IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

COAST COMMUNITY COLLEGE DISTRICT, et al.
Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES,
Defendant and Respondent,

DEPARTMENT OF FINANCE,
Real Party in Interest and Respondent.

EXEMPT FROM FILING FEES (Gov. Code, § 6103)

Case No. S262663

Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
Honorable Christopher E. Krueger, Judge

COMMISSION ON STATE MANDATES' REPLY BRIEF ON THE MERITS

JULIANA F GMUR, Bar No. 166477
Senior Commission Counsel

CAMILLE SHELTON, Bar No. 166945
Chief Legal Counsel

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562
FAX: (916) 445-0278
E-mail: litigation@csm.ca.gov

Attorneys for Defendant and Respondent,
COMMISSION ON STATE MANDATES

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I. INTRODUCTION

The Commission on State Mandates ("Commission") partially approved the consolidated *Minimum Conditions for State Aid* test claim, 02-TC-25 and 02-TC-31, but found that California Code of Regulations, title 5, sections 51000 through 51027 ("minimum conditions" or "minimum condition regulations") do not impose a state-mandated program because the community college districts are neither legally nor practically compelled to comply. The Districts, in their answer, did not substantially address whether the minimum condition regulations are legally or practically compelled by the state. Rather, the Districts merely provided conclusions, created new tests to establish practical compulsion, and left unanswered the question of whether the community college districts would face certain and severe penalties or other draconian consequences for failure to comply with the minimum conditions regulations. The Commission's conclusion is supported by an analysis of case law, by the evidence in the record, and is correct as a matter of law.

During the appeal of the Commission's decision, two jurisdictional issues were raised for the first time — not by the Districts — but rather by the Court of Appeal in its decision: (1) the remand of Education Code sections 76300 through 76395 which had not been pled and (2) the Court of Appeal's finding that section 54626(a) of title 5 of the California Code of Regulations imposes a state-mandated program because it implements Education Code section 25430.12, which is the original source of the program and was also not pled. Not only did the Commission not waive these issues, as asserted by the Districts, the Commission promptly defended on the facts and the law against their improper inclusion.

The Commission requests that this Court reverse the decision of the Court of Appeal and affirm the decision of the Commission.

II. ARGUMENT

A. The Commission's Conclusion that the Minimum Condition Regulations Do Not Impose a State-Mandated Program is Correct as a Matter of Law.

The Districts incorrectly conflate minimum conditions with standards;[1] allege that the Commission adopted its own test to determine whether the minimum condition regulations constitute a state-mandated program; and argue that the Commission reached an arbitrary conclusion in finding that the minimum condition regulations are not a state-mandated program. (District's Answer Brief, pp. 29, 31, 33, 41.) The Districts also encourage the Court to disregard the case law regarding findings of legal and practical compulsion and instead to adopt new tests to determine whether there is a state-mandated program; namely, whether the enforcement process is capable of imposing serious consequences that

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[1] Minimum standards and minimum conditions are not the same. The minimum standards are set forth in Education Code section 70901(b)(1) and require the State Board of Governors to adopt academic standards and standards on the employment of staff, formation of colleges, and credit/noncredit classes. Many of the standards were approved by the Commission which found that they were mandatory requirements. (See, AR 241-256.)

The minimum condition regulations are set forth in Education Code section 70901(b)(6) and sections 51000 et seq. of title 5 of the California Code of Regulations and establish certain conditions entitling districts to receive state aid for support of community colleges. Here, rather than being a mandatory requirement or standard, meeting the minimum conditions is a condition to "become entitled" to state aid. And though there are potential consequences for non-basic aid districts failing to become entitled, they are far from certain and have not been severe in practice. When the Legislature uses different words, it is presumed they intended a different meaning. (*Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.) The only minimum conditions at issue in this case are in California Code of Regulations, title 5, sections 51000, 51006, 51014, 51016, 51018, 51020, 51025. All others were correctly denied by the Court of Appeal, and the Districts have not challenged those conclusions.

would compel a reasonable person to comply, or whether community college districts are subsequently legally required to conform to the minimum conditions. (District's Answer Brief, pp. 29, 41.) The Districts' arguments are not supported by the law or the evidence in the record.

