Case No. S247266

SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA SCHOOL BOARDS ASSOCIATION, and its EDUCATIONAL LEGAL ALLIANCE, et al.,

Plaintiffs and Appellants,

vs.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

First Appellate District, Division Five, Case No. A148606,
Alameda County Superior Court Case No. RG11554698
The Honorable Evelio Marin Grillo, Judge

AMICI CURIAE SCHOOL DISTRICTS' BRIEF IN SUPPORT OF CALIFORNIA SCHOOL BOARDS ASSOCIATION ET AL.

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VISALIA UNIFIED SCHOOL DISTRICT, and
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

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INTRODUCTION

The Court of Appeal's opinion, *California School Boards Association v. State of California* (2018) 19 Cal.App.5th 566 ("Opinion"), strikes at the heart of the long-standing entitlement of local agencies, such as California school districts, to receive reimbursement from the State "whenever the Legislature or any state agency mandates a new program or higher level of service . . . ." (Cal. Const., art. XIIIB, § 6, subd. (a).) While the Opinion properly recognizes that the intent of article XIIIB, section 6 of the California Constitution ("article XIIIB, section 6") was "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose" (Op. at 3, citation and quotations omitted), it permits the State to dodge its constitutional responsibility, forcing school districts to extract from their general education funding monies necessary to cover the costs of State-imposed mandates. *Amici Curiae* Clovis Unified School District, Elk Grove Unified School District, Folsom-Cordova Unified School District, Porterville Unified School District, Sacramento City Unified School District, San Juan Unified School District, San Ramon Valley Unified School District, Twin Rivers Unified School District, Visalia Unified School District, and West Contra Costa Unified School District ("*Amici* Districts" or "*Amici*") submit this brief in support of Petitioners California School Boards Association et al. *Amici* urge this Court to correct the Opinion's undoing of article XIIIB, section 6, and ensure *Amici* Districts and other districts statewide are not forced to bear the financial burden—to the detriment of their educational programs and student constituents—of State prerogatives which mandate new programs or higher levels of service.

ARGUMENT

I. THE OPINION IS INCONSISTENT WITH THE CONSTITUTIONAL AND LEGISLATIVE POLICY OF LOCAL CONTROL IN EDUCATION, THUS DIRECTLY IMPINGING UPON SCHOOL DISTRICTS' ABILITY TO ADDRESS LOCAL NEEDS IN THE BEST INTEREST OF THEIR COMMUNITIES.

The State's challenged tactic of "switching" an existing state mandate for which school districts are constitutionally entitled to reimbursement, into a program or higher level of service for which school districts are required to prioritize use of their own general education funding, is inconsistent with and infringes upon school districts' constitutionally and statutorily designed local control and flexibility to use general education funding to address diverse and unique local needs through unique solutions. The impropriety and harmful consequences of the State's maneuver is all the more apparent when considering the monies at stake and the State's readiness to utilize the challenged practice more broadly on a prospective basis. This Court must reverse the Opinion to protect against these harms to the local decision-making in K-12 education, for *Amici* and districts around the state.

A. The State's Actions Directly Impinge Upon the Local Control and Discretion of California School Districts, Hindering the Ability to Address their Constituents' Unique Needs.

The State's actions and the Opinion's corresponding application of Government Code section 17557 ("section 17557") are inconsistent with the flexibility and local control which the California Constitution has granted to local school districts to address their communities' unique needs. (Cal. Const., art. IX, § 14.) The broad discretion of California school districts to take lawful action to address their diverse and localized community needs, including setting program and funding priorities, flows

from the overarching mandate of the California Constitution, article IX, section 14:

> The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

(Cal. Const., art. IX, § 14; cf. Ed. Code, § 14000 ["It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies: [¶] The system of public school support should be designed to strengthen and encourage local responsibility for control of public education...."]; *Cal. Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1523-24 ["It has been and continues to be the legislative policy of this state to strengthen and encourage local responsibility for control of public education through local school districts. (§ 14000.)"].)

