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Supreme Court of California
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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 and Respondent.

Case No. S262663

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

OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED

On August 12, 2020, the Court granted review of three issues. Both the Department of Finance ("Department") and the Commission on State Mandates ("Commission") sought review of the first issue; only the Commission sought review of the second and third:

1. Whether regulations that establish minimum conditions entitling California community college districts to receive state aid constitute a reimbursable state mandate within the meaning of Article XIII B, section 6 of the California Constitution.

2. Whether a court lacks jurisdiction under Article XIII B, section 6 of the California Constitution to make subvention findings on statutes that were not specifically identified in an initial test claim.

3. Whether a court lacks jurisdiction to remand a test claim based on a statute that was the subject of a prior final decision by the Commission on State Mandates.

INTRODUCTION

Article XIII B, section 6, of California's Constitution requires the State to reimburse local governments and school districts, including the districts that operate and manage California's community colleges, for costs they incur in complying with "mandates" imposed by state law. Here, several community college districts sought reimbursement for the costs of complying with dozens of alleged mandates under 170 distinct statutes, regulations, and executive orders. The Commission granted relief in significant part, accepting over 90 of the districts'

mandate claims—including numerous claims based on state regulations imposing mandatory standards for the formation and operation of community colleges (which this brief refers to as "operating standards"). These operating standards require community college districts to, among other things, adopt certain grading practices, establish various degree requirements, offer specified student services, and abide by certain faculty-hiring rules.

However, the Commission rejected reimbursement for any costs associated with satisfying a separate body of state regulations: the regulations specifying conditions entitling the districts to receive state aid (which this brief refers to as "funding-entitlement conditions").[1] The purpose of the funding-entitlement conditions, which cover many of the same subject areas as the operating standards (including grading practices, degree requirements, and student services) is to identify the grounds for which the State may, in its discretion, withhold state funding from the community college districts.

The Commission properly distinguished between the operating standards and funding-entitlement conditions for purposes of reimbursement under Article XIII B, section 6.

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[1] To date, the parties have referred to these conditions as "minimum conditions," but that terminology risks confusion with the entirely separate operating-standards regulations (which the parties have sometimes referred to as "minimum standards"). To avoid any confusion, this brief uses the terms "funding-entitlement conditions" (rather than "minimum conditions") and "operating standards" (rather than "minimum standards") to reference these separate bodies of regulations.

Unlike the operating standards, the funding-entitlement conditions do not legally compel the districts to take any action and, accordingly, do not qualify as state-imposed "mandates." Rather, districts may choose whether or not to satisfy the conditions: a district need only make that choice if it wishes to become entitled to state funding and avoid any risk that the State might withhold some portion of its funding.

Appellant districts argue, however, that even if they have no *legal* obligation to satisfy the funding-entitlement conditions, they are compelled to do so as a *practical* matter. The average community college district, they emphasize, is heavily dependent upon state aid and thus cannot afford to run the risk that the State will withhold financial assistance.

This Court has not yet decided whether such "practical compulsion" can give rise to a reimbursement obligation under Article XIII B, section 6. Should it reach the question here, the Court should hold that such claims do not provide a valid basis for reimbursement: among other legal and practical problems, all detailed *post*, pp. 51-53, such claims put the Commission and courts in the difficult position of evaluating competing empirical arguments about how much funding certain local governments can reasonably stand to lose and whether and to what extent their fiscal circumstances may change over time.

However, even assuming that practical compulsion might give rise to a reimbursable state mandate, the districts have not shown that they are likely to face such a severe loss of state funding that compliance with the funding-entitlement conditions

is compelled as a practical matter. While the state agency overseeing community colleges (the Office of the Chancellor of California Community Colleges) has discretion to withhold aid for noncompliance with the funding-entitlement conditions, nothing requires it to exercise that discretion. To the contrary, state law constrains that aid-withholding authority, and the Chancellor takes a cautious approach to the possibility of withholding aid out of a concern that doing so would unfairly harm students. Indeed, the record here reveals only a single example where the Chancellor ever sought to withhold aid for noncompliance with the funding-entitlement conditions—and even then, the amount of aid in question was modest, and the Chancellor ultimately agreed to a settlement under which the district did not actually lose any funding.

Finally, as to the second and third issues presented, the Department will only speak to them briefly because they are of particular interest to, and within the expertise of, the Commission. Pleading requirements for claims under Article XIII B, section 6, and the rule barring duplicative consideration of such claims are *mandatory* procedural rules, but not *jurisdictional*. These rules serve the important purposes of facilitating the Commission's research and review of reimbursement claims, as well as preventing piecemeal litigation and the conflicting resolution of claims. But nothing in the relevant implementing statutes provides the necessary clear indication that the Legislature intended to make them jurisdictional. The upshot is that, while courts must apply these

rules if properly invoked by a party on a timely basis, a court has no sua sponte duty to raise and apply them. The Department defers to the Commission on whether the court of appeal disregarded or misapplied these rules here.

LEGAL BACKGROUND

A. The Constitution Allows Local Governments, Including Community College Districts, to Seek Reimbursement for State-Mandated Costs

By force of the California Constitution's "ban on unfunded mandates" (*County of San Diego v. Com. on State Mandates* (2018) 6 Cal.5th 196, 210), the State has "*conditional* authority to enlist a local government in carrying out a new program or providing a higher level of service" (*id.*, p. 201, italics added). "Only when the state 'reimburse[s] that local government for the costs of the program or increased level of service' may the state impose such a mandate on its local governments." (*Ibid.*, quoting Cal. Const., art. XIII B, § 6.) Local governments covered by the provision include any "city," "county," "school district," "or other political subdivision." (*Id.*, § 8, subd. (d).) "School districts" include community college districts. (Gov. Code, § 17519.)[2]

Voters adopted the restriction on state mandates as part of the "so-called 'tax revolt'" of 1978-1979, which saw passage of Proposition 13 and, the following year, Proposition 4. (*Grossmont*

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[2] Unless otherwise noted, all citations are to current law. However, because the claims in this case were initially filed in 2003, the brief also provides citations to then-existing provisions where they materially depart from current law.

Union High School Dist. v. State Dept. of Education (2008) 169 Cal.App.4th 869, 876.) Proposition 13 added Article XIII A to the Constitution as a limit on "'the power of state and local governments to adopt and levy taxes.'" (*County of San Diego v. California* (1997) 15 Cal.4th 68, 80-81.) Proposition 4, also known as the "Spirit of '13," placed "a complementary limit" under Article XIII B "on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 574.) These provisions "'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.'" (*County of San Diego*, *supra*, 15 Cal.4th at p. 81.) Fearing that these restrictions would leave local governments "'ill equipped' to assume increased financial responsibilities," voters added the prohibition on unfunded mandates to Article XIII B "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies." (*Ibid*.)

To implement Article XIII B, section 6, the Legislature created the Commission on State Mandates, an expert, quasi-judicial body assigned to hear and decide claims that a local agency or district is entitled to be reimbursed for state mandated costs. (*Cal. School Boards Assn. v. California* (2019) 8 Cal.5th 713, 720; see Gov. Code, §§ 17525 et seq.) The "first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state" is called a

"test claim." (*Id.*, § 17521.)[3] No further claims involving the same statute or executive order are allowed. (See *id.*, §§ 17550 et seq.) Thus, by "express" design, the Legislature barred duplicative test claims, providing that only one claim may be filed for any single statute or executive order. (*Kinlaw v. California* (1991) 54 Cal.3d 326, 333; see also Gov. Code, § 17552.)[4]

This bar on duplicative test claims does not, however, prevent any local governments from obtaining relief. A "'test claim is like a class action—the Commission's decision applies to all [similarly situated] districts in the state.'" (*San Diego Unified School Dist. v. Com. on State Mandates* (2004) 33 Cal.4th 859, 872, fn. 10.) Moreover, multiple districts may participate in a test claim proceeding—by jointly filing claims, by "join[ing]" a claim previously filed by another district (*County of San Diego*, *supra*, 15 Cal.4th at p. 82), or by submitting briefing and evidence before the Commission as an "interested" party (Gov. Code, § 17553, subd. (a)(1)).

The Commission's adjudication of a test claim has several steps. It first considers whether the State has imposed a

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[3] The implementing legislation for Article XIII B, section 6, defines "executive order" to include regulations. (Gov. Code, § 17516.) Thus, unless otherwise noted, all references in this brief to "executive orders" include regulations.

[4] By regulation, the Commission has clarified that it will allow a claim to move forward, even if it involves the "same statutes [or executive orders]" as a previously filed test claim, provided that the claimant demonstrates it is "affected differently" by the relevant statutes or executive orders. (Cal. Code Regs. tit. 2, § 1183.1, subd. (b).)

"mandate[ ]." (Cal. Const., art. XIII B, § 6; see *Dept. of Finance v. Com. on State Mandates* (2003) 30 Cal.4th 727, 736 ("*Kern School District*" or "*Kern*").) If a "mandate" exists, the Commission then determines whether the State has mandated "a new program or higher level of service" (Cal. Const., art. XIII B, § 6)—that is, whether it has compelled a local agency or district to "carry out the governmental function of providing services to the public" or "impos[ed] unique requirements on local governments [that] do not apply generally to all residents and entities in the state." (*County of Los Angeles v. California* (1987) 43 Cal.3d 46, 56.) In assessing whether the mandated program or level of service is "new" or "higher," the Commission "compare[s]" the statute or executive order alleged to contain a reimbursable mandate "with the legal requirements in effect immediately before the enactment" or promulgation of that statute or executive order. (Administrative Record (AR) 22, citing *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 878.)

The Commission must also consider whether any exception applies, relieving the State of its reimbursement obligations. For example, the State need not reimburse local governments for the costs of complying with mandates that federal law requires the State to impose. (Gov. Code, § 17556, subd. (c).) Nor is reimbursement required if the mandated activity is necessary to implement "a ballot measure approved by the voters" (*id.*, subd. (f)), or if local agencies or districts have "authority to levy service charges, fees, or assessments sufficient to pay for the mandated program" (*id.*, subd. (d)).

