Case No.: S262663

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

COAST COMMUNITY COLLEGE DISTRICT, et al.,
Appellants and Petitioners,

v.

COMMISSION ON STATE MANDATES,
Respondent,

DEPARTMENT Of FINANCE
Real Party in Interest and Respondent.

ANSWER TO DEPARTMENT OF FINANCE'S PETITION FOR REVIEW

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

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I. INTRODUCTION

The Petition for Review filed by the Department of Finance ("Department") in this matter challenges sections of the appellate court decision that ruled in favor of the appellants below Coast Community College District, North Orange County Community College District, San Mateo County Community College District, Santa Monica Community College District, and State Center Community College District (hereinafter "Colleges"). The Colleges brought a writ petition challenging Commission on State Mandates ("Commission") decisions in the "Minimum Conditions for State Aid" test claims matter ("Test Claims"). The "Test Claims" are specifically identified in the Slip Opinion at p. 5. The trial court denied the writ petition and the appeal below followed. (Slip Opinion at pp. 4-5.)

The Petition is meritless for several reasons: (1) no conflict exists in the published appellate decisions; and (2) the appellate decision herein addresses the appropriate test and application of that test to an extensive record[1].

II. ISSUE PRESENTED BY THE DEPARTMENT

The question presented is whether optional programs[2] funded by the State can create "legal compulsion" for purposes of reimbursement under

[1] The Administrative Record consists of volumes CSM I-VIII and CSM pages 00001-05274

[2] Please note the Question Presented only concerns "optional programs."

article XIII B, section 6, and if so, whether "legal compulsion" exists where the requirements of such a program relate to a local government entity's "core functions." (Petition at p. 7.)

III. ISSUE PRESENTED BY THE COLLEGES

In the event the court does decide to grant review, the Colleges submit the following Issue Presented:

Whether the state has legally or practically compelled the Colleges to comply with the Test Claims minimum conditions, as well as other Test Claims remanded to the Commission in the appellate decision below, such that those Test Claims are a state mandate pursuant to Article XIII B, section 6, of the California Constitution.

IV. SUMMARY OF THE COURT OF APPEAL DECISION

The appellate court summarized the case as follows:

> This case involves claims for subvention by community college districts pertaining to 27 Education Code sections and 141 regulations. The regulations include minimum conditions that, if satisfied, entitle the community college districts to receive state financial support. (Cal. Code Regs., tit. 5, former §§ 51000-51027.) As to the minimum conditions, the Commission generally determined that reimbursement from the state is not required because, among other things, the state did not compel the community college districts to comply with the minimum conditions. (Slip Opinion at p. 2; footnote omitted.)

The appellate court summarized its conclusion as follows:

> We conclude the minimum condition regulations impose requirements on a community college district in connection with underlying programs legally compelled by the state. The

> Commission suggests the minimum conditions are not legally compelled because the Community Colleges are free to decline state aid, but that argument is inconsistent with the statutory scheme and the appellate record.
>
> The appellate court noted that:
>
> This conclusion does not end our analysis, however, because the Commission already identified some items for reimbursement, other items are not before us, and for some items it has not been established that remand is otherwise appropriate. (Slip Opinion at p. 3)

The appellate court twice delineated those statutes and regulations upon which the trial court judgment was reversed; which statutes and regulations included within the trial court judgment were affirmed; which claims the appellate court would not consider; and the "Test Claims" to be remanded to the Commission for further determination. (Slip Opinion at pp. 2-3; 54-55.)

V. THERE ARE NO GROUNDS FOR SUPREME COURT REVIEW

A. There is no Need to Clarify the Law

Review on the substantive issues raised by the Department should be denied for the same reasons which apply to the Commission's Petition. This case presents neither the need to "clarify" the law (Commission Petition at p. 20) or any important question of law (Department Petition at p. 21), nor a necessity to secure uniformity of decisions. (See Cal. Rules of Court, rule 8.500(b)(1).) The appellate court correctly applied the law to the record in

reaching its conclusions. (Slip Opinion pp. 6-54.) The appellate court opinion and disposition was thorough and complete. Indeed several analyses and dispositions were not in favor of the Colleges. (Slip Opinion at p. 12-33.) Nevertheless, on the key Test Claims minimum standards issues on which the Colleges prevailed, the appellate court properly analyzed the state constitution, relevant statutes, and regulations, as well as applicable precedent, to properly reach its conclusions. (Slip Opinion at pp. 8-12.)

