Case No. S262663

IN THE SUPREME COURT
FOR 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.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFFS AND APPELLANTS COAST COMMUNITY COLLEGE DISTRICT ET AL.

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

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I. INTRODUCTION

In 1978 and 1979, California voters amended the State constitution to limit local government revenue raising authority. Recognizing, however, that this would limit local government's ability to carry out programs and services on behalf of the State, the voters also required that if the State mandates that local agencies[1] perform new or expanded programs or services, the State must provide corresponding revenue for those costs.

In the intervening decades, the State has developed numerous strategies for attempting to avoid this obligation so that it can enjoy the benefits of the laudable policy objectives of a variety of new and expanded programs and services without meeting its constitutional obligation to provide the corresponding funding. Many of these attempts have been thwarted by the courts as unconstitutional. This case represents another one of those attempts.

Here, the Department of Finance (DOF) argues to this Court that new programs and higher levels of service for community college districts created by statute and regulation are not subject to the constitutional subvention requirement because they are not technically mandated. Rather, community college districts' ability to continue to receive state aid is

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[1] This brief uses the term "local government" or "local agency" as it is used in section 6 of article XIII B of the California Constitution, though the term also includes school districts and the community college districts that are the plaintiffs/appellants in this case.

dependent on their performance of the new or expanded programs and services. Notwithstanding the fact that state aid constitutes a significant portion of districts' budgets, and that without the state aid, the districts could not perform their core functions as required by law, DOF argues the districts are free to decline to perform the new and expanded programs and services and simply forgo state aid.

The Court of Appeal was not fooled. The court correctly noted that when a local agency's ability to perform its basic functions is dependent on performing new programs or higher levels of service, it constitutes a mandate for which subventions are required. The court concluded that given the risks presented by the significant penalty that can be imposed for failing to perform the services and programs at issue here – a potential loss of all state aid, which would render the districts unable to provide their core functions – compliance was legally compelled. It rejected the State's argument to the contrary, finding it "inconsistent with the statutory scheme and appellate record."

This conclusion is correct and should be affirmed for several reasons. First, determining whether a conditional requirement is actually a legal compulsion for purposes of the obligation to provide a subvention to local agencies should be made with reference to the history of the constitutional subvention requirement. The voters of this State unquestionably intended to limit the State's ability to shift costs to local

government for new programs and services after voters curtailed local tax authority. Attempting to avoid this limitation by conditioning state aid on compliance with performing specified requirements is clearly an attempt to avoid this limitation. Second, even if this Court determines there is no legal compulsion in this case, it should apply the "practical compulsion" standard. Without a practical compulsion standard for determining mandate reimbursement claims under section 6 of article XIII B of the California Constitution, the constitutional limitation on shifting State costs to local agencies is subject to an untenable loophole. The State would be permitted to stop just shy of explicitly requiring local agencies to undertake new programs or higher levels of service, but could create conditions that leave agencies no choice but to comply. This simply is not how the voters intended the constitutional limitation on shifting costs to local agencies to work. Conditioning state aid on implementing new programs or higher levels of service is not merely an incentive program to motivate preferred policy objectives. Rather, it circumvents constitutional restrictions put in place directly by the voters that are specifically intended to avoid this precise result.

Finally, DOF's argument that the practical compulsion standard cannot readily be applied by the courts is belied by case law applying similar standards. Indeed, the courts understand and are fully equipped to

evaluate such determinations, and do not need bright line standards in order to do so.

For these reasons, this Court should affirm the decision below.

II. ARGUMENT

A. Determinations on Whether a Statutory Scheme Creates a Legal and Practical Compulsion to Perform a New Program or Higher Level of Service Must Be Considered In Light of the Constitutional Requirement to Provide Subventions.

At issue in this case is whether a series of statutes, regulations and Executive Orders that prescribe minimum standards for community college districts are mandates for which the State is obligated to provide subventions. To answer that question, it is critical that this Court consider the purpose and intent of the constitutional requirement to provide local agencies with State subventions for mandated programs.

1. The history and intent of Article XIII B, Section 6 of the California Constitution require the State to make local agencies whole for the costs of new or expanded programs and services.

a. The genesis of Proposition 13.

