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January 15, 2014

The Honorable Tani Cantil-Sakauye, Chief Justice
Associate Justices, California Supreme Court
350 McAllister St.
San Francisco, California 94102

Re: **Request for Review**
Pich v. Lightbourne
Case No. C066397
Decision filed November 13, 2013

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to CRC 8.500(g), I am writing on behalf of the Legal Aid Association of California (LAAC) and its legal services member organizations to request that the Court review the opinion of the Third Appellate District in the case of *Pich v. Lightbourne*. LAAC and its members support a review of *Pich* because the decision conflicts with established authority on the availability of a writ of mandate. If the decision of the Court of Appeal stands, writs of mandate will be unavailable if there is discretion in the means of meeting a legal duty, even if what the agency did is insufficient to meet its legal duties.

Interest of the Legal Aid Association of California

The opinion affects critical interests of LAAC and its member organizations. Amicus LAAC is a statewide membership association of eighty-seven nonprofit public interest law organizations, which provide free civil legal services to low-income persons and communities throughout California. The mission of LAAC (which is itself a nonprofit corporation) is to ensure the efficient and coordinated delivery of legal services to indigent and disadvantaged persons throughout California and to provide an effective and unified voice for its members on issues of concern to the statewide justice community.

LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations, including seniors, persons with disabilities, victims of domestic violence, and migrant farmworkers.

Many of LAAC's organizational members undertake public interest litigation as part of their comprehensive services to low-income and other disadvantaged clients. LAAC's members use the courts to ensure that their clients have access to the public benefits to which the clients are entitled.

LAAC recognizes the importance of the availability of a writ of mandate, especially in the recent time of California's budget crisis. California's courts are the protectors of its citizens, residents, and businesses. Writs of mandate give the courts the power to compel government agencies to act and the power to protect Californians.

Reasons Why Review Should be Granted

The *Pich* decision used the wrong standard in denying the writ of mandate and finding that a writ of mandate is available only if there is no discretion in the means to meet legal duties. (*Pich*, supra, 164 Cal.Rptr.3d at pp.397-98, quoting *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633.)

This confusion of standards creates uncertainty and raises a troubling issue of law. In holding that Defendants violate no legal duty in allowing a data system consortium to make substantive policy for the CalWORKs and CalFresh programs (*Pich*, supra, at p.397.), the decision essentially opens the door for additional delegation of policy decisions to software programmers. The decision also ends any state accountability for the failures of its county agents in the operation of the CalWORKs and CalFresh programs. These results conflict with decisions from other districts and violate California's obligations under federal law. (*See County of Marin v. Martin* (1974) 43 Cal.App.3d 1, 8-9 [holding that state has a duty of tight supervision when necessary to ensure county compliance with program requirements]; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 240 [cannot delegate substantive policymaking in CalWORKs and CalFresh programs]; 42 U.S.C. § 602(a)(4); 7 U.S.C. §§ 2012(n)(1) and 2020(d).)

The decision is also worthy of review because it improperly departs from the rule that demurrers are to be determined by the facts as pled when the Petition was filed. The Court of Appeal assumes that Defendants' actions met its supervision duty, when the facts as pled by Petitioners were that those actions were insufficient to meet Defendants' legal duties.

For the foregoing reasons, LAAC requests that the Court grant the pending petition for review.

Sincerely yours,

Salena Copeland
Interim Executive Director

cc: See attached Proof of Service