The finding of whether there is a state-mandated program is a question of law requiring the court to exercise its independent legal judgment. (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762). The Commission's conclusion that the minimum condition regulations do not impose a state-mandated program within the meaning of article XIII B, section 6 is correct as a matter of law.

Article XIII B, section 6, of the California Constitution, requires that costs incurred be mandated or "ordered" or "commanded" by the state. (*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.) As explained in greater detail in the Commission's opening brief, legal compulsion is found within the plain language of the test claim statutes or regulations, interpreted within the statutory and regulatory scheme, which orders or forces local government to do something. This Court has also left open the possibility of finding a state mandate based on practical compulsion, which may apply when the test claim statutes or regulations contain voluntary, optional, or conditional language. A finding of practical compulsion requires local government to prove, with substantial evidence in the record, that a failure to engage in the activities at issue will result in certain and severe penalties or other draconian consequences, leaving local government no choice but to comply in order to carry out their core essential functions. (*Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 884-887; *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355,

1365-1366.)[2] Activities undertaken at the option or discretion of local government, without legal or practical compulsion, do not trigger a state-mandated program within the meaning or article XIII B, section 6. (*Department of Finance v. Commission on State Mandates (Kern High School Dist.), supra,* 30 Cal.4th 727, 745.)

In the instant case, the plain language of the minimum condition regulations does not constitute legal compulsion and there is not substantial evidence in the record to support a finding of practical compulsion.

The plain language of Education Code section 70901(b)(6) and of title 5, section 51000 of the California Code of Regulations is conditional, and does not constitute legal compulsion:

> The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid, including state general apportionment, for the support of its community colleges.

If the conditions are not met, the Chancellor shall take one or more of the following actions: (1) accept in whole or part the district's response regarding noncompliance (in other words, take no action), (2) require the district to submit and adhere to a plan and timetable for achieving compliance "as a condition for continued receipt of state aid," or (3) "withhold all or part of the district's state aid," with the approval of the Board of Governors. (Cal. Code Regs., tit. 5, §§ 51100, 51102.) This is not legal compulsion, which is confirmed by similar language analyzed by this Court in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51,

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[2] The test claimant has the burden to prove that it is entitled to reimbursement under article XIII B, section 6 and has incurred increased costs mandated by the state. (Evid. Code, § 500; Gov. Code, §§ 17514, 17551(a), 17553.)

57-58, 74 (finding no legal compulsion with a federal law that imposed a "stick," which was characterized by this Court as a "certain and severe" federal penalty in the loss of a federal tax credit and an administrative subsidy if the State failed to provide unemployment insurance coverage to public agency employees). Instead, community college districts that choose not to comply with the minimum condition regulations face a *possible* "stick;" the *potential* loss of being entitled to the receipt of state aid. Thus, there is no legal compulsion here.

Moreover, the test claimants did not provide evidence of practical compulsion or show that they have no choice but to comply with the minimum condition regulations as required by law. Substantial evidence showing that community college districts will face certain and severe penalties or other draconian consequences leaving them no choice but to comply with the minimum condition regulations in order to carry out their core essential functions is required to support a finding that the regulations are state-mandated based on practical compulsion. (*Department of Finance v. Commission on State Mandates (Kern High School Dist.), supra,* 30 Cal.4th 727, 752 ["The record in the case before us does not support claimants' characterization of the circumstances in which they have been forced to operate, and provides no basis for resolving the accuracy of amici curiae's warnings and predictions."]; *Department of Finance v. Commission on State Mandates* (*POBRA*), *supra*, 170 Cal.App.4th 1355, 1367 ["However, the 'necessity' that is required is facing " 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences. [citation.] That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences."]; Gov. Code, § 17559(b).) The Districts simply argue that the minimum condition regulations are state-mandated because "community colleges are

constitutional and statutory recipients of state funding [under Proposition 98] and cannot function without such state funding." (District's Answer Brief, pp. 12, 30.)

