

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; JOHN
CHIANG in his official capacity as
California State Controller,**

Defendants and Respondents.

Case No. S239907

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ISSUES PRESENTED

This case concerns a decision by the Commission on State Mandates. The Commission concluded that the State is no longer financially responsible for costs incurred by local governments in complying with certain duties imposed by the Sexually Violent Predator Act (SVPA). Under the state mandates requirement of the California Constitution, and the Government Code provisions implementing that requirement, the State generally must pay for the costs resulting from a new program or higher level of service imposed on local government by the Legislature. But the State is not responsible for the costs of duties that are expressly included in or necessary to implement a ballot measure approved by the voters. The Commission decided that amendments to the SVPA adopted by the voters in Proposition 83 changed the status of six of the SVPA duties from reimbursable state mandates to non-reimbursable voter mandates. The trial court agreed with that decision. In reversing the trial court, the Court of Appeal concluded that a ballot measure does not change the State's financial responsibility for a statutory mandate unless it alters the text of that duty. The issues presented by this case are:

(1) Whether the rule adopted by the Court of Appeal, which focuses exclusively on whether a voter initiative modifies the language of the statutory section or subdivision that imposes a statutory mandate, and does not allow consideration of other ways in which an initiative may modify the scope, nature, or source of that mandate, complies with the Government Code and the Constitution.

(2) Whether and to what extent the State remains responsible for the costs of duties imposed on local government by the Sexually Violent Predator Act, which the voters amended and partially re-enacted when they approved Proposition 83.

INTRODUCTION

As originally enacted by the Legislature, the SVPA defined a narrow category of unusually dangerous sex offenders and established a process for identifying such offenders and having them civilly committed. That process imposed a number of mandatory duties on both state and local agencies. The Commission on State Mandates originally held that the State was financially responsible for certain duties imposed by the SVPA on local agencies, because the duties were part of a new program mandated by the Legislature.

The Constitution does not, however, require the State to pay for costs arising from statutory duties mandated by a source other than the Legislature or a state agency. The Government Code implements that exclusion. In particular, it directs that the State is not responsible for the costs of a statutory duty that is “necessary to implement, or [is] expressly included in, a ballot measure approved by the voters in a statewide election”—regardless of whether the voters adopted that ballot measure “before or after” the statutory duty was first enacted. (Gov. Code, § 17556, subd. (f).)

Under that Government Code provision, the State is no longer financially responsible for the six SVPA duties at issue in this case because of the voters’ adoption of Proposition 83 in 2006. In Proposition 83, the voters substantially expanded the definition of “sexually violent predators,” which triggers the duties that are part of the SVPA process; they re-enacted the entire text of the statutory sections that impose several of those duties; and they prevented the Legislature from narrowing or repealing the provisions of Proposition 83 through the normal legislative process. As the Commission and the trial court recognized, after Proposition 83, the SVPA duties at issue here were either necessary to implement, or expressly included in, Proposition 83.

The Court of Appeal disagreed, on the ground that Proposition 83 had not altered the specific statutory language describing those duties. The Court of Appeal’s narrow construction of the Government Code is incorrect. Statutory duties are “expressly included in” a ballot measure if they are set out in its text. Statutory duties are “necessary to implement” a ballot measure if they flow from or are compelled by the measure. Here, all of the SVPA duties at issue were either contained within the text of Proposition 83 or impose costs that flow from and are compelled by Proposition 83. The California Department of Finance, the California State Controller, and the State of California (collectively, the “State Respondents”) respectfully request that this Court reverse the judgment of the Court of Appeal.

LEGAL BACKGROUND AND STATEMENT OF THE CASE

A. Article XIII B and the Government Code Generally Require the State to Reimburse Local Governments for the Costs of Mandates Imposed by the Legislature

The Constitution requires the State to reimburse local governments for the costs of a program or increased level of service “[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government.” (Cal. Const., art. XIII B, § 6, subd. (a); see Gov. Code, § 17514.) The concern prompting that state mandates requirement was “the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)¹

¹ The voters adopted the state mandates requirement as part of Proposition 4, which added article XIII B to the Constitution. (See Prop. 4, as approved by voters, Spec. Elec. (Nov. 6, 1979).) The year before, the
(continued...)

