CASE NO. B312348

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

CITY OF OXNARD,

Plaintiff, Cross-Defendant, and Appellant,

v.

COUNTY OF VENTURA, et al.

Defendants, Cross-Complainants, and Respondents.

On Appeal from an Order of the Superior Court for the State of California, County of Ventura, Case No. 56-2021-00552428-CU-WM-VTA, Hon. Ronda J. McKaig

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APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT

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ATTORNEYS FOR AMICUS CURIAE
LEAGUE OF CALIFORNIA CITIES

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I APPLICATION TO FILE AMICUS CURIAE BRIEF.

The League of California Cities (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 enhancing 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 believes that its amicus curiae brief, submitted in support of Plaintiff, Cross-Defendant, and Appellant, City of Oxnard (City), will assist the court by addressing the question of whether, under Health and Safety Code section 1797.201[1], City retained its police power to contract for the provision of emergency ambulance services through its delegation of such power via the 1971 Joint Exercise of Powers Agreement (JPA).

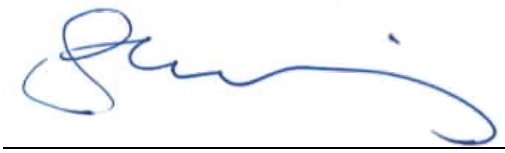
The amicus curiae brief was drafted by counsel for Cal Cities and no party or party's counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief. Apart from the amicus curiae or its counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of this brief.

[1] All statutory references are to the California Health and Safety Code unless otherwise indicated.

DATED: October 7, 2021

Respectfully submitted,

MEYERS NAVE

By: 

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II. INTRODUCTION

As the catastrophic effects of the pandemic have manifested, the burden of health care disparity and, thus, the resulting disproportionate impact of avoidable death and disease, falls heaviest on our low-income communities. Likewise, the City's uncontroverted pre-pandemic analysis demonstrated this disparity with regard to the provision of ambulance services in its community. That evidence unequivocally and tragically established that residents residing in the City's low-income communities were *twice* as likely to experience delayed ambulance response than residents in its affluent communities.

Faced with this stark inequity, the City decisively took remedial steps. Unfortunately, rather than cooperate with City's laudable efforts, Defendants, Cross-Complainants and Respondents County of Ventura, et al. (Respondents) have resisted and authorized a new contract with the very same contractor that caused the inequity in the City.

Without any other means to remedy the systematic disparity in the delivery of vital services to its citizens, the City sought judicial redress. However, the trial court's denial of the City's motion for preliminary injunction (Order) fundamentally misconstrues the plain language of the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act (EMS Act) as well as the nature and purpose of the JPA. In fact, its spare Order completely ignores the applicable legal principles pursuant to the Joint Exercise of Powers Act, Government Code section 6500 *et seq.* (JEPA), primary of which is that the parties' delegation of powers in a JPA *does not equate to a surrender* of such powers. If the trial

court's logic were to stand, it would undermine the JEPA itself and threaten cooperative efforts among all types and levels of public agencies in California.

Recognizing this inescapable fallacy of the Order and disdainfully characterizing City's cogent argument on this point as "just noise"[2], Respondents endeavor to recast it as a determination that "the JPA has no lingering post-EMS Act afterlife … ."[3] This creates two problems for Respondents. First, the trial court did not so find. Second, Respondents did not, and cannot, provide any support for the proposition that the EMS Act "superseded" or "rendered inoperative" the JPA. Rather, this claim is boldly advanced citation-free.

In truth, after exercising its police powers to contract for ambulance services itself from 1950 to 1971, the JPA served to delegate City's powers to the County of Ventura (County) until City withdrew on June 30, 2021 and such power could not have been surrendered while the City was a party to the JPA.

Based on similarly flawed reasoning and lack of support, the trial court further found that it could not accept the City's rationale because doing so would require it to grandfather entities that "indirectly" contracted for ambulance services as of June 1, 1980 and, thereby, render section 1791.201 (grandfathering provision) "meaningless". Nothing in the EMS Act's plain language, legislative history, subsequent interpretation by the California Supreme Court or amendments thereto sustains the trial court's determination.

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[2] (Respondents' Brief (RB) 44.)

[3] (RB 36.)(*See also* RB 21, note 3 "the EMS Act superseded the JPA" and RB 39 "it was the EMS Act's enactment that rendered the JPA inoperative".)

Conversely, as the California Supreme Court explained in *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917 (*San Bernardino*), the first version of the EMS Act's grandfathering clause was added days after Cal Cities objected to the lack of local control to adequately respond to community needs and advocated that "city management" was necessary to provide for the "efficient utilization" of prehospital emergency medical services (EMS). Because City seeks to address the disparate treatment it has identified by providing "City management" for "efficient utilization" of ambulance services, its actions fall squarely within the legislative purpose of the grandfathering clause.

Additionally, amendments to the EMS Act in the past forty years evidence the Legislature's intent to preserve and recognize the local control first adopted in the grandfathering clause. In fact, as recently as January 1 of this year, the Legislature enacted a provision *expanding* cities' involvement in the provision of a new EMS program by granting a right of first refusal to provide a community paramedicine program in its jurisdiction where a county chose to develop one.

Importantly, in this most recent legislative expression, cities may elect "*to provide*" this program through their right of first refusal by "partnering with" another entity "to deliver" the services. (*See* Section 1842.) Thus, just last year, the Legislature utilized the *same language* present in the grandfathering provision to: 1) grant cities *additional* rights to develop new programs under the EMS Act; and 2) categorize a cities' "partnership" with third parties who actually deliver such services as equating to a "provision" of those services. Observably, the trial court's baseless narrowing of the City's rights under the grandfathering provision are contrary to the Legislative intent of the EMS Act.

The passage of the EMS Act nearly a decade[4] after the parties' entered into the JPA rendered the City a grandfathered entity and, as such, it retained its authority to contract for adequate ambulance services to address the current woeful disparity it has evidenced. To strip the City of its inherent power to address this avoidable, but life-threatening, inequity experienced by its most vulnerable citizens under these facts is inconceivable.

III. FACTUAL AND PROCEDURAL HISTORY, AND STANDARDS OF REVIEW

Cal Cities joins in, and incorporates by reference, the factual and procedural history, and standards of review as stated in the City's Appellants' Opening Brief ("AOB"). (*See* AOB [Factual and Procedural History], 15–21[Standards of Review] 22-23.)