Finally, if a new, qualifying mandate exists, the Commission evaluates whether the State has already provided sufficient funds to cover the costs of compliance. (See *Kern*, *supra*, 30 Cal.4th at p. 747.) If not, the Commission determines the amount of reimbursable costs and adopts "parameters and guidelines" for reimbursement. (Gov. Code, § 17557, subd. (a).) The Legislature may then either appropriate funds to reimburse the affected local agencies or instead choose not to fund the mandate, thereby suspending operation of the mandate for that fiscal year. (*Id*., § 17581.) If the Legislature does not suspend the mandate, the State Controller is responsible for disbursing the necessary funds to local districts or agencies. (*Id*., § 17561, subds. (c)-(d).)

B. The Districts That Manage and Operate Community Colleges Receive Most of Their Funding from State Appropriations and Local Property Taxes

California's 116 community colleges together represent the largest system of higher education in the United States, offering two-year degree programs, as well as other forms of instruction, to over 2.1 million students.[5] In much the same way that local school districts manage K-12 schools, local community college districts operate and govern community colleges. (Ed. Code,

[5] See California Community Colleges, *Key Facts*, <https://www.cccco.edu/About-Us/Key-Facts>.

§ 70902, subd. (a)(1).) Many of today's 73 districts manage just a single college; others operate several.[6]

Community college districts receive funding from a variety of sources for operation of the colleges they oversee—including local property taxes, state appropriations, student enrollment fees (as well as other types of fees like health services and parking fees), dedicated lottery revenues, and federal grants.[7] The relative composition of these funding sources has shifted substantially over time. In the early twentieth century, when the Legislature first authorized establishment of community colleges (then called "junior colleges"), federal funding provided the primary source of revenue.[8] But as colleges' financing needs grew, these funds proved inadequate, and community college districts came to rely increasingly on state aid and local revenue sources, especially property taxes.[9] In recent years (fiscal years 2015-

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[6] See *Community College Districts* <https://www.cccco.edu/Students/Find-a-College/Community-College-Districts>. New community college districts are created through a state law-prescribed process that begins with a voter-signed petition (or petition by local education officials) and involves thorough review at the state and county levels. (See Ed. Code, §§ 74150 et seq.)

[7] See Legislative Analyst's Office, *2019-2020 Budget: Higher Education Analysis* p. 4, fig. 1 <https://lao.ca.gov/reports/2019/3946/higher-ed-analysis-022119.pdf>.

[8] See Winter, *History of the Junior College Movement in California* (1964) pp. 1, 8 <https://files.eric.ed.gov/fulltext/ED346902.pdf>.

[9] See *id.*, pp. 8-9, 11-13, 27; Public Policy Institute of California, *Financing California's Community Colleges* (2004) pp. 12-13 & fig. 2.4 <https://www.ppic.org/publication/financing-

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2018), districts have received, on average, about 42.5% of their revenue from state appropriations, 53.5% from local sources (including property taxes and student fees), 2% from federal sources, and 2% from lottery revenues.[10]

The State provides two principal types of funding to community college districts: general apportionment funding and categorical funding. As relevant here, a district may use general apportionment funding for any purpose in "support of [its] school or schools." (Cal. Code Regs., tit. 5, § 58140; see AR 155.) Categorical funds, by contrast, are program-by-program allotments under specific statutes that control how the funding may be used. (See AR 3429-3430.) Most districts receive significantly more general apportionment funding than categorical funding. (See *id.*, p. 3431)

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californias-community-colleges>; Dept. of Education, *Master Plan for Higher Education in California* (1960) p. 168 <https://www.lib.berkeley.edu/uchistory/archives_exhibits/masterplan/MasterPlan1960.pdf>; see also Legislative Analyst's Office, *A Look at Voter-Approval Requirements for Local Taxes* (2014) <https://lao.ca.gov/reports/2014/finance/local-taxes/voter-approval-032014.aspx> [discussing community college districts' authority to levy certain taxes, including property taxes to fund bond measures used to generate revenue for infrastructure projects].

[10] See Legislative Analyst's Office, *Community College Funding by Source* (2017) <https://lao.ca.gov/Education/EdBudget/ Details/50>; Legislative Analyst's Office, *2019-2020 Budget: Higher Education Analysis* p. 4, fig. 1 <https://lao.ca.gov/reports/ 2019/3946/higher-ed-analysis-022119.pdf>.

To determine how much general apportionment funding each district receives annually, the Chancellor's Office (a state agency that oversees community colleges) applies a statute-prescribed formula. The Chancellor's Office first calculates how much funding each district needs to operate (based largely on the number of students enrolled in the district).[11] It then takes that need-based figure and subtracts a district's annual revenue from local property taxes and student fees. (See Ed. Code, § 84751, subd. (a)(1)-(2).) The resulting amount is, roughly speaking, what a district receives in state general apportionment funding. (See *ibid.*) Several districts do not receive general apportionment funding because they derive sufficient revenue from local sources, including property tax revenues, to meet their needs. (AR 3429.) They do, however, generally receive categorical funding. (See *ibid.*)

Proposition 98 also informs how much general apportionment funding community college districts receive each year. Codified at Article XVI, section 8, of the Constitution, it provides a formula for "calculat[ing] [the] minimum level of state funding for public schools and community colleges to be appropriated every budget year." (*City of Alhambra v. County of*

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[11] See Ed. Code, § 84750.4; *Student-Centered Funding Formula* <https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/College-Finance-and-Facilities-Planning/Student-Centered-Funding-Formula> [describing the current apportionment formula]; see also *Financing California's Community Colleges*, *supra*, pp. 34-39 [describing the prior apportionment formula].

Los Angeles (2012) 55 Cal.4th 707, 714, fn. 5.) It leaves it to the Legislature, however, to decide how funding should be divided between the K-12 and community college systems and how much funding each individual community college district should receive.[12]

C. The State Has Promulgated Both Operating Standards and Funding-Entitlement Conditions for Community College Districts

While community college districts make most decisions concerning operation of the colleges (see Ed. Code, § 70902, subd. (a)(1)), the Legislature has cabined districts' authority in several ways. For example, the Education Code requires colleges to offer both "academic and vocational instruction," as well as "remedial instruction" and "adult noncredit education." (*Id.*, § 66010.4.)[13] The Legislature has also delegated oversight authority to a state agency, the Board of Governors of the California Community Colleges ("Board")—an 18-member body composed of the Lieutenant Governor and 17 members appointed by the Governor. (*Id.*, § 71000.) The Board enacts regulations and reviews major

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[12] See *County of Sonoma v. Com. on State Mandates* (2000) 84 Cal.App.4th 1264, 1290; Legislative Analyst's Office, *Historical Review of Proposition 98* (2017) <https://lao.ca.gov/reports/2017/3526/review-prop-98-011817.pdf>; *Financing California's Community Colleges*, *supra*, pp. 19-23.

[13] Some state law restrictions are directed to community college districts; others are directed to the colleges themselves. But the effect is the same: because the districts are responsible for operating the colleges, the districts must ensure that the colleges satisfy any applicable state law requirements.

decisions of community college districts, such as the creation of new colleges. (See *id.*, § 70901 subd. (b).) It also appoints a "chief executive officer," "known as the Chancellor of the California Community Colleges," to carry out and enforce its regulations, as well as to oversee the annual apportionment process described above, *ante*, pp. 22-23. (*Id.*, § 71090.)

Operating Standards. The most extensive body of regulations promulgated by the Board prescribes "minimum standards for the formation and operation" of community colleges. (Ed. Code, § 66700; see also *id.*, § 70901, subd. (b)(1).) This brief refers to these regulations (which today appear in chapters 4-10 of division 6, title 5 of the Code of Regulations) as "operating standards."

The operating standards set out critical, high-level rules for community college districts to follow. For example, the Board's regulations prescribe certain degree requirements, such as the number of total credit hours necessary to award an associate degree, as well as criteria for adding new courses to a college's curriculum. (See Cal. Code Regs., tit. 5, §§ 55000 et seq; *id.*, §§ 55060 et seq.) The Board has also promulgated operating standards addressing grading policies (*id.*, §§ 55020 et seq.), student probation and expulsion (*id.*, §§ 55030 et seq.) and faculty hiring (*id.*, §§ 53410 et seq.), among many other subjects.

Funding-Entitlement Conditions. Separate from the operating standards, the Board has also promulgated "minimum conditions entitling districts to receive state aid." (Ed. Code, § 70901, subd. (b)(6).) This brief refers to those regulations

(which appear in chapter 2 of division 6, title 5 of the Code of Regulations) as "funding-entitlement conditions."

The funding-entitlement conditions overlap substantially with the operating standards. The two bodies of regulations address many of the same subjects—from grading policies and degree requirements, to curriculum development and course approval, to student services. The appendix to this brief provides a table describing each of the 19 separate funding-entitlement conditions. As that table shows, eight of the conditions simply incorporate corresponding operating standards by reference. And virtually all of the conditions repeat requirements separately imposed by either the operating standards, the Education Code, or both.

Despite their overlapping subject matter, the two bodies of regulations serve different functions. As explained above, the operating standards are mandatory, dictating that community college districts meet what are, in effect, academic and operational performance metrics specified by the State. In contrast, compliance with the funding-entitlement conditions is not mandatory because their purpose is merely to identify grounds authorizing the Chancellor to "withhold or reduce all or part" of a district's "state aid." (Cal. Code of Regs., title 5, § 51102, subd. (b); see also Ed. Code, § 70901, subd. (b)(6).)

