Case No. S285426

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CITY OF SAN JOSÉ,

Plaintiff-Respondent,

v.

HOWARD JARVIS TAXPAYERS ASSOCIATION, CITIZENS FOR FISCAL RESPONSIBILITY, AND PAT WAITE, ET AL.,

Defendants-Appellants.

After the Denial of a Petition to Rehear a Published Decision of the Court of Appeal, Sixth District, Case No. H050889

On Appeal from the Santa Clara County Superior Court Case No. 21CV391517, The Honorable Sunil R. Kulkarni, Judge

APPLICATION FOR LEAVE TO FILE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AS AMICI CURIAE IN SUPPORT OF CITY OF SAN JOSÉ, AND BRIEF OF AMICI CURIAE

Devin Brennan
(SBN 254647)
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

Emily Minton Mattson
(SBN 330091)
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 S. Grand Avenue
Suite 2700
Los Angeles, CA 90071
(213) 629-2020

*Kristopher R. Wood
(SBN 284727)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2050 Main Street, Suite 1100
Irvine, CA 92614
Tel: (949) 567-6700
Fax: (949) 567-6710
kristopher.wood@orrick.com

Counsel for Amici Curiae Cal Cities and CSAC

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed in this certificate under rule 8.208.

/s/ ______________________

Kristopher R. Wood
Counsel for Amici Curiae
The League of California Cities
and California State
Association of Counties

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to California Rule of Court 8.520(f), the League of California Cities ("Cal Cities") and the California State Association of Counties ("CSAC" and collectively, "Amici") submit this application to file an amici brief.

The League of California Cities is an association of 476 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 25 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 State Association of Counties is an association of 58 California counties. The primary purpose of CSAC is to represent county government before the California Legislature, administrative agencies, and the federal government. CSAC's long-term objective is to significantly improve the fiscal health of all California counties so they can adequately meet the demand for vital public programs and services. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

This brief will assist the Court in resolving the issue presented. The brief explores matters that were not fully addressed by either party, such as the benefits of pensions plans for cities, counties, and public employees, the fiscal challenges of maintaining a pension plan, and the benefits of pension obligation bonds. The brief also discusses key aspects of the "obligation imposed by law" exception to the debt limitation, which was not fully addressed by the decision below.

Amici therefore request leave to file the attached brief, under California Rule of Court 8.520(f), in support of Respondent City of San José. This application is filed within 30 days after the filing of the final brief on the merits and is therefore timely pursuant to Rule 8.520(f)(2). Amici state, under California Rule of Court 8.520(f)(4), that: (1) no party or counsel for a party in this appeal authored or contributed to the funding of this brief, and (2) no one other than Amici or their counsel in this case made a monetary contribution intended to fund the preparation or submission of this brief.

Dated: February 21, 2025

Respectfully submitted,

/s/ Kristopher R. Wood

Kristopher R. Wood
(SBN 284727)
ORRICK, HERRINGTON &
SUTCLIFFE LLP
2050 Main Street, Suite 1100
Irvine, CA 92614
Tel: (949) 567-6700
Fax: (949) 567-6710
kristopher.wood@orrick.com

Devin Brennan
(SBN 254647)
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

Emily Minton Mattson
(SBN 330091)
ORRICK, HERRINGTON &
SUTCLIFFE LLP
355 S. Grand Avenue
Suite 2700
Los Angeles, CA 90071
(213) 629-2020

Counsel for Amici Curiae Cal Cities and CSAC

BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AS AMICI CURIAE IN SUPPORT OF CITY OF SAN JOSÉ

INTRODUCTION

Pensions are integral to the provision of cities and counties' public functions. Pensions allow cities and counties to hire and retain qualified employees, and pensions reward those employees for their long-standing public service. Cities and counties across California have established pensions to serve these purposes. Given that pensions are essential to public employment and local governance, the payment of pension benefits, once established, are protected under the California Constitution's contract clause and California statutory law. Cities and counties are therefore obligated by law to fund the pension benefits that they promised to their current and former employees. This case concerns one tool that cities and counties have in honoring those payments: pension obligation bonds, or POBs.

Petitioners argue that POBs implicate the constitutional debt limit, set forth in article XVI, Section 18 of the California Constitution, and therefore require voter approval. But Petitioners are wrong. Well-settled law dictates that the "obligation imposed by law" exception to the debt limit applies because cities and counties are legally mandated to fund pension benefits and to do so in an actuarially sound manner. Because the City of San José issued the POBs in question to fund its pensions, *City of San José v. Howard Jarvis Taxpayers Ass'n*, 101 Cal. App. 5th 777, 789 (2024), the POBs fall outside the scope of the debt limit.

Amici submit this brief to elaborate on the key points that reinforce the City of San José's position and address Petitioners' contrary arguments. Additionally, Amici seek to highlight the significant commonalities between the City of San José and the cities and counties comprising Amici's membership.

First, pensions serve an essential purpose in public employment. Given their role, it is well settled that pension laws "are liberally construed to carry out their beneficent policy." *Bellus v. City of Eureka*, 69 Cal. 2d 336, 345 (1968). Courts consistently apply this principle in protecting pension benefits and requiring cities and counties to fund those benefits. POBs are simply one method that the city or county has to fulfill its obligation to fund those benefits. *See infra* at 14-25.

Second, POBs do not implicate the debt limit because the "obligation imposed by law" exception renders the debt limit inapplicable. Cities and counties are obligated by law to fund pension benefits. Their obligations stem from California statutory law and the California Constitution's contract clause. In this particular case, the City of San José's charter also obligates it to fund pensions and to maintain an actuarially sound pension plan. Petitioners' arguments to the contrary are inapposite and unsupported by California law, whereas recognizing that pension expenditures are outside the purview of the constitutional debt limit comports with well-settled law and serves public policy considerations. *See infra* at 25-45.

BACKGROUND

Pensions Are Essential To Cities And Counties.

Pensions play a critical role in local governance. Pensions serve "to induce competent persons to enter and remain in public employment," *Kern v. City of Long Beach*, 29 Cal. 2d 848, 856 (1947), by providing "subsistence to retired public servants who have fulfilled their employment contracts," *Carman v. Alvord*, 31 Cal. 3d 318, 325 n.4 (1982). *See also id.* ("Pensions are a government obligation of great importance."); *Bellus*, 69 Cal. 2d at 351 (noting that the purposes of pensions are to "induce [municipal officers] to enter and continue in [public] service" and "provide sufficient subsistence for retired and disabled officers (or their dependents)").