IV. ARGUMENT

A. CITY COULD NOT SURRENDER ITS POWER TO CONTRACT FOR AMBULANCE SERVICES UNDER THE JPA

As the City makes plain in its briefing, its right to provide ambulance services is an exercise of its constitutional police powers. (AOB 23-25 and 35-36; Appellant's Reply (AR) 26-29 and RB 43-44.[5]) As a result, its exercise of those powers through its delegation via the JPA could never have resulted in a surrender of those rights.

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[4] Disingenuously described by the County as "not long after". (RB 34.)

[5] Despite Respondents' "belie[f that this principle] is as an open question of law", they provide absolutely no contrary authority to counter the City's well-supported argument. (RB 44.) The Court "may … disregard conclusory arguments that are not supported by pertinent legal authority … ."(*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153.)

"Unless authorized by statute or charter, a municipal corporation, in its public character as an agent of the state, cannot surrender, by contract or otherwise, any of its legislative and governmental functions and powers, including a partial surrender. The principle is fundamental and rests upon policies the soundness of which has never been seriously questioned. Its application has been considered in a large number of judicial decisions involving a great variety of subjects and matters. For instance, a municipal corporation cannot contractually or otherwise divest itself of its general police power … ."(2A McQuillin, Municipal Corporations (3d ed. Rev.2021) § 10:43)

This fundamental principle was relied upon in *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186. In that case, Plaintiffs claimed that Rohnert Park's agreement to settle a California Environmental Quality Act (CEQA) action challenging its adoption of a General Plan through which it agreed to "interpret and apply its General Plan in a manner specified in the Stipulated Judgment[,] apply to LAFCO for an amendment of its sphere of influence … and to interpret and apply certain policies concerning groundwater conservation, community design, and traffic in a manner set forth in the Stipulated Judgment" was a surrender of police powers. (*Id.* at 191.)

The Court acknowledged a "long line of California cases establish[ing] that a government may not bargain away its right to exercise its police power in the future" and a "contract that purports to do so is invalid as contrary to public policy" if it amounts to "the local entity's 'surrender,' 'abnegation,' 'divestment,' 'abridging,' or 'bargaining away' of its control of a police power or municipal function." (*Id.* at 194-195 citing *Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal.App.3d 724, 734; *Avco Community Developers, Inc. v. South Coast*

Regional Com. (1976) 17 Cal.3d 785, 800; *Delucchi v. County of Santa Cruz* (1986) 179 Cal.App.3d 814, 823; *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1724; *County Mobilehome Positive Action Committee, Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727; and *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 233.)

Relying on the related canon that a "[r]eservation of the police power is implicit in all government contracts"[6], the Court determined that, because the Stipulated Judgment did not give up the city's "authority to alter or amend its General Plan as future circumstances may dictate" it did not restrict "the City's exercise of its police power in the future", reservation of the police power is implicit in all government contracts and it would "not read into the contract an abrogation of the potential future exercise of the sovereign police power." (*Id.* at 195-197 citing *Professional Engineers v. Department of Transportation* (1993) 13 Cal.App.4th 585, 591 and *Delucchi, supra,* 179 Cal.App.3d at p. 823.)

1. The JEPA Allows The City to Delegate Its Police Powers to the County under the JPA Without Surrendering Such Powers

As described in *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (2000) 83 Cal.App.4th 556, 562–563 (*Hensler*), the JEPA authorizes public agencies[7], acting together, to exercise their powers jointly as follows:

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[6] *See e.g. County Mobilehome , supra* at 736 citing *Delucchi, supra,* at 823: "*It is to be presumed that parties contract in contemplation of the inherent right of the state to exercise unhampered the police power that the sovereign always reserves to itself for the protection of peace, safety, health and morals. Its effect cannot be nullified in advance by making contracts inconsistent with its enforcement.* Also applicable is the long-established rule that a contract must, if possible, be interpreted so as to make it lawful, operative, definite, reasonable, and capable of being carried into effect." (original emphasis.)

[7] Government Code section 6500 defines cities as public agencies.

> Government Code section 6502 states, in relevant part: 'If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties. It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised.'
>
> The predecessor statute to Government Code section 6502 originally granted no new powers and merely created a new procedure for public agencies, such as cities, to exercise their existing powers jointly. The legislature later enacted statutes allowing contracting parties—local governmental entities entering into a joint powers agreement—to create a separate joint powers agency 'to exercise on their behalf powers they hold in common.'
>
> Thus pursuant to Government Code section 6506, the agency administering or executing a joint powers agreement may be either (1) a party to the agreement, or (2) or a public agency or other entity constituted pursuant to or designated by the agreement."

Consequently, entering into a joint exercise of powers agreement pursuant to the JEPA as the parties have done here through the JPA, equates to a "joint exercise" of powers by those parties and cannot result in a surrender of any such rights.

The Court in *Hensler* analyzed whether the cities of Burbank, Glendale and Pasadena could delegate their eminent domain powers, described by the Court as "an inherent attribute of sovereignty that is necessary for government to exist", to the Airport Authority under the JEPA. (*Id.* at 561.)

It examined the stated purpose and the plain language of the joint exercise of powers agreement created by the cities pursuant to the JEPA and determined the cities "individually have the power to acquire property for an airport by exercising their eminent domain

powers; have the ability to delegate those powers to a joint authority, such as the Airport Authority; and did delegate their eminent domain power to the Airport Authority through the Joint Powers Agreement." (*Id.* at 564.)

Thus, like all contracts, in order to determine the nature of powers delegated to another entity through a joint exercise of powers agreement, a court must examine its stated purpose and language of the agreement itself, something the trial court utterly failed to do here. (8 AA 1753-1757A.)

Moreover, Cal Cities is aware of no authority interpreting a joint exercise of powers agreement entered into pursuant to the JEPA in the manner as the trial court has, namely, as a surrender and not a delegation of powers by the parties thereto. Nor is there any language in the JEPA itself that would support such an interpretation. Rather, as the Court in *Beckwith v. Stanislaus County* (1959) 175 Cal.App.2d 40, 45 ruled, the enactment of the JEPA clearly demonstrated "the express legislative policy" "of intergovernmental cooperation upon matters of mutual concern and benefit".

As is elucidated by *Hensler*, given the critical nature of cities' eminent domain powers, it is axiomatic that they would never willingly enter into an agreement which in any way limited their right to exercise such powers, let alone surrender them. If the trial court's interpretation of the City's exercise of its constitutional police powers to contract for ambulance services via delegation to the County pursuant to the JPA were to stand, it could lead to chaotic and drastic results as public agencies throughout California which had agreed to work cooperatively pursuant to an agreement under the JEPA could find themselves summarily divested of their constitutional police powers delegated through such agreements.