In the years proceeding adoption of Proposition 13 (Cal. Const., art. XIII A) on June 6, 1978, the stage was set for a property tax revolt. Prior to Proposition 13, property tax rates were determined by the city and county where the property was situated. (Former Rev. & Tax Code, § 2261.) This tax rate was then applied to the assessed value of the property: 25 percent of its full market value as of the March 1st lien date. (Former Rev. & Tax

Code, § 401, as amended (Stats. 1974, ch. 311, § 35, p. 604, repealed by Stats. 1978, ch. 1207, § 15, p. 3886).) What appears to be a simple, consistent mathematical equation was far more complicated: California had no set standards for the valuation of property. (See *Bret Harte Inn, Inc. v. City and County of San Francisco* (1976) 16 Cal.3d 14; Holmes, *Assessment of Farmland Under the California Land Conservation Act and the "Breathing Space" Amendment* (1967) 55 Cal.L.Rev. 273, 280.)

The economic reality of this framework was that the amount property owners were paying for property taxes escalated dramatically, due in part to the rapid inflation in the real estate market in the mid-1970's. Alexander Pope, Los Angeles County Assessor, released the fiscal 1979 assessments showing an average increase in residential values of 17.5 percent from the 1978 values, with some increasing by as much as 100 percent. (Lefcoe and Allison, *The Legal Aspects of Proposition 13: The Amador Valley Case* (1979) 53 So.Cal.L.Rev. 173, 178.) California was the fourth highest in the nation in per capita property tax burdens, and third highest in state and local tax burdens. (*Id*. at p. 176.) State and local tax collections increased faster than gains in personal income. (*Ibid*.)

Fueled by inflation and increases in personal income taxes, the State amassed an immense budget surplus. (*Id*. at p. 176.) As the State's surplus grew, local governments were powerless to reduce the property tax rate. Programs mandated by the State were supported by local tax dollars; the

State imposed funding formulas that required increased local support as property values increased. The cost of many programs increased faster than the cost of living, and schools and counties in particular had their state share of funds reduced in proportion to the increase in assessed valuation. (Legis. Analyst, An Analysis of Proposition 13, The Jarvis-Gann Property Tax Initiative (May, 1978) S-25 at pp. 2-3.) Thus, the genesis of Proposition 13 was partly a reflection of the economy in California at the time, in which rapidly rising inflation led to a dramatic increase in property taxation. (Note, Prisoners of Proposition 13: *Sales Taxes, Property Taxes and the Fiscalization of Municipal Land Use Decisions* (1997) 71 S.Cal. L.Rev. 183, 185.)

Against this backdrop, in June 1978, the voters adopted Proposition 13, capping the property tax rate and imposing high thresholds for special taxes, which severely restricted the ability to increase revenue at the local level for cities, counties, and schools. (Cal. Const., art. XIII A; *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 186.)

b. The revenue drain.

Proposition 13 limited the tax rate to one percent of the full cash value of taxable property. The assessed value was rolled back to the 1975-76 value to determine the full cash value base (Cal. Const., art. XIII A, § 2, subd. (a)), which could only be increased by inflation to a maximum of two

percent per year. (Cal. Const., art. XIII A, § 2, subd. (b).) This base value would only be reassessed when property was purchased, newly constructed, or if a change in ownership occurred after 1975. (Cal. Const., art. XIII A, § 2.) The revenue generated by this tax plan had to be shared by counties, cities and districts, including school districts. (Cal. Const., art. XIII A, § 1.)

The fiscal impact of the passage of Proposition 13 was dramatic. With the base value of the property reduced and the tax rate reduced and frozen, there was an immediate reduction of 57 percent in property tax revenue. (Lefcoe and Allison, *supra*, at p.188; Chapman and Kirlin, *Land Use Consequences of Proposition 13* (1979) 53 So.Cal.L.Rev. 95, 112.) Although in fiscal year 1968-69, property taxes provided nearly all of local government's revenue and 42 percent of all state and local revenues collected (Ehrman, *Administrative Appeal and Judicial Review of Property Tax Assessments in California - The New Look* (1970) 22 Hast.L.J. 1.), by 1978, property taxes constituted just 40 percent of all county funding and just over 20 percent of city funding. (Chapman and Kirlin, *supra*, at p. 112.) The passage of Proposition 13 reduced the per capita property tax burden from the fourth highest in the nation to the thirty-seventh. (Legis. Analyst, An Analysis of Proposition 13, supra, at p. S-4.)

