Case No. C080685

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

RICHARD STEVENSON and KATY GRIMES,
Petitioners and Appellants,

vs.

CITY OF SACRAMENTO,
Defendant and Respondent.

Appeal from an Order

Of the Superior Court, County of Sacramento

Case No. 34-2015-80002125

Honorable Shelly Anne W. L. Chang, Judge

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF SACRAMENTO

Derek P. Cole (State Bar No. 204250)
dcole@cotalawfirm.com
COTA COLE & HUBER LLP
2261 Lava Ridge Court
Roseville, CA 95661
Telephone: (916) 780-9009
Facsimile: (916) 780-9050

Attorneys for Amicus Curiae
League of California Cities and
California State Association of Counties

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

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C080685
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: DEREK P. COLE (SBN 204250) FIRM NAME: COTA COLE & HUBER LLP STREET ADDRESS: 2261 LAVA RIDGE COURT CITY: ROSEVILLE STATE: CA ZIP CODE: 95661 TELEPHONE NO.: (916) 780-9009 FAX NO.: (916) 780-9050 E-MAIL ADDRESS: dcole@cotalawfirm.com ATTORNEY FOR *(name)*: Amicus Curiae League of Calif. Cities, et al.	SUPERIOR COURT CASE NUMBER: 34-2015-80002125
APPELLANT/ PETITIONER: RICHARD STEVENSON and KATY GRIMES RESPONDENT/ REAL PARTY IN INTEREST: CITY OF SACRAMENTO	
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)*: Amicus Curiae, League of Calif. Cities, et al.

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: June 14, 2017

DEREK P. COLE ▶ /s/ Derek P. Cole

(TYPE OR PRINT NAME) (SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

State Cases

Statutes

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

The League of California Cities (League) and the California State Association of Counties (CSAC) seek leave to file the attached amicus brief in support of Respondent City of Sacramento (Sacramento). The League is an association of 475 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.

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 affecting all counties.

The League and CSAC request the Court consider the attached brief so they may convey their opinions regarding the methods of statutory interpretation that should apply in this case. Because California cities and counties are subject to the California Public Records Act (CPRA or the Act, Gov. Code, § 6250 et seq.) and must regularly ensure compliance with the Act, the League and CSAC believe they have ample familiarity with the issues this case presents.

In the view of these *Amici*, Appellants Richard Stevenson and Katy Grimes (Appellants) advocate that this Court depart significantly from traditional methods of statutory construction in interpreting the CPRA provision at issue, Government Code section 6258. The *Amici* wish to convey to this Court the fundamental flaws in the Appellants' attempt to rely on canons of construction that apply in situations—unlike the situation here—in which statutory text is ambiguous. The *Amici* also desire to make the Court aware that the statutory language of the CPRA in dispute is repeated—through the same or similar language—in several California statutes. The *Amici* believe that if the Court were to accept the Appellant's reasoning, any published opinion the Court issued would effectively rewrite the remedial provisions of *several* statutes in a manner contrary to legislative intent.

No party in this action authored this brief in whole or in part. Nor did any party or person contribute money toward the research, drafting, or preparation of this brief, which was authored entirely on a pro bono basis by the undersigned counsel.

Respectfully submitted,

Dated: June 14, 2017

COTA COLE & HUBER LLP

By: /s/ *Derek P. Cole*
Derek P. Cole
Attorneys for Amicus Curiae
League of California Cities
and California State
Association of Counties

AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

I. INTRODUCTION

In this CPRA action, the Appellants challenge the requirement that they post a bond to secure the preliminary injunction they obtained below. They argue that because the CPRA mentions only a right to "injunctive relief" and nothing more, the Legislature necessarily meant to exclude CPRA plaintiffs from the provisions of the Code of Civil Procedure requiring bonds to secure the issuance of preliminary injunctions. In asserting this position, the Appellants make several sweeping inferences based on a mere two words of statutory text. Their position is simply wrong.

As the League and CSAC explain within, the Appellants construct elaborate strawmen arguments, badly overcomplicating the simple statutory interpretation this case presents. The *Amici* also offer this brief to ensure this Court is aware that the statutory language at issue appears in the same or similar form in many statutes. Although the Appellants attempt to portray the statutory language at issue as implicating legislative policies unique to the CPRA, their interpretation ignores that this language is a common convention the Legislature has used to describe the procedures associated with enforcement of several statutes. If accepted, the Appellants' position would not only twist the plain meaning of the CPRA section at issue, it would do the same to the remedial sections of many other statutes. To avoid such an anomalous result, the League and CSAC join with Sacramento to request that the bond order below be affirmed.

