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April 23, 2012

Court of Appeal
Fourth Appellate District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101

Re: *San Diego Municipal Employees Association v. the Superior Court*
Court of Appeal Case No. D061724
San Diego Superior Court Case No. 37-2012-00092205-CU-MC-CTL

Dear Justices:

Real Party in Interest the City of San Diego ("City"), pursuant to this Court's request of April 12, 2012, provides this informal response to Petitioner San Diego Municipal Employees' Association's ("MEA") Petition for Writ of Mandate ("Petition.")

I.
INTRODUCTION

This matter involves a proposed amendment to the Charter of the City of San Diego, California ("Charter") entitled Comprehensive Pension Reform Initiative ("CPRI") scheduled for the June 5 ballot. Under the California Constitution, an amendment to the City Charter may be proposed for the ballot in one of only two ways: first, by the legislative body (here the City Council) proposing it for the ballot; and second, by voter initiative petition. In this case, the CPRI was ***not*** proposed by the City Council.

The CPRI was placed on the ballot by a voter initiative petition signed by at least 115,991 San Diego registered voters (3 Petitioner's Exhibits ("PE") 705.) These voters exercised their right of direct democracy guaranteed to them under the California Constitution.

Despite these 115,991 citizens "owning" the CPRI, MEA argues that the City had a legal duty under the Meyers-Milias-Brown Act ("MMBA") to first meet and confer with the MEA before placing the initiative of these 1155,991 citizens on the ballot. In making this argument, the MEA ignores clear constitutional law that holds that the City has no right to change a voter initiative or otherwise negotiate away its provisions.

Adopting MEA's argument as its own, the California Public Employment Relations Board ("PERB") filed a verified complaint in the San Diego Superior Court ("trial court") alleging that the City violated its obligation to meet and confer and requested that the Superior Court issue a temporary and ***permanent injunction*** preventing the City from placing the CPRI on the ballot as well as ***permanent injunctive relief and a writ of mandate commanding the City to meet and confer regarding the CPRI and all future citizens' initiatives*** before such measures are placed on the ballot ("Complaint"). In other words, MEA and PERB assert that the MMBA trumps the highest law of this State, the California Constitution. It does not.

Because MEA and PERB's arguments are fundamentally flawed, the trial court previously denied PERB's motion for a temporary restraining order, determining that this matter does not warrant pre-election review. MEA and PERB then decided to proceed administratively.

PERB has already decided its position in this case. PERB's board (currently composed of 3 individuals) and its General Counsel (appointed last year), in seeking a permanent injunction and writ of mandate, have already determined that a citizens' initiative placed on the ballot by a petition signed by nearly 116,000 registered voters loses its status as a citizens' initiative because of the mayor's support. Any administrative hearings would be a charade in light of the fact that PERB's board - not an administrative law judge - ultimately decides the administrative case as the appellate body.

Thus, the trial court correctly stayed all matters until a June 22, 2012 status conference which will occur after the results of the CPRI election are known. Therefore, the City requests that this Court deny MEA's Petition.

In addition, should the CPRI pass on June 5, the City will invite this Court to exercise its original jurisdiction over PERB and MEA's claims against the City. Beyond the arguments contained herein, the City asks this Court for an opportunity to provide a more detailed basis for this request if the voters approve the CPRI.

II.
BACKGROUND

On April 4, 2011, three private citizens sent to the Clerk of the City a Notice of Intent to Circulate a petition seeking to have placed on the ballot an initiative to change the City's pension benefits, the CPRI. (3 PE 674-686.)

The CPRI proposes to make changes to the City's retirement benefits for certain and future City employees, as well as define the terms the City must use when it begins labor negotiations with the City's recognized employee organizations. (*Id.*) To make these changes, the CPRI proposes to amend certain provisions of the City's Charter. (*Id.*)

In order for the CPRI to qualify for the ballot, the proponents needed to obtain verified signatures from at least 15% of the registered voters of the City. (Elections Code section 9255(b)(2).) On November 8, 2011, the San Diego County Registrar of Voters certified that the

petition had received a sufficient number of valid signatures for the CPRI to be presented to the voters. (3 PE 705.)