The Constitution's state mandates requirement is implemented by the Government Code. The Legislature created the Commission on State Mandates as a quasi-judicial body to decide whether a statute imposes a state-mandated cost on local governments within the meaning of the Constitution and the Government Code. (Gov. Code, § 17551, subd. (a).) Local agencies must file a "test claim" with the Commission to establish that they are entitled to reimbursement for such a cost. (See *id.*, §§ 17514, 17521, 17553; Cal. Code Regs., tit. 2, § 1181.2, subd. (s).) A test claim is the "sole and exclusive procedure" for claiming and obtaining reimbursement (Gov. Code, § 17552), and decisions of the Commission apply statewide to similarly situated agencies (Cal. Code Regs., tit. 2, § 1183.1).² Either the claimant or the State may seek judicial review of a final Commission decision by filing a petition for a writ of administrative mandamus. (Gov. Code, § 17559, subd. (b), citing Code Civ. Proc., § 1094.5.)

The Government Code also contains substantive provisions, directing the Commission on how to resolve test-claim disputes consistent with the Constitution's state mandates requirement. In particular, Government Code section 17556 describes circumstances in which the Commission "shall not find costs mandated by the state." Subdivision (f) of that section directs

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voters had approved Proposition 13, adding article XIII A to the Constitution to "limit[] the state and local governments' power to increase taxes." (*San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 574.) Articles XIII A and XIII B "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.)

² See also *San Diego Unified School District v. Com. on State Mandates* (2004) 33 Cal.4th 859, 872, fn. 10; Cal. Code Regs., tit. 2, § 1181.2, subd. (s) [test claim "functions similarly to a class action"].

that costs arising from statutory duties “that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election” are excluded from the reimbursement requirement. (Gov. Code, § 17556, subd. (f).) That exclusion “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.” (*Ibid.*)

When the Commission concludes that a state mandate exists, it must then determine the amount of reimbursable costs and adopt “parameters and guidelines” for reimbursement. (Gov. Code, § 17557, subd. (a).) The Legislature may choose to appropriate funds to reimburse the affected local agencies for the costs of the mandate; or the Legislature may choose not to fund the mandate, thereby suspending operation of the mandate for that fiscal year. (See Cal. Const., art. XIII B, § 6, subd. (b); Gov. Code, § 17581; *California School Bds. Assn. v. Brown* (2011) 192 Cal.App.4th 1507, 1513-1514 (*CSBA II*)). If the Legislature does not suspend the mandate, the Controller is responsible for disbursing the necessary funds to local agencies. (Gov. Code, § 17561, subds. (c)-(d).) If the Legislature suspends operation of a state mandate, an affected local agency may file an action to declare the mandate unenforceable and enjoin its enforcement for that fiscal year. (*Id.*, § 17612, subd. (c).)

Beginning in 2010, the Legislature authorized the Commission to “adopt a new test claim decision to supersede a previously adopted test claim decision . . . upon a showing that the state’s liability for that test claim decision . . . has been modified based on a subsequent change in law.” (Gov. Code, § 17570, subd. (b).) Under this re-determination process, an affected agency may request that the Commission conduct a new hearing process. (*Id.*, subd. (c).) In appropriate circumstances, the Commission may then conduct such a process and adopt a new test claim

decision to supersede one it issued before the change in law. (See *id.*, subd. (d)(4).)

