No. S247266

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CALIFORNIA SCHOOL BOARDS ASSOCIATION, et al.
Appellants and Petitioners

vs.

STATE OF CALIFORNIA, et al.
Appellees and Respondents.

On Review from the Court of Appeal
First Appellate District, Division 5 – Case No. A 148606

After an Appeal from the Alameda County Superior Court
(The Honorable Evelio Grillo) – Case No. RG 11554698

PROPOSED AMICI CURIAE BRIEF OF SAN JOSE UNIFIED SCHOOL DISTRICT; GROSSMONT UNION HIGH SCHOOL DISTRICT; NEWPORT-MESA UNIFIED SCHOOL DISTRICT; POWAY UNIFIED SCHOOL DISTRICT; EAST SIDE UNION HIGH SCHOOL DISTRICT; AND FULLERTON JOINT UNION HIGH SCHOOL DISTRICT IN SUPPORT OF PETITIONERS CALIFORNIA SCHOOL BOARDS ASSOCIATION, ET AL.

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INTRODUCTION

Amici San Jose Unified School District; Grossmont Union High School District; Newport-Mesa Unified School District; Poway Unified School District; East Side Union High School District; and Fullerton Joint Union High School District ("Amici or "Districts"), hereby file their Amici brief in this matter. The Amici will not repeat previous technical arguments by the parties, but will concisely address fundamental concerns regarding how the combination of several recently enacted statutes, including those currently before the Court and those otherwise being challenged by Amici, have radically undermined the Constitutionally protected right of school districts to subvention for state mandated programs.

Amici were among the test claimants in the Graduation Requirements test claim before the Commission on State Mandates, as well as subsequent superior court litigation brought by the Department of Finance. (Department of Finance v. Commission on State Mandates, Sacramento Superior Court Case No. 34-2010-80000529.) In addition, Amici are also among several districts challenging other recent attempts by the State to escape its constitutional obligation to provide separate subvention to school districts for the cost of programs imposed on them by the State. (Sacramento County

Superior Court Case No. 34-2017-80002696; San Diego County Superior Court Case No. 37-2016-00042334; Court of Appeal, Fourth Appellate District No. D072894.) While that later challenge focuses on accounting maneuvers which double count general funding (otherwise flowing to all school districts) as reducing the subvention due to specific school districts which have submit claims through the mandates reimbursement process, the State's defense in that case is sure to mirror the argument made before the Court and analyzed infra – that money "is just money." However, the State does not, and cannot simply declare that general funding to all school districts can also be deemed to satisfy the specific subvention amounts due to specific school districts under the constitutional right to subvention. School districts have extremely limited options for securing local revenue, thus allowing the State this unlimited authority would destroy the protection of local budgetary authority that the voters explicitly endorsed in adopting article XIII B, section 6 and allow the State to essentially control a large majority of school district budgets. The Court should reject the State's attempts to undermine the constitutional protection on local decision making and clarify that the State cannot use statutes and accounting maneuvers to evade this constitutional responsibility

II.

ARGUMENT

A. The State's Position That State Funding Is Fungible Fundamentally Contradicts The Constitutional Subvention Guarantee

The basic position taken by the State is that the State, by providing some amount of funding to school districts is absolved of its constitutional obligation to provide subvention for programs mandated on school districts. However, this position truly destroys the constitutional and statutory system set forth in article X IIIB, section 6, and implementing Government Code sections 17500, et seq. The State's position is frankly stated as follows:

> Moreover, just like the special education funding with respect to BIP, CSBA cites no authority requiring that state funding designated for graduation requirements must be somehow related to the mandate. (OB, p. 8.) It is also a curious argument to make, since presumably CSBA would have no concern with the state making an appropriation for the mandate directly from the General fund, and the General Fund has no specific relation to graduation requirements, or even education requirements. *It is just money, and CSBA's arguments regarding the source of that money are irrelevant.* (emphasis added) (Reply Brief at p. 35-36)

The State goes on to make the broad claim that:

> Regardless, the purpose of the school system is to educate students. (See *Long Beach Unified Sch. Dist. v. California* (1990) 225 Cal.App.3d 155, 172.) The graduation requirements mandate is an education program that directly seeks to advance this purpose. The second science course is no different than any other course within the districts' overall curricula that is paid for

> with revenue limits or LCFF money. *In providing general purpose education funding to schools and requiring the funds to first pay for the graduation requirements mandate, the Legislature is directly providing reimbursement for the mandate.* (Emphasis added.) (Reply Brief at p. 36.)

In the case before this Court the State most certainly is *not* "directly providing reimbursement for the mandate," rather it is providing general funding to school districts, unconnected to direct reimbursement for specific mandate cost claims. Moreover, such funding is distributed on a per student basis, with no relation to actual dollars spent on the graduation requirement mandates by any particular school district.