As a result, the City has a ministerial duty to place a qualified citizens' initiative to amend the City's Charter on the ballot. (Elections Code section 9255(b)(2).) "The law is clear: A local government is not empowered to refuse to place a duly certified initiative on the ballot." (*Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 149. In fact, "[t]he courts have uniformly condemned local governments when these legislative bodies have refused to place duly qualified initiatives on the ballot." (*Id.* at 148; citations omitted.)

On January 30, 2012, as required by the law, the City Council passed an ordinance to place the CPRI on the June 5, 2012 presidential primary election ballot. (3 PE 712-730.)

On January 31, 2012, MEA filed an unfair labor charge against the City with PERB. (1 PE 56 - 2 PE 290.) Based on MEA's unfair labor charge, on February 10, 2012, PERB's Office of the General Counsel issued a PERB complaint against the City alleging that the City had violated Gov. Code sections 3503, 3505, 3506 and California Code of Regulations section 32603(c). (2 PE 554-556.) PERB expediting the administrative proceedings pertaining to MEA's unfair practice charge. (3 PE 561)

Also on February 10, 2012, PERB, by and through its General Counsel, notified the City that the PERB Board had authorized the initiation of an action in the San Diego Superior Court seeking injunctive and writ relief against the City. (*Id.*)

Four days later, on February 14, 2012, PERB, filed its verified Complaint seeking temporary and permanent injunctive relief prohibiting the CPRI from being presented to the voters of the City of San Diego (1 PE 9:9-23) and a permanent injunction and peremptory writ of mandate ordering the City to comply with the City's alleged meet and confer obligations relating to the CPRI and any future initiatives. (1 PE 9:24 – 10:4.)

On February 21, 2012, the trial court, Judge Dato presiding, denied PERB's request for a temporary restraining order, ruling that the court proceedings should await the outcome of the June 5 election. (4 PE 839-855.)

PERB, nevertheless, continued with its expedited administrative hearing for April 2-5, 2012, on MEA's unfair labor charge against the City.

On March 27, 2012, following a March 23 hearing on the City's motion to stay the administrative hearing and after having taken the matter under submission, the trial court issued a Minute Order staying PERB's administrative hearing, quashing the subpoenas issued by PERB, and setting a status conference concerning the stay of proceedings for June 22, 2012. (8 PE 2257.)

III.
LEGAL ARGUMENT

A. Standard of Review

MEA, not PERB, petitions this Court for a writ overturning the trial court's decision to stay PERB's administrative hearing until after the election on June 5, 2012. However, MEA never addresses the proper standard of review this Court should employ in reviewing the trial court's decision to stay PERB's administrative proceedings. Instead of arguing how the trial court may have allegedly exceeded its authority in granting the City's request for a temporary stay of PERB's administrative proceeding, MEA argues its case-in-chief to this Court.

Regardless, this Court, in reviewing MEA's Petition, employs an abuse of discretion standard of review. (*Baines v. Moores* (2009) 172 Cal.App.4th 445, 480.) Abuse of discretion is a deferential standard of review. (*People v. Williams* (1998) 17 Cal.4th 148, 162.) Under this standard, a trial court's ruling "will be sustained on review unless it falls outside the bounds of reason." (*People v. DeSantis* (1992) 2 Cal.4th 1198, 1226.) This Court, therefore, could disagree with the trial court's conclusion, but if the trial court's conclusion was a reasonable exercise of its discretion, this Court is not free to substitute its discretion for that of the trial court.

As the City will show, the trial court's decision to stay the PERB administrative action, quash the subpoenas issued by PERB, and set a status conference concerning the stay of proceedings on June 22, 2012, was not an abuse of the trial court's discretion. (8 PE 2257.) Accordingly, this Court should deny MEA's Petition.

B. No Law Supports MEA's Unfair Labor Charge and PERB's Complaint

City charter amendments are a matter of statewide concern governed exclusively by state law. (*Jarvis Taxpayers Association v. City of San Diego* (2004) 120 Cal.App.4th 374, 387, citing *District Election Etc. Committee v. O'Connor* (1978) 78 Cal.App.3d 261, 266-67.) The California Constitution and Elections Code govern the charter amendment process. (*District Election Etc., supra,* 78 Cal.App.3d at 271.)