B. The Commission on State Mandates Determined That the SVPA, as Originally Enacted by the Legislature, Imposed Eight Reimbursable State Mandates

In 1995 and 1996, the Legislature enacted the SVPA, which established procedures for the screening, evaluation, and civil commitment of inmates convicted of certain sexual offenses following the completion of their prison terms.³ The Act defines the term “sexually violent predator.” (Welf. & Inst. Code, § 6600, subd. (a)(1).) It establishes a process for committing such offenders involving participation by state and local agencies. The SVPA process begins with the California Department of Corrections and Rehabilitation and the Department of State Hospitals, which must screen and evaluate offenders to determine whether they are likely to meet the definition of a sexually violent predator. (*Id.*, § 6601, subds. (a)-(h).) County officials must perform a variety of duties in connection with offenders who are likely to qualify as a sexually violent predator, such as reviewing records to determine if the county concurs with the State’s recommendation for commitment, preparing and filing a civil commitment petition, attending the probable cause hearing and civil commitment trial, and participating in future hearings. (See, e.g., *id.*, §§ 6601, subd. (i), 6602-6604.)

In 1998, the Commission on State Mandates considered a test claim regarding the costs local agencies incurred in complying with duties

³ See Welfare & Inst. Code, §§ 6600-6608, 6601.3, 6601.5; Stats. 1995, ch. 762, § 3, pp. 5912-5921; *id.*, ch. 763, § 3, pp. 5921-5929; Stats. 1996, ch. 4, §§ 1-3, pp. 14-17.

imposed by the SVPA. (AR 4.)⁴ The Commission concluded that several provisions of the SVPA imposed “a new program or higher level of service” upon local agencies and approved reimbursement for the following eight state-mandated duties:

1. Designation by the county board of supervisors of the appropriate district attorney or county counsel who will be responsible for handling the civil commitment proceedings. (See Welf. & Inst. Code, § 6601, subd. (i).)
2. Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the State’s recommendation. (See *ibid.*)
3. Preparation and filing of the civil commitment petition by the county’s designated counsel. (See *ibid.*)
4. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (See *id.*, § 6602.)
5. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the civil commitment trial. (See *id.*, §§ 6603-6604.)
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. (See *id.*, § 6605, subs. (b)-(d) (1998), § 6608, subs. (a)-(d).)
7. Retention of necessary experts, investigators, and professionals for trial preparation and subsequent hearings regarding the condition of the sexually violent predator. (See *id.*, §§ 6603, 6605, subd. (d) (1998).)
8. 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. (See *id.*, § 6602.)

(See AR 3.)

⁴ “AR” refers to the Administrative Record. “JA” refers to the Joint Appendix.

As a result of the Commission's 1998 decision, counties throughout the State have submitted claims for the costs incurred in performing these eight duties, and the State has reimbursed them. For fiscal year 2012-2013, for example, the State reimbursed counties in the amount of \$20.75 million; and for fiscal year 2013-2014, the enacted budget appropriated \$21.79 million in reimbursement funds. (AR 41; Stats 2013, ch. 20, § 2, p. 657 [item 8885-295-0001(l)(k)].)

C. The Voters Approved Proposition 83, Which Substantially Amended the SVPA

In the November 2006 general election, California voters approved Proposition 83, a statutory initiative also known as “Jessica’s Law.” (AR 674-675; see Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006).) Proposition 83 stated that its intent was “to strengthen and improve the laws that punish and control sexual offenders.” (AR 693 [Prop. 83, § 31].) The ballot-pamphlet arguments in favor of Proposition 83 contended that “[o]ur families deserve the protection of a tough sex offender punishment and control law. The State Legislature has failed to pass Jessica’s Law time and time again. WE CANNOT WAIT ANOTHER DAY TO PROTECT OUR KIDS.” (AR 680.) The voters approved Proposition 83 by a margin of 70.5% to 29.5%.⁵

Proposition 83 had three main objectives. First, it increased criminal penalties for sex offenses. (See AR 677.) Second, it sought to protect the public by requiring certain offenders to be monitored by GPS devices and preventing them from living near parks and schools. (See AR 677-678.)

⁵ California Secretary of State, Statement of Vote, November 7, 2006 General Election, State Ballot Measures, p. 97 <http://elections.cdn.sos.ca.gov/sov/2006-general/ssov/props_sum.pdf> [as of June 26, 2017].

