IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO; COUNTY OF LOS ANGELES; COUNTY OF ORANGE; COUNTY OF SACRAMENTO; and, COUNTY OF SAN BERNARDINO,

Plaintiffs/Appellants

v.

COMMISSION ON STATE MANDATES; STATE OF CALIFORNIA; DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; JOHN CHIANG, in his official capacity as California State Controller; and DOES 1 through 10, inclusive,

Defendants/Respondents

DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; and DOES 11 through 25,

Defendants/Respondents

Case No. S239907

After a Decision by the Court of Appeal, State of California
Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Defendants and Respondents, Department of Finance, State Controller and the State of California (hereinafter referred to as "Petitioners") urge this Court to accept review of this matter, repeatedly arguing that review is needed to "avoid uncertainty that might otherwise result from the Court of Appeal's published opinion below." (Petition, p. 13.) In fact, the Court of Appeal's opinion does just the opposite. The opinion brings clarity to a number of important issues relating to state mandates law. It's simply that in this case, Petitioners disagree with the Court of Appeal's rulings.

LEGAL DISCUSSION

I.

REVIEW IS NOT NECESSARY TO SETTLE AN IMPORTANT QUESTION OF LAW OR TO SECURE UNIFORMITY OF DECISION

A petition for review may be granted when necessary to settle an important question of law or secure uniformity of decision. (Cal. Rules of Ct., rule 8.500(b)(1).) As detailed below, there is no basis for review here. There is no issue to be settled because the Court of Appeal: (1) issued a clear rule for analyzing whether a voter initiative relieves the State of fiscal responsibility for a mandate; (2) correctly concluded that the Counties continue to be entitled to reimbursement for the costs incurred in performing activities mandated by the State as required by the Sexually Violent Predators Act ("SVPA") (Chapter 1995, Chs. 762, 763; Stats.

1996, Ch. 4; and (3) applied well established rules of statutory construction in reaching its conclusion. There also is no need to secure uniformity of decision because the opinion is consistent with existing case law.

II.

THE COURT OF APPEAL DID NOT ADOPT A "NEW RULE" THAT IS AT ODDS WITH THE GOVERNMENT CODE AND BASIC PRINCIPLES OF STATE MANDATE LAW

The Court of Appeal held "that a ballot initiative that modifies statutes previously found to impose a state mandate only changes the source of the mandate if the initiative changes the duties imposed by the statutes." (Slip Opinion, p. 25.) Contrary to the arguments advanced by Petitioners, this rule is both clear and consistent with the provisions of the Government Code and California Constitution relating to mandates and the State's obligation to provide a subvention of funds.

Petitioners' first argument is that the opinion will "have profound consequences for the State budget – and for those counties and local government agencies across the State." (Petition, p. 13.) Yet the State merely continues to have reimbursement obligations for the duties it mandated that local government perform. Contrary to the argument advanced by Petitioners, the opinion *does* provide clarity for policy makers and voters regarding when costs may be shifted from the State to local governments. The opinion applies well established statutory interpretation principles in its review of the California Constitution and relevant

Government Code provisions to conclude that unless an initiative changes the duties imposed by a statute, the obligation to fund the mandate remains with the State.

Next, Petitioners argue review is necessary to "ensure that, in future proceedings, the costs of complying with statutorily mandated duties that have been modified by a voter initiative are allocated in a manner consistent with the Constitution and the Government Code." (Petition, p. 14.) This argument is also without merit. It is premised on the assumption that the mandated duties have been modified by a voter initiative, a position that the opinion rejects. (Slip Opinion, *passim*.) Moreover, the opinion expressly rejects Petitioners' interpretation of the relevant provisions of the Constitution and the Government Code.

Finding that Government Code §§ 17556 and 17570 are ambiguous, the opinion adopts "a statutory construction that 'harmonizes the statute[s] internally and with related statutes' and that preserves the constitutionality of the statutes. [Cites omitted]" (Slip Opinion, p. 25.) The opinion explains that "[d]efining a 'subsequent change in the law' to include *any* modification to a state-mandated program by ballot initiative, as the Commission did, and not limiting the provisions to those modifications that change the duties imposed on local government (or that impose new duties) directly conflicts with [the] constitutional dictate" that precludes the State from shifting financial responsibility for carrying out governmental functions to local agencies. (Slip Opinion, p. 33.)