Accordingly, pensions benefit the cities and counties—by attracting and retaining qualified employees—and the employees—by rewarding them for their long-standing public service. *See Bd. of Dirs. of Woman's Relief Corps. Home Ass'n of Cal. v. Nye*, 8 Cal. App. 527, 545 (1908) (recognizing the theory that to hold pensions as "a reward to those engaged in certain branches of the public service … has a tendency to enhance the efficiency of such service and is consequently in the interest of the public welfare"); Cal. Gov. Code § 31451 (stating that the purpose of the County Employees Retirement Law of 1937 ("1937 Retirement Law," Cal. Gov. Code §§ 31450 *et seq.*) is to "recognize a public obligation to county and district employees … by making provision for retirement compensation," which results in "the betterment of the public service").

Given the essential role they play, pensions have long been considered "an integral part of the employment contract." *City of San José*, 101 Cal. App. 5th at 792 (quoting *Carman*, 31 Cal. 3d at 332). To protect the vested rights of pensioners and insulate them "and their dependents from economic insecurity," California law requires "pensions laws … to be liberally construed." *County of Orange v. Ass'n of Orange Cnty. Deputy Sheriffs*, 192 Cal. App. 4th 21, 41 (2011).

In particular, "[w]here feasible [pension laws] should be construed as providing adequate funds to meet employees' reasonable expectations." *Carman*, 31 Cal. 3d at 332 (quoting *Bellus*, 69 Cal. 2d at 351); *see also Bellus*, 69 Cal. 2d at 345 (recognizing "the well-recognized rule that all pension laws are liberally construed to carry out their beneficent policy"). Courts routinely apply these principles to require government entities to fund pension plans. *See, e.g.*, *Valdes v. Cory*, 139 Cal. App. 3d 773, 786 (1983) (holding that the state had a contractual obligation to make "systematic, substantial monthly contributions to the PERS fund" and statute deferring such payments violated the contracts clause); *United Firefighters of L.A. City v. City of Los Angeles*, 210 Cal. App. 3d 1095, 1107 (1989) (holding that the city was contractually obligated to pay pension benefits approximating $3.37 billion); *Ass'n of Blue Collar Workers v. Wills*, 187 Cal. App. 3d 780, 783-84, 795 (1986) (holding that the City of Fresno was obligated to pay "$39 million in unfunded liability in its pension cost of living adjustment fund").

Establishing A Pension Plan Under California Law.

California law provides that "any city may establish a retirement system for its officers and employees and provide for the payment of retirement allowances, pensions, disability payments, and death benefits, or any of them." Cal. Gov. Code § 45301. Counties are vested with similar authority. *See id.* §§ 31500, 33004; *see also id.* § 20460 ("Any public agency may participate in this [CalPERS] system by contract entered into between its governing body and the board pursuant to this part.").

In this case, the City of San José's charter required that it establish and maintain "a retirement plan or plans for all officers and employees of the City." *See City of San José*, 101 Cal. App. 5th at 793. "[I]t is well settled that a charter city may not act in conflict with its charter." *Domar Elec., Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994); Cal. Const. art. XI, § 3(a) ("The provisions of a charter are the law of the State and have the force and effect of legislative enactments."). Accordingly, the City of San José established its current Federated City Employees Retirement System in 1975 and its current Police and Fire Department Retirement Plan in 1961. *See City of San José*, 101 Cal. App. 5th at 788.

However, not all cities and counties have charters, and not all cities with charters provide for the establishment of a pension plan. In such cases, a city or county can establish a pension through the statutory framework set forth in Government Code §§ 45300 *et seq.* and §§ 31200 *et seq.* Or it can join the California

Public Employees' Retirement System, or CalPERS—which is available to all public agencies. *See* Cal. Gov. Code § 20460(a); *see also Jasper v. Davis*, 164 Cal. App. 2d 671, 672 (1958) (recognizing that "any public agency, such as a county, may participate in and make all or part of its employees members of the [CalPERS] system").

In general, there are two basic types of pension plans: (1) defined benefit plans, and (2) defined contribution plans. *See* 11 Witkin, Summary 11th Com. Prop. § 58 (2024). In a defined benefit plan, pension benefits for individual city employees are determined by a set formula, which considers "factors such as age, final salary, years of service, type of retirement, and any cost of living adjustments," and are payable for life. *See City of San José*, 101 Cal. App. 5th at 788. The benefits, therefore, accrue incrementally over the course of the employee's tenure and are adjusted based on the ordinary activities of the employee. *See* 11 Witkin, Summary 11th Com. Prop. § 58. The City of San José's pensions are defined benefit plans. *See City of San José*, 101 Cal. App. 5th at 788. On the other hand, in a defined contribution plan, benefits are determined not by a formula, but solely by the contributions in the account and the earnings of the account. *See* 11 Witkin, Summary 11th Com. Prop. § 58.

Once a local government, like the City of San José or one of Amici's other members, establishes a pension and offers that pension to an employee, the pension becomes an "an element of compensation" for the employee. *Betts v. Bd. of Admin.*, 21 Cal. 3d 859, 863 (1978). Accordingly, "a vested contractual right to pension benefits accrues upon acceptance of employment," *id.*, or "upon the performance of services for a public employer," *Cal Fire Loc. 2881 v. Cal. Public Emps.' Ret. Sys.*, 6 Cal. 5th 965, 985 (2019). Once vested, a public employee's pension rights "may not be destroyed … without impairing a contractual obligation of the employing public entity." *Betts*, 21 Cal. 3d at 863; *see also Kern*, 29 Cal. 2d at 855 ("[An employee] is not fully compensated upon receiving his salary payments because, in addition, he has then earned pension benefits, the payment of which is to be made at a future date.").

That pension rights cannot be destroyed is an integral aspect of pension plans. If an employer could renege on its promise to provide pension benefits, the primary purpose of pensions would be thwarted. Pensions would no longer serve "as an inducement to public employees"; instead, they would "become merely a snare and a delusion to the unwary." *Kern*, 29 Cal. 2d at 856.

Pension Systems Are Widespread In California.

