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 and 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,

Defendants and Respondents.

Case No. S239907

Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
Honorable Richard E. L. Strauss, Judge Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

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Review by this Court is necessary to settle an important question of state mandates law: how to determine whether a voter initiative has shifted responsibility for the costs of a statutory mandate from the State to local governments. The rule adopted by the Court of Appeal will create confusion because it is at odds with the Government Code and basic principles of state mandates law. (Petition, pp. 7, 16-18.) Clear guidance from this Court would advance the interests of voters, local governments, and the State by facilitating accurate estimates and legal determinations regarding the fiscal consequences of voter initiatives. (Petition, pp. 13-15; see also Commission on State Mandates Amicus Curiae Letter in Support of Petition for Review, pp. 2, 7-8.)

Plaintiffs and Appellants ("the Counties") contend that review is not warranted because the Court of Appeal's opinion already "brings clarity" to the law. (Answer, p. 1; see *id.* at pp. 1, 2, 4.) That is correct only insofar as *any* opinion adopting a new rule in an area that has not previously been addressed by a judicial opinion provides greater clarity. But the rule adopted by the Court of Appeal, while seemingly straightforward, is certain to create confusion in practice, because it will in many instances conflict with the Government Code. The rule directs 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 opn., p. 25.) In applying that rule, the Court of Appeal focused exclusively on whether the initiative altered the text of the statutory subdivision imposing a duty, without consideration of the larger statutory context or practical effects. (See slip opn., pp. 26-29, 31; see also Petition, pp. 12-13, 16-17.) That approach cannot be squared with Government Code section 17556, subdivision (f), which provides that the State is not responsible for reimbursing costs associated with any statutory "duties that

are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election." Section 17556 makes clear that altering the text of a provision defining a statutory duty is not the only way a voter initiative can modify the State's financial responsibility for that duty. (See Petition, p. 17.) The Court of Appeal's rule ignores that possibility.

The Counties defend the Court of Appeal's rule, arguing that the "opinion applies well established statutory interpretation principles in its review of the California Constitution and relevant Government Code provisions[.]" (Answer, pp. 2-3.) Significantly, this argument is not accompanied by any citation to the opinion. In fact, the Court of Appeal offered hardly any analysis or explanation for its "narrow construction of sections 17556, subdivision (f) and 17570." (Slip opn., p. 25.) And the only statutory interpretation principle invoked by the court was the principle that, if a statute is ambiguous, a court should adopt "the construction that best harmonizes the statute internally and with related statutes" and constitutional provisions. (*City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 195; see slip opn., p. 25.) That principle surely did not give the court license to adopt a construction that conflicts with the text of Government Code section 17556, subdivision (f).

The Counties also assert that Respondents "misstat[ed] the ruling of" the Court of Appeal. (Answer, p. 5.) In their view, it was "misleading" (*ibid.*) for Respondents to describe the Court of Appeal as "reason[ing] 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.) But that is exactly how the court understood and applied its own rule. In analyzing whether Proposition 83 "changes the duties" imposed by the Sexually Violent Predators Act (SVPA), the court merely reviewed the statutory subdivisions that the

Commission on State Mandates had originally determined imposed state-mandated duties, compared their text as originally enacted and as re-enacted by the voters in Proposition 83, and asked whether the Proposition modified any of the specific language that the Commission had previously found to impose a duty. (See slip opn., pp. 26-29, 31.) For example, three of the SVPA duties arise from Welfare and Institutions Code section 6601, subdivision (i). (See *id.* at p. 8.) The Court of Appeal rejected Respondents' argument that those duties were modified by Proposition 83, solely on the ground that "Proposition 83 amended only subdivision (k) of Welfare and Institutions Code section 6601" and did not alter the language of subdivision (i). (*Id.* at p. 26, fn. 9.) In short, although the Counties are correct that the "issue addressed by the Court was whether the 'initiative changes the duties imposed by the statutes'" (Answer, p. 6), the Court of Appeal addressed that issue by focusing exclusively on whether the initiative modified the text of the specific subdivision imposing the duty. That approach, which is inconsistent with the Government Code, will stand as precedent if this Court does not grant review.

With respect to the specific question presented by this case, the Counties dispute any suggestion that Proposition 83 modified the scope or nature of the duties mandated by the SVPA. (See Answer, pp. 6-9.) In particular, they disagree with Respondents' argument that Proposition 83 modified the SVPA duties by expanding the population of offenders who are eligible for referral to local governments under the SVPA. (Petition, pp. 18-19; see Answer, pp. 6-7.) The Counties contend that this argument is undermined by a 2011 report indicating that local governments processed "about the same number of [SVPA] offenders in 2009" as they did in 2005, before Proposition 83. (Answer, p. 7, italics omitted.) That misses the point. Regardless of the number of offenders processed by local governments in a particular year, it is beyond dispute that Proposition 83

materially expanded the category of offenders who "shall" be referred to local governments by the Director of State Hospitals (Welf. & Inst. Code, § 6601, subd. (h)(1)), by broadening the definition of "sexually violent predator" (see Petition, pp. 18-19 & fn. 7).[1] And that definitional change by the voters cannot be reversed by the Legislature through its normal processes. (Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006), § 33 [restricting the ability of the Legislature to amend the "provisions of this act"].)