There are two distinct methods to propose amendments to the City's Charter and only two: (1) a proposal made through a citizens' initiative, or (2) a proposal by a vote of the City's governing body, the City Council. The California Constitution provides, "[t]he governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed ***by initiative or by the governing body***." (Cal. Const., art. XI, section 3(b); emphasis added.) There is no "third way" to propose a Charter amendment. Despite PERB and MEA's attempt to characterize a "City initiated" (not City Council initiated) Charter change, there is no such method recognized by the law. The CPRI is a citizens' initiative.

Consequently, the crux of PERB and MEA's argument is that the MMBA trumps the California Constitution as they seek to require the City to meet and confer regarding a proposed citizens' initiative prior to it being put on the ballot. This is simply not true. Rather, the

California Constitution, being the highest law of the State, trumps the MMBA. (See e.g. *People v. Ortiz* (1995) 32 Cal.App.4th 286, 291, "A statute does not trump the Constitution.")

Thus, it should come as no surprise that neither MEA nor PERB have been able to cite any statutory or decisional case law which supports their position that the MMBA requires the City to meet and confer with MEA before the City complies with its mandatory duty to place a qualified citizens' initiative on the ballot.

Rather, the only "legal authority" MEA and PERB have proffered, to support their assertion that the City is under a legal obligation to meet and confer with its labor unions over a proposed citizens' initiative, is *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach* (1984) 36 Cal. 3d 591. However, both PERB and MEA have misrepresented the holding in *Seal Beach.* For example, PERB has argued that the "Supreme Court ruled that local government must satisfy the 'meet and confer' requirements of the MMBA before proposing to the electorate a charter amendment that would impact a subject within the scope of representation." (See e.g. 5 PE 1337:26 – 1138:3.) The California Supreme Court did not so rule.

The Supreme Court, in *Seal Beach,* identified the only issue it was ruling upon as "whether the ***city council*** of a charter city must comply with the Meyers-Milias-Brown Act's (MMBA) 'meet-and-confer' requirement before ***it*** proposes an amendment to the city charter concerning terms and conditions of public employment. (citations.)" (*Id.* at 594, emphasis added.) Confirming the scope of the Court's review, the *Seal Beach* court explained, "The simple question posed by this case is whether the unchallenged constitutional power of a charter city's ***governing body*** to propose charter amendments may be used to circumvent the legislatively designed methods of accomplishing the goals of the MMBA." (*Id.* at 597; emphasis added.)

The *Seal Beach* case involved three charter amendments approved by voters that "had been put on the ballot by the city council pursuant to its constitutional power to propose charter amendments." (*Id.* at 594-95, citing Const. art. XI, section 3(b)). The Court concluded that the City Council was required to meet and confer before ***it proposes*** charter amendments which affect matters within the scope of bargaining. (*Id.* at 602; emphasis added.) The issue of a citizen's initiative petition seeking to amend a city charter and an alleged duty to meet and confer under the MMBA was never before the California Supreme Court in *Seal Beach.* In fact, in a footnote conveniently ignored by MEA and PERB, the California Supreme Court stated, "[n]eedless to say, this case does not involve the question whether the meet-and-confer requirement was intended to apply to charter amendments proposed by initiative." (*Id.* at 559, fn. 8.)

In the 28 years since its decision in *Seal Beach*, the California Supreme Court has never imposed MMBA meet and confer requirements on a citizens' initiative. Nor has any other appellate court. Indeed, Judge Dato, in denying PERB's motion for a temporary restraining order, recognized that "there is no case direct [sic] on point clearly establishing the invalidity of this initiative . . . ." (4 PE 845:11-14.) This is why, presumably, MEA, in its Petition to this Court, now argues the applicability of *Seal Beach* by ***analogy only***. (MEA's Petition for Writ of Mandate, pg. 6.)

But contrary to MEA's argument by analogy, a more recent decision of the California Supreme Court has explained that placing a voter-sponsored initiative measure on the ballot is "a ministerial act compelled by law." (*Friends of Sierra Madre* (2001) 25 Cal. 4th 165, 189.) A city council does not have discretion to modify or reject a duly qualified citizen initiative; rather, it has a "constitutional and statutory obligation to place a properly qualified voter-sponsored initiative on the ballot." (*Id.* at 190, fn. 16.)

