Case No. S286264 No Fee (Gov. Code, § 6103)

IN THE SUPREME COURT OF CALIFORNIA

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES and BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES,

Defendants and Respondents.

After a Decision by the Court of Appeal,
Second Appellate District, Division Seven
Case No. B326977

OPENING BRIEF ON THE MERITS

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OPENING BRIEF ON THE MERITS

STATEMENT OF THE ISSUES

1. Does the "plenary authority and fiduciary responsibility for investment of moneys and administration of the system" granted to retirement boards by article XVI, section 17 of the California Constitution include the exclusive power to establish civil service classifications and set salary ranges for retirement system personnel who are statutorily designated as county employees (as the Court of Appeal held here), or is such authority "limited to the investments, payments to beneficiaries, and similar services" of retirement systems (*Westly v. California Public Employees' Retirement System Bd. of Administration* (2003) 105 Cal.App.4th 1095, 1110 & 1113, fn. 14)?

2. The County Employees Retirement Law of 1937 ("CERL")[1] gives county retirement boards the power to appoint personnel "as are required to accomplish the necessary work of the boards." However, such appointments "shall be made from eligible lists created in accordance with the civil service or merit system rules of the county"; and such "personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or

[1] CERL is codified at Government Code section 31450 *et seq*. All further statutory references are to the Government Code unless otherwise noted.

resolution adopted by the board of supervisors for the compensation of county officers and employees." (§ 31522.1.)

Did the Court of Appeal correctly hold that despite this express language, CERL imposes a ministerial duty on a county board of supervisors to amend the county salary ordinance or resolution to rubber stamp the civil service classifications and salary ranges adopted by a retirement board for retirement system appointees who are statutorily designated as "county employees"?

3. Do article XVI, section 17 of the California Constitution and CERL override a county board of supervisors' constitutional authority to establish civil service classifications, set salaries, and maintain a civil service system for county employees under article XI of the Constitution?

INTRODUCTION

In 1992, California voters approved giving more authority to public retirement boards over the administration and investment of pension assets in response to efforts by the Legislature and the Governor to balance the state budget by interfering with retirement boards' authority over employer contributions, cost-of-living reserve funds, and the actuarial function. (Cal. Const., art. XVI, § 17, amended by initiative, Gen. Elec. (Nov. 3, 1992), the California Pension Protection Act of 1992, commonly known as Proposition 162.) In the ensuing 32 years, retirement systems have repeatedly sought to expand that authority beyond the voters' intent at the expense of various longstanding constitutional and statutory guardrails. Courts have consistently rejected such efforts by retirement boards to overstep their authority and usurp other governmental agencies' express constitutional duties.

The decision below, however, represents a stark departure from this trend and directly conflicts with the Third District's interpretation of Proposition 162 in *Westly*, *supra*, 105 Cal.App.4th 1095, where the court held that a retirement board's "plenary authority" does "not include the exclusive and unfettered authority over payments made to and on behalf of" retirement system personnel. (105 Cal.App.4th at p. 1113.) What's more, the Second District's overbroad construction of Proposition 162 caused it to contort CERL in a manner that renders numerous provisions meaningless and displaces counties' constitutional authority to establish civil service classifications and salary ranges for county employees. Reversal of the Court of Appeal's decision is warranted on several grounds.

First, the Court of Appeal's overbroad reading of Proposition 162's general language regarding a retirement board's plenary authority and fiduciary responsibility for the "investment of moneys and administration of the system" (Cal. Const., art. XVI, § 17) departs from established principles of constitutional and statutory interpretation. The decision below not only fails to effectuate the voters' intent as evidenced by Proposition 162's plain language and history but also fails to harmonize that law with the longstanding legislative power to establish civil service classifications and compensation for state, county, and charter city employees. This misguided conclusion not only undermines a long line of cases restraining retirement systems' efforts to accrete more unbridled power to themselves (including *Westly*), it also calls into question a host of statutes meant to protect pension funds and the public fisc.

Second, relying on its incorrect interpretation of Proposition 162, the Court of Appeal's decision construes CERL to impose a ministerial duty on a county board of supervisors to rubberstamp the classifications and salary ranges adopted by a retirement board for retirement system personnel. But this is directly at odds with CERL's text, structure, and history, which shows that the Legislature intended retirement system personnel be "county employees" subject to a board of supervisors' classification and salary-setting authority. It also renders superfluous CERL's express provisions allowing certain retirement systems to decide classification and compensation issues.

And lastly, the Court of Appeal's overbroad interpretation of retirement systems' authority under Proposition 162 is directly at odds with the home rule principles embodied in article XI. By resolving this conflict in favor of retirement systems, the decision below erroneously elevated the general language regarding retirement system authority—which contains no mention of salary-setting—over specific constitutional language vesting counties and charter cities with the final say over employee compensation.

The Court of Appeal's decision carries significant implications for state and local retirement plan sponsors and threatens to upend carefully calibrated state and local civil service and merit selection systems. This Court should reverse.

STATEMENT OF THE CASE

A. The County of Los Angeles' constitutional, charter, and statutory authority over civil service classifications and salary ranges.

The California Constitution directs the governing body of each county to "'provide for the number, compensation, tenure, and appointment of employees.'" (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285, quoting Cal. Const., art. XI, § 1(b).) Counties may "adopt a charter" whose provisions "are the law of the State and have the force and effect of legislative enactments" and "supersede … all laws inconsistent therewith."

(Cal. Const., art. XI, § 3(a).) County charters must include provisions to fix and regulate, by ordinance, the appointment and number of employees and to prescribe and regulate their powers, duties, qualifications, and compensation. (*Id.*, art. XI, § 4(f).) "[C]harter counties have at minimum those 'powers' provided by the Legislature, pursuant to section 1(b), to noncharter (i.e., 'general law') counties." (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1207, citing Cal. Const., art. XI, § 4(h).)

Government Code section 25300 reinforces this authority, directing "board[s] of supervisors" to "provide for the number, compensation, tenure, appointment, and conditions of employment of county employees…." (§ 25300; see also *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1184.)

The Los Angeles County Charter states that the Board of Supervisors shall "provide, by ordinance, for the number of assistants, deputies, clerks, attaches and other persons to be employed from time to time in the several offices and institutions of the County, and for their compensation and times at which they shall be appointed." (3RA394 [art. III, § 11(3)].) The Charter also assigns all County employment positions into one of two categories—the "unclassified" and the "classified service." (3RA399 [art. IX, § 33].) "As required by the Charter, the County has a formal civil service system (detailed in Civil Service Rules adopted by the Board of Supervisors and found in the Los Angeles County Code) for filling classified positions and fixing the salary and benefits of classified employees[.]" (*Holmgren v.*

County of Los Angeles (2008) 159 Cal.App.4th 593, 602; see also 3RA397 [Charter, art. IX, § 30]; 3RA402-403 [Charter art. IX, §§ 35-36.)

Pursuant to this directive, the Board of Supervisors has "prescribe[d] and adopt[ed]" a set of civil service rules "for the purpose of carrying out Charter provisions, of assuring the continuance of the merit system, of promoting efficiency in the dispatch of public business, and of assuring all employees in the classified service of fair and important treatment at all times…." (4RA486 [rule 1.02].)

Under the County's civil service rules, the County's Chief Executive Officer ("CEO") is responsible for "classify[ing] all positions in the classified and unclassified service of the County, maintain[ing] a schematic list of all classes in the classification plan, and prepar[ing] and maintain[ing] specifications for each class." (4RA496 [rule 5.01(A)].) Additionally, the County CEO has issued policies regarding classification and compensation emphasizing the civil service principle of "equal pay for equal work." (5AA1007; 10RA1024.)

B. The County's creation of LACERA and CERL's appointment provisions.

"Although a number of different pension plans cover public employees in California, governed by a variety of statutes, local regulations, and agreements, the plans tend to operate in a similar manner." (*Cal Fire Local 2881 v. CalPERS* (2019) 6 Cal.5th 965, 971.) "[F]ixed retirement benefits are funded from three sources: employer contributions, employee contributions, and investment earnings and appreciation on the system's trust fund." (*Imperial County Sheriff's Assn. v. County of Imperial* (2023) 87 Cal.App.5th 898, 903.)

Twenty of California's 58 counties—including Los Angeles—"have chosen to implement their pension plans under CERL." (*Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032, 1055 ("*ACDSA*"); *Los Angeles County Employees Retirement Assn. v. County of Los Angeles* (2024) 102 Cal.App.5th 1167, 1186, fn. 3 ("*LACERA*").) In 1937, the County adopted CERL and made it applicable to "the system and schedules of compensation of all officers and other persons employed by the county whose compensation is fixed by the board of supervisors of the county and whose compensation is paid by the county…." (L.A. County Code § 5.20.010; *Holmgren*, *supra*, 159 Cal.App.4th at p. 603 & fn. 8.)

Ten years later, the County established the Los Angeles County Employees Retirement Association ("LACERA"). (*LACERA*, *supra*, 102 Cal.App.5th at p. 1186.) LACERA is governed by its Boards of Retirement and Investment (the "LACERA Boards"). (See §§ 31520, 31520.2.) Approximately 97 percent of LACERA members are County employees or retirees. (6AA1212.) In fiscal years 2018-19, 2019-20, and 2020-21, the County contributed $1.636 billion, $1.767 billion, and $1.971 billion (respectively) to LACERA. (9AA1624.) Those numbers increased to $2.150 billion and $2.243 billion in fiscal years 2021-22 and 2022-23.[2]

In the 1970s, the Legislature added provisions to CERL giving retirement boards a "degree of autonomy" (70 Ops.Cal.Atty.Gen. 277 (1987)) regarding appointment and budgeting, while specifying that personnel appointed by retirement boards "shall be made from eligible lists created in accordance with the civil service or merit system rules of the county," "shall be county employees," "shall be subject to the county civil service or merit system rules," and "shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees." (See §§ 31522.1, 31580.2.)