However, neither the law nor the record support a finding of practical compulsion. The Proposition 98 guarantee establishes an overall funding level for programs and districts, but it does not create an entitlement to any funds for a particular program or district. Proposition 98 merely provides the formulas for determining the minimum amount of state aid to be appropriated statewide every budget year for K-14 education. (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1290; *California Teacher's Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1534-1535.) Nor do Education Code section 70901(b)(6) and the minimum condition regulations guarantee state aid — they only allow the community college districts to be entitled to state aid if they comply with the requirements set forth in the regulations.

In addition, the only example raised by the Districts to support a finding of practical compulsion was that of San Mateo County Community College District, which failed to comply with equal employment opportunity provisions in section 51010 of the title 5 regulations when appointing a superintendent. The Districts contend that this "evidence" shows that the "threat of enforcement is real" and, thus, the minimum condition regulations are mandated by the state. (District's Answer Brief, p. 40.) However, in settling the San Mateo County Community College District matter, the Chancellor's Office agreed to allow the district to increase monitoring, but the district did not lose *any* state aid even though it failed to comply with the condition. (District's Answer Brief, p. 40; AR 35-36.) Despite the Districts' assertion that "the Chancellor must impose such financial sanctions as are necessary to compel future compliance, up to withholding the entire state apportionment," the evidence does not bear

that out or show that the Chancellor has ever withheld state aid. (District's Answer Brief, p. 38; Cal. Code Regs., tit. 5, §§ 51100, 51102.) Two of the Chancellor's three options are not financial sanctions or penalties, and the regulations allow the Chancellor to take no action at all. Thus, a mere possibility that the Chancellor may withhold state aid does not amount to a "certain and severe" penalty if a community college district chooses not to comply with a condition.

Further, there is no evidence in the record to show that a potential loss of state aid leaves a community college district no true choice but to comply with the minimum condition regulations. The Districts rely on a single page in the administrative record summarizing the 2008-2009 California Community College Proposition 98 Budget, filed by the California Community Colleges Chancellor's Office, which clarified the Chancellor's position that "[a]lthough most community college districts seek state aid in the form of apportionment; districts are not required to do so, and some districts do not receive apportionment." (1 CT 178, fn. 7; AR 1948, 2426-3427, 3429, 3431.) The page shows that 53 percent of the funding for the colleges *statewide* constitutes general state aid, but the page does not identify how much state aid is received by the individual appellant Districts, or identify federal funding or other revenues available to them. Nor is there any information in the record about the appellant District's required expenses, or the number of colleges and comprehensive centers a community college district chooses to have, or the types and number of courses the district offers. (Ed. Code, § 84750.5.) As explained in the Chancellor's comments on the test claim, there are basic aid districts in the state that receive no state general apportionment, but have sufficient funding with local property tax revenue and student fees to carry out their programs. Four of these basic aid districts existed in 2008 when the test claim was pending with the Commission: Marin, Mira Costa, South

Orange, and "at times" San Mateo Community College District (an appellant in this case). (AR 3429.)[3] Thus, no evidence was provided by the Districts to show that community college districts cannot function without state aid.

Rather than applying the tests for legal and practical compulsion as determined by the courts, the Districts attempt to establish their own tests to determine if a state mandate exists. Relying on dicta in *City of Sacramento*, the Districts attempt to establish a reasonable person standard: "State mandate case law only requires a certain enforcement process that is capable of imposing 'serious' consequences that would compel a reasonable person to comply." (District's Answer Brief, p. 41.) While the decision in *City of Sacramento* noted that double taxation was a "new and serious penalty," this Court did not establish a reasonable person standard:

> Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards. We therefore conclude that the state acted in response to a federal 'mandate' for purposes of article XIII B.