The year after the adoption of Proposition 13, the voters adopted Proposition 4, which added article XIII B to the California Constitution. Proposition 4, among other provisions, established an appropriations limit

each fiscal year for each entity of government, which cannot be exceeded (known as the "Gann Limit"). (Cal. Const., art. XIII B, § 1; *Santa Barbara County Taxpayers Assn. v. Bd. of Supervisors* (1989) 209 Cal.App.3d 940, 944.) The measure was intended to be a "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.)

c. The promise of reimbursement.

While voters were clearly providing themselves local tax relief at the ballot, surveys taken in 1977, 1978 and 1979 also show that voters did not actually desire any reductions in government services. (See *Prisoners of Proposition 13, supra,* 71 S.Cal. L.Rev. at p. 185.) Perhaps recognizing that the State would want to continue to provide the services desired by the public at the same time that local agencies were restricted by Propostion 13 and the Gann Limit, the voters imposed the subvention requirement at issue in this case by approving Proposition 4. (Cal. Const., art. XIII B, § 6; *Department of Finance v. Com. on State Mandates (County of Los Angeles)* (2016) 1 Cal.5th 749, 769; *Department of Finance v. Com. on State Mandates (County of Los Angeles)* (2021) 59 Cal.App.5th 546, 556.) The purpose of the subvention requirement is to "prevent '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.'" (*Department of Finance, supra,* 1 Cal.5th at p. 763, citing *County of San Diego v. State of Cal.* (1997) 15 Cal.4th 68, 81.) The context surrounding the adoption of article XIII B, section 6 is critical because it is a fundamental rule of construction that courts must interpret a constitutional amendment to give effect to the intent of the voters adopting it. (*Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 618.)

The California Voters Pamphlet for the November 6, 1979, special statewide election contained the exact text of the Proposition 4, the analysis by the Legislative Analyst, and arguments in favor of and against the proposed constitutional amendment. The Attorney General's summary on the ballot stated, in part: "With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by the state."

The Legislative Analyst stated that the proposal would:

> Require the state to reimburse local governments for the cost of complying with "state mandates." State mandates are requirements imposed on local governments by legislative or executive order.
>
> ***
>
> Finally the initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates.

The argument authored by Paul Gann submitted in favor of the proposition argued, in part:

> 1) WILL limit state and local government spending.
> ***
> 2) WILL curb excessive user fees imposed by local government.
> ***
> 3) WILL NOT allow the state government to force programs on local governments without the state paying for them.

Thus the voters balanced the financial picture through a Constitutional amendment whereby reimbursement was guaranteed to local government for costs expended for state-mandated programs, protecting what little property tax revenue was left for local discretionary expenditures.

After the adoption of the Constitutional amendment, the Legislature created an administrative process to govern reimbursement, which is found in Government Code section 17500 et seq. The essence of this process is found in Government Code section 17561, which requires the State to reimburse local agencies for all costs mandated by the State. Yet, the Legislature carved out certain exceptions: a program requested by the local agency; a court declaration that the program is part of existing law; a program required by a federal mandate with no added state costs; programs for which local agencies can levy fees to fund the program; programs accompanied by off-setting savings with no net costs to the local agency;

programs added by the voters; and programs creating or eliminating of a crime. (Gov. Code, § 17556.)

Other exceptions have been carved out by the courts. One such exception was first expressed in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, and again by this Court in *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727. Both cases find that if the decision to commence the program is discretionary for the local agency, it is not state-mandated and no subvention is required.

d. The efforts to avoid providing subventions to local governments.