C. Article XVI, section 17, and Proposition 162.

"The relevant portions of [article XVI,] section 17 reached their current form through two ballot initiatives." (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1202.) "The first, Proposition 21, passed in 1984 in an apparent response to the emerging financial markets of the 1980's" and "introduced the principle that 'assets of a public pension or retirement system are trust funds' that 'shall be held for exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and

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[2] (See https://ttc.lacounty.gov/wp-content/uploads/2024/06/2024-25-TRANS_Official-Statement.pdf, at p. A-5.)

defraying reasonable expenses of administering the system.'"
(*Ibid.*)

The second, Proposition 162, was passed in 1992 against a "backdrop" involving "actions by the Governor and Legislature to balance the state budget by limiting or delaying the state's employer contributions to CalPERS." (*Westly*, *supra*, 105 Cal.App.4th at p. 1100.) Among other things, these actions included:

- barring the State from making a contribution for a portion of 1982 and requiring the shortfall to be made up from CalPERS' reserve against deficiencies;
- changing the State's employer contributions from monthly, to quarterly, to semiannually, to "'semiannually, six months in arrears,'" to "'annually, 12 months in arrears'";
- repealing statutes providing cost of living benefits to retirees and requiring that such reserve funds instead be used to meet the State's employer contribution requirement; and
- "transferring the actuarial function to the Governor."

(*Ibid.*; *Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 657-659.)

These actions were largely upheld in March 1992. (*Claypool*, *supra*, 4 Cal.App.4th at pp. 657-658, 674-678.) Eight months later, the voters enacted Proposition 162 "in an apparent response to fears that the Legislature was raiding pension funds to balance their budget." (*O'Neal*, *supra*, 8 Cal.App.5th at p. 1203.) To effectuate that purpose, "Proposition 162 moved control of pension funds and actuarial services from the Legislature to pension systems" (*ibid.*), giving retirement boards "plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to" eight subdivisions (a) through (h). (Cal. Const., art. XVI, § 17.)

D. The County removes LACERA classifications from county bargaining units based on legal opinion relying on Proposition 162.

In 1996, LACERA obtained a legal opinion concluding that LACERA's Boards—as opposed to the Board of Supervisors—have the authority to establish classifications and set salaries for the personnel they appoint. (See 9AA1615-1616.) The opinion relied on the plenary authority granted to the LACERA Boards under Proposition 162. (9AA1615-1616; 1AA148, 152-153.) At the time, the County's counsel agreed with this assessment, prompting the County to remove LACERA classifications from County bargaining units. (9AA1635.)

While LACERA classifications are no longer included in County bargaining units, the County still retains authority over them as County employees. LACERA personnel remain subject to the County Code and civil service rules, and the memoranda of understanding ("MOUs") that LACERA negotiates reflect as much in their provisions. (6AA1288-1292.) The salaries that LACERA negotiates must fall within ranges fixed by the Board of Supervisors and cannot be paid until the MOUs have received approval from the Board of Supervisors. (6AA1285-1286, 1293-1294; 15RA1530 [§ 7.3]; L.A. County Code § 6.28.140.) LACERA's fringe benefits are also tied to the fringe benefits negotiated for employees in County bargaining units. (6AA1298.) And the County occasionally participates in LACERA's MOU negotiations to provide interpretative guidance on County ordinances or information about its own negotiations. (6AA1088-1091, 1094-1095, 1103, 1200-1201, 1269-1271.)

E. The Third District defines the bounds of retirement boards' "plenary authority" in *Westly*.

In 2003, the Third District Court of Appeal issued a landmark decision establishing the boundaries of retirement systems' "plenary authority" after Proposition 162. (See *Westly*, *supra*, 105 Cal.App.4th 1095.) In *Westly*, the CalPERS Board of Administration engaged in a series of actions that conflicted with the constitutional and statutory authority of the State Controller and Department of Personnel Administration. (See *id.* at pp. 1113-1114.) These actions included: exempting certain CalPERS employees from civil service; classifying and setting salaries for its employees (including portfolio managers); issuing its own warrants for the pay of its portfolio managers; increasing Board member compensation; and developing its own payroll system. (*Id.* at pp. 1102-1103, 1105.) The CalPERS Board claimed that its plenary authority "include[d] the exclusive power to set the salaries of its employees" and "determine their civil service status." (*Id.* at p. 1109.)

The Third District "disagree[d]" after an exhaustive review of Proposition 162's ballot materials, explaining that "with regard to administration of the system, the [CalPERS] Board's authority is limited to actuarial services and to the protection and delivery of the assets, benefits, and services for which the Board has a fiduciary responsibility," but not the "renumeration of the Board or its employees." (*Westly*, *supra*, 105 Cal.App.4th at pp. 1109-1110; see also *id.* at p. 1113, fn. 14.)

F. LACERA's classification and compensation requests.

In the years following *Westly*, the County and LACERA were able to amicably resolve any differences regarding classification and compensation. (9AA1624-1625, 1635-1636.) However, in 2017, the County CEO opposed several new classifications and pay range revisions adopted by the LACERA Boards that were out of step with comparable positions within the County and at other retirement systems. (9AA1635-1636; 10RA995-1001; see also 5AA1003-1004.) In 2018, the Board of Supervisors adopted an ordinance incorporating the County CEO's recommendations over LACERA's objections. (9AA1625.)

In 2021, the LACERA Boards again approved new classifications and pay ranges for appointees, including some that had already been considered (but not approved) by the Board of Supervisors in 2018. (9AA1625.) The County CEO recommended approving certain classification requests that her office could not recommend in 2018, including creation of the Deputy Chief Investment Officer position. (9AA1625-1626.) However, the County CEO recommended denying one classification request and several salary increases that were not consistent with comparable positions in the County and at other retirement systems. (9AA1625-1626; 4AA786-788; see also 5AA1007, 1009-1013.)

In October 2021, the Board of Supervisors adopted an ordinance incorporating the County CEO's recommendations. (9AA1604, 1621.) All told, the Board:

- created two new classifications (Deputy Chief Investment Officer and Information Technology Manager II);
- approved re-titling two existing classifications (Chief, Information Technology and Information Security Officer);
- denied just one of LACERA's requested classifications (Principal Staff Counsel);
- granted a smaller salary increase than requested for two positions (Chief Information Technology Officer, LR14 instead of LS17, and Information Technology Manager II, LS12 instead of LS13);
- denied salary increases for seven existing classifications (Chief Counsel, Information Security Officer, Chief Financial Officer, Assistant Chief Financial Officer, Director of Human Resources, Assistant Director of Human Resources, Chief of Internal Audit); and
- added 38 positions for various classifications.

(4AA785-788, 792-795, 803, 806, 813.)

Shortly thereafter, LACERA brought this action to compel the Board of Supervisors to amend its salary ordinance to add LACERA's classification and salary requests that it did not approve. (*LACERA*, *supra*, 102 Cal.App.5th at pp. 1196-1197.) LACERA asserted that the Board of Supervisors had a "ministerial duty" (Code Civ., Proc. § 1085) under Proposition 162 and CERL to approve LACERA's requested classifications and salary ranges. (*Ibid*.)

G. The Superior Court rejects LACERA's reading of CERL.

In December 2022, the Superior Court denied LACERA's petition. (9AA1602-1651.) Explaining that "[t]he *Westly* court's interpretation of Section 17 and its legislative history applies equally to the LACERA boards' authority," the court concluded that the Constitution's grant of "plenary authority" "does not authorize the [LACERA] boards to set classifications or salaries for LACERA's personnel." (9AA1634-1635.)

Turning to CERL, the Superior Court held that "the proper construction of section 31522.1 permits LACERA to make recommendations to the Board of Supervisors for job classification and employee compensation, but the Board of Supervisors does not have a ministerial duty to rubber stamp those requests in a salary ordinance." (9AA1639.) The court explained that "the language of section 31522.1 and relevant constitutional and CERL provisions make clear that LACERA's appointment power remains subject to the Board of Supervisors' constitutional and statutory authority to establish classifications and fix compensation." (*Ibid.*)

H. The Court of Appeal reverses after embracing LACERA's broad reading of Proposition 162 and CERL.

On June 24, 2024, the Court of Appeal reversed, explaining that "[u]nlike the trial court, we are not bound by the court's decision in *Westly*. Which is a good thing, because we conclude that decision is inconsistent with the language, purpose, and intent of Proposition 162." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1184; see also *id.* at pp. 1182-1184, 1200, 1229.) The court acknowledged that CERL was ambiguous as to whether the Board of Supervisors or LACERA's Boards have final authority over civil service classifications and salary-setting. (*Id.* at pp. 1218-1219.) But in order to "fulfill the purpose and intent of Proposition 162," the court construed section 31522.1 as imposing a ministerial duty on the Board of Supervisors "to include in the County eligibility list and salary ordinance the employment classifications and salaries adopted by the LACERA Boards." (*Id.* at pp. 1217-1218, 1228.)

On October 16, 2024, this Court granted review.

STANDARD OF REVIEW

A writ of mandate under Code of Civil Procedure section 1085 "will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner," but "a court may order a local legislative body to perform a nondiscretionary ministerial act." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442, 445.) "'The critical question in determining if an act required by law is ministerial in character is whether it involves the exercise of judgment and discretion.'" (*Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 344.)

On review of denial of a petition for writ of mandate, the trial court's factual determinations are reviewed for substantial evidence and its legal interpretations are subject to de novo review. (See *Prof. Engineers in Cal. Gov. v. Kempton* (2007) 40 Cal.4th 1016, 1032.)

LEGAL ARGUMENT

I. Proposition 162 Does Not Give Retirement Boards Carte Blanche to Establish Classifications and Set Salaries for Their State, County, and Charter City Employees.

In interpreting the meaning of an initiative, the "primary task is to ascertain the intent of the electorate so as to effectuate that intent." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 978-979.) Courts "look first to the words of the initiative measure, as they generally provide the most reliable indicator of the voters' intent." (*Id.* at p. 979.) But the words of a statute or constitutional provision "must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*People v. Valencia* (2017) 3 Cal.5th 347, 357-358; accord, *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 277, 283.)

Indeed, constitutional or "statutory language, even if it appears to have a clear and plain meaning when considered in isolation, may nonetheless be rendered ambiguous when the language is read in light of the statute as a whole or in light of the overall legislative scheme." (*Valencia*, *supra*, 3 Cal.5th at p. 360; see also *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.) When the meaning of an initiative is ambiguous, courts turn to "the materials that were before the voters" to "ascertain the voter's intent in approving the initiative." (*Valencia*, at p. 364, fn. 5.)

Here, the Court of Appeal's construction of Proposition 162 (unlike *Westly*'s) "read[s] more into the [law] than its words, context, and history permit" and is less faithful to "the electorate's intended goal as reflected in the language of the initiative and in the ballot arguments." (*Horwich*, *supra*, 21 Cal.4th at pp. 277, 283.)

A. Proposition 162's text and structure do not support LACERA's overbroad reading.

Unlike the provisions of the California Constitution bestowing counties and charter cities with salary-setting authority,[3] the text of Proposition 162 does not mention salary-setting. Nevertheless, the Court of Appeal concluded that such power resides in Proposition 162's prefatory phrase granting retirement boards "plenary authority and fiduciary responsibility for investment of moneys and administration of the system." (See *LACERA*, *supra*, 102 Cal.App.5th at pp. 1200-1204.) Not so.

1. "Plenary authority."

The Court of Appeal concluded that "the plenary authority" granted by Proposition 162 is "complete and absolute, subject only to the terms of Proposition 162 and judicial review." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1202.) But this Court has warned against "giv[ing] an unreasonably expansive

[3] Unless otherwise noted, "salary-setting" is used throughout this brief to refer to establishing classifications and setting compensation.

construction" to the word "plenary," taking a skeptical view of efforts to conflate "plenary" with "exclusive" at the expense of established constitutional prerogatives. (See *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1035-1036 & fn. 4; accord, *Hustedt v. Workers' Compensation Appeals Bd.* (1981) 30 Cal.3d 329, 342-346; *Castellanos v. State* (2024) 16 Cal.5th 588, 601-604.)

A retirement system's "plenary authority" under Proposition 162 cannot be construed in a vacuum and necessarily turns on the meaning of the subjects to which that plenary authority extends—here "investment of moneys" and "administration of the system." In evaluating the meaning of these words, "'all intendments favor the exercise of the Legislature's plenary authority'" and any "'*restrictions and limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.*'" (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180, alterations omitted.)

2. "Investment of moneys."

LACERA has not argued that "investment of moneys" encompasses salary-setting authority. Nor could it. That phrase is meant to give retirement boards the authority to make investment decisions with the assets of the retirement fund without legislative interference. The phrase pre-dates the two most recent amendments to Article XVI, section 17 in 1984 (Proposition 21) and 1992 (Proposition 162).

Before 1984, the phrase operated as a narrow exception to the general prohibition on the state "subscrib[ing] to" or "be[ing] interested in the stock of any company, association or corporation" by allowing the Legislature to "authorize *the investment of moneys* of any public pension or retirement fund" under a host of byzantine restrictions on the percentage of fund assets that could be invested and the specific types of investments. (Cal. Const., art. XVI, former § 17, adopted Nov. 5, 1974, emphasis added.) In 1984, the voters eliminated these restrictions but still retained the power to "authorize the investment of moneys of any public pension or retirement fund" with the Legislature. (See Ballot Pamp., Primary Elec. (June 5, 1984) Text of Proposed Law, p. 25.) When the voters enacted Proposition 162 eight years later, they removed that power from the Legislature and gave retirement boards "plenary authority and fiduciary responsibility for investment of moneys…." (See 1AA145 [Ballot Pamp., Gen. Elec. (Nov. 3, 1992) Text of Proposed Law, p. 71].) However, Proposition 162 added new language allowing the Legislature "to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition" does not violate retirement boards' fiduciary duties. (Cal. Const., art. XVI, § 17(g).)

3. "Administration of the system."

The Court of Appeal concluded that "administration of the system" encompasses salary-setting. In support, it relied heavily on definitions of "administration" completely untethered from the language of Proposition 162, the specific context of public pension administration, and Proposition 162's history. (See *LACERA*, *supra*, 102 Cal.App.5th at pp. 1201-1204.)

But as this Court has explained, "to seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results." (*Hodges*, *supra*, 21 Cal.4th at p. 114, alterations omitted.) This is particularly so given that "administration" is susceptible to different meanings. (See, e.g., Black's Law Dictionary (6th ed. 1990) at p. 44 ["In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs or agencies"]; *ibid.* ["Administration expenses imply disbursements incidental to the management of the estate which are deductible in computing estate taxes"].)

Simply put, the phrase "administration of the system"—which is "not pellucid"—cannot be interpreted "in a vacuum" or "in a way that the electorate did not contemplate." (*Horwich*, *supra*, 21 Cal.4th at p. 277; *People v. Ledesma* (1997) 16 Cal.4th 90, 95 ["Given this definitional diversity … [w]e must therefore focus more broadly on the language, context, and history of the statute"].) Indeed, "statutory language, even if it appears to have a clear and plain meaning when considered in isolation, may nonetheless be rendered ambiguous when the language is read in light of the statute as a whole or in light of the overall legislative scheme." (*Valencia*, *supra*, 3 Cal.5th at p. 360 [discussing cases].)

Critically, the "prefatory reference" (*Horwich*, *supra*, 21 Cal.4th at p. 280) to "administration" is not the only place that term appears in Proposition 162. (See *id.* at p. 280 ["'words must be construed in context'"]; accord, *Westly*, *supra*, 105 Cal.App.4th at p. 1109 ["administration of the system" must be interpreted "within the context of the subsequent conditions"].)

Some derivation of "administer" appears in three of the subdivisions that follow Proposition 162's prefatory phrase. (See Cal. Const., art. XVI, § 17(a), (b), & (h).) Subdivision (a) charges retirement boards with two "sole and exclusive" "responsibilit[ies]": (1) "fiduciary responsibility over the assets of the public pension or retirement system"; and (2) the "responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries." (*Ibid.*)

Viewed through this lens, "administer" is used in a manner that is much narrower than LACERA contends—assuring prompt delivery of benefits and related services to plan participants. (See *ACDSA*, *supra*, 9 Cal.5th at p. 1066 ["As a practical matter, the retirement boards' responsibilities generally involve management of the system's financial assets [citing *Westly*] and the processing and payment of claims for benefits under the plan [citations]"]; *Bandt v. Board of Retirement* (2006) 136 Cal.App.4th 140, 152-153 ["This provision requires that the Board develop an administrative structure to assure that benefits are delivered to members in a timely manner (e.g. assuring that claims for benefits are processed and paid properly), and not with assuring that the fund is adequately funded"].)

The other references to "administer" in Proposition 162 do not support LACERA's broader reading of the word in the prefatory phrase. The last sentence of subdivision (a) and the first sentence of subdivision (b) both talk about "defraying reasonable expenses of administering the system" in the context of "providing benefits to participants" and their beneficiaries. (See Cal. Const., art. XVI, § 17(a), (b).) This language was enacted in 1984 as part of Proposition 21—not Proposition 162—and was intended to give retirement boards more flexibility over investments. (See *O'Neal*, *supra*, 8 Cal.App.5th at pp. 1202-1203.) The argument in favor of Proposition 21 explained that it "adopts federally tested investment safeguards to replace existing guidelines" that "*senselessly raise the cost of pension administration for all taxpayers*." (Ballot Pamp., Primary Elec. (June 5, 1984) argument in favor of Prop. 21, p. 26, original italics.) The language therefore does not support LACERA's view that the power to administer the system includes setting salaries for the state, county, or charter city employees who work for retirement systems.

Finally, subdivision (h) merely uses the phrase to make clear that a "retirement board" does not include a governing body or board "which does not administer pension or retirement benefits." (Cal. Const., art. XVI, § 17(h).) But administering retirement benefits is very different from setting compensation—or, for that matter, benefit levels that themselves turn on compensation. (See *ACDSA*, *supra*, 9 Cal.5th at p. 1057 ["a county employee's final compensation is a critical factor in determining the amount of his or her pension benefit"].)

The remaining subdivisions that follow the prefatory phrase—subdivisions (c), (d), (e), (f), and (g)—do not expressly mention "administration of the system." But they are relevant to understanding the meaning of "administration of the system" since the grant of "plenary authority" is also "subject to" these subdivisions. (See 1AA144-145.) And they likewise do not support the conclusion that Proposition 162's grant of authority encompasses salary-setting. (*Ibid.*) The only subdivision which addresses the composition of retirement system boards (subdivision (f)) provides that the Legislature may not modify the "number, terms, and method of selection or removal of members of the retirement board." (1AA144.) But it says nothing about the remuneration or civil service classification of retirement boards or retirement system personnel. (See 1AA144-145.) If Proposition 162 were meant to restrict the Legislature's ability to set the compensation for retirement board members or their appointees, one would expect such a restriction to appear here. Yet it is nowhere to be found.

The Court of Appeal here believed that Proposition 162's subsequent conditions—subdivisions (a) through (h)—do not "serve to limit and define the authority and responsibility granted in the initial paragraph" (*Westly*, *supra*, 105 Cal.App.4th at p. 1109) and instead provide the only limits on a retirement board's authority. (See *LACERA*, *supra*, 102 Cal.App.5th at pp. 1204-1205.) But this is at odds with the court's own conclusion that the phrases "fiduciary responsibility" and "expenses of administering the system" in subdivision (a) shed light on the meaning of "administration of the system" in the prefatory phrase. (See *id.* at pp. 1202-1203, 1205, 1209.)