Layering on article IX, section 14 of the California Constitution, the Legislature has seen it fit to further codify the legal principle of local control in the State's K-12 education system. Education Code section 35160 provides, in pertinent part:

> the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

(Ed. Code, § 35160.) Section 35160 provides school districts with local control and the ability to act without express legislative authorization. (*San Jose Unified School Dist. v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967, 980 citing *Hartzell v. Connell* (1984) 35 Cal.3d 899, 915-916.)

Correspondingly, Education Code section 35160.1, subdivision (a), provides, in pertinent part:

> The Legislature finds and declares that school districts . . . have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts . . . should have the flexibility to create their own unique solutions.

(Ed. Code, § 35160.1, subd. (a); see *American Civil Rights Foundation v. Berkeley Unified Sch. Dist.* (2009) 172 Cal.App.4th 207, 216.) In this regard, Education Code section 35160.1 "is a clarification of section 35160, which in turn provides flexibility [for school districts] to 'act in any manner which is not in conflict with or inconsistent with, or preempted by, any law . . . .'" (*San Rafael Elementary Sch. Dist. v. State Bd. of Ed.* (1999) 73 Cal.App.4th 1018, 1027; see also *Dawson v. East Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1017.)

Over time, this and other California courts have repeatedly recognized the significance of the Constitution, article IX, section 14, and Education Code section 35160's grant of local control, authority and discretion to school districts. (See, e.g., *Butt v. State of California* (1992) 24 Cal.4th 668, 689 ["the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1) . . ."]; *American Civil Rights Foundation*, 172 Cal.App.4th at 216 ["the Legislature has granted school boards wide authority to set policies for the communities they serve."]; *T.H. v. San Diego Unified School Dist.* (2004) 122 Cal.App.4th 1267, 1281 [courts must construe educational statutes "keeping in mind the Legislature's expressed intent to provide each school district with broad discretion and flexibility to accomplish its educational mission."].)

With local control in mind, the Legislature has provided unrestricted funds in order to enable school districts, on an equalized basis, to develop and implement programs designed to address the unique needs of their students and the communities they serve in accordance with the principle of local control. (See *Belanger v. Madera Unified School Dist.* (9th Cir. 1992) 963 F.2d 248, 251-52; Ed. Code, § 42238 et seq.) The unrestricted nature of these funds allows *Amici* and school districts statewide to develop programs that are appropriate to address diverse and unique local needs—programs and solutions which are perhaps appropriate for one individual school district, but may be less useful to others. For example, school districts in predominately agricultural areas may provide programs for students to learn farmland and livestock management practices whereas such programs would be of little benefit to students in urban areas. Similarly, where one school district finds the need to hire mental health therapists to address a local student population with a critical need for such supports and services, another district may have a greater need and community interest in staff training in and programmatic implementation of positive behavior interventions and supports. This flexibility to develop community specific programs is consistent with the constitutional and legislative policy and grant of discretionary authority to school districts.

If left alone, the Opinion validates the State's commandeering of school districts' unrestricted general education funding to cover the costs of state mandates, monies traditionally left to school districts to utilize as seen fit by local school boards in the development of local solutions to local educational challenges. (See Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1.) Specifically, the Opinion allows for the State, through Education Code sections 42238.24 and 56523, to obligate school districts to prioritize their general fund budgets to satisfy the Legislature's state-

mandated policy preferences, rather than addressing the unique needs of their students and the community.

All told, the actions of the State challenged by Petitioners and now before this Court disregard the principle of local control in K-12 education, shirking the State's constitutional responsibility to provide specific funding to reimburse school districts for state-mandated new programs or high levels of service. Article XIIIB, section 6, requires the Legislature to only impose mandated programs on local school districts if the Legislature is prepared to finance such programs. If the Legislature is unwilling or unable to fund such programs, the program cannot be enforced as a mandate. (Gov. Code, § 17581.) The Opinion, however, permits the State's undermining of not only article XIIIB, section 6, but the constitutional and statutory framework of local control in K-12 education. This Court must correct the Opinion and prevent the State from annexing the general funds of local school districts to cover the State's financial obligation with respect to state mandates, such looting simultaneously and congruently undermines the ability of school districts to address the unique needs of their communities in the process.