II. ARGUMENT

In the League and CSAC's view, this is a straightforward case that should be decided based on statutory text alone. The Court need not

consider any of the special rules of interpretation on which the Appellants rely. Those rules may only be applied when the relevant text is ambiguous, which is far from the case here.

In interpreting statutes, courts must be "mindful of [their] limited role in the process of interpreting enactments from the political branches of our state government." (*California Teachers Assn. v. Governing Bd. of Rialto Union School Dist*. (1997) 14 Cal.4th 627, 632.) The role of courts is to ascertain "the Legislature's intent, as exhibited by the plain meaning of the actual words of the law…." (*Ibid*.) The Court has no authority to rewrite the statute to conform to a presumed intention that is not expressed. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 75; see Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted."].)

Here, the statute at issue, Government Code section 6258,[1] states that "[a]ny person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter." The crux of the Appellants' position is that this section's mention of only "injunctive … relief" and its lack of an express bond requirement necessarily means the Legislature did not intend for an undertaking to be required in CPRA litigation. The Appellants recognize that when a statute is clear, its plain meaning must prevail over

[1] This section shall be referred to within as "Section 6258."

any judicially created rule of construction. (*Kavanaugh v. West Sonoma County Union High School Dist*. (2003) 29 Cal.4th 911, 919.) But to support their position, the Appellants attempt several end runs around the clear text of Section 6258, asserting among other things that it and Code of Civil Procedure 529[2] are in conflict, that Section 6258 must prevail over the latter because it is more specific and recent, and that "real world consequences" and public-policy considerations compel their interpretation.

The Appellant's effort to duck the plain language of section 6258 is a textbook example of the fallacy of division. Implicit to the Appellants' position is the notion that the interpretation issue presented is unique to the CPRA and implicates *that* Act's important policies of transparency and open government. But unmentioned in either of the Appellants' briefs is that the same or similar remedial language appears in many other California statutes. Like section 6258, a number of statutes involving public records[3] and meetings[4] state a general right to injunctive relief without specifying any other details about such relief. Contrary to the Appellants' suggestion

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[2] Subdivision (a) of Section 529 provides that a court *must* require an undertaking of the plaintiff to cover the damages the defendant may sustain because of the granting of a preliminary injunction in the event the court, after trial, determines the injunction is not warranted.

[3] See, e.g., Gov. Code, § 9076 (records of the State Legislature); Ed. Code, § 72697 (community college district records); Ed. Code, § 92957 (records of University of California campus foundations); Health & Saf. Code, § 101875(a) (health corporation records).

[4] See, e.g., Gov. Code, § 9031 (meetings of the State Legislature); § 11130 (Bagley-Keene Act, state agency meetings); Gov. Code, § 54960(a) (Ralph M. Brown Act, local agency meetings); Ed. Code, § 35145 (school district governing boards); Ed. Code, § 72121 (community college governing boards); Welf. & Inst. Code, § 4668 (meetings of regional centers for persons with developmental disabilities); Health & Saf. Code, § 101868 (health corporation meetings).

that the language evinces a policy choice specific to the CPRA, it is simply a variant of common language the Legislature has used in many other statutory schemes to describe enforcement remedies.

More telling is that the Legislature has demonstrated that it knows how to exempt litigants from the requirement to post an injunction bond when that is its intent. A number of statutes contain general language like in section 6258 but that also *expressly* exempt parties from the bond requirement.[5] That the Legislature has plainly spoken on the subject of bond exemptions in other statutes authorizing injunctive relief makes clear that its decision not to do so in section 6258 was deliberate. (See *People v. Brun* (1989) 212 Cal.App.3d 951, 954; *Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13.) Moreover, California Courts have interpreted the bond requirement of Code of Civil Procedure section 529 as mandatory for more than a century[6] and the Legislature is presumed to have been aware of this fact at the time it enacted section 6258 and the other statutes with the same or similar language. (*People v. Yartz* (2005) 37 Cal.4th 529, 538.) Consequently, it is only reasonable to read the absence of language regarding the bond requirement in section 6258 as an *endorsement*, not an exclusion, of that requirement in CPRA litigation.

