Case No. S239907

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, the California; and John Chiang, State Controller, in his official capacity as California State Controller,

Defendants/Respondents

After a Decision by the Court of Appeal, State of California
Fourth Appellate District, Division One
Case No. D068657

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INTRODUCTION

Nearly two decades ago, the Commission on State Mandates ("Commission") determined that Article XIII B, section 6, subdivision (a) of the California Constitution required the state to reimburse local governments for carrying out activities mandated by the state statutes governing sexually violent predators (the "SVPA"). Although the reimbursable activities have not changed, the Department of Finance ("DOF"), State Controller and the State of California (collectively, the "State") urge this Court to adopt a rule that would relieve the state of its constitutional reimbursement obligation and shift the costs to local governments.

The State argues that when unaltered provisions of a statute are included in a ballot measure that amends or imposes *other* duties, there has been "a subsequent change in law" under Government Code section 17570 that permits the Commission to reconsider its prior determination. (Gov't Code[1] § 17570, subd. (b).) To reconsider its determination based on a subsequent change in the law, however, the Commission must find that the cost is no longer one mandated by the state pursuant to section 17556. While section 17556 provides that a cost is not state-mandated if the statute "imposes duties that are necessary to implement ... or are expressly included in" a ballot measure (§ 17556, subd. (f)), the ballot measure here did not impose the reimbursable duties and those duties were not necessary to implement the specific changes made by the ballot measure. Rather, the reimbursable duties were imposed by *unaltered* statutory provisions that remained in effect and were "included in" the ballot measure because the state constitution *requires* that all provisions of a statute be restated when any provision is amended. But this technical requirement did not change the source of the duties, which local agencies would still be required to perform had the ballot measure failed.

As the Court of Appeal correctly found, the Commission and the trial court erred in broadly interpreting sections 17556 and 17579 to find a "change in the law" based on

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[1] Unless otherwise stated, all references are to the Government Code.

a ballot measure that did *not change* the reimbursable activities or the source of the mandate. This broad interpretation runs afoul of article XIII B, section 6's reimbursement requirement, the very purpose of which is to preclude the state from shifting financial responsibility to local agencies that have limited taxing authority.

CONSTITUTIONAL AND LEGISLATIVE BACKGROUND

A. The Voter Initiatives Underlying State Mandate Law.

In 1978 voters adopted Proposition 13, adding article XIII A to the state constitution. The initiative was "aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.'" (*County of Fresno v. State* (1991) 53 Cal.3d 482, 486 ("*County of Fresno*"), citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-32.) Article XIII A "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno, supra,* 53 Cal.3d at 486.)

The following year, voters adopted Proposition 4, adding article XIII B to the constitution imposing a spending limit on state and local governments. (*County of Fresno, supra,* 53 Cal.3d at 486; see also *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 80-81 ("*County of San Diego*"); *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 573-74.) Articles XIII A and XIII B "work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*County of Fresno, supra,* 53 Cal.3d at 486, quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn.1.) The goals of the two articles are "to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California* (1981) 43 Cal.3d 46, 61, citation omitted.) Included in article XIII B is section 6, subdivision (a) ("section 6"), which provides in part:

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention [2] of funds to reimburse such local government for the costs of such program or increased level of service . . . ."

The purpose of section 6 "is to preclude 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." (*County of San Diego, supra,* 15 Cal.4th at 81; *County of Fresno, supra,* 53 Cal.3d at 487.) The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra,* 53 Cal.3d at 487.)

The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. (§ 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580-588.) Section 17514 provides that "'[c]osts mandated by the state' means any increased costs which a local agency . . . is required to incur ... as a result of any statute ..., which mandates a new program or higher level of service in an existing program within the meaning of Section 6 of Article XIII B . . . ." Under the regulatory scheme, local agencies may file test claims with the Commission, which must determine whether the statute requires a new program or increased level of service. (*County of San Diego, supra,* 15 Cal.4th at 81; § 17551.)

The state "shall reimburse each local agency" for all mandated costs. (§ 17561, subd. (a).) Appropriations for ongoing mandates "shall be included in the annual Governor's Budget and in the accompanying Budget Bill." (§ 17561, subd. (b)(2).) The Legislature is required to "either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable . . . ." (Cal. Const. art. XIII B, § 6, subd. (b).) If the Legislature specifically identifies the statutory program in the

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[2] "'Subvention' generally means a grant of financial aid or assistance, or a subsidy." (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577, citation omitted.)

Budget Act as a mandate for which reimbursement is not provided in that fiscal year, local agencies are excused from providing the mandated programs or services. (§ 17581.) If the Legislature fails to provide an appropriation for a mandated program or activity but does not specifically designate the mandate as one for which there is no funding pursuant to section 17581, the local agency must perform the mandate or seek affirmative relief from the court excusing performance. (§ 17612, subd. (c).)

B. The Sexually Violent Predator Mandate.

In 1995, the Legislature enacted Welfare and Institutions Code ("Welf. & Inst. Code") sections 6600 through 6608, establishing civil commitment procedures for sexually violent predators following completion of their criminal sentences for certain sex-related offenses. (Stats. 1995, c. 763, § 3.) In 1996, the Legislature amended Welf. & Inst. Code sections 6601 and 6602 and enacted Welf. & Inst. Code sections 6601.3 and 6601.5. (Stats. 1996, c. 4, § 4.)

On June 25, 1998, the Commission adopted a Statement of Decision ("original SOD") approving a test claim requiring reimbursement of local governmental agencies (i.e. district attorneys, public defenders and sheriff departments) for certain activities mandated by the state pursuant to Welf. & Inst. Code sections 6601, subdivision (i), 6602, 6603, 6604, 6605, subdivisions (b)-(d), and 6608, subdivisions (a)-(d) (the "Test Claim Statutes") relating to civil commitment procedures for the civil detention and treatment of sexually violent predators. (Administrative Record ("AR") 001-014.)

