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.

Case No. S262663

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

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Article XIII B, section 6, of California's Constitution requires the State to reimburse local governments and school districts, including community college districts, for costs they incur in complying with "mandates" imposed by state law. The first issue presented is whether the conditions entitling community college districts to state aid—referred to here as "funding-entitlement conditions"—qualify as reimbursable "mandates."

They do not. The funding-entitlement conditions coexist within a broader regulatory regime beside district "operating standards." While the operating standards impose mandatory, enforceable operational and performance obligations on the districts, the funding-entitlement conditions work differently. The conditions do not compel districts to take specific actions; rather, they describe what a district must do to be entitled to state aid. If a district fails to satisfy any of the conditions, the Chancellor of California Community Colleges (the state agency overseeing the districts) may take one or more discretionary steps to encourage compliance. Such steps include collaborating with the district to develop a plan and timetable for coming into compliance, working with the district to improve its finances and identify additional funding sources to enable it to comply, and—at least theoretically—withholding some amount of state funding from a noncompliant district. (Opening Brief on the Merits (OBM)

25-28, 56-59, and fn. 25.)[1] The Commission thus properly distinguished in its test claim decision between the operating standards and funding-entitlement conditions for purposes of Article XIII B, section 6. While the operating standards may qualify as reimbursable "mandates" because districts are legally compelled to comply, the same cannot be said of the funding-entitlement conditions.

In their answer brief, the five plaintiff community college districts ("districts") make only a limited effort to defend the Court of Appeal's determination that districts are "legally compelled" to satisfy the funding-entitlement conditions. (See Answer Brief on the Merits (ABM) 25-31; slip opn., pp. 5-12.) Instead, the districts principally contend that compliance is "practically compelled." (ABM 31-43.) Assuming that such "practical compulsion" claims can be advanced under Article XIII B, section 6, the districts assert that practical compulsion exists here because they stand to lose "the entirety of [their] state aid" if they fail to satisfy one or more funding-entitlement conditions. (*Id.* at p. 35.)

That assertion is pure exaggeration; it finds no support in law or practice. While the Chancellor has discretion to withhold some amount of state aid when a district fails to satisfy the conditions, nothing requires the Chancellor to do so. (OBM 55-60.) And the Chancellor is legally barred from withholding an amount of aid disproportionate "to the extent and gravity" of a

[1] Unless otherwise noted, all references to "OBM" are to the Department's opening brief.

district's noncompliance. (Cal. Code of Regs., title 5, § 51102, subd. (c).) The extent of noncompliance will rarely, if ever, be substantial because almost all of the funding-entitlement conditions address conduct that is already separately compelled by the operating standards. (See OBM 25-27, 58-60, and Appendix.) As the Commission determined, the operating standards are legally mandatory and thus eligible for reimbursement under Article XIII B, section 6, thereby facilitating a district's ability to comply. It is small wonder, then, that the record does not contain a single example in which the Chancellor has ever actually withheld aid based upon a district's noncompliance with the funding-entitlement conditions. (See ABM 40 [acknowledging this reality].) For all of these reasons, the districts cannot meet the high bar set out in *Kern*, where the Court concluded that practical compulsion claims—if allowed—would require claimants to show that "severe," "draconian" consequences would result from failing to satisfy state-imposed conditions. (*Dept. of Finance v. Com. on State Mandates* (2003) 30 Cal.4th 727, 754, internal quotations omitted ("*Kern*").)

The second and third issues presented concern procedural rules governing the filing of reimbursement claims with the Commission under Article XIII B, section 6 (called "test claims"). These procedural rules are not "jurisdictional" in a fundamental sense (meaning nonwaivable and essential to a court's power to decide the subject matter of a case). (See OBM 63-66.) But the rules at issue here are mandatory; if the Commission or another party invokes them on a timely basis, a court commits reversible

error by disregarding them. (See *ibid.*) That was the case here: as fully explained in the Commission's opening brief, the Commission argued below that the Court of Appeal could not remand reimbursement claims that the districts had failed to plead in their test claim or that the Commission had previously addressed in another test claim decision. (See Commission OBM 40-52.) Contrary to the districts' principal response (ABM 44-46), the Commission raised these arguments in a timely fashion.

The Court should thus reverse the Court of Appeal's judgment on each of the three issues presented and uphold the Commission's decision, as relevant here, to deny the districts' claims for reimbursement under Article XIII B, section 6.