Unfortunately, the court of appeal below adopted this "just money" theory of the State when it opined:

> *We acknowledge that by enacting Education Code section 42238.24, the Legislature may have largely eliminated the State's obligation to reimburse school districts and county offices of education for the GR Mandate without actually providing any new or additional funding.* We emphasize that our decision affirming the constitutionality of a particular statute "is not in any sense an endorsement" of it. (*Santa Monica Beach, Ltd v. Superior Court* (1999) 19 Cal.4th 952, 962.) "Courts have nothing to do with the wisdom of laws or regulations. The only function of the court is to determine whether the exercise of legislative power has exceeded constitutional limitations." (*Lockard v City of Los Angeles* (9149) 33 Cal.2d 453, 461-462.) Moreover, "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities." (*City of San Jose v State of California* (1996) 45 Cal.App.4th 1802, 1817.) *Here, given that the State, through its budget acts, provides funding to school districts and*

> *county offices of education is amounts it deems sufficient to ensure the local entities do not have to rely on local revenues to pay the costs of the GR Mandate, we discern no conflict with article XII B, section 6, of the California Constitution.* (emphasis added) (*CSBA v. State of California* (2018) 19 Cal.App.5th 566, 585.)

Again, this new theory that "money is money" erases the concrete subvention of specific funds spent on the particular mandate, as required by the full statutory mandate system set forth in Article XIII B, section 6, as well as Government Code sections 17500, et seq., and approved by this Court in *Kinlaw v. State of California* (1991) 54 Cal.3d 326.

B. How Is The State's "Just Money" Position Contrary To The Constitutional And Statutory Scheme?

As enacted by the voters, article XIII B, section 6 of the California Constitution provides in pertinent part that the State must provide a subvention of funds to reimburse a local government for the costs of a program or increased level of service. The purpose of this protection is to ensure that the budgets of local agencies controlled by locally-elected officials, not through state-mandated requirements. (*CSBA v. State of California* (2011) 192 Cal.App.4th 777, 787.) In this way, the Constitution protects the financial sovereignty of all local agencies, including school districts.

This Court has explained: "the concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.) The provision's "fundamental purpose" was "to require each branch of government to live within its means, and to prohibit the entity having superior authority (the State) from circumventing this restriction by forcing local agencies such as school districts to bear the State's costs,..." (*CSBA v. State of California, supra* at p. 770, 787.) Yet, this circumvention is exactly what is happening in the case before this Court. The use of general funding severs any connection between costs for a particular mandate and subvention from the State. Further, it places mandate claimants in a disadvantageous position, not only because funds are distributed on a per student basis, but also because funds are allocated to non-mandate claimants and those school districts awaiting reimbursement alike.

C. The Practical Impact Of These Budget Act Changes on Mandate Claimants such as Amici

Amici have fully met all legal requirements for subvention. Amici are public school districts and political subdivisions of the State of California. Each is organized pursuant to law and possesses those powers set forth in article IX of the California Constitution and the laws of the State of California. Each is a "local government" within the meaning of article XIII B, section 6, of the California Constitution and a "school district" within the meaning of Government Code sections 17514 and 17519. Each school district filed claims for subvention for new programs and higher levels of service imposed by the State in accordance with the Commission is determination that reimbursement is required and establishing parameters and guidelines for reimbursement.

In 1984, the Legislature enacted legislation to implement article XIII B, section 6. (Gov. Code, § 17500 et seq.[1]) This legislation established the Commission and delegated to it quasi-judicial authority to determine whether a statute or executive order imposes costs mandated by the State within the meaning of article XIII B, section 6. (§§ 17500 & 17550.) The legislation defined "costs mandated by the state" as "any increased costs which a local agency is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or an executive order implementing any statute enacted on or after January 1,

[1] All statutory references involving the State mandate process are to the Government Code unless otherwise noted.

1975, which mandates a new program or higher level of service of an existing program within the meaning of section 6 of article XIII B of the California Constitution." (§ 17514.) Section 17519 defines "school districts" to mean "any school district, community college district, or county superintendent of schools."

According to the statutory scheme, the Commission is required to hear and decide the claim of a local agency or school district that it is entitled to subvention for costs mandated by the State. The Commission is authorized to adopt procedures for receiving such claims, and the statutory process is the sole and exclusive means to claim subvention. (§§ 17550 & 17552.)

If the Commission determines a statute or executive order requires subvention under article XIII B, section 6, it then determines the "parameters and guidelines" by specifying the costs that may be reimbursed based upon its determination of the mandate. (§ 17557.) In addition, the Commission prepares a statewide estimate of the costs of any mandate determined to require subvention, and reports this information to the Legislature, Legislative Analyst, Department of Finance, and Controller. (§ 17600.)