In *Friends of Sierra Madre*, the Court examined an earlier decision of the Court of Appeal, which held that a charter amendment proposed by a citizens' initiative is not subject to environmental review under the California Environmental Quality Act ("CEQA") because it "involve[s] no discretionary activity directly undertaken by the City." (*Stein v. City of Santa Monica* (1980) 110 Cal. App. 3d 458, 460-462.) The *Stein* court explained that a proposal to amend a city charter by initiative is "an activity undertaken by the electorate and did not require the approval of the governing body. The acts of placing the issue on the ballot and certifying the result as a charter amendment qualifies as a nondiscretionary ministerial act not contemplated by CEQA." (*Id.* at 461.)

Just as there is no mandate on the part of the City to comply with the procedural requirements of CEQA when faced with the ministerial duty to place a duly qualified charter amendment by voter initiative on a city ballot, there is no duty to comply with the MMBA prior to placement of the CPRI on the ballot.

The CPRI is a voter-sponsored initiative petition, not a Charter amendment proposed by the City's Council. (See the declaration of Mayor Jerry Sanders, 3 PE 631-32, ¶¶ 2-3; the declaration of Council President Pro Tem Kevin Faulconer, 3 PE 633-34, ¶¶ 1-3; declaration of Council President Anthony Young, 3 PE 635, ¶¶ 1-2; declaration of Councilmember Carl DeMaio, 3 PE 637, ¶¶ 1-2; declaration of Councilmember Lorie Zapf, 3 PE 639, ¶¶ 1-2.)

The Constitution protects the authority of citizens to amend a city charter by initiative. (*See* Cal. Const. art. I, section 3(a), people have the right to petition government for redress; *Id.* at art. II, section 1, "All political power is inherent in the people . . . they have the right to alter or reform it when the public good may require.") "The initiative and referendum are not rights 'granted the people, but . . . power[s] reserved by them." (*MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal. App. 4th 1372, 1381, quoting *Rossi v. Brown* (1995) 9 Cal. 4th 688, 695.) These reserved powers are "one of the most precious rights of our democratic process." (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 135, quoting *Associated Home Builders, Etc., Inc. v. City of Livermore* (1976) 18 Cal.3d.582, 591.)

Because this power is constitutionally vested in the people, courts are suspicious of any restrictions placed on it. "[I]t has long been our judicial policy to apply a liberal construction to [initiative] power whenever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (*Voters for Responsible Retirement v. Board of Supervisors of Trinity County* (1994) 8 Cal.4th 765, 776-77, quoting *Associated Home Builders, Etc., Inc., supra,* 18 Cal.3d.at 591.) Thus, if a citizens' initiative petition to amend the Charter qualifies for the ballot, there is no legal basis for the Council to modify the proposed language. (*See Save Stanislaus Area Farm

Economy v. Board of Supervisors (1993) 13 Cal. App. 4th 141, 149, "The law is clear: A local government is not empowered to refuse to place a duly certified initiative on the ballot.")

PERB, through its administrative process, cannot adjudicate or otherwise resolve the competing ministerial duties as claimed by the parties herein. That is a legal issue solely for the trial court and/or this Court. Based on PERB's adversarial role against the City and PERB's foregone conclusion that the City has a duty to meet and confer, the City faced a very real threat, in the absence of a stay of the administrative proceedings, that PERB would have continued to ignore the prevailing constitutional, statutory and case law regarding citizens' initiatives.

C. The Trial Court Had the Authority to Stay the PERB Proceedings

"[A] trial court has inherent power, independent of statute, to exercise its discretion and control over all proceedings relating to litigation before it." (*Johnson v. Banducci* (1963) 212 Cal.App.2d 254, 260. See also *Sole Energy Co. v. Petrominerals Corporation* (2005) 128 Cal.App.4th 187, 193, citing Code Civ. Proc. sections 128(a) and 187, a trial court has the inherent authority to manage and control the matters on its docket. *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, "A court has inherent equity, supervisory and administrative powers, as well as inherent power to control litigation and conserve judicial resources.")