B. The Harm of the State's Actions to School Districts is Concrete, and the Risk of Future Harm and Diminishment of Local Control Will be Ongoing Absent Reversal of the Opinion by this Court.

The monetary impact of requiring school districts to use their general fund to cover the costs of state mandates is significant. The Graduation Requirements Mandate ("GR Mandate") (Ed. Code, § 51225.3, subd. (a)(1)(C)), directly at issue in this case, is illustrative. The GR Mandate requires school districts to provide each student with two science courses as a prerequisite to graduation. (Op. at 4-5.) Compliance with the GR Mandate requires acquisition of additional space for science instruction (if such space is lacking in existing facilities) or remodeling of existing

space for science instruction, acquisition of additional equipment and furniture, acquisition of additional instructional materials, including textbooks, materials, and supplies, and increased staffing. (See Office of the State Controller, State Mandated Costs Claiming Instructions No. 2010-20, Graduation Requirements (Revised July 1, 2015) available at https://www.sco.ca.gov/Files-ARD-Local/Manuals/sd_1415_gr297.pdf (last visited Sept. 28, 2018).)

Using some of *Amici* as examples, confirms the GR Mandate's required expense, which the State has shifted to school districts. Elk Grove Unified School District incurred actual costs of complying with the GR Mandate of $3,104,310 for the 2017-2018 academic year. Since the 1995-1996 academic year, the Elk Grove Unified School District has incurred nearly $52 million in actual compliance costs. To date, the State has only provided $698,392.00 in direct payments to reimburse the Elk Grove Unified School District for the GR Mandate. Similarly, since 2009 the Twin Rivers Unified School District has incurred annual compliance costs of between $1,300,000 and $1,500,000. San Ramon Valley Unified School District incurred annual compliance costs of between $1,000,000 and $1,400,000 in the fiscal years between 2006-2007 and 2010-2011 and is currently owed nearly $8,000,000 in State reimbursements for GR Mandate compliance. San Juan Unified School District incurred annual compliance costs of approximately $2,000,000 in each of the 2010-2011, 2011-2012, and 2012-2013 fiscal years. Porterville Unified School District, for the 1995-1996 through the 2007-2008 fiscal years, has incurred a total of over $9,000,000 for the compliance with the GR Mandate and has only received $47,259 in reimbursement payments from the State. Folsom Cordova Unified School District incurred a total of over $2,000,000 in GR Mandate compliance costs in the three year period preceding 2010. And for Clovis

Unified School District, GR Mandate costs ranged between $3,500,000 and $1,600,000 per year between 2005-2006 and 2010-2011.

Left standing, the Opinion means that *Amici's* and other school districts' budgets will be burdened by compliance costs associated with the GR Mandate. In fact, whether it is the GR Mandate, or any another existing or future state mandate, the cost of which the State chooses to shift to school districts to cover with their general funds, the consequence will be the direct proportionate reduction in school districts' local control and flexibility in addressing unique local needs. The Legislature, freed by the Opinion from the subvention requirement of article XIIIB, section 6, will be fully encouraged to further restrict school district discretionary budget authority by imposing new state mandated programs. Over time, the Legislature may come to essentially dictating local school district budgeting, entirely eliminating local discretion and control embodied in the California Constitution and the Education Code.

Actual costs and consequences put into perspective, there is now a clear view of how the State intends to utilize the at issue legislative trick more broadly going forward. As part the education trailer bill (Assembly Bill 1840) for the 2018-19 Budget Act, the Legislature included a provision requiring school districts to offset *any* state mandates contained in the act with unrestricted funds:

> If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, except that funding provided for school districts, county offices of education, and charter schools pursuant to Sections 2574, 2575, 2575.2, 42238.02, and 42238.03, as applicable, shall be used to directly offset any mandated costs.

(Stats. 2018, ch. 426 § 43 ["Section 43"].)

