In the Supreme Court of the State of California

COAST COMMUNITY COLLEGE DISTRICT, et al.,

Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES,

Defendant and Respondent,

DEPARTMENT OF FINANCE,

Real Party in Interest.

Case No. S262663

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

REPLY TO ANSWER TO DEPARTMENT OF FINANCE'S PETITION FOR REVIEW

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
PAUL STEIN
Supervising Deputy Attorney General
SAMUEL T. HARBOURT
Deputy Solicitor General

*P. PATTY LI
Deputy Attorney General
State Bar No. 266937
455 Golden Gate Avenue,
Suite 11000
San Francisco, CA
94102-7004
Telephone: (415) 510-3817
Fax: (415) 703-1234
Email: Patty.Li@doj.ca.gov
Attorneys for Real Party in Interest Department of Finance

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

INTRODUCTION

The Court of Appeal's opinion represents a significant departure from this Court's well-established framework for analyzing legal compulsion for the purpose of finding a reimbursable state mandate—a departure that threatens to sow significant confusion in the law absent this Court's review. Appellant community college districts' answer fails to acknowledge or meaningfully address this divergence from precedent. The districts instead largely summarize and repeat the same flawed analysis offered by the Court of Appeal. They also dispute the centrality of the "core functions" concept to the Court of Appeal's analysis, even as they acknowledge that the opinion relied on this concept in distinguishing this Court's precedents and determining that the program in question is "mandatory," not "voluntary." These arguments only serve to underscore the need for this Court to review the Court of Appeal's opinion.

Indeed, instead of offering any persuasive responses to the arguments in the petition that this case is important and worthy of review, the districts defend the Court of Appeal's *legal* compulsion ruling on the merits. But in doing so, the districts rely entirely on a *practical* compulsion argument. That, however, illustrates exactly why the Department of Finance seeks further review in this case: as explained in the petition, the Court of Appeal conflated the two separate inquiries for legal and practical compulsion, treating a program that provides state funds as a form of legal compulsion even though participation in

the program is not required under state law. The Court should grant the petition for review to clarify this important issue.[1]

ARGUMENT

I. REVIEW IS NEEDED TO ADDRESS A SIGNIFICANT QUESTION OF STATE CONSTITUTIONAL LAW—HOW TO PROPERLY DEFINE LEGAL COMPULSION FOR PURPOSES OF STATE MANDATES ANALYSIS

As explained in the petition, state mandates issues present important questions of state constitutional law, and this Court has repeatedly granted review to address such issues. The Department of Finance, for example, cited no fewer than ten cases in this area for which this Court has granted review. (Petition, at p. 21.)

The districts contend that review is not necessary, arguing that the Court of Appeal corrected the erroneous characterization of the minimum conditions program relied upon by the Commission on State Mandates, the Department of Finance, and the superior court. (Answer, at pp. 6-9.) But this disagreement over the proper way to define the program at issue underscores the need for this Court to provide guidance as to the appropriate frame of reference when analyzing legal compulsion.

The regulations at issue in the Court of Appeal's legal compulsion analysis are the "minimum conditions entitling districts to receive state aid for support of community colleges."

---

[1] The slip opinion is attached to the Department of Finance's petition for review. Citations to the administrative record in the case are given as "AR [page number]," and citations to the Clerk's Transcript are given as "CT [page number]."

(Ed. Code, § 70901, subd. (b)(6).) The regulations are set forth in sections 51000-51027 of title 5 of the California Code of Regulations, which "comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges." (Cal. Code Regs., tit. 5, § 51000 (2003).)

Based on the statutory and regulatory provisions describing the minimum conditions, the Commission on State Mandates, the Department of Finance, and the superior court have characterized the minimum conditions as requirements that apply to participants in a program through which community college districts can become entitled to receive state aid. As explained in the petition (at p. 22), this approach is consistent with this Court's decision in *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern*), which establishes that "the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves." (*Kern*, *supra*, 30 Cal. 4th at p. 743.)

In *Kern*, several local school districts sought reimbursement from the State for the cost of complying with notice and agenda requirements applicable to school councils and advisory committees established as a condition of the school districts' participation in various education-related programs funded by the State. (*Kern*, *supra*, 30 Cal.4th at p. 730.) This Court found no "legal compulsion" from these requirements; although

compliance with the notice and agenda-posting requirements was required of program participants, the school districts were not required to participate in the programs at issue. (*Id.*, at pp. 742-745.) While the districts were obligated to comply with these requirements once they had "*elected* to participate in, or continue to participate in" the programs at issue, they were not legally compelled to participate in the programs in the first place. (*Id.*, at p. 745 [emphasis in original].) Indeed, the districts could "decline" to participate in any given program if they determined that "the costs of . . . compliance" with the program's requirements "outweigh the funding benefits." (*Id.*, at p. 753.)

Here, the minimum conditions are requirements that apply to participants receiving program funding—i.e., state aid. Community college districts are subject to the minimum conditions only insofar as they choose to become entitled to receive state aid. Following the analysis in *Kern*, the proper question for legal compulsion is whether the districts are legally compelled to participate in the underlying program—that is, whether they are legally compelled to become entitled to receive state aid.