For this reason alone, the trial court's determination cannot stand. Further, as discussed *infra*, particularly in the context of public health, California courts have determined that agencies delegating powers to each other under the JEPA *retain* such delegated powers and may exercise them at any time.

2. Courts Have Applied the Principle that Agencies Cannot Contract Away Their Police Powers through Joint Exercise of Powers Agreements under the JEPA

The long-standing doctrines that a city cannot contract away its constitutional police powers and a reservation of police powers is implicit in all government contracts have been applied to the construction of joint exercise of power agreements or "interlocal" agreements like the JPA here to find that such "contracts are a reasonable method of exercising the police power, rather than abdicating it, and that such agreements or contracts are also a method of recognizing, or redefining, the scope of the problem that is attacked by the contract or agreement … ." (1 McQuillin, Municipal Corporations (3d ed. Rev. 2021) § 3A:9.)[8]

[8] For example, the treatise cites a case from Georgia with a similar fact pattern which involved a contract whereby a County agreed to provide water to a city for 40 years. (*City of Fayetteville v. Fayette County* (1984) 171 Ga.App. 13.) In response to the City's argument that the agreement was void because it ceded its legislative authority to set water rates, the court reasoned that, because the rates "were established by contract and by county ordinance" and the Georgia Constitution allowed counties and cities to contract to enter into such contracts for 50 years or less "the city did not thereby cede away its legislative authority to establish its own rates." (*Id.*)

In fact, California courts have repeatedly rejected the notion that public entities have surrendered their police powers when entering into joint exercise agreements to address public health matters.

3. Courts Determined that Agencies Retain their Police Powers Delegated Through a JPA under the JEPA in the Public Health Context

Like the current pandemic and the statutory scheme at issue in this case, throughout the State's history, it has adopted various legislative initiatives encouraging coordination and cooperation among itself, counties and cities to respond to critical health issues affecting all Californians.

In 1921, the State enacted a statute designed to encourage a similar coordinated inter-governmental response as the EMS Act does here in order to address the tuberculosis pandemic. (*City and County of San Francisco v. Boyle* (1923) 191 Cal. 172.[9]) (*Boyle*) Like the EMS Act, that law established a state agency which promulgated regulations and provided funds to "cities, counties, cities and counties and groups of counties" which chose to join together to construct, maintain and operate tuberculosis wards or hospitals in a manner consistent with the statute. (*Id.* at 179.)

[9] The legislative purpose described by the California Supreme Court was to address the State's dual duties of "provision for the care of indigent sick and dependent poor is a duty of state and society, so well understood and thoroughly recognized that time devoted to a discussion of the subject would be but little better than waste" and a "duty equally as great … to protect and guard the health of the public from infectious or other communicable forms of diseases."(*Id.* at 177.)

However, rather than proceed per the statute, the City and County of San Francisco entered into a joint exercise of powers agreement with the County of Alameda pursuant to the newly-enacted JEPA whereby San Francisco agreed to pay Alameda County for the design and construction of tuberculosis units to be added to Alameda's existing tuberculosis hospital, the Arroyo Sanatorium, "for the use and benefit of … San Francisco in the care, maintenance, and treatment of its patients affected with tuberculosis … ." (SF-Alameda JPA) (*Id.* at 174.) The SF-Alameda JPA term was 25 years and, as is true here, "administration and control of said sanatorium [wa]s to remain exclusively with the county of Alameda."[10] (*Id.* at 177.)

The San Francisco Auditor refused to approve payment to Alameda County pursuant to the SF-Alameda JPA and, echoing Respondents' claims, argued San Francisco's authority to contract pursuant to the JEPA had been "superseded by a more elaborate and comprehensive act passed … at a later date" that required "cities, counties, cities and counties, desiring to join in a group as provided by said act must conform to the provisions thereof and that such provisions furnish exclusive and, in fact, the only source of authority for legal existence." (*Id.* at 179-180.)

The Court rejected this claim. (*Id.* at 180.) It held that the JEPA and later-enacted tuberculosis legislation "are separate and distinct and provide different methods for the

[10] It should be further noted that, although the trial court was persuaded by the fact the County administered the ambulance services contracts under the JPA (8 AA 1756), the California Supreme Court was not equally persuaded by the Auditor's argument that the SF-Alameda JPA was invalid because the County administered the sanatorium and ruled it would not declare it "invalid for the reason that the county retains supervisory control of the hospital." (*Id.* at 185.)

accomplishment of some of the objects common to both. The subjects treated therein are not wholly identical and the more elaborate machinery provided for the operation of one plan or scheme is not appropriate or necessary for the operation of the other. Neither are the acts coextensive in scope. We think, therefore, that each authorizes the adoption of a plan and procedure independent of the other, and that neither one was intended to be exclusive in its operation." (*Id.*)

Likewise, Respondents' decision to voluntarily subject themselves to the EMS Act here[11] does not alter City's exercise of its constitutional police powers to contract for ambulance services through delegation of such power via the JPA. Rather, like the SF-Alameda JPA, the JPA here represents "the adoption of a plan and procedure independent of" the one implemented by the County pursuant to the EMS Act. Accordingly, the EMS Act did not "supersede" the parties' ability to so contract in the form of the JPA.

In another strikingly similar factual context, the Court in *City of Pasadena v. Los Angeles County* (1965) 235 Cal.App.2d 153, 155 (*Pasadena*) examined a State legislative scheme which "[r]ecogniz[ed] the desirability of combining … some … functions" of "the state, the counties, and incorporated cities … in the enactment and enforcement of rules and laws governing public health."

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[11] In light of Respondents' unsubstantiated gloss on the Legislature's goal of the EMS Act as desiring "centralized ambulance services" (RB 13), it is important to note that the EMS Act *does not require* county participation, but instead explicitly makes it voluntary. Section 1797.200 states "[e]ach county *may* develop an emergency medical services program." (emphasis supplied) Thus, any claim that the EMS Act's purpose was to "centralize" the provision of services is belied by its plain language.

In particular, the law in effect at the time allowed a city to "transfer to the county health officer the power and duty of enforcing, within the city, all of the state-created laws and rules, in which case the costs of local enforcement of these laws becomes a county expense." (*Id.*) Pasadena did so and then entered into a joint exercise of powers agreement pursuant to the JEPA[12] which transferred the county health officer duties back to the Pasadena's Health Officer, under the county Health Officer supervision and at the county's expense (Pasadena-LA JPA). (*Id.* at 156.) When Los Angeles County refused to pay Pasadena, Pasadena filed suit. (*Id.*)

Los Angeles County argued that, once Pasadena had transferred the power to enforce health laws in its jurisdiction to the County, Pasadena no longer retained those powers and the Pasadena-LA JPA was, thus, ultra vires. (*Id.* at 157.)