Perhaps not surprisingly given a natural desire of the Legislature and Administration officials to provide new and innovative programs and services to their constituents, the courts have routinely had to intervene to close loopholes created by the State in an attempt to avoid providing constitutionally-required subventions to local governments for mandates. Examples include:

- Attempting to avoid subventions by arguing that the source of the mandate is no longer the Legislature when parts of a statute are

included in a ballot measure as technical reprints (*County of San Diego v. Com. on State Mandates* (2018) 6 Cal.5th 196)[2]

- Attempting to meet the subvention requirement by appropriating a nominal amount to satisfy statewide mandates (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770)

- Deferring payments to future fiscal years (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770)

- Treating orders of the Regional Water Boards of the State Water Resources Control Board as exempt from constitutional subvention requirements (*County of Los Angeles v. Com. on State Mandates* (2007) 150 Cal.App.4th 898)

- Attempting to require local agencies to carry out responsibilities that are imposed on the State by federal law without providing the legal agencies with subventions for the costs of performing the State's responsibilities, or claim federal law imposes requirements on local agencies that are actually imposed by the State (*Hayes v. Com. on State Mandates* (1992) 11 Cal.App.4th 1564;[3] *Department of Finance v. Com. on State Mandates (County of Los Angeles)* (2016)

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[2] "We conclude that the Commission's approach is at odds with the constitutional requirement that the state reimburse local governments for the costs of complying with state mandates. If the term 'ballot measure' in Government Code section 17556, subdivision (f) were defined as automatically including every provision subject to constitutionally compelled restatement in an initiative, it would sweep in vast swaths of the California Code." (*County of San Diego, supra,* 6 Cal.5th at p. 209.)

[3] "Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government." (Hayes, *supra,* 11 Cal.App.4th at p. 1593.)

1 Cal.5th 749; *Department of Finance v. Com. on State Mandates (County of San Diego)* (2017) 18 Cal.App.5th 661[4])

- Adopting a statute that excludes from subvention requirements any new program or higher level of service that is reasonably within the scope of a ballot measure (as opposed to expressly included or necessary to implement a ballot measure)(*California School Bds Assn. v. State of California* (2009) 171 Cal.App.4th 1183)

- Alleging no subventions are required for Executive Orders that do not implement statutes (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155)[5]

- Asserting that requiring a local agency to contribute funds to the State to run a program, rather than requiring the local agency to run

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[4] "No federal law, regulation, or administrative case authority expressly required the conditions. The requirement to reduce pollution impacts to the 'maximum extent practicable' was not a federal mandate, but instead vested the regional board with discretion to choose which conditions to impose to meet the standard. The permit conditions resulting from the exercise of that choice in this instance were state mandates." (*Dept. of Finance, supra,* 18 Cal.App.5th at p. 667.)

[5] "We understand the use of 'mandates' in the ordinary sense of 'orders' or 'commands,' concepts broad enough to include executive orders as well as statutes. As has been noted, "[t]he concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California*, supra, 43 Cal.3d at p. 56.) It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared." (*Long Beach Unified Sch. Dist., supra,* 225 Cal.App.3d at pp. 174-175.)

the program itself, is not a reimbursable mandate (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830)[6]

This case presents another such effort. If the State had merely required community college districts to perform the minimum condition regulations, the State would have been required to provide subventions, with the budgetary impacts associated with those costs. If the State had not attached the receipt of state aid to performing the minimum condition regulations, but instead made them optional without strings attached, the State may not have successfully achieved its policy objectives, as districts may have elected not to perform the services. Attaching the receipt of state aid to performance of the minimum condition regulations is the State's attempt at having it both ways — sufficient coercion to effectively ensure community college districts will perform the minimum condition regulations, while arguing that districts can decline state aid and are therefore not compelled to perform the services, thereby eliminating the need for the State to provide subventions. The Court of Appeal correctly determined that community college districts are dependent on state aid to

[6] "The fact that the impact of the section is to require plaintiffs to contribute funds to operate the state schools for the handicapped rather than to themselves administer the program does not detract from our conclusion that it calls for the establishment of a new program within the meaning of the constitutional provision. To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB." *(Lucia Mar Unified School Dist., supra*, 44 Cal.3d at p. 835.)

perform their underlying core functions, which are legally compelled. As such, the activities the districts are required to perform to order to receive the state aid are also legally compelled. (Slip opn., p. 9.) In order to give the meaning to section 6 of article XIII B that the voters intended, this Court should affirm.