In its original SOD, the Commission determined that the Test Claim Statutes, imposed the following reimbursable SVPA state-mandated activities on counties:

> A. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code § 6601(i).)
>
> B. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the State's recommendation. (Welf. & Inst. Code § 6601(i).)

C. Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code § 6601(i).)[3]

D. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code § 6602.)

E. Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code §§ 6603 and 6604.)

F. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code §§ 6605(b-d) and 6608(a-d).)

G. Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code §§ 6603 and 6605(d).)

H. Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code § 6602.)

(AR 013.)

Since the adoption of the original SOD, counties throughout the state have submitted claims and have been reimbursed in excess of $186 million[4] for performing the activities found to be mandated by the Commission. For fiscal year 2010-11, the statewide claims for reimbursement exceeded $20.75 million and were budgeted by the state to exceed $21.75 million for fiscal year 2013-14. (AR 41.)

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[3] The original SOD cites subdivision (j) (AR 3), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumed that this is a typographical error, and that subdivision (i) was the intended citation for this activity. (AR 401.)

[4] The annual financial reports prepared by the Controller's office ("AB 3000 Reports") evidence these payments and may be found at http://www.sco.ca.gov/ard_mancost_ab3000.html.

C. The Adoption of Proposition 83.

On June 30, 2006, the Secretary of State announced that Proposition 83, also known as Jessica's Law, qualified for the ballot for the November 7, 2006 General Election. The primary focus of Proposition 83 was to amend provisions of the Penal Code to strengthen criminal penalties for certain crimes against children, expand the definitions of certain sexual offenses, mandate a minimum 25-year sentence for habitual sexual offenders, and require certain sex offenders who are released on parole to be monitored, while on parole, by a global positioning system device. (AR 410.) As further addressed below, the ballot measure also amended some of the Welf. & Inst. Code provisions found to impose reimbursable state mandates.

Pursuant to the Elections Code[5], on September 2, 2005, Tom Campbell, the Director of the DOF[6], and Elizabeth G. Hill, the Legislative Analyst, sent a letter to the Attorney General wherein they concluded that Proposition 83 would likely "result in an increase in ***state*** operating costs in the tens of millions of dollars annually ...." (AR 148, (emphasis added).) The letter reiterated on four separate occasions that counties would continue to be reimbursed in full for all of these costs after they had filed and processed claims with the state. (AR 148-150.)

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[5] Elections Code section 9004, subdivision (a) requires the Attorney General to "prepare a circulating title and summary of the chief purposes and points" relating to any proposed statewide initiative measure. Elections Code section 9005, subdivision (a) requires the Official Summary and Title to include "in boldface print" an "estimate of the amount of any increase or decrease in revenues or costs to the state or local government, or an opinion as to whether or not a substantial net change in state **or local** finances would result if the proposed initiative is adopted." (Emphasis added.) Such estimate is to be prepared jointly by the DOF and the Joint Legislative Budget Committee. (Elec. Code §9005, subd. (b).) In arriving at its joint estimate or opinion, the DOF and the Joint Legislative Budget Committee may rely upon the statement of fiscal impact prepared by the Legislative Analyst pursuant to Government Code section 12172, subdivision (b). (Elec. Code §9005, subd. (d).)

[6] The DOF subsequently requested that the Commission redetermine the test claim relating to the SVPA mandates. The Director of the DOF is also the Chair of the Commission that granted the request.

The summary of fiscal impact prepared by the Attorney General that appeared in the Voter Information Guide sent to voters did not indicate whether there would be any impact on local governments relating to the mandated activities. (AR 676.) The analysis by the Legislative Analyst in the Voter Information Guide described the fiscal impact of Proposition 83 on local governments as "unknown." (AR 679.)

Prior to the November 2006 election, the Legislature on August 31, 2006, approved SB 1128 (Stats. 2006, c. 337) as urgency legislation effective September 20, 2006. SB 1128 codified nearly all of the changes in the law included in Proposition 83 before Proposition 83 was adopted by the voters. (See AR 198-201 [County of San Diego's Comments to Request to Adopt a New Test Claim filed March 27, 2013] and AR 205-210 [Attachment A thereto].)

On November 7, 2006, the voters approved Proposition 83, which became effective immediately. (AR 310.) The following chart summarizes the activities the original SOD determined to be state-mandated activities; the Welfare & Institutions Code provisions mandating the activities, as identified by the Commission; and whether the code provision was amended by, or included in Proposition 83:

Activity	**Welf. & Inst. Code Section Imposing the Mandate**	**Changed by Jessica's Law?**
1.) Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings.	6601(i)	No change
2.) Initial review of reports and records by the county's designated counsel to determine if the county concurs with the State's recommendation.	6601(i)	No change
3.) Preparation and filing of the petition for commitment by the county's designated counsel.	6601(i)[7]	No change

[7] See footnote 3, *supra*.

4.) Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing.	6602	Not Included
5.) Preparation and attendance by the county's designated counsel and indigent defense counsel at trial.	6603 and 6604	6603 – Not Included 6604 – No change[8]
6.) Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator.	6605(b-d) and 6608(a-d)	6605(b) – Changed[9] 6605(c) - No change 6605(d) - No change 6608(a) - Changed[10] 6608(b) - No change 6608(c) - No change 6608(d) - No change

D. Legislative Creation of the Redetermination Process.

In 1984, the Legislature added section 17556 to the statutes governing reimbursable state mandates, providing that costs incurred by local governments are not reimbursable if, among other things, a "statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election." (Stats. 1984, c. 1459, § 1, pp. 5118, 5119; former Gov't Code § 17556, subdivision (a)(6).)

