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VIA OVERNITE EXPRESS

November 11, 2015

Hon. Tani Cantil-Sakauye, Chief Justice and
Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Support of PETITION FOR REVIEW in Supreme Court Case No. S229342, *San Bernardino County v. S.C. (Inland Oversight Committee)*

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

This request is submitted on behalf of Californians Aware ("CalAware"), a non-profit organization whose primary objectives and purposes are to foster the improvement of, compliance with and public understanding and use of, public forum law, which deals with people's rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

CalAware has filed *amicus curiae* briefs in cases raising First Amendment and right of access to information issues including *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, *Vargas v. City of Salinas* (2005) 135 Cal.App.4th 361, and *Starkey v. County of San Diego* (9th Cir. 2009) 346 Fed.Appx. 146.

Much of CalAware's work seeks to promote transparency from government officials and agencies.

CalAware respectfully submits this letter pursuant to California Rules of Court Rule 8.500(g) as *amicus curiae* in support of the Petition by The Inland Oversight Committee and Citizens for Responsible Equitable Environmental Development ("Petitioners") for review of the decision in *San Bernardino County v. Superior Court of San Bernardino County* (2015) 239 Cal.App.4th 679 ("*San Bernardino County*"), holding that Petitioners lacked standing to bring a taxpayer's suit to challenge a contract entered into by the County of San Bernardino as the result of bribery of a public official. We urge this Court to grant review in order to secure the critical public policy of preventing

and remedying corruption of and by public officials, as set out in Government Code § 1090.

The case involves the settlement of a lawsuit and the issuance of judgment obligation bonds to satisfy the resulting inverse condemnation judgment in favor of Colonies Partners, L.P. Both the settlement and the issuance of bonds resulted from the bribing of a member of the San Bernardino County Board of Supervisors.

While the bribe was given and accepted in 2007, its existence only came to light in 2011, when the Supervisor involved pleaded guilty to various bribery-related charges. (*San Bernardino County*, 239 Cal.App.4th at 683.) After the bribery occurred, but while it was still secret and unknown to the public, the County filed and litigated a validation action pursuant to Code of Civil Procedure § 860 to validate the judgment obligation bonds. The validation action found the bonds to be valid, and that result was not challenged within the 60-day statute of limitations for such a challenge.

In 2012, Petitioners filed an action under Government Code § 1090 ("§ 1090"), seeking invalidation of the bonds and disgorgement of the money paid to Colonies Partners, alleging that the bonds had been issued and the proceeds paid as a result of bribery, making the settlement and the bonds illegal under § 1090.

The Court below held that Petitioners had no standing to bring such a suit, and in a companion case held that the validation action barred any invalidation of the settlement or bonds, and any disgorgement of the $102 million paid by the County. (*San Bernardino County*, 239 Cal.App.4th at 687-688; *Colonial Partners, L.P. v. Superior Court of San Bernardino County* (2015) 239 Cal.App.4th 689, 695.)

This Court should grant review of *San Bernardino County* in order to resolve a difficult question of law that is of high importance, namely the prevention of bribery and corruption of public officials, and the recovery by the public of monies paid out illegally due to such corruption. Although stated by this Court in the context of the Public Records Act, Govt. Code Section 6250, *et seq.*, these concepts should apply with equal or greater force here: ""Implicit in the democratic process . . . [are] checks against the arbitrary exercise of official power and secrecy in the political process . . . ." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.)

This Court has recently reaffirmed the black letter law requirement that courts must harmonize different statutes into a coherent and meaningful whole. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955 ["A court must, where reasonably possible, harmonize statute, reconcile seeming inconsistencies in them . . .

when 'two codes are to be construed, they "must be regarded as blending into each other and forming a single statute."'"])

Here, a conflict exists between the Code of Civil Procedure § 860 validation statute and the § 1090 conflict of interest statute. But instead of harmonizing the two statutes, the Court of Appeal essentially elevated the validation statute above the conflict of interest statute, holding that the validation statute and a decision made under the validation statute could make a contract legal and valid that the conflict of interest statute holds cannot be legally formed. In so doing, the opinion below not only fails in its duty to harmonize apparently conflicting statutes, but it exalts the public policy of rapid certainty for public bonds and contracts that underlies the validation statute over the very strong public policy against corruption in government. The lower court did so by barring the suit and any possible recovery of the multi-million dollar fruits of bribing a public official. In effect, the appellate court held that the validation statute could immunize bribery of a public official.

