

September 3, 2019

VIA ELECTRONIC FILING

Chief Justice Tani Gorre Cantil-Sakauye
Associate Justices Chin, Corrigan, Liu,
Cuellar, Kruger and Groban
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *City of Fontana, et al v. Keely M. Bosler, et al*
Petition for Review before the California Supreme Court
Supreme Court Case No. S257169
Court of Appeal, Third Appellate District Case Nos. C083058, C083081

Dear Chief Justice and Associate Justices:

The League of California Cities respectfully presents this amicus curiae letter *in support* of the Petition for Review of the Opinion issued by the Third District Court of Appeal for the above-referenced cases. Pursuant to California Rules of Court, Rule 8.500, subdivision (g), the League respectfully urges this honorable Court to grant review because: (i) With the Third District’s Opinion, there is now a split of authority between that district and the Fourth District Court of Appeal with respect to the binding effect of an action adjudicated under the validation statutes in Code of Civil Procedure section 860 *et seq.* (commonly referred to as [a] “Validation Action(s)”), and (ii) The Third District’s Opinion undercuts decades of precedent, expressed statutory provisions, and clear legislative intent that a final judgment from a Validation Action, or proceeding subject to resolution exclusively by Validation Action, shall be “forever binding and conclusive” and shall “permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.”

***The League Of California Cities’ Interest In This Appeal
Is Because It Affects All California Cities And Their Significant Official Decisions***

The League of California 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 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.

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The League, and all California cities, have a substantial interest in this honorable Court reviewing the Third District’s Opinion for the above-referenced cases because, as detailed below, **every city** in the state is subject to Validation Actions. Even more, **every city** in the state has the power to take (and very likely has taken) specified actions that the California Legislature intended to be subject to a judicial determination of legal validity which, once decided, will be “forever binding and conclusive” and will “permanently enjoin” **any** person or entity from subsequently challenging such determination for legal validity. The Third District’s decision puts that long-established legislative intent in substantial jeopardy, thereby meriting review.

Summary of Validation Actions And
The Legislative Intent And Public Policy For These Special Actions

The League defers to Petitioners City of Fontana and its Successor Agency’s well-summarized explanation of Validation Actions in its Petition for Review on pages 22-26. For further background and emphasis as to **the importance of Validation Actions in general to cities**, however, the League offers this additional summary:

The validation statutes provide a procedure by which a public agency may determine the validity of certain acts. The public agency may bring a validating proceeding in superior court within 60 days of “the existence of any matter which under any other law is authorized to be determined pursuant to [the validation statutes].” ([Code of Civ. Proc.,] § 860.) Such an action is “in the nature of a proceeding in rem.” (*Ibid.*) And where the public agency does not initiate a validating proceeding under section 860, “any interested person may bring an action within the time and in the court specified by Section 860 to determine the validity of such matter.” ([Code of Civ. Proc.,] § 863.) The interested person must bring a validating proceeding within 60 days: “No contest except by the public agency or its officer or agent of any thing or matter under this chapter shall be made other than within the time and the manner herein specified.” ([Code of Civ. Proc.,] § 869.) Thus, insofar as section 863 provides that an interested person “may” bring a validating proceeding, the statute “seems innocuous enough ... section 869 says he must do so or be forever barred from contesting the validity of the agency’s action in a court of law.” [¶] Hence, under the validation statutes, the public agency may initiate a proceeding to establish the validity of its act. Alternatively, the agency may do nothing, in which case the act will become immune from attack if no interested person

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brings a proceeding to establish the act’s validity or invalidity within
60 days.

(*Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 29-30 (“*Kaatz*”), quoting in part, *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341.)

A Validation Action “shall be in the nature of a proceeding in rem.” (Code Civ. Proc., § 860.) Because a validation action operates against property, as distinct from an injunction that operates against persons or other traditional actions challenging a public agency decision, a judgment from a Validation Action has an effect that binds the agency and all other persons. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 843 (“*Friedland*”).)

The validation statutes do not specify the matters to which they apply; rather, validation procedures apply to any matter which under any *other* law is authorized to be determined pursuant to these procedures. (*Kaatz, supra*, 143 Cal.App.4th at p. 31.) While only a limited number and specified types of official public agency decisions are subject to Validation Actions, they can be *very significant* decisions, including:

- The validity of a city’s bonds, warrants, contracts, obligations or evidences of indebtedness (Gov. Code, § 53511);
- The validity of a change of organization, reorganization, or sphere of influence determination (such as a proposed annexation of territory) under the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 (Gov. Code, § 56103; *Hills for Everyone v. Local Agency Formation Commission of Orange County* (1980) 105 Cal.App.3d 461, 466);
- The validity of bond issuances or special taxes levied under the Mello-Roos Community Facilities Act of 1982 (Gov. Code, § 53359; *Building Industry Assn. of the Bay Area v. City of San Ramon* (2016) 4 Cal.App.5th 62, 67, 72);
- The validity of actions by a publicly owned utility adopting or increasing specified fees, adopting or changing the terms and conditions of access, or adopting or changing an automatic adjustment that results in an increase in the amount of specified fees (Pub. Util. Code, § 9518); and
- The validity of the creation of an enhanced infrastructure financing district, adoption of an infrastructure financing plan (including a division of taxes thereunder), or specified elections relating to an enhanced infrastructure financing district (Gov. Code, § 53398.57).

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Other types of official city decisions may be subject to Validation Actions, but only to the extent the Legislature designates them as such. In this regard, the legislative intent and policy purposes behind Validation Actions are straight-forward yet **highly critical** for those cities and city decisions to which the validation statutes apply:

A validation action implements important policy considerations. '[A] central theme in the validating procedures is **speedy determination** of the validity of the public agency's action.' [Citation.] 'The text of section 870 and cases which have interpreted the validation statutes have placed great importance on the need for **a single dispositive final judgment.**' [Citation.] The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to **settle promptly all questions about the validity of its action.**' [Citation.]

(*Friedland, supra*, 62 Cal.App.4th at p. 842 [emphasis added]; accord, *McLeod v. Vista Unified Sch. Dist.* (2008) 158 Cal.App.4th 1156, 1166.)

Most significantly, "The validation judgment is conclusive." (*Friedland, supra*, 62 Cal.App.4th at p. 844; citing Code Civ. Proc., § 870.) Until the Third District's decision from the above-referenced cases, "conclusive" meant **forever conclusive** in order to effectuate the clear public purpose of finality from a single dispositive judgment **even if the law changed**. As stated above, the Third District's decision puts that long-established legislative intent in substantial jeopardy.

**The Lower Appellate Court's Opinion Must Be Reviewed
Because It Undermines The Legislative Intent To Have Judgments In
Validation Actions Be Forever Conclusive Even If The Law Changes**

The League of California Cities is very concerned about the decision rendered by the Third District's decision from the above-referenced cases. If not vacated or reversed by this honorable Court upon review, then the flood gates are open.

Prior decisions that were or had to be validated through a Validation Action could—for the first time—be subject to a judicial challenge merely because a statute was added or amended. While the instant appeal addresses a duly validated redevelopment agreement evidencing a debt of a (now dissolved) redevelopment agency, the sweeping Opinion from the Third District threatens to undermine countless other public agency transactions, organizational decisions, and other types of official actions which the Legislature specifically intended to be free from possible recurring challenges as to their enduring validity.

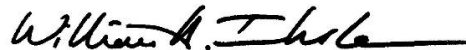
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The validation statutes are clear that the focus of the Legislature’s intent is to address the validity or invalidity of a public agency’s official decision. Every official decision is made at some point in time, and therefore its validity or invalidity likewise is made under the law at that time. If the Opinion from the Third District were to be followed, then public agency decisions that clearly were intended to be forever validated—such as a bond issuance for public infrastructure or an annexation of territory to a city—would be subject to new and recurring judicial challenges long after those decisions were made.

Therefore, The League of California Cities respectfully requests that this Court grant the Petition for Review filed by Petitioners City of Fontana and its Successor Agency.

Yours truly,

RUTAN & TUCKER, LLP



William H. Ihrke
Partner
For Amicus Curiae
League of California Cities

WHI:lr

PROOF OF SERVICE

City of Fontana, et al. v. Keely M. Bosler, et al.
Third District Court of Appeal Case Nos. C083058, C083081
Supreme Court Case No. S257169

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On September 3, 2019, I served on the interested parties in said action the within:

**AMICUS CURIAE LETTER OF LEAGUE OF CALIFORNIA
CITIES IN SUPPORT OF PETITION FOR REVIEW**

as stated below:

VIA TRUEFILING ELECTRONIC E-SERVICE SYSTEM:
Concurrent with transmission via the Internet of a true copy(s) of the above-entitled document(s) through the Court’s Mandatory Electronic Filing System via the TrueFiling Portal, I 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 September 3, 2019, at Costa Mesa, California.

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

William H. Ihrke

/s/William H. Ihrke

(Type or print name)

(Signature)

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as stated below:

(BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown in the attached service list.

In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, I deposited such envelope(s) in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelope(s) were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on September 3, 2019, at Costa Mesa, California.

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

Lauren E. Ramey

/s/Lauren E. Ramey

(Type or print name)

(Signature)

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