The districts argue that this approach is "a misreading and misapplication" of *Kern*, because "[t]he question is not whether the Colleges are legally or practically compelled to become entitled to state aid, but rather whether the Colleges are legally or practically compelled to conform to the minimum conditions." (Answer, at pp. 7, 8.) This appears to be a reference to the Court of Appeal's approach, which asked whether compliance with the

minimum conditions is required as a means of fulfilling obligations beyond the program as described by statute and regulation—obligations relating to the "core functions" of community college districts. (Slip Opn., at p. 9.) The Court of Appeal thus held that *Kern*'s reasoning is inapplicable to program requirements involving "core functions" of a local government entity.[2] (*Ibid.*) However, neither the districts nor the Court of Appeal cited any case in support of this interpretation of *Kern*. And *Kern* itself rejected this mode of analysis, establishing that the question is not whether a program participant is legally compelled to comply with conditions *after* voluntarily choosing to participate, but instead whether participation in the program is legally compelled *in the first place*. (*Kern*, *supra*, 30 Cal.4th at p. 743.)

Still, the divergent approaches to legal compulsion analysis in this case highlight the need for further guidance from this Court, regarding the appropriate test for legal compulsion, and whether there is an exception to *Kern* for certain types of programs. The districts appear to acknowledge, by block quoting the analysis of *Kern* performed by the Commission on State Mandates, that the Commission interpreted *Kern* very differently

---

[2] The districts contend that in doing so, "[r]ather than expanding an exception, the appellate court prudently limited the legal compulsion analysis to mandatory, *not optional*, requirements also pertaining to a 'core function' or 'mission' of the community colleges." (Answer, at p. 12 [emphasis in original].) However, limiting "the legal compulsion analysis" to a particular situation is functionally the same thing as creating an exception to *Kern*'s previously broadly applicable standard.

than the Court of Appeal did. (Answer, at pp. 7-8.) This, by itself, indicates that this Court's review is necessary to clarify the scope of that important decision. If it is appropriate to consider whether compliance with program requirements is required by "core functions" that are separate from the program as defined by statute and regulation, such a significant departure from *Kern* should be announced and explained clearly by this Court.

II. REVIEW IS NEEDED TO CLARIFY WHETHER PROGRAM REQUIREMENTS RELATING TO A LOCAL GOVERNMENT ENTITY'S "CORE FUNCTIONS" GIVE RISE TO LEGAL COMPULSION FOR PURPOSES OF STATE MANDATES ANALYSIS

This Court should also grant review because, as set forth in the petition, the Court of Appeal's opinion provides little to no guidance on the "core functions" it relied upon in attempting to distinguish *Kern*. (See Petition, at pp. 24-28.) That "core functions" standard threatens to cause serious confusion in the law.

The districts fail to persuasively respond to this point as well. Although they attempt to minimize the importance of the "core functions" or "core mission" concepts to the Court of Appeal's analysis by counting the number of times those terms appear in the opinion (Answer, at p. 11),[3] they nevertheless

[3] The opinion refers numerous times to the community colleges' "underlying legally-compelled mission" (Slip Opn., at pp. 13, 18, 19, 21); "underlying legally-compelled functions" (*id.*, at p. 7); "legally-compelled underlying programs" (*id.*, at p. 20); and "underlying legally-compelled programs" (*id.*, at pp. 24, 27).

(continued…)

acknowledge that the court found legal compulsion for requirements "pertaining to a 'core function' or 'mission' of the community colleges." (*Id.*, at pp. 11, 12.) And, this is certainly how other claimants seeking payment for reimbursable state mandates view the opinion.[4]

It simply is not possible to perform the analysis set forth in the Court of Appeal's opinion without asking whether the requirements at issue relate to a "core function." This necessarily requires a definition of a core function, but the opinion provides none. Nor does the opinion explain how to determine whether the requirements at issue are sufficiently related to the "core function" so as to constitute legal compulsion. The opinion thus threatens to lead to significant confusion, as the Commission on State Mandates and courts will struggle to apply the Court of Appeal's vague standard.

(…continued)
These are clearly references to the court's "core functions" legal compulsion analysis.

[4] In a recent submission to the Commission on State Mandates, a claimant describes the Court of Appeal's opinion as establishing that with respect to legal compulsion, "the question is not whether the local agencies made *any* initial discretionary choice that resulted in incurring state-mandated costs, but whether the subject of that purported choice was critical to their core functions." (Comments on Proposed Decision, 19-TC-01 (May 27, 2020), at p. 3 [emphasis in original], available at https://csm.ca.gov/matters/19-TC-01/doc10.pdf [last accessed July 10, 2020].) The claimant contends that the activity at issue in the claim—"calling special elections"—satisfies this test. This is because "local agencies can call special elections for purposes related to their essential duties of basic governance." (*Id.*, at p. 4.)