Practically all local governments in California have established or participate in one or more pension plans. According to the California State Controller's Office, all 58 California counties have pension systems—21 counties have defined benefit plans, a term defined above, *supra* at 17, while 37 participate in CalPERS.[1] Amici's Motion for Judicial Notice

[1] CalPERS runs three of eight defined benefit state plans. MJN, Ex. A at pp. 10-11 ("1 ENTITIES" sheet, listing eight plans with

("MJN"), Ex. A at pp. 10-11.[2] And out of California's 483 cities, 29 have defined benefit plans and 452 participate in CalPERS.[3, 4] *Id.*

Accordingly, pensions not only play an essential role in local government, but they are also ubiquitous in California.

The Fiscal Challenges Of Maintaining A Public Pension System.

Although cities and counties have flexibility in determining ***how*** to fund their pension plans, California law ***requires*** that they fund pension benefits. Cal. Gov. Code § 45343 ("Contributions [by municipalities] shall be in amounts which

---

an entity code of "State" (Column E)—three of which are CalPERS plans (Rows 89-91, *see* Column A)); *see also* MJN at 6-7. CalPERS's largest plan—PERF A—has over 2.2 million members and 2,888 employees. *See* MJN Ex. A at p. 14 ("8 PR_PLANMEM" sheet, Row 89, Column K ("grand total members"), Column X (number of agency-employers), and Column Y (number of members)).

[2] *See* MJN, Ex. A at pp. 10-11 ("1 ENTITIES" sheet, providing a listing of government entities with pension plans (Column A), by type of plan (Column D) and type of entity (Column E), reflecting 21 counties with defined benefit plans); *see id.* at p.14 ("8 PR_PLANMEM" sheet, Row 89, containing information on CalPERS PERF A plan participation, with Column N reflecting 37 county-employer participants).

[3] MJN Ex. A, at pp. 10-11 ("1 ENTITIES" sheet, Columns A, D, and E, reflecting 29 cities with defined contribution plans). *Id.* at p. 14 ("8 PR_PLANMEM" sheet, Row 89, Column P, reflecting 452 city-employer participants).

[4] That all 58 counties and 481 out of 483 cities provide defined pension benefits further demonstrates that the provision of such benefits through the adoption of (or participation in) pension plans is critical to cities and counties' ability to attract and retain qualified employees.

will accumulate at retirement a fund sufficient to carry out the promise to pay benefits to the individual on account of his service as a member of the system."); *id.* § 31586 ("All payments of the county or of any district into the retirement fund, whether made pursuant to this article or made pursuant to law, are obligations of the county or district."). Cities and counties also have an obligation to maintain actuarially sound pension systems.[5] Cal. Gov. Code § 45342 ("Any pension or retirement system adopted shall be on a sound actuarial basis."); *id.* §§ 31453.5, 31587 (requiring county governments to fund pensions under one of two methods based on actuarial valuations); *Valdes*, 139 Cal. App. 3d at 785 n.5 (noting that § 45342 "requires cities which elect to adopt their own retirement system [ ] do so on a 'sound actuarial basis'"); *City of Costa Mesa v. McKenzie*, 30 Cal. App. 3d 763, 772-73 (1973) ("[A] municipal retirement plan whether enacted under Government Code sections 45300-45345 or pursuant to 'an alternative procedure' must be on a sound actuarial basis.").

With respect to CalPERS specifically, local governments in the CalPERS system must "make the contribution for [their] employees in this system, as recommended by the actuary and approved by the [CalPERS] board and certified by it to the contracting agency." Cal. Gov. Code § 20532; *id.* § 20831 ("[No] contracting agency shall fail or refuse to pay the employers'

[5] Black's Law Dictionary defines an "actuarially sound retirement system" as one "that contains sufficient funds to pay future obligations, as by receiving contributions … to be invested in accounts to pay future benefits." *Actuarially Sound Retirement System*, Black's Law Dictionary (12th ed. 2024).

contribution required by this chapter or to pay the employers' contributions required by this chapter within the applicable time limitations."). These contributions are determined on an annual basis by the CalPERS actuary. *Id.* § 20814(c); *see also Bd. of Admin. v. Wilson*, 52 Cal. App. 4th 1109, 1133 (1997) ("Actuarial soundness of the [CalPERS] system is necessarily implied in the total contractual commitment, because a contrary conclusion would lead to express impairment of employees' pension rights.").

County governments with plans established under the 1937 Retirement Law (Cal. Gov. Code §§ 31450 *et seq.*) are subject to similar requirements. County boards of supervisors "shall" in adopting a county budget include "an appropriation determined pursuant to" the 1937 Retirement Law, Cal. Gov. Code § 31581, and "shall" "adjust the rates of interest, the rates of contributions of members, and county and district appropriations in accordance with the recommendations of the [retirement] board, but shall not fix them in amounts that reduce the individual benefits," *id.* § 31454. The retirement board, in turn, must make recommendations "[u]pon the basis of the investigation, valuation, and recommendation of the actuary," and such actuarial assessments must take place within one year of the establishment of the plan and at least every three years thereafter. *Id.* § 31453(a).

Likewise, here, the City of San José's charter also requires it to fund its pension plans and for those plans to be "actuarially sound." *City of San José*, 101 Cal. App. 5th at 793. The charter further requires the City's pension plans to "be operated in conformance with [the 1992 California Pension Protection Act]," which includes "an annual actuarial analysis that is publicly disclosed in order to assure the plan has sufficient assets." *Id.* The charter assigns the responsibility of "maintaining the actuarial soundness" of the plans to the City's retirement board. *Id.*

Indeed, the practicalities of maintaining a pension plan necessitate the involvement of actuaries. Pension benefits are deferred compensation. *Supra* at 14-15. Accordingly, "the exact amount of the pension benefit an active employee will receive upon retirement cannot be known until their retirement." *City of San José*, 101 Cal. App. 5th at 788. That amount will depend "on their years of service and pensionable earnings." *Id.* Relatedly, "[t]he current pension benefits of retirees are known, but their future benefits will depend on cost of living and on how long they and their beneficiaries live." *Id.*

Given these unknowns and their legal obligations, cities and counties engage actuaries to conduct regular evaluations to determine the contributions necessary to fund the retirement benefits of employees. Contributions made to fund the benefits earned by current pension members in a given year are referred to as the "normal cost." *Id.*; RA 134. Where "the normal cost does not cover the present value of providing vested requirement benefits [for all pension members], an unfunded liability arises." *City of San José*, 101 Cal. App. 5th at 788; RA 135. An unfunded liability—also referred to as the unfunded accrued actuarial liability (UAAL)—is "the difference between the present value of future retirement benefits that have been earned as of the valuation date and the assets the city has currently set aside to pay for them." *City of San José*, 101 Cal. App. 5th at 788 (citing San José Mun. Code, ch. 3.28, § 3.28.960).