This power includes the authority to stay pending cases, for a variety of reasons. As the California Supreme Court has stated, "trial courts have inherent authority to stay . . . suits, holding them in abeyance pending resolution of the underlying litigation." (*Adams v. Paul* (1995) 11 Cal.4th 583, 593.) The California Supreme Court, a few years later, again confirmed the sweeping breadth of a court's inherent powers:

> It is also well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. In addition to their inherent equitable power derived from the historic power of equity courts, all courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority. It is beyond dispute that Courts have inherent power . . . to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council. ***That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation*** . . . in order to insure the orderly administration of justice. Courts are not powerless to formulate rules of procedure where justice demands it. The Legislature has also recognized the authority of courts to manage their proceedings and to adopt suitable methods of practice.

(*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967, internal citations and quotations omitted; emphasis added. See also *People v. Picklesimer* (2010) 48 Cal.4th 330, 338, "Where jurisdiction exists from other sources, Code of Civil Procedure section 187 grants courts authority to exercise any of their various powers as may be necessary to carry out that jurisdiction.")

Following the trial court staying of the administrative hearing, PERB Administrative Law Judge Ginoza did not contest the trial court's authority. Rather, Judge Ginoza issued an independent order placing the PERB case in abeyance as a result of the stay imposed by the trial court. (12 PE 3231-3233.)

Neither PERB nor MEA have argued that the trial court was without authority to stay PERB's administrative hearing. Thus, it is unquestionable that the trial court had the legal power to stay PERB's expedited administrative hearings.

D. PERB and MEA Provided No Valid Reason Why the Administrative Action Needed to Proceed Before the Election

The trial court's order staying the proceedings does not stay the action indefinitely, as MEA argues. The trial court, in the same order in which it stayed PERB's administrative action, also set a status conference "concerning the Stay of Proceedings on June 22, 2012." (8 PE 2257.) Thus, the trial court's order effectively stays the administrative proceeding for a little over two months.

The two month stay does not prejudice MEA or PERB. This is especially true in light of the fact that neither MEA nor PERB have ever provided the trial court with any valid reason why the PERB administrative proceeding needs to take place ahead of the June 5 CPRI election.

In hearing the City's motion to stay PERB's administrative hearing, the trial court found Judge Dato's prior decision denying PERB's request for a temporary restraining order a month earlier to be "in the spirit of a safe harbor period before elections . . . the Initiative will go before the voters, the voters will vote, and then the noise will tamp down from both sides, for all sides until there's an election and then we can take a look at it, because the standard by which you keep things off the ballot is extremely high."[1] (8 PE 2230:13-20.)

Despite Judge Dato's ruling, at the hearing on the motion to stay, the trial court specifically inquired of PERB why PERB needed to conduct the administrative hearing on an expedited basis and in advance of the June 5 election. The trial court first asked, "why was there an expedited order for hearing?" (8 PE 2221:26-27.) The attorney for PERB responded, "Your Honor, I'm not privy to the Board's determination as to its order." (4 PE 971:17-21; 8 PE 2221:28 – 2222:1.)

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[1] On February 21, 2012, the parties appeared before Judge Dato on PERB's request for a temporary restraining order. (1 PE 22.) Judge Dato denied that request. Judge Dato found the general rules regarding pre-election challenges to initiative matters to be set forth in *Independent Energy Producers Association v. McPherson* (2006) 38 Cal.4th 1020. (4 PE 843:14-20.) Based on the decision of the California Supreme Court in that case, Judge Dato found post-election review of the CPRI to be proper. (4 PE 845:3-6.) Judge Dato found that PERB supported this conclusion when it cited *Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, which held that the Court should only interfere with a pre-election review of a citizens' initiative if the invalidity of the initiative is clear beyond a doubt. (4 PE 845:6-10.)

The trial court next inquired why the administrative hearing needed to proceed before the election. To this inquiry, PERB simply replied that perhaps a record of the factual and legal issues made during the administrative hearing could assist the trial court in this matter. (8 PE 2223:8-14.) MEA mimicked PERB's rationale for holding the administrative hearing before the election. (8 PE 2229:15-20.)

Notably, neither PERB nor MEA provided any argument or authority that a stay of the administrative proceedings until after the CPRI election would result in any prejudice to either PERB's jurisdiction or MEA's ability to have their PERB complaint heard by a PERB administrative law judge. To the contrary, PERB noted that in a prior PERB administrative matter, "a hearing was conducted and that particular judge decided not to release his findings prior to an election, but held it, waited for the election to occur, and once the election was over, then released his findings." (8 PE 2223:25 – 2224:2.)