The Court rejected the County's argument and found in favor of Pasadena which maintained that, because it could terminate the delegation to the County, it "retain[ed]" its ability to enforce health laws "within its boundaries" and held that, despite the prior delegation, the Pasadena-LA County JPA was "within the legitimate contractual powers of the city" and "valid and binding on both parties." (*Id.* at 157-158.)

This Second District precedent is directly on point. If Pasadena retained its police power to enforce health laws within its boundaries *even though* it previously "transferred" that

[12] The Court noted that the "parties have briefed the case with emphasis on the so-called 'joint powers' act and with citations to cases standing for the general propositions: (a) that municipal corporations are bodies of limited powers; and (b) that such corporations do have implied powers to carry out their legitimate municipal functions." (*Id.* at 156.)

power to the County pursuant to a statutory process by later terminating such transfer, then there can be no doubt that the City has retained its authority to contract for ambulance service despite its delegation via the JPA especially in light of the fact that it could, and did, terminate its participation in the JPA upon the requisite notice. (4 AA 705, 722-723 and 725-726.) Notably, Respondents' failed to take any action in response to City's termination despite notice thereof. (4 AA 824:14-17.)

In the most unequivocal expression of this principle, the California Supreme Court also ruled in a case involving the preservation of public health in *City of Oakland v. Williams* (1940) 15 Cal.2d 542 (*Oakland*). The Court examined a joint exercise of powers agreement entered into pursuant to the JEPA between seven East Bay Area cities to address a "problem[] that can best be met and solved by several governmental agencies acting jointly and permitting one of their number to act for all."[13] (East Bay Cities JPA) (*Id.* at 549.)

[13] Likewise, the JPA's stated purpose is as follows: "there exists in the CITIES and COUNTY a lack of uniformity and standards in the operation and regulation of ambulance services"; "uniform regulations and standards for ambulance services are necessary for the protection of the health, safety, and welfare of the inhabitants of Ventura County"; "the COUNTY and CITIES, and each of them, *has the authority provided by law to license and regulate ambulances*"; "the parties hereto, *in the exercise of powers common to each of them desire* to establish the Ventura County Ambulance System as authorized by Article I commencing with section 6500, Chapter 5, Division 7, Title 1 of the California Government Code).";"There is hereby established the Ventura County Ambulance System, hereinafter referred to as the "System."; "The System shall be administered by COUNTY subject to the terms and provisions contained herein. COUNTY shall administer and enforce on a uniform basis the ordinances adopted by CITIES similar in form and substance to COUNTY Ordinance No. 2388."; and "COUNTY shall contract with one (1) ambulance company within each service area to provide the minimum standards service as outlined above." (4 AA 702-704.) (emphasis added.)

The problem was identified by State Board of Public Health which declared the "sewage disposal of said municipalities [that] caused the illness of persons required to work in the general vicinity, has resulted in damage to nearby property and ships, and has caused a pollution of shellfish" "to be a public nuisance". (*Id.* at 545.)

The East Bay Cities JPA designated the City of Berkeley as the "sponsor" because it was "thought to be best adapted to carry out the work" of a "joint survey and study" of the existing sewage disposal conditions and suitability of different methods of disposal in the seven cities' jurisdictions. (*Id.* at 545-547.) Thus, just as the nine Ventura County cities' delegated to the County via the JPA here[14], the seven East Bay cities delegated to Berkeley via the East Bay Cities JPA their authority "to enter into all necessary contracts in its own name" with "[a]ll acts and obligations" thereunder belonging to Berkeley alone. (*Id.* at 547.)

The Oakland Auditor refused to execute the East Bay Cities JPA arguing the JEPA did "not contemplate or permit the joint exercise of powers that may be separately or independently exercised by [the East Bay Cities]." (*Id.* at 548.)

The Court rejected the Auditor's argument and held the JEPA "means nothing if it does not mean that cities may contract in effect to *delegate* to one of their number the exercise of a power or the performance of an act in behalf of all of them, and which each independently could have exercised or performed." (*Id.* at 549.)(emphasis added)

The Supreme Court explained the underpinning of its ruling as follows:

> "[The JEPA] grants no new powers but merely sets up a new procedure for the *exercise of existing powers*. The cities that are parties to the contract here involved *possess the necessary police power*, both under constitutional grant and

[14] (4 AA 702-705.)

> under their respective charters, to abate nuisances, to preserve the health of their inhabitants … . [The JEPA] merely provides a procedure whereby this power may be exercised by cooperative action." (*Id.*) (emphasis supplied.)

The trial court's determination is squarely at odds with this Supreme Court precedent. By holding that the seven East Bay cities *presently "possess"* the police powers they had previously delegated to Berkeley via the East Bay Cities JPA, the Supreme Court makes evident that the City *also presently possesses*, and always has possessed, its police power to contract for ambulance services despite its previous delegation of that power to the County via the JPA. Rather, as the Court further explained, the JPA is "merely a procedure whereby this power may be exercised by cooperative action."

The Auditor further argued that the East Bay Cities JPA was an unlawful delegation by Oakland of its constitutional police powers to spend its public tax funds in a manner as determined by Berkeley. (*Id.* at 550.) The Court refused this contention as well and, most importantly, determined "the delegation of the administrative function[s]" to Berkeley does not "infringe[] upon any constitutional" powers of Oakland. (*Id.*) Thus, *exactly* like the JPA delegation of the Ventura County cities' constitutional police power to contract for the provision of ambulance services to the County here, the delegation of such administrative functions to the County *cannot infringe* on the cities' constitutional powers resulting in a surrender of such powers.

4. Courts Determined that Agencies Retain their Police Powers Delegated Through a JPA under the JEPA in Other Contexts

In other contexts outside the public health arena, California courts have also applied the established tenet that delegation of an agency's police powers pursuant to the JEPA does

not surrender such powers. For example, in *Beckwith v. Stanislaus County* (1959) 175 Cal.App.2d 40 (*Beckwith*) a taxpayer challenged Stanislaus County's power to pay the Turlock Irrigation District's (District) for the District's construction of bridges across canals intersected by county roads pursuant to three joint exercise of powers agreements entered into under the JEPA (collectively, Stanislaus-Turlock JPA).

