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February 3, 2020

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice
And Honorable Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Curiae Letter of the League of California Cities in Support of The Petition For Review filed by the City of Anaheim in *City of Anaheim et al v. Bosler, et al*; California Court of Appeal, Third Appellate District, Case No. C087417; California Rules of Court, Rule 8.500(g).

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Pursuant to California Rules of Court, Rule 8.500(g), this amicus curiae letter is submitted on behalf of the League of California Cities ("League of Cities") in support of the petition for review of the City of Anaheim ("Petitioner"), requesting review of the opinion of the Third District Court of Appeal in *City of Anaheim, et al. v. Keely Bosler, et al.*, Case. No. C087417 (the "Opinion"). The League of Cities is an association of 478 California cities dedicated to protecting and restoring local control to provide for the public health, safety and welfare of their residents, and to enhance the quality of life for all Californians. The League of 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. For the reasons explained below, the Committee has identified this case as having such significance.

I.
Grounds for Review

Review of the Opinion by the Supreme Court is necessary to secure uniformity of decision and to settle important questions of law. (Rules of Court, Rule 8.500(b).) As the Court may suspect, this is not the only case pending in the judicial system challenging a determination of the Department of Finance ("DOF") that pension obligations of former redevelopment agencies do not qualify as enforceable obligations under the Dissolution Law. Counsel for the League of Cities are aware of three such cases in which they are counsel of record for the city/successor agency: *Successor Agency to the Redevelopment Agency of the City of Sacramento, et al v. Cohen, et al*, Sacramento Superior Court Case No. 34-2017-80002603 (consolidated with *Successor Agency to the Redevelopment Agency of the County of Sacramento, et al., v. Cohen* (Case No. 34-2017-80002623); and *City of Riverside As Successor Agency to the*

Redevelopment Agency of the City of Riverside, et al v. Cohen, et al, Sacramento Superior Court Case No. 34-2018-80002930. The two Sacramento cases resulted in a Superior Court decision granting the successor agencies' petitions for writ of mandate to have CalPERS retirement contributions for employees of the Sacramento Housing and Redevelopment Agency, a joint powers authority, who performed redevelopment services recognized as enforceable obligations. The Sacramento decisions were not appealed by DOF, and became final on August 29, 2018.

The Riverside case resulted in a Superior Court decision denying the successor agency's petition for writ of mandate. That decision has been appealed by Riverside and is currently pending in the Third District Court of Appeal, Case No. C089497. Counsel is aware of several other cities that are awaiting a final determination of this issue by the courts before deciding whether to initiate their own actions against DOF on this subject. Review of the Opinion will settle the confusion created by the conflict of decisions and provide direction for future decisions of DOF concerning the ongoing employee and pension obligations of former redevelopment agencies.

Review of the opinion is also necessary to settle important questions of law. As will be explained in greater detail below, for decades most cities in California have provided staff services to the redevelopment agencies operating in their communities, receiving a reimbursement for the cost of those staff services from the redevelopment agency. This arrangement extends not just to salaries, but also to benefits like pensions and retiree health insurance. Budgeting and long-term planning to meet city pension obligations has long depended on redevelopment agencies paying a proportionate share of retiree benefits for employees of the city serving the redevelopment agency. This includes, pledging redevelopment agency tax increment to pay a portion of principal and interest on pension obligation bonds of a city (which is the subject of the Riverside case, noted above). The Opinion construes the term "enforceable obligation" so narrowly that it excludes the vast majority of employee and pension obligations despite clear evidence of legislative intent to the contrary. If the Opinion is not reversed, it will result in a massive transfer of liability from the revenue source which was always intended to pay it – redevelopment tax increment – to the general funds of cities around the state, many of which are ill-prepared to absorb this unexpected burden. There is ample evidence that the Legislature never intended such a transfer and in fact deliberately sought to avoid it.