Petitioners further argue that the opinion's "discussion of the Legislature's suspension authority is problematic" placing "the Legislature in the awkward position of either funding duties that have been substantially modified ... or suspending them. . . ." (Petition, pp. 14-15.) .) However, the Court of Appeal directly addresses that point and makes clear that the ability of the State to suspend a mandate is based on the source of the mandate. (Slip Opinion, p. 37.) The first question is whether the source of the mandate is the Legislature or an initiative. The answer to that question determines whether the State has the authority to suspend the mandate. It does not, as Petitioners suggest, resolve the question of the source of the mandate. Thus Petitioners' argument that the Legislature cannot suspend the mandates continues to put "the cart before the horse," as the Court of Appeal correctly notes. (*Ibid.*) Petitioners' argument is based on the false premise that the duties imposed on the Counties were substantially modified by Proposition 83. In addition, the Legislature's "position" has not changed; it must fund state mandated duties unless it acts to suspend them. (Slip Opinion, p. 37.)

Finally, Petitioners argue that "clear guidance" is necessary to enable the Department of Finance and the Legislative Analyst to accurately estimate the "'increase or decrease in revenues or costs to the state of local government' that would result from [an] initiative. (Cite omitted.)" (Petition, p. 15.) However, the opinion provides clear guidance: there is no "subsequent change in law" that could

affect funding obligations when a voter initiative simply reenacts statutory provisions without change. (Slip Opinion, p. 16.) In fact, exactly the opposite is true. As the Counties argued in the Court of Appeal, "[t]he interpretation advocated by the DOF and adopted by the Commission is untenable. If allowed to stand, no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist when a ballot measure mentions existing law, even if just in passing." As it stands, the opinion avoids the uncertainty created by the Commission's interpretation of "subsequent change in law," under which it appeared that a voter initiative could effect a change in the law merely by re-enacting existing provisions.

III.

PETITIONERS' CHARACTERIZATION OF THE COURT OF APPEAL'S DECISION IS MISLEADING

Petitioners argue that the Court of Appeal focused exclusively on "whether an initiative alters the text directly imposing the mandated duty" (Petition, p. 18) and erroneously concluded "that 'section 17556, subdivision (f), does not apply' unless the initiative modifies the specific statutory subdivision that has been found to impose a state mandate." (Petition, p. 17.) This argument misstates the ruling of the Court. As stated above, the Court held "that a ballot initiative that modifies statutes previously found to impose a state mandate *only changes the source of the mandate if the initiative changes the duties imposed* by the statutes." (Slip

Opinion, p. 25. Emphasis added.) The issue addressed by the Court was whether the "initiative changes the duties imposed by the statutes", not whether the specific language in a statute that imposed the mandate has been modified. Because the Court found that the initiative in this case did not change the statutory duties given the facts of this case, it correctly held that the mandated activities remain reimbursable.

IV.

PETITIONERS' ARGUMENT THAT THE INITIATIVE SUBSTANTIALLY ENLARGED THE SCOPE OF THE MANDATED DUTIES IS CONTRARY TO THE STATE'S OWN AUDIT RESULTS

While acknowledging that "Proposition 83 did not materially alter the statutory text describing the specific SVPA duties" Petitioners claim that "it did change the law in ways that modified the State's financial responsibility for those duties." (Petition, p. 18.) In support of this claim, Petitioners argue that changes to other provisions in the SVPA "substantially enlarged the population of offenders for whom the counties must perform the required SVPA duties." (Petition, p. 18.) The superior court considered and relied on Petitioners' misleading and belated offer of proof on this point over the Counties' objections, and the Court of Appeal did not expressly rule on the Counties' objections to this offer of proof on appeal. Regardless, the Counties refuted Petitioners' claim that the offender population had increased.

The Counties cited to a report by the California State Auditor on the Sex Offender Commitment Program, wherein the State's Auditor concluded that "despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases . . . about the *same number of offenders* in 2009 as it did in 2005 before the voters passed Jessica's Law." (California State Auditor, Sex Offender Commitment Program July 2011 Report 2010-116, http://www.bsa.ca.gov/pdfs/reports/2010-116.pdf at p. 15.) (Emphasis added).

In any event, as the Court of Appeal correctly notes, the inquiry is the source of the duty. (Slip Opinion, p. 32.) The size of the population entitled to receive the mandated services does not change the source of the duty. The changes merely have the potential to increase the volume of work, but not the nature of the activities themselves. The eight mandated activities continue to be provided in exactly the same manner notwithstanding the changes made to the program by Proposition 83. The Court of Appeal, therefore, properly rejected Petitioners' argument about case load.

V.