"State aid" refers to both types of funding described above: general apportionment and categorical funding.[14] By its plain terms, "*state* aid" excludes federal funding and local revenue sources (including property taxes and student fees). It also excludes lottery revenues—dedicated by voters to fund education, including community college district expenses. (See Gov. Code, §§ 8880.4-8880.5.)[15]

If a community college district fails to satisfy the funding-entitlement conditions, that means it is not "entitl[ed]" to receive the funds that qualify as "state aid"—that is, the general apportionment and categorical funding discussed above. (Ed. Code, § 70901, subd. (b)(6).) But that does not mean it will not receive such funding. Noncompliance merely provides the Chancellor with *discretion* to withhold aid; the Chancellor is not required to do so. (See Cal. Code of Regs., title 5, § 51102.) Rather, after giving a noncompliant district notice "in writing"

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[14] See Request for Judicial Notice, Exhibit A, pp. A-2, A-10 [analysis of 2006 amendments to section 51102].

[15] In addition, "state aid" excludes revenues collected under Propositions 30 and 55 (passed by voters in 2012 and 2016 respectively), which dedicated a portion of new sales and income tax revenue to funding "community college districts" (Cal. Const., art. XIII, § 36, subd. (e)(3)(A)), without authorizing the Chancellor to withhold any portion of those funds (see *id.*, subd. (e)(6)). Proposition 30/55 funds constitute roughly 15% of the community college system's annual funding from the State. (Compare *ante*, p. 22, fn. 10, with Dept. of Finance, *Proposition 98 Certifications* <http://www.dof.ca.gov/Programs/Education/> [providing the total amount of annual Proposition 30/55 funding, 11% of which goes to community college districts].)

and an opportunity to cure its deficiency (*id.*, subd. (a)), the Chancellor may either accept the district's responsive efforts "in whole or part" or "require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid" (*id.*, subd. (b)). Should the Chancellor determine that it is necessary to withhold aid, he or she must first obtain "approval of the Board of Governors." (*Id.*, subd. (c).) And any amount withheld must be "related to the extent and gravity of noncompliance." (*Ibid.*)

STATEMENT OF THE CASE

In 2002, the Legislature imposed a one-year deadline for bringing reimbursement claims based on state mandates "that became effective before January 1, 2002." (Stats. 2002, ch. 1124, p. 7223.)[16] Shortly before that one-year deadline expired, three community college districts (Los Rios, Santa Monica, and West Kern Community College Districts, or "claimants") filed separate test claims alleging reimbursable mandates under 27 statutes, 141 regulations, and 2 executive orders enacted or promulgated at various points between 1975 and 2002. (AR 16-17.)

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[16] Prior to 2002, no statute of limitations governed the test claim process. Thus, claimants could file at any time—even decades after an alleged mandate's enactment—so long as the challenged provision was not first enacted before January 1, 1975 and thus grandfathered under Article XIII B's implementing legislation. (Gov. Code, § 17514.) The current limitations period is "12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." (Gov. Code, § 17551, subd. (c).)

A. Commission Decision Granting Relief in Substantial Part

The Commission consolidated most of the districts' claims into a single test claim (AR 16-17), and following nearly a decade of review, issued a draft staff analysis providing the claimants notice of its proposed decision and an opportunity to submit comments (much like a notice of proposed action or notice of proposed rulemaking). (*Id.*, pp. 3531-3691.) Several months later, on May 26, 2011, the Commission finalized a 164-page statement of decision (*id.*, pp. 7-170), accepting the claims in significant part, rejecting them in part, and authorizing reimbursement for the approximately 93 state mandates that it identified (*id.*, pp. 156-170).

A number of the districts' successful mandate claims involved the operating standards, discussed *ante*, p. 25. For example, the Commission concluded that grading-related operating standards required districts to undertake two state mandated activities: "[d]etermin[ing] a uniform grading practice for the district," and ensuring that the grading policy "[c]onform[s]" to the standard prescribed by the Board's regulations. (AR 80.) Similarly, the Commission determined that curriculum-focused operating standards compelled districts to ensure that their colleges offer courses covering "the scientific method," the basics of "written composition," and among other things, certain recurring topics in "social and behavioral sciences." (*Id.*, pp. 136-137.) All told, the Commission ordered reimbursement for the costs of complying with about 70 separate

mandates contained in the operating-standards regulations. (See *id.*, pp. 152-163.)

By contrast, the Commission rejected the claimants' contention that the second body of state regulations discussed above—the funding-entitlement conditions, *ante*, pp. 25-28—imposes reimbursable mandates. (AR 28-36.) The Commission explained that "nothing in the governing statutes [and] regulations" requires districts to satisfy those conditions. (*Id.*, p. 35.) Districts must only comply if they make the "discretionary decision to become entitled to receive state aid"—that is, if they want to ensure that the State does not withhold funding. (*Id.*, p. 97, italics omitted.) "As a result," the Commission concluded, community college districts "do not face *legal* compulsion" to comply with the funding-entitlement conditions. (*Id.*, p. 35, original italics.)

The Commission also rejected the districts' contention that they are "practically" compelled to satisfy the conditions. (AR 35-36.) The Commission stressed that, "even if the Chancellor finds a community college district to be in noncompliance" with the funding-entitlement conditions, the "district may still receive state aid." (*Id.*, p. 35.) The Commission acknowledged that the Chancellor's discretionary authority to withhold aid makes some "loss of funding" theoretically "possible." (*Id.*, p. 36.) But according to the Commission, the claimants made no "concrete showing in the record" that any loss of funding was likely to occur, let alone that any such loss would be "severe." (*Id.*, pp. 35-36.)

The Commission explained that, to the contrary, the record revealed only one example where the Chancellor's Office even considered withholding aid, and in that instance, the district ultimately "did not lose any state aid." (AR 35.) Specifically, in 2001-2002, the San Mateo Community College District hired a new superintendent without conducting an open-hiring process, thereby failing to satisfy the funding-entitlement condition addressing equal-opportunity hiring. (*Ibid.*, citing Cal. Code Regs., tit. 5, § 51010.) Although the Chancellor's Office initially recommended withholding about $500,000 in state aid, it ultimately reached an agreement whereby the district accepted increased monitoring and oversight, but did not actually lose any funding. (*Ibid.*)

Finally, in a separate part of its decision, the Commission rejected reimbursement for any costs incurred by the districts in complying with section 54626 of title 5 of the Code of Regulations. (AR 149-151.) That regulation required districts to engage in the "one-time activity" of adopting and publicly disseminating a policy identifying "categories of student directory information" that may be released. (*Id.*, p. 149.) The Commission concluded that this regulatory mandate, promulgated in 1976, did not impose a "*new* program or *higher* level of service," as required by Article XIII B, section 6 (italics added), because a measure enacted the previous year—former Education Code, section 25430.12—contained the identical mandate. (*Id.*, p. 151.) Furthermore, the Commission declined to order reimbursement

for the costs of complying with section 25430.12 because it "was not pled by the claimants" in their test claim. (*Ibid.*)

B. Trial Court Decision Affirming in Full

Five community college districts—including Santa Monica Community College District, one of the claimants before the Commission—sought writ relief. (Clerk's Transcript (CT) 1-22.) Both the Commission and the Department of Finance opposed the petition.

On July 6, 2015, the superior court denied relief. (CT 234-235.) It agreed with the Commission that nothing legally compels the districts to satisfy the funding-entitlement conditions. (*Id.*, p. 245.) And like the Commission, the court found "'no concrete evidence'" supporting the districts' argument that, as a practical matter, they "have no meaningful choice but to comply." (*Id.*, pp. 246, fn. 7, 248, italics omitted.) Though the court did "not doubt that state aid constitutes a substantial part of the community colleges' budget," it emphasized that the districts "cite[d] no evidence in their briefs about how much community colleges receive from state aid, how much they receive from property taxes, and how much they receive from other funding sources." (*Id.*, p. 246, fn. 7.)

The court also agreed with the Commission that the San Mateo episode—the only example in the record where the Chancellor considered exercising his discretion to withhold aid (*ante*, p. 31)—indicated that it was "unlikely that a district would actually lose any state aid," let alone a significant amount. (CT 248.) Record evidence indicated that, after the Chancellor

recommended withholding aid for the district's failure to conduct an open-hiring process, members of the Board of Governors opposed the recommendation "because of the worry" that withholding aid "would negatively impact students." (*Ibid.*, citing AR 1844, 1847-1848 [minutes from Board meeting].) The court also pointed out that the Chancellor had recommended withholding only about $500,000. (CT 247.) "[A]lthough $500,000 is a large amount of money," the court observed, it appeared to constitute only about "1% of a district's general state aid." (*Id.*, p. 248, fn. 12.)

The court further held, as relevant here, that the Commission properly denied reimbursement for any costs of complying with the student directory-related mandate contained in former Education Code, section 25430.12. The court accepted the Commission's reasoning that where, as here, a statute "is not pled in a test claim," and "is the original source of the [alleged] mandate," "reimbursement is not required." (CT 265, internal quotations omitted.)

C. Court of Appeal's Decision Reversing

On April 3, 2020, the Third District reversed in relevant part, concluding that the districts are "legally compelled" to satisfy the funding-entitlement conditions. (Slip opn., pp. 5-12.) The court's principal rationale was that the conditions have a "connection with" the community college districts' "core function[ ]" of providing "academic, vocational, and remedial instruction." (*Id.*, pp. 7, 9-10, internal quotations omitted.) Because that legal compulsion analysis provided a sufficient ground to reverse, the

court declined to consider the issue of "practical compulsion." (*Id.*, p. 12.)

The court then evaluated each of the funding-entitlement conditions one-by-one, addressing the Commission's alternative arguments that, even if the districts were legally compelled to comply, reimbursement was not required because the Commission had already "approved reimbursement for [the underlying] activities" addressed by the conditions. (Slip opn., p. 12.) As discussed *ante*, p. 29, the Commission approved mandate claims for numerous operating-standards regulations and Education Code provisions—many of which overlap in substantial part with the funding-entitlement conditions. (See *post*, Appendix.) Ultimately, the court accepted the Commission's alternative arguments in significant part, concluding that only six of the funding-entitlement conditions required remand to the Commission for further analysis. (Slip opn., p. 55 [remanding for the Commission to address sections "51006, 51014, 51016, 51018, 51020, 51025"]; see also *id.*, pp. 12-28.)