In 2005, the Legislature amended section 17556, subdivision (f) (originally subdivision (a)(6)) to provide that costs are not reimbursable if "[t]he statute or executive order imposes duties that *are necessary to implement, reasonably within the scope of, or*

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[8] The change in the commitment period from two-years to "an indeterminate term" was previously enacted by SB 1128. The other changes deleted extraneous language made irrelevant by the change in the commitment period. No changes were made to the mandated activities.

[9] Changes were made relating to the findings required to be made by the State Department of Mental Health. No changes to the mandated activities.

[10] Changed the first sentence to read … "from petitioning the court for conditional release ***and subsequent*** unconditional discharge …." to "from petitioning the court for conditional release ***or*** unconditional discharge…." (Emphasis added.) No changes to the mandated activities.

expressly included in a ballot measure approved by the voters in a statewide or local election." (Stats. 2005, c. 72, § 7, emphasis added for new statutory language.) The Legislature also added a new last sentence to Section 17556, subdivision (f), which provides: "This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

In 2009, *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183 ("*California School Boards*"), held that the language "reasonably within the scope of" to be unconstitutionally overbroad because it was "inconsistent with article XIII B, section 6 of the California Constitution" (*Id.* at 1215-1216), but declined to determine the validity of the last sentence of Section 17556, subdivision (f), which makes the subdivision applicable to ballot measures approved before or after the enactment imposing the duties. (*Id.* at 1217, fn. 11.)

In 2010, the Legislature enacted section 17570 (Stats. 2010, c. 719, § 33 (S.B. 856)), which created a process whereby the Commission may redetermine a previously determined mandate. Section 17570, subdivision (b) provides that the Commission may adopt a new test claim decision if there has been a "subsequent change in law." Section 17570, subdivision (a)(2) in relevant part defines "subsequent change in law" as "a change in law that requires a finding that an incurred cost . . . is not a cost mandated by the state pursuant to Section 17556 . . . ."

E. <u>The Second Statement of Decision and Procedural History</u>.

On January 15, 2013, the DOF filed with the Commission a request for redetermination of the SVP Mandate decision pursuant to Section 17570. On December 6, 2013, the Commission, by a vote of 6 to 1, adopted a new test claim SOD ending reimbursement for six of the eight activities approved in the original test claim.

On February 28, 2014, the Counties filed their Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief with the superior court challenging the administrative decision of the Commission. A hearing on the merits was held on April

24, 2015. At that time the court denied all relief requested by the petition and complaint. (Joint Appendix ("JA"), pp. 365-368.) The court thereafter entered judgment on May 12, 2015. (JA, pp. 369-384.)

After a timely appeal by the Counties, the Court of Appeal reversed. It determined, among other things, that Proposition 83 did not convert the state-mandated duties imposed on the Counties into duties mandated by the people.

LEGAL DISCUSSION

I.

THE COURT OF APPEAL CORRECTLY DETERMINED THAT PROPOSITION 83 DID NOT CONVERT THE STATE-MANDATED DUTIES INTO DUTIES MANDATED BY THE PEOPLE

The question addressed by the Court of Appeal was "whether Proposition 83 converted the duties imposed on the Counties by the SVPA, and that the Commission previously determined were state-mandated, into duties that are instead mandated by the People." (Slip Opinion ("Slip Opn.") 24.) Under section 17556, subdivision (f), a cost is not mandated by the state if a "statute ... imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election." (§ 17556, subd. (f).) Proposition 83 did not impose the mandated duties, or operate to convert the "source" of those duties, as the State claims.[11]

A. Under Settled Rules of Statutory Construction, Only Altered Statutory Provisions are Considered Have Been Enacted at the Time of Amendment

Proposition 83 made minor and immaterial amendments to two subdivisions in two of the Test Claim Statutes. As a result, article IV, section 9 of the California

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[11] See, Opening Brief on the Merits ("Opening Brief") 25: "the costs of complying with the duty flow from that voter mandate"; Opening Brief 26: "... when the voters take away a statutory duty previously imposed by the Legislature and make it part of an initiative statute, ...the duty becomes a voter-imposed mandate"; Opening Brief 29: "if a statutory duty originally enacted by the Legislature is expressly re-stated in a subsequent ballot measure ... the source of the duty" is the voters; Opening Brief 36: "[a]fter Proposition 83, the voters are the source of the expanded definition of 'sexually violent predator'".

Constitution required that these statutes be restated in their entirety. (See *American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748.) As explained in *American Lung Association*: "The reenactment rule is set forth in article IV, section 9 of the California Constitution [formerly, article IV, section 24], which provides in pertinent part: 'A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is reenacted as amended.'" (*Ibid.*) The purpose of the reenactment rule "is to avoid 'the enactment of statutes in terms so blind that legislators themselves [are] sometimes deceived in regard to their effect, and the public, from the difficulty of making the necessary examination and comparison, fail[s] to become [apprised] of the changes made in the laws.'" (*Ibid.*, citing *Hellman v. Shoulters* (1896) 114 Cal. 136, 152; *Huening v. Eu* (1991) 231 Cal.App.3d 766, 773.) Although article IV, section 9 requires that an amended statute be reenacted in its entirety, Government Code section 9605 ("section 9605") codifies the legislative intent:

> "Where a section or part of a statute is amended, it is *not* to be considered as having been repealed and reenacted in the amended form. The portions which are *not* altered are to be considered as having been *the law from the time when they were enacted;* the *new* provisions are to be considered as having been *enacted at the time of the amendment*; and the omitted portions are to be considered as having been repealed at the time of the amendment." (§ 9605, emphasis added.)[12]

This rule of statutory construction is well established in California jurisprudence, having been applied in some form for over a century. (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; *City of Los Angeles v. Pacific Land Corp.* (1940) 41 Cal.App.2d 223, 225.) Indeed, as this Court long ago observed: "to construe a statute amended in certain particulars as having been wholly reenacted as of the date of the amendment, is to do violence to the code and all canons of construction." (*County of Sacramento v. Pfund* (1913) 16 Cal. 84, 88.)