Actuaries calculate the unfunded liability regularly. To do so, they consider "a combination of factors, including the performance of the city's investments, city employees' actual retirement and mortality patterns, and changes in actuarial assumptions and methods." *Id.* at 789. Many of the relevant factors impacting the unfunded liability analysis are outside of the city's control. For example, here, the City of San José's "unfunded liability has grown not because of increases in promised benefits, but because declining interest rates on the expected rate of return on the city's investments, as well as changes to certain assumptions about demographic factors, including mortality and retirement rates." *Id.*

Again, the CalPERS and 1937 Retirement Law statutory schemes are similar. In addition to other required contributions, local governments in both systems must make contributions to be fixed and determined by the retirement board on account of unpaid liability for prior service. Cal. Gov. Code § 20806; *id.* § 31453.5. The retirement board may adopt a funding period of up to 30 years to amortize unfunded liability obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies. *Id.* § 20812; *see also id.* § 31453.5 ("The portion of liability not provided by the normal contribution rate shall be amortized over a period not to exceed 30 years.”).

In short, if a city or county establishes a pension system, it must fund the pension benefits provided thereunder. The unfunded liability, which may increase or decrease with market fluctuations or changes in retirement patterns, represents the amount necessary (together with prior contributions) to fund pension benefits already earned.

Pension Obligation Bonds.

This case concerns the City of San José’s issuance of pension obligation bonds to fund its obligation to the pension plans. *See* 1 AA 084-91 (resolution that authorizes the POBs at issue); 1 AA 137 (identifying the City’s goal as “ensur[ing] the long-term sustainability of the City’s retirement system”). The details of the particular bond are outside the scope of this brief. In general, however, POBs are an important tool that are often used by local governments to address their obligation to fund pension benefits while maintaining overall fiscal health. *See* 1 AA 204 (“The issuance of pension obligation bonds is a common financing mechanism to refund existing debt.”).

POBs provide many benefits to cities and counties. First, by issuing POBs, local governments can avoid cutting benefits or increasing contributions and reduce reliance on their contributions. 1 AA 140, 155. Second, POBs result in cost savings to employers—and taxpayers—through decreased interest payment. This is true even after accounting for the cost of the issuance. *See* 1 AA 143, 155. The instant case serves as an example of this. *See City of San José*, 101 Cal. App. 5th at 791 ("The resolution authorizing the issuance of the bonds states that the bonds can be issued only if they result in savings to the city."). Third, there are downstream benefits of POBs, including a better credit rating for the city or county if the POB lowers its interest obligations. *See* 1 AA 143, 155, 161-62. This could lead to reduced borrowing costs in other financings.

Given these benefits, it is no surprise that POBs are widely used. Since 1985—when the first POB was issued—POBs have been issued in multiple states, most notably California. 2 AA 453. Indeed, "[s]ince 2017, there have been 111 POBs totaling $10.8 billion issued throughout the United States with 45 POBs (41%) issued in California." 2 AA 453. Over a longer timescale, a report to the California Debt and Investment Advisory Commission (CDIAC) indicates "333 unique POB and OPEB transactions worth over $34 billion have been issued by public agencies in California from 1985 through April 2022." MJN Ex. B at 21.

California courts regularly validate the issuance of these POBs, holding that the POBs do not create new debt but replace pension obligations that cities and counties are required to fund. *See* 1 AA 206 ("[Between May 2020 and July 2022], Stradling has obtained fifteen (15) validation judgments validating the issuance of Pension Obligation Bonds … totaling more than 2.6 billion dollars."); *see also* 2 AA 217-91 (the validation judgments).

ARGUMENT

Petitioners challenge the validity of POBs that the City of San José issued to fund its pension obligations. According to

Petitioners, the City's action implicated the constitutional debt limit and thus required voter approval. The Court of Appeal and the trial court correctly disagreed, holding that the POBs fell outside the scope of the constitutional debt limit. Although both decisions are correct and based on sound reasoning, the two courts looked at the question presented in the case through slightly different lenses. However, each "fundamentally … recogni[zed] that the transaction … in question does not create a 'debt' owed by the governmental entity within the meaning of the debt limit provisions, but is instead a payment arrangement that falls entirely outside of those provisions." *Taxpayers for Improving Pub. Safety v. Schwarzenegger*, 172 Cal. App. 4th 749, 762 (2009); *see also State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc.*, 152 Cal. App. 4th 1386, 1401 (2007) ("[A]ll of the exceptions recognized under article XVI, section 18 are just restatements of the general principle that the local debt limit applies only in circumstances where the governmental entity has *created* a *debt*.").

Amici urge this Court to adopt the trial court's reasoning that the City of San José has an obligation imposed by law to fund pension benefits because it follows the traditional framework for determining whether a local government's conduct implicates the constitutional debt limit, which cities and counties have relied upon for hundreds of transaction since 1985.

I. The Constitutional Debt Limit And Its Exceptions.

Article XVI, section 18 of the California Constitution sets forth the municipal debt limitation. Section 18 provides: "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose." In other words, the debt limitation requires that "[e]ach year's income and revenue must pay each year's indebtedness and liability, and no indebtedness or liability incurred in one year shall be paid out of the income or revenue of any future year." *County of Orange*, 192 Cal. App. 4th at 33.

The constitutional debt limitation was enacted in 1879 "in response to concern over excessive municipal indebtedness." *City of San Diego v. Rider*, 47 Cal. App. 4th 1473, 1481 (1996); *San Francisco Gas Co. v. Brickwedel*, 62 Cal. 641, 642 (1882) (noting that the debt limitation provision "put a stop to" municipal "extravagance"). To curb such excess, the provision "establish[ed] the 'pay as you go' principle … [in] municipal finance." *County of Orange*, 192 Cal. App. 4th at 33. Accordingly, the provision "ha[s] been viewed more accurately as [a] balanced budget requirement[] than [a] debt limit[]." *Taxpayers For Improving Public Safety*, 172 Cal. App. 4th at 761.

