TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION EIGHT	Court of Appeal Case Number: B265690
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*: DEREK P. COLE, State Bar No.: 204250 COTA COLE LLP 2261 Lava Ridge Court Roseville, CA 95661 TELEPHONE NO.: 916-780-9009 FAX NO.*(Optional)*: 916-780-9050 E-MAIL ADDRESS *(Optional)*: dcole@cotalawfirm.com ATTORNEY FOR *(Name)*: League of California Cities	Superior Court Case Number: BC565079 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: Paula Cruz, et al. RESPONDENT/REAL PARTY IN INTEREST: City of Culver City, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

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

2. a. ☑ 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: January 13, 2016

DEREK P. COLE
(TYPE OR PRINT NAME)

▶ /s/ DEREK P. COLE
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courtinfo.ca.gov

CASE NO. B265690

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

PAULA CRUZ, RONALD DAVIS, JOHN HEYL, JAMES PROVINCE, and NADINE F. PROVINCE,

Plaintiff and Appellant,

v.

CITY OF CULVER CITY; CULVER CITY CITY COUNCIL; MEGHAN SAHLI-WELLS, MICHEÁL O'LEARY, JIM B. CLARKE, JEFFREY COOPER, ANDREW WEISSMAN, Members of the Culver City City Council,

Defendants and Respondents,

On Appeal from a Judgment
of the Superior Court of California for Los Angeles County,
Honorable Michael Johnson, Judge, Case No. BC565079

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS CITY OF CULVER CITY ET AL.; AND PROPOSED BRIEF OF *AMICUS CURIAE*

Derek P. Cole, SBN 204250
COTA COLE LLP
2261 Lava Ridge Court
Roseville, CA 95661
(916) 780-9009 (ph.)
(916) 780-9050 (fax)
dcole@cotalawfirm.com

Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS

The League of California Cities ("League") is an association of 474 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy Committee, which is composed of 24 city attorneys representing all regions of the State. The committee monitors appellate litigation affecting municipalities and identifies those cases, such as the instant matter, that are of statewide significance.

As its Legal Advocacy Committee has determined, the League and its member cities have a substantial interest in the outcome of this case. All League members are governed by "legislative bodies" subject to the Ralph M. Brown Act ("Brown Act," Gov. Code, § 54950 et seq.). The Brown Act prescribes procedures by which California realizes its commitment to transparent governance at the local level. These procedures include the requirement that legislative bodies post agendas within certain periods of time before holding meetings and that they take no action on items not appearing on the agendas except under limited circumstances. At the same time, the Brown Act requires that legislative bodies provide time during their meetings, usually referred to as "public comment," for members of the public to address the bodies on any matters within their jurisdiction. Often, during this time, members of the public raise questions, make demands, or provide comments about matters that do not appear on meeting agendas.

These situations are at issue in this appeal. When members of the public address legislative bodies on off-agenda items, the Brown Act

precludes the bodies from taking substantive actions in response, but it authorizes the bodies to answer questions, provide clarification about the issues raised, direct appropriate staff follow-up, or schedule the issues for consideration at a future meeting.

The Appellant's interpretation of the Brown Act provision at issue in this case amounts to a hyper-technical and unrealistic reading—one apparently intended to advance Appellant's position in the underlying dispute and not actually to serve the public's interest. The League accordingly requests permission to file the enclosed brief to not only state what it believes to be the correct interpretation of the Brown Act in this context, but to explain to the Court how local government meetings work in practice and how the relief Appellants request would, if granted, hinder public meeting participation.

The author of the enclosed brief is a member of the League's Legal Advocacy Committee and is a contract city attorney for three cities, general counsel for two special districts, and a former contract county counsel. Because of these positions, the author has regularly attended public-agency meetings subject to the Brown Act for years. The author has also provided Brown Act training to public officials on multiple occasions and writes about the Brown Act in his law firm blog and other resources.