The districts' answer demonstrates how difficult it will be to derive an administrable legal-compulsion standard from the Court of Appeal's analysis. Every attempt made by the districts to defend the Court of Appeal ruling is couched in terms of practical compulsion, rather than legal compulsion. For example, in explaining why legal compulsion exists, the districts state, "[r]ather than the Colleges electing to voluntarily participate in the minimum conditions, they are required to do so at risk of *drastic fiscal loss of funds* received pursuant to the constitution and state statutes." (Answer, at p. 10 [emphasis added].) But as explained in the petition (at pp. 28-29), that is a practical-compulsion argument—that, even if no legal mandate exists, the risk of "drastic fiscal loss" requires compliance as a practical matter.[5] (See *Kern*, *supra*, 30 Cal.4th at pp. 748-754 [discussing *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, and recognizing that practical compulsion concerns whether a claimant has a "true option or choice"].)

In sum, the districts' attempt to explain the opinion's holding on legal compulsion relies on analysis that is instead

---

[5] As the Commission on State Mandates and the superior court correctly determined, and as reflected by constitutional and statutory provisions governing the allocation of state aid to community college districts, the districts receive "state aid" without demonstrating compliance with the minimum conditions, and the record contains no examples of any district losing state aid for failure to comply with the minimum conditions. (Petition, at pp. 17-18 [citing AR 34-36; CT 208, 210-211].) For those reasons, the Commission and the superior court correctly concluded that the districts have not shown practical compulsion on this record.

properly considered under practical compulsion.[6] It thus underscores the confusion generated by the opinion and the need for this Court's review.

CONCLUSION

For the forgoing reasons, this Court should grant review in this matter and order the Court of Appeal's decision depublished.[7]

---

[6] The districts argue that, if this Court grants review, it should expand the issues presented to include whether the State has "practically compelled the Colleges to comply with the Test Claims minimum conditions . . . ." (Answer, at p. 4). However, the Court of Appeal did not address that question (Slip Opn., at p. 9.), and the Answer does not identify a conflict in the lower courts or any other reason why this Court should address practical compulsion in the first instance. (See Cal. Rules of Court, rule 8.500(b)(1).)

[7] The Department of Finance timely submitted a separate request for depublication on June 30, 2020, and requests that the Court depublish regardless of whether it grants review.

Dated: July 10, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
SENIOR ASSISTANT ATTORNEY GENERAL
PAUL STEIN
SUPERVISING DEPUTY ATTORNEY GENERAL
SAMUEL T. HARBOURT
DEPUTY SOLICITOR GENERAL

/S/ P. PATTY LI

P. PATTY LI
Deputy Attorney General
Attorneys for Real Party in Interest
Department of Finance

CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY TO ANSWER TO DEPARTMENT OF FINANCE'S PETITION FOR REVIEW uses a 13 point Century Schoolbook font and contains 2,178 words.

Dated: July 10, 2020

XAVIER BECERRA
Attorney General of California

/S/ P. PATTY LI

P. PATTY LI
Deputy Attorney General
Attorneys for Real Party in Interest
Department of Finance

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***Coast Community College District, et al. v. Commission on State Mandates, et al.***
CA Supreme No: **S262663**
Appellate No.: **C080349**

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 collecting and processing electronic and physical correspondence.

On July 10, 2020, I electronically served the attached REPLY TO ANSWER TO DEPARTMENT OF FINANCE'S PETITION FOR REVIEW by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on July 10, 2020, I placed 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:

Christian M. Keiner, Attorney at Law
Dannis, Woliver & Kelley
555 Capitol Mall, Ste. 645
Sacramento, CA 95814
Email: ckeiner@dwkesq.com

Attorneys for Plaintiffs and Appellants Coast Community College District, et al

(Via TrueFiling)

Camille Shelton
Chief Legal Counsel
Juliana Francis
Senior Commission Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814-2719
Email: camille.shelton@csm.ca.gov

Attorneys for Defendant and Respondent Commission on State Mandates

(Via TrueFiling)

Clerk of the Court
Sacramento County Superior Court
Gordon D. Schaber Downtown
Courthouse
720 9th Street
Sacramento, CA 95814-1398
(Via U.S. Mail)

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 July 10, 2020, at San Francisco, California.

Susan Chiang	/s/ Susan Chiang
Declarant	Signature

SA2015105458

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **patty.li@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	S262663 Reply brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Fran Hyland Dannis Woliver Kelley	fhyland@DWKesq.com	e-Serve	7/10/2020 11:37:58 AM
Camille Shelton Commission on State Mandates 166945	camille.shelton@csm.ca.gov	e-Serve	7/10/2020 11:37:58 AM
Christian Keiner Dannis Woliver Kelley 95144	ckeiner@dwkesq.com	e-Serve	7/10/2020 11:37:58 AM
Ila Friend Dannis Woliver Kelley	ifriend@dwkesq.com	e-Serve	7/10/2020 11:37:58 AM
P. Li Office of the Attorney General 266937	patty.li@doj.ca.gov	e-Serve	7/10/2020 11:37:58 AM

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

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

7/10/2020
Date

/s/Susan Chiang
Signature

Li, P Patty (266937)
Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm