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September 10, 2021

Via TrueFiling

The Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4897

Re: *Jason Briley v. City of West Covina,* Case No. S270321 (Court of Appeal Case No. B295666) – Letter by Amici Curiae in Support of Petition for Review by City of West Covina
Client-Matter: LE010/005

To the Honorable Chief Justice Tani Cantil-Sakauye and Honorable Associate Justices of the California Supreme Court:

Amici Curiae the League of California Cities ("Cal Cities") and the California Special Districts Association ("CSDA") submit this letter in support of the Petition for Review in the matter *Jason Briley v. City of West Covina* filed by Appellant and Petitioner the City of West Covina (the "City"). Cal Cities and CSDA respectfully request that the Supreme Court grant the City's Petition for Review.

The Court of Appeal in this case declined to accept the City's arguments that the doctrine of exhaustion of administrative remedies barred Plaintiff Jason Briley's ("Briley's") claims for retaliation under Labor Code section 1102.5. The Court's holding allows a terminated civil service employee completely to bypass administrative review based only on the employee's speculation about who will serve as the decision maker in the administrative process and whether that person has a bias that would create exception to the exhaustion requirement, under the doctrine of due process or based on other exceptions. Under these circumstances, the City had no opportunity to respond to the employee's objections, because he abandoned the administrative process without ever presenting his objections to the City or the City's Human Resources Commission. As the City's Petition for Review explains, the City thus had no opportunity to interpret, clarify or apply its own procedures so as to avoid bias, due process concerns, or fairness issues relating to its administrative procedures asserted by its former employee.

This Court should accept review of this case in order to clarify that for an employee to have the ability to claim in the Trial Court excuse from having to comply with applicable administrative procedures, the employee must first present his or her due process, futility, or other objections to the local agency. This allows the local agency, and the employee, to create a record for Trial Court review, and also allows the local agency to undertake corrective action to try to resolve the objection. This would further the policy interests advanced by California's long-standing requirement of exhaustion of administrative remedies. (See, *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 317, 321-22.) In this way, and for the reasons articulated in the City's Petition and below, review is necessary to settle an important question of law. (See, Cal. Rules of Court, Rule 8.500, subd. (b)(1).)

I. THE AMICI CURIAE

The League of California Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California Special Districts Association ("CSDA") is an association with a membership of over 900 special districts throughout California that was formed to promote good governance and improved core local services through professional development, advocacy, and other services for all types of independent special districts. CSDA represents all types of independent special districts including, but not limited to, irrigation, water, park and recreation, cemetery, fire protection, police protection, library, utility, harbor, healthcare, and community services districts. CSDA is advised by its Legal Advisory Working Group, comprised of 25 attorneys from all regions of the state with an interest in legal issues related to special districts. The group monitors litigation of concern to special districts and identifies those cases that are of statewide significance. It has identified this case as having such significance.

II. THE INTERESTS OF AMICI CURIAE

The ability of public agencies to receive and consider, during administrative hearings, sworn testimony and evidence in support of a disciplined employee's allegations of impropriety regarding any discipline being challenged prior to initiation of costly and lengthy court litigation and the associated risk of a high value judgment or jury verdict is of great importance to cities, special districts and other public agencies, as well as the public and taxpayers who will ultimately be responsible for payment of any monetary judgments against the agencies. Because this case involves circumstances under which a public employee may avoid participation in the

employer's prescribed administrative disciplinary appeal process, this case could have far-reaching impacts on public agencies' abilities to limit their exposure to lawsuits and costly judgments by addressing, prior to litigation, allegations that the discipline was retaliatory or otherwise improper.

Most of the members of Cal Cities and special districts throughout the state provide employees with the ability to appeal significant discipline through participation in an administrative hearing process in which sworn testimony and evidence is presented to a factfinder. Accordingly, Cal Cities and CSDA, and their members, have a substantial interest in the outcome of the legal issues presented in this matter.

