

SUPREME COURT
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Case No. S247266

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

CALIFORNIA SCHOOL BOARDS ASSOCIATION, et al.
Appellants and Petitioners

vs.

STATE OF CALIFORNIA, et al.
Appellees and Respondents.

CALIFORNIA COURT OF APPEAL, First Appellate District, Division 5
Case No. A 148606

Alameda County Superior Court (The Honorable Evelio Grillo)
Case No. RG 11554698

PETITIONERS' RESPONSE TO *AMICUS CURIAE* BRIEFS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES3
RESPONSE TO BRIEFS OF AMICUS CURIAE.....4
CERTIFICATE OF COMPLIANCE.....9
CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

CASES

Cal. School Boards Ass'n. v. State (2009) 171 Cal.App.4th 11834
Cal. School Boards Ass'n. v. State (2011) 192 Cal.App.4th 7705
County of San Diego v. State (1997) 15 Cal.4th 68.....8
County of San Diego v. Comm. on State Mandates (Nov. 19, 2018, S239907)
Cal.5th [2018 Cal. LEXIS 8819]8

GOVERNMENT CODE

Gov Code Section 175005
Gov. Code Section 17581.65
Gov. Code Section 17581.86
Gov. Code Section 17581.96
Gov. Code Section 17581.956
Gov. Code Section 17581.966

CONSTITUTIONAL PROVISIONS

California Constitution
Article XIII B, section 6passim

OTHER AUTHORITIES

Assembly Bill 1840 (Stats. 2018, ch. 426)7

RESPONSE TO BRIEFS OF *AMICUS CURIAE*

The *amicus curiae* briefs filed in this case focus on various aspects of the State's efforts to undermine the protections of Article XIII B, section 6.

Petitioners would like to briefly put the various issues raised in the amicus briefs in the broader context of the State's actions.

Looking at the big picture, it is undeniable that the State has used every effort to avoid its constitutional obligation to reimburse for state-mandated programs for decades. The most consequential was perhaps its decision beginning in 2002 to pay only \$1,000 annually for mandates and treat the outstanding balance as a debt. This led to the cities and counties proposing an amendment in 2004 that requires advance payment or suspension of the mandate. (Cal. Const., art. XIII B, section 6(b).)

On the education side, the deferral of mandate reimbursement led to a build-up of a massive debt – more than \$5 billion owed in 2014. (JA II:545.) The State also attempted to reduce its *ongoing* mandate obligations with legislation directing the Commission on State Mandates to “reconsider” a number of its mandate decisions. This was declared unlawful in *Cal. School Boards Ass'n. v. State* (2009) 171 Cal.App.4th 1183. It then enacted the 2010 legislation at issue here, which was also intended to eliminate approximately three-quarters of the State's ongoing annual mandate obligation.

When the State's ability to indefinitely defer payment of its mandate debt was declared contrary to article XIII B, section 6 in *Cal. School Boards Ass'n. v. State* (2011) 192 Cal.App.4th 770, 787, the State was undeterred. First, it enacted the "mandate block grant." (Gov. Code, § 17581.6.) Created in 2012, the block grant "allows" districts and offices of education to accept an annual "grant" in lieu of actual mandate payment; the amount of the "grant" is unrelated to actual mandate costs and acceptance of the grant requires the district to waive any claims for payment of actual costs. Block grant funding has been allocated money to districts and county offices of education on the basis of attendance – the mechanism for allocating general education funding – rather than on the basis of cost-based mandate claims as prescribed by Government Code section 17500 *et seq.* As a practical matter, this means that two districts with similar numbers of students will receive comparable allocations, irrespective of whether or not the districts have comparable mandate claims. (Gov. Code, §17581.6(c)(2).) This, combined with the fact that the State has refused to provide any other mandate funding, has pushed more districts into the block grant and further undermined the claims-based system created by the State for mandate reimbursement.

In addition to the block grant, the State began to "pay off" its backlog of mandate debt with a series of "one-time payments." Significantly, the State has directed these payments to be used not only for reimbursement of outstanding mandate costs but also for a litany of *general education* expenses: professional

development for teachers, instructional materials, technology infrastructure, implementation of the common core standards in English language arts and mathematics implementation of the “Next Generation Science standards,” and deferred maintenance. (See Gov. Code, §§ 17581.8 [2014-15]; 17581.9 [2015-16]; 17581.95 [2016-17]; 17581.96 [2017-18].) The *amicus curiae* brief filed by the counties, cities and special districts demonstrates in more detail why the State cannot constitutionally be permitted to direct local entities to use the same pot of money for multiple purposes and call it mandate “reimbursement.” Unfortunately, for schools, the State has been doing precisely this for several years. Whereas the 2010 legislation directed schools to use general education funds to pay *ongoing* mandate costs, these “one-time payments” essentially directed them to use general education funds to pay off past-due mandate debt.

