SUPREME COURT
FILED

JAN 25 2018

Jorge Navarrete Clerk

Deputy

Case No. S239907

**IN THE SUPREME COURT
FOR 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; JOHN CHIANG, in his official capacity as the California State Controller,
Defendants and Respondents.

CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS COUNTY OF SAN DIEGO, ET AL.

Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
The Honorable Richard E.L. Strauss

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7535 Fax: (916) 443-8867
jhenning@counties.org

Case No. S239907

IN THE SUPREME COURT
FOR 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; JOHN CHIANG, in his official capacity as the California State Controller,
Defendants and Respondents.

CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS
COUNTY OF SAN DIEGO, ET AL.

Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
The Honorable Richard E.L. Strauss

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7535 Fax: (916) 443-8867
jhenning@counties.org

I. APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND INTEREST OF AMICUS CURIAE

Pursuant to Rule 8.520(f) of the California Rules of Court, the California State Association of Counties ("CSAC") and League of California Cities ("League")[1] respectfully request leave to file the attached amicus curiae brief in support of Plaintiffs and Appellants County of San Diego, County of Los Angeles, County of Orange, County of Sacramento, and County of San Bernardino.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and

---

[1] No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

II. ISSUES TO BE BRIEFED IN PROPOSED AMICUS CURIAE BRIEF

Counsel for proposed Amici Curiae CSAC and the League has reviewed the briefing in this case, and will not duplicate those arguments. Instead, the proposed amicus brief provides this Court with legal analysis and examples to aid the Court in determining whether the source of the Sexually Violent Predators Act mandates has been changed from the State to the voters as a result of Proposition 83 (known as Jessica's Law).

The brief will argue that the mandated activities are neither expressly include in, nor necessary to implement, Proposition 83. The brief explains that the mere reprinting of the text of the mandated activities within the ballot to comply with the "reenactment rule" does not mean that the language is expressly included in the voter-adopted language for purposes of a mandate redetermination. The brief will provide some examples of why this is so, including examples of legislative amendments made to technically restated provisions within the ballot measure that would violate the restrictions on amendment to voter-adopted provisions if the State's argument is correct.

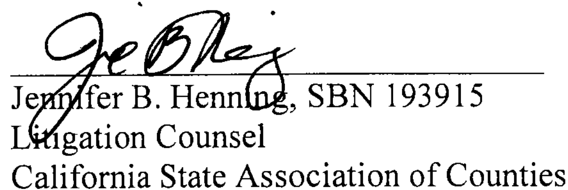
The brief also provides a discussion of what it means for a mandated activity to be necessary to implement a ballot measure. The Sexually Violent Predators Act and Proposition 83 may implicate Due Process considerations for those subject to its civil commitment proceedings. However, the proposed amicus brief informs the Court that the State has provided this Court with no analysis on precisely what minimum process is due

for these proceedings, or why that process must be provided by counties and cannot be achieved through other means. That the services may be provided by the counties in a convenient and cost effective manner on behalf of the State does not mean that the mandated activities are "necessary" to implement Proposition 83. The discussion in this portion of the brief is of critical importance because the redetermination statutes themselves would be unconstitutional if the activities under consideration are merely related to, rather than necessary to implement, the voter-adopted ballot measure.

III. CONCLUSION

For these reasons, CSAC and the League respectfully request that this Court grant this application for leave to file the proposed amicus curiae brief, and order the brief submitted with this application to be filed.

Dated: January 16, 2018



Jennifer B. Henning, SBN 193915
Litigation Counsel
California State Association of Counties

Case No. S239907

IN THE SUPREME COURT
FOR 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; JOHN CHIANG, in his official capacity as the California State Controller,
Defendants and Respondents.

[PROPOSED] AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS COUNTY OF SAN DIEGO, ET AL.

Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
The Honorable Richard E.L. Strauss

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7535 Fax: (916) 443-8867
jhenning@counties.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. ARGUMENT 2

A. The Sexually Violent Predators Act mandates are not expressly included within Proposition 83. 2

1. The reenactment rule requires that the entire section of a provision be printed in the ballot, even if the language itself is not being amended. 4

2. The State has continued to treat most provisions of the Sexually Violent Predator Act as a Legislative Enactment, and Not as an Enactment Adopted by the Voters. 6

3. Concluding that technical restatements are sufficient to change the State's mandate obligations would lead to absurd results. ... 10

B. The Sexually Violent Predators Act mandates are not necessary to carry out Proposition 83. 12

C. The State's argument that the inability to suspend the Sexually Violent Predators Act mandates means they can no longer be considered mandates is a tautology and must be rejected. 18

D. A change that may increase the volume of work, but does not change the nature of the tasks to be performed, is not a "subsequent change in the law" that warrants reconsideration of an existing mandate. 20

III. CONCLUSION 22

CERTIFICATION OF COMPLIANCE 25

TABLE OF AUTHORITIES

Cases

American Lung Assn. v. Wilson (1996) 51 Cal.App.4th 743 5

California School Boards Assn. v. State of California (2009) 171 Cal.App.4th 1183 .... 13, 15

County of San Diego v. Comm'n on State Mandates (2016) 7 Cal.App.5th 12 .... 11, 19

Department of Finance v. Comm'n on State Mandates (2016) 1 Cal.5th 749 .... 12, 14, 18

People ex rel. Warfield v. Sutter S. R. Co. (1897) 117 Cal. 604 5

People v. Fowler (1938) 32 Cal.App.2d Supp. 737 5

San Diego Unified School District v. Comm'n on State Mandates (2004) 33 Cal.4th 859 15

San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal.4th 859 13

Vallejo & N. R. Co. v. Reed Orchard Co. (1918) 177 Cal. 249 5

Statutes

Gov. Code, § 17556 .... passim

Gov. Code, § 17570 .... 4, 12

Pen. Code, § 273.5 22

Pen. Code, § 3000 7

Pen. Code, § 3001 7

Pen. Code, § 3003 8

Pen. Code, § 3041.5 9

Pen. Code, § 667.5 7

Welf. & Instit. Code, § 6600 21

Welf. & Instit. Code, § 6601 .... 3, 8, 21

Welf. & Instit. Code, § 6602 .... 3, 4

Welf. & Instit. Code, § 6603 .... 3, 4

Welf. & Instit. Code, § 6604 .... 3, 8

Welf. & Instit. Code, § 6605 .... 3, 4, 8

Welf. & Instit. Code, § 6608 .... 3, 8

Other Authorities

Com. on State Mandates, Statement of Decision on Sexually Violent Predators, No. 12-MR-01, pp. 33-35 16

Com. on State Mandates, Statement of Decision on Sexually Violent Predators, No. CSM-4509 (June 25, 1998.) 3

Regulations

2 Cal.Code Reg § 1190.5 12

Constitutional Provisions

Cal. Const., art. II, § 10 6

Cal. Const., art. IV, § 9 4

Cal. Const., art. XIII B, § 6 13

California Session Laws

Stats 2007, ch. 208 7

Stats 2007, ch. 571 7

Stats 2007, ch. 601 7

Stats 2009, ch. 61 7

Stats 2010, ch. 710 7

Stats 2011, ch. 15 .... 7, 8

Stats 2011, ch. 359 7

Stats 2011-2012, 1st Ex. Sess., ch. 12 7

Stats 2012, ch. 24 8

Stats 2012, ch. 790 7

Stats 2013, ch. 182 7

Stats 2014, ch. 442 7

Stats 2014, ch. 877 7

Stats 2015, ch. 470 9

Stats 2016, ch. 878 7

Stats. 2015, ch. 576 7

I. INTRODUCTION

The governing legal principles in this case are fairly straightforward. The State of California is required to provide subventions to local agencies for State-mandated programs and services. There are exceptions to that subvention requirement, which this Court has found should be narrowly construed. The Government Code states that programs and services created by the voters through the initiative process are distinguishable from those created by the "State." Thus, one of those exceptions to the subvention requirement is that the State need not provide a subvention of funds for programs or services that are expressly included in, or are necessary to implement, a voter-approved ballot measure.

In this case, there is no question that the Legislature previously established mandates as part of the Sexually Violent Predators Act for eight discrete activities. The question before this Court is whether, as a result of Proposition 83, these discrete activities are no longer mandated by the State, but rather are now mandated by the voters, and thus exempt from the subvention requirements. For Respondents to prevail, the previously established mandates must be either expressly included in, or necessary to implement, Proposition 83.

