In the Supreme Court of the State of California

COAST COMMUNITY COLLEGE DISTRICT, et al.,

Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES,

Defendant and Respondent,

DEPARTMENT OF FINANCE,

Real Party in Interest and Respondent.

Case No. S262663

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

ANSWER TO BRIEFS OF AMICI CURIAE

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INTRODUCTION

The Department of Finance has explained in detail in its Opening and Reply Briefs why this Court should hold that the conditions entitling community college districts to state aid—funding-entitlement conditions—are not reimbursable state mandates under Article XIII B, section 6, of the California Constitution. Amici California State Association of Counties (CSAC) and California School Board Association's Education Legal Alliance (SBA) devote substantial portions of their briefs to repeating the community college districts' arguments on the merits, but offer no persuasive reason for this Court to reach a different conclusion.

By their terms, the funding-entitlement conditions do not "*mandate[]* a new program or higher level of service on" the community college districts. (Cal. Const., art. XIII B, § 6, italics added.) No state statute, regulation, or executive order requires districts to comply with the conditions. (OBM 39-41.) The Commission on State Mandates thus correctly distinguished the conditions from the separate body of "operating standards" regulations, which districts *are* legally compelled to satisfy. (OBM 29-30, 59; RBM 9-10.) The conditions, in contrast to the standards, cannot give rise to legal compulsion.

Like the districts, amici have little to say in response; they instead focus on the question whether the funding-entitlement conditions give rise to "practical compulsion." They assert that the State is attempting to evade constitutional reimbursement requirements based on a "technical[ity]" because, as a practical

matter, the districts have no real choice but to comply with the conditions. (CSAC ACB 5; see SBA ACB 10-11.)

But as the Department has explained, even if a practical compulsion claim might prevail in a case involving "severe," "'draconian'" consequences flowing from local districts' failure to satisfy certain conditions—a question this Court has expressly reserved (*Dept. of Finance v. Com. on State Mandates* (2003) 30 Cal.4th 727, 754 (*Kern*))—the districts here have not made, and cannot make, any such showing. Amici's practical compulsion arguments, like those of the districts, are based on a mistaken understanding of how the funding-entitlement conditions work. Amici assert that the State is trying to coerce the districts into "becom[ing] agents of the State, compelled to carry out the Legislature's preferred programs." (SBA ACB 19-20; see also CSAC ACB 5-7, 18-19, 24; SBA ACB 10-11, 17). This follows, amici suggest, because if the districts do not comply with the conditions, they must "forgo" "*all* state aid (CSAC ACB 6, italics added) or the "vast majority of operational revenues" (SBA ACB 11).

This is incorrect. Far from "coerc[ing]" community college districts into compliance (e.g., CSAC ACB 24), the regulations prescribing the funding-entitlement conditions simply provide notice that, if a district fails to satisfy one of the conditions, the Chancellor of California Community Colleges may take one of several compliance-encouraging steps—several of which stop far short of withholding state aid. (OBM 55-60; RBM 16-22.) While withholding some amount of aid is theoretically possible, the

Chancellor has never actually done so, in large part because withholding aid would often run counter to the ultimate objective of serving students' educational needs. (OBM 57-58; RBM 18-19.) And for reasons detailed at OBM 56-60; RBM 17-19, and briefly reiterated below, if the Chancellor were ever to withhold aid, he or she would be virtually certain to withhold only a limited amount—certainly not so much as to apply "coercive" pressure on the districts. The funding-entitlement conditions thus cannot give rise to practical compulsion.

The Court should reverse the judgment of the Court of Appeal and uphold the Commission's denial of reimbursement in relevant part.

ARGUMENT

The only type of "mandate" that this Court has recognized as a viable basis for reimbursement under Article XIII B, section 6, is a state statute, regulation, or executive order that local governments are "legally compelled" to satisfy. (*Kern*, *supra*, 30 Cal.4th at p. 742.) No such legal compulsion exists here. And while the Court has "assum[ed], for purposes of analysis only," that "practical compulsion" may support a state mandate claim in certain limited circumstances (see *id.* at p. 751), the funding-entitlement conditions do not give rise to such compulsion because community college districts face no risk of "severe," "'draconian'" penalties for failing to comply (*id.* at p. 754).