PETITIONERS IGNORE THE COURT OF APPEAL'S FINDING THAT COUNTIES INTERPRETATION OF THE CHANGES TO THE SVPA BY PROP 83 IS CONSISTENT WITH THE LONG ESTABLISHED "REENACTMENT RULE"

The Court of Appeal found that its interpretation of the effect of Proposition 83 on the State's responsibility to provide a subvention of funds to Counties for the costs of the SVPA mandate was "also supported by the 'reenactment rule' advanced by the Counties." (Slip Opinion, p. 34.) Although the entire statute must be reenacted when a section is amended (Cal. Const., art. IV, § 9), under the "reenactment rule" unaltered portions of the statute are not considered to have been repealed and reenacted. (Gov. Code §9605.) The Court found that "[u]nder the rule, it is the *actual changes* made by Proposition 83 that are relevant to the inquiry of whether the initiative changed the source of the mandate. To the extent that the [W & I] Code provisions were restated by the initiative to comply with the restatement rule, those restatements are not relevant. [Cites omitted.]" (*Id.*)

Petitioners argue that this application of the reenactment rule "appears to be in tension with at least one other Court of Appeal opinion" citing *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597. Petitioners did not cite the *Shaw* decision in the Court of Appeal and they do not show that *Shaw* is inconsistent with the decision in the present case. *Shaw* addressed the meaning of language in

an initiative limiting the Legislature's ability to amend a statute that had been included in the initiative. After lengthy analysis and discussion, the *Shaw* court concluded that the statute's "language. . . that allows legislative amendment of 'this section' if the amendment is 'consistent with and furthers the purposes of this section' must be read to authorize the Legislature to amend any part of the . . . statute as long as the amendment is consistent with and furthers the purposes of that particular part of the statute." (*Id.* 175 Cal.App.4th 577 at 601-602.)

The court in *Shaw* did not consider the effect of an initiative on unchanged portions of an existing statute, and did not address Government Code section 9605, its predecessor, or the decades of case law interpreting and applying those provisions. (See, *Central Pac. R.R. Co. v. Shackelford* (1883) 63 Cal. 261, 265; *Swamp Land Dist. No. 307 v. Glide* (1896) 112 Cal. 85, 90; *Hellman v. Shoulders* (1896) 114 Cal. 136, 151; *County of Sacramento v. Pfund* (1913) 16 Cal. 84, 88; *Vallejo etc. R.R. Co. v. Reed Orchard Co.* (1918) 177 Cal. 249, 255; *City of Los Angeles v. Pacific Land Corp.* (1940) 41 Cal.App.2d 223, 225; *In re Oluwa* (1989) 207 Cal.App.3d 439, 446; *Huening v. Eu* (1991) 231 Cal.App.3d 766; *American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748; *People v. Cooper* (2002) 27 Cal.4th 38, 44, fn. 4; *St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 984.)

CONCLUSION

Counties respectfully submit that the petition for review be denied because the opinion does not create a conflict in the law or raise any important issue that needs to be resolved by this Court.

DATED: February 24, 2017

Respectfully submitted,

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DATED: February 23, 2017

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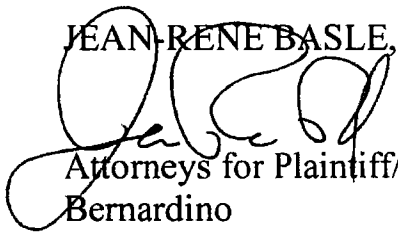

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CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.201(c)(1), I certify that the text of this brief consists of 2,096 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

Dated: February 24, 2017

Respectfully submitted,

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Case No. S239907
(Court of Appeal No. D068657; Superior Court No. 37-2014-00005050-CU-WM-CTL)

PROOF OF SERVICE

I, ODETTE ORTEGA, declare:

I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On February 24, 2017, I cause to be transmitted the following documents:

1. **ANSWER TO PETITION FOR REVIEW.**

☒ **(BY MAIL)** By causing a true copy thereof, enclosed in a sealed envelope, with postage fully prepaid, for each addressee named below and depositing each in the U. S. Mail at San Diego, California.

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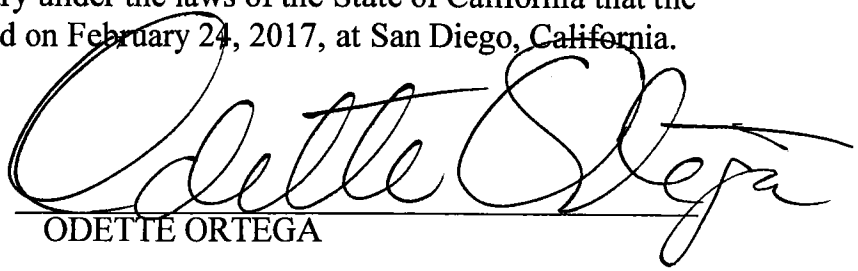
Fourth Appellate District, Division One
(*Via TrueFiling Submission*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 24, 2017, at San Diego, California.

By: 
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