The California State Association of Counties and League of California Cities submit that neither has occurred, and the State is obligated to continue to provide a subvention of funds for these eight discrete

activities. First, the mandates cannot be considered to be expressly included in Proposition 83 where they were merely reprinted therein to fulfill the so-called "reenactment rule." The fact that the Legislature has amended these technical reprints without meeting the requisite voting threshold illustrates that not even the State considers mere technical reprints to be an express part of the voters' actions.

Second, the mandated activities are not necessary to implement Proposition 83. There is no finding or evidence in the record that these tasks are required to meet minimum due process requirements for civil commitments, or that there are no alternative mechanisms that the State could employ to implement Proposition 83.

For these reasons, the Court of Appeal correctly held that Proposition 83 did not constitute a subsequent change in law that modified the State's obligation to provide subventions for the mandates related to the Sexually Violent Predators Act. The opinion should be affirmed.

II. ARGUMENT

A. The Sexually Violent Predators Act mandates are not expressly included within Proposition 83.

As the State acknowledges, to be successful before the Commission on State Mandates on its petition for reconsideration, it must show that the mandates in question are either expressly included in Proposition 83, or are necessary to implement Proposition 83. However, as explained fully

below, the mandates cannot be considered to be expressly included in the ballot measure when they are merely reprinted as required by law.

In 1998, the Commission on State Mandates approved eight activities imposed by the Sexually Violent Predators Act for reimbursement. (Com. on State Mandates, Statement of Decision on Sexually Violent Predators, No. CSM-4509 (June 25, 1998.)) These eight activities are found in Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608, and are as follows:

> **Activity 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. (Welf. & Instit. Code, § 6601, subd. (i).)
>
> **Activity 2:** Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Instit. Code, § 6601, subd. (i).)
>
> **Activity 3:** Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Instit. Code, § 6601, subd. (i).)
>
> **Activity 4:** Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Instit. Code, § 6602.)
>
> **Activity 5:** Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Instit. Code, §§ 6603, 6604.)
>
> **Activity 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. (Welf. & Instit. Code, §§ 6605, subds. (b)-(d), 6608, subds. (a)-(d).)

Activity 7: Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Instit. Code, §§ 6603, 6605, subd. (d).)

Activity 8: Transportation and housing for each potentially 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. & Instit. Code, § 6602.)

For the State to be relieved of the obligation to provide a subvention for these mandated activities, as required by section 6 of article XIII B of the California Constitution, these activities must be either expressly included in, or necessary to implement, Proposition 83.[2] (Gov. Code, §§ 17570, subd. (a)(2), 17556, subd. (f).) This Court should conclude that the mandated activities are not expressly included in Proposition 83.

1. **The reenactment rule requires that the entire section of a provision be printed in the ballot, even if the language itself is not being amended.**

The text of Proposition 83 included the text of five of the eight mandated activities. Proposition 83 made no changes to the text of the mandated activities, but nevertheless included them in the ballot measure as a result of the so-called "reenactment rule." This is a constitutional requirement that a "section of a statute may not be amended unless the section is reenacted as amended." (Cal. Const., art. IV, § 9.) The purpose

---

[2] Proposition 83, known as "The Sexual Predator Punishment and Control Act: Jessica's Law," was adopted by the voters on November 7, 2006. It will be referenced as Proposition 83 throughout this brief.

of the rule is to allow the public to be fully apprised of the full context of the proposed changes without having to make the necessary examination and comparison with the existing, unchanged portions of the section being amended. (*American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 749.)

As the Counties point out at length in the Answer Brief, the law in this State for more than 100 years is that unchanged portions of a statute that are simply reprinted under the reenactment rule – what this brief will refer to as a technical restatement – do not actually repeal and reenact those provisions, but are merely restatements of existing law. (Answer Br., pp. 16-17. See also *People ex rel. Warfield v. Sutter S. R. Co.* (1897) 117 Cal. 604; *Vallejo & N. R. Co. v. Reed Orchard Co.* (1918) 177 Cal. 249 [The portions of the amended sections which are copied without change are not to be considered as repealed and re-enacted, but to have been the law all along]; *People v. Fowler* (1938) 32 Cal.App.2d Supp. 737 [reprinted provisions that are substantially the same as existing law shall be construed as continuations of existing law and not new enactments].)

The law does not consider technical restatements to be new enactments. Rather, for a mandate to be expressly within a voter-adopted initiative, it must be an activity directly created by the voters, and not simply technically reprinted under the constitutional requirement to print the entire section of an amended statute.