It also overlooks the ways in which the subdivisions that follow (by giving specific power to retirement boards) counsel against an overly broad reading of the general "prefatory" phrase that would make those subdivisions unnecessary. (See *Horwich*, *supra*, 21 Cal.4th at p. 280.) For example, if the authority to administer the system were as broad as LACERA contends, then why would subdivision (e) need to bestow retirement boards with the "sole and exclusive power to provide for actuarial services"? (See Cal. Const., art. XVI, § 17(e); *Horwich*, *supra*, 21 Cal.4th at p. 280 [refusing to read prefatory phrase of initiative statute in isolation in a manner that "would render '[t]he injured person' surplusage"].)

This more nuanced reading of "administration of the system" is also consistent with the way that "administration" is typically used in the specific context of public pensions. (See Civ. Code, § 13 ["technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, … are to be construed according to such peculiar and appropriate meaning"]; *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 19-24 [applying this principle to the term "discovery"]; *Irvin v. Contra Costa County Employees' Retirement Assn.* (2017) 13 Cal.App.5th

162, 173 [discussing "a technical issue of pension administration"].)

As the Attorney General has explained, "[t]he duties of a retirement board member consist primarily of protecting the assets of the retirement system through investment decisions and *through actuarial valuations and adjustments; calculating benefits; delivering benefits and services to members and their beneficiaries; and deciding individual members' claims for benefits*." (89 Ops.Cal.Atty.Gen. 152 (2006), emphasis added; see also *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1092 [a retirement board's "role is to manage and administer the City's retirement system. It is responsible for determining who may receive retirement benefits, as well as ensuring that benefits are adequately funded through the sound investment of City- and employee-provided contributions"].) The italicized activities—which illustrate the types of activities that constitute "administration of the system"—do not include the legislative function of salary-setting.

4. "Fiduciary responsibility."

The Court of Appeal also reasoned that retirement systems must have the exclusive power to establish classifications and set salaries to discharge their "fiduciary responsibilit[ies]" under Proposition 162. (See *LACERA*, *supra*, 102 Cal.App.5th at pp. 1201, 1205-1206.) But as *Westly* recognized, this "confuse[s] the measure of [a retirement board's] power with the reasonableness of its exercise of the power." (105 Cal.App.4th at

p. 1114.) It also ignores that the fiduciary duties in article XVI, section 17 were first introduced by Proposition 21 in 1984. (See *O'Neal*, *supra*, 8 Cal.App.5th at p. 1202.) Subdivision (e) illustrates that the measure's drafters knew how to bestow specific grants of authority in furtherance of fiduciary obligations. (See Cal. Const., art. XVI, § 17(e) ["consistent with the exclusive fiduciary responsibilities vested in it, [a retirement board] shall have the sole and exclusive power to provide for actuarial services"].) Their failure to do so with respect to salary-setting is noteworthy.

B. Proposition 162's ballot materials do not support the Court of Appeal's overbroad construction.

Courts may "seek enlightenment in the 'legislative history'" of initiative measures, "[c]onsidering the electorate's intended goal as reflected in the language of the initiative and in the ballot arguments." (*Horwich*, *supra*, 21 Cal.4th at p. 277.) Here, Proposition 162's history confirms that the Court of Appeal erred in broadly construing the law to encompass salary-setting.

1. Historical context.

The "broader view provided by the historical background" (*McPherson*, *supra*, 38 Cal.4th at p. 1040) of the 1992 election supports the County's reading of Proposition 162. As discussed, the measure was enacted in response to "legislation removing the actuarial function from the [CalPERS] Board and placing it under a state actuary appointed by the Governor and confirmed by the Legislature, and legislation allowing the use of CalPERS assets to offset employer contribution costs." (*O'Neal*, *supra*, 8 Cal.App.5th at p. 1203.)

That legislation had largely been affirmed in *Claypool*, *supra*, despite the voters' efforts in 1984 to "'give public pension assets full constitutional protection as trust funds'" and "'guarantee[] that neither the Governor nor future Legislatures will ever be able to use this money for other purposes.'" (4 Cal.App.4th at p. 674.) It is within this context that Proposition 162's grant of "plenary authority" over "administration of the system" must be understood. (See *Castellanos*, *supra,* 16 Cal.5th at pp. 604-605.)

2. Uncodified findings and declarations and purpose and intent.

Proposition 162's uncodified text confirms its focus on preventing raids by politicians or interference with the actuarial function—not the longstanding legislative function of salary-setting. (See *Westly*, *supra*, 105 Cal.App.4th at pp. 1110-1111; see *Horwich*, *supra*, 21 Cal.4th at p. 276 ["We must also consider 'the object to be achieved and the evil to be prevented by the legislation'"].) The "Findings and Declarations" section is focused on the dangers of "raids" and "looting" of pension funds, interference with the actuarial function, and the concern that political packing of retirement boards could indirectly accomplish these evils. (1AA144.) The "Purpose and Intent" section reinforces these concerns. (*Ibid*.)

The Court of Appeal believed that the measure's emphasis on avoiding "political" interference supports its broad interpretation of "plenary authority" over "administration of the system." (See *LACERA*, *supra*, 102 Cal.App.5th at pp. 1184, 1208.) Not so. Proposition 162 references "political" interference and "politicians" several times in its uncodified text. (See 1AA144.) Each is specifically tied to one of three categories: raiding pension funds; packing retirement boards to encroach on fiduciary powers; and infringing upon the actuarial duties of retirement boards. (See 1AA144, §§ 2(a-g), 3(c-f).) Apart from the composition of retirement boards (art. XVI, § 17(f)), the references to "political" interference do not concern who has the power to classify employees or set their salaries. And, as discussed above, the measure's restriction of the Legislature's power over the "number, terms, and method of selection or removal of members of the retirement board" (art. XVI, § 17(f)) contains no reference to salaries.

What's more, many of the references to "political" interference focus on concerns regarding "massive tax increases in the future," "the prospect of higher taxes," and "future tax increases" that would flow from allowing elected politicians to raid retirement funds or interfere with the actuarial function. (1AA144.) Yet as LACERA itself has conceded, giving retirement boards carte blanche to establish classifications and set salaries could lead to higher unfunded liabilities for state and local plan sponsors necessitating future tax increases—precisely the opposite of what Proposition 162's uncodified text promised. (See 6AA1228-1230; 5RA621.)

3. Impartial analysis.

The impartial analysis confirms this reading of Proposition 162. (See *Valencia*, *supra*, 3 Cal.5th at p. 372; *Westly*, *supra*, 105 Cal.App.4th at pp. 1112-1113.) The analysis identified two examples of "recent legislation" that "allowed the use of certain PERS assets to offset employer contribution costs" and "removed the actuarial function from the PERS Board and placed this function under a State Actuary appointed by the Governor and confirmed by the Legislature." (1AA141.)

The analysis also identified three "changes to the constitutional provisions related to public retirement systems" and provided more explanation of those changes in three bullet points:

- It gives the board of each public pension system complete authority for administration of the system's assets and for actuarial function. (This would have the effect of returning the PERS actuarial function to the PERS Board.)
- Each board must continue to provide benefits to members of the system and their beneficiaries, minimize employer contributions, and pay reasonable administrative costs. The measure, however, specifies that each board is to give highest priority to providing benefits to members and their beneficiaries.
- The measure specifies that the Legislature cannot change terms and conditions of board membership (for boards with elected employee members) unless a majority of the persons

> registered to vote in the jurisdiction of the retirement system approves the change. For example, a change in a county retirement system's board membership would require a countywide vote.

(1AA141, Prop. 162, analyst by Legislative Analyst.)

Conspicuously absent from this analysis is any suggestion that Proposition 162 would give retirement systems exclusive power to establish classifications or set compensation for state, county, or charter city employees.

4. Ballot arguments.

The ballot arguments provide yet even further support for this interpretation. (See 1AA142-143.) The argument in support of Proposition 162 did not mention salary-setting. Instead, it focused on preventing the Legislature from "raid[ing] public pension funds" to "balance their budgets on the backs of seniors and retirees" and protecting taxpayers—who are "ultimately responsible for public pensions"—from "huge future tax increases … needed to pay back *tomorrow* the funds politicians loot from public pension funds *today*." (1AA142.) The rebuttal to this argument likewise did not mention salary-setting. (1AA142.)

If Proposition 162 had in fact worked a sea change impacting state and local plan sponsors' longstanding power to establish civil service classifications and set compensation, the voters should have been put on notice. (See *Valencia*, *supra*, 3 Cal.5th at p. 372 ["It is not reasonable to apply a presumption of voter awareness when the text of the initiative and the voter information guide supporting it make no reference whatsoever to any effect on a different law"].)

To be sure, the opponents of Proposition 162 asserted that the State Controller "would have no authority to stop … outrageous salary hikes if Proposition 162 becomes law." (1AA143 [Ballot Pamp., *supra*, Argument Against Prop. 162, p. 39].) But this Court has recently reaffirmed that the views of a law's opponents are of limited relevance in divining its meaning. (*Stone v. Alameda Health System* (2024) 16 Cal.5th 1040, 1083, fn. 25; accord, *Legislature v. Eu* (1991) 54 Cal.3d 492, 505 ["ballot measure opponents frequently overstate the adverse effects of the challenged measure" and "their 'fears and doubts' are not highly authoritative"].)

Moreover, the proponents explained that the opponents were trying to "mislead the voters" and that the measure does not "have anything to do with retirement benefit levels" since "[o]nly legislative bodies elected by voters and voters themselves have the power to set benefit levels." (1AA143; see *ACDSA*, *supra*, 9 Cal.5th at p. 1057 ["A county employee's final compensation is a critical factor in determining the amount of his or her pension benefit"].) The proponents reiterated that the "central purpose of this measure is to STOP POLITICIANS FROM USING PUBLIC PENSION FUNDS TO BAIL THEM OUT WHEN THEY FAIL TO KEEP GOVERNMENT SPENDING UNDER CONTROL" since "[p]ension funds should be used to provide promised benefits for retired workers, not as a slush fund for politicians."