This Court has identified several exceptions to the debt limitation. *Rider v. City of San Diego*, 18 Cal. 4th 1035, 1046 (1998) (recognizing that certain exceptions "are almost as old as the [debt limitation] itself" and "are firmly rooted in [this Court's] jurisprudence"). Those exceptions include: "the special fund doctrine," *City of Oxnard v. Dale*, 45 Cal. 2d 729, 733 (1955), obligations "imposed by law," *City of Long Beach v. Lisenby*, 180 Cal. 52, 57 (1919), and contingent obligations, *Rider*, 18 Cal. 4th at 1047.

These exceptions, albeit different in substance, share a common thread. Each exception reflects an instance in which the debt limit is "too rigid and restrictive for the needs of a modern, urbanized population." *Id.* at 1046. Rather than opening the door to municipal extravagance, the exceptions allow municipalities to maintain fiscal responsibility while abiding by compulsory obligations and dispensing essential government duties. *See, e.g.*, *Lewis v. Widber*, 99 Cal. 412, 415 (1893) (holding that the county had an obligation to pay its treasurer's salary and that expenditure was exempt from the municipal debt limitation); *San Francisco Sulphur Co. v. County of Contra Costa*, 207 Cal. 1, 4-5 (1929) (holding that the municipal debt limitation was not applicable to bonds issued for the improvement of streets where there was a special fund for the payment of the bonds). Or, as Courts of Appeal have recognized, each exception "is fundamentally a recognition that the transaction or legislation in question does not create a 'debt' owed by the governmental entity within the meaning of the debt limit provisions, but is instead a payment arrangement that falls entirely outside of those provisions." *Taxpayers For Improving Public Safety*, 172 Cal. App. 4th at 762; *see also State ex rel. Pension Obligation Bond Com.*, 152 Cal. App. 4th at 1401 ("[I]t may be noted that all of the exceptions recognized under article XVI, section 18 are just restatements of the general principle that the local debt limit applies only in circumstances where the governmental entity has *created* a *debt* … Because article XVI, section 1, like article XVI, section 18, limits the power of the governmental entity to create debt, that limitation should not apply if no debt has been created.”).

II. The “Obligation Imposed By Law” Exception.

This case implicates the obligation imposed by law exception. First recognized in *Lewis* in 1893, this exception provides that “[a]n obligation imposed by law upon a city or county is not an indebtedness or liability within the meaning of the debt limitation provision.” *County of Los Angeles v. Byram*, 36 Cal. 2d 694, 698 (1951); *see also Wright v. Compton Unified Sch. Dist.*, 46 Cal. App. 3d 177, 181 (1975) (“[T]his constitutional debt limitation does not apply to an obligation or liability imposed by law as distinguished from one voluntarily incurred.”). In *Lewis*, the city had an obligation to pay the salary of a city clerk, which removed the relevant debt from the purview of the debt limitation. 99 Cal. at 413. Likewise, in *City of Long Beach*, the city had a duty to pay a tort judgment imposed against it, and that duty rendered bonds issued to pay for the judgment exempt from the municipal debt limitation. 180 Cal. at 57-58; *see also Byram*, 36 Cal. 2d at 698-99 (applying the obligation imposed by law exception to the county’s duty to provide “adequate quarters for courts”).

For the obligation imposed by law exception to apply, the obligation must be a “specific” legal duty to expend money. A “‘general’ duty on local government to perform some function” does not excise the money spent on that function from the purview of the debt limitation. *Compton Cmmty. Coll. Fed. of Teachers v. Compton Cmmty. Coll. Dist.*, 165 Cal. App. 3d 82, 91 (1985). "Only if the law imposes a 'specific' duty to expend its money on that function will those expenditures be exempt from the constitutional debt limitation." *Id.*

For example, in *Compton Community College Federation of Teachers*, the Court of Appeal held that Compton Community College District "had a specific duty to employ the teachers needed to provide education to its citizens and to pay them according to a set salary schedule." *Id.* at 93; *see also id.* at 91 n.2 (recognizing that "the logic of the 'imposed by law' exception" applies to "relationships—contractual and otherwise—which are similar to that of employer-employee"). Expenditures required to pay those salaries, therefore, were "not barred by the constitutional debt limitation and [could] be made out of revenues and income from later fiscal years." *Id.* at 96; *see also Wright*, 46 Cal. App. 3d at 183 (holding that state law imposes a duty to provide legal representation for employees at the district's expense regardless of whether the district had already exhausted its revenues for the years the attorney had billed).

III. The Obligation To Fund Pensions Is Imposed By Law.

The obligation imposed by law exception applies here. When a city or county establishes a pension plan, it assumes a specific duty to fund that pension plan and to do so in an actuarially sound manner. The source of that duty is California state law. A POB that is issued to fund the pension is therefore not subject to the constitutional debt limit.

California law requires that local governments fund pension benefits. Cal. Gov. Code § 45343 (“Contributions [by municipalities] shall be in amounts which will accumulate at retirement a fund sufficient to carry out the promise to pay benefits to the individual on account of his service as a member of the system.”); *id.* § 31586 (“All payments of the county or of any district into the retirement fund, whether made pursuant to this article or made pursuant to law, are obligations of the county or district.”); *id.* § 31454(a) (“The board of supervisors shall … adjust the rates of interest, the rates of contributions of members, and county and district appropriations in accordance with the recommendations of the [retirement] board, but shall not fix them in amounts that reduce the individual benefits provided in this chapter.”); *id.* § 20532 (stating that local governments in the CalPERS system must “make the contribution for [their] employees in this system, as recommended by the actuary and approved by the board and certified by it to the [local governments]”); *id.* § 20831 (“[No] contracting agency shall fail or refuse to pay the employers’ contribution required by this chapter or to pay the employers’ contributions required by this chapter within the applicable time limitations.”); *supra* at 19-22. Compliance with this legal obligation is not voluntary. *See Valdes*, 139 Cal. App. 3d at 784-85 (recognizing that pension contributions are obligations of the state). Local governments therefore do not have an option: Once established, they must fund their pension plans, and they must do so in an actuarially sound manner—including by amortizing or otherwise providing for any unfunded liabilities. Cal. Gov. Code § 20812 ("[T]he [CalPERS] board may adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies and school employers."); *id.* § 31453.5 ("The portion of liability not provided by the normal contribution rate shall be amortized over a period not to exceed 30 years.").