Reiterating the San Francisco Auditor's argument in *Boyle*, *supra*, at 179, the trial court issued a preliminary injunction requested by the taxpayer finding "that a statutory scheme of responsibility for erection and maintenance of county bridges over the district canals has been created and that that scheme of responsibility is exclusive". (*Id.* at 44.)

As the Supreme Court in *Boyle* had previously ruled, this Court disagreed and held, although the Stanislaus County "*at all times* had power" to construct the bridges, "[t]hat *it exercised this power* by agreement with the district" was no basis to invalidate the Stanislaus-Turlock JPA. (*Id.* at 48.)(emphasis supplied.)

Again, the Court's ruling that the parties to the Stanislaus-District JPA retained their police powers despite the exercise of such powers through it and that a separate statutory scheme to exercise such powers did not limit or supersede their ability to cooperate in this manner under the JEPA contravenes the Order and Respondents arguments in support of it.

Additionally, in *Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 959, (*Robings*) the court examined a joint exercise of powers agreement entered into pursuant to the JEPA between the Santa Monica Mountains Conservancy and Conejo and Rancho Simi Recreation and Park Districts. (Conservancy-Park Districts JPA).

As the San Francisco Auditor unsuccessfully argued in *Boyle*, *supra*, at 179 and the trial court erroneously ruled in *Beckwith*, *supra,* at 44, the appellants in this case again contended that the later-enacted and more extensive Santa Monica Mountains Conservancy Act superseded the parties' ability to delegate common powers under the JEPA and, thus, prevented the Santa Monica Mountains Conservancy from providing grant funds as contemplated by Conservancy-Park Districts JPA. (*Robings, supra*, at 960.)

Consistent with the Court's analysis in *Hensler, supra,* at 564, the Second District again examined the expressed purpose of the Conservancy-Park Districts JPA. (*Robings, supra*, at 959.) Citing *Beckwith, supra,* at 44–45, the Court also reiterated the "presumption … that parties to joint powers agreement 'acted reasonably and within the scope of their respective powers' unless affirmatively shown otherwise." (*Robings, supra*, at 965.)

Although the Court agreed with appellants that there were existing limitations on the manner in which Santa Monica Mountains Conservancy could expend funds pursuant to the later-enacted and more extensive Santa Monica Mountains Conservancy Act, it rejected appellants' contention finding "no specific statutory language, legislative intent, or relevant case law … support[ed their] position." (*Robings, supra*, at at 961.)

As further discussed *infra*, similar to the facts of this case, although the EMS Act limits the manner in which the City may exercise its police powers to contract for ambulance services after June 1, 1980, the trial court and Respondents have provided no statutory language, legislative intent or relevant case law that supports their position that City surrendered such powers through its exercise of such pursuant to the JPA.

Accordingly, the trial court's rejection of the City's argument that it retained its powers to contract for ambulance services through its delegation of such powers via the JPA and its alternate characterization of such delegation as the City's "voluntary and express" "relinquishment" of "City authority"[15], and Respondents' arguments in support thereof, are directly in conflict with the overwhelming authority interpreting the JEPA and must be rejected and reversed.

B. PLAIN LANGUAGE OF SECTION 1797.201 ALLOWS CITY TO RETAIN POWER TO CONTRACT FOR OR PROVIDE AMBULANCE SERVICES

The trial court's interpretation of the grandfathering provision of the EMS Act is additionally flawed. "In construing the law, the court's primary aim is to determine the legislative intent, looking first to the words of the statute. (*Robings*, *supra,* at 964 citing *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501.)

Accordingly, the trial court's analysis should have begun with the words of the grandfathering provision itself which, in relevant part, states: "the administration of prehospital EMS by [a city … that contracted for or provided, as of June 1, 1980, prehospital emergency medical services] shall be retained by those cities …, except the level of prehospital EMS may be reduced where the city council … pursuant to a public hearing, determines that the reduction is necessary." (Section 1797.201.) Simply put, if City "contracted for or provided" ambulance services as of June 1, 1980, it qualifies as a grandfathered entity.

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[15] 8 AA 1756.

Rather than correctly apply this unmistakable statutory language, the trial court jerrybuilt the following constricted application relying solely on inapposite authority, namely, *Navellier v. Sletten* (2002) 29 Cal.4th 82, 95[16]:

"The notion that the city 'contracted for' ambulance services through the JPA as those words are used in section 1797.201 requires the Court to interpret section 1797.201 to exempt both entities that contracted *directly* for ambulance services and entities that did so *indirectly*. Such an interpretation would render section 1797.201's exemption language meaningless, because cities that were not contracting directly for ambulance services as of 1980 most certainly must have agreed (by contract, resolution or ordinance) that other entities would contract for those services on their behalf. Under City's interpretation, virtually no city would be prevented from providing its own ambulance services, rendering the limiting language in section 1797.201 mere surplusage. The Court is required to avoid statutory interpretations that create surplusage." (8 AA 1755-1756.) (original emphasis.)

1. The Order Deletes "Contracted For" From Grandfathering Provision

Preliminarily, it must be emphasized that the trial court had *absolutely no evidence* before it, and correspondingly the Order cites none, for the proposition that any city outside the nine cities that joined the JPA acted in any particular way. Instead, the closest expression we get to the status of other cities is the 2014 Attorney General Opinion which states

[16] The facts and law of this SLAPP case had no applicability whatsoever to the matter before the trial court. (*Id.*) Instead, the trial court simply relied on the general doctrine repeated therein that, in construing a statute, it must "avoid any construction that would create [a] surplusage."(*Id.*)

"[n]umerous .201 providers have expressed a desire to retain their '.201 rights' " and then explains those providers' trepidation regarding inadvertently taking actions designed to effectuate such rights, but which potentially subject them to a loss of the same, as the trial court has accomplished through its Order. (97 Ops.Cal.Atty.Gen. 90, (2014).)[17]

In truth, the trial court's rendition of the grandfathering provision reads "contracted for" out of the statute altogether by stating that "cities that were not contracting directly for ambulance services as of 1980 most certainly must have agreed *by contract* … that other entities would contract for those services on their behalf." (8 AA 1755-1756.) Respondents repeat this claim, again, without any basis as to why this Court should read "contracted for" out of the statute other than to disqualify all cities from retaining grandfathered status. (*See* RB 27-28, 31 and 33.) Indeed, Respondents expand this assertion to argue, '[e]ven if the City had somehow obtained grandfathered status under section 1797.201, … it would have no authority to prevent County from providing services in City limits … ." (*Id.* at 31, note 8.) Thus, under the trial court's ruling and Respondents' exaggeration of it, grandfathered cities have no authority to prevent County expansion into the EMS services they "retained" the right to provide.