I. THE COURT OF APPEAL ERRED IN TREATING THE FUNDING-ENTITLEMENT CONDITIONS AS LEGAL MANDATES

Like the districts' answer brief, the amicus briefs make little effort to defend the Court of Appeal's determination that compliance with the funding-entitlement conditions is "legally compelled." (Opn. 3, 5-12; see, e.g., CSAC ACB 19-20.) As the Department has explained (OBM 39-45; RBM 9-13), no state statute, regulation, or executive order "*mandates*"—that is, "order[s], enjoin[s], or command[s]"—compliance with the conditions. (Webster's Third New Internat. Dictionary (1976 ed.) p. 1373; see *Kern*, *supra*, 30 Cal.4th at p. 741.) No district violates state law or otherwise acts unlawfully if it fails to satisfy the conditions. The Commission thus correctly distinguished between the funding-entitlement conditions and the separate body of "operating standards" regulations, which *do* compel compliance. (See OBM 24-28, 29-30, 58-60, Appendix; RBM 17-19.)

Indeed, the legal compulsion analysis in this case is more straightforward than in *Kern* and many other state mandates cases. In *Kern*, local recipients of state funds for particular programs had an "obligation to comply" with certain conditions in exchange for receiving that funding. (*Kern*, *supra*, 30 Cal.4th at p. 743.) Once they accepted the funding, compliance with the conditions was required. (*Ibid.*) But the Court still treated the conditions as non-mandatory for purposes of Article XIII B, section 6, because the claimant school districts were "under no legal compulsion" to accept the state funds at issue "in the first

place." (*Ibid.*) Similarly, in *City of Merced v. California* (1984) 153 Cal.App.3d 777, 783, the claimant city government faced a state law "obligation to compensate for lost business goodwill" when it "resort[ed] to eminent domain." (*Kern*, *supra*, 30 Cal.4th at p. 743.) But that obligation "was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place." (*Ibid.*; see also SBA ACB 15-17 [discussing similar cases]; *San Diego Unified School Dist. v. Com. on State Mandates* (2004) 33 Cal.4th 859, 885 [considering whether, under *Kern*, "when a school pursues a discretionary expulsion [of a student], it is not acting under compulsion of any law but instead is exercising a choice"]; *Dept. of Finance v. Com. on State Mandates* (2009) 170 Cal.App.4th 1355, 1358 [similar with respect to decision by certain "school districts and special districts" "to employ peace officers who supplement the general law enforcement units of cities and counties"].)

While such applications of *Kern* may sometimes pose difficult questions (see *San Diego Unified*, *supra*, 33 Cal.4th at pp. 887-888), no such difficulties are presented here. As explained (OBM 43-44; RBM 11-13), community college districts are neither legally compelled to accept state aid in the first place, nor legally obligated to satisfy the funding-entitlement conditions upon receiving state aid. Thus, unlike in *Kern*, *City of Merced*, *San Diego Unified*, and similar cases, the districts' claims in this case do not involve any legal "obligation to comply with" certain conditions (*Kern*, *supra*, 30 Cal.4th at p. 743), thereby requiring the Court to take the additional step of inquiring whether such

an "obligation" was "trigger[ed]" by some "initial discretionary decision" on the part of the districts (*San Diego Unified*, *supra*, 33 Cal.4th at p. 888).

CSAC nonetheless suggests that "this Court can decide this case on grounds of legal compulsion" because "exercising the 'option' not to perform minimum conditions regulations would critically jeopardize [the districts'] core, required services." (CSAC ACB 19-20.) To the extent CSAC intends to echo the Court of Appeal's "core" functions analysis (see opn. 9-12), that argument fails for reasons discussed at OBM 42-45. A state condition does not become legally compelled merely because it bears some relationship to a local district's "core" functions. To the extent CSAC instead suggests that one of the *practical* consequences of noncompliance with the conditions would be the loss of so much state aid that districts could no longer provide "core, required services," that is an argument about practical, not legal compulsion. And even if the impact of a funding loss on districts' "core" functions were relevant to a practical compulsion inquiry—a question the Court need not address here—the districts do not stand to lose a substantial amount of state aid for failing to satisfy the funding-entitlement conditions, certainly nowhere near enough to compromise their "core" functions. (See *post*, pp. 15-16.)[1]