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[12] Prior to the enactment of section 9605 (Stats. 1943, c. 134, p. 108) this rule was codified in former Political Code section 325. (repealed by Stats. 1943, c. 134, p. 1013.)

More recently, the Court observed that section 9605 was adopted "to ensure that the intent of the Legislature would be carried out, consistent with article IV, section 9, whenever statutes are amended." (*In re Lance W.* (1985) 37 Cal.3d 873, 895.) The Court confirmed that the "effect of section 9605 is to avoid an implied repeal and reenactment of unchanged portions of an amended statute, ensuring that the unchanged portion operates without interruption." (*Ibid.*; see also *People v. Cooper* (2002) 27 Cal.4th 38, 44, fn. 4 ["Because there were no changes to the credits provision, there were no reenactments."]; *In re Oluwa* (1989) 207 Cal.App.3d 439, 446 ["Because amendment of a portion of a statute has no effect on portions which remain unchanged ... there is no change of any existing portion of the section...."]; *St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 984 [reiterating that section 9605 "avoid[s] an implied repeal and reenactment of unchanged portions of an amended statute, ensuring that the unchanged portion operates without interruption."].)

Applying this rule of statutory construction here, the voters are considered to have enacted only those portions of the Test Claim Statutes that were *altered.* (§ 9605.) Proposition 83 did not alter the duties set forth in Welf. & Inst. Code sections 6601(i), 6605(c) and (d), and 6608(b) through (d). Proposition 83 made technical changes to Welf. & Inst. Code sections 6604[13], 6605(b) and 6608(a), but did not alter the duties imposed by those provisions. Proposition 83 does not alter or even restate the provisions of Welf. & Inst. Code sections 6602 and 6603 -- the statutes imposing the most costly state-mandated duties.

Because Proposition 83 is not considered to have enacted any of the duties imposed by the Test Claim Statutes, Proposition 83 did not operate to change the "source" of the mandate. As the Court of Appeal concluded, "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." (Slip Opn. 34 (italics in original).) Put another way, the

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[13] The only arguably relevant changes to §6604 had already been made by the Legislature through SB 1128. (Stats. 2006, c. 337, Sec. 55.)

source of the mandate remained the state because the mandated activities were enacted by the *Legislature* and remained in effect from the date of their enactment. (See *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 990, fn. 6 [noting that section 9605 "establishes that the effective date for unaltered portions of an amended statute remains the date on which the original, unaltered enactment was first operative."].)

B. The Voters Did Not Intend to Change the Source of the Mandated Duties

The fundamental goal of the rules of statutory construction is to give effect to the intent of the enacting body. (*Yoshisato, supra,* 2 Cal.4th at 990.) As stated in *Yoshisato*: when courts construe "statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration." (*Ibid.;* citations omitted.) *Yoshisato* considered whether two simultaneously enacted ballot measures amending the same statute were "competing" measures for purposes of article II, section 10, subdivision (b) of the California Constitution, which directs that where "provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." (*Id.* at 988 (citation omitted).) In an earlier opinion, the Court had found this language "could reasonably be understood to focus on *the individual provisions* that conflict, and that 'the remaining (nonconflicting) provisions of the initiative or initiatives receiving the lesser affirmative vote are also operative if they are severable.'" (*Ibid.*, citation omitted, italics in original.)

Yoshisato rejected an argument that the voters were presented with two competing, comprehensive statutory schemes simply because each ballot measure reenacted the statute in its entirety. (*Id.* at 989.) *Yoshisato* found that this argument "assigns undue import to the *technical* procedures for amending statutes, and gives insufficient consideration to whether the voters ... *intended* to adopt a comprehensive scheme that would prevail over any other measure ...." (*Id.* at 990, emphasis added.) The Court acknowledged that article IV, section 9 of the California Constitution compelled the reenactment of entire statute, but pointed out that the purpose of this requirement is avoid confusion as to what is being amended. (*Id.* at 989-990.)

Yoshisato concluded that "the technical (and indeed, constitutionally compelled) reenactment of a statute that is amended by the voters does not, in and of itself, reflect intent of the voters to adopt a 'comprehensive scheme' that would prevail over any other measure ...." (*Ibid.*) Finding that the ballot materials "demonstrate[d] persuasively that the voters did not intend th[is] preclusive result," the Court concluded that the measures were not competing within the meaning of article II, section 10, subdivision (b). (*Ibid.*)

Applying *Yoshisato's* reasoning here, the constitutionally compelled reenactment of the unaltered Test Claim Statutes cannot reasonably be construed as a decision by the voters to "impose" duties that the ballot measure did not add or amend. (See *Yoshisato, supra,* 2 Cal.4th at 990.) Proposition 83 was not presented as a comprehensive statutory scheme that would repeal and replace the existing SVPA but rather as an initiative making specified amendments to existing statutes. (AR 677-678.) Proposition 83 was presented as a measure to protect the public from sex offenders by providing "adequate penalties for and safeguards against sex offenders ...." (AR 682, Prop 83, section 2, subdivision (h).) To accomplish this purpose, Proposition 83 primarily made amendments to the Penal Code to increase penalties and impose monitoring requirements. (AR 682-691, Prop. 83, section 3 through section 24.) The few minor changes Proposition 83 made to the Test Claim Statutes limiting the conditions under which a sex offender might seek release (amending section 6604 to provide for an indeterminate rather than two year commitment term; amending section 6605, subd. (b), to require changed conditions before petitioning for release; and amending section 6608 to permit a petition for conditional release "or" (as opposed to "and") unconditional discharge) were incidental to the controlling purpose of Proposition 83, that being to provide for harsher criminal penalties for sexually violent predators.

