Case No. S239907

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

County of San Diego; County of Los Angeles; County of Orange; County of Sacramento; and County of San Bernardino,

Plaintiffs and Appellants

v.

Commission on State Mandates; State of California; Department of Finance for the State of California, the California; and John Chiang, State Controller, in his official capacity as California State Controller,

Defendants/Respondents

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

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INTRODUCTION

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

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

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

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

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

CONSTITUTIONAL AND LEGISLATIVE BACKGROUND

A. The Voter Initiatives Underlying State Mandate Law.

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

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

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

The purpose of section 6 "is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego, supra,* 15 Cal.4th at 81; *County of Fresno, supra,* 53 Cal.3d at 487.) The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra,* 53 Cal.3d at 487.)

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

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

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

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

B. The Sexually Violent Predator Mandate.

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

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

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

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

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

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

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

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

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

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

(AR 013.)

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

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

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

C. The Adoption of Proposition 83.

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

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

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

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

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

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

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

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

[7] See footnote 3, *supra*.

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

D. Legislative Creation of the Redetermination Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL DISCUSSION

I.

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

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

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

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

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

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

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

This rule of statutory construction is well established in California jurisprudence, having been applied in some form for over a century. (See *Central Pac. R.R. Co. v. Shackelford* (1883) 63 Cal. 261, 265; *Swamp Land Dist. No. 307 v. Glide* (1896) 112 Cal. 85, 90; *City of Los Angeles v. Pacific Land Corp.* (1940) 41 Cal.App.2d 223, 225.) Indeed, as this Court long ago observed: "to construe a statute amended in certain particulars as having been wholly reenacted as of the date of the amendment, is to do violence to the code and all canons of construction." (*County of Sacramento v. Pfund* (1913) 16 Cal. 84, 88.)

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

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

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

Because Proposition 83 is not considered to have enacted any of the duties imposed by the Test Claim Statutes, Proposition 83 did not operate to change the "source" of the mandate. As the Court of Appeal concluded, "it is the *actual changes* made by Proposition 83 that are relevant to the inquiry of whether the initiative changed the source of the mandate." (Slip Opn. 34 (italics in original).) Put another way, the

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