(1AA143 [Ballot Pamp., *supra*, Rebuttal to Argument Against Prop. 162, p. 39].)

By putting the emphasis on pension raids while at the same time laying to rest opponents' dire warnings, Proposition 162's proponents made clear that the measure would prevent the Legislature from dipping into pension funds while at the same time preserving the Legislature's traditional powers, such as setting retirement benefits and public employee compensation. (See *Westly*, *supra*, 105 Cal.App.4th at pp. 1109-1114.) If the drafters of Proposition 162 had intended to submit to the voters a provision that "modified the existing" salary-setting scheme and bestowed retirement boards with salary-setting authority, "they chose a curious way to accomplish that goal." (*Valencia*, *supra*, 3 Cal.5th at p. 385, fn. 3 (conc. opn. of Kruger, J.).) This Court should not "encourage drafters in future cases to deploy similarly oblique" tactics to "hide the true scope of proposed legislation from the electorate." (*Ibid.*; see also *In re Christian S.* (1994) 7 Cal.4th 768, 782 ["We are not persuaded the Legislature would have silently, or at best obscurely, decided so important ... a public policy matter and created a significant departure from the existing law."].)

C. Longstanding legislative understandings of PERL and CERL undermine the Court of Appeal's reading of "administration."

The Court of Appeal relied on *pari materia* to construe "administration" in Proposition 162 as encompassing salary-setting since "expenses of administration" under CERL

(§§ 31580.2, 31595) includes compensation for personnel. (*LACERA*, *supra*, 102 Cal.App.5th at pp. 1202-1203.) But Proposition 162 and section 31580.2 "do not address the same subject" and were enacted at different times, by different legislators, for different purposes. (*Valencia*, *supra*, 3 Cal.5th at p. 376, fn. 15.) Proposition 162 deals with retirement system authority generally and, as discussed, was enacted in response to specific legislative encroachments. By contrast, section 31580.2 was enacted to give retirement systems a "degree of autonomy" (70 Ops.Cal.Atty.Gen. 277, *supra*) by giving them the power to appoint personnel and to set budgets while still ensuring that system expenses do not exceed a statutory limit as a percentage of fund value. (See § 31580.2.) And section 31595—which uses the same "defraying reasonable expenses of administering the system" as Proposition 21—was enacted in 1984 to effectuate that amendment shortly after the voters approved that measure. (See Stats.1984, ch. 1738, § 7; Legis. Counsel's Dig., Assem. Bill No. 3508 (1983-84 Reg. Sess.) 4 Stats. 1984, Summary Dig., p. 651.)

Regardless, any effort to apply *pari materia* to Proposition 162's "administration" language cannot look at CERL in isolation and must also consult the Public Employees' Retirement Law ("PERL"). (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 504 [explaining that the "construction of 'compensation earnable' should be consistent under CERL, the 1931 State Employee Retirement Act, and PERL"]; see also *In re Simpson's Estate* (1954) 43 Cal.2d 594, 598.)

Long before the voters approved Proposition 162, the legislative meaning of "exclusive control" of a retirement system's "administration" was not nearly as broad as the Court of Appeal concluded below. Since 1931, the CalPERS's retirement board—the "Board of Administration"—has been vested with "broad and exclusive control over the administration and investment of the retirement system's funds." (*Valdez v. Cory* (1983) 139 Cal.App.3d 773, 781.) Yet this "broad and exclusive" authority was not understood to give the Board of Administration carte blanche over salaries and classifications.

Indeed, in the same enactment that created CalPERS and endowed the Board of Administration with "exclusive control over the administration" of the system, the Legislature provided that the board "shall appoint and fix the compensation of a secretary and other necessary employees *in accordance with the classifications made by the civil service commission*." (Stats.1931, ch. 700, § 43, emphasis added.) If "administration" had the meaning that the Court of Appeal below ascribed to it, then CalPERS' enabling legislation would have been incongruous.

Three years later, in 1934, the voters amended the Constitution and established the State Personnel Board to replace the civil service commission. (See *Brown*, *supra*, 29 Cal.3d at pp. 182, 188; see also *id.* at pp. 204-205 (dis. opn. of Richardson, J.).) The Legislature enacted legislation creating the civil service system in 1937. (See Stats.1937, ch. 753.) That same year, the Legislature enacted CERL. Just like with the CalPERS Board of Administration, the Legislature provided that "management of the retirement system shall be vested in the board of retirement" and system "assets shall be administered solely by the board of retirement." (See Stats.1937, ch. 677, p. 1903, §§ 51, 55.) At the same time, however, the Legislature contemplated that salary-setting would remain with county boards of supervisors, defining "employee" with reference to persons "whose compensation is fixed by the board of supervisors" and paid with either county or district funds. (Stats. 1937, ch. 677, p. 1899, § 17.)

In 1945, the "entire State Civil Service Act was placed in the Government Code" (*Simpson v. Cranston* (1961) 56 Cal.2d 63, 67), along with the Public Employees Retirement Law (see *Ventura*, *supra*, 16 Cal.4th at p. 503). This legislation charged the State Personnel Board with "creat[ing] and adjust[ing] classes of position in the State civil service" and "establish[ing] and adjust[ing] salary ranges for each class of position in the State civil service" based on the "principle that like salaries shall be paid for comparable duties and responsibilities." (Stats.1945, ch. 123, pp. 548-549, former §§ 18800, 18850.)

Given the new role of the State Personnel Board in establishing classifications and setting salary ranges, the Legislature removed the above italicized language requiring CalPERS to appoint and fix compensation of employees in accordance with classifications established by the civil service commission. (See Stats.1945, ch. 123, p. 577, former § 20105.) But since it did not "specifically provide[] that approval of the Department of Finance is not required," the Board of

Administration was subject to the rule that "whenever any State agency or court fixes the salary or compensation of an employee … the salary is subject to the approval of the Department of Finance before it becomes effective and payable." (Stats.1945, ch. 123, p. 535, former § 18004; see also *State v. Brotherhood of Railroad Trainmen* (1951) 37 Cal.2d 412, 421-422 [discussing section 18004].) All the while, the Legislature still vested "management and control of this [retirement] system" in the Board of Administration and reiterated that "[t]he board has the exclusive control of the administration and investment of the Retirement Fund." (Stats.1945, ch. 123, pp. 577, 580, former §§ 20103, 20201; see *Garvey v. Byram* (1941) 18 Cal.2d 279, 282 ["It is significant that Political Code section 3817 was reenacted with minor amendments during the same legislative session in which Political Code section 3834.25 was enacted"].)

In 1981, the Legislature moved salary-setting from the State Personnel Board to the Department of Personnel Administration and required state agencies to obtain DPA approval before fixing salaries. (See Stats.1981, ch. 230, pp. 1170, 1173-1174, former §§ 19816, 19825, 19826.) One year later, the Legislature restricted CalPERS' and CalSTRS' ability to contract with investment personnel "[u]pon a finding by the board[s] that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board." (Stats.1982, ch. 1433, pp. 5472-5473, former § 20206.2; see also Stats.1986, ch. 230, p. 1182;

§ 20208.) Yet, Proposition 162 did not target any of this legislation.

D. The Court of Appeal failed to harmonize Proposition 162 with longstanding constitutional and statutory provisions governing salary-setting.

"In choosing between alternative interpretations of constitutional provisions," this Court has explained that it is "further constrained by [its] duty to harmonize various constitutional provisions [citation] in order to avoid the implied repeal of one provision by another." (*City & County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554, 563.) The same is true when "harmoniz[ing] constitutional language with that of existing statutes." (*Ruelas v. County of Alameda* (2024) 15 Cal.5th 968, 979.) Accordingly, this Court "has explicitly eschewed the 'meat ax' approach" and "has instead applied harmonizing principles in dealing with overlapping jurisdictional schemes." (*Brown*, *supra*, 29 Cal.3d at p. 199.)

An "'implied repeal should not be found unless '… the latter provision gives *undebatable evidence* of an intent to supersede the earlier.'" (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039.) Courts therefore "'cannot presume that … the voters intended the initiative to effect a change in law that was not expressed or strongly implied in either the text of the initiative or the analyses and arguments in the official ballot pamphlet.'" (*Valencia*, *supra*, 3 Cal.5th at p. 364.)

In the specific context of the state civil service laws—which have a much closer connection with salary-setting than Proposition 162—this Court has held that constitutional language historically empowering the State Personnel Board to "'administer and enforce'" the civil service system did not include salary-setting and thus did not "preclude the Legislature from adopting the collective bargaining salary setting process established in" the State Employer-Employee Relations Act. (*Brown*, *supra*, 29 Cal.3d at pp. 194, 196; compare *id.* at pp. 204-207, 209 (dis. opn. of Richardson, J.).)

Here, the Court of Appeal's construction of Proposition 162—which itself says nothing about civil service classifications or compensation—fails to harmonize that law with longstanding constitutional and statutory provisions governing civil service classification and salary-setting for employees of the state, counties, and charter cities.

1. State employees.

In 1934, the voters amended the California Constitution "to establish, as a constitutional mandate, the principle that appointments and promotions in state service be made solely on the basis of merit." (*Brown*, *supra*, 29 Cal.3d at pp. 183-184; see Cal. Const., art. VII, § 1(b).) The constitutional provision created the State Personnel Board and vested it with jurisdiction over the merit aspects of the civil service. (Cal. Const., art. VII, §§ 2, 3.) But the "constitutional provision left the Legislature with a 'free hand' to fashion 'laws relating to personnel administration for the best interests of the State.'" (*Brown*, at p. 184.) Over the years, the Legislature created a comprehensive civil service system that charged the State Personnel Board (and later, the DPA) with establishing classifications and salary ranges for state employees. (See § 18500 et seq.; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322, fn. 8.)

In *Westly*, the Third District construed Proposition 162 in a manner that avoided conflicting with the foregoing constitutional and statutory provisions governing the classification and compensation for state employees. (See *Westly*, *supra*, 105 Cal.App.4th at pp. 1109, 1113 & fn. 14, 1118, citing Cal. Const., art. VII, § 1.)