Moreover, because pension benefits are a form of employee compensation, the California Constitution further obligates cities and counties "to make pension payments to covered employees." *See City of San José*, 101 Cal. App. 5th at 795-96. Regardless of whether an employee has yet to complete his prescribed period of service, "he has actually earned some pension rights as soon as he has performed substantial services for his employer." *Kern*, 29 Cal. 2d at 855. His employer therefore is obligated to pay him the pension payments, just as the employer is obligated to pay the employee's salary. That obligation is "a contractual duty" protected under the California Constitution's contract clause. *See id.*; *see also Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Emps.' Ret. Ass'n*, 9 Cal. 5th 1032, 1077 (2020) ("It is the nature of pension rights as deferred compensation that caused *Kern* to hold them protected under the contract clause."). Indeed, this Court has consistently recognized that "a public employee acquires a constitutionally protected implied contractual right to receive statutory pension benefits upon retirement." *Cal Fire Local 2881*, 6 Cal. 5th at 983; *see also O'Dea v. Cook*, 176 Cal. 659, 661-62 (1917) (recognizing that pension benefits are "in a sense a part of the contract of employment itself"); *Kern*, 29 Cal. 2d at 853 (observing that "a pension right is 'an integral portion of contemplated compensation'" and thus "cannot be destroyed, once it has vested, without impairing a contractual obligation").

The duty to provide pension payments necessarily implies an obligation to (1) fund the pension plans, and (2) to do so in an actuarially sound manner. A city cannot make do on its obligation to fund pension benefits if the funds in the pension system are insufficient, and no provision is made to cover any unfunded liability (whether through the amortization option provided by statute or via pension obligation bonds). *See Wilson*, 52 Cal. App. 4th at 1133 (regarding the CalPERS system, the "[a]ctuarial soundness of the system is necessarily implied in the total contractual commitment [to pay pension benefits], because a contrary conclusion would lead to express impairment of employees' pension rights"); *see also Valdes*, 139 Cal. App. 3d at 785-86. And given the nature of deferred compensation, a public employee's right to those pension benefits vests long before he retires. *See supra* at 14-15; *Betts*, 21 Cal. 3d at 863 ("Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity.").

In addition to California statutory law and the California Constitution, the City of San José is also subject to the requirements set forth in its charter. *Domar Elec.*, 9 Cal. 4th at 171; Cal Const. art. XI, § 3(a) ("The provisions of a charter are the law of the State and have the force and effect of legislative enactments."). Pursuant to its voter-approved charter, the City is required to establish, fund, and maintain actuarially sound retirement plans. *City of San José*, 101 Cal. App. 5th at 793; 3 AA 535.

Not only does the City of San José—and all other cities and counties in California—have a duty to fund pensions, that duty is a mandatory and specific obligation. As discussed above, the obligation itself is not optional—regardless of how a city or county establishes its pension system, it must fund that pension system. *See supra* at 19-22, 31-33. State law, in multiple forms, binds cities in this regard. And the duty is specific. The City is required "to perform a certain function": Fund the pension plans and do so in an actuarially sound manner. *See Compton Cmmty. Coll.*, 165 Cal. App. 3d at 94. That function is just as specific as the duty "to employ the teachers needed to provide education to its citizens and to pay them according to a set salary schedule," *id.* at 93, or the duty to "provide for the defense of [district] employees in the defamation action brought against them," *Wright*, 46 Cal. App. 3d at 182, or the duty to provide "adequate quarters for [the] courts," *Byram*, 36 Cal. 2d at 699. Accordingly, the duty legally imposed on the City of San José, and other similarly situated cities and county, justifies exemption from the constitutional debt limit.

IV. POBs Do Not Create New "Debt."

The City's decision to issue POBs to comply with its obligation to fund the pension plans does not alter the obligation imposed by law analysis. As courts below correctly held, the POBs are not an indebtedness or liability themselves; they are "only the evidence or representat[ion] of an indebtedness." 3 AA 538 (quoting *City of Los Angeles v. Teed*, 112 Cal. 319, 327 (1896)[6]); *City of San José*, 101 Cal. App. 5th at 806 (same). Indeed, it is well settled that converting debt into bond obligations does not create new debt and doing so is well within the city or county's discretion. *See City of Long Beach*, 180 Cal. at 60 ("It rests entirely with the governing body of the town or city to determine whether or not an outstanding indebtedness which is presently due or is soon to become due, or which is bearing a high rate of interest, shall be converted into long term bonds at reduced interest.").

Cities and counties are obligated under statute to pay unfunded actuarial liability over time if their retirement boards amortize the unfunded liability as provided for by statute. Cal. Gov. Code § 20812; *id.* § 31453.5. In this way, unfunded actuarial liability shares some commonality with bonds, which must also

[6] In their Reply Brief, Petitioners argue that *Teed* "pre-dates the constitutional provision at issue." Reply Brief at 15-16. Petitioners are incorrect. The constitutional debt limit was enacted in 1879—17 years before *Teed*. *See Teed*, 112 Cal. at 326; Cal. Const. art. XVI, § 18(a). At the time of *Teed*, however, the debt limit provision was § 18 of article XI, whereas now it is § 18 of article XVI. *Teed*, 112 Cal. at 326; Cal. Const. art. XVI, § 18. *Teed*, therefore, remains good law.

be paid over time. Pension obligation bonds merely replace the obligation to fund pensions and make payments on unfunded liability with an obligation to make payments on bonds. Thus, they do not create a new debt. And because a local government can in many instances borrow at lower interest rates, pension obligation bonds often result in significant savings to the issuing entity—as the City of San José seeks to do here.[7] *See City of San José*, 101 Cal. App. 5th at 791.

In short, the POBs stand in the shoes of the amount owed to the pension plans. Although the debt exists in a different form, the POB does not create new debt.

V. The Trial Court's Holding Comports With Public Policy.

The trial court's holding that the obligation imposed by law exceptions applies to pension obligations accords with public policy considerations. As discussed above, pensions play a critical role in local government and are ubiquitous in California. Both public employers and employees rely on pension benefits. The former must be able to offer pensions to prospective, qualified employees to attract and retain them, and the latter count on

[7] Pension obligation bonds in this way resemble refinancing transactions for residential mortgages. Replacing the variable nature of unfunded actuarial liability with the fixed debt of bonds makes a particularly apt comparison to refinancing an adjustable-rate mortgage, in which interest rate (and thus the total future payments) are variable, to a fixed rate mortgage "which offers the certainty of set payment amounts no matter what happens to interest rates in the future." William J. Birney, *Refinancing Your Home Mortgage*, L.A. Law., 11 (Jan. 2003).

pension benefits for their livelihood upon retirement. *See supra* at 14-15; *see also Carman*, 31 Cal. 3d at 325 n.4 ("Pensions are a government obligation of great importance. They help induce faithful public service and provide agreed subsistence to retired public servants who have fulfilled their employment contracts."). Subjecting the funding of pensions plans to the debt limit threatens the beneficial role they play in California's cities and counties.