Dated: January 13, 2016 COTA COLE LLP

By: /s/ DEREK P. COLE
Derek P. Cole
Attorney for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES

INTRODUCTION

California has 482 municipalities, 58 counties,[1] and approximately 3,300 special districts,[2] all of which are governed by at least one legislative body subject to the Ralph M. Brown Act.[3] Because many local agencies also have multiple boards and commissions, there are effectively thousands of bodies in the State that are subject to the Act's open government requirements.

The existence of such a considerable number of "Brown Act bodies"[4] is a fact that should resonate with this Court when it considers this case. Here, the Appellants invoke a section of the Brown Act to challenge a brief exchange that occurred during a city council meeting that led to the council placing a business item on a subsequent agenda. Because such exchanges commonly take place in the meetings of nearly every Brown Act body throughout this state, *Amicus Curiae* League of California Cities ("League") respectfully submits this Brief to request that the Judgment below be affirmed.

As explained within, the Appellants' interpretation of the Brown Act provision at issue would hinder public participation in local government

---

[1] Gov. Code, §§ 23101-23158.

[2] Cal. Senate Local Gov. Comm., *What's So Special About Special Districts?* (4th ed. 2010), p. 1.

[3] Gov. Code, § 54950 et seq. The act is commonly referred to as the "Brown Act" and will be referenced as such within.

[4] Technically, the bodies subject to the Brown Act are referred to as "legislative bodies." These include the chief bodies for local agencies—such as city councils, boards of supervisors, or boards of directors—as well as a wide variety of subordinate commissions, boards, advisory boards, and other bodies. (See Gov. Code, § 54952 [defining "legislative body"].)

rather than serve the Act's overarching policy of open government. The Appellants' claims are devoid of an accurate understanding of how local government meetings work and, more specifically, how members of the public actually interact with public officials. If accepted, the Appellants' claims, while perhaps advancing their narrow interests, would diminish the public's ability to interact with public officials during agency meetings. The League accordingly supports the Respondents in requesting that this Court affirm the Superior Court's dismissal of the Appellants' claims.

ARGUMENT

Appellants claim that the Respondents violated the Brown Act. In dismissing this action, the Superior Court effectively concluded Appellants' claims were without merit. The League respectfully requests this Court uphold that conclusion.

The central statute at issue is Government Code section 54954.2, which states the requirements for meeting agendas and, as relevant here, what discussion and actions may occur concerning items not placed on agendas. Section 54954.2, subdivision (a)(2), begins by stating that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda …." Notably, the subdivision does not stop after stating this general rule, but instead proceeds to enumerate a number of exceptions, which constitute the bulk of the subdivision's text.

The subdivision (a)(2) exceptions are fairly detailed. First, the subdivision indicates that members of the legislative body or agency staff may "briefly respond" to statements or questions made by persons who

address the body during the "public comment" portion of a meeting.[5] (*Id*.) Second, members of the legislative body or agency staff "on their own initiative or in response to questions posed by the public," may "ask a question for clarification," "make a brief announcement," or "make a brief report on his or her activities." (*Id*.) And third, a member of a legislative body or the body itself, subject to the body's rules, may refer a matter to agency staff "for factual information," request that staff "report back to the body at a subsequent meeting concerning any matter," or "direct staff to place a matter of business on a future agenda." (*Id*.)

The League views the facts of this case as plainly falling within the subdivision (a)(2) exceptions. The facts are undisputed that, in response to a "question posed by the public," the City Council "ask[ed] for clarification" and then "direct[ed] staff to place a matter of business" on an upcoming agenda. As detailed more fully in the Respondents' Brief, the six-minute discussion at issue in this case began when a city councilmember noted he had received a letter from a church concerning parking along a city street.[6]

---

[5] The next section of the Brown Act, Gov. Code, § 54954.3, subd. (a), requires that every legislative-body agenda "provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body …." To implement this requirement, local agencies universally set aside time during their meetings for members of the public to address them concerning items that do not appear on their agendas. These portions of agency agendas are usually referred to as "public comment," and appear on agendas as separate, standing items.