ARGUMENT

I. THE FUNDING-ENTITLEMENT CONDITIONS DO NOT QUALIFY AS REIMBURSABLE STATE MANDATES

Under Article XIII B, section 6, "legal compulsion" exists where a statute, regulation, or executive order requires local governments to take certain actions and thereby incur costs. (*Kern*, *supra*, 30 Cal.4th at p. 736; see also *id.* at pp. 742-749.) The districts only briefly suggest that the funding-entitlement conditions give rise to legal compulsion (see, e.g., ABM 26, 29); their brief focuses in the main on the argument that "practical compulsion" exists (*id.* at pp. 31-44). But to date, the Court has merely assumed "for purposes of analysis only" that reimbursable mandates can arise from "practical compulsion." (*Kern*, *supra*, 30 Cal.4th at p. 751.) If allowed, such claims would pose substantial administrability challenges that neither the voters nor

Legislature contemplated when enacting Article XIII B, section 6, and its implementing legislation. (OBM 49-54.) However, even if such claims could require reimbursement in some circumstances, no practical compulsion would exist here because the districts have not shown that they would face a "substantial penalty"—such as a "severe," "draconian" loss of funding—for noncompliance with the funding-entitlement conditions. (*Kern*, *supra*, 30 Cal.4th at pp. 731, 751, internal quotations omitted.)

A. The Funding-Entitlement Conditions Do Not Give Rise to Legal Compulsion

The Commission's decision in this case properly distinguished between the operating standards and the funding-entitlement conditions for purposes of reimbursement under Article XIII B, section 6. (See AR 28-36.) While the two bodies of regulations overlap substantially in content and subject matter—addressing standards of scholarship, course offerings, grading requirements, and student counseling, among other topics (see OBM 25-26, and Appendix)—they operate differently: The operating standards legally compel districts to take action, and are enforceable in court if districts fail to comply. (See OBM 25.)[2] The Commission thus concluded that the operating standards (in particular, the standards addressed in the test claim proceeding)

[2] A state department or agency tasked with oversight and enforcement of a mandatory requirement under state law—here, the Chancellor's Office—may bring a writ action to compel a local government to comply with the mandate. (See generally *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 992-995.)

may qualify as reimbursable "mandates" under Article XIII B, section 6. (See, e.g., OBM 29-30, 34.) The funding-entitlement conditions, by contrast, merely identify grounds that authorize the Chancellor, in his discretion, to take one or more steps to encourage compliance. Those steps include collaborating with the district to establish a plan and timetable for coming into compliance, working with the district to identify additional sources of funding to support its compliance efforts, and, at least in theory, withholding an amount of aid that is proportionate to the "extent and gravity" of a district's failure to comply. (Cal. Code of Regs., title 5, § 51102; see OBM 25-28, 56-59, and fn. 25.) But nothing "legally compels" the districts to satisfy the funding-entitlement conditions; they must comply only if they wish to ensure that the Chancellor will not have grounds to take one or more of the discretionary actions described above. (OBM 40-41.)

The districts offer little in the way of a response. They provide no defense of the Court of Appeal's novel standard, which would find "legal compulsion" any time a funding condition can be said to relate to a local district's "core mission functions." (Slip opn., p. 9.) As the Department has explained, compliance with funding conditions does not become legally mandatory merely because those conditions have some "connection with" districts' "core" functions. (*Id.* at pp. 7, 12; see OBM 42-43.)

The districts assert that "the state, by law and regulation, require[s]" the districts to satisfy the funding-entitlement conditions. (ABM 31.) But the districts cite no such "law [or] regulation." As the Commission explained in the decision under

review, the "plain language" of the relevant statutory and regulatory provisions shows that the funding-entitlement conditions do not mandate action by the districts. (AR 33.) Rather, section 70901 of the Education Code provides that satisfying the conditions "*entitl[es]* districts to receive state aid." (Italics added; see also Cal. Code of Regs., title 5, § 51000 [same].) That is, satisfaction of the conditions "leads to an *entitlement* to state aid by a community college district" (AR 34, italics in original), meaning a legal "right . . . to" state aid (Webster's Third New Internat. Dictionary (2002), p. 758). Any legal mandate thus runs only to *the State*—to apportion aid to compliant districts if conditions are met—not to *the districts*.

