

Case No. S262663

SUPREME COURT OF CALIFORNIA

COAST COMMUNITY COLLEGE DISTRICT, et al.,

Plaintiffs and Appellants,

vs.

COMMISSION ON STATE MANADATES,

Defendant and Respondent.

DEPARTMENT OF FINANCE,

Real Party in Interest and Respondent.

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

**APPLICATION OF THE CALIFORNIA SCHOOL BOARDS
ASSOCIATION'S EDUCATION LEGAL ALLIANCE FOR LEAVE
TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF
APPELLANTS; AND PROPOSED *AMICUS CURIAE* BRIEF**

Sloan R. Simmons, SBN 233752

Nicholas J. Clair, SBN 299097

LOZANO SMITH

One Capitol Mall, Suite 640

Sacramento, CA 95814

Telephone: (916) 329-7433

Facsimile: (916) 329-9050

E-mail: ssimmons@lozanosmith.com

Robert Tuerck, SBN 255741

Chief Legal Counsel

California School Boards Assn./

Education Legal Alliance

3251 Beacon Boulevard

West Sacramento, CA 95691

Telephone (800) 266-3382

Facsimile (916) 371-3407

E-mail: rtuerck@csba.org

Attorneys for *Amicus Curiae*
California School Boards Association's
Education Legal Alliance

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF
TO THE HONORABLE CHIEF JUSTICE TANI GORRE CANTIL-
SAKAUYE, AND ASSOCIATE JUSTICES OF THE CALIFORNIA
SUPREME COURT:

Leave is hereby requested to file the Brief of *Amicus Curiae* California School Boards Association’s Education Legal Alliance in this matter in support of Appellants Coast Community College District, North Orange County Community College District, San Mateo County Community College District, Santa Monica Community College District, and State Center Community College District (collectively “Appellant Districts”).

INTEREST OF AMICUS CURIAE

The California School Boards Association (“CSBA”) is a California nonprofit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of over 950 school districts and county offices of education. CSBA’s Education Legal Alliance (“ELA”) is composed of over 700 CSBA members and is dedicated to addressing public education legal issues of statewide concern to school districts and county offices of education.

One purpose of the ELA is to ensure that local school boards retain the authority to exercise fully the responsibilities vested in them by law and to make appropriate policy decisions for their local agencies. The ELA’s activities include joining in litigation where legal issues of statewide concern affecting public education are at stake.

This case presents an issue of statewide importance to *Amicus Curiae*’s school district and county office of education members charged with oversight and accountability of state issued reimbursement funds and

the implementation of education programs or higher services newly mandated by state agencies.

BRIEF OF AMICUS CURIAE WILL ASSIST THE COURT

Amicus Curiae's Brief will assist the Court in the following ways.

The Brief provides additional context as to how the Commission on State Mandate's (the "Commission") interpretation and application of this Court's test set forth in *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727 ("*Kern*"), risks the further whittling away of the long-standing constitutional entitlement of local agencies, such as California school districts and county offices of education, to receive reimbursement from the State "whenever the Legislature or any state agency mandates a new program or higher level of service" (Cal. Const., art. XIII B, § 6, subd. (a).)

This Brief describes how California's public school districts and county offices of education are ill-equipped to bear the financial impact of Legislative mandates and the importance of the subvention requirement. These local education agencies are dependent on constitutional State funding guarantees. The interpretation and application of the *Kern* test advocated for by the Commission would undermine the protections and subvention entitlement of local education agencies under article XIII B, section 6 of the California Constitution. At the same time, the Commission's version of the *Kern* test would provide the Legislature with a road map for using the threat of denying this funding to coerce local education agencies into implementing unfunded state mandates in the form of new programs or higher levels of services.

With this context in mind, the Brief also explains the great importance of the Court accounting for how the Commission's approach at issue in this case directly impinges upon the local control and discretion of

California school districts and county offices of education, hindering their ability to meet their obligation to address their constituent districts unique needs.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the Court accept the accompanying Brief for filing in this case.

Date: May 17, 2021

Respectfully submitted,

LOZANO SMITH

/s/ Sloan Simmons

SLOAN R. SIMMONS*

NICHOLAS J. CLAIR

Attorneys for *Amicus Curiae*

CALIFORNIA SCHOOL

BOARDS ASSOCIATION'S

EDUCATION LEGAL ALLIANCE

Case No. S262663
SUPREME COURT OF CALIFORNIA

COAST COMMUNITY COLLEGE DISTRICT, et al.,

Plaintiffs and Appellants,

vs.