[6] The City Council had just formally acknowledged receipt of this letter (along with others) as part of a regular agenda item in which correspondence to the council is formally identified.

Relaying that the church had raised an issue concerning who may appeal certain parking determinations, the councilmember asked that the council consider placing an item on a future agenda to address the church's inquiry. During a brief ensuing colloquy, city staff was asked to clarify whether the item should focus on appeal rights within city parking districts generally, or whether the item should deal only within the parking district in which the church was located. Ultimately, the council agreed with staff's recommendation to confine the item to a discussion about parking in the church's vicinity, and staff committed to notify the affected parties (the church and residents of the affected parking district) of the meeting in which the item would be considered. As the video of the entire exchange confirms, the council made *no* decision on the merits of the parking issue and was deliberate about avoiding discussion of the issue's substance until it could properly appear on a subsequent agenda.

The key message the League desires to convey to the Court is that exchanges like this happen all the time during public meetings—*and this is how local government should work.* The people of this State rely on local agencies to provide a broad range of public services, including public safety, utilities, parks, streets, and many others. The matters that interest members of the public can often be parochial—as in this case, for example, in which parking along a city street is the underlying issue. But the people of the State also rely on local agencies to address important social, economic, and political issues. Local government, in short, affects the public in many ways, from the purely local (e.g., parking on a city street) to some of the day's biggest issues (e.g., environmental protection or income inequality).

Because of the broad range of subjects local government addresses, public meetings serve many important purposes, not the least of which is to provide the public a *direct* opportunity to interface with agency decision-makers. As so often happens, especially during the "public comment" portion of meetings, members of the public use meetings as occasions to ask questions, make complaints, demand actions, or bring issues to the attention of the assembled bodies. The timing of such comments is favorable, as usually, agency administration, key staff, and counsel are all present during the meetings. Meetings thus allow the public to receive appropriate responses when all the relevant officials and employees are assembled together.

Often, the result of such interaction is that a member of the public is immediately directed to the correct person within the agency who can answer his or her question or who can assist in providing some service, response, or benefit. On other occasions, agency staff is directed to look into the issues the public raises and follow up accordingly. In some instances, the matter raised is deemed to be of such importance that it is placed on a future agency agenda.

These scenarios occur regularly during local government meetings. No doubt this is why the Legislature included the exceptions to the general prohibition on discussion of off-agenda items under section 54954.2, subdivision (a)(2). By enacting a general prohibition of discussions concerning such items, the Legislature sought to ensure agency decisions would be made openly and publicly, vindicating the key policy of transparency that underlies the Brown Act. (See Gov. Code, § 54950;

Castaic Lake Water Agency v. Newhall County Water Dist. (2015) 238 Cal.App.4th 1196, 1203.) But clearly the Legislature did not intend for this general rule to become a stultifying one, as it took care to provide exceptions to the rule and to outline those exceptions in some detail.

In interpreting the Brown Act, courts have observed they must construe the act in a manner that "'comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute….'" (*Chaffee v. San Francisco Library Com'n* (2004) 115 Cal.App.4th 461, 467, citing *People v. Jenkins* (1995) 10 Cal.4th 234, 246.) In light of this standard, the exceptions stated in subdivision (a)(2) should be read and applied pragmatically, keeping in mind how local government meetings actually work. (*DiCampli-Mintz v. Cty. of Santa Clara* (2012) 55 Cal.4th 983, 992 [statutes should be given a reasonable and common-sense construction].) Thus, when it rules in this case, the Court should consider that *the public* often raises issues at agency meetings that are not on agendas, and that such interaction often provides the most direct—and sometimes most efficient—way for the public to interact with their local government.