In addition, like the block grant, each of these “payments” has allocated money to districts and county offices of education on the basis of attendance rather than on the basis of cost-based mandate claims. Like the block grant, this means that districts with similar numbers of students will receive comparable allocations, irrespective of mandate claims. Districts with outstanding mandate claims, *i.e.*, districts that have incurred and filed costs under the State’s mandate system, have those claims administratively eliminated but they receive no more money than other comparable districts without any mandate cost claims – further undermining the mandate reimbursement system created by the State itself. As the *amicus*

curiae brief filed by San Jose Unified and several other districts indicates, this practice is also being challenged in the court as it deprives districts of actual reimbursement. (Brief of San Jose Unified School District, *et al.*, pp. 6, 14.)

The “one-time payments” and the block grant have thus allowed the State to both eliminate billions of dollars of past-due mandate claims and to significantly reduce its ongoing mandate obligations without complying with the mandate reimbursement system and without actually providing any actual funding for mandates through the reimbursement system. Having thus eliminated outstanding mandate debt and reduced ongoing obligations, the 2010 provisions also lay the groundwork for the elimination of *future* education mandates.

Although the State has repeatedly claimed that nothing in the 2010 legislation signals that a similar approach would be used in the future, as the *amicus curiae* briefs of School Innovations & Achievement and Clovis Unified School District, *et al.* notes, the State has used the 2010 approach as a virtual template for a catch-all provision in the 2018 education trailer bill which provides:

Sec. 43. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to [Government Code sections 17500 *et seq.*] *except that funding provided to school districts, county office of education and charter schools pursuant to Sections 2574, 2575, 2575.2, 42238.02, and 42238.03, as applicable, shall be used to directly offset any mandated costs.*

(Assembly Bill 1840; Stats. 2018, ch. 426, §43.) The funding referenced in this section is to general education funding made available to districts, county

office of education and charter schools. While it is not possible to know whether any of the dozens of substantive provisions contained in AB 1840 impose a new mandate, the clear import of section 43 is to prevent the creation of any future education mandates. And it does so in a way that could be used for literally any mandate in the future, including non-education mandates.

All briefs filed by *amicus curiae* confirm that the State's actions are little more than transparent attempts to avoid the responsibilities imposed by article XIII B, section 6. Unless those constitutional responsibilities are protected by this Court, that provision will become a dead letter. The salutary intent of article XIII B, section 6 has been repeatedly acknowledged by the courts – to impose fiscal discipline at all levels of government and to prevent the State from shifting the costs of state-mandated programs to local governments in light of limited revenues. (See, e.g., *County of San Diego v. State* (1997) 15 Cal.4th 68, 81; see also *County of San Diego v. Comm. on State Mandates* (Nov. 19, 2018, S239907) _Cal.5th_ [2018 Cal. LEXIS 8819, p. 16] [purpose of the ban on unfunded mandates was to protect strapped budgets of local governments in wake of Proposition 13].) As the arguments of *amici* correctly point out, the decision of the Court of Appeal would not merely frustrate that intent, it would defeat it entirely.

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For the reasons presented in Petitioners' briefs and supported by the various *amicus curiae*, Petitioners respectfully request that Court of Appeal's construction of the requirements of article XIIB, section 6 be rejected.

Dated: December 7, 2018

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP
Deborah B. Caplan

By: /s/ Deborah B. Caplan
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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached **PETITIONERS' RESPONSE TO *AMICUS CURIAE BRIEFS*** is proportionately spaced, has a typeface of 13 points or more, and contains 1,187 words as counted by the Microsoft Office Word 2010 word processing program used to generate this brief, excepting the caption, tables, verification, and this certificate.

Dated: December 7, 2018

OLSON, HAGEL, & FISHBURN, LLP

By: /s/ Deborah B. Caplan
DEBORAH B. CAPLAN
Counsel for Appellants/Petitioners

CERTIFICATE OF SERVICE

Case Name : *California School Boards Assn, et al. v. State of California, et al.*
Case No: : S247266
Court : **In the Supreme Court, State of California**

I am a citizen of the United States, over the age of 18, and not a party to the within action. My business address is 555 Capitol Mall, Suite 400, Sacramento, California, 95814. On this date, I served a true and correct copy of the following entitled documents:

PETITIONERS' RESPONSE TO *AMICUS CURIAE* BRIEFS

on the parties in said action as indicated below:

 X BY ELECTRONIC SERVICE: By submitting the foregoing with the clerk of the California Supreme Court, by using its True Filing system, which electronically serves counsel for each party.

 X BY OVERNIGHT MAIL: By placing the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices, for overnight delivery, via UPS Overnight. I am readily familiar with this business' practice for collecting and processing correspondence for mailing.

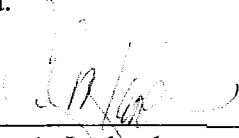
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*(via electronic submission
pursuant to Rule 8.212(c)(2).)*

Clerk of the Court
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 7, 2018 in Sacramento, California.



Cindy A. Inghland