The districts' principal legal compulsion argument appears to be that community college districts are legally compelled "to receive state aid or funding" (ABM 31), and that once a district accepts such funding, it is "subsequently legally required to conform to" the funding-entitlement conditions (*id*. at p. 29). But that argument is doubly flawed. No law obligates the districts to accept state aid. (OBM 44-45.)[3] And even if the districts were so obligated, they would still not be legally compelled to satisfy the funding-entitlement conditions as a condition of accepting the aid: State aid is provided through an annual apportionment process that operates separately from the funding-entitlement conditions. (See *id*. at pp. 43-44, and fn. 19.) At no point during the apportionment process are districts required to agree to satisfy

[3] Indeed, a few districts operate without general apportionment funding from the State. (See OBM 23.)

the conditions in exchange for state aid or demonstrate ongoing compliance with the conditions. (See *ibid.*) That is, the funding-entitlement conditions do *not* operate in the nature of a contract, whereby acceptance of aid triggers a corresponding legal duty on the part of the districts to satisfy the conditions. (See *ibid.*) Rather, the conditions merely identify grounds authorizing the Chancellor to take one or more of the various discretionary actions discussed above—including withholding some amount of aid that the districts would otherwise receive. (See Cal. Code of Regs., title 5, §§ 51000, 51102.) The districts cite nothing suggesting otherwise.[4]

The districts also invoke this Court's observations about "legal compulsion" in *San Diego Unified School Dist. v. Com. on State Mandates* (2004) 33 Cal.4th 859, 888. (See ABM 30, 32-33.) That decision does not suggest, however, that regulations resembling the funding-entitlement conditions give rise to "legal compulsion." The Court merely cautioned against an overly expansive or rigid application of the principle recognized in *Kern* that no legal compulsion exists "whenever an entity makes an initial discretionary decision that in turn triggers mandated costs." (*San Diego Unified*, *supra*, 33 Cal.4th at p. 888.) Specifically, the Court recognized that, where "an executive order requir[es] that county firefighters be provided with protective

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[4] To the contrary, the districts quote the relevant discussion in the Department's opening brief, acknowledging that "'[a]t no point during [the apportionment] process are districts required to agree to satisfy the [funding-entitlement conditions] in exchange for state aid.'" (ABM 29, quoting OBM 44.)

clothing and safety equipment," "reimbursement would [not] be foreclosed . . . merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected." (*Ibid.*, citing *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521.) In other words, the Court considered whether the requirement to properly equip and outfit firefighters could be treated as "voluntary" and non-reimbursable for purposes of Article XIII B, section 6—even though districts were legally compelled to comply—because the hiring of the firefighters represented "an initial discretionary decision" that "in turn triggered mandated costs." (*San Diego Unified*, *supra*, 33 Cal.4th at p. 888.) The Court suggested the answer would be "no."

The districts point to nothing remotely similar here. Unlike the requirement to equip and outfit firefighters, the funding-entitlement conditions do not impose any mandatory obligations on local districts. (See *ante*, pp. 9-11; OBM 39-45.) Because nothing whatsoever is "mandated," there is no need to consider any questions involving "initial discretionary decision[s]" that "in turn trigger[] *mandated* costs." (*San Diego Unified*, *supra*, 33 Cal.4th at p. 888, italics added.) The funding-entitlement conditions do not give rise to legal compulsion in any sense.

B. The Districts Are Not Practically Compelled to Comply with the Funding-Entitlement Conditions

The districts' answer brief focuses on whether the funding-entitlement conditions give rise to "practical compulsion." (ABM 31-43.) The districts assume that such claims are viable under Article XIII B, section 6. But as this Court has suggested, the most natural reading of the constitutional text is that it applies to legal compulsion alone. (See *Kern*, *supra*, 30 Cal.4th at pp. 737, 750-751; *City of Sacramento v. California* (1990) 50 Cal.3d 51, 71; OBM 49.) And practical compulsion claims could pose substantial administrability challenges within the test claim regime: among other difficulties, the Commission and courts would be placed in the position of deciphering government-specific fiscal conditions to determine how much funding local districts could reasonably stand to lose; devising a means to apply a practical compulsion decision to all similarly situated districts on a statewide basis; and figuring out how to revisit a reimbursement decision many years later when practical compulsion no longer existed (if such reconsideration would even be legally permissible and procedurally feasible). (See OBM 51-55.)[5]

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[5] The information provided to voters in 1979 when they considered and approved Article XIII B, section 6, said nothing about these administrability challenges. (See *Kern*, *supra*, 30 Cal.4th at p. 737; Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) pp. 16-21.) Nor did the voter-education materials otherwise reference practical compulsion. (See *ibid.*)