(*City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 74.) The Districts' second new test turns the analysis of whether a mandate exists on its head, noting that "[t]he question is not whether the College Districts are

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[3] The Districts assert, "The majority of community college districts are state funded. A minority of community colleges are primarily locally funded. There is no evidence in the record that these College Districts are primarily locally funded." (District's Answer Brief, p. 12, fn. 5.) As stated *infra*, *the test claimants* have the burden to prove that a statute or regulation imposes a state-mandated program and they have not met that burden. (Evid. Code, § 500; Gov. Code, §§ 17514, 17551(a), 17553.) In addition, neither the test claimants nor the Districts have filed any evidence rebutting the Chancellor's comments showing that San Mateo Community College District (an appellant in this case) has at times been a basic aid district.

'legally' or 'practically' compelled to become entitled to state aid, which they are as a matter of law, but rather whether the College Districts are subsequently legally required to conform to the minimum conditions." (District's Answer Brief, p. 29.) Statutes or regulations may require local government to act, and demonstrate that the Legislature intends them to act, but that does not mean the activity is mandated by the state within the meaning of article XIII B, section 6. (*Department of Finance v. Commission on State Mandates (Kern High School Dist.), supra,* 30 Cal.4th 727, 743 ["We instead agree with the Department of Finance, and with *City of Merced, supra,* 153 Cal.App.3d 777, that the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves."].) Thus, simply because there's an inducement to act does not mean that the activity constitutes a reimbursable state-mandated activity. (*City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 72.)

Accordingly, based on the law and the record, the Commission's conclusion that the minimum condition regulations are not mandated by the state is correct as a matter of law.

B. The Commission Did Not Waive the Jurisdictional Issues Relating to Education Code Section 25430.12 and Sections 76300 through 76395, But Promptly Addressed the Issues When First Raised by the Court of Appeal.

As explained in the Commission's Opening Brief, there are two jurisdictional issues *first* identified in the Court of Appeal's opinion: (1) the remand of Education Code sections 76300 through 76395 by the Court of Appeal, and (2) the Court of Appeal's finding that section 54626(a) of title 5 of the California Code of Regulations imposes a new program or higher level of service because it implements Education Code section 25430.12. (Slip Opn., pp. 49-50.) The test claimants did not plead Education Code

section 25430.12 or sections 76300 through 76395 and have never alleged these code sections were the source of a reimbursable state-mandated program. Since these code sections were not pled in the test claims in accordance with Government Code sections 17500 et seq. and the Commission's regulations, the Commission does not have the authority to determine whether these code sections impose a reimbursable state-mandated program.

The law is clear that quasi-judicial administrative agencies, such as the Commission, have only such limited authority as is conferred upon them by law, and the courts will set aside their acts that are beyond their statutory jurisdiction. (*American Federation of Labor v. Unemployment Insurance Appeals Board* (1996) 13 Cal.4th 1017, 1023; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679.) Submitting a test claim to the Commission is the exclusive method for resolving whether a cost is or is not a reimbursable state mandate. (*Grossmont Union High School Dist. v. State Board of Education* (2008) 169 Cal.App.4th 869, 884 citing *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 833-834; see also, Gov. Code, § 17552 ["This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."].)

The Districts now argue, however, that the Commission failed to raise these issues timely and assert that they are waived. (District's Answer Brief, pp. 44-45.) The Districts are wrong.

The Commission pled the affirmative defense of failure to state a claim in its answer to the Districts' petition for writ of mandate. (CT 46: 26-28.) The Districts have failed to state a claim that they are entitled to reimbursement for Education Code section 25430.12 and sections 76300 through 76395 because these code sections were not pled.