With these considerations in mind, the Court should have no difficulty affirming the trial court's rejection of Appellants' claim that the Respondents violated the Brown Act. The Appellants' invocation of Section 54954.2 seems to be motivated more by personal and strategic considerations than a true desire to vindicate the Brown Act's overall policy of promoting open government. Apparently characterizing what transpired on August 11, 2014 as the trunk of a "poisonous tree," the Appellants believe they can use

section 54954.2 to set aside any actions taken as a result of the agenda item the City Council subsequently considered. In this respect, the Appellants attempt to use the statute as a basis for a "gotcha" argument, interpreting it in a way that serves their unique interests in the underlying parking issue, rather than one that best effectuates the Brown Act's express language and public policy goals.

Although the Appellants' narrow interests may be served by the result they seek in this case, the public's interest would not. Here, an organization wrote a letter to an elected official, that official requested during a meeting that an item be placed on future agenda to consider the issue the organization raised, and a brief exchange occurred about how best to consider the item at the future meeting. No discussion of the merits of the issue occurred as, indeed, that discussion happened only *after* the issue was properly agendized and considered at a future meeting in which all stakeholders were invited and given an opportunity to provide input.

In this situation, local government worked *as it should*: the public raised an issue, the issue was acknowledged, a deliberative body placed the issue on a future meeting agenda, and a fair consideration was thereupon given to the issue. If this situation—which happens all the time at local agency meetings across the state—does not qualify for section 54954.2's exceptions, legislative bodies will undoubtedly stop providing meaningful responses to off-agenda items when raised by members of the public. If the facts of this case do not qualify for any of section 54954.2's exceptions, it is difficult to envision any set of facts that *would* qualify. Concerned about the prospect of Brown Act lawsuits—and the substantial attorney's fees that may

be awarded when agencies are unsuccessful in or settle such actions—agencies would most likely choose to employ defensive measures whenever the public raises off-agenda items during their meetings. Acting on the advice of their counsel, agencies would likely limit their responses, if they choose to provide any responses at all, fearing that efficacious responses could become a basis for meritless litigation by those who may be opposed to the interests of the inquiring party.

Such an anomalous result can be easily avoided. Applying a common sense interpretation to section 54954.2, and taking into account how local government *actually* works, the Court should affirm the decision below. The people of this State have a right to appear before their local governmental agencies, address public bodies on issues that are important to them, and receive meaningful responses to their questions, comments, demands, and petitions—within the confines of the Brown Act. This right should not be abridged by a hyper-technical construction of a statute that was intended to *confirm* local agencies' ability to provide informative answers and direct efficacious responses when members of the public raise issues not on agency meeting agendas.

CONCLUSION

For the reasons described above, the League requests that the Court affirm the Judgment.

Dated: January 13, 2016 COTA COLE LLP

By: /s/ DEREK P. COLE
Derek P. Cole
Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF COMPLIANCE

I certify that pursuant to California Rules of Court, rule 8.204, the attached brief is proportionately spaced, has a typeface of Times New Roman 13 points or more. I further certify that the Memorandum of Points and Authorities contains 2,190 words as calculated by the Microsoft Word 2010 word processing program, which is within the 14,000-word limitation imposed for opening briefs.

Dated: January 13, 2016 COTA COLE LLP

By: /s/ DEREK P. COLE
Derek P. Cole
Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF SERVICE

I, Mylene Tiongco, declare that I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is Cota Cole LLP, 2261 Lava Ridge Court, Roseville, CA 95661. On January 13, 2016, I served the within document(s):

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS CITY OF CULVER CITY, ET AL.; AND PROPOSED BRIEF OF *AMICUS CURIAE;* CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Roseville, California, addressed as indicated below.

☐ I caused such envelope to be delivered via overnight delivery addressed as indicated below. Such envelope was deposited for delivery by following the firm's ordinary business practices.

HERBERT LESLIE GREENBERG — *Attorney for Paula Cruz*
10732 Farragut Drive
Culver City, CA 90230
Fax: 310838-8105

THOMAS B. BROWN — *Attorney for City of Culver*
Burke Williams & Sorensen LLP
1901 Harrison Street, Suite 900
Oakland CA 94612-3501
Fax: 510-839-9104

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 13, 2016, at Roseville, California.

/s/ Mylene Tiongco
Mylene Tiongco