The districts' only response is to suggest that, because the Court has recognized practical compulsion claims in the *federal* mandates context, it "should apply" the same analysis in the *state* mandates context. (ABM 32.) But the relevant legal and practical considerations differ. The Legislature, in determining how best to implement Article XIII B, has authorized practical compulsion claims for purposes of the federal mandates provision, but not for purposes of state mandates claims. (See OBM 50-51, and fn. 21; *City of Sacramento*, *supra*, 50 Cal.3d at p. 75.)[6] That legislative decision makes good sense. Administrability concerns are greatly reduced in the federal mandates context: as a general matter, practical compulsion arguments in that context require courts and the Commission to address the limited question whether a single entity, the State of California, has been practically compelled by the federal government to impose certain requirements on local entities—rather than whether the State has practically compelled dozens or hundreds of local governments, each with differing fiscal conditions, to take certain actions or incur certain costs. (See, e.g., *City of Sacramento*, *supra*, 50 Cal.3d at pp. 74-76; *Dept. of Finance v. Com. on State Mandates* (2016) 1 Cal.5th 749, 763-767 [reviewing a number of decisions applying the federal mandates provision].)

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[6] Where costs are federally mandated, they are not subject to a local entity's annual appropriations limit under Article XIII B, and the State does not have to reimburse local entities for such costs. (See Cal. Const., art. XIII B, § 9, subd. (b); Gov. Code, § 17556, subd. (c).)

However, even if the Court were to hold that practical compulsion can result in a reimbursable state mandate, no such compulsion would exist here. The districts argue that they would face a "drastic fiscal loss of state funds"—the "entirety of [their] state aid"—if they failed to satisfy the funding-entitlement conditions. (ABM 14, 35.) They assert that the Chancellor "must impose" "financial sanctions" if it finds a district out of compliance. (*Id.* at p. 38; see also *id.* at p. 35 ["The simple and most logical understanding of the [funding-entitlement conditions] is that the College Districts must comply . . . in order to maintain state funds"].)

That is not an accurate reading of the applicable statutes and regulations. Section 70901, subdivision (b)(6) of the Education Code provides that satisfying the funding-entitlement conditions "entitl[es] districts to receive state aid." (See also *ante*, p. 11.) And the regulations implementing that statutory provision make clear that the Chancellor has broad discretion to enforce the funding-entitlement conditions in a variety of ways that do not entail withholding the entirety—or even a substantial amount—of a district's aid. The Chancellor may "accept in whole or part the district's response" after notifying the district of its noncompliance, "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 withhold only "part of " the district's aid. (Cal. Code of Regs., title 5, § 51102, subd. (b); see OBM 27-28, 56-59.)

Indeed, the Chancellor is *legally barred* from withholding all of a district's aid because any withheld aid must be proportionate "to the extent and gravity" of a district's noncompliance with the funding-entitlement conditions. (Cal. Code of Regs., title 5, § 51102, subd. (c).) Any noncompliance is virtually certain to be modest because there is significant overlap between the funding-entitlement conditions and separate statutory provisions and regulations—the operating standards, in particular—that impose mandatory requirements on the districts. (See OBM 58-59, and Appendix.) Eight of the nineteen separate funding-entitlement conditions simply incorporate operating standards by reference, and only a handful of the conditions address conduct that is not independently required by either the operating standards or separate provisions of the Education Code (or both). (See OBM, Appendix.) Thus, so long as a district is complying with those provisions and operating standards—which are enforceable and, as the Commission determined, subject to reimbursement under Article XIII B, section 6 (see OBM 29-30, 59)—there is no reason to think the district will be in substantial noncompliance with the funding-entitlement conditions and, accordingly, no basis to conclude that it will suffer any substantial loss of aid. For that reason, it is immaterial here whether or not a district could "somehow 'choose' not to receive state funding or aid [while] . . . remain[ing] a functional community college [district]." (ABM 30;

see also *id.* at pp. 12, 14, 33, 40, 41 [similar].) The State is not suggesting the districts can or must make any such choice.[7]

The districts also contend the funding-entitlement conditions cannot be considered "voluntary" because "a voluntary regulation is a non-sequitur." (ABM 36.) Not at all. There is nothing anomalous about spelling out the grounds for the Chancellor's discretionary withholding of state aid. Doing so provides advance notice to the districts of actions that may lead them to lose some amount of aid. And it provides guidance to the Chancellor about the appropriate bases for withholding aid or taking another of the discretionary compliance-encouraging actions discussed above.