The decision below abandons the public policy against corruption by public officials by elevating above it the policy of providing certainty as to municipal bonds. By so doing, the decision may encourage other entities, and other public officials, to engage in bribery and receipt of bribes, and then to quickly insulate their wrongdoing by bringing a validation action before anyone finds out about their abuse of the public fisc and their betrayal of the public trust.

This Court's review is indispensable to harmonize the statutes and to correct the Court of Appeal's elevation of one statute, and one set of public policies, over another. For example, this Court might hold that an exception to Code of Civil Procedure § 860 exists where a violation of § 1090 is adequately pled and proven, as it was here.

Since the awarding of a contract due to bribery of a public official is presumably atypical – although unfortunately, certainly not unheard of – such a harmonization would forward the public policy against corruption of and by public officials without unduly limiting the swift and certain validation of the vast majority of municipal bonds and contracts, which are free from such a taint.

At the very least, this Court could hold Petitioners have standing to try the case. Multiple cases have considered and decided actions brought by taxpayers to invalidate a public agency's action when that action violated § 1090. (*See, e.g., Thomson v. Call* (1985) 38 Cal.3d 663; *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572). The Court of Appeal found these cases inapplicable because the courts that had decided them did not

explicitly find that the plaintiffs therein had standing to bring those cases. (*San Bernardino County*, 239 Cal.App.4th at 685.)

While it is unexceptionable that an opinion does not constitute precedent for issues it did not discuss or consider (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 460), it is common for courts to render opinions without explicitly discussing the standing of the plaintiff(s), if that issue is not raised by a defendant. Allowing an appellate court to ignore a decision and deny its precedential value on grounds that standing was not explicitly discussed and decided would upset both common judicial practice and common expectations. In addition, the public policy supporting open and transparent government militates in favor of allowing persons or entities other than public officials or entities themselves to bring actions under § 1090.

Without this Court granting review, officials who have engaged in or know of malfeasance such as occurred in *San Bernardino County* would effectively become judges of themselves, and would foster the antithesis of Justice Brandeis' observation that "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." (*Buckley v. Valeo* (1976) 424 U.S. 1, 67, quoting L. Brandeis, *Other People's Money*, 62, National Home Library Foundation, ed. 1933.)

California has a vigorous public policy in favor of enforcement of good-government statutes by individuals and private groups that supports a grant of review by this Court. (*See, e.g., McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1316-1317 [petitioner was "interested person" in enforcement of public agency open meetings law under Brown Act even though he was not a resident of Orange County or the district served by respondent agency]; *Common Cause of California v. Board of Supervisors of Los Angeles County* (1989) 49 Cal.3d 432, 439 [taxpayers, as citizens "interested . . . in having the laws executed and the duty in question enforced," had broad standing to seek injunction requiring execution of voter outreach statute].) That policy also supports grant of review of the decision below, which decision allows government officials to act to validate their own wrongdoing at the cost of both substantial taxpayer funds and significant public confidence in the integrity of the process.

CalAware respectfully requests that this Court grant review to resolve this issue of great statewide importance.

Respectfully Submitted,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS:lm

PROOF OF SERVICE

I, LILLIAN MANZELLA, declare:

I am over the age of 18 and not a party to the within action. I am employed by The Silverstein Law Firm, APC. My business address is 215 N. Marengo Avenue, 3rd Floor, Pasadena, California, 91101. On November 11, 2015, I served the within document(s):

AMICUS CURIAE LETTER ADDRESSED TO HON. TANI CANTIL-SAKAUYE, CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT

☒ by placing the document(s) listed above in a sealed Overnite Express/NORCO envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Overnite Express/NORCO agent for delivery as set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pasadena, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[SEE ATTACHED SERVICE LIST]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 11, 2015, at Pasadena, California.

_____

LILLIAN MANZELLA

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