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[5] See, e.g., Code Civ. Proc., § 1811 (actions involving tribal compacts); Pub. Resources Code, § 30803 (actions arising under California Coastal Act); Wat. Code, § 60226 (actions involving groundwater replenishment districts); Food & Agr. Code, § 77173 (actions brought by the California Walnut Commission).

[6] See *San Diego Water Co. v. Pacific Coast S.S. Co.* (1894) 101 Cal. 216, 219; *Biasca v. Superior Court of Humboldt County* (1924) 194 Cal. 366, 367; *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1024.

In addition to its distortion of clear statutory text, the Appellants' position, if accepted, would be unworkable from a judicial standpoint. The Appellants posit that the Court should infer from the absence of express authorizing language that bonds are not authorized in CPRA litigation. But if this is the case, then what else should the Court glean or not glean from the mere reference in section 6258 to "injunctive … relief"? For instance, if the Court should disregard Code of Civil Procedure section 529 because its subject, undertakings, is not expressly mentioned in section 6258, then should the Court disregard the other statutes that fall within the chapter of the Code of Civil Procedure that governs injunctions?[7] The general standards for injunctions are contained in Sections 526 and 527 of that chapter. If the absence of a specific reference to a particular requirement in section 6258 implies that the requirement is not applicable in CPRA litigation, then how would the Court know which other requirements governing injunctions to apply, and which may not be applied? More fundamentally, how would the Court know that it should even look at all to the chapter of the Code of Civil Procedure governing injunctions for the applicable standards?

The correct response to these questions is to reject the Appellants' confused construction and to interpret a general reference to "injunctive relief" as incorporating the chapters and sections of the Code of Civil Procedure that govern such relief. As the Legislature has demonstrated through section 6258 and several other code sections,[8] it has chosen to

[7] Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure, sections 527 through 534.

[8] See *supra* footnotes 3 and 4.

create enforcement mechanisms for *substantive* statutes like those governing public agency records and meetings by generally incorporating separate *procedural* statutes. Thus, in statutes like the CPRA, the Legislature has broadly referenced injunctive relief, as well as mandamus and declaratory relief, as the civil litigation vehicles by which parties may enforce the policies it seeks to advance through the underlying statutes. In doing so, the Legislature's clear command has been to refer to the relevant portions of the Code of Civil Procedure regarding each remedy to provide the applicable procedural standards. When the Legislature has chosen to modify any of these remedies for a particular substantive statute, it has done so *expressly*, such as it has done in those statutes that specifically exempt parties seeking injunctions from the requirement to post a bond.[9]

Overall, then, the Appellants' position is backwards. They assert that a court must conclude a bond is not required unless a substantive statute, such as the CPRA, mentions that requirement explicitly. But the Legislature has plainly directed that the opposite approach be taken. Unless a substantive statute specifically *excludes* a particular requirement of a remedial statute, such as the requirement for a bond, the Legislature has commanded that the requirement be applied in any enforcement litigation. Because this conclusion is clearly discernible from the text of the relevant statutes, the Appellants' resort to canons of construction that apply only in cases of conflicts or ambiguity in statutory text is unavailing. Those canons may not be utilized when a court concludes the disputed text is susceptible of a plain meaning. (*Kavanaugh, supra*, 29 Cal.4th at p. 919.)

[9] See *supra* footnote 5.

To be sure, the League and CSAC agree with the Appellants about the fundamental role the CPRA serves in promoting openness and transparency in the affairs of state and local government. (See Gov. Code, § 6250 [finding that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"].) But that the CPRA is intended to serve such important objectives does not itself dictate that the usual bond requirement must be excused in litigation brought under that Act.

Although the Legislature has plainly sought to ease the public's burden in obtaining public records and has squarely placed the onus on government to justify the withholding of such records, it has not at the same time been unmindful to the costs of compliance the CPRA imposes on agencies. For example, the Legislature has authorized agencies to recover some of their direct costs, such as for duplication, in responding to records requests. (Gov. Code, § 6253(b).) And recognizing that members of the public may sometimes abuse the rights the CPRA guarantees, the Legislature also has authorized agencies to recover their reasonable attorney fees in cases in which the plaintiffs' claims are found to be frivolous. (Gov. Code, § 6259(d).) Through these provisions, the Legislature has indicated that the cost agencies must bear in complying with the CPRA is not an insignificant interest within the CPRA's overall scheme. The Legislature has instead recognized that interest as one that should be balanced against the broad public right of access the Act provides. Thus, given the financial consequences agencies would face if bonds were never authorized in CPRA litigation, it is not reasonable to assume the Legislature would have remained silent had it intended to exempt plaintiffs from the bond requirement.