The districts' contrary reading of the conditions—which would apparently authorize (or even require) the Chancellor to withhold all of a district's aid whenever it fails to satisfy any one of the funding-entitlement conditions—is irreconcilable with the history of enforcement by the Chancellor. As the districts acknowledge (see ABM 40), the record contains only a single example in which the Chancellor has ever sought to withhold some amount of a district's aid for failure to satisfy a funding entitlement condition. In 2002, the Chancellor proposed withholding a small amount of aid from San Mateo Community College District. No aid was ultimately withheld because

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[7] Another limitation on the Chancellor's aid-withholding authority is the constitutional guarantee of funding to the districts under Propositions 30 and 55. (OBM 27, fn. 15.) Those funds represent approximately 15% of the districts' annual funding from the State. (*Ibid.*)

members of the Board of Governors objected out of a concern that it would unfairly harm the district's students. (See OBM 58.)

That same solicitude for student welfare is likely to check the Chancellor from pursuing any substantial withholding of aid. (See OBM 57-58.) Indeed, it is simply unrealistic to suggest, if a district is struggling to satisfy the funding-entitlement conditions because of financial difficulties, that the Chancellor would respond to the situation by withholding even more of the district's scarce resources. The Chancellor is far more likely to work with the district to find or free up *additional* funding sources to enable it to satisfy the conditions. (See *id.* at pp. 57-58, and fn. 25 [discussing Chancellor's authority to provide increased monitoring and oversight of a district's financial affairs and, if necessary, to seek an "emergency apportionment" of aid].)[8]

Finally, the districts suggest that practical compulsion arises whenever there is a mere possibility that "'serious'" consequences would flow from a district's failure to satisfy funding conditions—

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[8] The districts also briefly mention (at ABM 38) regulations authorizing the Chancellor to conduct audits to determine whether "the allocation of state moneys or applicable federal funding may have been in error." (Cal. Code of Regs., tit. 5, § 59100; see also Ed. Code, § 84040 [requiring districts to conduct annual financial audits].) These provisions do not bear on the issues presented here: they do not so much as mention the funding-entitlement conditions and, in any event, do not require the Chancellor to withhold substantial amounts of state aid for any reason. As a general matter, the State audits the use of state funds in many areas of the budget; this is an important function to ensure taxpayer dollars are appropriately spent as the Legislature intended. State audits are in no respect tantamount to, or indicative of, state mandates.

that is, whenever the State "is *capable* of imposing" such consequences. (ABM 41, italics added.) This Court has already recognized, however, that if practical compulsion claims are to be allowed, they would require a showing of "severe," "draconian" sanctions that are "certain" to result—or at least reasonably certain or likely to result. (*Kern*, 30 Cal.4th at p. 754, internal quotations omitted; see also OBM 46-47.) The districts have not made—and cannot make—that showing.

C. The Purpose of the State Mandates Provision Does Not Require Treating the Funding-Entitlement Conditions as "Mandates"

The purpose of Article XIII B, section 6, is "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies." (*County of San Diego v. California* (1997) 15 Cal.4th 68, 81.) The districts contend that if the Court upholds the Commission's decision in this case, it would "eviscerate[]" that purpose (ABM 30) because it would allow the State to pressure or "induce compliance" by threatening to withhold aid (*id.* at p. 37; see also *id.* at pp. 41-43). But Article XIII B, section 6, requires reimbursement for "mandates" imposed by state law, not every activity that a local district feels "indirectly" pressured by the State to undertake. (See *Kern*, *supra*, 30 Cal.4th at p. 752, internal quotations and italics omitted.) And as the Court recognized in *Kern*, the State may legitimately provide funds to local districts on the expectation that they will use state funds in certain ways. (See *id.* at p. 754.) That is, in essence, what the State is doing here: apportioning funds to community college districts on an annual basis, while

providing notice to the districts that, if they fail to satisfy certain conditions, they may be subject to one of several discretionary actions to encourage compliance, including the loss of some amount of their state aid. (See Cal. Code of Regs., title 5, § 51102.)

Nothing about that funding regime offends the text or purposes of Article XIII B, section 6. In fact, the funding-entitlement conditions are less coercive than the conditions that the Court treated as non-mandatory in *Kern*. There, the Court held that certain funding conditions were "voluntary" for purposes of Article XIII B, section 6, because the districts were "free to . . . decline" the funds if they objected to the "strings attached" by the State. (30 Cal.4th at p. 753; see also *id.* at p. 754, fn. 22.) Here, noncompliance does not require the districts to decline any state aid. Rather, if a district falls out of compliance with any of the funding-entitlement conditions, that simply means that the Chancellor may exercise his discretion to take one or more steps authorized by regulation—including working with the district to formulate a plan and timetable for coming into compliance or, in theory, reducing the district's aid by some amount proportionate to the "extent and gravity" of the district's noncompliance. (Cal. Code of Regs., title 5, § 51102, subd. (c).) Given the legal limits on the Chancellor's aid-withholding authority (OBM 57-60), and demonstrated reluctance to withhold aid (*id.* at p. 58), it is "unlikely that a district would actually lose any state aid" for failing to comply.