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[1] As the Department explained in its petition for review (see pp. 24-29), any open-ended standard that requires an assessment of an entity's "core" functions would pose challenging

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II. THE FUNDING-ENTITLEMENT CONDITIONS DO NOT GIVE RISE TO PRACTICAL COMPULSION

Assuming "for purposes of analysis only" that "practical compulsion" might support a reimbursement claim under Article XIII B, section 6 (*Kern*, *supra*, 30 Cal.4th at p. 751), this Court has recognized that claimants would have to demonstrate that "severe," "'draconian'" penalties would likely result from failing to meet state-imposed conditions (*ibid.*). The districts cannot satisfy that standard. (OBM 55-60; RBM 16-21.)

Amici contest both the relevant legal standard and the Commission's application of it to deny reimbursement in this case. As to the standard itself, CSAC asserts that it should be "sufficient" but "not necessary" for a claimant to show that the penalties for noncompliance would be "'severe' and 'draconian.'" (CSAC ACB 24.) CSAC acknowledges, however, that this Court "used those terms" when setting out the standard in *Kern* (*ibid.*), and that the "severity of penalties is certainly relevant in evaluating" a practical compulsion claim (CSAC ACB 25). Given that CSAC also agrees that the ultimate question for practical compulsion purposes is whether the State has created conditions that leave local agencies "no true option or choice" but to comply (*Kern*, *supra*, 30 Cal.4th at p. 748, internal quotation marks omitted; see CSAC ACB 7, 25), it is not at all clear that there is significant daylight between the standard proposed by CSAC and

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line-drawing questions. Indeed, neither the districts nor amici make any attempt to define "core" functions.

the standard endorsed by *Kern* and already discussed in detail by the Department (OBM 46-54).

Indeed, as amici appear to acknowledge, the only reason this Court would even contemplate a practical compulsion standard would be to serve the limited purpose of preventing the State from "stop[ping] just shy of explicitly" commanding or ordering "local agencies to undertake new programs or higher levels of service, [while] . . . creat[ing] conditions that leave agencies *no choice* but to comply." (CSAC ACB 7, italics added; see SBA ACB 17, 19-20 [similar].) Such a standard would necessarily impose an exceptionally high bar for proving practical compulsion, distinguishing "'de facto' reimbursable state mandate[s]"—that is, truly coercive funding conditions—from the myriad state funding regimes imposing conditions that, if violated, "simply [require local governments to] adjust to the withdrawal of grant money." (*Kern*, *supra*, 30 Cal.4th at p. 754.) And as the Department has explained, such a standard would also help to mitigate the serious administrability concerns that practical compulsion claims pose. (OBM 51-54).

CSAC downplays the administrability concerns raised by the Department, suggesting that "courts can, and in fact already do, evaluate . . . similar standards." (CSAC ACB 20; see CSAC ACB 20-22.) But none of the cases invoked by CSAC support that comparison. In *South Dakota v. Dole* (1987) 483 U.S. 203, 211, for example, the Court *rejected* an argument that a federal program was "so coercive as to pass the point at which 'pressure turns into compulsion.'" The Court expressed serious concerns

about the administrability of a practical compulsion standard, emphasizing that such a standard could "plunge the law [into] endless difficulties." (*Ibid.*, quoting *Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 590; see OBM 51, fn. 22.)[2] And in *California School Boards Association v. California* (2011) 192 Cal.App.4th 770, 782-784, another decision cited by CSAC, the Court of Appeal simply accepted the parties' common-sense agreement that "$38,000" in state funding qualified as a "nominal amount" in relation to costs "exceed[ing] $160 million." While the court had to weigh the parties' competing legal arguments about whether the Legislature's appropriation of that nominal amount satisfied certain constitutional strictures (see *id.* at pp. 787-790), nothing about that purely legal assessment required the court to grapple with the kinds of evidence-laden questions and procedural difficulties that may arise if practical compulsion claims are not carefully circumscribed—or barred entirely—under Article XIII B, section 6 (see OBM 51-53).[3]

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[2] While the U.S. Supreme Court struck down a federal funding condition on coercion grounds in one post-*Dole* decision (see *Nat. Federation of Independent Bus. v. Sebelius* (2012) 567 U.S. 519, 581 (opn. of Roberts, C.J.)) it did so to protect "the status of the States as independent sovereigns in our federal system" (*id.* at p. 577). As this Court has explained, "sovereignty is not an issue" for purposes of applying Article XIII B, section 6, because "local governments" are "agencies of the state, and not separate or distinct political entities." (*Kern*, 30 Cal.4th at p. 751, fn. 20.)