2. This Court must interpret the mandate reimbursement requirements to reflect the constitutional standard.

To resolve this case, this Court must consider whether conditioning funding that is necessary for a local government to perform its core functions is a constitutionally viable option for the State to avoid subvention requirements. In evaluating that issue, the Court must consider whether such an interpretation of the constitution advances the clear directive given by the voters that the State not be permitted to shift costs for mandated programs to local agencies. DOF's arguments must be read in the context of the voters' intent in passing Proposition 13, the Gann Limit, and the subvention requirement for State mandates. This Court must ask whether an activity is truly optional when a local agency's decision to exercise the option not to perform the activity would result in a loss of funding necessary for core functions. Does that result accurately reflect the constitutional standard adopted by the voters?

As detailed below, the answer is certainly no. The Court of Appeal correctly determined that if exercising the "option" not to perform

minimum condition regulations would critically jeopardize core, required services, then the "optional" services are no longer optional, but legally required. To permit otherwise is inconsistent with both the plain language and intent of article XIII B, section 6 and must be rejected.

B. Courts are Capable of Implementing a Practical Compulsion Standard.

As did the Court of Appeal, this Court can decide this case on grounds of legal compulsion, and need not address whether practical compulsion can support a successful mandate claim. However, this Court previously laid the foundation for practical compulsion claims, finding they may be possible "in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program." (*Department of Finance v. Com. on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 730.)

DOF argues against allowing practical compulsion claims, offering several reasons why practical compulsion as a framework for mandate claims is unworkable. First and foremost, DOF argues that practical compulsion claims would create administrative problems for the Commission on State Mandates and the courts. (DOF Opening Br., pp. 51-53.) But this concern is belied by the fact that courts can, and in fact already do, evaluate this and other similar standards.

This Court tackled this issue with regard to federal mandates in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, recognizing that "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id*. at pp. 73-74.) In that case, the Court did not find a need for a hard and fast rule, but rather developed a list of factors that could be used to determine whether a federal program is compulsory or voluntary: "the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Id.* at p. 76.) Consistent with the arguments set forth in this brief above, this Court noted that the intent of the constitutional provisions governs how these factors are applied: "Always, the courts and the Commission must respect the governing principle of article XIII B, section 9(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary." (*Ibid.*)

Subsequent decisions have not expressed an inability to apply *City of Sacramento* or raised the contention that undertaking the review of relevant factors is too administratively burdensome to be useful. (*See, e.g., (Department of Finance, supra,* 1 Cal.5th 749.) Courts use similar factors

in determining when incentives become compulsion in other contexts. For example, the United States Supreme Court in *South Dakota v. Dole* (1987) 483 U.S. 203, addressed the issue of voluntariness with regard to tying federal highway funds to the adoption of a minimum drinking age of 21 years. The Court held that such tied funding was a valid use of Congress' spending power. But, in so doing, the Court conceded that "[o]ur decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns to compulsion.'" (*Id.* at p. 211 citing *Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 590.)

Relatedly, in *California School Boards Association v. State of California* (2011) 192 Cal.App.4th 770, the court concluded that the State's practice of appropriating a nominal dollar amount with a stated intention of providing additional funding at some later, undefined date "directly contradicts the language and the intent of article XIII B, section 6, and the implementing statutes." (*Id.* at p. 787.) The court did not create a bright line rule for what level of funding was required in order not to be considered "nominal" funding. Where $1,000 was appropriated statewide for programs that cost more than $1 million to administer, the court found that to be nominal, and therefore unfunded for purposes of the constitutional subvention requirement. (*Ibid.*) That it might have been a more difficult decision if $100,000 or $250,000 were appropriated did not

cause the court to find that a "nominal funding" test was administratively burdensome. (*See Grossmont Union High School Dist. v. State Dept. of Education* (2008) 169 Cal.App.4th 869, 875 [providing judicial declarations that minimally funded mandates are, in effect, unfunded and therefore suspended].)

As these examples illustrate, courts are perfectly capable of applying tests that consider multiple factors to a set of facts, and weighing the factors appropriately. There is no reason the same cannot occur with regard to practical compulsion claims made under section 6 of article XIII B for mandate subventions.

C. Consistent with the Voter's Will, a Practical Compulsion Standard Should Focus on the Overall Effect of the Statutory Scheme, Including the Intent to Coerce and the Practical Consequences of Noncompliance.

DOF proposes that if this Court should decide to allow for practical compulsion mandate claims, such claims must include: (1) a showing that consequences are certain to flow automatically from a local agency's failure to comply; and (2) that the consequences are severe and draconian. (DOF Opening Br., p. 54.) These standards fail to implement the purpose and intent of section 6 of article XIII B and should be rejected.