2. The State has continued to treat most provisions of the Sexually Violent Predator Act as a Legislative Enactment, and Not as an Enactment Adopted by the Voters.

While the State asserts in this case that the technically restated provisions are voter enactments for purposes of avoiding the obligation to provide mandate reimbursement, the State has not treated the provisions as voter enactments when it comes to legislative amendments. The Legislature may only amend or repeal an initiative statute by another statute if that statute is approved by the voters, unless the initiative statute permits amendment or repeal without their approval. (Cal. Const., art. II, § 10, subd. (c).) And yet, the Legislature has not met the required vote threshold when amending the technically restated provisions of Proposition. 83. The State cannot have it both ways.

Proposition 83 states that its provisions can only be amended in two ways: (1) by a majority vote if the amendment expands the scope or increases the punishments or penalties provided by Proposition 83; or (2) by a 2/3 vote of the Legislature. Yet, the Legislature has in fact amended the technically restated provisions of Proposition 83 without either

expanding the scope / increasing the penalties or meeting the 2/3 vote requirement:[3]

- AB 109 [Stats 2011, ch. 15, § 443] amended Penal Code section 667.5, subd. (a), which was technically restated in Section 9 of Proposition 83. AB 109 changed the provision related to a prison term to reflect incarceration in county jail. It was passed without a 2/3 vote.
- ABx1_17 [Stats 2011-2012, 1st Ex. Sess., ch. 12, § 10] amended Penal Code section 667.5, subd. (b), which was technically restated in Section 9 of Proposition 83. ABx1_17 allowed post-release supervision to qualify as a prior county jail term for the purposes of the one-year enhancement. It was passed without a 2/3 vote.
- AB 109 [Stats 2011, ch. 15, § 468] amended Penal Code section 3000, subd. (b), which was technically restated in Section 17 of Proposition 83. AB 109 changed the body responsible for discharging an inmate to parole from the Parole Board to the courts. It was passed without a 2/3 vote.
- AB 109 [Stats 2011, ch. 15, § 472] amended Penal Code section 3001, subd. (a), which was technically restated in Section 19 of Proposition 83. AB 109 changed the period of parole before a

---

3 The State notes twelve occasions where amendments to Proposition 83 occurred with a 2/3 vote. (Reply Br., p. 24, fn. 15.) This is true, but is misleading. Of those twelve votes, only two were identified as Legislative Counsel as requiring a 2/3 vote because they were amending provisions of Proposition 83. (Stats 2011, ch. 359 (SB 542); Stats 2013, ch. 182 (SB 295).) Three of the remaining ten were identified by Legislative Counsel as requiring a 2/3 vote because they were urgency measures, and not because they amended Proposition 83. (Stats 2007, ch. 601 (SB 1546); Stats 2012, ch. 790 (SB 760); Stats 2014, ch. 442 (SB 1465).) The final seven of those bills were identified by Legislative Counsel as requiring only a majority vote, but nevertheless received at least a 2/3 vote, presumably based on the popularity among the Legislators of the policy in the bills. (Stats 2007, ch. 208 (SB 542); Stats 2007, ch. 571 (AB 1172); Stats 2009, ch. 61 (SB 669); Stats 2010, ch. 710 (SB 1201); Stats 2014, ch. 877 (AB 1607); Stats. 2015, ch. 576 (SB 507); Stats 2016, ch. 878 (AB 1906).)

parolee is eligible for discharge from one year to six months. It was passed without a 2/3 vote.

- AB 109 [Stats 2011, ch. 15, § 473] amended Penal Code section 3003, subd. (a), which was technically restated in Section 20 of Proposition 83. AB 109 added post-release supervision to the parole provisions of this section. It was passed without a 2/3 vote.
- AB 1470 [Stats 2012, ch. 24, §§ 139, 143, 144, and 146] amended Welfare and Institutions Code sections 6601, 6604, 6605 and 6608 to substitute names of the responsible State agencies named in those sections. It was passed without a 2/3 vote.