This short provision, buried at the conclusion of the bill, constitutes the exact danger which the Opinion stands to permit, i.e., that the State will going forward continue to legislate new programs or higher levels of service which constitute state mandates under article XIIIB, section 6, but which the State intends to require school districts to pay for out of their finite general education funding. Section 43 is an express demonstration that the Legislature is willing to shift its burden to fund state mandated programs to the unrestricted funding utilized by school districts for local programs without consideration of the impact on school district budgets and the policy of local control. Section 43 does not identify specific programs or activities contained in the 2018-19 Budget Act, the cost of which would be offset by unrestricted funding. Section 43 also does not contain any limitations to ensure that at least some unrestricted funding is preserved for local priorities. Rather, the Legislature applies the offsetting language broadly to *any potential* state mandate that is found in the education budget trailer bill, no matter the cost. In the Legislature's rush to escape its constitutional duty to provide specific financing for the programs it mandates, no consideration is given to the local school district programs which would be impacted by the offsetting requirement.

Absent this Court reversing the Opinion, the inclusion of provisions similar to Section 43 will become routine in any legislation applicable to school districts. Affirmance of the Opinion will thus permit the whittling away of flexibility constitutionally and statutorily afforded to school districts' general fund use, narrowing or eliminating the ability of local school boards and school districts to address unique local needs in the best way they see fit. This result would free the State from the burdens imposed by article XIIIB, section 6, and would represent a significant erosion of the principle of local control. The Court should not permit this to occur.

II. THIS COURT'S PROPER INTERPRETATION AND HARMONIZATION OF THE SUBJECT STATUTES, WHICH ARE AMBIGUOUS ON THEIR FACE, REQUIRES REVERSAL OF THE OPINION.

The Opinion incorrectly glosses over ample ambiguity in the two critical mandate statutes at issue, looking only to the language in section 17557, subdivision (d)(2)(B), to conclude that the statute "expressly provides the State can request the Commission to amend parameters and guidelines for reimbursement to '[u]pdate offsetting revenues . . . that apply to the mandated program *and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of section 17556.*'" (Op. at 19, citing Gov. Code, § 17557, subd. (d)(2)(B), emphasis original.) The plain language of section 17557, subdivision (d)(2)(B), was crafted "pursuant to subdivision (e) of section 17556," thus the analysis should have then turned to subdivision (e) of section 17556. The Opinion, however, does not review the language of subdivision (e) of section 17556, which section 17557, subdivision (d)(2)(B), *specifically references*. Instead, the Opinion read section 17557, subdivision (d)(2)(B), as if the enactment stood alone, not just overlooking section 17556, subdivision (e), but the entire statutory scheme. "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Super. Ct.* (2003) 30 Cal.4th 894, 903.) Even a hasty review of section 17556, subdivision (e), manifests ambiguities raised by the statutory provisions at issue, ambiguities which the Opinion does not reach, much less resolve. In such an instance, where "statutory language is ambiguous or open to more than one reasonable interpretation . . ." this Court "may turn to legislative history for guidance." (*Tuolumne Jobs & Small Business Alliance v. Super. Ct.* (2014) 59 Cal.4th 1029, 1040

["*Tuolumne Jobs*"].) This Court's application of proper tools of statutory interpretation calls for reversal of the Opinion.

A. A Review of Relevant Provisions of Section 17556 and 17557 Manifest Clear Ambiguities.

An ambiguity exists in a statute when the "plain meaning can accommodate the alternative meanings proposed by the parties; that is, whether they are 'reasonable' or 'plausible' meanings." (*Newark Unified School Dist. v. Super. Ct.* (2015) 245 Cal.App.4th 887, 901, citing *Tuolumne Jobs*, 59 Cal.4th at 1040.) On their face, the plain language of the mandate statutes at issue present differing plausible interpretations. First, the two statutes use different language to describe revenue, even though one statute (section 17557) references the other (section 17556). Second, both sections 17556 and 17557 provide for a hearing by the Commission on State Mandates ("CSM"), which is belied by the Opinion's finding that the phrase "and do not require a new legal finding" in section 17557, subdivision (d)(2)(B), eliminates any need for a hearing by the CSM. (See Gov. Code, §§ 17556, subd. (e) and 17557, subd. (d)(1)-(2).) As explained below, these ambiguities cannot plausibly resolve in the State's favor.

