or equitable interest." On its face, the 2018 DA Amendment does not apply to any property Surland currently does not own, and it expressly does not allow additional property to be added until after Surland acquires the requisite ownership interest.
2. Even assuming the trial court was correct that in finding a portion of the 2018 DA Amendment to be unlawful, the trial court erred in

ordering the City of Tracy to legislatively rescind it in its entirety. The trial court should have done no more than issue a declaratory judgment identifying the provisions in the 2018 DA Amendment it found to be invalid. In response to such a judgment, it was then within the City's broad legislative discretion to decide how to respond (subject, as appropriate, to further negotiations with Surland), with its options including:

a. taking no further action, thereby allowing the remainder of the 2018 DA Amendment to remain (assuming the invalid provisions were severable);
b. renegotiating those provisions with Surland; or
c. rescinding the 2018 DA Amendment in its entirety.

The trial court well exceeded its authority and violated constitutional separation of powers by purporting to dictate to the City how to exercise its discretion.

Cal Cities has a strong interest in both of these issues. Courts should not be interpreting or applying development agreement statutes narrowly so as to impose limitations and obstacles on cities and developers that are not supported by its plain language. The judgment appears to call into question the ability of cities to amend development agreements, even though such amendments are expressly authorized by statute. Cities regularly approve amended development agreements, and affirmance of the judgment below could threaten to undermine the validity of such amendments. More significantly, courts should not dictate how cities exercise their legislative discretion. This amicus brief generally incorporates and supplements the arguments made in Appellants' Opening and Reply Briefs.

II. ARGUMENT

A. The City of Tracy acted within its legislative discretion in approving the 2018 DA Amendment, as it only applies to property already owned by Surland, and it allows for the addition of future property only after Surland acquires the requisite ownership interest.

The Planning and Zoning Law (Gov. Code §§ 65000 et. seq.) authorizes cities and counties to enter into "development agreements" with developers to provide them with greater certainty as to their ability to proceed with costly development projects without being subject to later changes in local regulations that might either make such development more costly or even infeasible. (See generally, Gov. Code §§ 65864-65869.5; *National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1521.) Once adopted, development agreements may likewise be amended by mutual agreement of the parties, so long as such amended agreements continue to comply with the law. (Gov. Code § 65868.) These laws should be interpreted liberally to achieve their express statutory purposes of reducing the cost of housing, encouraging investment in new development, encouraging private developers to finance public facilities, promoting comprehensive planning, and maximizing the efficient use "of resources at the least economic cost to the public." (Gov. Code § 65864; *National Parks*, *supra*, 42 Cal.App.4th at 1522.)

The trial court erred in ruling that the 2018 DA Amendment violated applicable statutes merely because it set forth a process for future DA amendments to make it applicable to additional property that has yet to be identified. The trial court found that the 2018 DA Amendment violated two statutory provisions, but its findings were not supported by the plain language of either. First, the trial court found that these provisions violated Government Code section 65865, subdivision (a), which authorizes cities to "enter into a development agreement with any person having a legal or

equitable interest in real property for the development of the property as provided in this article." (Appellant's Appendix ("AA") at pp. 328-335.) However, the 2013 DA, as amended by the 2018 DA Amendment, only applies to the Ellis Specific Plan area, and it is undisputed that Surland has the requisite ownership of this entire area. The mere possibility that the 2013 DA could be further amended in the future to add additional property (not currently owned by Surland) does not result in any present violation of this ownership requirement. This point is especially true given that (as explained in the City of Tracy's briefs) the 2018 DA Amendment allows for the future addition of property *only after* Surland actually acquires such property, and even then, only if the City of Tracy exercises its unfettered legislative discretion to actually approve such amendment.

The trial court also found that the 2018 DA Amendment violated Government Code section 65865.2 (hereafter "section 65865.2"), insofar as that section requires that "[a] development agreement shall specify … the permitted uses of the property, the density or intensity of use, [and] the maximum height and size of proposed buildings …." The trial court erroneously found that the 2018 DA Amendment does not comply with this requirement because it does not (and obviously cannot) specify such terms for property that has yet to be identified. (AA at p. 335.) However, it is undisputed that the 2013 DA, as amended by the 2018 DA Amendment, adequately specifies such details for the entire Ellis Specific Plan area, which is the only property *currently* subject to the DA. The mere possibility that the 2013 DA could be further amended in the future to add additional property (for which details are not yet known) does not render it in violation of section 65865.2. Obviously, as part of any such future DA amendment, adequate details for such additional property will need to be included in such amendment to comply with section 65865.2 *at that time*.

While the City of Tracy has extensively briefed the above issues, Cal Cities supplements that briefing with the following additional argument.

1. The trial court's interpretation of the development agreement statutes contradicts their legislative intent as well as their plain language.

As summarized above, the plain language of Government Code sections 65865(a) and 65856.2 obviously contradicts the trial court's interpretation of their provisions. But even if their language was ambiguous, a review of the legislative intent and purposes of the development agreement statutes further demonstrates why the judgment should be reversed.