Respondents further unconvincingly contend that, if this Court were to find the City had merely delegated its police powers to County via the JPA and did not, thereby, relinquish such power, then it "would render section 1797.201 grandfathering a nugatory. In

[17] From Cal Cities' review of public documents, it appears potentially only one other local entity delegated EMS powers via a JPA in or prior to 1980 and is, thus, similarly situated to City.

other words, there would be nothing to 'grandfather' since the power in question would inherently have been retained." (RB at 40.) This begs the question – if a city retained its police powers to provide EMS and this fact renders the grandfathering provision inapplicable and a "nugatory", as Respondents argue, when would the grandfathering provision ever be applicable? It is difficult to imagine.

Rather, it is obvious that the trial court has read "contracted for" out of the grandfathering provision in order to disqualify City and Respondents have read out the grandfathering provision from the EMS Act to disqualify all entities potentially subject to it.

2. The Meaning of "Contracted For" Is Plain

Moreover, the meaning of the words "contracted for" as utilized in the EMS Act is plain. Given that, there was absolutely no basis for the trial court to add restrictive language to the statute to disqualify the City. For example, Civil Code section 1549A defines a "contract" as "an agreement to do or not to do a certain thing." Certainly, the JPA falls within this definition and, as set forth in subsection A above, through it, the City contracted for the provision of ambulance services from 1971 through 2021.

In fact, the Attorney General relied upon the JEPA to determine that it "permits any state agency to contract with any other governmental agency or entity to provide … services which *both have the power to provide* within their own jurisdictions. Accordingly, the Joint Exercise of Powers Act would constitute an alternate source of authority for the Department of Forestry … *to provide* rescue, first aid and emergency medical services *as part of a contract to provide* a local fire agency with fire protection services." (64 Ops.Cal.Atty.Gen. 588, (1981)

citing Gov. Code, §§ 6500, 6502, 6506, 6508; 57 Ops.Cal.Atty.Gen. 107 (1974); 53 Ops.Cal.Atty.Gen. 324, 327 (1970); 14 Ops.Cal.Atty.Gen. 72 (1949).) (emphasis added.)

Further, in considering "whether the Department of Forestry may *contract* with a local agency *to provide mobile paramedic service* as part of its contract to provide overall fire protection service", the Attorney General likewise concluded it "since the Department of Forestry and local fire agencies are empowered to perform [rescue, first aid and emergency medical] services, …the Department of Forestry may provide 'mobile intensive care paramedic service' as part of *a contract to provide* overall fire protection service under … the Joint Exercise of Powers Act." (*Id.*) (emphasis added.)

As a result, even though it is unnecessary to construe the plain language of the grandfathering provision, when determining whether one government entity may enter into "*a contract to provide*" emergency medical services to another entity, the Attorney General has resolved that an agreement pursuant to the JEPA affords the authority to do so. Since the City has likewise "contracted to provide" its ambulance services that it has the power to provide through the JPA, its actions meet the grandfathering provision's requirements.

3. Other EMS Act Provisions Support City's Position

Assuming *arguendo* that the meaning of "contract for or provide" requires interpretation, as the California Supreme Court in *San Bernardino, supra,* has guided, it "is reasonable to consult [other EMS Act provisions], where the term… is also used, to discern its meaning elsewhere in the EMS Act. It is elementary that, absent indications to the contrary, 'a word or phrase accorded a particular meaning in one part or portion of the law,

should be accorded the same meaning in other parts or portions of the law." (*Id.* at 926 citing *Miranda v. National Emergency Services, Inc.* (1995) 35 Cal.App.4th 894, 905.)

As is evident from the following examples where the Legislature amended the EMS Act in 2002 and 2020, the trial court's needless narrowing of the grandfathering provision finds no support elsewhere in the EMS Act.

For example, section 1843(a)(1)(B) enacted in 2020 states an advanced life support "provider providing emergency medical transport services pursuant to Section 1797.201 may contract with private providers to deliver triage to alternate destination services in the proposed program areas. This subparagraph does not impair or alter an existing right to contract or provide for administration of emergency medical services pursuant to Section 1797.201."

Thus, the Legislature, recognizing and preserving the rights of grandfathered cities as recently as last year, allows such cities providing "emergency medical transport services" to choose to "contract with" private providers to deliver triage transportation and *retain* their grandfathered status as an "ALS provider".

Similarly, section 1797.115(b)(2) enacted in 2002 allows the Emergency Medical Services Authority to allocate funds to the California Fire Fighter Joint Apprenticeship Program to "[e]nter into reimbursement contracts with eligible state and local agencies[18] that

[18] Section 1797.115(e)(2) defines a "local agency" as "any city, county, city and county, fire district, special district, joint powers agency, or any other political subdivision of the state that provides fire protection services."

in turn may contract with educational institutions for the delivery of paramedic training conducted in compliance with the requirements of subdivision (a) of Section 1797.172."

Yet again this provision demonstrates the Legislature's endorsement of cities as eligible to receive funds as providers of services even when such cities contract to provide the services through a third party contract.

Moreover, in 2019, the Legislature amended the EMS Act to express when a "direct" provision of services was required. It added section 1798.8 limiting local Emergency Medical Agency's (LEMSA) medical control authority. In particular, subdivision (a) provides that LEMSAs' medical control authority shall not be construed to: (1) limit, supplant, prohibit, or other alter, a public safety agency's authority to "*directly* receive and process requests" for emergency assistance through 911; (2) authorize the LEMSA to enter a contract in contravention of Gov't Code section 53110; (3) authorize the LEMSA to unilaterally reduce a public safety agency's response mode, prevent a public safety agency response, or alter a public safety agency's deployments of emergency response resources. Subdivision (b) further provides that a public safety agency's adherence to a LEMSA's policies, procedures, and protocols "does not constitute a transfer of any of the public safety agency's authorities regarding the administration of emergency medical services."

This provision was added by Senate Bill 438 (2019-2020) (SB 438) which amended both the Warren-911-Emergency Assistance Act (Gov. Code, § 53100 *et seq*.) and the EMS Act by enacting four provisions relating to emergency communications and response. (2019 Cal. Legis. Serv. Ch. 389 (S.B. 438) SB 438 text)

SB 438 also added section 1797.223 which sets forth various requirements for public safety agencies' provision of 911 dispatch and call processing services. (*Id.*) Importantly, the Legislature repeats its recognition and preservation the rights of grandfathered cities through subdivision (f) which states "Nothing in this section supersedes Section 1797.201."