Likewise, Proposition 83 was not presented as a ballot measure that would change the "source" of existing SVPA duties, thereby relieving the state of its funding obligations and shifting tens of millions in costs to local governments. With regard to the Penal Code amendments imposing new monitoring requirements, the voter guide

informed voters that "because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders ... it is unclear whether local governments would bear some of these long term costs." (AR 678.) With regard to the changes to the Test Claim Statutes, however, the voter guide informed voters that because of the change from two-year to indeterminate commitments, the measure "would *reduce* county costs for SVP commitment proceedings." (AR 679 (emphasis added).) The voter information guide further apprised voters that "this measure would result in increased *state* costs generally" for the SVPA, and with regard to referral and commitment costs would specifically increase "*state* costs probably by the low tens of millions of dollars annually. (AR 679 (emphasis added).)

The ballot materials for Proposition 83 thus may have left voters with the impression that the costs to local governments might be reduced as a result of the changes made to the Test Claim Statutes. But they certainly did *not* inform voters that state funding to local governments would *end* as a result of the measure, or indicate that existing state costs would be shifted to local governments as a result of that measure. Just as the ballot materials in *Yoshisato* demonstrated that voters did not intend to enact a measure that would prevail over other measures enacted by a lesser vote, the ballot materials here demonstrate that voters did not intend for Proposition 83 to eviscerate state funding for the mandated duties and shift those costs to local governments -- because nothing in the ballot materials indicated this would be the result of adopting the Proposition.[14]

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[14] The State's use of the Government Code provisions to seek a redetermination of the SVPA Test Claim duties thus frustrates not one, but two voter initiatives. As the co-author of Proposition 83, retired State Senator George Runner, stated in his comments to the Commission during the redetermination process:
"[T]he interpretation favored by the Department of Finance frustrates the intent of the voters who supported not one but two ballot initiatives....the Finance argument against reimbursement can most charitably be characterized as a loophole designed to avert the clear intent of the voters who amended the California Constitution to require funding of state mandates (Proposition 4, 1979). Even more perverse is Finance's response to the voters who supported Proposition 83. They are being told that, despite their clear intent that the laws penalizing sex offenders and protecting at

C. Proposition 83 Does Not Preclude the Legislature From Amending the Statutes Imposing the Mandated Duties

The State argues that the reasoning of *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577 ("*Shaw*") shows "why it is appropriate to treat the re-enactment as changing the source of the duty from the Legislature to the People for purposes of the state mandates requirement, and eliminating the State's obligation to pay for local costs arising from the duty." (Opening Brief 42-43.) The State's reliance on *Shaw* is misplaced.

Initially, the court in *Shaw* did not consider the specific question presented in this case. In *Shaw*, the court's ruling was limited to whether legislation enacted by the Legislature materially amending statutes previously enacted as part of a voter approved initiative violated a provision in the initiative prohibiting subsequent amendments by the Legislature unless such amendments were "consistent with and further[ed] the purposes of this section." (*Id.* 175 Cal.App.4th 577 at 601-602.) That was the limit of the court's holding in *Shaw*.

Shaw considered whether the Legislature could amend a tax code provision after it had been amended by a ballot measure and cited *Yoshisato* for the proposition that voters amending a portion of a statute must reenact the entire statute. (*Shaw, supra,* 175 Cal.App.4th at 596, citations omitted.) *Shaw* reasoned that as a result of the forced reenactment, California Constitution, article II, section 10, subdivision (c) applied to prevent the Legislature from amending the entire voter-approved statute "unless the initiative statute permits amendment or repeal without their approval." (*Id.* at 597, citing Cal. Const. art. II, § 10, subd. (c).)

Applying *Shaw's* reasoning here, the Legislature could be constitutionally-precluded from modifying those Test Claim Statutes that were actually reenacted by Proposition 83 absent an amendment clause in the ballot measure. But it does not follow that this constitutional limitation itself operates to change the "source" of the duties

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risk children be strengthened, their votes enacting Proposition 83 will be used to eviscerate funding for the Sexually Violent Predator Program." (AR 457, emphasis added.)

imposed by unaltered statutory provisions, a question not addressed in *Shaw*.[15] As *Shaw* explains, "[t]he purpose of this constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent." (*Shaw, supra,* 175 Cal.App.4th at 597, citations and internal quotation marks omitted.)

In *Shaw,* the voters amended a tax provision that governed virtually all state sales and use taxes, and the initiative permitted legislative amendment only "if the statute is consistent with, and furthers the purposes of this section." (*Id.* at 599.) *Shaw* construed this limiting language in the context of the entire initiative, which it found had a particular purpose and did not intend to address sales and use taxes generally. (*Id.* at 600.) *Shaw* concluded the Legislature could amend any part of the tax statute "as long as the amendment is consistent with and furthers the particular part of the statute." (*Id.* at 602.)

Here, the voters similarly used the initiative power to accomplish a particular purpose, increasing criminal penalties, adding monitoring requirements, and changing the criteria for release of sex offenders. (AR 677-678.) But rather than enshrine the SVPA as a voter-approved scheme by either not providing for amendment or by including limiting language preventing the Legislature from "undoing what was done," Proposition 83's amendment clause authorizes modification of any its provisions, without limitation, by the necessary vote. (AR 693 [Prop. 83, § 33].)[16] The Legislature thus retains the authority to modify or even repeal the duties it imposed on counties through the Test Claim Statutes (which the state has done no less than fourteen times since 2007[17]); duties

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[15] See Section IA, *supra.*

[16] Section 33 of Proposition 83 states in full: The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

[17] See Stats 2007, c. 208 (SB 542), § 1, amending Section 6603; Stats 2007, c. 571 (AB 1172), § 3 amending Section 6608; Stats 2007, c. 601 (SB 1546), §§ 2 and 3, amending Section 6601;

for which the counties are entitled to reimbursement under the Commission's original SOD.[18] As discussed below, no "subsequent change in the law" has occurred to allow a redetermination of that decision.