Moreover, PERB's own allegations in their Complaint reveal that PERB itself believes its own administrative action is unnecessary. In their verified Complaint, PERB, in support of its request that the trial court grant permanent injunctive relief and issue a peremptory writ of mandate, alleges,"[t]here is no other plain, speedy, or adequate relief or remedy at law available to PERB or the MEA, other than the relief sought in this Petition." (1 PE 7:28 – 8:1.) Thus, PERB concedes its own administrative proceedings will not provide it with the relief it seeks, thus, making those proceedings unnecessary.

More than that, PERB admits that the only harm that may befall MEA and its members will occur only *if* the CPRI passes. This is because all of PERB's alleged harm relates to Charter amendments proposed in the CPRI. Specifically, PERB alleges in its verified Complaint, "An Administrative Complaint has issued . . . . PERB will set a formal hearing before an administrative law judge (ALJ) on the Administrative Complaint shortly thereafter. However, any proposed decision of the ALJ will be subject to an appeal to the Board itself, followed by possible judicial review by the Court of Appeal and the California Supreme Court – a process that, in the best of circumstances, can take a year or more to complete; thus, no final, enforceable order of the Board can issue before the June 5, 2012 election. In these circumstances, ***the Board will not be able to meaningfully aid those new employees who in the meantime have been excluded from the City's existing Defined Benefit Plan and forced into a Defined Contribution Plan, or those current employees who in the meantime have been forced to pay higher employee contributions to the Deferred Benefit Plan, or those who have retired with diminished benefits, or those City employees whose wages have been frozen as a result of the Initiative***." (*Id.* at 2-14; emphasis added.) Accordingly, if the CPRI does not pass, the harm PERB alleges will not come to pass. Therefore, awaiting the outcome of the election on the CPRI seems eminently reasonable.

As PERB and MEA provided no valid reason why PERB's administrative hearing must or should proceed before the CPRI election, the trial court was well within its discretion to stay the PERB hearing. Therefore, the trial court did not abuse its discretion when it temporarily stayed this action to await the results of the election on the CPRI.

E. The City Invites This Court to Exercise its Original Jurisdiction to Speedily Resolve the Basic Legal Issue in this Case

Courts of Appeal "have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." (Cal. Const., art. VI, section 10; Cal. Rules of Court, Rule 8.486.) The issues presented in PERB's Petition for Writ of Mandate meet the requirements for this Court to hear the matter in the first instance.

Specifically, PERB's Petition is not limited to just the CPRI. PERB has requested a permanent injunction and writ of mandate compelling the City, and presumably all other municipalities and governments, to meet and confer prior to placing a qualified citizens' initiative on any ballot. (1 PE 9:24-10:4.)

Additionally, the issues raised in PERB's Petition are of statewide concern. As MEA acknowledges, "[e]ven if the ballot initiative fails, the issues raised in MEA's UPC will *not* become moot because, as pension reform efforts dominate the political landscape in California, the legality of the City's refusal to meet and confer under the MMBA will remain a matter of grave importance for MEA-represented employees as well as public employers and employees around the state . . . ." (MEA's Petition for Writ of Mandate, pg. 39; italics in original.)

Nor does the decision in this matter depend on the resolution of disputed facts. As PERB acknowledges, "the factual issues, actually, in some respects are not in dispute." (8 PE 2223:10-11.)

Rather, the resolution of this matter relies on a first impression question of law. As Judge Dato noted, "[t]here's no case that has addressed an initiative under circumstances remotely similar to what we have here, and has said that under those circumstances there's an obligation to meet and confer in advance." (4 PE 848:1-4.)

Holding a hearing before a PERB administrative law judge, appealing that decision to the PERB Board, and then appealing that decision to this Court and potentially the California Supreme Court involves, as PERB contends, a lengthy and time consuming process. (1 PE 8:5-9.) That lengthy process leaves all citizens and governmental entities of this State in legal limbo and subjects other governmental entities to future lawsuits by PERB with regard to future citizens' initiatives.