1. The Terms "Additional" and "Offsetting" Are Two Different Words.

The statutes present two different ways to describe revenue in their plain language: section 17556 uses the term "additional" revenue, while section 17557 refers to "offsetting" revenue. (See and cf. Gov. Code, §§ 17556, subd. (e), 17557, subd. (d)(2)(B).) "Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning." (*Comm. of Seven Thousand v. Super. Ct.* (1988) 45 Cal.3d 491, 507.)

Section 17556, subdivision (e), provides that "The commission shall not find costs mandated by the state" if it finds:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes *additional* revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for *additional* revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(Gov. Code, § 17556, subd. (e), emphasis added.) Section 17557, subdivision (d)(2)(B), provides that the "commission may, after public notice and hearing, amend the parameters and guidelines . . ." and the "request to amend parameters and guidelines may be filed to make any of the following changes to parameters and guidelines, consistent with the statement of decision" to [u]pdate *offsetting* revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of Section 17556." (*Id.*, § 17557, subd. (d)(1) and (d)(2)(B), emphasis added.) In bypassing this ambiguity between the statutes, the appellate opinion "violated" foundational "principles of statutory construction." (*Walt Disney Parks & Resorts US, Inc. v. Super. Ct.* (2018) 21 Cal.App.5th 872, 879.) "When confronted with two statutes, one of which contains a term, and one of which does not, we do not import the term used in the first to limit the second. Instead, it is our obligation to interpret different terms used by the Legislature in the same statutory scheme to have different meanings." (*Id.*)

Despite statutory text to the contrary, the Opinion finds only one reasonable interpretation, i.e., that "section 17557, subdivision (d)(2)(B), provides that "'offsetting' revenues can be identified that do not require a new legal finding of no costs pursuant to subdivision (e) of section 17556, and hence, that were not 'specifically intended' to fund the mandate." (Op. at 19, citing Gov. Code, §§ 17556, subd. (e) and 17557, subd. (d)(2)(B), emphasis original.) But there is "more than one reasonable interpretation," where unlike section 17557, subdivision (d)(2)(B), section 17556, subdivision (e), contains an express condition that any "additional revenue that was specifically intended to fund the costs of the state mandate" be "*in an amount sufficient to fund the cost of the state mandate.*" (Gov. Code, § 17556, subd. (e), emphasis added.) Thus, any offsetting of revenues must make the school district whole. The Opinion ignores this plain language in subdivision (e). (*Id.*, § 17556, subd. (e); see also *Tuolumne Jobs*, 59 Cal.4th at 1037 ["We consider first the words of a statute, as the most reliable indicator of legislative intent"].)

2. The Phrase "and do not require a new legal finding" is Ambiguous if Not Confusing in the Context of the Statute.

The Opinion finds the phrase "and do not require a new legal finding" as dispositive, even as it is distinctly dissonant when read with the rest of the statute. (See Op. at 19 ["But section 17557, subdivision (d)(2)(B) provides that 'offsetting' revenues can be identified that do *not* require a new legal finding of no costs pursuant to subdivision (e) of section 17556, and hence, that were not 'specifically intended' to fund the mandate"], citing Gov. Code, §§ 17556, subd. (e) and 17557, subd. (d)(2)(B), emphasis original.) The Opinion does not interpret what the phrase "and do not require a new legal finding" means. Indeed, it is no easy task. In the plain reading of the provision, the phrase reads

awkwardly: "Update offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state . . . ." (Gov. Code, § 17557, subd. (d)(2)(B).) On one hand, the phrase should read as a modifier, i.e., updating offsetting revenues and offsetting savings, *which* do not require a new legal finding, except "which" is not the term the Legislature used. Using the word "and" instead, the provision reads as requiring two elements, that a party update offsetting revenues or offsetting savings "*and*" such an update would not "require a new legal finding," again begging the question of what "a new legal finding" means. (*Id.*, emphasis added.)