II.
THE COURT OF APPEAL CORRECTLY CONCLUDED THAT SECTION 17556, SUBDIVISION (F) DOES NOT APPLY WHEN A BALLOT MEASURE'S MODIFICATIONS DO NOT CHANGE THE SOURCE OF EXISTING STATE-MANDATED DUTIES

To determine whether Proposition 83 effected a "subsequent change in the law" and thus permitted the Commission to reconsider its prior determination that the Test Claim Statutes imposed state-mandated duties, the Court of Appeal correctly applied the rules of statutory construction, first examining the statutory language to determine its plain meaning. (Slip Opn. 22, citing *Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 478, 484-485.) Under these rules, statutory language found to be ambiguous or susceptible to more than one interpretation must be examined in context and harmonized with related provisions, and extrinsic aids may be considered, such as legislative history and public policy. (*Ibid.*, citing *Pacific Sunwear of California, Inc. v. Olaes Enterprises Inc.* (2008) 167 Cal.App.4th 466, 474.)

Stats 2009, c. 61 (SB 669), § 1, amending Section 6605; Stats 2010, c. 710 (SB 1201), § 4, amending Section 6601; Stats 2011, c. 359 (SB 179), §§ 2 and 3, amending Section 6601; Stats 2012, c. 24 (AB 1470), §§ 139, 141, 143, 144 and 146, amending Sections 6601, 6602, 6604, 6605, and 6608; Stats 2012, c. 440 (AB 1488), § 66, amending Section 6603; Stats 2012, c. 790, (SB 760), § 1, amending Section 6603; Stats 2013, c. 182 (SB 295), §§ 2 and 3, amending Sections 6605 and 6608; Stats 2014, c. 442 (SB 1465), § 16, amending Section 6601; Stats 2014, c. 877 (AB 1607), § 1, amending Section 6608; Stats 2015, c. 576 (SB 507), § 1, amending Section 6603; and Stats 2016, c. 878 (AB 1906), § 1, amending Section 6601.

[18] In its Opening Brief, the State, without citing any authority, speculates that "a voter re-enactment may alter the Legislature's ability to suspend a statutory mandate contained in such a provision." (Opening Brief 42.) As discussed in Section A, *supra* at 4, the Constitution (art. XIII B, § 6, subd. (b)) and statutory provisions (§§ 17581 and 17612) establish when the state may avoid its obligation to provide local agencies with a subvention of funds. Even after Proposition 83 was approved, nothing stopped the Legislature from exercising its authority under these provisions from defunding the mandated activities and the State cites no authority to the contrary.

The Court of Appeal started with the language of section 17750, which provides that a "subsequent change in the law" is defined by sections 17514 and 17556. These sections in turn define what constitutes or is excluded as a state-mandated cost, but the Court of Appeal found the statutes "do not explicitly address how the source of the mandate should be characterized when a statutory provision previously found to impose a mandate is amended by a ballot initiative." (Slip Opn. 25.) Because it found the statutory language ambiguous in this regard, the Court of Appeal undertook the task of "adopting a statutory construction that 'harmonizes the statutes internally and with related statutes' and that preserves the constitutionality of the statutes." (*Ibid.*, citing *City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 195 and *Metromedia Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 186-187.)

The Court of Appeal correctly concluded that section 17556, subdivision (f), which excludes from subvention statutes that impose duties necessary to implement, or included in a ballot measure, does not apply here because Proposition 83 did not change the source of the mandated duties. (Slip Opn. 29.) The Court of Appeal's reasoning is supported by this Court's opinion in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 ("*San Diego Unified*"), which addressed the source of the mandate for student expulsion proceedings. The issue in *San Diego Unified* was whether the duties imposed on school districts were excluded from subvention under section 17556, subdivision (c), because federal law imposed the duties. With regard to *discretionary* expulsions, the Court found the duties and costs were imposed by federal due process requirements. (*San Diego Unified, supra*, 33 Cal.4th at 889.) However, because at the time only state law required an expulsion recommendation or expulsion for firearm possession, the Court concluded that the duties associated with these *mandatory* expulsion proceedings were imposed by the state. (*Id.* at 880-881.) The Court reasoned that state law "establishes conditions under which the state ... has made the decision requiring a school district to incur the costs of an expulsion hearing." (*Id.* at 880.)

Here, the state, not the voters, made the decision requiring Counties to incur the cost of carrying out the duties imposed by the Test Claim Statutes. There is no question that if Proposition 83 had not passed, the Counties would nevertheless be required to perform those duties. (See Slip Opn. 29.) The voters did not supersede the state's decision by themselves mandating that the duties remain in effect; as noted, Proposition 83 did not amend most of the Test Claim Statutes and allows the Legislature to further amend the provisions that were amended. The fact that the Legislature imposed the duties at issue is critical. In reviewing cases considering whether the state or the federal government was the source of a particular mandate, this Court observed that "the key factor was how the costs came to be imposed on the entity that was required to bear them." (*Dep't of Fin. v. Comm'n on State Mandates* (2016) 1 Cal.5th 749, 767.) Here, the costs came to be imposed by the Legislature, not by a ballot measure. As a result, section 17556, subdivision (f), does not apply here.

A. The Court of Appeal Correctly Found that the Commission and Trial Court's Interpretation of the Phrase "Subsequent Change in Law" Conflicts with the Intent and Purpose of Article XIII B, Section 6.