II.
Discussion

Until it was effectively rescinded in 2011 by the enactment of ABx1 26 **(**Stats. 2011-12, 1st Ex. Sess., c. 5, eff. June 29, 2011**;** as amended, the "Dissolution Law"**)**, the Community Redevelopment Law (Health and Safety Code Section 33000 et seq., "CRL")[1] provided an extraordinarily broad and flexible tool for cities to address issues of urban blight.[2] Redevelopment agencies were created by the Legislature in each community (§ 33100) as administrative arms of the State to carry out State policies related to the elimination of urban blight. (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal. App. 3d 158, 168-9.) Those agencies were activated by an ordinance of the local legislative body (the city council in the case of a city) declaring a need for the redevelopment agency to function. (§ 33101)

In recognition of the great variety of circumstances in which redevelopment agencies would operate, cities were given a range of options to choose from concerning how the redevelopment agency would be governed. A governing board of 5 resident electors could be appointed by the mayor (§ 33110). This type of organization was commonly referred to as a "separate board," i.e., the members of the board governing board were separate from the city council. Alternatively, the city council could designate its members as the governing board of the redevelopment agency. (§ 33200) This choice was commonly referred to as "the legislative body as agency." Other options existed,[3] but the great majority of redevelopment agencies were governed by either an appointed separate board or the legislative body as agency. In either event, the legislative body of the redevelopment agency was a corporate governmental entity separate and distinct from the city council which activated it and not merely another department of the city. (§§ 33100; 33219; *Long Beach Community Redevelopment Agency v. Morgan* (1993) 14 Cal. App. 4th 1047.) This type of relationship is not unique to the redevelopment context. Housing authorities and parking authorities (among others) have similar relationships to their sponsoring cities. (§§ 34240, 34290, Streets & Highways Code §§ 3265, 32661.1.)

By far, the greatest number of cities chose to designate the members of the city council as the governing board of the redevelopment agency. Only a handful of the largest cities in the State chose the separate board option. The reasons were several. First, decisions made by the redevelopment agency were often among the most important and visible and had the greatest impact on the community. Many city councils were unwilling to delegate these decisions to an appointed board. Second, and most importantly for this case, choosing the legislative body as agency enabled the use of city staff knowledgeable in redevelopment matters to conduct redevelopment business. It was extremely common for some city employees to split their time

[1] Unless otherwise stated, all future statutory reference are to the Health and Safety Code.
[2] See Health and Safety Code Sections 33035, 33036, 33037.
[3] See, e.g., § 34100 et seq., creating community development commissions.

between redevelopment agency business and general city business, with the redevelopment agency paying a portion of the salary and benefits of those employees based on estimates or actual accounting of time spent on each. This administrative model provided greater ease of administering employees of the redevelopment agency, avoiding duplication for civil service rules, collective bargaining agreements with unions and many other functions. It is specifically authorized by statute. (§§ 33128, 33206.)

When it enacted the Dissolution Law, the Legislature took special notice of the disruption it would cause in the municipal workforce of most cities and included provisions designed to avoid or mitigate the confusion and hardship of dissolving over 400 agencies statewide with little or no warning. First, it provided that all former redevelopment agency employees would become employees of their successor agency. (§ 34190(e)). Next, and most significantly, in Section 34171(d)(1)(C) it defined the term "enforceable obligation" to include ". . . legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement." This meant that successor agencies would be able to claim moneys deposited in the Redevelopment Property Tax Trust Fund ("RPTTF") to pay employee costs such as required contributions to pension plans and retiree health benefits. Absent such provisions, successor agencies would be left with obligations to contribute to employee pension plans and retiree health benefits as set forth in the collective bargaining agreements to which they succeeded under Section 34190(e), without any source of funds to pay those obligations. Successor agencies have no independent source of funds and rely entirely on distributions from the RPTTF to pay their obligations. This common sense legislative solution is consistent with the declared intention of the Legislature to "stabilize labor and employment relations of redevelopment agencies and successor agencies in furtherance of and connection with their responsibilities under [the Dissolution Law] . . ." (§ 34190(a))