The phrase is more ambiguous and awkward when read in the context of the statute, because the entire subdivision presumes that the CSM may conduct a hearing to consider reimbursable costs and any request to amend parameters and guidelines for such costs. (See Gov. Code, § 17557, subd. (a), (d)(1) and (d)(2)(B).) Section 17556 states that the CSM "shall not find costs...if, after a hearing, the commission finds..., and section 17557 provides that any "update offsetting revenues and offsetting savings" must be "filed" with the commission, which could then "after public notice and hearing" consider the filing and "amend the parameters and guidelines. (See *id.*, §§ 17556 and 17557, subd. (d)(1)-(2).) The phrase is also incongruent with its sister subdivisions (d)(2)(A) through (d)(2)(H), none of which can be reasonably interpreted to permit a determination of reimbursable costs without the CSM, whose charge is to "determine the amount to be subvened to local agencies and school districts for reimbursement." (See *id.*, § 17557, subd. (a) and (d)(2)(A)-(H).) The Opinion does not address any of these uncertainties on the face of these statutes.

Instead, the Opinion reasons that the plain language of subdivision (d)(2)(B) eliminated any need for a new legal finding that state revenue was

"specifically intended" to fund the mandate." (Op. at 19, citing Gov. Code, § 17557, subd. (d)(2)(B).) But any plausible interpretation cannot cast aside the entire statutory scheme's expectation that any request to amend the commission's parameters and guidelines be considered by the commission. (See Gov. Code, § 17557, subd. (d)(1) and (d)(2).) A reasonable interpretation of the statute would leave for the CSM—in fulfillment of its express statutory charge—to determine whether any "additional" revenue was "sufficient to fund the cost of the state mandate" at issue in any given case. (See *id.*, §§ 17556, subd. (e), 17557, subd. (d)(1)-(2).)

B. Extrinsic Aids Reinforce a Statutory Interpretation Consistent with the Constitutional Mandate that the State Reimburse School Districts for Costs Incurred for New Programs or Higher Service It Imposes.

Acknowledging these differing plausible interpretations, this Court should turn to extrinsic aids for interpreting the statutory language, including "the ostensible objects to be achieved, the evils to be remedied" as well as "public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*People v. Scott* (2014) 58 Cal.4th 1415, 1421.) The objective of the statutory scheme at issue is the fulfillment of an unequivocal constitutional mandate that the state reimburse local governments for costs incurred carrying out state mandates:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service . . . .

(Cal. Const., art. XIIIB, § 6; see *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799 ["In 1984, the Legislature enacted statutes to govern the state mandate process"].) "The principles of constitutional

interpretation are similar to those governing statutory construction. In interpreting a constitution's provisions, our paramount task is to ascertain the intent of those who enacted it. To determine that intent, we look first to the language of the constitutional text, giving the words their ordinary meaning." (*Professional Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1032, citation and quotations omitted.)

Section 17557, subdivision (d)(2)(B), must be read in light, not in spite, of the plain language of article XIIIB, section 6, and the entire statutory scheme. "We give the words of the initiative their ordinary and usual meaning and construe them in the context of the entire scheme of law of which the [constitutional] initiative is a part, so that the whole may be harmonized and given effect." (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1316.) Article XIIIB, section 6, mandates that "the State *shall* provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service." (Cal. Const., art. XIII B, § 6, subd. (a), emphasis added.) Government Code section 17561 provides that the "state *shall* reimburse each local agency and school district for all costs mandated by the state . . . ." (Gov. Code, § 17561, emphasis added.) The CSM "*shall* determine the amount to be subvened to local agencies and school districts for reimbursement . . . ." (*Id.*, § 17557, subd. (a), emphasis added.) "Shall" means "mandatory." (*Id.*, § 14.)

The contemporary administrative construction is likewise unavailing for the State's preferred interpretation of section 17557, subdivision (d)(2)(B). (See Petitioner's Opening Br. ["Pets.' OB"] at 24, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180 [stating such an enactment "represents a considered legislative judgment as to the appropriate reach of the constitutional provision" and "enjoys significant weight and deference by the courts"].) As cited in Petitioners' Opening

Brief, the "administrative scheme adopted in 1984 did not even include an 'offsetting revenues' provision," and

> in 1989, the Legislature expanded Government Code section 17556(e) to provide that no mandate was created if the statute or executive order imposing the mandate 'includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.'