In the Commission's decision, and throughout all court proceedings, the Commission's position has been that California Code of Regulations, title 5, section 54626(a), as added in 1976, was correctly denied since the requirements imposed by that regulation were previously required by former Education Code section 25430.12, as added in 1975, and therefore the requirements in the regulation are not new. (Stats. 1975, ch. 816; AR 151.) The test claimants did *not* plead former Education Code section 25430.12, or Statutes 1975, chapter 816, in their test claim, and the Districts apparently concede that fact since they do not address the issue in their Answer Brief. (AR 459 and 523 et seq., for the test claim filings; Commission's Points and Authorities in Opposition to Petition for Writ of Mandate, p. 8; Commission's Respondent's Brief, p. 45.) The Court of Appeal acknowledged that Education Code section 25430.12 was not pled; however, the Court of Appeal found that the requirement in section 54626(a) of the regulations was new because it implemented Education Code section 25430.12, a statute enacted after January 1, 1975. (Slip Opn., p. 49, fn. 7.) The Commission does not have the authority to determine whether Education Code section 25430.12 contains a state mandated new program or higher level of service; jurisdiction is limited to section 54626 of the regulations and, as explained in the next section, the requirement imposed by that regulation is not new. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 75, 98; *Lucia Mar Unified School Dist. v. Honig* (1988*)* 44 Cal.3d 830, 835; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189.) Thus, it is incorrect as a matter of law to find that Education Code section 25430.12 is the source of the mandate since that code section was not pled.

With respect to Education Code sections 76300 through 76395, the Districts simply point to the parenthetical reference in the test claim narrative concerning section 51012 of the title 5 regulations, suggesting that

the sections 76300 through 76395 were pled. (Districts' Answer Brief, pp. 48-49.) The law requires, however, that a test claim specifically identify each section of a chaptered bill or executive order, and the effective date and register number of regulations, alleged to impose a mandate. (Gov. Code, § 17553(b)(1); Cal. Code Regs. tit. 2, former § 1183(d)(1).) The requirement to identify the statute and chapter of a code section in the test claim is necessary for the Commission to determine which version of the statute is pled and whether that version imposes any *new* state-mandated activities; and to provide notice to the State Department of Finance, any other affected state agency, and other community college districts that may later claim reimbursement (as the real parties in interest) that reimbursement is being sought for that version of the code section.[4] This requirement is consistent with the general rule of construction in Government Code section 9605(a), which states that if a statute is amended, "[t]he portions that are not altered are to be considered as having been the law from the time when those provisions were enacted . . . ."

In this case, the caption of the test claim pleads section 51012 of the regulations (which provides community college districts "may only establish such mandatory student fees as it is expressly authorized to establish by law"), but does not plead or identify Education Code sections 76300 through 76395. (AR 524, 527.) The narrative of the test claim generally refers to Education Code sections 76300 through 76395, but only in the context of discussing section 51012 of the regulations: "This condition alleges mandated costs reimbursable by the state for community

[4] Generally, a plaintiff has a duty to plead the essential facts of the case "with reasonable precision and particularity sufficient to acquaint a defendant with the nature, source and extent of the cause of action." (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245; *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 382.)

college districts to establish and implement policies and procedures to ensure that the collection of student fees complies with the law (generally, Education Code sections 76300 through 76395)." (AR 577-578.)[5] Following the receipt of the test claim, the Commission issued a notice of complete test claim inviting comments from the test claimants and all interested parties, which identifies the statutes and regulations pled and within the jurisdiction of the Commission. That notice identifies only section 51012 of the regulations, and not Education Code sections 76300 through 76395. (AR 4986-4991.) The test claimants did not object or comment on the notice of complete test claim. In response to the draft staff analysis of the test claim, the test claimants filed comments clarifying that section 51012 of the regulations "was the subject of this program," and did not mention Education Code sections 76300 through 76395. (AR 3704.) At no time during litigation have the Districts discussed Education Code sections 76300 through 76395 in their briefs or before the court. Although sections 76300 through 76395 were generally referred to in the test claim, neither the real parties in interest, nor the Commission, had notice that the test claimants were seeking reimbursement to comply with those code sections. Nor is it clear, to this day, which version of those code sections the Districts consider pled and remanded by the Court of Appeal. Thus, the remand of Education Code sections 76300 through 76395, which were not pled in the test claim, is incorrect as a matter of law.