These provisions demonstrate: 1) the Legislature's consistent intent to strengthen and maintain grandfathered entities' rights throughout the decades since the EMS Act's adoption; 2) a recognition that delegation of those rights through contracts with third parties for the provision of EMS equates to "contracting for or providing" as those terms are used in the grandfathering provision; and 3) when it intends to limit these rights, as the trial court erroneously did by adding the modifier "directly", it does so explicitly.

By also failing to consider the plain language of "provided" in the grandfathering provision and, instead, improperly qualifying "contracted for" without any basis therefor, the court's reasoning is further undermined as the term "provided" is also manifest. Merriam-Webster's Dictionary defines it as follows: "to supply or make available". (*Provide*, Merriam-Webster Dictionary (11th ed. 2014).)

Obviously, by first contracting for the provision of ambulance services through a private contractor from 1950 through 1971 and then delegating its power to contract for such services to the County from 1971 through 2021 via the JPA, the City "supplied or made available" those services to its citizens for *over seventy years now*. (4 AA 676-693, 695-714, 728-729.)

However, even if the meaning of "provided" in the grandfathering provision was not obvious, as directed by the Supreme Court in *San Bernardino, supra,* we can again look to the

EMS Act and regulations promulgated thereunder to determine the meaning envisioned by the Legislature.

For example, just like section 1843 discussed above enacted in 2020, section 1842, which became effective on January 1st of this year, regulates the manner in which a LEMSA may develop a community paramedicine program, if it chooses to implement such a program.

Consistent with all the Legislative expressions discussed above in the last forty years, the Legislature once again recognized and secured cities' rights to manage and control emergency medical services in their own jurisdictions, this time through the new community paramedicine program.

Section 1842 states a LEMSA shall:

"(a) Coordinate, review, and approve any agreements necessary for the provision of community paramedicine specialties as described in Section 1815 consistent with all of the following:

(1) *Provide a* first *right of refusal to the public agency* or agencies within the jurisdiction of the proposed program area *to provide* the proposed program specialties for community paramedicine. If the public agency or agencies agree to provide the proposed program specialties for community paramedicine, the local EMS agency shall review and approve any written agreements necessary to implement the program with those public agencies.

(2) Review and approve agreements with community paramedicine providers *that partner with* a private provider to deliver those program specialties." (emphasis added.)

This provision establishes both the Legislature's sanctioning of cities' continuing right to provide EMS to their communities even when establishing new programs under the EMS Act and that "to provide" means "partnering" with other entities to deliver those services. In other words, there is no requirement whatsoever for "direct" provision of such services by the City as was expressed in section 1798.8 analyzed above.

Although these facts are self-evident from section 1842 itself, further support can be found in the legislative history of Assembly Bill 1544 (2019-2020) which enacted the community paramedicine program provisions of the EMS Act.[19] Contained in the "Arguments in Support" section of Senate Floor Analysis is the following explanation of Cal Cities support for the bill:

"The League of California Cities supports this bill because it provides public agencies with a right of first refusal, and because it contains provisions requiring local EMS agencies to continue using and coordinating with medical transport providers operating within that agency's jurisdiction, thereby preserving transport rights to providers who have been in continuous operation since 1980." (Cal Cities RJN, Exh. A, September 03, 2019 California Assembly Bill No. 1544, California 2019-2020 Regular Session, Senate Rules Committee Report at p. 17.)

Consequently, the trial court erred by ignoring the plain language of the grandfathering provision and adding modifier "*directly*" into section 1797.201 to improperly restrict its application in order to disqualify the City.

[19] See Cal Cities' Request for Judicial Notice (RJN) Exhibit A.

The provisions of the EMS Act examined above demonstrate that, when relevant and warranted, the Legislature will add the modifier "*directly*" in order to restrict its application accordingly. It did not so limit the grandfathering provision in its original adoption of the EMS Act in 1980 and has not done so through any of its many amendments thereto in the subsequent forty (40) years.

To the contrary, in those four decades, the Legislature has repeatedly confirmed its intention to sustain and expand, and not diminish or limit, the rights of grandfathered entities pursuant section 1797.201.

C. THE PUBLIC INTEREST FAVORS CITY'S REMEDY OF SYSTEMATIC INEQUITIES

Because the City sought to enjoin Respondents, the trial court relied upon the principle that the public interest weighs against issuance of an injunction when it is sought to enjoin public officers from performance of their duties. (8 AA 1754 citing *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board* (1994) 23 Cal.App.4th 1459, 1472-1473.)

However, this rule was articulated in the context of a private party seeking to enjoin a public officer and has only been applied in that context thereafter[20]. Thus, the trial court failed to adequately consider the manner in which this principle should be applied when another public entity, and not a private party, seeks the injunction.

As the Supreme Court has articulated, harm to the general public must be considered in determining whether to grant a preliminary injunction. (*Loma Portal Civic Club v. American*

[20] See *Cota v. County of Los Angeles* (1980) 105 Cal.App.3d 282, 292; *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1471; and *Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 77.

Airlines, Inc. (1964) 61 Cal.2d 582, 588.) Based on the evidence supplied by the City, it is unmistakable that the trial court did not properly weigh the harm to the public interest[21]. As set forth below, the City demonstrated significant harm to the public without the injunction.

1. City Evidence Demonstrated Severe Public Harm that Significantly Outweighed Respondents' Showing

Although this fact is sadly ubiquitous, the City established that low-income neighborhoods have higher general usage of 911 services for emergencies and as a means of primary healthcare. (8 AA 1644:13-1645:7 [Villa Supp. Dec. ¶ 44].)

Tragically, patients in City's most disadvantaged southern neighborhoods suffer from higher acuity emergencies than residents in affluent County areas due to inability to access primary care or pay for chronic disease prevention, or fear of revealing residency status. (*Id.*)

Despite this abysmal reality, the City further presented evidence that its economically disadvantaged neighborhoods experience *twice* the amount of delayed ambulance responses than more affluent neighborhoods. (8 AA 1646:1-3 [Villa Supp. Dec. ¶ 46].)