Third, and most relevant here, it substantially revised the SVPA. (See AR 678.)

With respect to the SVPA, Proposition 83 expanded the definition of “sexually violent predator”: it reduced the required number of victims from two to one; expanded the set of crimes that qualify as “sexually violent offenses”; and allowed consideration of more prior offenses, including certain crimes committed by an offender while a juvenile. (AR 690-691.) Proposition 83 made several additional changes to the SVPA, such as modifying the term of commitment of offenders found to be sexually violent predators. (AR 691.) In making those changes, Proposition 83 re-enacted in full many of the statutory sections that comprise the SVPA. (AR 691-693.)⁶ Those re-enacted sections contain most of the statutory duties that the Commission on State Mandates had previously found to impose reimbursable, state-mandated duties in its 1998 test-claim decision.

The final provision in Proposition 83 is an “Amendment Clause,” which constrains the Legislature’s ability to amend or repeal the provisions of Proposition 83:

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

(AR 693 [Prop. 83, § 33]; see generally Cal. Const., art. II, § 10, subd. (c) [“The Legislature . . . may amend or repeal an initiative statute by another

⁶ See generally Cal. Const., art. IV, § 9 [“A section of a statute may not be amended unless the section is re-enacted as amended”].

statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval”].)

D. After Proposition 83, the Commission Determined That Six SVPA Duties Were No Longer State Mandates

In January 2013, the Department of Finance requested that the Commission reconsider its 1998 determination regarding the SVPA duties in light of the “change in law” effected by Proposition 83. (AR 31-50.) The Department argued that Proposition 83 modified the State’s financial responsibility for the duties because they were now “expressly included in” Proposition 83 or “necessary to implement” the Proposition within the meaning of Government Code section 17556, subdivision (f). (AR 33, 37-39.) The Commission concluded that six of the eight SVPA duties (duties 1, 2, 3, 5, 6, and 7) had become voter-imposed mandates. (AR 605; see AR 623-640.)⁷

E. The Trial Court Upheld the Commission’s Determination

The Counties of San Diego, Los Angeles, Orange, Sacramento, and San Bernardino filed a petition for a writ of administrative mandamus and a complaint for declaratory relief. (JA 1-24.) They named the Commission, the Department of Finance, the State Controller, and the State of California as respondents and defendants. (JA 3-4.)⁸ Among other things, the Counties argued that the Commission had misapplied the relevant

⁷ The Commission concluded that two other duties related to probable cause hearings (duties 4 and 8) “remain reimbursable as state-mandated costs.” (AR 606.)

⁸ At the time the Counties filed their petition and complaint, John Chiang held the Office of California State Controller. Betty Yee, having been duly elected on November 4, 2014, now holds that Office. Counsel of record for the former Controller and the present Controller remains the same.

Government Code provisions, and that “the changes in law imposed by [Proposition 83] cannot be lawfully used as a basis for a request for redetermination.” (JA 12.)

The trial court denied the Counties’ petition. (JA 368.) It ruled that Proposition 83 was a change in law modifying the State’s reimbursement liability. (JA 366-367.) The court noted that Proposition 83 “was more than a mere restatement” and made “substantive changes to the SVP Act,” including by adopting “a broader definition of ‘sexually violent predator.’” (JA 367.) It also emphasized that the Proposition’s “‘Amendment Clause’ mak[es] it more difficult for the Legislature to repeal or weaken the measure.” (*Ibid.*)⁹

F. The Court of Appeal Reversed, Applying A “Narrow” Rule for Determining What Constitutes a State Mandate

The Court of Appeal reversed. It first addressed the threshold question of how to determine whether a voter initiative “converted the duties . . . that the Commission previously determined were state-mandated[] into duties that are instead mandated by the People,” and therefore no longer reimbursable by the State. (Opn. p. 24.) The court viewed this as a “novel question” that is “not easily answer[ed]” by the Government Code. (*Id.* at p. 25.) Adopting a “narrow construction” of sections 17556, subdivision (f), and 17570, the court held “that a ballot initiative that modifies statutes previously found to impose a state mandate