Moreover, the Commission does not have the authority to rehear Education Code section 76300 since it was the subject of a prior final decision of the Commission where it was already determined to be

[5] Section 51012, however, does not require community colleges to establish and implement policies and procedures, as alleged, and does not reference statutes, including Education Code sections 76300 through 76395. The Court of Appeal correctly denied section 51012 of the regulations.

reimbursable. (*California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1202. See *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15) Statement of Decision at <https://csm.ca.gov/decisions/99tc13,00tc15sod.pdf> [as of February 26, 2021], Parameters and Guidelines at <https://csm.ca.gov/decisions/99tc13,00tc15pg.pdf> [as of February 26, 2021]; Commission's Request for Judicial Notice, Exhibit C, filed with the Court of Appeal.) That test claim pled Education Code section 76300 as added by Statutes 1993, chapter 8, and as derived from prior versions in the law (beginning with Stats. 1984xx, ch. 1, as former section 72252), and as amended in 1994, 1995, 1996, and 1999. The *Enrollment Fee Collection and Waiver* program has been and is currently being funded by the Legislature for exactly what the test claimants requested in their parenthetical reference in the test claim: to establish and implement policies and procedures to ensure that the collection of student fees complies with the law.[6] Thus, it is not clear what the Districts are disputing about Education Code section 76300.

[6] Statutes 2020, chapter 7, (AB 89), § 83, Item 6870-101-0001; Statutes 2020, chapter 6 (SB 74), Items 6870-101-0001 and 6870-295-0001; Statutes 2019, chapter 363, (SB 109), § 76, Item 6870-101-0001; Statutes 2019, chapter 23 (AB 74), Items 6870-101-0001 and 6870-295-0001; Statutes 2018, chapter 449 (SB 862), § 34, Item 6870-295-0001; Statutes 2018, chapter 29 (SB 840), Items 6870-101-0001 and 6870-295-0001; Statutes 2017, chapter 54 (SB 108), § 23, Item 6870-101-0001; Statutes 2017, chapter 14 (AB 97), Items 6870-101-0001 and 6870-295-0001; Statutes 2016, chapter 23 (SB 826), Items 6870-101-0001 and 6870-295-0001; Statutes 2015, chapter 321 (SB 101) § 30, Item 6870-101-0001; Statutes 2015, chapter 11 (SB 97), § 87, Item 6870-101-0001; Statutes 2015, chapter 10 (AB 93), Items 6870-101-0001 and 6870-295-0001; and Gov. Code, § 17581.7(f)(6) [which provides block grant funding for the program, in lieu of filing reimbursement claims with the State Controller's Office].

Finally, these jurisdictional issues arose solely from the Court of Appeal, beginning with the court's tentative decision issued March 4, 2020. The Commission addressed the issues at oral argument on March 16, 2020, and again through a petition for rehearing filed April 17, 2020. This Court is not barred from taking up these issues under California Rules of Court, rule 8.516(b) ("The Supreme Court may decide any issues that are raised or fairly included in the petition or answer.").

The Commission's raising of the jurisdictional issues is proper. The Commission did not waive the jurisdictional issues relating to Education Code section 25430.12 and sections 76300 through 76395, but promptly addressed the issues when first raised by the Court of Appeal. The Court of Appeal's findings on Education Code section 25430.12 and Education Code sections 76300 through 76395 are incorrect as a matter of law.

C. The Requirement in California Code of Regulations, Title 5, Section 54626(a) to Adopt a Policy Regarding the Release of Directory Information is Not New and the Districts and Court of Appeal Misunderstand the Test for a New Program or Higher Level of Service.

The Districts argue that "[t]he Commission errs in applying an 'immediately before' standard" in its analysis of California Code of Regulations, title 5, former section 54626(a) noting that this Court, in *San Diego Unified School Dist. v. Commission on State Mandates*, "ruled that to be a reimbursable mandate, 'the requirements are new in comparison with the preexisting scheme….' [citation]." The Districts assert that the Court of Appeal was correct in finding that the preexisting scheme was "the law as it stood on January 1, 1975." (Districts' Answer Brief, pp. 47-48.) This position does not make sense.