By contrast, the Court of Appeal's broad construction of Proposition 162 here embraces the disfavored "meat ax" approach (*Brown*) and fails to "harmonize constitutional language with that of existing statutes" (*Ruelas*). This is also squarely at odds with this Court's admonition that "restrictions and limitations imposed by the Constitution" on "the Legislature's plenary authority" "are to be construed strictly, and are not to be extended to include matters not covered by the language used.'" (*Brown*, *supra*, 29 Cal.3d at p. 180, emphasis and alterations omitted.)

2. County and charter city employees.

Sections 1, 4, and 5 of article XI of the Constitution expressly vest general law counties, charter counties, and charter cities with the authority to provide for the number and compensation of employees. (See Cal. Const., art. XI, §§ 1, 4, 5; see also § 25300.) This Court has repeatedly recognized the exclusivity and breadth of this authority. (See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315-316 & fn. 19 [discussing the "rights of chartered cities and counties to determine the compensation of their employees"]; *County of Riverside*, *supra*, 30 Cal.4th at p. 295 ["the county, not the state or anyone else, sets compensation for its employees"].)

In *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69 ("*SDCERS*"), the Fourth District followed *Westly*'s lead, construing Proposition 162 in a manner that would not intrude on "matters within the purview of other branches of government," such as a charter city's "exclusive[]" power to grant retirement benefits under its city charter. (See *id.* at pp. 79-80.) Accordingly, the court concluded that the "scope of the [retirement] board's power as to benefits is limited to administering the benefits set by the City." (*Id.* at p. 80; see also *ACDSA*, *supra*, 9 Cal.5th at p. 1067 [the "scope of the board's power as to benefits is limited to administering the benefits set by the '[legislative body]'"].)

LACERA and the Court of Appeal have emphasized Proposition 162's "notwithstanding" clause as evidence of intent to repeal contrary law regarding salary-setting. But Proposition 162's "notwithstanding" clause only applies to laws that are actually "contrary" to section 17—such as the constitutional provisions requiring legislative approval to invest in stocks and the statutes giving the legislative and executive actors the ability to raid retirement system funds and transfer actuarial functions. (See Cal. Const., art. XVI, §§ 6 & 17; *Claypool*, *supra*, 4 Cal.App.4th at p. 652.)

In *Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, the Court of Appeal held that this clause did not support the retirement board's "assertion that Proposition 162 repealed by implication Code of Civil Procedure section 1094.5, subdivision (c)." (*Id.* at pp. 1189-1190; accord, *Westly*, *supra*, 105 Cal.App.4th at p. 1113 ["The phrase applies only to laws that are 'to the contrary'"]; see also *Hustedt*, *supra*, 30 Cal.3d at pp. 343-344 [similarly broad language in article XIV, section 4 did not impliedly repeal the separation of powers doctrine embodied in article III, section 3].)

For similar reasons—and given the lack of "undebatable evidence" (*Tuolumne Jobs*) that the voters intended to displace state and local constitutional, charter, and statutory authority to maintain a civil service system, establish classifications, and set compensation—this Court should reject LACERA's invitations to construe retirement systems' plenary authority in such a manner. At bottom, any "[d]isharmony … between the provisions" of the Constitution governing county authority to set salaries and retirement systems "'exists only if one takes—as does [the Court of Appeal]—an overly broad view of the matter at issue.'" (*Singh*, *supra*, 41 Cal.App.4th at pp. 1190-1191.)

E. Adopting LACERA's construction of Proposition 162 would uproot decades of settled law and result in absurd consequences.

Lest there be any doubt, the "consequences that will flow from [the Court of Appeal's] particular interpretation" (*Valencia*, *supra*, 3 Cal.5th at p. 358) of Proposition 162 illustrate why *Westly*'s more nuanced construction should prevail. In the nearly 32 years since voters passed Proposition 162, courts have rejected arguments that Proposition 162's "plenary authority": insulates retirement boards from judicial oversight (*Singh*, *supra*, 41 Cal.App.4th 1180); prevents grand juries charged with investigating and reporting on the affairs of local government from investigating retirement boards (*Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185); immunizes retirement boards for undertaking actions based on impermissible motives (*O'Neal, supra,* 8 Cal.App.5th 1184); and empowers retirement boards to expand pension benefits beyond those authorized by participating employers' city charters (*SDCERS*, *supra*, 186 Cal.App.4th 69).

Yet, in the Court of Appeal's view, retirement boards' "plenary authority" under Proposition 162 "is complete and absolute, *subject only to the terms of Proposition 162 and judicial review*." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1202, emphasis added.) This not only undermines decades of precedent, it also raises a host of questions: Are retirement boards still subject to state and local civil service systems (see Cal. Const., art. VII, §§ 1, 4 [state civil service]; *id.*, art. XI, §§ 1, 4(f) & 5)? Can

CalPERS draw money from the treasury without "an appropriation made by law and upon a Controller's duly drawn warrant" (Cal. Const., art. XVI, § 7) and must it comply with the Controller's "uniform state payroll system for all state agencies" (§ 12470)? Must retirement boards still comply with CERL's limits on expenditures (§ 31580.2) and compensation for retirement board members (§§ 31521, 31521.1 [$100 per meeting])? Do retirement boards still need to annually audit and report on the financial condition of the retirement system (§ 31593); file an annual financial statement in the office of the county auditor and with the board of supervisors (§ 31597); and allow the county auditor to "audit the accounts of the retirement system" at the request of the board of supervisors (§ 31593)?

The Court of Appeal's overly broad construction of Proposition 162 calls these cases and laws into question, providing further evidence that the voters could not have intended to bestow retirement systems with the sweeping authority that LACERA contends. (See *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 425-426 [considering "the consequences that will flow from a particular interpretation"].) And as this Court has explained, "courts must be vigilant in protecting the rights of the pensioner against powerful and distant administrators."

(*Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 393.)[4]

II. CERL Does Not Independently Vest the LACERA Boards with Authority over Classification and Compensation Issues.

The Court of Appeal also held that "CERL requires the Board of Supervisors to include the LACERA Boards' employment classifications and salaries in the County's eligibility list and salary ordinance." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1217.) This reading of CERL—which is premised on an overbroad reading of Proposition 162—cannot be squared with the relevant statutory text, structure, and history.

A. Section 31522.1's text and history make clear that LACERA personnel are "county employees," subject to the Board of Supervisors' salary-setting authority.

Section 31522.1 provides that retirement system appointees (1) "shall be county employees," (2) "shall be subject to the county civil service" rules, and (3) "shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees." (§ 31522.1; compare § 31522.4(a) [exempting certain

[4] The Court of Appeal pointed to Proposition 162's directive that its provisions "be liberally interpreted to effect their purposes." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1205.) But "the rule of liberal construction 'should not be blindly followed so as to eradicate the clear language and purpose of the statute.'" (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 472.)

senior retirement system personnel from county charter and civil service rules].)

The Court of Appeal found that the third clause "creates a mandatory duty for boards of supervisors to include in the relevant county's salary ordinance the salaries adopted by a retirement board for its appointees." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1219.) But this takes an overly simplistic view of the term "shall" and fails to construe the relevant clause in context and in harmony with the other applicable constitutional and statutory provisions.

Courts have found that even if the word "shall" appears in a statute creating a duty, the duty is discretionary if the entity must exercise significant discretion to perform the duty. (*Sonoma AG Art. LLC v. Dept. of Food & Agric*. (2004) 125 Cal.App.4th 122, 127; *City of Oakland v. Oakland Police and Fire Ret. Sys.* (2014) 224 Cal.App.4th 210, 249.) And "[a]lthough statutory language is, of course, the most important guide in determining legislative intent, there are unquestionably instances in which other factors will indicate that apparent obligatory language was not intended to foreclose a government entity's or officer's discretion." (*Morris v. Marin County* (1977) 18 Cal.3d 901, 910, fn. 6.)

Contrary to the Court of Appeal's determination, section 31255.1 does not say that the salaries of LACERA personnel, *as set by the LACERA Boards*, "shall" be included in the salary ordinance or resolution. Rather, it simply says that those personnel appointed by the LACERA Boards shall be included in the County salary ordinance or resolution. This language "invok[es] the discretion" of the Board of Supervisors because the "ultimate act of applying the standards and of fixing compensation is legislative in character." (*Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 26; *Schecter v. Los Angeles County* (1968) 258 Cal.App.2d 391, 397 [the "power of classification … involve[s] the exercise of discretion and cannot be said to be merely ministerial in nature"]; cf. *Glendale City Employees' Assn., Inc.*, *supra*, 15 Cal.3d at p. 344 ["The writ, therefore, did not command the enactment of a new salary ordinance, but directed the non-legislative and ministerial acts of computing and paying the salaries as fixed by the memorandum" of understanding the city council had already approved].)

Accordingly, section 31522.1's phrase "shall be included in the salary ordinance" simply reflects a recognition that as "[C]ounty employees," LACERA personnel are subject to the salaries and classifications set by the Board of Supervisors in its discretion via ordinance or resolution. Put differently, an alternative (and constitutional) reading of the phrase is that, to the extent the term "shall" imposes a mandatory duty, it imposes a duty on the LACERA Boards to compensate any personnel they appoint in accordance with the salary schedules established by the Board of Supervisors pursuant to its express constitutional, statutory, and Charter authority.