(Pets.' OB at 23, citing Gov. Code, § 17556, subd. (e), as amended by Stats. 1989, ch. 589.) "Thus, the requirement for actual payment has been in place from the inception, with a limited exception created in 1989 where the State provides *additional* revenues that are *sufficient* to make the local government whole, i.e., the offsetting savings or revenues must result in 'no net costs.'" (Pets.' OB at 24, citing to Joint Appendix II:489 and Gov. Code, § 17556, subd. (e), emphasis original.)

"[L]egislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." (*Chesney v. Byram* (1940) 15 Cal.2d 460, 463-34.) An interpretation of the statutory scheme implementing article XIIIB section 6, therefore, cannot disregard the ostensible object to be achieved: "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that articles XIIIA and XIIIB impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, citations and quotations omitted.)

C. Harmonization of the Statutes Require that Additional Revenues Must Be Sufficient to Fund the Costs of the Mandate.

This Court must reject any interpretation of the statutes at issue which would repeal by implication article XIIIB, section 6, or its

contemporary administrative scheme, including section 17556, subdivision (e), and section 17557, subdivision (d), which contemplates a "hearing" by the commission to amend any parameters and guidelines. (*State Dept. of Public Health v. Super. Ct.* (2015) 60 Cal.4th 940, 955 ["All presumptions are against a repeal by implication"].) The State's expansive interpretation of section 17557, subdivision (d)(2)(B), is permitted "only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." (*State Dept. of Public Health*, 60 Cal.4th at 955-56, citations omitted.) "When two statutes potentially conflict, our first task is not to declare a winner, but instead to find a way, if possible, to avoid the conflict." (*Newark Unified School Dist.*, 245 Cal.App.4th at 904.)

To reconcile the use of the terms "additional" and "offsetting" to describe revenues in section 17556, subdivision (e), and section 17557, subdivision (d)(2)(B), respectively, this Court should give effect to the explicit condition attached to "additional" revenue in the former statute that any new revenue would be sufficient to fund the cost of the mandate, an interpretation that would also conform best to the plain meaning of "offsetting" revenue. (Black's Law Dict. (8th ed. 2004) p. 1120 [defining noun "offset" as "something (such as an amount or claim) that balances or compensates for something else" and the verb as "to balance or calculate against; to compensate for <the gains offset the losses>"].) The express condition in section 17556, subdivision (e), requires that any "additional revenue" that is "specifically intended to fund the costs of the state mandate [be] in an amount *sufficient to fund the cost of the state mandate.*" (Gov. Code, § 17556, subd. (e), emphasis added.) "Where the same word or phrase might have been used in the same connection in different portions of a statute but a different word or phrase having different meaning is used

instead, the construction employing that different meaning is to be favored." (*Kray Cabling Co. v. County of Contra Costa* (1995) 39 Cal.App.4th 1588, 1593.) The language of section 17556, subdivision (e), regarding the sufficiency of the revenue to fund the mandate must be given effect and cannot be disregarded. (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1087 ["the Legislature does not engage in idle acts, and no part of its enactments should be rendered surplusage if a construction is available that avoids doing so"].)

New revenue may not be sufficient, but could still be applied to the outstanding costs of the mandate. As urged by Petitioners' Reply Brief, the proper interpretation "construes section 17557(d)(2)(B) to include the limitations of section 17556(e) that funding be additional and intended for the mandate, but allows for less-than-full funding (otherwise required by section 17556(e)[,]" because "such a construction would make section 17557(d)(2)(B) consistent with the longstanding construction of Section 6 rather than turning it on its head." (Pets.' Reply Br. at 18.) Abiding to the statutory scheme, moreover, whether the revenue is sufficient to fund the mandate is a finding left to the commission. (See, e.g., Gov. Code, § 17557, subd. (a).) This interpretation gives effect to the statute's plain language that the commission "*shall* determine the amount to subvene to local agencies and school districts for reimbursement" and may conduct a hearing to consider requests to amend parameters and guidelines. (See *id.*, § 17557, subd. (a) and (d), emphasis added.) All this considered, this Court "must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions." (*State Dept. of Public Health*, 60 Cal.4th at 955-56.)

