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March 28, 2018

Honorable Tani Cantil-Sakauye, Chief Justice and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *California School Boards Ass'n v. State of California*,
Case No. S247266
First District Court of Appeal, Case No. A148606
Superior Court, Alameda County, Case No. RG 11554698

Letter in Support of Petition for Review (Cal. Rules of Court, Rule 8.500(g))

To the Chief Justice and the Associate Justices of the California Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the California State Association of Counties ("CSAC") and the League of California Cities ("League") respectfully submit this letter in support of the petition for review filed by the California School Boards Association on February 26, 2018 in the above-referenced case.

I. CSAC and the League's Interest in Review

CSAC is a non-profit corporation with membership consisting of all 58 California counties. CSAC sponsors a litigation coordination program, which is administered by the County Counsels' Association of California and overseen by the Association's Litigation Overview Committee, comprising County Counsels throughout the State. The committee monitors litigation of concern to counties statewide and has determined that this case raises significant issues affecting all counties.

The League is an association of 474 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, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance.

CSAC and the League's member counties and cities have a substantial interest in the issues presented in this case. Cities and counties are at the forefront of delivering the programs and services that the State has determined are important for the peace, safety, and quality of life of California's residents. However, as this Court has recently recognized, local governments are constitutionally limited in their ability to raise revenue, and as such, the State has a corresponding constitutional duty to provide subventions for new programs or higher levels of service it asks cities and counties to provide, with limited exceptions. (*State Dept. of Finance v. Com. on State Mandates* (2016) 1 Cal.5th 749, 763.)

The critical question in this case is whether the State meets this important obligation by merely identifying "offsetting revenue." In other words, can the State reimburse local agencies for mandates without actually providing any new revenue to the local agencies? The Court of Appeal answered that question in the affirmative, even while acknowledging that its holding essentially allows the State to eliminate its obligation to reimburse the school districts for the mandates at issue in this case without actually providing any new or additional funding. (*Cal. School Boards Assn. v. State of Cal.* (2018) 19 Cal.App.5th 566, 585.) Cities and counties, therefore, have a profound interest in Supreme Court review of this issue.

II. Review Should Be Granted in Order to Settle the Important Question of Whether Government Code section 17557(d)(2)(B) is Consistent with the Constitutional Subvention Requirements of article XIII B, section 6 of the California Constitution.

In 1979, the voters adopted Proposition 4, which added article XIII B to the California Constitution. Proposition 4, among other things, establishes an appropriations limit each fiscal year for each entity of government, which cannot be exceeded (known as the "Gann Limit"). (Cal. Const., art. XIII B, § 1; *Santa Barbara County Taxpayers Assn. v. Bd. of Supervisors* (1989) 209 Cal.App.3d 940, 944.) The measure was intended to be a "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.)

In order to ensure that local agencies do not exceed their Gann Limit as a result of State-mandated activities, the voters in Proposition 4 also imposed the subvention requirement at issue in this case. (*Cal. School Boards Assn., supra,* 19 Cal.App.5th at p. 571.) The purpose of the subvention requirement is to "prevent 'the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.'" (Ibid., citing *County of San Diego v. State of Cal.* (1997) 15 Cal.4th 68, 81.)

As the court below noted, this leaves the "vexing problem" of precisely how the State complies with its constitutional obligation to reimburse for State mandates.

In particular, the Court of Appeal was required to consider whether "offsetting" revenue (i.e., revenue the State is already providing to an agency) meets that obligation. (*Cal. School Boards Assn., supra,* 19 Cal.App.5th at p. 566.) The court concluded that "it is constitutional for the state legislature to designate funding it already provides" as offsetting revenue for purposes of meeting the state's obligations to fund state mandates.

This is an important constitutional issue that warrants Supreme Court review. Local agencies are severely limited in their revenue raising authority, and yet are faced every year with legislative proposals that will require them to perform new programs or expand existing ones. The voters were quite clear in adopting article XIII B, section 6 that the financial responsibility for those new or expanded programs should fall to the State. In deciding –- for the first time since article XIII B, section 6's adoption –- that existing funding can be used to meet that obligation, the lower court has created significant instability in our State's mandate fiscal structure. The opinion's conclusion that Government Code section 17557(d)(2)(B) is constitutional places local agencies in precisely the place that the voters said they should not be: performing new services that are required by the State without new revenue to pay for the services.

The Court should grant review to consider this critical constitutional issue.

III. Review Should Be Granted to Determine Whether the State Meets Its Constitutional Obligations Through "Pay From First" Statutes.

Another critically important question posed by this case is whether the State meets its constitutional obligation under article XIII B, section 6 when it does not provide new revenue, but rather merely specifies in statute that particular funding already provided to a local agency should be used first to pay for a mandated service before it is used for other services. Significantly, this question is raised in the context of programs that are already undeniably severely underfunded.

The particular statutes at issue require that a designated funding stream "shall first be used" or "shall first be allocated" to pay for identified mandated services. (*Cal. School Boards Assn., supra,* 19 Cal.App.5th at p. 576.) By concluding that such designations are sufficient to show offsetting revenue for purposes of Government Code section 17557(d)(2)(B), the Court of Appeal essentially allows the State to spend the same money multiple times, posing the question of how such "pay from first" statutes could possibly meet the state's constitutional subvention requirement.

A simplified hypothetical illustrates the problem with the opinion's analysis. Assume that a local agency receives $100 million from the State Budget Act to provide a slate of 15 services, which have each been determined to be state mandates. Each service costs $10 million. There is no dispute that the local agencies are underfunded by $50 million for the mandated services. Yet, there is a statutory provision for each of the 15 services specifying that the State Budget Act funding "shall be used first" to

pay for that service. In looking at Individual Service X, one could say that there are offsetting funds because the local agency receives $100 million from the State Budget Act, and Individual Service X only costs $10 million. But that conclusion belies the fact that the State claims that the same $100 million will be used to pay for $150 million in programs, because the local agency actually must spend $50 million of its own revenue to provide all of the 15 services. That certainly cannot be consistent with the requirements of article XIII B, section 6.

Yet that is precisely what the Court of Appeal opinion allows in this case. The opinion states: "The BIP Mandate is estimated to cost $65 million per year, but school districts and county offices of education receive approximately $3 billion in special education funding. Given that special education funding is sufficient to cover the costs of the BIP mandate, then section 17557, subdivision (d)(2)(B), as applied in Education Code section 56523, subdivision (f),[1] does not conflict with article XIII B, section 6 of the California Constitution." (*Cal. School Boards Assn.*, supra, 19 Cal.App.5th at pp. 585-586.) But as CSBA makes clear in its Petition for Review: "It was essentially unrebutted that while the amount of special education funding exceeds the cost of the BIP Mandate, the special education program itself was already underfunded by approximately $3.4 billion annually in 2010-11. (JA II:748-759.) The addition of the BIP costs therefore simply increased the amount schools were required to pay from their local resources by an additional $65 million annually. (JA II:740.)"

Thus, similar to the hypothetical, the total amount received by the schools exceeds the cost of one mandate, but falls far short of paying for all of the services it is intended to cover. Allowing the State to avoid its subvention obligation by merely stating that specified revenue must be used first falls far short of the constitutional subvention requirement by any measure. The seriousness of this issue for understanding the respective obligations of the State and local agencies for state mandated programs is hard to understate. This Court should grant review to provide clarity on this important issue.

IV. Conclusion

For the foregoing reasons, CSAC and the League respectfully urge this Court to grant the Petition to address these issues of statewide importance.

Respectfully submitted,

/s/

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[1] Education Code section 56523(f) is a "pay from first" statute as described in the paragraph above.