Under article XIII B, section 6, a local entity may seek subvention for costs imposed by legislation or executive orders enacted after January 1, 1975. However, the local entity must comply with the controlling statutory

law to file a test claim. (Gov. Code, § 17552.) At the time these test claims were filed, the law required test claimants to identify all potential state-mandated activities that became effective after January 1, 1975, and before January 1, 2002, and specifically plead each section of a statute or executive order and the effective date and register number of regulations alleged to impose a mandate by September 30, 2003. (Gov. Code, §§ 17551 as amended by Stats. 2002, ch. 1124, 17553; former Cal. Code Regs., tit. 2, § 1183, as it existed in 2003 [Register 2003, No. 17].) Thus, if a statute with an effective date after January 1, 1975, is not pled in a test claim and it is the original source of the mandated activity, then reimbursement is not required even though the same activity is required in a later-enacted regulation that is pled. The activity required in the later-enacted regulation is simply not new.

Test Claim 02-TC-25 sought reimbursement for the costs to comply with former section 54626(a) of the regulations, which imposed the requirement on community college districts to adopt a policy identifying categories of directory information that may be released. (AR 462, 466.) Section 54626 of the regulations was adopted in Register 76, Number 10, filed on March 5, 1976, and became effective on the 30th day thereafter, April 4, 1976.[7] However, former Education Code section 25430.12, which was not pled, required the same activity and was enacted in September 1975 and became effective and operative on January 1, 1976; four months before the effective date of the regulation. (Stats. 1975, ch. 816, § 7.) The

[7] See regulatory history to California Code of Regulations, title 5, section 54600, which identifies when sections 54600-54662, including 54626, were originally adopted: "New Chapter 6 Articles 1-7, (Sections 54600-54662, not consecutive) filed 3-5-76; effective thirtieth day thereafter (Register 76, No. 10)." (AR 1378; see also AR 2460, 2473-2475, History Index for Title 5, California Code of Regulations filed in 02-TC-25, showing that section 54262 was added by Register 76-10.)

test claimants did not plead former Education Code section 25430.12, or Statutes 1975, chapter 816, in their test claim. (AR 462, 466.) Thus, even though section 54626(a) imposes a requirement, the requirement is not new as it was previously imposed by Education Code section 25430.12.

As fully explained in the Commission's opening brief, to find a new program or higher level of service, the comparison can only be between the law immediately before and after the enactment of the test claim statute or regulation and the courts have confirmed this analysis. (*County of San Diego v. State of California, supra,* 15 Cal.4th 68, 75, 98; *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 835, *County of Los Angeles v. Commission on State Mandates, supra,* 110 Cal.App.4th 1176, 1189.) The approach by the Districts and the Court of Appeal ignores these cases and completely ignores changes in law between 1975 and the effective date of the test claim statute or regulation. Their approach would also contradict the rules of interpretation in Government Code section 9605(a), which states that if a statute is amended, "[t]he portions that are not altered are to be considered as having been the law from the time when those provisions were enacted . . . ."

Accordingly, the mandate in section 54626(a) of the regulations is not new.

D. If this Court finds that the Commission's Decision is Incorrect, Remand is Necessary to Address the Remaining Issues.

The Districts assert that the Commission is seeking "an overbroad remand." (Districts' Answer Brief, p. 51.) The Districts are not correct.

The Commission believes its decision is correct as a matter of law and, thus, it is not "seeking" a remand. However, if this Court determines that the Commission's conclusions are not correct, the claims should be remanded back to the Commission to adopt a new decision consistent with

this Court's ruling, and to determine whether the remaining elements required for reimbursement under article XIII B, section 6 have been met. Because the Commission found that the minimum condition regulations did not impose a state-mandate, the Commission did *not* reach the issues of whether the requirements in the minimum condition regulations were new and imposed a new program or higher level of service, or whether they resulted in increased costs mandated by the state; issues disputed by the Chancellor's Office. (AR 1946-1949.) Nor did the Commission determine whether section 54626(a) imposes increased costs mandated by the state. In order for reimbursement to be constitutionally required under article XIII B, section 6, *all* of the legal elements must be satisfied. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 835; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of San Diego v. State of California, supra,* 15 Cal.4th 68, 111; *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 874-875.)