The Appellants' concerns about the potential financial impact of the bond requirement on individual plaintiffs also does not compel their interpretation of section 6258. The Legislature has already made its intentions concerning this subject known in the Bond and Undertaking Law (Code of Civil Procedure, § 995.010 et seq.), which governs all the types of undertakings provided for in California civil litigation, including those applicable to preliminary injunctions. (Code Civ. Proc., § 995.020(a).) Through this act, the Legislature has empowered courts to waive the requirement for a bond when a person is "indigent" and "unable to obtain sufficient securities." (Code Civ. Proc., § 995.240.) In deciding whether to waive the requirement for the bond, a court must "take into consideration all factors it deems relevant," including "the character of the action or proceeding," the "nature of the beneficiary, whether *public* or private," and the potential harm to the beneficiary. (*Ibid*., emphasis added.) As is true of Code of Civil Procedure section 529, which requires bonds to be given to secure injunctive relief, the Legislature is deemed to have been aware of this separate authority concerning waiver of bonds at the time it enacted section 6258. (See *Yartz, supra,* 37 Cal.4th at p. 538.) Because the Legislature possessed this awareness, the fact it did not modify the usual bond requirement in the CPRA is—as has been noted—illustrative of an intent *not* to exempt plaintiffs from the requirement. In claiming otherwise, the Appellants again have it backwards.

In sum, this Court has ample reason to affirm the bond order below. A plain reading of Section 6258 compels the conclusion that by broadly referencing the right to "injunctive … relief," the Legislature meant to adopt *all* the relevant provisions of the Code of Civil Procedure governing injunctions, including the bond requirement of Code of Civil Procedure

section 529, in CPRA litigation. The Appellants' many attempts to evade this clear meaning are unavailing.

III. CONCLUSION

For the reasons described above, the League and CSAC request that this Court affirm the order below requiring the Appellants to have posted a bond as a condition for securing the preliminary injunction they obtained. The Court should reject the Appellant's unfounded interpretation of section 6258 and hold that the usual rule requiring injunction bonds applies in CPRA litigation.

Respectfully submitted,

Dated: June 14, 2017

COTA COLE & HUBER LLP

By: /s/ *Derek P. Cole*
Derek P. Cole
Attorneys for Amicus Curiae
League of California Cities
and California State
Association of Counties

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 point or more. I further certify that the attached brief contains 2648 words as calculated by the Microsoft Word 2010 word processing program, which is within the 14,000-word limitation imposed for Respondents' briefs.

Dated: June 14, 2017

COTA COLE & HUBER LLP

By: /s/ *Derek P. Cole*
Derek P. Cole
Attorneys for Amicus Curiae
League of California Cities
and California State
Association of Counties

PROOF OF SERVICE

Case: ***Richard Stevenson, Katy Grimes v. City of Sacramento***
Case Number: **Third District Court of Appeal Case No. C080685**
Sacaramento Superior Court Case No. 34-2015-80002125-CU-WM-GDS

I, Kirsten Morris, declare that I am a resident of the State of California over the age of eighteen years and not a party to the within action. My business address is Cota Cole & Huber LLP, 2261 Lava Ridge Court, Roseville, California 95661. On June 14, 2017, I served the within documents:

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF SACRAMENTO

X via electronic/e-mail service. The document(s) listed above were served via email as set forth below.

Paul Nicholas Boylan
Law Office of Paul Nicholas Boylan
P.O. Box 719
Davis, CA 95617

COURT CLERK
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

James Sanchez, City Attorney
Andrea M. Velasquez, Dpty City Atty.
915 I Street, Fourth Floor
Sacramento, CA 95814

X 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 set forth below.

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720 Ninth Street, Appeals Unit Room 102
Sacramento, CA 95814-1380

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 14, 2017,at Roseville,California.

/s/ Kirsten Morris
Kirsten Morris