The Court of Appeal correctly construed the phrase "subsequent change in the law" narrowly to avoid a conflict with the article XII B, section 6. The courts "must enforce the provisions of our Constitution and 'may not lightly disregard or blink at ... a clear constitutional mandate.'" (*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448, quoting *State Personnel Bd. v. Department of Personnel Admin.* (2005) 37 Cal.4th 512, 523.) Courts are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law. (*Ibid.*, citing *Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1355.)

The voters' clear purpose in adopting article XIII B, section 6 was "to preclude 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." (*County of San Diego, supra*, 15 Cal.4th at 81.) Section 6 "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*Ibid.*; see also *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-85.)

As the Court of Appeal found: "[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 this constitutional dictate." (Slip Opn. 33.) The Commission's broad definition, adopted by the trial court, must be rejected for this reason. "This broad interpretation of the definition of 'subsequent change in the law' under sections 17556, subdivision (f) and 17570 would allow the state to avoid its constitutional obligation to fund the costs it has placed on local governments, which are limited in their ability to raise funds by article XIII A. (Citations omitted.)" (Slip Opn. 34.)

B. The Last Sentence of Section 17556, Making that Provision Applicable to Previously-Enacted Statutes, must be Construed in a Manner that Avoids a Conflict with Article XIII B, Section 6

As originally enacted, section 17556, subdivision (f) provided that the Commission could not find local government costs reimbursable if, among other things, "[t]he statute or executive order imposed duties which ***were*** expressly included in a ballot measure approved by the voters in a statewide election." (Stats. 1984, c. 1459, § 1, pp. 5118, 5119; former Gov't Code § 17556, subdivision (a)(6) (emphasis added).) "In construing statutes, the use of verb tense by the Legislature is considered significant." (*Hughes v. Board of Architectural Examiner* (1998) 17 Cal.4th 763, 776.) Use of the "present tense includes the past and future tenses; and the future, the present." (§ 11.) By implication, the use of the past tense excludes the present and future tenses.

Thus, originally the ballot measure exception applied to statutes enacted to implement voter-imposed duties. For example, if a statewide ballot initiative imposed

new programs or activities, or amended existing statutes to impose additional requirements relating to existing programs or activities, such activities would not have been reimbursable mandates imposed by the state. Statutes enacted to implement the provisions of the ballot measure, likewise, would not have been reimbursable mandates imposed by the state. Rather, the voters were the source of the mandate.

In 2005, however, section 17556, subdivision (f) was amended to change the tense to the present tense and to add the last sentence making the ballot measure exception applicable regardless of when a statute was enacted. (Stats. 2005, c. 72, § 7.) The last sentence of section 17556, subdivision (f) now provides that this subdivision applies "regardless of whether the statute . . . was enacted . . . before or after the date on which the ballot measure was approved by the voters." (*Ibid.*) To the extent that this sentence allows the Commission to revisit test claim determinations when a ballot measure *does not change* the source of reimbursable duties, it is constitutionally infirm and should be stricken.

It is well settled that a statute is invalid to the extent it conflicts with the provisions of the California Constitution. (*Strauss v. Horton* (2009) 46 Cal.4th 364, 395.) "'There is a clear limitation . . . upon the power of the Legislature to regulate the exercise of a constitutional right.' [Citation omitted.] '[A]ll such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.'" (*Silicon Valley Taxpayers Ass'n., Inc. v. Santa Clara County Open Space Authority, supra,* 44 Cal.4th at 448.) Thus, a legislative body "has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect." (*Id.* at 448.)

Here, the Legislature has no authority to enact a provision that conflicts with article XIII B, section 6, which imposes a constitutional obligation on the state to reimburse local agencies for costs incurred in carrying out state-mandated duties. To avoid a constitutional conflict, the last sentence of section 17556, subdivision (f) must be read to authorize a redetermination of a Test Claim decision only when a ballot measure

actually changes existing duties and thus the source of those duties from the state to the voters. (See *California School Boards Ass'n. v. State, supra,* 171 Cal.App.4th at 1215.)

C. The Court of Appeal Correctly Found that the Commission and Trial Court's Interpretation of "Subsequent Change in Law" Leads to Absurd Results

The Court of Appeal also correctly found that the Commission and the trial court's interpretation of section 17556, subdivision (f) -- under which *any* voter modification to statutory language changes the source of the statutory mandate -- "leads to an absurd result, allowing the state to avoid the subvention requirement by advancing propositions that reenact without changing or that only marginally modify existing laws." (Slip Opn. 33-34.) For example, a ballot measure could be advanced that merely made changes in punctuation, changed tenses from past to present, or made the language of a statute imposing reimbursable mandates gender neutral. Under the Commission and trial court's reasoning, such a ballot measure would result in a "subsequent change in law" under sections 17570 and 17556, subdivision (f), and trigger a redetermination of the existing mandates. The same would be true if a ballot measure was advanced to renumber or divide the statute into subparts. Moreover, under section 17556, subdivision (f), such a ballot measure could establish a "subsequent change in the law" as to *other* statutes not even mentioned in the ballot measure, as happened here.

The State argues that shifting state-mandated costs to local agencies whenever a ballot measure makes even minor changes "is hardly an absurd result" because "when the voters re-enact a statutory duty in its entirety, it carries the *potential* of insulating that duty from amendment or repeal by the Legislature." (Opening Brief 40 (emphasis added).) To illustrate the "soundness" of its point, the State cites *Shaw, supra,* 175 Cal.App.4th 577, but as noted above, the ballot measure in that case did *not* insulate the unaltered statutory provisions from amendment or repeal. (*Id.* at 602.) *Shaw* also did not consider whether a ballot measure changes the "source" of duties imposed by its unaltered provisions so as to constitute a "subsequent change in the law" for purposes of section 17570 and 17556, subdivision (f). A case simply "is not authority for an issue

neither raised nor considered." (*People v. Wells* (1996) 12 Cal.4th 979, 984, fn. 4.)