This Court has recognized the Commission's exclusive jurisdiction to determine these issues in the first instance. (Gov. Code, §§ 17559; 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333-334; *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 837; *County of San Diego v. Commission on State Mandates, supra,* 6 Cal.5th 196, 201, 217.)

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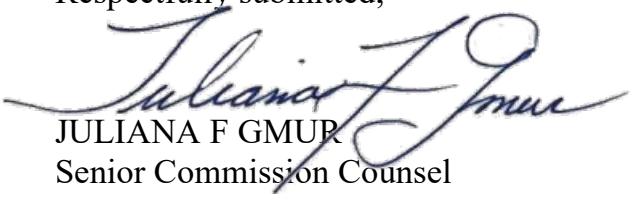
III. CONCLUSION

For these reasons, the Commission respectfully requests this Court to reverse the decision of the Court of Appeal and affirm the decision of the Commission.

Dated: March 8, 2021

Respectfully submitted,



JULIANA F GMUR
Senior Commission Counsel

CAMILLE SHELTON
Chief Legal Counsel

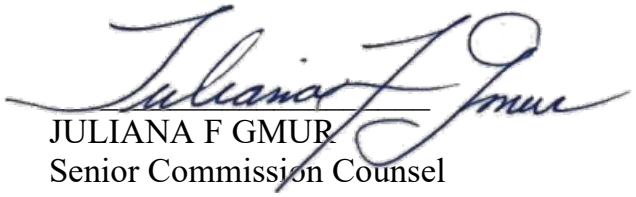
Attorney for Defendant/Respondent,
Commission on State Mandates

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, undersigned counsel certifies that this brief contains 5,737 words, including footnotes, as indicated by the word count of the word processing program used.

Dated: March 8, 2021

Respectfully submitted,



JULIANA F GMUR
Senior Commission Counsel

CAMILLE SHELTON
Chief Legal Counsel

Attorney for Defendant/Respondent,
Commission on State Mandates

ELECTRONIC PROOF OF SERVICE

I hereby certify that I am over the age of 18 and am employed in the County of Sacramento, where the mailing took place. My business address is located at the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento, California, 95814. The Commission on State Mandates' (Commission's) electronic service address is litigation@csm.ca.gov.

On March 8, 2021, I served:

COMMISSION ON STATE MANDATES' REPLY BRIEF ON THE MERITS
Coast Community College District, et al. v. Commission on State Mandates (Department of Finance)
Supreme Court Case No. S262663
Court of Appeal, Third Appellate District Case No. C080349
Sacramento County Superior Court Case No. 34-2014-80001842-CU-WM-GDS

on the following parties in said action:

Christian M. Keiner Dannis Woliver Kelley, Esq. 555 Capitol Mall, Suite 645 Sacramento, CA 95814 (916) 978.4040 ckeiner@dwkesq.com *Attorney for Appellants/Petitioners: Coast Community College District, et al.* *(Via TrueFiling.com)*	Clerk of Court California Court of Appeals Third Appellate District 914 Capitol Mall, Sacramento, CA 95814 (*Via tf3.truefiling.com constitutes service on the Court of Appeal consistent with the California Rules of Court, rule 8.500(f)(1).*)
P. Patty Li Deputy Attorney General Department of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Patty.li@doj.ca.gov *Attorney for Real Parties in Interest/Respondent: Department of Finance* *(Via TrueFiling.com)*	Clerk of Court ATTN: Department 54 Superior Court of California County of Sacramento Gordon D. Schaber Courthouse 720 9th Street Sacramento, CA 95814 (*By U.S. Mail*)

Samuel T. Harbourt
Deputy Solicitor General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
Samuel.Harbourt@doj.ca.gov
Attorney for Real Parties in Interest/Respondent: Department of Finance (Via TrueFiling.com)

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I, **CARLA SHELTON**, declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 8, 2021.

CARLA SHELTON
Sr. Legal Analyst