COMMISSION ON STATE MANADATES,

Defendant and Respondent.

DEPARTMENT OF FINANCE,

Real Party in Interest and Respondent.

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

**PROPOSED BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL
BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE
IN SUPPORT OF APPELLANTS**

Sloan R. Simmons, SBN 233752

Nicholas J. Clair, SBN 299097

LOZANO SMITH

One Capitol Mall, Suite 640

Sacramento, CA 95814

Telephone: (916) 329-7433

Facsimile: (916) 329-9050

E-mail: ssimmons@lozanosmith.com

Robert Tuerck, SBN 255741

Chief Legal Counsel

California School Boards Assn./

Education Legal Alliance

3251 Beacon Boulevard

West Sacramento, CA 95691

Telephone (800) 266-3382

Facsimile (916) 371-3407

E-mail: rtuerck@csba.org

Attorneys for *Amicus Curiae*
California School Boards Association's
Education Legal Alliance

TABLE OF CONTENTS

TABLE OF AUTHORITIES	7
INTRODUCTION	10
ARGUMENT	12
I. THE COMMISSION’S IMPROPER INTERPRETATION AND APPLICATION OF THE <i>KERN</i> TEST EXTENDS TO SCHOOL DISTRICTS AND COUNTY OFFICES OF EDUCATION, AND WOULD FURTHER UNDERMINE THE STATE MANDATE SYSTEM OF REIMBURSEMENT.	12
A. California School Districts and County Offices of Education are Dependent on State Funding.....	12
B. The Commission’s Position Attempts to Utilize <i>Kern</i> to Further Erode the Subvention Requirement for School Districts.....	14
II. THE COMMISSION’S POSITION UNDERMINES THE PRINCIPLE OF LOCAL CONTROL.....	18
CONCLUSION	21
CERTIFICATE OF WORD COUNT	22

TABLE OF AUTHORITIES

Cases

<i>American Civil Rights Found. v. Berkeley Unified School Dist.</i> (2009) 172 Cal.App.4th 207.....	18
<i>Arvin Union School Dist. v. Ross</i> (1985) 176 Cal.App.3d 189	13
<i>Butt v. State of California</i> (1992) 4 Cal.4th 668	20
<i>Bd. of Regents v. Southworth</i> (2000) 529 U.S. 217	17
<i>Cal. School Bds. Assn. v. Brown</i> (2011) 192 Cal.App.4th 1507	15
<i>Cal. Teachers Assn. v. Hayes</i> (1992) 5 Cal.App.4th 1513	19
<i>County of Los Angeles v. Sasaki</i> (1994) 23 Cal.App.4th 1442	13
<i>County of San Diego v. State of California</i> (1997) 15 Cal.4th 68	14, 15
<i>County of San Diego v. State of California</i> (2008) 164 Cal.App.4th 580	14
<i>Dawson v. East Side Union High School Dist.</i> (1994) 28 Cal.App.4th 998	18, 19
<i>Dept. of Finance v. Comm. on State Mandates (Kern High School District)</i> (2003) 30 Cal.4th 727	<i>passim</i>
<i>Dept. of Finance v. Comm. on State Mandates</i> (2016) 1 Cal.5th 749	14
<i>Hartzell v. Connell</i> (1984) 35 Cal.3d 899	13, 20
<i>Hayes v. Comm. on State Mandates</i> (1992) 11 Cal.App.4th 1564	14

<i>International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Super. Ct.</i> (2007) 42 Cal.4th 319	17
<i>Johnson v. Bd. of Ed.</i> (1986) 179 Cal.App.3d 593	19
<i>Neilson v. City of California City</i> (2005) 133 Cal.App.4th 1296	12
<i>San Rafael Elementary School Dist. v. State Bd. of Ed.</i> (1999) 73 Cal.App.4th 1018	18
<i>Serrano v. Priest</i> (1971) 5 Cal.3d 584	13, 20

Constitution & Statutes

California Constitution

Cal. Const., art. IX, § 1	20
Cal. Const., art. IX, § 5.....	20
Cal. Const., art., IX, § 14.....	19
Cal. Const., art. XIII A, § 1	12
Cal. Const., art. XIII A, § 2	12
Cal. Const., art. XIII A, § 4	12
Cal. Const., art. XIII B, § 6	10, 11, 17