The Opinion takes an insupportably narrow view of the meaning of Section 34171(d)(1)(C). It does so based solely on the language of the sentence immediately following the portion of section cited in the preceding paragraph, specifically: "Costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former redevelopment agency shall be considered enforceable obligations payable from property tax funds." The Opinion interprets this sentence, which was not included in the original Dissolution Law, but added by a subsequent "clean-up" bill, as modifying the preceding sentence to mean that only employee costs of separate board redevelopment agencies were included in the definition of "enforceable obligations." (Opinion. P.6.) This interpretation is wrong for multiple reasons. First, it ignores the context in which redevelopment agencies functioned. It is undisputed that the vast majority of redevelopment agencies were organized on the legislative body as governing body model and contracted with their host city for staff services. How could the Legislature simultaneously intend to stabilize the

labor and employment relations of redevelopment agencies state-wide (§ 34190(a)), and limit the effect of the provisions of the bill designed to do that to a tiny minority of agencies?

Second, it emphasizes one declared legislative purpose – preserving property tax funds for distribution to taxing agencies – to the exclusion of a second, equally important purpose – protecting the integrity of obligations entered into by redevelopment agencies prior to their dissolution. (§§ 34167(f), 34177.) As noted by this Court in *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231, 263: "As a practical and perhaps a constitutional matter, to require an existing entity that has entered into a web of current contractual and other obligations to dissolve instantaneously is not possible; doing so would inevitably raise serious impairment of contract questions. (See U.S. Const., Art. I, § 10; Cal. Const. Art. I, § 9.)"

Third, the language the Opinion relies on can just as easily be interpreted to modify the preceding sentence to clarify that the term "agencies' employees" includes city employees performing work for the redevelopment agency. Indeed, when viewed in context of the manner in which most redevelopment agencies operated, that is the more logical interpretation. There is no rational basis, certainly none that is articulated anywhere, for distinguishing between employee and pension obligations based on whether the redevelopment agency is organized on the legislative body as governing board model or the separate board model. Regardless of how they were organized, they perform the same function. Indeed it has been common for cities to switch back and forth between the two models based on changes in circumstances. Nowhere did the law state that by choosing to operate under the legislative body as governing board model a city would lose the right to require a redevelopment agency to pay for the staff services provided by the city.

The Opinion dismisses these arguments by stating that if the legislature meant to include the employee and pension obligations of former redevelopment agencies organized on the legislative body as governing board model and not just those of redevelopment agencies organized on the separate board model, it would have clearly said so. (Opinion, p. 6) However, there are many sections of the Dissolution Law that are far from clear. All of the bills comprising the Dissolution Law were budget trailer bills that were passed on the floor without discussion within hours of the language becoming available to the public. None of them went through the normal legislative process and none of them was heard in policy committees where cities could have pointed out weaknesses in the language. Where, as here, budget trailer bills are used to enact significant and complex policy changes, courts should recognize that statutory language may be less than clear and look to the broader context in which the law was enacted in order to determine its meaning.

III.
Conclusion

For the foregoing reasons, the League of Cities respectfully urges this Court to grant the Petition for Review.

Sincerely,

Iris P. Yang
of BEST BEST & KRIEGER LLP

cc: Attached Service List

PROOF OF SERVICE

City of Anaheim, et al v. Keely Bosler, et al
Supreme Court Case S259990

I am employed by the law office of Best Best & Krieger LLP in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814.

On February 3, 2020, I served on the interested parties in said action the within:

AMICUS LETTER BRIEF TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA

as stated on the attached service list.

☒ **VIA TRUEFILING ELECTRONIC E-SERVICE SYSTEM:** I transmitted via the Internet a true copy(s) of the above-entitled document(s) through the Court's Mandatory Electronic Filing System via the TrueFiling Portal and concurrently caused the above-entitled document(s) to be sent to the recipients listed in the attached service list pursuant to the E-Service List maintained by and as it exists on that database. This will constitute service of the above-listed document(s)

Executed on February 3, 2020, at Sacramento, California.

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

Patricia Alshabazz	/s/ Patricia Alshabazz
(Type or print name)	(Signature)

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PROOF OF SERVICE

City of Anaheim, et al v. Keely Bosler, et al
Supreme Court Case S259990

I am employed by the law office of Best Best & Krieger LLP in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814.

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Patricia Alshabazz	/s/ Patricia Alshabazz
(Type or print name)	(Signature)

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