In addition, the court reversed the Commission's denial of relief with respect to the student directory-related mandate in former Education Code, section 25430.12. (Slip opn., pp. 48-50.) While the court agreed that "the claimants did not plead" section 25430.12 in their test claim (*id.*, p. 49, fn. 7), it faulted the Commission for failing to order reimbursement, suggesting that the Commission was not prejudiced by claimants' failure to plead the provision because the Commission discovered section

25430.12 in its own research, enabling it to "consider[ ]" the provision in its decision (*ibid.*).

Finally, the court ordered the Commission to consider reimbursement for Education Code, sections 76300 through 76395—a series of statutory provisions regulating the types of student fees that community college districts may impose. (Slip opn., pp. 16-17.) Although these provisions were neither pled in the test claim nor mentioned in the districts' appellate briefs, the court concluded that the Commission should address them on remand because the claimants had effectively sought reimbursement under these provisions by pleading a separate regulation that likewise addresses student fees. (See *ibid.*)

On April 17, 2020, the Commission petitioned for rehearing, urging the court to reconsider its remand of Education Code, sections 76300-76395, as well as former Education Code, section 25430.12. The court of appeal denied rehearing. This Court then granted separate petitions for review filed by the Commission and the Department of Finance.

STANDARD OF REVIEW

This Court "independently reviews conclusions" by the Commission "as to the meaning and effect of constitutional and statutory provisions." (*Dept. of Finance v. Com. on State Mandates* (2016) 1 Cal.5th 749, 762.) The "question whether a statute or executive order imposes a mandate is a question of law," warranting de novo review. (*Ibid.*)

SUMMARY OF ARGUMENT

On the first issue presented, the Court should hold that the funding-entitlement conditions do not qualify as reimbursable "mandates" under Article XIII B, section 6. No state statute, regulation, or executive order compels the community college districts to satisfy those conditions. Rather, the conditions merely identify grounds authorizing the Chancellor's Office, in its discretion, to withhold state aid. The districts thus have a choice whether or not to comply—they must choose to do so only if they wish to ensure the Chancellor will not have any grounds to withhold aid.

The districts respond that, even if they are not *legally* compelled to satisfy the funding-entitlement conditions, they must do so as a *practical* matter because failing to do so could result in a substantial loss of funding. This Court, however, has never approved such "practical compulsion" claims for purposes of reimbursement under Article XIII B, section 6. That is for good reason: such claims present enormous administrability challenges, entangling the Commission and courts in fiscal disputes that require difficult, empirics-driven judgments about how much funding local governments can reasonably stand to lose. Indeed, there is good reason to think that adjudication of such claims is not even procedurally feasible. The class action-like process for adjudicating state mandate claims—which results in a legal decision applying statewide to all similarly situated local governments—is ill-suited for individualized analysis of government-specific budgetary situations. And there is no

available procedure for revisiting test claim decisions based upon local governments' changed fiscal circumstances.

But even if practical compulsion might theoretically qualify for reimbursement under Article XIII B, section 6, the districts here cannot show that they are practically compelled to satisfy the funding-entitlement conditions. Noncompliance with the conditions is not likely to result in a loss of state aid, let alone a sizeable amount of aid. Nothing requires the Chancellor's Office to exercise its discretion to withhold aid, and it prefers not to do so, relying instead on other methods to encourage compliance and improve educational outcomes for students—such as increased oversight and giving districts *more* funding, rather than less. Moreover, any amount of aid withheld must be tailored to the severity of a district's noncompliance, and the Board of Governors must approve any aid-withholding decision—something it is demonstrably reluctant to do because of the fear that withholding aid would unfairly harm students. It is thus unsurprising that the record here reveals only a single instance in which the Chancellor has ever even considered withholding aid from a district.

As for the second and third issues presented, the procedural rules at issue—prescribing test claim pleading requirements and barring duplicative consideration of test claims—are mandatory, but not jurisdictional. If a rule is considered "jurisdictional," it is nonwaivable, meaning parties may invoke it for the first time on appeal and courts have a duty to raise the issue sua sponte if no party does so. The Legislature provided no indication in the

relevant provisions of the Government Code that it intended for the rules at issue here to have jurisdictional significance.

But that does not mean there are no consequences for violating these procedural rules. Assuming the Commission properly invoked the rules in a timely manner, and is right about their application here—a question on which the Department defers to the Commission—the court of appeal committed reversible error.

ARGUMENT

I. THE FUNDING-ENTITLEMENT CONDITIONS DO NOT QUALIFY AS REIMBURSABLE STATE MANDATES

A reimbursable mandate may exist under Article XIII B, section 6, where there is "legal compulsion"—that is, where a statute or executive order requires local governments to take action. (*Kern*, *supra*, 30 Cal.4th at pp. 731.) This Court has also assumed "for purposes of analysis only" that reimbursable mandates can arise from "practical compulsion," where the State technically affords local governments a "voluntary" choice whether or not to abide by certain requirements but, "as a practical matter," leaves them "'no true option'" because they would face a "substantial penalty"—such as a "'severe,'" "'draconian'" loss of funding—for noncompliance. (*Id*., pp. 731, 751.) The funding-entitlement conditions do not qualify as either type of mandate.

A. Community College Districts Are Not Legally Compelled to Satisfy the Funding-Entitlement Conditions

1. No statute or executive order requires the districts to satisfy the funding-entitlement conditions

Legal compulsion exists where, by statute or executive order, the State "compel[s]" a local agency or district to take certain action. (*Kern*, 30 Cal.4th at p. 744; see also *id*., pp. 742-745.) Typically, this means that a statute or executive order uses mandatory language—such as "shall" or "must"—to impose requirements on local governments. This Court has, for example, identified mandates under Article XIII B, section 6, where the Welfare and Institutions Code provided that counties "shall" take certain steps in connection with civil commitment proceedings (§ 6601, subd. (i); see *County of San Diego*, *supra*, 6 Cal.5th at p. 203), and where the Education Code directed that school districts "shall" immediately suspend students who bring firearms to school (§ 48915, subd. (c); see *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pp. 879-882).

By contrast, where state law gives local governments a voluntary "choice" to "decid[e]" whether or not to satisfy certain requirements or conditions, no legal compulsion exists. (*Kern*, 30 Cal.4th at pp. 744, 746, fn. 13, italics omitted.) In *Kern*, for example, the Court considered nine separate programs, whereby "participating school districts [were] granted state or federal funds," and in exchange, agreed to abide by certain conditions—in particular, requirements to establish certain committees, make

committee meetings "open to the public," "provide notice" of meetings, and "post meeting agendas." (30 Cal.4th at p. 732.) While the language of these conditions appeared mandatory when considered on its own—for example, providing that participating districts "shall" provide notice and post agendas (*id.*, p. 732, fn. 2, quoting Ed. Code, § 35147)—the Court held that the "proper focus" was on the "underlying programs," not the "program conditions" (*id.*, p. 743). And critically, the "underlying programs" were voluntary—providing that "school districts '*may* apply'" to receive funds. (E.g., *id.*, p. 744, italics added, quoting Ed. Code, § 52063.)

The funding-entitlement conditions at issue here are voluntary in a similar sense. Like the notice and agenda-posting conditions in *Kern*, the regulations spelling out the funding-entitlement conditions might appear mandatory when considered on their own. Section 51006 of title 5, for example, provides that "a community college district *shall* adopt" a policy making courses open to any enrolled students. (Italics added.) But these conditions cannot be read separately from the statutes and regulations establishing when compliance is necessary: Education Code, section 70901 provides that satisfying the conditions "*entitl[es]* districts to receive state aid." (Italics added; see also Cal. Code of Regs., title 5, § 51000 [same].) And section 51102 of title 5 clarifies that the conditions serve the limited purpose of identifying grounds for exercise of the Chancellor's discretionary power to withhold state aid. (*Ante*, pp. 26-28.) Thus, just as the districts in *Kern* had to satisfy funding

conditions only if they voluntarily decided to participate in the underlying funding programs, the districts here must satisfy the funding-entitlement conditions only if they wish to become entitled to state aid—that is, if they wish to ensure that the Chancellor will lack grounds to withhold funding.

To be sure, the possible loss of state aid may exert some pressure on the districts to satisfy the funding-entitlement conditions. But *Kern* likewise involved the possible "withdrawal of grant money" for noncompliance with funding conditions. (*Kern*, 30 Cal.4th at p. 754.) That possibility alone did not create legal compulsion because no provision of law required the districts to participate in the underlying funding programs. (See *id*., p. 745.)

To date, the districts have principally argued that the funding-entitlement conditions give rise to reimbursable mandates because noncompliance risks such a "drastic loss of state funding" that they have "no true choice" but to comply.[17] That, however, is a "practical compulsion" argument, not a claim of "legal compulsion." As the Court explained in *Kern*, if "practical compulsion" can give rise to a reimbursable mandate (which the Court assumed without deciding), such compulsion would exist where a district has "'no true option or choice.'" (30 Cal.4th at pp. 731, 751.) The districts' claim, therefore, must rise or fall under the "practical compulsion" standard. (*Post*, pp. 46-60.) No legal compulsion exists.

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[17] See, e.g., Court of Appeal Opening Brief (Sept. 12, 2016), pp. 23, 34; CT 67, 71-73.

2. The court of appeal's novel legal compulsion standard is flawed

Rather than addressing the districts' practical compulsion argument, the court of appeal devised a novel "legal compulsion" standard. (Slip opn., p. 12.) Specifically, it held that the districts are "legally compelled" to satisfy the funding-entitlement conditions because those conditions "direct the community college districts to take specific steps in fulfilling" their "core mission functions." (*Id*., p. 9.)