With regard to the City and the CPRI specifically, as noted by PERB, the lack of a speedy and definite resolution will hamper the City's ability to determine whether new employees are eligible for a defined contribution or defined benefit plan. (1 PE 9-14.) It also will leave new City employees in limbo regarding which retirement benefits they are entitled to, as well as the amount of their take home compensation due to the uncertainty regarding employee retirement contributions. (*Id.*)

Lastly, any final decision of the trial court is appealable to this Court. If the PERB administrative law judge renders a decision, an aggrieved party can appeal to the PERB Board itself, a lengthy process, and the PERB Board's decision is appealable directly to this Court.

(Gov. Code section 3509.5(b).) Thus, ultimately, the basic legal issue of this case will likely end up before this Court.

Given the need for prompt adjudication of these issues of important public interest, as well as local and statewide impact, the exercise of this appellate court's, rather than a trial court's, power to issue a writ of mandamus is appropriate. (See, e.g., *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d. 245, 264-65.) Therefore, if the CPRI passes, the City urges this Court to exercise its original jurisdiction to decide the first impression legal issue raised in PERB's Complaint. Only if this Court exercises its original jurisdiction will PERB and the City, directly, and the citizens of this State and all other municipalities and governments of this State, indirectly, have a speedy resolution of the allegations leveled by MEA and PERB against the City.

IV.
CONCLUSION

The CPRI is a citizens' initiative. It qualified for inclusion on the June 5, 2012 when the County Registrar of Voters determined that at least 115, 991 registered voters of the City signed the petition. Upon that determination, the City had a ministerial duty to place the citizens' initiative on the ballot exactly as proposed by the citizens themselves.

With regard to the timing of both the trial court and PERB's administrative hearing on PERB and MEA's charges against the City, the trial court correctly ruled that such determination should proceed post-election. This is because the only harm PERB has alleged is based on the CPRI passing. In fact, neither PERB nor MEA provided the trial court or this Court with any evidence that either PERB or MEA will be prejudiced by a little over two month delay of PERB's administrative proceedings.

Accordingly, the trial court did not abuse its discretion in temporarily staying PERB's administrative hearing and quashing the subpoenas issued by MEA. This Court should, thus, deny MEA's Petition. In addition, if the CPRI passes on June 5, this Court should exercise its original jurisdiction over this matter and decide the sole legal issue raised by PERB's Complaint, does the citizens' power of direct democracy reserved to them by the California Constitution prevail over the meet and confer provisions contained in the MMBA, as the city contends, or does the MMBA's meet and confer requirements prevail over the Constitution's reserved powers, as MEA and PERB contend.

Sincerely yours,

JAN I. GOLDSMITH, City Attorney

By

Walter C. Chung
Deputy City Attorney

WCC:wcc

COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

PROOF OF SERVICE

San Diego Municipal Employees' Association v. Superior Court of the State of California, County of San Diego

4th Civil No. D061724
SDSC Case No. 37-2012-00092205-CU-MC-CTL

I, Ginger Botha, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California, where the mailing occurs; and, my business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

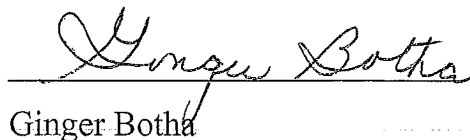
I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I served the foregoing **INFORMAL RESPONSE TO MEA'S PETITION FOR WRIT OF MANDATE**, on **April 23, 2012**, by sealing each envelope and placing it with for collection and mailing with the United States Postal Service, on this same day, at my business address shown above, following ordinary business practices, addressed to:

M. Suzanne Murphy, General Counsel Wendi L. Ross, Deputy General Counsel Yaron Partovi, Regional Attorney Public Employment Relations Board 1031 18th Street Sacramento, CA 95811-4174 Tel: (916) 322-3198 Fax: (916) 327-6377 Email: SMurphy@perb.ca.gov *Attorneys for Plaintiff/Real Party in Interest, State of California, Public Employment Relations Board*	Fern M. Steiner, Esq. Tosdal, Smith, Steiner & Wax 401 West 'A' Street, Suite 320 San Diego, CA 92101 Tel: (619) 239-7200 Fax: (619) 239-6048 Email: fsteiner@tosdalsmith.com *Attorney for Petitioner, San Diego Municipal Employees' Association*

Honorable Luis R. Vargas
San Diego County Superior Court
330 West Broadway, Dept. C-63
San Diego, CA 92101
Tel: (619) 450-7063

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct. Executed on April 23, 2012, in San Diego, California.



Ginger Botha