The Legislature adopted the development agreement statutes in order to provide a mechanism through which developers could obtain a "vested right" to proceed under local rules, ordinances, and regulations in effect at the time a development agreement is approved, thereby minimizing the risk that future changes in local laws could make development significantly more costly or even infeasible. (*North Murrieta Community, LLC v. City of Murrieta* (2020) 50 Cal.App.5th 31, 41.) They were adopted in response to the Supreme Court's decision in *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, which held that developers normally cannot obtain such a vested right until late in the development process, after they obtain a building permit and incur substantial construction expenses or similar hard costs in reliance on it. (See *Santa Margarita Area Residents Together v. San Luis Obispo County* (2000) 84 Cal.App.4th 221, 229-230; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 552.) The Legislature adopted these statutes based on findings that "[t]he lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage

investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources as the least economic cost to the public." (Gov. Code § 65864, subd. (a).) It thus expressly found that the purposes of these statutes are to "strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development" and also to encourage developers to pay up front for the cost of financing necessary public infrastructure, subject to reimbursement agreements. (Gov. Code § 65865, subds. (b), (c).)

Courts have recognized that the development agreement statutes should be liberally construed to achieve these statutory purposes. (*National Parks*, *supra*, 42 Cal.App.4th at 1522.) They thus apply a deferential "substantial compliance" (rather than "strict compliance") test to determining whether a development agreement is valid, meaning "actual compliance in respect to the substance essential to every reasonable objective of the statute." (*Ibid*, quoting *Stasher v. Harger–Haldeman* (1962) 58 Cal.2d 23, 29.)

Indeed, the Supreme Court has repeatedly recognized that the Planning and Zoning Law is generally intended to give maximum deference to local city authority. "The Legislature, in its zoning and planning legislation, has recognized the primacy of local control over land use. It has declared that in enacting zoning laws, 'it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.'" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782; quoting Gov. Code § 65800.) "The power of cities and counties to zone land use in accordance with local conditions is well entrenched. [Citations.] The Legislature has specified certain minimum standards for local zoning regulations [citation] but has

carefully expressed its intent to retain the maximum degree of local control...." (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.) "We have recognized that a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state." (*DeVita*, *supra*, 9 Cal.4th at 782.)

In ruling that the 2018 DA Amendment violated sections 65865 and 65865.2, the trial court made no attempt to explain how its interpretation of those sections was consistent with the reasonable legislative objectives of the development agreement statutes. It appears undisputed that the 2013 DA, as amended by the 2018 DA Amendment, complies with these statutes as to the Ellis Specific Plan area itself. The trial court's findings were based solely on potential future amendments to the 2013 DA to add additional property, which amendments may or may not ever even occur. The mere fact that the 2018 DA Amendment authorizes the addition of future property (but only after Surland acquires ownership and after the details of the development of such property are known and spelled out) cannot support a finding that it does not substantially comply with the law. The judgment should be reversed.

2. The trial court erred in finding the 2018 DA Amendment facially invalid, as it is clearly possible for the City to implement it in full compliance with the development agreement statutes.

In invalidating the 2018 DA Amendment, the trial court further erred by disregarding the high bar that applies to *facial* challenges to local legislative actions. Because the 2018 DA Amendment was just adopted and has not yet been applied to any future property, Respondent Mitracos was limited to making solely a "facial" challenge to it. No "as applied" challenge will be ripe unless and until the City of Tracy and Surland actually amend it to apply it to additional property. (See generally, *Tobe v.*

City of Santa Ana (1995) 9 Cal.4th 1069, 1083-1086; see also, *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-71; *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 541.)

"[A] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 678; quoting *United States v. Salerno* (1987) 481 U.S. 739, 745.) Such a facial challenge "considers only the text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe*, *supra*, 9 Cal.4th at 1084.) It is not enough for a petitioner to suggest "that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute. … Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Ibid.*, emphasis in original.) In a facial challenge, the court's task "is to determine whether the challenged policy can constitutionally be applied in any set of circumstances." (*American Civil Rights Foundation v. Berkeley Unified School Dist*. (2009) 172 Cal.App.4th 207, 217.)

There is a minor conflict in the caselaw as to whether a "facial challenge must fail if courts can conceive of a single situation in which the legislative enactment can be constitutionally applied." (*Personal Watercraft Coalition v. Marin County Bd. of Supervisors* (2002) 100 Cal.App.4th 129, 138.) Some courts have criticized this formulation of the standard as being too stringent, and instead have allowed a facial challenge if an enactment "will result in legally impermissible outcomes 'in the *generality* or *great majority* of cases,'" which the Supreme Court has

characterized as "the minimum showing we have required for a facial challenge to the constitutionality of a statute." (See *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1280; quoting *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 673, emphasis in original.)

But even under the less deferential standard, the trial court made no finding that the 2018 DA Amendment will result in a legally impermissible outcome in a majority of future circumstances. Obviously, it will always be possible for property to be added to the DA in full compliance with the development agreement statutes, so long as Surland first obtains the requisite ownership interest (in compliance with section 65865(a)) and so long as the nature of the future development is first adequately specified (in compliance with section 65865.2). Indeed, as demonstrated in the City's briefing, Government Code section 65868 expressly authorizes such future amendments to development agreements. The trial court exceeded its authority in invalidating the 2018 DA Amendment based on no more than the speculative possibility that there could be a statutory violation in the future.