Moreover, pensions are not the sort of extravagant and profligate borrowing that the constitutional debt limit sought to prevent. *See San Francisco Gas Co.*, 62 Cal. at 642. Quite the opposite, pensions funds are an example of careful, responsible planning for the future of local government employees. *See supra* at 14-15, 17-18.

These important considerations counsel against holding cities and counties' funding of pensions subject to the constitutional debt limit.

VI. Petitioners' Arguments Against The "Obligation Imposed by Law" Exception Lack Merit.

Petitioners lob multiple arguments against the application of the obligation imposed by law exception in this context. But their arguments are inapposite and untethered from this Court's precedent.

First, Petitioners contend that the City can play only two roles: create the pension plans and pay invoices sent to it by the retirement boards. Opening Brief at 19-20. According to Petitioners, Proposition 162, which gives retirement boards "the sole and exclusive fiduciary responsibility over the assets of a public pension or retirement system," divests municipalities of any other duties in connection with pensions, including the duty to "manage" the retirement plans, "decide that additional assets must be supplied in the current year," or "perform … actuarial services." Opening Brief at 19.

Petitioners misunderstand the City's conduct in this case and many other similar situations involving Amici's membership. The City did not calculate the unfunded liability, perform actuarial services, manage the plans, or simply "decide" the pension fund required more assets. Actuaries conducted the relevant evaluations; the retirement board managed the assets of the fund; and both informed the City that the fund was woefully underfunded. *See supra* at 22-23. The City of San José then carried out its obligation to *maintain*—not "manage," as Petitioners incorrectly insert—actuarially sound pension plans by sufficiently funding the plans. Each entity followed its specified role and fulfilled its assigned function.

Indeed, the City's obligation stems in part from calculations imposed on it by the retirement board, a separate entity with Constitutional and statutory authority to set the City's obligations. Cal. Const. art. XVI, § 17(e) ("The retirement board of a public pension or retirement system … shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system."); *see also* Cal. Gov. Code §§ 20812, 31453.5 (CalPERS and county retirement boards amortize UAAL over 30 years). This favors a finding that the City's obligation is one imposed on it by law, given that the retirement board is a separate and higher authority. *Cf. State ex rel. Pension Obligation Bond Com.*, 152 Cal. App. 4th at 1406 (concluding that there was no obligation imposed by law where the state legislature imposed the obligation on itself instead of by a higher authority). Other cities and counties are similarly situated, as the requirement of an independent retirement board to oversee pension plans is one of general application under the California Constitution. *See generally* Cal. Const. art. XVI, § 17.

Second, Petitioners argue that the obligation imposed by law exception does not apply because the unfunded liability is merely "a projection of future needs"—it does not represent a "current, existing, legally enforceable obligation." Opening Brief at 26-30 (citing *County of Orange*, 192 Cal. App. 4th at 36). But this argument misunderstands the City of San José's specific obligation (and that of other similarly situated cities and counties). The City is obligated to funds pension benefits to which it already agreed. *See supra* at 19-22, 31-33; *contra* Opening Brief at 27. This reasoning is consistent with the Court of Appeal's decision in *County of Orange*.

In *County of Orange*, the Court of Appeal considered whether the county retirement board's modification of the retirement formula, which resulted in higher pension payments, violated the constitution debt limit. 192 Cal. App. 4th at 30-31. The county sued to rescind the board's decision, arguing that the increase in pension benefits resulted in an "unfunded actuarial liability" that "was an immediately enforceable debt incurred in a year in which the County's [revenue was less than the liability] and the County did not hold the required election to obtain voter approval." *Id.* at 33. The court disagreed, holding that the board's decision did not incur an immediate, legally enforceable obligation within the meaning of the debt limitation because the unfunded liability was "an actuarial estimate projecting the impact of a change in a benefit plan." *Id.* at 36-37. In other words, the change in the benefit plan did not create a "debt," so it did not implicate the constitutional debt limit.

As the Court of Appeal correctly recognized below, "[t]he facts here are materially different" than the facts in *County of Orange*. *See City of San José*, 101 Cal. App. 5th at 798. The City of San José is not seeking to increase pension benefits. To the contrary, the City of San José seeks to make do on pension benefits that it has already promised to pay. *See id.* The unfunded liability—which is undoubtedly "an actuarial estimate," *County of Orange*, 192 Cal. App. 4th at 36-37—is an attempt to pinpoint the cost of the City's pension obligations at any given time, depending on a number of factors.[8] But the relevant

[8] This accords with the record in this case. In the trial court, Eugene Yano, a Certified Public Accountant and government consultant, provided a declaration stating: "While accounting and auditing professionals sometimes refer to the unfunded pension liability as not 'payable today,' this is a term of art and does not mean the obligation is not owed. *The obligation is owed*. The actuarially-determined liability is a reasonable estimate of the amount that eventually will be paid, and is not a speculative amount." 1 AA 060 (emphasis in original).

obligation here stems from the City's duties to fund pension benefits for work already performed, not from a non-existent duty to immediately pay the unfunded liability, which may change based on market fluctuations or other factors.

Third, the apparent tension Petitioners identify between *County of Orange* and the Court of Appeal's opinion stems from a fundamental error by Petitioners. Namely, Petitioners argue that the obligation imposed by law exceptions is "for clearly defined dollar amounts, immediately due and payable, which can be presently enforced if not paid." Opening Brief at 34-35. The case law, however, says otherwise. In *Compton Community College Federation of Teachers*, the Court of Appeal recognized that any requirement that the law must "set the exact amount of [the] expenditure" for the obligation imposed by the law to apply has been "removed" from the jurisprudence since this Court's 1893 decision in *Lewis* and decision in *City of Pasadena v. McAllaster*, 204 Cal. 267 (1928). *Compton Cmmty. Coll.*, 165 Cal. App. 3d at 93. For example, in *Byram*, this Court held that the county had a legal duty to provide "adequate quarters for courts," even though the county had significant discretion in deciding what constituted "adequate quarters" and how much money to invest in the building. *See Byram*, 36 Cal. 2d at 699-700.