[3] CSAC also points to this Court's recognition of a practical compulsion standard for *federal* mandates purposes. (CSAC ACB 21, citing *City of Sacramento v. California* (1990) 50 Cal.3d 51,

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CSAC also argues that "the State should carry the burden" under *Kern* of "showing its conditions are not so coercive as to amount to compulsion." (CSAC ACB 25.) But this Court thought otherwise in *Kern*. The Court explained that the "*claimants* have failed to establish" practical compulsion. (*Kern*, 30 Cal.4th at p. 754, italics added; see *id.* at pp. 751-754.) That determination is consistent with the Government Code, which places the burden on subvention-seeking claimants to demonstrate that a reimbursable mandate exists. (See Gov. Code, § 17553; see also former Cal. Code Regs., tit. 2, § 1183 (2003).) It is also consistent with the general evidentiary principle that "a party has the burden of proof as to each fact . . . which is essential to the claim for relief." (Evid. Code, § 500.) And it comports with common sense and good judgment: when it comes to demonstrating practical compulsion, a local-government claimant is far better positioned than the State to produce required forms of proof, such as evidence of dependency on state aid and any practical impacts of a funding loss on local services. (See OBM 51-54.)[4]

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73-74.) But for the reasons explained at RBM 15, administrability concerns are substantially diminished in that context.

[4] CSAC notes that "the party claiming the applicability of an exception" to reimbursement requirements under Article XIII B, section 6, "bears the burden" of demonstrating that the exception applies. (CSAC ACB 25, citing *Dept. of Finance v. Com. on State Mandates* (2016) 1 Cal.5th 749, 769.) But there is no reimbursement exception at issue before this Court. (See, e.g., OBM 19 [discussing several exceptions].) The issues relevant here, as in *Kern*, are "the meaning of state 'mandate'" under the

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As to the specific question whether the districts have satisfied their burden here, amici echo the districts' assertion that, by failing to satisfy the funding-entitlement conditions, community college districts stand to lose "all state aid" (CSAC ACB 6) or "the vast majority of [their] operational revenues" (SBA ACB 11; see, e.g., ABM 14, 35, 38). That assertion is unsupported. (See OBM 55-60; RBM 16-20.) The Chancellor's Office has no obligation to withhold state aid when a district fails to satisfy the conditions; it may instead take one of several other compliance-encouraging steps, such as collaborating with the district to develop a plan for coming into compliance or working with the district to improve its finances and identify additional funding sources to enable it to comply. (See OBM 56-58, and fn. 25; RBM 16-17, 19.) While the Chancellor's Office could theoretically decide to withhold some amount of state funding from a noncompliant district, it has never actually done so. (OBM 58.) And if it ever did withhold aid, it would be legally limited to withholding an amount proportionate "to the extent and gravity" of a district's noncompliance. (Cal. Code of Regs., title 5, § 51102, subd. (c).) As a matter of law, the risk of substantial noncompliance is vanishingly small because almost all of the funding-entitlement conditions address conduct that is

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Constitution and whether any such mandate exists. (30 Cal.4th at p. 736.) Claimants have the burden of proof on such "essential" elements of their claim for relief. (Evid. Code, § 500.)

separately compelled by the mandatory operating standards. (OBM 58-59, and Appendix; RBM 17-18.)

Accordingly, even assuming "for purposes of analysis" that "practical compulsion" might support a reimbursable mandate claim (*Kern*, *supra*, 30 Cal.4th at p. 751), the funding-entitlement conditions do not give rise to practical compulsion.

CONCLUSION

The Court should reverse the Court of Appeal's decision and uphold the Commission's denial of the districts' reimbursement claims in relevant part.

Dated: July 16, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO BRIEFS OF AMICI CURIAE uses a 13-point Century Schoolbook font and contains 2,815 words.

Dated: July 16, 2021

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DECLARATION OF ELECTRONIC AND MAIL SERVICE

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I am employed in the Office of the Attorney General, and am a member of the California State Bar. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

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

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **S262663**
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