The court failed to explain, however, why compliance with the conditions would become legally mandatory merely because they have a "connection with" districts' "core" functions. (Slip opn., p. 7.) As discussed above, and as the Commission and superior court rightly concluded, no statute or executive order compels the districts to satisfy the conditions "entitling" them to state aid. (AR 35; CT 245.) And as this Court held in *Kern*, where no provision of state law compels compliance, no legal compulsion exists. (See 30 Cal.4th at pp. 744-746.)

The court of appeal tried to distinguish *Kern*, asserting that *Kern* involved conditions attached to "discrete" programs, rather than conditions related to the districts' "core mission functions." (Slip opn., p. 9.) But *Kern*'s analysis did not turn on the degree to which a funding program relates to "core functions" of a local district. That terminology appears nowhere in *Kern*. Instead, what mattered in *Kern* was that the districts had "not been legally compelled" to satisfy the relevant funding conditions. (30

Cal.4th at p. 731.) As explained above (*ante*, pp. 40-41), the same is true here.[18]

The court of appeal nonetheless suggested that compliance with the conditions is mandatory, asserting—incorrectly (*post*, pp. 44-45)—that the districts are legally obligated to accept state aid. (Slip opn., p. 10.) Even if true, that would be legally immaterial: a district's decision to accept state aid triggers no legal obligation to satisfy the funding-entitlement conditions. In this respect, the funding-entitlement conditions differ from the conditions at issue in *Kern*. Like many state and federal funding programs, the programs in *Kern* were "'in the nature of a contract: in return for . . . funds, the [recipients] agree[d] to comply with [the funder's] imposed conditions.'" (*Barnes v. Gorman* (2002) 536 U.S. 181, 186, alteration omitted.) In other words, the funding recipients had no obligation to accept the funds in the first place, but once they did so, they were required to satisfy the attached conditions. (See *Kern*, *supra*, 30 Cal.4th at pp. 742-744.) The Education Code made that clear for the various programs at issue—providing, for example, that "[e]ach school district receiving funds . . . shall establish" an advisory committee. (Former Ed. Code, § 52065 (2003); see 30 Cal.4th at p. 732, fn. 2.)

No similar requirement exists here. State aid is provided through an apportionment process governed by statutes and

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[18] As detailed in the Department's petition for review (pp. 23-28), the court of appeal's "core functions" standard—finding legal compulsion whenever a funding condition relates to a local entity's "core" functions—would also threaten to sow confusion in the law.

regulations that operate separately from those establishing the funding-entitlement conditions. (*Ante*, pp. 22-23.) During that apportionment process, the Chancellor applies a statute-prescribed formula to determine how much aid each district should receive. (*Ibid.*) At no point during the process are districts required to agree to satisfy the funding-entitlement conditions in exchange for state aid. (See Ed. Code, §§ 84750.4 et seq.; Cal. Code Regs., tit. 5, §§ 58770 et seq.)[19]

In any event, the court of appeal's assertion that districts are legally required to accept state aid is unsupported. It cited no statute or other legal provision requiring the districts to accept state aid. Instead, it pointed to a host of constitutional and statutory provisions showing, at most, that *the State* has a legal obligation to offer certain funding to districts. (Slip opn., pp. 10-11.) For example, the court invoked Proposition 98, which provides a constitutional formula for "calculat[ing] [the] minimum level of state funding for public schools and community colleges." (*City of Alhambra*, *supra*, 55 Cal.4th at p. 714, fn. 5.) By its plain terms, however, that provision requires only that funds "be applied *by the state* for the support of school districts

[19] Accordingly, the State could *not* bring suit to enjoin compliance with the funding-entitlement conditions, but likely could seek injunctive relief to compel compliance with funding conditions of the type considered in *Kern*. (See *McDonald v. Stockton Metropolitan Transit Dist.* (1973) 36 Cal.App.3d 436, 442-443 [recognizing that, as with private-party contracts, "specific performance" is an available remedy in appropriate circumstances for enforcing government-to-government funding agreements].)

and community college districts." (Cal. Const., art. XVI, § 8, italics added.) It requires nothing of the *districts*.

Finally, the court of appeal briefly discussed *Kern*'s determination that the cost of complying with the notice and agenda-posting requirements at issue would be "'modest.'" (Slip opn., pp. 9-10, quoting *Kern*, *supra*, 30 Cal.4th at p. 747.) This case is "different," the court observed, because "the record does not establish that the costs" of compliance with the funding-entitlement conditions "would be modest." (*Id*., pp. 9-10.)

But *Kern*'s discussion of costs was not part of its compulsion analysis—legal or practical. Rather, the Court addressed costs in the course of deciding an entirely separate legal question: whether, even if a mandate existed, reimbursement was not required because the State had already provided sufficient funds to cover the costs in question. (See 30 Cal.4th at p. 746.) In particular, one of the nine programs at issue (the "Chacon-Moscone" program) posed a more difficult legal compulsion question than the other eight. (*Ibid*.) So, the Court straightforwardly "assume[d] for purposes of analysis" that the districts "have been legally compelled to participate." (*Ibid*.) It then held that the districts were not, in any event, entitled to reimbursement because the State had already appropriated sufficient funds "to cover" the "modest" cost of compliance. (*Id*., p. 747.) Here, by contrast, there is no need for such an inquiry because the districts plainly face no legal compulsion.

B. The Districts Are Not Practically Compelled to Comply with the Funding-Entitlement Conditions

The districts argue that, even if they are not legally compelled to satisfy the funding-entitlement conditions, they are practically compelled to do so because they are so reliant on state aid. (See, e.g., Answer to Commission Petition for Review (June 30, 2020), p. 16.) This claim fails, however, because the districts cannot satisfy the demanding standard for practical compulsion claims that this Court set out in *Kern*. Indeed, while the districts assert that noncompliance with the funding-entitlement conditions risks a "drastic" loss of aid (*id*., p. 18), no loss of funds is likely, much less a "drastic" loss.

1. Assuming without deciding that local governments may bring practical compulsion claims, this Court's *Kern* decision properly sets a high bar for proving such claims

Kern assumed "for purposes of analysis only" that "practical compulsion" could support a reimbursement claim under Article XIII B, section 6, if a local agency or district could show that it has "'no true option or choice'" whether to comply with state conditions or requirements. (30 Cal.4th at pp. 751-752.) On that assumption, *Kern* held that practical compulsion would require at least two showings, and possibly others: A local government must demonstrate, first, that the consequences of noncompliance with state conditions would be so "'severe'" or "'draconian'" that it could not reasonably decide not to comply (*id*., p. 754), and second, that such consequences are "'certain'" to result (*ibid*.), or at least

"reasonably certain" or likely to result (CT 247, fn. 9). The Court also suggested (though it did not hold) that the claimant must face a "penalty" for noncompliance that is "independent of the program funds at issue"—meaning that a threatened loss of funding would, on its own, be insufficient to show practical compulsion. (30 Cal.4th at p. 731.)

The Court derived this approach from *City of Sacramento v. California* (1990) 50 Cal.3d 51. There, the Court addressed whether the *federal government* had effectively mandated that California expand its unemployment-insurance scheme, requiring local governments to sponsor unemployment coverage for their employees. (*Id*., pp. 58-59.) That question mattered because, under Article XIII B, section 6, and its implementing legislation, the State need not reimburse local governments for "costs mandated by the federal government," and such costs do not count toward local governments' annual appropriations limits. (See *id*., pp. 70-71; Cal. Const., art. XIII B, § 9, subd. (b); Gov. Code, § 17556, subd. (c).)

While federal law did not legally compel California to expand its unemployment regime, the Court nonetheless concluded that compliance was mandated because "severe," "draconian" consequences would "certain[ly]" result if the State failed to do so. (*City of Sacramento*, *supra*, 50 Cal.3d at p. 74.) In particular, California businesses would have seen a massive, automatic increase in their federal unemployment taxes. (*Ibid*.) Federal law "assesses an annual tax upon the gross wages paid by" employers, but permits "employers in a state with a federally

‘certified’ unemployment insurance program [to] credit their contributions to the state system against up to 90 percent of the federal tax.” (*Id.*, p. 58.) The loss of this tax credit would have “constitut[ed] an intolerable expense against the state’s economy,” resulting in “double taxation” that would “place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance.” (*Id.*, p. 74.) For that reason, the Court concluded that the federal unemployment requirements were coercive “in every practical sense.” (*Ibid.*)

In *Kern*, by contrast, the Court held that the claimant school districts faced no such practical compulsion. Although noncompliance with the notice and agenda-posting requirements risked a “substantial” funding loss—about $400 million annually for all districts statewide under just one of the nine programs at issue (30 Cal.4th at p. 732)—the Court determined that the districts were “free to . . . decline” the funding and “adjust to the withdrawal of grant money” (*id.*, p. 753-754). Moreover, the districts faced no “substantial penalty” “independent of the program funds” like the “double taxation” threated in *City of Sacramento*. (*Id.*, p. 731.) For similar reasons, explained *post*, pp. 55-60, the districts here have likewise failed to demonstrate that they face practical compulsion.

2. Practical compulsion claims would pose substantial administrative difficulties for the Commission and courts

Since *Kern*, the Court has not addressed the question whether practical compulsion may give rise to reimbursable mandates under Article XIII B, section 6. The Department of Finance argued in *Kern* that the answer is "no" (30 Cal.4th at p. 736), and it continues to doubt that a practical compulsion standard is administratively workable or consistent with the text of Article XIII B, section 6 and its implementing legislation. For these reasons, the Department urges the Court to either reserve the question as it did in *Kern* or instead hold that claimants may not bring state mandate claims based upon theories of practical compulsion.