B. Even assuming any portion of the 2018 DA Amendment was unlawful, the trial court erred in ordering the City to legislatively rescind it in its entirety.

A court may only issue a writ of mandate to compel a city to perform "an act which the law specially enjoins" (Code Civ. Proc. § 1085(a)), in circumstances where the respondent has "a clear, present and usually ministerial duty" to perform an act and that the petitioner has "a clear, present and beneficial right" to performance of that act. (*Barnes v. Wong* (1995) 33 Cal.App.4th 390, 394.) In this case, even assuming the trial court correctly found any provision in the 2018 DA Amendment to be invalid, the City has no ministerial duty to legislatively rescind its approval

of it. The trial court should have done no more than issue a declaratory judgment finding the 2018 DA Amendment to be partially invalid. In response to such a judgment, it was then within the City's broad legislative discretion to decide how to respond (subject, as appropriate, to negotiation with Surland). At that point, the City had a broad range of options within its legislative discretion. For example, it could have renegotiated with Surland to cure and remove the provisions the trial court found unlawful. Or it could have simply left the 2018 DA Amendment in place, subject to the trial court's finding that certain portions of it were unlawful and unenforceable. Or, as the trial court ordered, the City could have gone ahead and rescinded it. But each of these options were for the City and Surland to decide; they were not for the trial court to mandate.

"[J]udicial power relative to legislative acts is severely circumscribed." (*Sklar v. Franchise Tax Board* (1986) 185 Cal.App.3d 616, 624.) "Mandamus will not lie to compel a legislative body to perform legislative acts in a particular manner." (*Board of Supervisors v. California Highway Commission* (1976) 57 Cal.App.3d 952, 962.) "Generally, a court is without power to interfere with purely legislative action, in the sense that it may not command or prohibit legislative acts, whether the act contemplated or done be at the state level [citation] or the local level [citation]. The reason for this is a fundamental one—it would violate the basic constitutional concept of the separation of powers among the three coequal branches of the government." (*City of Palo Alto v. Public Employment Relations Board* (2016) 5 Cal.App.5th 1271, 1310; quoting *Monarch Cablevision, Inc. v. City Council* (1966) 239 Cal.App.2d 206, 211.) Indeed, in *City of Palo Alto*, the court explained that, when an adopted resolution "is legislative in nature, it necessarily follows that rescinding the resolution is similarly legislative in nature." (*City of Palo*

Alto, *supra*, 5 Cal.App.5th at 1313.) Accordingly, "'rescinding the resolution is a legislative act beyond the court's power to command,'" and any such order violates "'the doctrine of separation of powers.'" (*Ibid*., quoting *Eller Outdoor Advertising Co. v. Board of Supervisors* (1979) 89 Cal.App.3d 76, 83; see also, *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 305-306.)

The trial court thus exceeded its constitutional authority by issuing mandamus relief requiring the City to legislatively rescind the 2018 DA Amendment. The judgment should be reversed.

III. CONCLUSION

Cal Cities notes that the 2018 DA Amendment *could* simply have remained silent as to any future amendments. Such silence would not have prevented the City of Tracy and Ellis from later negotiating any future amendments, including but not limited to the amendments expressly contemplated by the 2018 DA Amendment. But instead, the 2018 DA Amendment informed the public about a specific type of future amendments the parties contemplated, thereby further promoting disclosure and informed public participation. It is thus ironic that the judgment below essentially penalizes the City and Surland for "oversharing" details as to which they could have simply chosen not to disclose.

For the reasons set forth above as well as in the briefs filed by the City of Tracy, Cal Cities respectfully asks that the Court reverse the trial court's judgment.

JARVIS, FAY & GIBSON, LLP

Dated: November 29, 2021

By: /s/ Rick W. Jarvis .
Rick W. Jarvis
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF WORD COUNT

I certify that Cal Cities' application and brief contains a total of 4,202 words, as indicated by the word count feature of Microsoft Word, the computer program used to prepare the application and brief. This word count excludes the cover page, tables, signature blocks, and this certification.

Dated: November 29, 2021 /s/ Rick W. Jarvis .

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay & Gibson, LLP, 555 12th Street, Suite 310, Oakland, California 94607.

On November 29, 2021, I served the within

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF TRACY; SUPPORTING DECLARATION; PROPOSED AMICUS CURIAE BRIEF

on the parties in this action as follows:

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VIA TRUEFILING: I caused a copy of the document to be sent to the parties listed above via the Court-mandated vendor, truefiling.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

VIA FIRST CLASS MAIL: I an envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California to:

Clerk of the Court
San Joaquin County Superior Court
180 E. Weber Avenue
Stockton, CA 95202

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 29, 2021, at Oakland, California.

Jennifer Dent

Jennifer Dent