⁹ In addition to arguing that the Commission misapplied Government Code sections 17570 and 17556, subdivision (f), the Counties advanced several constitutional challenges to those sections in the trial court, such as arguing that the term “subsequent change in the law,” as used in section 17570, “is unconstitutionally vague.” (JA 15; see *id.* at pp. 12-15.) The trial court rejected the Counties’ constitutional challenges (see JA 367-368); the Court of Appeal did not reach them; and the Counties have not raised them before this Court. (See *post*, p. 25, fn. 11.)

only changes the source of the mandate” for reimbursement purposes “if the initiative changes the duties imposed by the statutes.” (*Ibid.*)

Next, the Court of Appeal applied that rule to Proposition 83 and the SVPA. It reviewed the sections of the Welfare and Institutions Code that the Commission had found to impose state-mandated SVPA duties, compared their text as originally enacted and as re-enacted by the voters in Proposition 83, and asked whether the Proposition modified any of the specific language that the Commission had found to impose a duty. (See *Opn.* pp. 26-29, 31.) Based on that comparative analysis of the statutory text, the court concluded that Proposition 83 “did not change any of the duties the law imposed on the Counties” and that the duties “were not affected by Proposition 83.” (*Id.* at pp. 26, 29.)

The Court of Appeal rejected the argument that other changes the voters made to the SVPA when they adopted Proposition 83 altered the State’s financial responsibility for the SVPA duties. (*Opn.* p. 32.) In particular, the court reasoned that Proposition 83’s Amendment Clause and its expansion of the “sexually violent predator” definition “did not impact any of the duties imposed by the SVPA or change the source of the mandated duties,” because those statutory changes did not modify the specific text within the Welfare and Institutions Code describing those duties. (*Ibid.*) The court also rejected the argument that the voters’ re-enactment of several statutory sections containing SVPA duties altered the State’s financial responsibility for those duties, stating that the argument would lead to “absurd” results. (*Id.* at pp. 33-36.) After concluding that the SVPA duties remain reimbursable state mandates notwithstanding Proposition 83, the Court of Appeal suggested that the Legislature remains free to suspend those mandates. (*Id.* at pp. 36-37.)

STANDARD OF REVIEW

Appellate courts must “independently review[] conclusions” by the Commission on State Mandates “as to the meaning and effect of constitutional and statutory provisions.” (*Dept. of Finance v. Com. on State Mandates* (2016) 1 Cal.5th 749, 762.) The “question whether a statute or executive order imposes a mandate is a question of law,” warranting de novo review. (*Ibid.*; see *City of San Diego v. State of California* (1997) 15 Cal.4th 68, 109; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810.)

ARGUMENT

I. THE CONSTITUTION AND THE GOVERNMENT CODE REQUIRE THE STATE TO REIMBURSE ONLY THE COSTS OF DUTIES IMPOSED AT THE LEGISLATURE’S DISCRETION

This case principally involves an interpretation of Government Code section 17556, subdivision (f), which directs that the Commission “shall not find costs mandated by the state” if those costs arise from a statutory duty that is “expressly included in” a voter-adopted ballot measure or “necessary to implement” such a measure. Interpreting those clauses requires an analysis of the statutory language. Because subdivision (f) is part of a broader statutory framework adopted to implement the Constitution’s state mandates requirement, that analysis also must consider the function and history of section 17556 “in the context of the statutory framework as a whole.” (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) Respondents begin by addressing that history and context.

A. Section 17556 Implements the State Mandates Requirement by Identifying Non-Reimbursable Costs That Are Mandated by Entities Other Than the Legislature

Section 17556 conforms with the constitutional text, which requires reimbursement only when “the *Legislature or any state agency* mandates a