(CT 248 [superior court ruling].) No compulsion exists under this cooperative, discretionary funding regime—legal or practical.

II. THE COMMISSION TIMELY RAISED ITS PROCEDURAL CLAIMS

For reasons detailed in the Commission's opening brief, the Court of Appeal failed to apply procedural rules requiring claimants to plead test claims with specificity and barring consideration of duplicative test claims. While those rules are not "jurisdictional" in a fundamental sense (meaning nonwaivable and essential to a court's power to decide the subject matter of a case), they are *mandatory*. (OBM 63-66.) That means it constitutes reversible error for a court to disregard or misapply the rules if timely invoked by the Commission or another party. (See *ibid.*)

The districts' principal response is that the Commission failed to timely raise these procedural arguments. (ABM 44-46.) That is incorrect. At every stage of this case, the Commission argued that it properly rejected reimbursement for the costs of complying with former Education Code, section 25430.12 (requiring districts to adopt a policy regulating the release of student directory information) because that provision "was not pled" in the test claim. (AR 151.)[9] And at its first opportunity, the Commission argued that the Court of Appeal improperly remanded reimbursement claims concerning Education Code,

[9] See CT 104 (Commission briefing before the superior court); Commission Court of Appeal Brief (Dec. 15, 2016), p. 44.

sections 76300 through 76395 (provisions regulating the types of student fees that districts may impose), because those provisions were not pled in the test claim and section 76300 was the subject of a prior test claim decision. (See Commission OBM 40-44, 49-52.) Those provisions were not mentioned in the districts' briefing before either the superior court or Court of Appeal; the Court of Appeal sua sponte addressed Education Code, sections 76300 through 76395, and ordered the Commission to consider the provisions on remand.[10] The Commission timely filed a petition for rehearing urging the Court of Appeal to reconsider that improper remand order. (See OBM 35; Commission OBM 22-23.)

Accordingly, if the Court agrees that the Commission's procedural arguments have merit, it should correct the Court of Appeal's failure to apply the procedural rules at issue.

CONCLUSION

The Court should reverse the Court of Appeal's decision and uphold the Commission's decision granting the districts' reimbursement claims in part and denying them in part.

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[10] See slip opn., pp. 16-17; CT 54-91 [districts' superior court brief in support of petition for writ of mandate]; CT 145-159 [districts' superior court reply brief]; see generally Court of Appeal Opening Brief (Sept. 12, 2016); Court of Appeal Reply Brief (Feb. 3, 2017).

Dated: April 16, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 4,673 words.

Dated: April 16, 2021

MATTHEW RODRIQUEZ
Acting Attorney General

/s/ Samuel T. Harbourt

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Department of Finance

DECLARATION OF ELECTRONIC SERVICE

Case Name: **Coast Community College District, et al. v. Commission on State Mandates, et al. (California Supreme Court)**
No.: **S262663**

I declare:

I am employed in the Office of the Attorney General, and am a member of the California State Bar. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On April 16, 2021, I electronically served all parties in the case, as well as the Clerk of Court of the California Court of Appeal, with the attached **REPLY BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system.

I also directed a legal assistant with the California Department of Justice to serve the Clerk of Court of the Superior Court of California by U.S. Mail at the following address: Clerk of Court, Attn: Department 54, Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 16, 2021, at San Francisco, California.

Samuel T. Harbourt	*/s/ Samuel T. Harbourt*
Declarant	Signature

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **COAST COMMUNITY COLLEGE DISTRICT v. COMMISSION ON STATE MANDATES (DEPARTMENT OF FINANCE)**
Case Number: **S262663**
Lower Court Case Number: **C080349**

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Samuel Harbourt Office of the Attorney General 313719	samuel.harbourt@doj.ca.gov	e-Serve	4/16/2021 4:14:40 PM

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

4/16/2021
Date

/s/Samuel Harbourt

Signature

Harbourt, Samuel (313719)

Last Name, First Name (PNum)

California Department of Justice

Law Firm