As the Court has recognized, the most natural reading of the constitutional text—the term "mandate[ ]" (Cal. Const., art. XIII B, § 6)—is that it applies to legal compulsion alone. The Court acknowledged this in *City of Sacramento* when interpreting the same term in Article XIII B's federal-mandates provision. (See 50 Cal.3d at p. 71.) The Court nonetheless identified a "latent ambiguity" in "article XIII B's reference to 'federal mandates'" because, if it "were limited to strict legal compulsion by the federal government, it would have been largely superfluous": the "power of the federal government to impose its direct regulatory will on state and local agencies" is strictly limited. (*Id.*, pp. 71-

73.)[20] By contrast, there is no similar superfluity concern with respect to the state mandates provision because the "State of California has suffered no such restriction [on its authority to impose mandates], vis-à-vis local government entities." (*Kern*, 30 Cal.4th at p. 751.) "Unlike the federal-state relationship, sovereignty is not an issue between state and local governments." (*Id*., p. 751, fn. 20.)

Moreover, Article XIII B's implementing legislation expressly defines "federal mandates" to include practical compulsion, while omitting similar language from the "state mandates" definition.[21] That too factored into *City of Sacramento*'s analysis. (50 Cal.3d at p. 75 [noting the Legislature's "agreement with our construction"].) While the Legislature cannot control the meaning of a constitutional provision, this Court has repeatedly upheld reasonable decisions made by the Legislature in implementing Article XIII B, section 6. (See, e.g., *Cal. School Boards Assn.*, *supra*, 8 Cal.5th at p. 726 [recognizing Legislature's "broad power to decide how best to meet [Article

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[20] The U.S. Constitution "withhold[s] from Congress the power to issue orders directly to the States." (*Murphy v. Nat. Collegiate Athletic Assn.* (2018) 138 S.Ct. 1461, 1475.)

[21] Compare Gov. Code, § 17513 ["'Costs mandated by the federal government' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation" would, under federal law, "*result in substantial monetary penalties or loss of funds* to public or private persons in the state," italics added], with *id*., § 17514 [simply defining "[c]osts mandated by the state" to include all costs mandated within "the meaning of Section 6 of Article XIII B"].)

XIII B's] reimbursement requirement"]; *County of San Diego*, *supra*, 6 Cal.5th at p. 196 [upholding Legislature's decision to exempt mandates imposed by voter ballot measures]; *County of Fresno v. California* (1991) 53 Cal.3d 482, 484-486 [upholding Legislature's decision to exempt mandated costs where local governments have authority to levy "service charges, fees, or assessments" to pay such costs].)

The Legislature's failure to expressly authorize practical compulsion claims in the state mandates context is all the more notable because of the serious administrative problems that practical compulsion claims would present. Arguments of the type considered in *Kern*—alleging that the threatened loss of funding gives rise to practical compulsion—put the Commission and courts in the difficult position of deciphering how much funding a certain local government (or group of governments) can reasonably stand to lose.[22] Such inquiries demand careful examination of government-specific fiscal situations, and raise a number of vexing legal questions, including:

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[22] The U.S. Supreme Court has warned of similar administrative difficulties in evaluating claims that Congress has exceeded federalism limits by offering "financial inducement" "so coercive as to pass the point at which 'pressure turns into compulsion.'" (*South Dakota v. Dole* (1987) 483 U.S. 203, 211.) "'[T]o hold that motive or temptation is equivalent to coercion'" risks "'plung[ing] the law into endless difficulties.'" (*Ibid.*; see also *Nat. Federation of Independent Bus. v. Sebelius* (2012) 567 U.S. 519, 643-645, and fn. 27 (opn. of Ginsburg, J., conc. in part, conc. in judg. in part, and dis. in part).)

- Would it matter that a local government's revenue shortage was principally caused by its own financial decisions over the years, rather than any action by the State?

- What if a local government's fiscal outlook changes over time—does it lose its right to reimbursement as soon as compliance is no longer practically compelled? There appears to be no procedural avenue for the Commission to revisit a test claim decision on that basis. (See Gov. Code, § 17570, subd. (b) [allowing the Commission to reconsider a prior test claim decision only where there has been a "subsequent change in law"].)

- Or what of the converse scenario, where no practical compulsion initially exists but develops over time? The one-year limitations period for test claims (Gov. Code, § 17551, subd. (c)) might bar a claimant from bringing an updated practical compulsion claim.

The design of the test claim process is also poorly suited for adjudication of practical compulsion claims in other ways. As discussed *ante*, p. 18, the process resembles a class action, resulting in a decision that applies statewide to all similarly situated entities (that is, all community college districts, all K-12 school districts, all county governments, etc.). That would make it challenging, if not impossible, to assess individualized practical compulsion claims—a difficulty exacerbated by the fact that the Commission does not invariably receive the kind of comprehensive evidence necessary to evaluate claims on a statewide basis. Though any interested parties are *allowed* to participate in a test claim proceeding (*ante*, p. 18), they do not always do so. Here, for example, only a handful of districts participated, and as the superior court noted (CT 246, fn. 7), they

failed to provide much in the way of evidence about their own budgets, let alone about the financial circumstances faced by similarly situated districts across the State.

For all of these reasons, practical compulsion claims pose too many administrative difficulties to allow them to proceed within the test claim regime. Thus, if the Court wishes to reach the question it reserved in *Kern*, it should hold that reimbursement is available under Article XIII B, section 6, only where legal compulsion exists.

However, if the Court instead wishes to recognize that practical compulsion claims are permissible, or if it reserves the question as it did in *Kern*, it should make clear that claimants carry a heavy burden and must satisfy strict limits in light of the administrability challenges discussed above. Specifically, it should first reiterate, as it held in *Kern*, that any practical compulsion standard would be a high bar, requiring the claimant to show that it is reasonably "certain" to face "severe," "draconian" consequences for failing to satisfy state conditions or requirements. (*Ante*, pp. 46-47.) That demanding standard would help prevent courts and the Commission from having to make difficult, arbitrary judgment calls when answering questions like "how much funding is too much for particular districts or agencies to lose?": if the threatened consequences are not so severe as to make it unambiguous that a local government cannot reasonably bear the consequences, then no practical compulsion exists.

This standard would have two components, one legal and one factual. The legal portion of the analysis would focus on the state statutes or regulations that, in the claimant's view, trigger severe, draconian consequences. Courts and the Commission would assess, as this Court did in *City of Sacramento*, 50 Cal.3d at p. 74, whether the relevant legal provisions make such consequences "certain" to flow automatically from a local government's failure to satisfy certain conditions or, instead, simply give the State discretion to cut off funds or impose other penalties.[23] The factual component of the inquiry would evaluate whether the threatened consequences would, in fact, be "severe" and "draconian." In addressing that question, courts and the Commission would have to consider both the magnitude of the threatened penalty or funding loss and the specific consequences that would flow from it. And claimants would need to submit sufficient evidence to demonstrate that all similarly situated entities across the State—not just the claimants themselves—face practical compulsion. Only that way would the Commission be able to give its test claim decision the requisite statewide scope. (See *ante*, p. 18.)

To be clear, however, even this demanding standard would not address all of the administrative difficulties discussed above. Thus, the better course would be to reject altogether the

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[23] Another relevant legal consideration would be whether the threatened consequence is merely a loss of funding or, instead, a different type of "penalty" "independent of" program funding—for example, "double taxation" of the sort addressed in *City of Sacramento*. (*Kern*, *supra*, 30 Cal.4th at p. 731.)

possibility of practical compulsion claims under Article XIII B, section 6.

3. The districts have failed to show practical compulsion

Even if the Court were to conclude that practical compulsion can support a state mandate claim, the districts have failed to make the necessary showing here. They have not demonstrated that they—as well as other districts around the State—are reasonably certain to face "'severe,'" "'draconian'" consequences for failing to satisfy the funding-entitlement conditions. (*Kern*, *supra*, 30 Cal.4th at p. 754.) While the Chancellor's Office has authority to "withhold or reduce all or part of [a] district's state aid" for failing to satisfy the conditions (Cal. Code of Regs., title 5, § 51102, subd. (b)), nothing obligates the Chancellor to do so. And several aspects of the regulatory regime for community college governance and financing make it highly unlikely that the Chancellor would ever withhold a significant amount of aid.

To begin with, satisfying the funding-entitlement conditions "entitl[es]" districts to receive state aid (Ed. Code, § 70901, subd. (b)(6)), but as the Commission rightly concluded, that does not mean "a community college district which has not satisfied the . . . conditions . . . will not receive state aid" (AR 34). In other words, the conditions establish *entitlement* criteria, not *eligibility* criteria. These "words are not synonymous." (*De Vries v. Regents of Univ. of California* (2016) 6 Cal.App.5th 574, 593.) Entitlement means a person or entity has a "legal right to" a certain benefit—meaning that the government *must* provide the

benefit to a person or entity "entitled to" it. (*Ibid.*; see also, e.g., *Cabell Huntington Hospital, Inc. v. Shalala* (4th Cir. 1996) 101 F.3d 984, 988.) But nothing about the word "entitled" signals that the government has a correlative obligation to *deny* a benefit to a noncompliant person or entity. Rather, the government retains discretion to confer the benefit on a person or entity that does not satisfy the entitlement criteria.

The regulation authorizing the Chancellor to withhold aid confirms as much. Rather than withholding "all" of a noncompliant district's state aid, the Chancellor may instead choose to "accept in whole or part the district's response" after notifying the district of its noncompliance, "require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid," or withhold only "part of " the district's aid. (*Id.*, § 51102, subd. (b).) As the Commission explained, "[e]ach of these actions that the Chancellor is authorized to take allow for the possible provision of state aid" to a noncompliant district. (AR 34.)

This discretion represents a significant difference with *City of Sacramento*. In that case, which addressed an alleged federal mandate (*ante*, pp. 47-48), the severe consequences of noncompliance kicked in automatically and were thus "certain" to result. Specifically, under the governing federal statutes, the federal government's decertification of a State's unemployment regime automatically triggered the "double taxation" at issue. (50 Cal.3d at pp. 58, 74; see former 26 U.S.C. § 3302 (1990).) And

the federal government lacked discretion not to decertify a noncompliant State. (See *id*. § 3304, subd. (c) (1990).)