Likewise, in *Wright*, the Court of Appeal recognized the district's duty to provide its employees with legal representation, despite the fact that the law did "not require the district to pay the attorney a specific total fee or to limit the attorney to a certain hourly rate." *Compton Cmmty. Coll.*, 165 Cal. App. 3d at

93 (citing *Wright*, 46 Cal. App. 3d at 181); *id.* (observing the district's "discretion to use a salaried public lawyer" or "a private attorney"). Accordingly, Petitioners' argument that the exception only applies where the amount is fixed and immediately due and payable lacks merit.

Fourth, Petitioners argue that because the city has a choice whether to issue a POB, the obligation imposed by law exception cannot apply. The obligation imposed by law exception, say Petitioners, only applies where the municipality has no discretion whatsoever. Opening Brief at 32. Again, the case law does not support Petitioners' position.

The obligation imposed by law exception applies where the *obligation* is mandatory. *See Compton Cmmty. Coll.*, 165 Cal. App. 3d at 93 (holding that the district had a "state-mandated function"). How the City of San José (or any similarly situated city or county) complies with that obligation remains within the City's discretion. *See Wright*, 46 Cal. App. 3d at 181 (recognizing that the district had discretion to use a salaried public lawyer or a private attorney); *see also City of Long Beach*, 180 Cal. at 60 (recognizing that it "rests entirely with the governing body of the town or city to determine" how to manage its indebtedness in light of market trends). That the City has such discretion has no bearing on the application of the exception in this context.

For example, Petitioners accept that judgment obligation bonds are within the obligation imposed by law exception, Opening Brief at 37 (citing *City of Long Beach*, 180 Cal. at 52 (holding that paying a tort judgment was an "obligation imposed by law," and thus, the bond issued to pay for the judgment was not subject to voter approval), but nothing in the law requires the local government to fund an adverse tort judgment by issuing bonds. Indeed, issuing bonds is merely one of several options. *See* Cal. Gov. Code §§ 970.4, 970.5, 970.6 *et seq.* (providing for immediate payment, payment in the following fiscal year, or payment via up to ten annual installments in case of "unreasonable hardship"); *id.* §§ 975 *et seq.* (concerning the funding of a judgment via bonds). It is ultimately up the local government to decide *how* it satisfies the obligation of the judgment, and that the local government has options does not impact the obligation imposed by law analysis.

Fifth, Petitioners rely on *Compton Community College Federation of Teachers* to argue that the City of San José's "original choice to offer pension benefits" renders its obligation to fund pension plans "voluntar[y]." Opening Brief at 42-45. Petitioners' argument misunderstands both the *Compton* case and the relevant constitutional analysis. To begin with, the *Compton* case actually *supports* the City of San José's position because the court held that even if a decision to hire a teacher at a particular salary was voluntary, the obligation to pay whatever salary was negotiated was mandated by state law. *Compton Cmmty. Coll.*, 165 Cal. App. 3d at 94-95 ("[E]ven if there was no legal obligation to provide an education or to employ teachers or to negotiate with them about salary, the District nonetheless did have a duty not to reduce any teacher salaries it might have voluntarily contracted to pay."). Pension obligations are the same.

Once a pension is established and the benefits earned, a local government is obligated to fund its pension plans. *See supra* at 19-22. As to the constitutional analysis, Petitioners are not challenging the City's decision to offer pension benefits. Instead, Petitioners are challenging the City's decision to issue POBs to fund those pension benefits. Accordingly, the constitutional analysis concerns whether the City issued the POBs to comply with an obligation imposed by law, not whether the City offered pension benefits voluntarily—the latter is immaterial to the question presented.

Again, the tort judgment example is instructive here. In determining whether a city is obligated to pay a tort judgment, the law asks whether the city has discretion to pay or not pay the judgment (it does not). *See Mills v. Houck*, 124 Cal. App. 1, 5 (1932); Opening Brief at 36. The law does not ask whether the tortious conduct that created the liability—e.g., damaging a citizen's private property in an inverse condemnation case—was voluntary. *See F & L Farm Co. v. City Council of the City Lindsay*, 65 Cal. App. 4th 1345, 1352 (1998) (holding that the city was obligated by law to pay the inverse condemnation judgment against it and thus, the constitutional debt limit did not apply). Likewise, whether the City had discretion to establish a pension is irrelevant to whether the City is obligated to fund that pension.

Sixth, Petitioners rely on *State ex rel. Pension Obligation Bond Committee v. All Persons Interested etc.*, to argue that voter approval is required here. 152 Cal. App. 4th 1386 (2007). But critically, *State* involved the state debt limit, not the municipal debt limit. *Id.* at 1401. Where the state is involved, the inquiry of whether the obligation imposed by law exception applies is materially different because the state's obligations are imposed under the state's own law. Indeed, in *State*, the Court of Appeal recognized that the state's "contractual obligation to maintain pension benefits" was "an obligation the Legislature has imposed on itself." *Id.* at 1406. If the Legislature wished to modify its obligation, it could do so as a matter of law—and in fact had done so in the past. *Id.* at 1405 ("The Legislature retains the power to eliminate or amend the obligation, as it did in the 2004 pension reform legislation described above."). But cities and counties do not have that power. In other words, the imposition of state law on the state is a different matter than the imposition of state law on a municipality, an entity that has no choice but to comply. Petitioners fail to grasp this distinction.

CONCLUSION

For these reasons, the Court should affirm the decision of the Court of Appeal but adopt the trial court's reasoning.

Dated: February 21, 2025

Respectfully submitted,

/s/ Kristopher R. Wood

Kristopher R. Wood
(SBN 284727)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2050 Main Street, Suite 1100
Irvine, CA 92614
Tel: (949) 567-6700
Fax: (949) 567-6710
kristopher.wood@orrick.com

Devin Brennan
(SBN 254647)
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

Emily Minton Mattson
(SBN 330091)
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 S. Grand Avenue
Suite 2700
Los Angeles, CA 90071
(213) 629-2020

Counsel for Amici Curiae Cal Cities and CSAC

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.520 of the California Rules of Court, the foregoing is proportionally spaced and contains 8,907 words, according to the word processing program used to prepare it.

/s

Kristopher R. Wood
Counsel for Amici Curiae
The League of California Cities and California State Association of Counties