Indeed, as the Court of Appeal below recognized (see *LACERA*, *supra*, 102 Cal.App.5th at p. 1208), under section 31522.1, most LACERA personnel "remain bound by" the

County's civil service rules, which unquestionably fall within the Board of Supervisors' province. (*Holmgren*, *supra*, 159 Cal.App.4th at p. 602.) It makes little sense to conclude—as the Court of Appeal did here—that while a board of supervisors may control certain aspects of retirement system personnel's terms and conditions of employment via its civil service rules, the most important components of that employment (i.e., classification and compensation) are somehow off limits.[5]

This conclusion is confirmed by the historical context in which section 31522.1 was first enacted as well as that law's specific legislative history. Starting in 1947, CERL defined "employee" to "mean[] any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and includes any officer or other person employed by any district within the county whose compensation is fixed by the board of supervisors or by the board in ex officio capacity and whose compensation is paid from the funds of the district." (Stats.1947,

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[5] The Court of Appeal cited *Corcoran v. Contra Costa County Employees Retirement Bd.* (1997) 60 Cal.App.4th 89 for the proposition that "courts have found 'county employees' who worked for a retirement system were also employees of that system." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1217.) But *Corcoran* dealt with a narrow question not at issue here—whether "the Contra Costa County Employees Retirement Board was an agency governed by the county board of supervisors" under former section 31751 (*Westly*, *supra*, 105 Cal.App.4th at p. 1112), and even recognized that the retirement personnel in that case were "members of the county civil service and paid according to county salary schedules." (*Corcoran*, at p. 95.)

ch. 424, p. 1265 [former § 31469(a)].) Over the years, the Legislature removed the "fixed by the board of supervisors" language from the second half of this definition to include "any officer or other person employed by any district within the county." (See, e.g., Stats.1968, ch. 1261, p. 2380.)

It was against this backdrop that the Legislature added sections 31522.1 and 31580.2 in 1973, clarified that retirement system appointees "shall be county employees" in 1979, added section 31522.2 in 1987, and added section 31522.4 in 2001. Those statutes permit retirement boards to appoint certain personnel and pay those personnel out of fund earnings. As the Legislative Counsel's Digest recognized in 1973, AB 470 (which enacted section 31522.1) "[p]ermits personnel appointments by the board of retirement and board of investment and provides that the expense of administration of the retirement system up to a specified amount shall be charged against the earnings of the retirement fund if such appointments are made." (Stats.1973, Summary Dig., ch. 269, p. 39.)

In that regard, they represent a slight departure from section 31469's definition of "employee" since the "compensation is paid by" the earnings of the fund, not directly from the county. But they do not say anything about departing from the rule that a "person employed by a county" is someone "whose compensation is fixed by the board of supervisors or by statute." (§ 31468(a).) The Legislature could have defined "district" to include retirement systems, bringing their appointees out of the definition of "employee" requiring that their "compensation is fixed by the board of supervisors or by statute." But it did not do that until 2002, when it enacted the first of several system-specific carve outs from the general appointment provisions. (See *infra* at pp. 68-71; § 31468(*l*)(1)-(4).) Thus, the best way to harmonize section 31469(a) with sections 31522.1 and 31580.2 is to conclude that that these latter laws allowed retirement system personnel to be "county employees" "whose compensation is fixed by the board of supervisors" even though they are paid from retirement system funds.

The enrolled bill report for AB 470 reinforces this point. It stated that the bill would "vest such appointing authority in the two administrative boards *subject however, to county civil service and salary fixing authority*." (5AA1043, emphasis added.) Although enrolled bill reports are not entitled to "great weight," they are "instructive on matters of legislative intent." (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19.) This is particularly so where, as here, the enrolled bill report at issue is the only piece of legislative history that addresses which body has salary-setting authority.[6]

Moreover, when the Legislature subsequently expanded LACERA's ability to appoint senior personnel who would not be

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[6] Notably, when section 31522.1 was amended in 1979 to add the words "shall be county employees," the legislative history for that bill (AB 132 (1979)) shows that this language was "nonsubstantive" and intended to clarify what the Legislature had always meant—namely, that personnel employed by CERL retirement systems are county employees subject to county civil service and salary-fixing authority. (5RA572.)

subject to the County Charter and civil service rules (see § 31522.4), the Legislative Counsel's Digest—which is "entitled to great weight" (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1170)—reiterated the conclusion from the enrolled bill report, recognizing that existing law (§ 31522.2) authorized the LACERA Boards to "appoint an administrator who shall be a county employee *subject to the county salary ordinance* or resolution but who shall not be subject to the county civil service or merit system rules." (5RA583, emphasis added.)

B. Other CERL provisions show that when the Legislature intends to shift salary-setting authority to retirement boards, it does so expressly.

Courts "'must, where reasonably possible, harmonize statutes, reconcile inconsistencies in them, and construe them to give force and effect to all their provisions.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805.)

Here, other CERL provisions illustrate that the Legislature knows how to impose an express requirement on a county board of supervisors to adopt an action of retirement boards when that is what it intends. For example, section 31454 requires that the "*board of supervisors shall*, not later than 90 days after the beginning of the succeeding fiscal year, *adjust the rates of interest*, *the rates of contributions* of members, *and* county and district *appropriations in accordance with the recommendations* *of the [board of retirement or investment]*…." (§ 31454(a), emphasis added.)

Section 31522.1, by contrast, uses starkly different language. Had the Legislature intended to impose a mandatory duty on boards of supervisors to adopt salaries and/or classifications fixed by the retirement boards, it would have used express and specific language to do so, as it did in section 31454. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1395 [finding the absence of express language used by the Legislature in other relevant statutes instructive].)

Indeed, if the Legislature had truly intended for the LACERA Boards to have salary-setting authority over LACERA personnel, it could have made them employees of the system—rather than "county employees"—as it has done in several other counties. As noted above, the Legislature has defined four CERL retirement systems (Orange, San Bernardino, Contra Costa, and Ventura) as "districts" (§ 31468(*l*)(1-4)) and provided that some or all personnel appointed by these retirement boards "shall not be county employees but shall be employees of the retirement system, subject to terms and conditions of employment established by the board of retirement." (§ 31522.5(b); accord, §§ 31522.7, 31522.9, 31522.10, 31522.11; see § 31469(a) [defining "employee" to include "any officer or person employed by any district within the county"].)

Not surprisingly, the legislative history for the bills enacting these statutes confirm they were enacted, at least in part, to shift salary-setting authority from the counties to their respective retirement boards. (See, e.g., 7RA712-713 [Orange]; 7RA720-721 [San Bernardino]; 7RA737-738 [Ventura].)

In its decision below, the Court of Appeal dismissed these provisions as mere byproducts of *Westly*, stating they were "not indicative of the original intent of section 31522.1 or of its interpretation in light of Proposition 162." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1228.) But this reading runs counter to what courts have described as "the most rudimentary rule of statutory construction"—that "later-enacted statutes" can clarify the interpretation of an earlier statute on the same subject. (See *Branch v. Smith* (2003) 538 U.S. 254, 281; *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.) This is particularly so given that the Legislature expressly referenced (and expressly disclaimed) either (or both) sections 31522.1 and 31522.2 in these newer statutes. (See §§ 31522.5(e), 31522.7(e), 31522.9(b), 31522.10(e), § 31522.11(e).)

Perhaps even more notably, in 2016, the State Association of County Retirement Systems supported legislation (AB 1853) that would have permitted *all* CERL systems to become "districts" and designate their staff as retirement system employees rather than "county employees subject to county civil service provisions and salary ordinances." (8RA779, 784, 833, 839-866.) Governor Brown ultimately vetoed this bill because it was "too far-reaching" in permitting retirement systems to "unilaterally separate," finding that a "more collaborative approach betters serves the public interest." (8RA868.)

The Court of Appeal ignored this failed bill (AB 1858) despite its relevance in ascertaining the Legislature's intent regarding the CERL provisions at issue. (See *Jaonnou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 761; *Los Alamitos Unified School Dist. v. Howard Contracting, Inc.* (2014) 229 Cal.App.4th 1222, 1229.)

As these county-specific provisions (and failed bill) illustrate, when the Legislature intends to divest a county board of supervisors of salary-setting authority over retirement system personnel and grant that authority to a retirement board, it does so by expressly designating those personnel as employees of the system, rather than county employees. Interpreting other CERL provisions (including section 31522.1) as already granting such authority to the LACERA Boards would fail to "give meaning to every word in [these] statute[s]" and render these more specific provisions "superfluous," in contravention of established rules of statutory construction. (See *In re C.H.* (2011) 53 Cal.4th 94, 103.)

C. CERL's grant of appointment and budgetary powers does not implicitly include the authority to unilaterally decide classification and compensation issues.

Mostly disregarding the above statutory provisions and history, the Court of Appeal instead focused on the fact that section 31522.1 "gives the LACERA Boards authority to 'appoint' staff who are 'required to accomplish the necessary work of the boards.'" (*LACERA*, *supra*, 102 Cal.App.5th at p. 1219.) The court went on to find that this grant "includ[ed], at a minimum," the power to classify LACERA personnel and set their salaries. (*Ibid.*)

But no one disputes that the LACERA Boards may appoint and manage LACERA's staff. (See *Santa Barbara County Grand Jury*, *supra*, 58 Cal.App.4th at p. 1191 [recognizing that a "[retirement system's] staff are county employees, although management of the system is vested in the [retirement board]"].) Rather, the issue here is who has the authority to establish these employees' classifications and salaries. Again, given LACERA personnel's statutorily-designated status as "county employees," such issues plainly fall within the Board of Supervisors' constitutionally and statutorily-recognized province.

The Court of Appeal's decision to the contrary conflates the power to appoint staff with the authority to establish classifications and compensation. As other courts (including this Court) have recognized, because "appointment is in its nature an executive act," it may be delegated.[7] (See *Scott v. Boyle* (1912) 164 Cal. 321, 326-327.) This stands in stark contrast to a board of supervisors' classification and salary-setting authority, which is a nondelegable legislative power. (*Bagley*, *supra*, 18 Cal.3d at p. 24; *Carrier v. Robbins* (1952) 112 Cal.App.2d 32, 35 ["The fixing of salaries of county [] employees is a legislative function … within the discretion of the board of supervisors and the courts will not interfere with that determination…."].)

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[7] And that is precisely what the County has done here. (See L.A. County Code, §§ 6.127.020, 6.127.040(B)(1), (B)(4), (D), (M) [delegating appointment authority to LACERA].)