Another significant difference with *City of Sacramento* is that there is no threat here of any "substantial penalty" "independent of the program funds at issue." (*Kern*, *supra*, 30 Cal.4th at p. 731.) Nor are the consequences for failing to satisfy the funding-entitlement conditions, if any, likely to be "severe" or "draconian." To the contrary, several aspects of community college governance, including the Chancellor's demonstrated policy priorities, make it virtually certain that any amount of withheld aid would be insubstantial.

The Chancellor's Office has made clear that it sees its mission as "assist[ing] and support[ing] colleges in putting students first"—thereby "helping every student" achieve success. (*Vision for Success: Strengthening the California Community Colleges to Meet California's Needs* (2019) pp. 23, 27.)[24] One of the ways that the Chancellor's Office works toward this end is by advocating for districts to receive "*additional* resources." (*Id*., p. 32, italics added.) Withholding state funding, by contrast, risks hurting the very students that the Chancellor's Office aims to support and, for that reason, is a last resort when it comes to ensuring that districts provide students with the quality education they deserve.[25] Indeed, the fact that the record here

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[24] Available at <https://vision.foundationccc.org/>.

[25] A 2014 report noted, for example, that the Chancellor's Office prefers to focus its resources on assisting "institutions facing significant fiscal issues," rather than enforcing the

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reveals only a single instance in which the Chancellor has ever sought to withhold aid from a district provides a striking illustration of the Chancellor's cautious approach to enforcement of the funding-entitlement conditions.

The Board of Governors, which must "approv[e]" any decision to withhold aid (Cal. Code of Regs., title 5, § 51102, subd. (c)), has a similar philosophy. In the single record example where the Chancellor proposed withholding aid—about $500,000 from San Mateo Community College District in 2002—members of the Board objected because of the fear that withholding aid "would negatively impact students." (CT 248, citing AR 1844, 1847-1848.) That led to an agreement whereby the district "agreed to increased monitoring" by the Chancellor without losing any funding (AR 35)—providing further indication, as the superior court concluded, that it is "unlikely that a district would actually lose any state aid" for failing to satisfy the funding-entitlement conditions. (CT 248.)

But even if the Chancellor sought to withhold aid, and the Board approved the proposal, the amount would almost certainly

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funding-entitlement conditions. (State Auditor, *California Community College Accreditation*, Report No. 2013-123 (2014) pp. 4, 54 <https://www.auditor.ca.gov/ pdfs/reports/2013-123.pdf>.) The Chancellor may do so through increased monitoring and oversight of a struggling district (see Cal. Code of Regs., title 5, § 58310), intervention in the day-to-day management of a district to help it restore fiscal stability and maintain its academic standards (see *id.*, § 58312), and, if necessary, appropriation of "emergency apportionment" for a district in need of additional state aid (*id.*, § 58316).

be small. The Chancellor has an obligation to ensure that any amount of withheld aid is proportionate "to the extent and gravity" of a district's noncompliance with the funding-entitlement conditions. (Cal. Code of Regs., title 5, § 51102, subd. (c).) As a practical matter, no district is likely to be in substantial noncompliance. As discussed *ante*, pp. 26, 34, there is significant overlap between the funding-entitlement conditions and the separate operating standards. (See *post*, Appendix.) Thus, so long as a district abides by the operating standards—which it has no good reason to avoid, given that the standards are mandatory and reimbursable under Article XIII B, section 6 (*ante*, pp. 29-30)—the district will necessarily be in substantial compliance with the funding-entitlement conditions.

The same goes for a district maintaining its accreditation status. The funding-entitlement conditions overlap in significant part with the criteria for community college accreditation (a process carried out by a regional accreditation organization pursuant to criteria prescribed in significant part by federal law).[26] Thus, so long as a district maintains its accreditation—which it faces federal law-based pressure to do, given that eligibility for certain federal funds is tied to maintaining accreditation (see State Auditor, *California Community College Accreditation*, *supra*, at pp. 9, 56-57)—the extent of any

[26] See *An Aspiration for Excellence: Review of the System Office for the California Community Colleges* (2004), Appendix p. D-49 <https://tinyurl.com/y3hg7yj9>; see also State Auditor, *California Community College Accreditation*, *supra*, at pp. 9-14.)

noncompliance with the funding-entitlement conditions will be limited.

Accordingly, the Chancellor is unlikely to have either the grounds for withholding, or the desire to withhold, a significant amount of state aid. For that reason, and because nothing else legally or practically requires the districts to satisfy the funding-entitlement conditions, no compulsion exists—legal or practical.

II. TEST CLAIM PLEADING REQUIREMENTS AND THE RULE BARRING DUPLICATIVE TEST CLAIMS ARE MANDATORY, BUT NOT JURISDICTIONAL

The Court also granted review to consider whether "a court lacks jurisdiction" "to make subvention findings on statutes that were not specifically identified in an initial test claim" or "to remand a test claim based on a statute that was the subject of a prior final decision by the Commission." While test claim pleading requirements and the rule barring duplicative test claims serve important functions within the test claim regime, those restrictions are not jurisdictional. They are, however, mandatory procedural rules, meaning that it constitutes reversible error for a court to disregard or misapply them if a party properly invokes them on a timely basis. As to whether the court of appeal committed such reversible error here, the Department defers to the Commission.

A. For Good Reason, the Government Code Requires Claimants to Plead Test Claims with Specificity and Bars Duplicative Test Claims

The legislation implementing Article XIII B, section 6, requires a claimant to plead the "specific sections" of statutes or executive orders alleged to contain a reimbursable mandate on a "form prescribed by the commission." (Gov. Code, § 17553, subd. (b); see also former Cal. Code Regs., tit. 2, § 1183, subd. (d)(1) (2003).) That form clarifies that a claimant must identify specific "code sections," as well as "statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]."[27] In addition, the Government Code bars the Commission from entertaining duplicative test claims: by definition, a test claim is limited to "the *first claim* filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov. Code, § 17521, italics added; see *ante*, pp. 17-18.)

These rules serve important purposes. By requiring claimants to plead the specific enactment alleged to contain a mandate, Article XIII B's implementing legislation facilitates the research and review necessary for the Commission to adjudicate a test claim. If, for example, a claimant could generally plead a multi-subdivision code section without identifying which part of the statute the test claim concerned, the Commission might be

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[27] Available at <https://www.csm.ca.gov/forms/ TCForm.pdf>.

unable to decipher the claim. And if a claimant were not required to cite specific session laws—that is, "statutes, chapters, and bill numbers"—it would make it more burdensome for the Commission to apply the test claim statute of limitations and the grandfathering provision contained in the legislation implementing Article XIII B, section 6. (*Ante*, p. 28, fn. 16.) Those rules require the Commission to determine when a measure was enacted and whether any prior statute or executive order imposed the same mandate. Test claim pleadings should be sufficiently specific to ensure that the research burden does not fall entirely on the Commission.

At the same time, the Commission and Legislature have properly sought to prevent test claim pleading requirements from yielding overly harsh results. As interpreted by the Commission, those rules require only "notice pleading," meaning that a claimant's filings are acceptable if, "'reasonably interpreted'" and "'read as a whole,'" they allow the Commission to identify the "statutes and requirements for which reimbursement is sought."[28] The Legislature has also adopted liberal rules that permit a local agency or district to amend its test claim as late as the date "the test claim is set for a hearing." (Gov. Code, § 17557,

[28] *County Formation Cost Recovery Test Claim* (2013) No. 06-TC-02, p. 23 <https://www.csm.ca.gov/matters/06-TC-02/Item4-StaffAnalysisandProposedSOD.pdf>.

subd. (e).) Here, that date was January 31, 2011 (AR 5181), over seven years after the test claim was filed.[29]

The rule barring duplicative test claims likewise plays an important role within the test claim regime. As this Court has explained, the rule prevents "inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and . . . resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw*, *supra*, 54 Cal.3d 326 at p. 331.) And by encouraging all affected local governments to bring related mandate claims concerning a statute or executive order in a single action, the rule helps to ensure that the Commission will receive the comprehensive briefing and evidence that it needs to reach a sound decision.

B. By Misapplying These Procedural Rules, a Court Commits Reversible Error, But Not Jurisdictional Error

In recent years, both this Court and the U.S. Supreme Court have "undertaken 'to ward off profligate use'" of the term "jurisdictional." (*Fort Bend County, Texas v. Davis* (2019) 139 S.Ct. 1843, 1848.) It is a "'hazy'" term (*Kabran v. Sharp Memorial Hosp.* (2017) 2 Cal.5th 330, 339)—a "'word of many, too

[29] Claimants here had even longer to amend their test claim because, at the time it was filed, the Government Code allowed amendments "at any time prior to a commission hearing on the claim." (Former Gov. Code, § 17557, subd. (c) (2003).) The Commission held its hearing on May 26, 2011. (AR 8.)

many, meanings'" (*Sebelius v. Auburn Regional Medical Center* (2013) 568 U.S. 145, 153).

As a general matter, however, courts refer to jurisdiction in a "'fundamental sense,'" meaning "the power of the court over the subject matter of the case." (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 807.) The "parties to a case cannot confer fundamental jurisdiction upon a court by waiver, estoppel, consent, or forfeiture," and "'[d]efects in fundamental jurisdiction . . . may be raised at any point in a proceeding, including for the first time on appeal.'" (*Ibid.*) Indeed, courts have an obligation to raise defects in fundamental jurisdiction "sua sponte." (*Kabran*, *supra*, 2 Cal.5th at p. 346; cf. *Steel Co. v. Citizens for a Better Environment* (1998) 523 U.S. 83, 93 [same under federal law].)