III. THE REASONS FOR GRANT OF REVIEW

The Court of Appeal in *Los Globos Corp. v. City of Los Angeles* (2017) 17 Cal.App.5th 627, concisely explained the reasons for California's longstanding rule requiring exhaustion of administrative remedies:

> The rule serves several well-established functions. First, it allows the administrative agency an opportunity to redress the alleged wrong without resorting to costly litigation. Second, even where complete relief is not obtained, it can serve to reduce the scope of the litigation or possibly avoid litigation. Third, an administrative remedy ordinarily provides a more economical and less formal forum to resolve disputes and provides an opportunity to mitigate damages. Finally, the exhaustion requirement promotes the development of a more complete factual record and allows the administrative agency or entity implicated in the claim an opportunity to apply its expertise, both of which assist later judicial review if necessary.

(*Id.* at 632-33 [citations omitted]; accord, *Campbell, supra,* 35 Cal. 4th at p. 322 ["The rule has important benefits: (1) it serves the salutary function of mitigating damages; (2) it recognizes the quasi-judicial tribunal's expertise; and (3) it promotes judicial economy by unearthing the relevant evidence and by providing a record should there be a review of the case."].)

This case presents this Court with the opportunity to determine how, procedurally, an employee can establish he or she is exempt from complying with the exhaustion of administrative remedies requirement. Here, the Court of Appeal erred by concluding that an employee need not assert objections as to the fairness of administrative proceedings to the agency or body itself. This conclusion undermines the purpose of the requirement. Also, as a practical matter, under the law as the Court of Appeal here interprets it, the employee in fact takes a significant risk in declaring a supposed conflict presents a due process violation and proceeding to court with a civil lawsuit – the employee faces severe consequences in having a Court disagree that a due process violation exists and exhaustion of remedies nevertheless applies. Adverse consequences of the employee's wrong choice are foisted on the public employer as well, given that the employer must bear the cost of defending a civil action until the

Court resolves the issue of whether a due process violation exists and thus whether the employee should have exhausted administrative remedies. Also, the agency does not have the full benefit of knowing the employee's claims or defenses, if the administrative process is bypassed, which defeats the purpose of revealing evidence and potential mitigation of damages.

A way to solve this issue should be a judicially formulated requirement that an employee formally present the due process, futility, or similar claim to the public employer at the outset, so that at a minimum a record develops by which a Court can later review the issue (and by which appellate courts can later do the same). This could be part and parcel of the administrative process. The parties' addressing this threshold issue of a potential due process or similar violation in this way could actually lead them to resolve the issue between themselves.

Indeed, authority already exists that litigants cannot simply abandon administrative remedies, even if they are correct that futility, due process, or other conditions exempt litigants' compliance. (See, *Los Globos, supra,* 17 Cal.App.5th at p.632 ["the rule of exhaustion of administrative remedies is well established in California jurisprudence"; employee must present the question whether the process applies to the agency so that it can "decide the issue in the first instance"] [quoting authority]; *Griswold v. Mt. Diablo Unified Sch. Dist.* (1979) 63 Cal.App.3d 648, 652 [constitutional challenges must be raised as part of exhaustion doctrine]; *Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th 866, 892 n.6 ["due process and bias issues must be presented to the hearing officer or tribunal itself for the issue to be preserved"].)

Briley's withdrawal from the process prevented the Commission and the City from being able to consider the due process objection, even though "agencies must be given the opportunity to reach a reasoned and final conclusion on each and every issue upon which they have jurisdiction to act before those issues are raised in a judicial forum." *Hill RHF Hous. Partners v. City of L.A.* (2020) 51 Cal.App.5th 621, 632 [quoting *Sierra Club v. San Joaquin LAFCO* (1999) 21 Cal.4th 489, 510].) Indeed, Briley's withdrawal letter never specifically addressed any due process claim; this was only later raised when the exhaustion issue was addressed by the Trial Court. An agency must be able to "receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review." *Id.* at 634 (quotations omitted).

For all of the foregoing reasons, and those described in the City's Petition, the League of California Cities and California Special Districts Association respectfully request that this Court grant review of the Court of Appeal's decision in *Briley v. West Covina*.

Thank you for your consideration of this request.

Sincerely,

LIEBERT CASSIDY WHITMORE

/s/ David A. Urban

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