B. The Department's Concerns With the Appellate Decision Are Misplaced

Throughout the Petition, the Department focuses upon a wide array of hypotheticals regarding the: 1) the claimed "optional" program and legal compulsion test applied by the appellate court (Petition at pp. 6-7; 12-13; 18; 23-24); and 2) the Department's concept of "core functions" as mentioned by the appellate court. (Petition at pp. 7-9; 19-22; 25-28.) The Colleges assert such concerns are not well-grounded in applicable law, or this matter.

1. The Department Argues the Erroneous Commission Test

The first error by the Department regarding the claimed "optional program" and legal compulsion test is the Colleges have argued that Commission's Issue Number One does not present the correct issue on this

record.[3] There was a specific test adopted by the Commission below and applied to the Colleges on the record in this matter. That test is adopted by the Department herein (Petition at pp. 17; 24.) But, the test was based upon a misreading and misapplication of *Department of Finance v. Commission on State Mandates (Kern High School Dist.*) (2003) 30 Cal.4th 727 (hereinafter "Kern").

The Commission's final Statement of Decision adopted this flawed "test" as follows:

> The claimants argue that a "*Kern* analysis" is unnecessary and not relevant, because *districts are legally compelled to comply with the minimum conditions*. However, there is nothing in the governing statutes, regulations, or in the record that *community college districts are required to become entitled to state aid*. As a result, community college districts do not face *legal compulsion to become entitled to state aid*.
>
> The California Supreme Court held in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is *voluntary or legally compelled*. The court also held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion where "'certain and severe … penalties', such as 'double … taxation' and other 'draconian' consequences,'" would result if the local entity did not comply with the program.
>
> Based on the plain language of the code sections and title 5 regulations the Commission finds that only title 5 sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51022, 51023, 51023.5, 51023.7, 51024, 51025,

[3] Some of the Colleges arguments herein are based upon its Answer to the Commission, the first Petition for Review received by the Colleges.

> and 51027 constitute minimum conditions, satisfaction of which entitles *a community college district to state aid*. However, because community college districts perform the activities in the title 5 regulations as conditions for entitlement to state aid and there is no evidence in the record that *districts are legally or practically compelled to become entitled to state aid*, the Commission finds that the title 5 regulations do not impose activities mandated by the state pursuant to K*ern High School Dist.* (AR at p. 00011; emphasis added; footnotes omitted.)

The Commission thus rephrased the *Kern*, *supra*, 30 Cal. 4th 727 test herein to be whether "… districts are legally or practically compelled to become *entitled to state aid …,*" and reports as a finding "there is no evidence in the record that districts are legally or practically compelled to *become entitled to state aid*." (AR at p. 00011; emphasis added.)

The Colleges asserted the community college districts receive state aid each budget year pursuant to the constitution and statutes. The question is not whether the Colleges are legally or practically compelled to become entitled to state aid, but rather whether the Colleges are legally or practically compelled to conform to the minimum conditions. The appellate court agreed:

> We conclude the minimum condition regulations impose requirements on a community college district in connection with underlying programs legally compelled by the state. The Commission suggests the minimum conditions are not legally compelled because the Community Colleges are free to decline state aid, but that argument is inconsistent with the statutory scheme and the appellate record. (Slip Opinion at p. 10.)

The Department's own Petition at p. 15; footnote 7, sets out those same constitutional and statutory provisions as follows:

> In this context, "state aid" refers to funding constitutionally required to be appropriated to community college districts, in accordance with Proposition 98, which sets a minimum funding level for "the moneys to be applied by the State for the support of school districts and community college districts." (Cal. Const., art. XVI, § 8, subd. (b).) Since 2012, Proposition 98 funding has included Education Protection Account funding, as established by Propositions 30 and 55. "State aid" does not include funds from other sources, local property taxes, student fees, and dedicated lottery revenues. (See Ed. Code, §§ 84750.4, 84751; Cal. Code Regs., tit. 5, §§ 51102, subd. (b) (2003), 58770, subd. (b) [describing Chancellor's allocation of "state general apportionment for each district"]; Gov. Code, § 8880.5.

This succinct Department definition of "state aid" constitutionally required to be appropriated to the Colleges fully supports the appellate court opinion, and position of the Colleges herein.