None of these amendments expand the scope or increase the punishment of Proposition 83, and yet all were passed without a 2/3 vote. Courts are to presume that legislative enactments are valid, and amici do not question the validity of those enactments here. Rather, the amendments to Proposition 83 are cited as evidence of how the State itself views the voter-enactments. If all of the language printed in the ballot for Proposition 83, including those provisions which are mere technical reprints, have "far reaching consequences for the Legislature's ability to modify the language," (Opening Br., p. 40), how is it possible for these amendments to have occurred without a2/3 vote? The State cannot consider this language to be "expressly included" for its purposes here, but not "expressly included" when it comes to the Legislature's ability to modify the statute.

The State's treatment of technically reprinted language as not constituting an express voter enactment is not unique to Proposition 83 either. For example, on November 8, 2008, the voters adopted Proposition

9, known as the "Victims' Bill of Rights Act of 2008: Marsy's Law." Proposition 9 has an amendment clause similar to Proposition 83. It states that its statutory provisions cannot be amended by the Legislature without a 3/4 vote, unless the amendments recognize additional rights of victims of crimes. Nevertheless, the Legislature adopted SB 230 (Stats 2015, ch. 470, § 4), which changed provisions of Penal Code section 3041.5 that were technically restated in Proposition 9, including a substantive change to a provision regarding postponing parole to rescinding parole.[4] SB 230 was passed without a 3/4 vote.

If the technically restated provisions are express voter enactments, rather than just included in the ballot to comply with the reenactment rule, the Legislature could not amend the provisions without complying with the required vote thresholds. To argue here that the technical restatements amount to "express inclusion" in the ballot measure for purposes of avoiding mandate payment, while also amending technical restatements without meeting the voting thresholds, is inconsistent. It must be

---

[4] The provision technically restated in Proposition 9 read: "Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action." SB 230 amended that paragraph to read: "Within 10 days of a board action resulting in the rescinding of parole, the board shall send the inmate a written statement setting forth the reason or reasons for that action, and shall schedule the inmate's next hearing in accordance with paragraph (3)."

acknowledged, as the case law has stated for over 100 years, and as the Legislature has indeed treated Proposition 83, that the technical restatements are just a continuation of existing law rather than a new legal provision. That is why the State is able to make amendments to such provisions without meeting the vote threshold, and that is why they are not considered expressly included in the ballot measure for purposes of this mandate redetermination.

3. **Concluding that technical restatements are sufficient to change the State's mandate obligations would lead to absurd results.**

The State's argument that technical restatements become substantive voter enactments would also lead to absurd results based solely on the original drafting structure of a statutory provision. Such arbitrary application of whether the Legislature can amend a provision with a simple majority, and whether the provision is a subsequent change in the law for purposes of mandate redeterminations, cannot be what was intended.

For example, imagine a statutory scheme where, as originally drafted, all of the substantive provisions are included within one section of code, with twenty paragraphs ((a) through (t)). If the voters wanted to make a change only to paragraph (a) of the section, the reenactment rule would require not only the changes in paragraph (a) to be included in the text of the ballot measure, but also the technical reprinting of paragraphs (b) through (t). Now imagine that same statutory scheme was initially drafted

as twenty different sections, 6000.01 through 6000.20 for example. If the voters wanted to make a change only to the first section, the reenactment rule requires that only section 6000.01 would be printed in the ballot. Sections 6000.02 through 6000.20 would not be included.

Under the State's argument, in the first example, all of paragraphs (a) through (t) are considered fully reenacted, meaning the Legislature cannot make any amendments unless the measure so provides, and any mandates therein now derive from the voters and are no longer reimbursable. In the second example, however, only the very first section is considered reenacted, and the remaining provisions continue on as existing law. The Legislature is free to make amendments, and any existing mandates continue to be reimbursable.

The Court of Appeal recognized such potential for absurd results. (*County of San Diego v. Comm'n on State Mandates* (2016) 7 Cal.App.5th 12, 30.) This Court should affirm the Court of Appeal. By following more than a century of case law finding that a technical restatement merely continues existing law, this Court would put in place the common sense result that only those provisions actually changed by the voters are considered voter-adopted provisions.

B. The Sexually Violent Predators Act mandates are not necessary to carry out Proposition 83.

To be relieved of the obligation to provide subventions for the mandated activities, the State bears the burden of showing the activities are either expressly included in the ballot measure, or are necessary to carry out Proposition 83. (*Department of Finance v. Comm'n on State Mandates* (2016) 1 Cal.5th 749, 769 [Since section 6 of article XIII B establishes a general rule requiring subventions, the party claiming an exception from subventions in Government Code section 17556 bears the burden of showing the exception applies]; Gov. Code, § 17570, subd. (h) [Commission on State Mandates must find that requester (the State in this case) has made a showing that the State's obligation to provide subventions has been modified by a change in the law]; 2 Cal.Code Reg § 1190.5, subd.(a) [Commission must make an initial determination as to whether requester has made an adequate showing of a subsequent change in the law, and deny the request if such showing is not made].)