Education Code

Ed. Code, § 14000	19, 20
Ed. Code, § 33080	20
Ed. Code, § 35160	18, 20
Ed. Code, § 35160.1	18, 20

Other Authorities

Comm. on State Mandates, Statement of Decision, <i>Hepatitis Presumption (K-14) Test Claim</i> , Case No. 02-TC-17 (Sept. 27, 2007).....	15
Comm. on State Mandates, Statement of Decision, <i>School Bus Safety III Test Claim</i> , Case No. 03-TC-01 (Sept. 27, 2007).....	16
Comm. on State Mandates, Statement of Decision, <i>Surplus Property Advisory Committees Test Claim</i> , Case No. 02-TC-36 (Sept. 27, 2007)	16
West, <i>Equitable Funding of Public Schools Under State Constitutional Law</i> (Spring 1999) J. of Gender, Race & Just.	13

INTRODUCTION

Amicus Curiae California School Boards Association's Education Legal Alliance ("CSBA," "ELA," or "*Amicus Curiae*") submits this Brief in support of Appellants Coast Community College District, North Orange County Community College District, San Mateo County Community College District, Santa Monica Community College District, and State Center Community College District (collectively "Appellant Districts").

For *Amicus Curiae*, the issue before this Court of greatest concern is the Commission on State Mandates' ("Commission") improper interpretation and application of *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727 ("*Kern*"), which would further erode the subvention requirement of article XIII B, section 6, of the California Constitution and the principle of local control in the context of California's local education agencies. In *Kern*, this Court established a test whereby a mandate does not exist if a public agency voluntarily participates in a funded, non-mandatory program. Subvention is required, however, if the Legislature legally or practically compels compliance with new program or higher level of service. Since *Kern*, and certainly in this case, the Commission has stretched this Court's *Kern* opinion to deny the existence of mandates in nearly any situation where the Commission can identify any semblance of "choice" on the part of school districts, no matter how impractical or illusory such a choice is.

This case is the logical conclusion of the Commission's attempts to stretch *Kern*: finding a mandate does not exist where the Legislature conditions the receipt of existing base State education funding, on which the Appellant Districts (parallel to school district funding) across California depend for ongoing operations, on compliance with new requirements,

programs, or increased levels of service. The Commission asserts that it is a matter of “choice” for districts to accept this base level of funding, which in the case of school districts accounts for the vast majority of operational revenues, and the Legislature can impose unlimited conditions and avoid its subvention requirements.

As this Brief describes, such a position shifts the fiscal and political burden of the Legislature’s decisions onto local education agencies which are ill-equipped to absorb the costs of new mandates due to the revenue raising limitations created by Proposition 13, which is entirely contrary to the language and intent of article XIII B, section 6, of the California Constitution. Such an interpretation and application of *Kern* concomitantly undermines the principle of local control by authorizing the Legislature to withhold the base State funding school districts depend on unless school districts comply with and implement the Legislature’s priorities.

Amicus Curiae urges this Court to uphold the decision of the Court of Appeal, and prevent the further undoing of article XIII B, section 6, of the California Constitution, ensuring that local education agencies statewide are able to rely on the base State funding they receive without being compelled to implement and bear the financial burden of costly new programs or higher levels of service on the Legislature’s behalf. *Amicus Curiae* thus urges the Court to uphold the principle articulated in article XIII B, section 6: if the Legislature intends to require school districts and other public agencies to implement new programs or higher levels of service, the responsibility for financing those programs falls to the Legislature, not local agencies with limited sources of revenue.

ARGUMENT

I. THE COMMISSION’S IMPROPER INTERPRETATION AND APPLICATION OF THE *KERN* TEST EXTENDS TO SCHOOL DISTRICTS AND COUNTY OFFICES OF EDUCATION, AND WOULD FURTHER UNDERMINE THE STATE MANDATE SYSTEM OF REIMBURSEMENT.

California School districts have limited avenues to raise revenues to fund their operations, making them unable to bear the financial burden of Legislative mandates. Like the Appellant Districts, school districts are dependent on Constitutional State funding guarantees to finance their operations. The Commission’s interpretation of *Kern* at issue in this case permits the Legislature to condition receipt of this State funding on compliance with new requirements or the implementation of new programs or higher levels of service. The Commission’s approach is directly contrary to the test articulated by the Court in *Kern*, the constitutional subvention requirement, and the principle of local control.

A. California School Districts and County Offices of Education are Dependent on State Funding.

The road to the current construct of educational finance for California school districts started over thirty years ago in 1978 with the passage of Proposition 13. Proposition 13, incorporated into article XIII A of the California Constitution, made the following changes to the then-existing tax system in California: “(1) limit[ed] ad valorem property taxes to 1 percent of a property’s assessed value, (2) limit[ed] increases in assessed value to 2 percent per year unless ownership of the property has changed, and (3) require[d] two-thirds voter approval of any ‘special tax.’” (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1306, citing Cal. Const., art. XIII A, §§ 1, 2, subd. (a)-(b), 4.)

The effect of Proposition 13 “was to drastically cut property tax revenue, and thereby sharply reduce the funds available from that source to

local governments, and also schools.” (*County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1451; see *Hartzell v. Connell* (1984) 35 Cal.3d 899, 902, fn. 1 [“Proposition 13 . . . was adopted by the voters in June of 1978. It enacted article XIII A of the California Constitution, which sharply limits the power of local and state governments to increase tax rates or enact new taxes.”]; see also *Sasaki*, 23 Cal.App.4th at 1450-53 [detailing historical perspective of significant school finance legislation and changes]; *Arvin Union School Dist. v. Ross* (1985) 176 Cal.App.3d 189, 194-201 [detailing history of California school financing since Supreme Court’s *Serrano v. Priest* (1971) 5 Cal.3d 584, up and through passage of Proposition 13; ultimately affirming under Proposition 13 denial of revenue raised by school districts by tax overrides].)

“One year after Prop[osition] 13 was passed, another popular initiative, the ‘Gann Amendment,’ limited increases in total state spending regardless of the source of revenue[,]” resulting, among other things, in the inability of California’s spending on education “to increase sufficiently to replace the money school districts lost from the 1978 cut in property taxes.” (*West, Equitable Funding of Public Schools Under State Constitutional Law* (Spring 1999) J. of Gender, Race & Just., p. 302.)

These changes, along with other legislative enactments, resulted in a school district financing system completely dependent on State funding. For example, as recently as the 2018-2019 school year, State funding accounted for 58% of school district revenues. (Financing California’s Public Schools, Public Policy Institute of California, available at <https://www.ppic.org/wp-content/uploads/jtf-financing-californias-public-schools.pdf> [as of May 12, 2021].) Like the Appellant Districts, school districts and county offices of education are also dependent on State funding for general operations. Accordingly, it is paramount for California’s school districts that this Court ensure the test it articulated in

Department of Finance v. Commission on State Mandates (Kern High School District) (2003) 30 Cal.4th 727 (“*Kern*”), is properly understood and applied by the Commission, so as to protect State funding when constitutionally required to reimburse local education agency state mandates resulting from the statutory and regulatory imposition of new programs or higher levels of service.

B. The Commission’s Position Attempts to Utilize *Kern* to Further Erode the Subvention Requirement for School Districts.

One year after the adoption of Proposition 13, California’s voters adopted Proposition 4 (also known as the “Gann limit”), which increased restrictions on local governments’ ability to appropriate funds. (*Dept. of Finance v. Comm. on State Mandates* (2016) 1 Cal.5th 749, 762-63.) Proposition 4, codified at article XIII B of the California Constitution, “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’” (*Id.* at 762, citation omitted.) Proposition 4, however, in recognition of the restrictions of local government revenues created by Proposition 13, also created a strict requirement on the Legislature to provide subvention¹ for those local government costs that resulted from a mandate from the Legislature or State agencies. (*Id.* at 763; see *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.)

The subvention requirement created by Proposition 4 reflected the restrictions in local government revenues created by Proposition 13 and was meant to protect local governments from being forced by the Legislature to bear the costs of state programs. (*Dept. of Finance*, 1 Cal.5th

¹ “‘Subvention’ generally means a grant of financial aid or assistance, or a subsidy.” (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 588, fn. 4, citing *Hayes v. Comm. on State Mandates* (1992) 11 Cal.App.4th 1564, 1577.)

at 763.) Proposition 1A, passed in 2004, strengthened the subvention requirement by directing that if the Legislature does not appropriate funding for a state mandate, the respective state mandate must be suspended. (See *Cal. School Bds. Assn. v. Brown* (2011) 192 Cal.App.4th 1507, 1524.) The purpose of constitutionally required subvention “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of constitutional taxing and spending limitations” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, citations omitted.)

The interpretation of *Kern* consistent with the above principles is important to ensure the preservation of the subvention requirement and respecting the will of the voters. Consistent with a pattern of narrowing the view of state mandates, the Commission’s position here seeks to interpret and apply this Court’s opinion in *Kern* to deny mandate test claims where a local agency can be construed to have some manner of choice in whether to comply with new requirements imposed by the Legislature. The Commission’s present approach has already been utilized to the detriment of local education agencies. For example, the Commission applied *Kern* to find that there was no state mandate in the additional litigation costs school districts faced in overcoming new evidentiary burdens in workers compensation litigation because school districts are not compelled to dispute claims. (See CSBA’s Motion for Jud. Notice, Ex. 1 [Comm. on State Mandates, Statement of Decision, *Hepatitis Presumption (K-14) Test Claim*, Case No. 02-TC-17 (Sept. 27, 2007)].) Likewise, the Commission has found that new procedural requirements which school districts must complete prior to selling school district property were not mandates because school districts could choose not to sell unused property and instead let it be unutilized. (See CSBA’s Motion for Jud. Notice, Ex. 2

[Comm. on State Mandates, Statement of Decision, *Surplus Property Advisory Committees Test Claim*, Case No. 02-TC-36 (Sept. 27, 2007)].)

The Commission also relied on its view of *Kern* to deny subvention to school districts required to purchase and install new safety restraint systems on school buses and comply with other safety procedures, because school districts could, in the Commission's view, simply choose not to provide bus transportation to students, including students with disabilities. (See CSBA's Motion for Jud. Notice, Ex. 3 [Comm. on State Mandates, Statement of Decision, *School Bus Safety III Test Claim*, Case No. 03-TC-01 (Sept. 27, 2007)].)

These Commission determinations illustrate a pattern in which the Commission has extended *Kern* such that the Legislature can impose unlimited costly requirements on basic school district functions and not provide subvention, provided school districts have some semblance of choice in whether or not to take action, even if that action would be fundamentally detrimental to school districts, the purpose on which they are established, and the communities they serve. According to the Commission's interpretation and application of *Kern*, the Legislature could require school districts to retrofit any school buildings to be fully carbon-neutral prior to offering them for sale, and the State would not be required to provide subvention because a school district could simply choose to never sell property and let it sit abandoned in the community. The Legislature could also require all school buses to be powered by fuel cells, and the State would not be required to provide subvention because a school district could simply abandon its student transportation program and force students to figure out how to get to school on their own.

In this way, the Commission's interpretation of *Kern* shifts not only the financial but also the political burden of Legislative requirements onto school districts. When the Legislature mandates new equipment be

installed on school buses and the Commission denies subvention because school districts have a “choice” regarding whether or not to provide transportation to their students, it is the school districts which make the decision whether to reduce funding in other areas to comply with the new requirement or eliminate transportation entirely and the community response in either case. The Legislature is thus freed from the political, as well as financial, consequences of its decisions. (Cf. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Super. Ct.* (2007) 42 Cal.4th 319, 328 [“Implicit in the democratic process is the notion that government should be accountable for its actions.”]; *Bd. of Regents v. Southworth* (2000) 529 U.S. 217, 235 [“When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy.”].)

Here, the Commission seemingly attempts to go even further: through its application of *Kern*, the Commission has condoned the ability of the Legislature to deny existing State funding entitlements unless the new Legislative requirements are met. The Commission thus takes the “choice” framework it has employed in previous decisions and extends it to argue the Legislature can compel community college districts and school districts to comply with its new programs because it is a “choice” whether these educational agencies, which are reliant on State funding and constitutionally limited by Proposition 13 from obtaining alternative funding, decide to receive State funding at all. The Commission’s application of *Kern*, which permits the Legislature a roadmap to withhold school district funding while compelling them to comply with unfunded mandates, is the antithesis of the voters’ intent in creating the subvention requirement through Proposition 4 and article XIII B, section 6, of the California Constitution.

II. THE COMMISSION'S POSITION UNDERMINES THE PRINCIPLE OF LOCAL CONTROL.

Under the Commission's interpretation of *Kern*, one which allows the Legislature to compel community college districts and school districts to comply with new unfunded requirements by holding the State funding these agencies rely on captive is not only contrary to article XIII B, section 6, of the California Constitution, it also undermines the principle of local control of education.

Education Code section 35160.1, subdivision (a), provides, in pertinent part:

The Legislature finds and declares that school districts...have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts...should have the flexibility to create their own unique solutions.

(Ed. Code, § 35160.1, subd. (a); see *American Civil Rights Foundation v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207, 216.)

Education Code section 35160.1 "is a clarification of section 35160, which in turn provides flexibility [for school districts] to 'act in any manner which is not in conflict with or inconsistent with, or preempted by, any law....'"

(*San Rafael Elementary School Dist. v. State Bd. of Ed.* (1999) 73

Cal.App.4th 1018, 1027; see also *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1017.) Correspondingly, Education Code section 35160 provides, in pertinent part:

the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

(Ed. Code, § 35160.)

The broad discretion of California school districts and county offices of education to take lawful action to address their unique and common

community needs flows from the overarching mandate of the California Constitution, article IX, section 14:

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

(Cal. Const., art. IX, § 14; cf. Ed. Code, § 14000 [“It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies: [¶] The system of public school support should be designed to strengthen and encourage local responsibility for control of public education...”]; *Cal. Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1523-24 [“It has been and continues to be the legislative policy of this state to strengthen and encourage local responsibility for control of public education through local school districts. (§ 14000.)”].)

Over time, California courts have repeatedly recognized the significance of Education Code section 35160 in conformity with the constitutional grant of authority and discretion to school districts. (See, e.g., *American Civil Rights Foundation*, 172 Cal.App.4th at 216 [“the Legislature has granted school boards wide authority to set policies for the communities they serve.”]; *Dawson*, 28 Cal.App.4th at 1017-19.) And with this grant of local discretion, “[t]here is a correlative limitation upon the authority of courts to control the actions of local school districts.” (*Dawson*, 28 Cal.App.4th at 1018, citing *Johnson v. Bd. of Ed.* (1986) 179 Cal.App.3d 593, 600-01.)

If the Commission’s position were adopted by this Court, California school districts and their locally elected governing boards would effectively become agents of the State, compelled to carry out the Legislature’s

preferred programs or risk losing the majority of their funding. One of the benefits of the system of local school districts is that each district is accountable to its own community and can design programs to meet local needs. (See Ed. Code, §§ 14000, 35160, 35160.1.) If the Legislature can use constitutionally mandated State funding to compel compliance with its programs, the Legislature can effectively create a top-down system of control. Local school districts would be compelled to comply with new legislative requirements and would be forced to allocate existing resources to the Legislature's chosen programs at the expense of programs designed to benefit local communities. Local control would no longer be a fundamental principle of California's school district system, but rather it would only be allowed at the discretion of the Legislature.

The Court should consider the importance of local control and how it would be undermined if the Commission's view of the *Kern* test is permitted. The Commission has already stretched *Kern* to allow the State to avoid its subvention requirement in any instance where the Commission can convenience of a "choice" a school district can make, no matter how impossible or impractical that choice is. Here, the Commission would find a "choice" exists where a school district can either comply with new unfunded requirements or "choose" to forfeit the majority of its existing revenues—a "choice" that if made would wholly undo local education agencies' ability to satisfy their constitutional and statutory obligations. (See Cal. Const., art. IX, §§ 1, 5; *Hartzell*, 35 Cal.3d at 906-09; *Butt v. State of California* (1992) 4 Cal.4th 668, 680-85; *Serrano v. Priest* (1971) 5 Cal.3d 584, 595-96; Ed. Code, § 33080 ["Each child is a unique person, with unique needs, and *the purpose of the educational system* of this state is to enable each child to develop all of his or her own potential."], emphasis added.) Permitting such a result would set a dangerous precedent, under which the Legislature, with the Commission's blessing through test claim

denial, can rely upon the threat of eliminating existing funding to control the programs of local school districts without the promise of subvention, thereby severely curtailing, if not outright eliminating, the principle of local control.

CONCLUSION

For the foregoing reasons, and those set forth in Appellant Districts' briefing on the merits, this Court should affirm the decision of the Court of Appeal.

Date: May 17, 2021

Respectfully submitted,

LOZANO SMITH

/s/ Sloan Simmons

SLOAN R. SIMMONS

NICHOLAS J. CLAIR

Attorneys for *Amicus Curiae*

CALIFORNIA SCHOOL BOARDS

ASSOCIATION'S EDUCATION

LEGAL ALLIANCE

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.504(d) of the California Rules of Court, counsel hereby certifies that the word count of the Microsoft® Office Word 2013 word-processing computer program used to prepare this application and brief (excluding the cover, tables, and this certificate) is 3,860 words.

Date: May 17, 2021

Respectfully submitted,
LOZANO SMITH

/s/ Sloan Simmons
SLOAN R. SIMMONS
NICHOLAS J. CLAIR
Attorneys for Amicus Curiae
CALIFORNIA SCHOOL BOARDS
ASSOCIATION'S EDUCATION
LEGAL ALLIANCE

PROOF OF SERVICE

I, Rachele Esquivel, am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is One Capitol Mall, Suite 640, Sacramento, CA 95814.

On May 17, 2021, I served the attached:

APPLICATION OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION’S EDUCATION LEGAL ALLIANCE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS; AND PROPOSED *AMICUS CURIAE* BRIEF

on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope addressed as follows and I caused delivery to be made by the mode of service indicated below:

<p><u>Attorneys for Appellants San Coast Community College District et al.:</u> Christian M. Keiner William Benjamin Tunick Dannis Woliver Kelley 555 Capitol Mall, Suite 645 Sacramento, CA 95814</p>	<p><u>Attorneys for Respondent Commission on State Mandates:</u> Camille Shelton Juliana Francis Gmur Commission on State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814</p>
<p><u>Attorneys for Real Party in Interest Department of Finance:</u> P. Patty Li Samuel Thomas Harbourt Office of the Attorney General 455 Golden Gate Avenue, Ste. 11000 San Francisco, CA 94102</p>	<p><u>Clerk of the Court:</u> Hon. Christopher E. Krueger Superior Court of California County of Sacramento 720 9th Street Sacramento, CA 95814</p>

- [X] ***(Regular U.S. Mail)*** on Superior Court of California, County of Sacramento, in said action in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Sacramento.
- [X] ***(By Electronic Filing Service Provider)*** By transmitting a true and correct copy thereof by electronic filing service provider (EFSP), True Filing, to the interested party(s) or their attorney of record to

said action at the e-mail address(es) of record and contained within the relevant EFSP database listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication from the EFSP that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 17, 2021, at Sacramento, California.

/s/ Rachelle Esquivel
Rachelle Esquivel

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **COAST COMMUNITY COLLEGE DISTRICT v. COMMISSION ON STATE MANDATES (DEPARTMENT OF FINANCE)**

Case Number: **S262663**

Lower Court Case Number: **C080349**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ssimmons@lozanosmith.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	Application of the CSBA's ELA for Leave to File Brief of Amicus Curiae ISO Appellants and Proposed Brief.PDF
MOTION	Motion for Judicial Notice, Memorandum of Supporting Authorities and Declaration of Nicholas Clair.PDF

Service Recipients:

Person Served	Email Address	Type	Date / Time
Jennifer Henning California State Association of Counties 193915	jhenning@counties.org	e-Serve	5/17/2021 7:11:38 PM
Camille Shelton Commission on State Mandates	litigation@csm.ca.gov	e-Serve	5/17/2021 7:11:38 PM
Sloan Simmons Lozano Smith, LLP 233752	ssimmons@lozanosmith.com	e-Serve	5/17/2021 7:11:38 PM
Fran Hyland Dannis Woliver Kelley	fhyland@DWKesq.com	e-Serve	5/17/2021 7:11:38 PM
camille Shelton Commission on State Mandates 166945	camille.shelton@csm.ca.gov	e-Serve	5/17/2021 7:11:38 PM
Christian Keiner Dannis Woliver Kelley 95144	ckeiner@dwkesq.com	e-Serve	5/17/2021 7:11:38 PM
Ila Friend Dannis Woliver Kelley	ifriend@dwkesq.com	e-Serve	5/17/2021 7:11:38 PM
Juliana Gmur Commission on State Mandates 166477	juliana.gmur@csm.ca.gov	e-Serve	5/17/2021 7:11:38 PM
Samuel Harbourt Office of the Attorney General 313719	samuel.harbourt@doj.ca.gov	e-Serve	5/17/2021 7:11:38 PM
Nicholas Clair	nclair@lozanosmith.com	e-	5/17/2021 7:11:38

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

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

5/17/2021

Date

/s/Sloan Simmons

Signature

Simmons, Sloan (233752)

Last Name, First Name (PNum)

Lozano Smith, LLP

Law Firm