2. The Minimum Conditions are Mandatory

In this Test Claims situation, there was no *election* by the Colleges' *to receive state aid.* The Department is off-base when posing a Question Presented regarding "optional programs." (Petition at p. 7.) As noted above, the Colleges by the constitution and budget statutes are appropriated state aid or funding each budget year. (Slip Opinion at pp. 10-11.) Regarding the minimum conditions, the state by law and regulation require the Colleges to take multiple actions and increase programs to continue to receive state aid or funding. (Slip Opinion at p. 9.) Put simply, the Colleges budgetary

allocations of state aid can be removed or reduced by failure to comply with the required minimum conditions. Rather than the Colleges electing to voluntarily participate in the minimum conditions, they are required to do so at risk of drastic fiscal loss of funds received pursuant to the constitution and state statutes. Because these minimum standard requirements cannot be legally or practically "voluntary" within the meaning of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, *and Kern, supra,* the appellate court herein properly found certain of the Test Claims must be compulsory legal mandates. (Slip Opinion at pp. 9-12; 54-55.)

3. The Department Misinterprets the Court's Usage of "Core Functions" in the Decision

The Department focuses upon the appellate court's limited usage of the term "core functions" to claim error by over-stating: "The Court of Appeal's decision here questions that [*Kern*] logic and creates a new test, allowing a local government to argue that program requirements are reimbursable state mandates any time they relate to the local entity's 'core functions.'" (Petition at p. 22; citation omitted.)

The Department previously stated: "The Court of Appeal altered the *Kern* framework for assessing 'legal compulsion' under article XIII B, section 6, by finding that legal compulsion can exist where the requirements of an *optional program* relate to the local government's 'core functions.'"

(Petition at p. 20; emphasis added.)

Actually, the appellate court used the term "core functions" only twice and "core mission" once, within the context of a total analysis of the *Kern* test.

> The Commission continues to rely on *Kern, Supra,* 30 Cal.4th 727 in support of its contention that there is no legal compulsion. *Kern* involved state statutes requiring certain school district councils and advisory committees to provide notice of meetings and post meeting agendas in connection with particular underlying programs. The Supreme Court said that in determining whether the notice and posting requirements were state mandates, the proper focus was not on whether the notice and posting requirements were compelled by the state, but instead whether the *underlying programs were compelled*. (*Id.* at p. 743.) In that case, because the school districts voluntarily participated in the underlying programs, the costs for the notice and posting requirements were not subject to subvention under a legal compulsion theory. (emphasis in original)
>
> This case is different. The notice and posting requirements in *Kern* applied to discrete programs in which school participating was voluntary, but here the minimum condition requirements apply to the underlying core functions of the community colleges, functions compelled by state law. As we have explained, California community colleges are required to provide specific academic, vocational, and remedial instruction, along with support services. (Ed. Code, § 66010.4.) The minimum condition requirements direct the community college districts to take specific steps in fulfilling those legally-compelled core mission functions, including requirements pertaining to scholarship, degrees, courses, campuses, counseling, and curriculum. (Slip Opinion at p. 9.)

In context, the appellate court is analyzing and comparing the voluntary and discrete programs at issue in *Kern*, with this case in which the minimum conditions requirements apply to the underlying core functions of

the community colleges, functions compelled by law. Rather than expanding an exception, the appellate court prudently limited the legal compulsion analysis to mandatory, *not optional*, requirements also pertaining to a "core function" or "mission" of the community colleges.

VI. CONCLUSION

For the foregoing reasons, the Supreme Court should deny the Petition for Review, and let the matter proceed on remand back to the Commission pursuant to the appellate court's disposition. (Slip Opinion at pp. 4, 54-55.)

Dated: June 30, 2020

Respectfully submitted,

Dannis Woliver Kelley
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By: 

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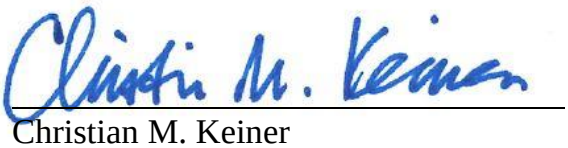
CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, Appellant's Answer To Commission On State Mandates' Petition For Review was produced using 13-point Roman type including footnotes and contains approximately 2990 words, which is less than the total words permitted by the rules of court. Counsel relies on the word court of the computer program used to prepare this Petition.

Dated: June 30, 2020

Respectfully submitted,

By: 

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DECLARATION OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: 555 Capitol Mall, Suite 645, Sacramento, CA 95814.

On the date set forth below I served the foregoing document described as **ANSWER TO DEPARTMENT OF FINANCE'S PETITION FOR REVIEW** on interested parties in this action by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, I caused such document to be placed in the U.S. Mail at Sacramento, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit, addressee as follows:

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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. Executed on June 30, 2020.

Frenneci Hyland

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 6/30/2020 by Tayuan Ma, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **COAST COMMUNITY COLLEGE DISTRICT v. COMMISSION ON STATE MANDATES (DEPARTMENT OF FINANCE)**
Case Number: **S262663**
Lower Court Case Number: **C080349**

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