Amici explain above why technical restatement does not make a provision expressly included in a ballot measure for purposes of a mandate redetermination. The Department of Finance therefore had the initial burden before the Commission of demonstrating that the activities required by the relevant Welfare & Institutions Code provisions are necessary to

implement Proposition 83.[5] As discussed below, Respondents failed to meet their burden before the Commission to demonstrate that the mandated activities are necessary to carry out Proposition 83.

It is important to first note that finding that a mandated activity is necessary to implement a voter-adopted measure is critical to the constitutionality of the mandate redetermination process. Local governments are constitutionally entitled to a subvention of funds to reimburse them for the costs of programs and services imposed upon them by the State. (Cal. Const., art. XIII B, § 6.) Certainly a mandate not imposed by the State does not require subventions. But to avoid the constitutionally required subvention, it is not sufficient to find that a duty is reasonably within the scope of a ballot measure. (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1189-1190.) Without a clear finding that the activity is truly necessary to carry out a voter-adopted measure, the redetermination process would be unconstitutional. (*Id.* at p. 1215.) The activity must be "part and parcel" of the initiative. (*San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 890.)

---

5 The State cannot win this case on "express inclusion" alone because as the chart on pages 12-13 of the counties' Answer Brief so clearly demonstrates, two of the mandated activities were not even included in the text that was reprinted in Proposition 83. Thus, at a minimum, the State must show why those two activities cannot be accomplished by other means.

This Court recently reiterated the framework to consider how exemptions to the subvention requirement should be applied. (*Department of Finance v. Comm'n on State Mandates* (2016) 1 Cal.5th 749.) In *Department of Finance v. Commission on State Mandates,* the Court considered the "federal law" exception to the subvention requirement. (Gov. Code, § 17556, subd. (c).) Under that exemption, the State is not required to provide subventions if the mandate is "compelled" by federal law. (*Department of Finance*, supra, 1 Cal.5th at p. 765.) Based on the history and purpose of the constitutional subvention requirement, which this Court noted is to prevent the State from shifting financial responsibilities for programs to local government, (*Id.* at p. 763), the Court took a narrow view of what it means to be "compelled" by federal law, and concluded that where the state exercises its discretion, the requirement is not federally mandated. (*Id.* at p. 765.) For the same reasons, that narrow view of exemptions to the subvention requirement should apply equally to the exemption for initiatives. (Gov. Code, § 17556, subd. (f).) To the extent that the specific mandated activities at issue in this case are not directly compelled by action of the voters, the constitutional language requiring the subvention must apply.

Despite that constitutionally-required standard, the State offers virtually no discussion of why the mandated activities are *necessary* to implement Proposition 83, or that the State is without discretion to choose

alternative means of achieving the same objectives. (*See* Opening Br., pp. 26-27 [arguing that State meets this test merely by showing the mandated activities "flow from" the initiative].)[6] The Statement of Decision issued by the Commission on State Mandates concluded that five of the eight mandated activities (Activities 1, 2, 3, and 6, and part of Activity 7) are no longer imposed by the State because they were expressly included in Proposition 83. But there was no analysis before the Commission on why they would also be necessary to implement Proposition 83. Similarly, the State merely asserts the activities are necessary to implement with no further discussion. Should this Court agree with the Court of Appeal that a technical restatement of the mandated activities is not sufficient to be considered "expressly" included in Proposition 83, there is nothing in the Statement of Decision, trial court opinion, or the State's briefs to explain why these activities are "necessary" (i.e., "part and parcel" or the only means) to implement Proposition 83.

The only activities for which any analysis has been provided on necessity are Activity 5, and parts of Activities 7 and 8. For these, the

---

[6] As noted above, Government Code section 17556, subdivision (f) would be unconstitutional if interpreted in a manner that allows the State to avoid the subvention requirements for mandates that are merely reasonably within the scope of a ballot measure. (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1189-1190; *San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 890.)