While a ballot measure has the "potential" of insulating statutory duties from amendment or repeal, Proposition 83 did not insulate the Test Claim Statutes duties from revision. On the contrary, since the adoption of Proposition 83 in 2006, the Legislature has amended the Test Claim Statutes on fourteen separate occasions. (See footnote 17, *supra.*) Presumably under the State's theory, these legislative actions, which required re-enactment of the entire statute, would have again converted the source of the duties (from voter-imposed back to state-imposed).

Regardless, the duties imposed by the Test Claim Statutes remain state-mandated duties because Proposition 83 did not change the source of those duties.

III.

THE STATE MISCHARACTERIZES THE COURT OF APPEAL'S OPINION AND THE "CHANGES" MADE BY PROPOSITION 83

The State mischaracterizes the Court of Appeal's decision by claiming that it "focuses exclusively on whether a voter initiative modifies that language of the statutory section or subdivision that imposes a statutory mandate." (Opening Brief 9.) The Court of Appeal did not hold that the specific language imposing the mandate has to be modified, it 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 Opn. 25, emphasis added.) The State contends that the mandated duties were "changed" because "[t]he definition of 'sexually violent predator' is central to the process established by the SVPA" and "Proposition 83 ... materially altered the definition of 'sexually violent predator.'" (Opening Brief 30-34, citing Welf. & Inst. Code § 6600.) Specifically, the State argues that changes to Welf & Inst. Code section 6600 "expanded the category of offenders who 'shall' be referred to local governments as part of the SVPA process" and by implication the number of referrals to local governments must have increased. (Opening Brief 38.) The State's argument ignores several key facts.

First, Welf. & Inst. Code section 6600 is not one of the Test Claim Statutes and thus any amendments to it are not material to whether Proposition 83 changed the source of the Test Claim Statute duties.

Second, the Legislature had already expanded the definition of what constitutes a "sexually violent predator" to mirror the changes included in Proposition 83 in a number of ways when it enacted SB 1128, which became effective September 20, 2006, before the passage of Proposition 83. SB 1128 changed the definition of "sexually violent offense" to mirror the amended definition in Proposition 83 and expanded the universe of crimes that could be considered a sexually violent offense to match the proposed amendments in Proposition 83. (Stats. 2006, c. 337, section 53.)[19] Thus, to the extent that Proposition 83 had the potential to slightly increase the number of individuals qualifying as a SVP on the one hand, it potentially *reduced* the workload by eliminating the hearing right on the other hand, as the voter guide indicated. (See AR 679.)

Third, the State fails to show how definitional changes that may increase the number of persons found to be sexually violent predators changes the *source* of the mandated duties. Assuming the amendments to the definition of "sexually violent predator" potentially increases the number of cases referred to local agencies and potentially decreases the number of commitment hearings, this potential increase/decrease does not change the source of the duties. In other words, Proposition 83 did not mandate any new or different activity. The size of the population entitled to receive the mandated services does not change the duty itself, or the source of the duty, that being the Test Claim Statutes.

Fourth, contrary to the State's arguments, there is no evidence in the record that changes to Welf. & Inst. Code section 6600 actually increased the number of referrals to district attorneys or the county counsels responsible for carrying out the duties at issue.

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[19] SB 1128 did not include the provision that reduced the required number of victims from "two of more" to "one of more" and did not eliminate the cap on the number of prior offenses committed by an offender while a juvenile that could constitute "a prior conviction for which a person received a determinate term".

While the State asserts that changes resulted in an increase in "the number of inmates referred by the Department of Corrections and Rehabilitation as possible sexually violent predators by 'nearly 800 percent,' from 50 per month to over 600," the State's assertion is misleading because this information relates to referrals to the State Department of Mental Health -- *not to local district attorneys and county counsels*. As noted by the Court of Appeal, "the report does not provide any evidence concerning the impact, if any, that Proposition 83 or Senate Bill No. 1128 had on *counties'* SVP commitment duties." (Slip Opn. 32, fn. 14, emphasis in original.)

The evidence in the record is that the passage of Proposition 83 did *not result in an increase in the number of referrals to district attorneys and county counsels*. As set forth in a 2011 report by the California State Auditor on the Sex Offender Commitment Program, 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 [Proposition 83]." (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.)

The State thus fails to show that the definitional changes Proposition 83 made to Welf. & Inst. Code section 6600 changed the mandated duties so as to effect a change the source of the mandate.

CONCLUSION

As the Court of Appeal correctly found, the Commission and trial court's broad construction of sections 17550 and 17556, subdivision (f), simply does not align with the purpose and policy of this state's mandate law and directly conflicts with the constitutional dictate set forth in article XIII B, section 6. This broad construction leads to absurd results because any modification by ballot initiative, no matter how small, would convert the source of the mandate from one imposed by the Legislature to one imposed by the People. By contrast, the Court of Appeal's narrow construction of

sections and 17570 and 17556, subdivision (f) avoids constitutional conflicts, absurd results, and is supported by the reenactment rule of statutory construction. For all these reasons, the Counties respectfully request that the decision of the Court of Appeal should be affirmed.

Dated: September 26, 2017 Respectfully submitted,

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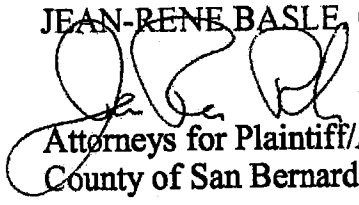

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CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.201(c)(1), I certify that the text of this brief consists of 9, 404 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

Dated: September 28, 2017

Respectfully submitted,

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County of San Diego, et al, v. Commission on State Mandates, et al;
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 September 28, 2017, I caused to be transmitted the following documents:

1. **ANSWER BRIEF ON THE MERITS.**

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

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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 on September 28, 2017, at San Diego, California.

By: _____
ODETTE ORTEGA