In light of the objective of the constitutional mandate under article XIIIB, section 6, and implementing statutes, moreover, the Court must "reject a literal construction that is contrary to the legislative intent apparent

in the statute or that would lead to absurd results." (*Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 630.) Imagine the possibilities for the Legislature to write statutes that eliminate *constitutional* requirements by using the phrase "and do not require a new legal finding." (See Gov. Code, § 17557, subd. (d)(2)(B.) Such language operates as a cynical, self-serving evasion of the State's clear legal obligations. (*Id.*, § 17557, subd. (d)(2)(B).) Thus, "[w]hile legislative declarations and characterizations are a factor...in construing legislation, they are not binding . . . . This is particularly true when the characterization is the product of an attempt to avoid the imposition of a financial responsibility." (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 196-97, internal citations omitted, disapproved on other grounds in *County of Los Angeles v. State* (1987) 43 Cal.3d 46.) Adopting the State's interpretation of section 17557, subdivision (d)(2)(B), in a manner that permits a request to the commission to "update offsetting revenues and offsetting savings that apply to the mandated program *and do not require a new legal finding* . . ." would defeat the purpose of the statutory scheme, which contemplates the CSM hearing and determining costs and "the amount to be subvened." (See Gov. Code, § 17557, subd. (a) and (d).) The Court must find "the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1369.)

It is "elementary" that a legislative enactment "may not abrogate or deny a right granted by the Constitution." (*Rose v. State of California* (1942) 19 Cal.2d 713, 725.) The State's interpretation of the statute would eviscerate the mandate of article XIIIB, section 6, which "with certain exceptions," ultimately "requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it

imposes upon local governmental agencies." (*County of San Diego*, 15 Cal.4th at 81, citations and quotations omitted.) Section 17557, subdivision (d)(2)(B), is not one of these constitutionally enumerated exceptions, yet the Opinion's expansive interpretation of statute impermissibly renders it so. (See *Thompson v. Dept. of Corrections* (2001) 25 Cal.4th 117, 122 ["The principles of constitutional interpretation are similar to those governing statutory construction"]; *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230 ["Under the maxim of statutory construction, *expressio unius est exclusio alterius*, if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary"].) Therefore, the Court should reverse the Opinion, interpreting section 17557, subdivision (d)(2)(B), to avoid any repeal by implication, and with an effect consistent with, article XIIIB, section 6, and the implementing statutory scheme.

CONCLUSION

For the foregoing reasons, and those set forth in Petitioners' briefing on the merits, the Court of Appeal's Opinion should be reversed.

September 28, 2018 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 6,307 words as counted by the Microsoft Word word-processing program used to generate this *Amici Curiae* Brief.

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PROOF OF SERVICE

I, Rachelle Esquivel, declare as follows: I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the law firm of Lozano Smith, One Capitol Mall, Suite 640, Sacramento, California 95814.

I served the following document

AMICI CURIAE SCHOOL DISTRICTS' BRIEF IN SUPPORT OF CALIFORNIA SCHOOL BOARDS ASSOCIATION ET AL.

on the following persons at the locations specified:

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Seth E. Goldstein Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550	Defendant and Respondent: State of California, John Chiang, and Michael Cohen	*, **
Camille Nichols Shelton Commission On State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814	Defendant and Respondent: Commission on State Mandates	*, **
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in the manner indicated below:

[X] *(***By Electronic Filing Service Provider***) By transmitting a true and correct copy thereof on September 28, 2018 by electronic filing service provider (EFSP), True Filing,

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[X] **(***By Federal Express/Overnight Mail***) on all parties in said action by depositing, on October 1, 2018, a true and correct copy thereof in a sealed envelope/packet for overnight mail delivery, with charges thereon fully paid, in a Federal Express collection box, at Sacramento, California, and addressed as set forth above.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed October 1, 2018, at Sacramento, California.

Rachelle Esquivel