On some issues, the Counties do not directly engage with the arguments made in the petition for review. They describe the petition as "argu[ing] that the Legislature cannot suspend" the SVPA mandates in the wake of the Court of Appeal's opinion. (Answer, p. 4.) In fact, the petition made the opposite point, noting that the Court of Appeal's opinion "suggested that the Legislature remains free to suspend any or all of the SVPA mandates." (Petition, p. 14; see *id.* at p. 20; slip opn., pp. 36-37.) The petition noted that one reason this case is important is that the Court of Appeal's opinion places the Legislature in the difficult dilemma of either funding duties that have been substantially modified by the voters, or suspending them and potentially undermining a voter initiative. (See Petition, pp. 14-15.) If this Court were to adopt a standard that preserves the line drawn by Government Code section 17556, subdivision (f)—which distinguishes between state mandates imposed by the Legislature and voter mandates imposed by a ballot initiative—that dilemma would disappear.

Similarly, the petition noted that the Court of Appeal's discussion of re-enactment is likely to create confusion, in part because it appears to be in tension with *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577.

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[1] Compare Welf. & Inst. Code, § 6600, subds. (a)(1), (g) with Welf. & Inst. Code, § 6600, subds. (a), (g) as codified at Stats 2006, ch. 337, § 53.

(See Petition, p. 20.) The Counties attempt to distinguish *Shaw*, but do not directly address the source of the tension. (See Answer, pp. 8-9.) The court in *Shaw* reviewed article IV, section 9 of the California Constitution, which requires re-enactment whenever a statutory section is amended, and article II, section 10, subdivision (c), which constrains the Legislature's ability to amend or repeal an initiative statute. (See *Shaw*, *supra*, 175 Cal.App.4th at pp. 596-597.) Turning to the statutory section before it, the court noted that the section "was actually re-enacted in its entirety as amended" by a voter initiative in 1990, such that after "that point, any subsequent amendment to *any* portion of [the] section . . . would require approval of the voters to be effective," except insofar as the initiative expressly authorized legislative amendment. (*Id.* at p. 597, italics added.) There is evident tension between that discussion and the analysis of the Court of Appeal below, which reasoned that a "technical reenactment" of a statutory section as the result of a voter initiative cannot "change[] the source of a mandate" from the Legislature to the voters. (Slip opn., p. 35, see *id.* at pp. 33-35.)[2]

Ultimately, the Counties do not appear to dispute that this is an important area of the law, with profound consequences for State and local budgets. By adopting a rule that conflicts with the Government Code, the Court of Appeal's opinion threatens to create confusion concerning the State's financial responsibility for other statutory mandates. This Court

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[2] The Counties also argue that, under Government Code section 9605, "unaltered portions of the statute are not considered to have been repealed or reenacted." (Answer, p. 8.) As this Court has explained, however, that section "merely establishes that the effective date for unaltered portions of an amended statute remains the date on which the original, unaltered enactment was first operative." (*Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 990, fn. 6.)

should grant review to adopt a clear legal standard that is consistent with the governing statutes and constitutional provisions, and that would facilitate accurate estimates and legal determinations regarding the fiscal consequences of voter initiatives.

CONCLUSION

The petition for review should be granted.

Dated: March 8, 2017

Respectfully submitted,

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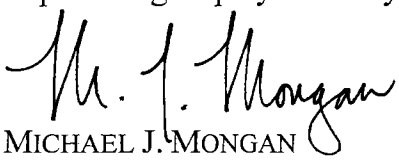

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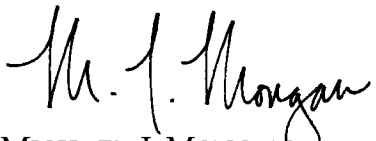
CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY TO ANSWER TO PETITION FOR REVIEW** uses a 13 point Times New Roman font and contains 1,667 words.

Dated: March 8, 2017

XAVIER BECERRA
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **County of San Diego v. Commission on State Mandates (APPEAL)**
No.: **S239907**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. 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 collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 8, 2017, I served the attached **REPLY TO ANSWER TO PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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Court of Appeal
Fourth Appellate District, Division One
(Via TrueFiling Submission)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 8, 2017, at San Francisco, California.

M. Campos	M. Campos
Declarant	Signature

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