Even when a court has fundamental jurisdiction, however, "'the Constitution, a statute, or relevant case law may constrain the court to act only in a particular manner.'" (*Kabran*, *supra*, 2 Cal.5th at p. 339.) Such rules are "mandatory" in the sense that they are "'binding, and parties must comply with them to avoid a default or other penalty.'" (*Id.*, p. 341.) But "'failure to comply does not render the proceeding void' in a fundamental sense." (*Ibid.*)[30]

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[30] Mandatory, non-jurisdictional rules include certain affidavit-filing deadlines (*Kabran*, *supra*, 2 Cal.5th at p. 338), "affirmative defense[s]" (*Quigley*, *supra*, 7 Cal.5th at p. 815), claim-presentation requirements for suing the government (*California v. Superior Court* (2004) 32 Cal.4th 1234, 1239, fn. 7), and—especially pertinent here—"pleading instructions" for
(continued…)

In deciding whether a procedural rule is jurisdictional, this Court presumes "that statutes do not limit the courts' fundamental jurisdiction absent a clear indication of legislative intent to do so." (*Quigley*, *supra*, 7 Cal.5th at p. 808.) Nothing in the relevant statutes here provide any such "clear indication." The provisions of the Government Code discussed *ante*, p. 61, impose test claim pleading requirements and establish that the Commission may not entertain duplicative test claims. But they do not "reference . . . the jurisdiction of the courts" or "otherwise speak to the courts' power to decide a particular category of cases." (*Quigley*, *supra*, 7 Cal.5th at p. 808; see also, e.g., *County of San Diego*, *supra*, 15 Cal.4th at p. 87.)[31]

The relevant statutory provisions do, however, speak in mandatory terms, providing no license for parties or courts to disregard them. Government Code, section 17553 establishes that "*[a]ll* test claims . . . *shall* contain . . . the specific sections" of statutes and executive orders "alleged to contain a mandate."

(…continued)
bringing claims before an adjudicative agency (*Union Pacific Railroad Co. v. Bd. of Locomotive Engineers & Trainmen Gen. Committee of Adjustment, Central Region* (2009) 558 U.S. 67, 85, and fn. 9).

[31] Because these procedural rules "govern[ ] a decisionmaking entity's exercise of authority," they might be said to be "jurisdictional" in "the sense that the [Commission] lacks the power to take the action at issue if it does not comply with" the rules. (*Kabran*, *supra*, 2 Cal.5th at p. 341; but cf. *City of Arlington v. FCC* (2013) 569 U.S. 290, 297-300.) Even if so, that does not mean they affect a court's "*fundamental* jurisdiction." (*Kabran*, *supra*, 2 Cal.5th at p. 341.)

(Italics added.) And sections 17521 and 17552 make clear that the test claim process—limited to "the first claim filed with the [C]ommission"—"*shall* provide the *sole and exclusive* procedure by which a local agency or school district may claim reimbursement." (Italics added.) Accordingly, if the Commission properly invoked these rules on a timely basis, and its arguments have merit, this Court must "sustain the . . . objection[s]." (*Kabran*, *supra*, 2 Cal.5th at pp. 347.)

CONCLUSION

The Court should reverse the court of appeal's determination that the funding-entitlement conditions qualify as reimbursable mandates. And for the reasons provided by the Commission, it should reverse the court of appeal's order remanding the case for the Commission to address Education Code, sections 76300-76395, as well as former Education Code, section 25430.12.

Dated: Nov. 12, 2020

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APPENDIX

Funding-Entitlement Condition		**Corresponding Operating Standards or Education Code Requirements**
§ 51002, *Standards of Scholarship*[32]	Incorporates operating standards by reference: districts are to "substantially comply with" the operating standards "contained in articles 2 through 5" of "subchapter 1 of chapter 6."	§§ 55020 et seq., requiring adherence to certain grading practices, probation rules, and course-repetition standards.
§ 51004, *Degrees and Certificates*	Incorporates operating standards by reference: districts are to adopt the regulations "pertaining to degrees and certificates" "commencing with section 55060."	§§ 55060 et seq., prescribing minimum requirements for granting associate degrees and credit certificates.
§ 51006, *Open Courses*	Districts are to adopt a resolution declaring that every course "shall be fully open to enrollment" by any person who has been admitted to the colleges.	No comparable requirement.

[32] Except where noted, all citations in this table are to Title 5 of the California Code of Regulations.

§ 51008, *Master Plan*	Incorporates by reference Education Code provision directing each district to adopt a master plan.	Ed. Code, § 70901, subd. (b)(9); see also *id.*, § 70902, subd. (b)(1).
§ 51010, *Equal Employment Opportunity*	Incorporates by reference operating standards "commencing with section 53000."	§§ 53000 et seq., imposing rules designed to ensure equal opportunity in hiring.
§ 51012, *Student Fees*	Districts "may only establish such mandatory student fees as [they are] expressly authorized to establish by law."	Ed. Code, §§ 76300 et seq., setting out the types of fees that districts may impose.
§ 51014, *Approval of New Colleges and Educational Centers*	Incorporates operating standards by reference: districts are to seek Board approval for new colleges and educational centers under standards "commencing with section 55180."	§§ 55180 et seq., imposing requirements for seeking approval of new colleges and educational centers.

§ 51016, *Accreditation*	Districts are to maintain the accreditation of all colleges they oversee.	While no other provision of state law appears to require accreditation, several provisions presuppose that colleges will remain accredited. (See, e.g., § 58312; Ed. Code, §§ 72208, 74265.5, subd. (c).) And districts face federal law-based pressure to maintain accreditation. (*Ante*, p. 59.)
§ 51018, *Counseling Programs*	Districts are to provide students with counseling services, including academic, career, and personal counseling.	While no provision of law appears to be precisely identical to section 51018, several operating standards require districts to provide academic and career counseling (§§ 55520, 55523, 55525), as well as referrals for personal counseling and mental-health services (§ 55520). The operating standards also authorize districts to use student fees to fund a variety of personal-counseling services. (§ 54702.) And the Education Code requires districts to provide "support services which help students succeed at the postsecondary level" (§ 66010.4), as well as counseling to students seeking to transfer to four-year institutions (§ 66736).

§ 51020, *Objectives*	A district is to adopt "stated objectives for its instructional program."	§ 55080, requiring adoption of a plan "contain[ing] the educational objectives" of the district; Ed. Code, § 70902, subd. (b) [similar].
§ 51021, *Curriculum*	Incorporates operating standards by reference: districts are to approve educational programs and courses pursuant to the standards "commencing with section 55000."	§§ 55000 et seq., prescribing standards for approval of new courses.
§ 51022, *Instructional Programs*	Districts are to develop policies for "establishment, modification, or discontinuance of courses or programs," as well as policies governing acceptance of high-school courses for credit and policies to ensure that four-year institutions provide credit for community college courses.	Ed. Code, § 70902, subd. (b)(2), requiring each district to establish "policies for" approval of courses and educational programs; see also §§ 55000 et seq. [similar]. Ed. Code, § 66732, requiring each district to "design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University"; Ed. Code, § 66721.5 [similar]; § 55051, addressing requirements for "permit[ting] articulated high school courses to be applied to community college requirements."

§§ 51023, 51023.5 and 51023.7 *Faculty, Staff, and Students*	Districts are to adopt policies to protect academic freedom and ensure that faculty, staff, and students have an opportunity to have their voices heard in college governance decisions.	Ed. Code, § 70902, subd. (b)(7), requiring districts to "ensure faculty, staff, and students [have] the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, to ensure the right to participate effectively in district and college governance, and to ensure the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards"; see also §§ 53200 et seq. [addressing academic senates and faculty councils].
§ 51024, *Student Success and Support*	Incorporates operating standards by reference: districts are to offer specified student services as provided in regulations "commencing with section 55500."	§§ 55500 et seq., requiring districts to adopt a plan and provide various services for the purpose of "matriculation," defined as the "process that brings a college and a student" "into an agreement for the purpose of achieving the student's educational goals."
§ 51025, *Full Time Faculty*	At least 75% of annual credit hours are to be offered by full-time faculty.[33]	No comparable requirement.

[33] Unlike the other funding-entitlement conditions, section 51025 provides a formula for aid withholding specific to that provision.

§ 51026, *Student Equity*	Incorporates by reference operating standard at "section 54220," whereby each district is to "adopt a student equity plan."	§ 54220, requiring each district to study race, sex, and disability-based disparities in student performance and opportunities and devise a plan to address those disparities.
§ 51027, *Transfer Centers*	Districts are to establish "transfer center[s]," offering various services supporting students wishing to transfer to four-year institutions.	While no other provision specifically requires establishment of "transfer centers," the Education Code appears to require all of the services that transfer centers provide. (See Ed. Code, §§ 66720 et seq.; *id.*, §§ 66730 et seq.; see also AR 157-158.)

CERTIFICATE OF COMPLIANCE

I certify that the attached OPENING BRIEF ON THE MERITS (including the APPENDIX) uses a 13-point Century Schoolbook font and contains 13,993 words.

Dated: November 12, 2020

XAVIER BECERRA
Attorney General of California

/s/ Samuel T. Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
Attorneys for Real Party in Interest Department of Finance

Supreme Court of California
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DECLARATION OF ELECTRONIC SERVICE

Case Name: **Coast Community College District, et al. v. Commission on State Mandates, et al. (California Supreme Court)**
No.: **S262663**

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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On November 12, 2020, I electronically served all parties in the case, as well as the Clerk of Court of the California Court of Appeal, with the attached **OPENING BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system.

I also served the Clerk of Court of the Superior Court of California by U.S. Mail at the following address: Clerk of Court, Attn: Department 54, Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on Novemner 12, 2020, at San Francisco, California.

Samuel T. Harbourt	*/s/ Samuel T. Harbourt*
Declarant	Signature

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/12/2020 by Tayuan Ma, Deputy Clerk

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.

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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.

11/12/2020

Date

/s/Samuel Harbourt

Signature

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Last Name, First Name (PNum)

California Department of Justice

Law Firm