Once this process is completed and a statute is determined to impose state-mandated costs, "the Legislature is required to appropriate funds to reimburse the local entity for these costs." (*CSBA, supra,* 192 Cal.App.4th at p. 787 citing §§ 17561, subd. (a) and 17612, subd. (a).) To determine the amount of the subvention due to each school district, the statutory scheme requires school districts to file

"initial reimbursement claims" for the initial fiscal years of the program or services and then to submit "annual reimbursement claims" by February 15 following each fiscal year thereafter. (§ 17561.) The claims are submitted to and processed by the Controller. (*Ibid.*)

> (c) The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.
>
> (d) The Controller shall pay any eligible claim pursuant to this section by October 15 or 60 days after the date the appropriation for the claim is effective, whichever is later. The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies that would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. (§ 17561, emphasis added.)

Once again, Amici met all such requirements. This statutory direction to pay, however, is rarely followed by the State. In many years, the State budget includes only $1,000 to reimburse *all* school districts in the State for *all* costs associated with each state-mandated program or service. (Gov. Code, § 17561.)

Despite not being paid, Amici and other school districts, must continue to provide the program or services – and incur the related costs – unless the program or service is explicitly declared "suspended" by the Legislature or declared "unenforceable" by a court. (§§ 17612, subd. (c) and 17581, subd. (a).) This results in precisely the scenario the voters sought to preclude – the diversion of

limited school district funds to pay for additional programs and services imposed by the State without accompanying subvention.

This fiscal shortfall is compounded by the extremely limited authority of school districts is otherwise raise revenue. Short of two-thirds super-majority approval of voters, school districts do not have the authority to raise local revenue. (Cal. Const. art. XIII A & art. C.) Thus, for most school districts, funding appropriated by the State makes up almost all of their revenue. If a school district must rely on the State for its revenue and the State can simply deem that funding as also counting towards subvention or eliminating a reimbursable cost in the first instance, it functionally eliminates the constitutional subvention requirement.

This cannot be what the voters intended in adopting article XIII B, section 6. That constitutional provision was adopted after Proposition 13, which imposed the limits on local revenue noted above. In other words, voters adopted article XIII B, section 6 with the understanding that school districts had a very limited ability to raise local revenue and intended section 6 to protect local discretion. If a school district cannot raise local revenue, and the State can claim that all general funding offsets costs or subvention owing, the State would be dictating the budgetary decision of local school districts directly contrary to the intent of the voters.

This concern is more than theoretical. For example, according to the State Controller the "one-time" accounting maneuvers by the State have wiped out nearly $365,000,000 in mandated costs otherwise owed to California school districts. (http://www.sco.ca.gov/ard_mancost_ab1610_schools.) Thus, not only are the

Amici, and all other similarly situated school districts who are mandate claimants, not being directly reimbursed for established mandates costs, the amounts due and owing are being reduced solely on an accounting basis.

III.

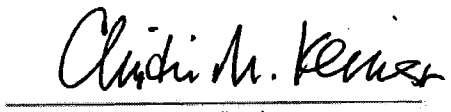
CONCLUSION

These new State systems of allocation of State funds through the budget process are entirely contrary to well-established mandate law interpreting Article XIII B, section 6 and Government Code section 17500, et seq. Based on the foregoing, Amici Curiae urges the Court to reverse the holding of the court of appeal in its entirety.

Dated: September 28, 2018

Respectfully submitted,

Dannis Woliver Kelley

By: 

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CERTIFICATE OF COMPLIANCE

WITH RULE 8.204(c)(1) OF CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this attached brief is proportionately spaced, has a typeface of 13 points or more, and contains 3,203 words as counted by the Microsoft Word 2010 word processing program used to generate this brief, excepting the caption, tables, verification, this certificate, and the Certificate of Service.

Dated: September 28, 2018 Dannis Woliver Kelley

By: _____

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CERTIFICATE OF SERVICE

Case Name : **California School Boards Assn, et al. v. State of California, et al.**
Case No : **S 247266**
Court : **CA Supreme Court**

I am a citizen of the United States, over the age of 18, and not a party to the within action. My business address is 555 Capitol Mall, Suite 645, Sacramento, California, 95814. On this date, I served a true and correct copy of the following entitled documents:

PROPOSED AMICI CURIAE BRIEF OF SAN JOSE UNIFIED SCHOOL DISTRICT; GROSSMONT UNION HIGH SCHOOL DISTRICT; NEWPORT-MESA UNIFIED SCHOOL DISTRICT; POWAY UNIFIED SCHOOL DISTRICT; EAST SIDE UNION HIGH SCHOOL DISTRICT; AND FULLERTON JOINT UNION HIGH SCHOOL DISTRICT IN SUPPORT OF PETITIONERS CALIFORNIA SCHOOL BOARDS ASSOCIATION, ET AL.

on the parties in said action as indicated below:

X BY MAIL: By placing the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

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Clerk of the Court RE: Case No. RG 11554698 Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 28, 2018, at Sacramento, California.

Cathy Coates