Finally, the Court of Appeal stated that its reading of section 31522.1 "makes sense in light of section 31580.2, which gives retirement boards authority to create their own budgets and to charge administrative expenses, including compensation, against their earnings." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1220.) But the "purpose of section 31580.2" was "to transfer the costs of operating the county retirement system from the general tax revenues of the county…." (70 Ops.Cal.Atty.Gen. 277, *supra*.) As the Attorney General has recognized, it is still possible for retirement boards to fulfill that purpose and set a budget that accounts for costs that are not within their control. (*Ibid.*)

Notably, the Attorney General has explained that the "degree of autonomy" granted by sections 31580.2 and 31522.1 is not unfettered:

> [T]his degree of autonomy does not mean that the retirement system will no longer be a part of county government. It will remain an integral part thereof. This is highlighted in section 31522.1 where staff appointments are to be made from the county civil service, *the salaries of the staff are to be included in the county salary ordinance, and the staff are still county employees.*

(70 Ops.Cal.Atty.Gen. 277, *supra*, emphasis added.) The Court of Appeal's interpretation of a retirement board's budgetary authority under section 31580.2 is at odds with this 1987 opinion, from which the Legislature has only deviated for four specific CERL counties. (See *County of San Diego v. State of California*

(1997) 15 Cal.4th 68, 104 ["we presume that the Legislature was cognizant of the Attorney General's construction … and would have taken corrective action if it disagreed with that construction"].)

The Court of Appeal's decision also glosses over the fact that the County is ultimately financially responsible for the funding of LACERA, and thus, for the funding of LACERA's personnel salaries. (§§ 31453, 31453.5 & 31581; *LACERA v. Towers, Perrin, Foster & Crosby* (C.D. Cal. Jun 20, 2002) 2002 WL 32919576, at *4, 7.) This is because LACERA's administrative expenses (including employee salaries) are financially absorbed by the County in the form of increased employer contribution rates due to unfunded liabilities. (*Ibid.*; 5AA1016, 1064-1077.) It is not surprising, therefore, that CERL expressly permits the County to audit "the accounts of" LACERA to provide it some degree of oversight in terms of how the system's funds are spent, including when it comes to employee salaries.[8] (§ 31593.)

* * *

In sum, CERL establishes a system of collaboration, requiring that counties and retirement board work together to

[8] Pursuant to this authority, in 2019, the Board of Supervisors authorized the County's Auditor-Controller to audit LACERA. (See 11RA1075-1106.) That audit revealed that a number of other public employee retirement systems "have lower administrative cost percentages, which indicates that opportunities exist for LACERA to adopt best practices to be more cost efficient." (11RA1076.)

resolve classification and compensation issues. Just because a county's board of supervisors has discretion to set salaries for statutorily-designated county employees working for retirement systems, that does not mean that this discretion is boundless. On the contrary, courts may "'determine whether or not … municipal bodies acted within the limits of their discretion" in setting salaries. (*People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 940.)

III. The Court of Appeal's Overbroad Construction of Proposition 162 and CERL Cannot Displace Counties' and Charter Cities' Constitutional Salary-Setting Authority.

Even if the Court of Appeal's construction of Proposition 162 and CERL were correct, it erred in discounting the County's home rule authority.[9] (See *Sonoma County*, *supra*, 23 Cal.3d at p. 317 ["the determination of the wages paid to employees of charter cities as well as charter counties is a matter of local rather than statewide concern"]; *County of Riverside*, *supra*, 30 Cal.4th at p. 292 ["compensating county employees is a municipal function"].)

A. LACERA appointees are County employees for purposes of article XI.

The Court of Appeal reasoned that "Proposition 162 does not interfere with the County Charter" because "LACERA's operations exceed the operation of the County" by managing

[9] The Court need not reach this issue if it agrees with the County's construction of Proposition 162 and CERL.

retirement funds for other public agencies within the County, "[e]mployees appointed by a retirement board are not appointees of the Board of Supervisors," and "LACERA is not an 'office or institution' of the County." (*LACERA*, *supra*, 102 Cal.App.5th at pp. 1215-1216 & fn. 13.)

Again, the Legislature has designated LACERA appointees as "county employees" for purposes of civil service classification and compensation. (§ 31522.1.) CERL has several definitions of "employee," but the only one that applies to "person[s] employed by a county" states that their "compensation is fixed by the board of supervisors or by statute." (§ 31469(a).) And elsewhere, the Government Code confirms that "[t]he board of supervisors … shall provide for the number, compensation, tenure, appointment, and conditions of employment of *county employees*." (§ 25300, emphasis added.) When the Legislature has wanted to deviate from this framework in CERL, it has enacted county-specific appointment provisions that define specific retirement systems as "districts" (§ 31468(*l*)(1-4)) and designate their appointees as employees of the system, not the county. (See *supra* at pp. 68-71.)

In the Court of Appeal's view, the fact "that CERL defines employees of a retirement system as 'county employees' for limited purposes does not mean they are employees of the county for purposes of article XI." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1217.) But the question is whether they are county employees for compensation and classification purposes. Section 31469(a)—which identifies "person[s] employed by a county" as those "whose compensation is fixed by the board of supervisors by statute"—is quite clear on that point.[10]

In the Court of Appeal's view, agreeing with the County on this score would "create conflicts with various legislative grants of authority to retirement boards" vesting them, not county boards of supervisors, with the authority to appoint personnel (§§ 31522.1, 31580.2) and to determine the tenure and manner of removal of certain high-ranking employees (§§ 31522.3, 31522.4). But as discussed *supra* (at pp. 71-75), this all-or-nothing approach poses a false choice.

Indeed, outside the context of CERL, there are plenty of county officials or employees who also perform non-county functions and who are not appointed by county boards of supervisors. Yet they are still subject to county home rule authority under article XI. For example, district attorneys "represent[] the state and [are] not a policymaker for the county" "when preparing to prosecute and when prosecuting criminal violations of state law." (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 362.) But despite that, "the county's board of supervisors, not the Legislature, 'prescribe[s] the compensation' of its district

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[10] The Court of Appeal relied on *Kern County Employees' Retirement Assn. v. Bellino* (2005) 126 Cal.App.4th 781 and *Metropolitan Water Dist. v. Superior Court* (2004) 32 Cal.4th 491, which both applied the common law test to determine employment status. But neither case considered statutes that defined employee with reference to a county board of supervisors' salary-setting authority. (Compare § 31469(a), with § 53227, and § 20028; see also *supra* note 5.)

attorney." (*Id.* at p. 361.) Likewise, county commissioners/sealers are subject to county home rule authority even though the state has "authority to regulate their performance with regard to their statewide duties" and appoint them under certain circumstances. (*Neville v. County of Sonoma* (2012) 206 Cal.App.4th 61, 72, 80; see also *Los Angeles County Employees Assn. v. Superior Court* (2000) 81 Cal.App.4th 164, 170, 176-178 [deputy municipal court clerks not appointed by county still subject to the provisions of the county charter relating to civil service].)

This more functional approach makes sense given that counties are ultimately responsible for the vast majority of their pension systems' obligations as the largest participating employers. (See *Westly*, *supra*, 105 Cal.App.4th at p. 1116; *Santa Barbara County Grand Jury*, *supra*, 58 Cal.App.4th at p. 1191 [retirement boards "perform[] functions for the county" using "substantial county funds"].)

B. The specific constitutional grants of salary-setting authority to counties prevail over Proposition 162's more general grant of authority.

The Court of Appeal also based its ruling on its view that "the much later and more specific constitutional provisions of Proposition 162 regarding the plenary authority and fiduciary responsibility of retirement boards over the administration of a retirement system limit the application of article XI, sections 1 and 4, to employees appointed by a county board of supervisors and not by a retirement board." (*LACERA*, *supra*, 102 Cal.App.5th at p. 1214.)

This analysis suffers from two fatal flaws. First, it confuses the "high level of generality" for "a narrower group of individuals" in Proposition 162 ("administration of the system") with the far "more specific subject matter" in article XI, sections 1 and 4 ("compensation," "number," and "manner of … appointment" of county employees). (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 961; *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 648-649 [explaining that "broad grants of power" do "not control over the more specific" statute that "expressly governs the employment of temporary employees for the limited 'assignment supervising athletic activities of pupils'"].)

Indeed, this Court has explained that "[t]he constitutional language [in article XI, § 1] is quite clear and specific: the *county*, not the state, not someone else, shall provide for the compensation of its employees." (*County of Riverside*, *supra*, 30 Cal.4th at p. 285; *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 640 ["Among the powers specifically delegated to charter counties is control over matters of employee compensation"]; *Sonoma County*, *supra*, 23 Cal.3d at p. 316 [describing charter cities' plenary authority as "a specific directive"].)

Second, the court's emphasis on Proposition 162 being "much later" in time overlooks the fact that the specific controls the general regardless of "whether the specific provision was passed before or after the general enactment." (*Miller v. Superior Court* (1999) 21 Cal.4th 883, 895-896.) As this Court recognized in *State Dept. of Public Health*, *supra*, "when these two rules are in conflict, the rule that the specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence." (60 Cal.4th 940 at p. 960.)

CONCLUSION

This Court should reverse and reinstate the Superior Court's judgment.

Dated: December 16, 2024

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.520(c)(1))

The foregoing brief contains **13,990** words (including footnotes, but excluding the cover information, table of contents, table of authorities, the statement of the issues, signature block, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: December 16, 2024 RENNE PUBLIC LAW GROUP

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BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES

PROOF OF SERVICE

Case Name: *Los Angeles County Employees Retirement Association v. County of Los Angeles et al.*
Case No.: S286264 (Court of Appeal Case No. B326977)

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On December 16, 2024, I served the following document: **OPENING BRIEF ON THE MERITS** on the party below ***via TrueFiling***:

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I declare, under penalty of perjury that the foregoing is true and correct. Executed on December 16, 2024, at San Francisco, California.

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