The City further proved that the higher delayed call density were due in part to the GCA's[22] practices of favoring neighborhoods outside of its designated service area (ASA 6) consisting of more affluent residents and not deploying adequate ambulances to meet the City's low-income residents' needs. (*Id.*)

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[21] This is mainly due to its erroneous ruling regarding the City's likelihood of success on the merits since it dismisses the City's evidence of harm as "not a harm that weighs in the City's favor" because it was "not convinced that the City has a legal right to provide ambulance services." (8 AA 1756.)

[22] The ambulance provider selected to serve the City pursuant to the JPA.

It should be noted that the City established these practices were not always the norm. Rather, in 2010, GCA was acquired by AMR. (8 AA 1590.) Before its acquisition, GCA was a small, locally-owned and company which operated in ASA 6 only and was, not surprisingly, responsive to the community and Oxnard Fire Department's needs. (8 AA 1590-1591.)

Regrettably, after its acquisition, Oxnard Fire Department noted incremental changes to GCA's management, ambulance staffing levels, unit redeployment to other service areas, reduced engagement with the Fire Department, and limited-to-no community reinvestment. (*Id.*) In fact, between 2015 and 2017 regular Fire Department and GCA meetings ceased. (8 AA 1591.)

The City additionally demonstrated that the newly-constituted GCA deliberately shifted ambulance units from south to north end of City, while not backfilling to account for these high call volume areas. (*Id.*) This deployment shifting results in 2:1 ratio of response delays in disadvantaged City neighborhoods alone. (8 AA 1646:1-3 [Villa Supp. Dec. ¶ 46].) (See also 5 AA 985:23-987:4 [Shaffer Dec. ¶¶ 16-21 & tbl.1] [GCA units spent an average 13% of total operating hours outside ASA 6 in 2017-2019] and 5 AA 987:23-991:17 [Shaffer Dec. ¶¶ 25-38 & tbl. 3, Exs. 1-2] [residents in City's lower income neighborhoods were twice as likely to experience noncompliant 911 ambulance response than residents in more affluent areas.]

Worse still, the City revealed that VCEMS had no contractual mechanism to require remediation and provision of equitable care in disadvantaged communities by GCA. (8 AA 1645:8-27 [Villa Supp. Dec. ¶ 45].)

Not only did the City undertake this significant pre-pandemic data analysis to determine and document the grave impact on the health and welfare of its citizens, it responded by taking swift remedial action to protect its citizens from GCA's practices through its withdrawal from the JPA and by designing a program to remedy it.[23]

It is truly difficult to imagine a greater harm and more weighty public interest sought to be protected than the City's efforts to provide efficient, cost-effective, equitable and accountable municipal services to its citizens, the result of which the lives of its most-vulnerable citizens are dependent; a fact even more potent as a result of the current pandemic.

Consequently, the trial court's abject refusal to consider the weight of this harm resulted in its abdication of its duty to balance the harm to the public interest and Order should be reversed on this basis as well.[24]

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[23] Oxnard Fire, Oxnard GIS, and the City's chosen contractor designed and developed an ambulance service program to provide more effective, affordable services through more dynamic and equitable coverage, optimized ambulance station and posting locations identified by predictive analyses, multi-tier ambulance surge plans, scalable deployment plans, and response metrics that emphasize system, performance, and/or clinical improvements. (8 AA 1651:11-1653:23 [Hamilton Supp. Dec. ¶¶ 74-86].)

[24] *See e.g. Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 227 reversing trial court denial of preliminary injunction sought against LA County by indigent individuals who, without the injunction, would have been without medical services essential to control and treat life-threatening conditions. ["In reaching this conclusion we are not unmindful of its far-reaching consequences or the impact it will have upon the difficult public policy choices already made by the County with respect to the proper allocation of scarce public resources."]

V. CONCLUSION

If the trial court's logic were to stand, it would undermine the JEPA itself by unwittingly divesting public agencies' delegated rights through joint exercise of powers agreements and chill cooperative efforts among all public agencies seeking to most effectively address the needs of Californians collaboratively.

It would also leave the City without a remedy to address the life-threatening disparity suffered by its most vulnerable residents which it has painstakingly evidenced created by the contractor Respondents have indifferently contracted with anew.

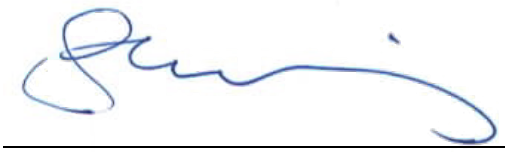
As the Supreme Court observed in the pandemic experienced by our nation a century ago, this State and its subdivisions are duty-bound to provide "for the care of indigent sick and dependent poor, … a duty … so well understood and thoroughly recognized that time devoted to a discussion of the subject would be but little better than waste … ." (*Boyle, supra*, at 177.)

In light of the indifference of Respondents, especially in the face of the current pandemic, it is unconscionable to deny the City its statutory and constitutional rights to effectively perform these duties. The trial court's defective Order should be reversed.

DATED: October 7, 2021

Respectfully submitted,

MEYERS NAVE

By: 

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CERTIFICATE OF WORD COUNT

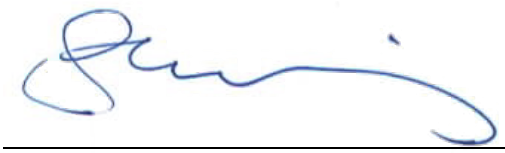
(Cal. Rules of Court, rule 8.204 (c)(1))

I certify that this brief consists of 9,989 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(1), relying on the word count of the Microsoft Word 365 computer program used to prepare the brief.

DATED: October 7, 2021

Respectfully submitted,

MEYERS NAVE

By: 

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PROOF OF SERVICE

City of Oxnard v. County of Ventura; Ventura County Emergency Medical Services Agency
B312348

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1999 Harrison Street, 9th Floor, Oakland, CA 94612.

On October 7, 2021, I served true copies of the following document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mmclaurin@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on October 7, 2021, at Oakland, California.

/s/ Mikhayla McLaurin
Mikhayla McLaurin

SERVICE LIST
City of Oxnard v. County of Ventura; Ventura County Emergency Medical Services Agency
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PROOF OF SERVICE

City of Oxnard v. County of Ventura; Ventura County Emergency Medical Services Agency
B312348

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1999 Harrison Street, 9th Floor, Oakland, CA 94612.

On October 8, 2021, I served true copies of the following document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT** on the interested parties in this action as follows:

Ventura County Superior Court
Appellate Division
800 South Victoria
Ventura, CA 93009
Appeals Clerk, Room 210

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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

Executed on October 7, 2021, at Oakland, California.

/s/ Mikhayla McLaurin
Mikhayla McLaurin