First, there is no proffered explanation as to why consequences must "automatically" occur in order to make a successful practical compulsion claim. Such a standard seems intentionally designed to avoid subvention

obligations in a case like this one. But the facts of this case provide a clear example of why the standard should be rejected. Here, the Chancellor may, but is not required to, withhold state aid to any district that does not implement the minimum conditions regulations. As such, the loss of all or some state aid would not occur *automatically*. Yet districts must determine in advance whether they will implement the minimum conditions regulations, knowing that if they fail to do so, anywhere from 0 to100% of their state aid could be eliminated, jeopardizing their ability to undertake their basic, core functions. The significant coercive effect of that must certainly support a practical compulsion claim. If not, the State could condition nearly all local agency funding on performing new programs or higher levels of service without subventions, so long as the ability to withhold the funding has some discretionary element and does not occur automatically. That clearly is not the intent of section 6 of article XIII B.

Similarly, the requirement that a claimant show that a penalty is "severe" and "draconian" is not supported by this Court's jurisprudence on this issue. Certainly a severe and draconian penalty should be sufficient to show a practical compulsion claim, but it is not necessary. In *Kern High School District*, this Court used those terms in applying the criteria set forth in *City of Sacramento* – for purposes of analysis only – to the factual situation in that case. (*Kern High School Dist., supra,* 30 Cal.4th at pp. 751, 754.) As explained above, however, this Court evaluated practical

compulsion in the context of federal mandates using a number of factors, not merely whether the penalty is severe and draconian. The severity of penalties is certainly relevant in evaluating the claim, but so are, among other things, whether the design of the statutory scheme suggests an intent to coerce, and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. In light of the clear intent of the voters to prevent the State from shifting costs to local governments, courts should be able to evaluate all of these factors in determining whether a practical compulsion claim has been established.

Finally, DOF suggests if practical compulsion claims are to be permitted, claimants should carry a "heavy burden" in making their claim. (DOF Opening Br., p. 53.) However, given the voters' intent to protect local agencies from the burden of new, unfunded requirements, the State should carry the burden of showing its conditions are not so coercive as to amount to compulsion.

As this Court has found, article XIII B, section 6 "establishes a general rule requiring reimbursement of all state-mandated costs." (*Dept. of Finance, supra,* 1 Cal.5th at p. 769.) This Court further noted that "[t]ypically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies." (*Ibid.*) In that case, the Department of Finance alleged that the mandates at issue were exempted from the subvention requirement because they were imposed by federal

law. On the issue of burden, this Court concluded that requiring the State to prove that the exemption applies, rather than requiring the local agencies to prove the opposite, furthers the purpose of article XIII B, section 6, which is "to protect local governments from state attempts to impose or shift the costs of new programs or increased levels of service by entitling local governments to reimbursement." (*Ibid.*)

In order to further the purpose of article XIII B, section 6, it should be incumbent upon the State to prove that the conditions it has imposed on allegedly optional new programs or higher levels of service do not practically compel a local agency to perform the programs or services.

III. CONCLUSION

The questions posed by this case raise critical issues that impact the fiscal well-being of all local agencies, and require consideration of the will of the voters in adopting tax and spend limits and the subvention requirement. The Court of Appeal's opinion appropriately evaluated this case as one of legal compulsion since non-compliance could result in an inability to perform core functions. Even if this Court disagrees, it should still consider the case under a practical compulsion standard, following *City of Sacramento* and similar cases that do not require bright line rules, but rather allow the courts to consider a variety of factors in light of the intent and purpose of the constitutional subvention requirement.

For these reasons, Amicus Curiae respectfully urge this Court affirm the appellate court ruling below.

/s/ Jennifer B. Henning

Dated: May 17, 2021

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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

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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. Executed this 17th day of May, 2021 in Sacramento, California.

Respectfully submitted,

/s/ Jennifer B. Henning

By: _____
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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	5/17/2021 3:40:30 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

5/17/2021

Date

/s/Jennifer Henning

Signature

Henning, Jennifer (193915)

Last Name, First Name (PNum)

California State Association of Counties

Law Firm