Morris Polich & Purdy LLP
ATTORNEYS AT LAW
www.mpplaw.com

January 2, 2014

Writers' e-mail addresses:
shoch@mpplaw.com
csmith@mpplaw.com

Chief Justice Cantil-Sakauye
Associate Justices Kennard, Werdegar, Chin, Baxter, Corrigan, and Liu
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: Amicus Letter in Support of Petition for Review of
State Dept. of Finance, et al. v. Commission on State Mandates
California Supreme Court Case No. S214855
Court of Appeal Case No. B237153

Dear Chief Justice Cantil-Sakauye and Associate Justices:

This letter is submitted pursuant to Rule 8.500(g) of the California Rules of Court on behalf of the League of California Cities ("League") and the California State Association of Counties ("CSAC"). The League and CSAC urge the Court to grant review of the Court of Appeal's decision in *State Dept. of Finance, et al. v. Commission on State Mandates* ("*Mandates*").

I. Interest of the League and CSAC

The League is an association of four hundred sixty-seven (467) 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 ("Committee"), comprised of twenty-four (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. The Committee has identified *Mandates* as having such significance.

CSAC is a non-profit corporation whose membership consists of fifty-eight (58) California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview

Committee monitors litigation of concern to counties statewide and has determined that the issues presented in *Mandates* affect all counties.

II. The Court Should Grant Review to Secure Uniformity of Decision and Settle Important Questions of Law

Article XIII B, section 6 of the California Constitution provides that the State shall provide a subvention of funds when it imposes a new program or higher level of service on a city or county. The purpose of this constitutional protection is to preclude the State from shifting financial responsibility for carrying out governmental functions to local agencies, whose taxing abilities are constitutionally constrained. A significant body of mandate jurisprudence has developed, defining the parameters of this constitutional right. The Court of Appeal's holding in *Mandates*, that this jurisprudence is of "limited utility" in the subject of water regulation, has now cast doubt on the applicability of this jurisprudence – both in the area of water regulation and determining the line between State and Federal mandates under all State-implemented Federal programs. This doubt has created great uncertainty, making it difficult for cities and counties to know when they would be entitled to subvention and to plan accordingly.

Under the Court of Appeal's decision in *Mandates*, cities and counties are presented with substantial uncertainty about the availability of subvention funds moving forward. This uncertainty presents a number of issues for local public agencies, the most significant of which is financial planning. In the context of municipal stormwater permits, the ability of cities and counties to anticipate their obligations and how those obligations will be funded is significant. Some specifics of the substantial financial impacts are set forth in the petition for review.

The terms of municipal stormwater permits are imposed by the California Regional Water Quality Control Boards ("Regional Board") on cities and counties for periods often lasting more than five (5) years. In order for cities and counties to implement these permits, they need to be able to project the financial impacts of the conditions required. The *Mandates* decision, by finding that mandate jurisprudence is of limited utility in this area, interjects unnecessary uncertainty into the equation.

Beyond the financial uncertainty, additional uncertainty is presented by the Court of Appeal's reversal of the Commission on State Mandates' ("Commission") careful and deliberate findings. Cities and counties have historically looked to the Commission to render decisions on issues involving state mandates and have come to rely upon those decisions to establish precedents. In substituting its own judgment for the Commission and not reviewing that decision under the substantial evidence standard, the Court of Appeal ignored Government Code section 17559(b) and also cast doubt on the applicability of that section.

Turning to the broader implications of the *Mandates* decision for cities and counties, the decision also calls into question the definition of state mandates flowing from other federal laws that are analogous to the Clean Water Act. The Clean Water Act standard at issue in *Mandates*, i.e., "maximum extent practicable" is not defined by federal statute. The Commission thus looked to federal regulations and other federal authority to define it. This issue of how to define

a state versus federal mandate, when the federal statute does not define the standard, will arise in the future with respect to other programs. *See, e.g., Katie A. ex rel. Ludin v. County of Los Angeles* (9th Cir. 2007) 481 F.3d 1150, 1158-60 (a broad federal mandate to provide a comprehensive child health program of prevention and treatment does not require the State of California to provide services in a particular form); *see also* Commission on State Mandates, *Statement of Decision 08-TC-04* (Dec. 6, 2013) (finding that specific procedures imposed on counties by the State of California for determining eligibility for Medi-Cal constitute reimbursable mandates notwithstanding federal law, which sets forth general eligibility criteria).[1] In light the existing framework of general federal statutes, which can be implemented through specific activities mandated on local governments by the State, the *Mandates* decision could be used by State agencies to impose requirements and/or limitations on cities and counties that extend beyond what was intended under those statutes, but without the constitutionally required subvention of funds.

Under the statutory scheme that is called into question by the *Mandates* decision, the Commission has exclusive jurisdiction to determine what a state mandate for subvention purposes is. *See* Gov. Code § 17552. Under the Court of Appeal's decision, the Court implies that the Regional Board or the Court has that authority. Not only is this holding unsupported under the law, it contravenes the intentions of the residents of the State who voted to amend the California Constitution to include the article on subvention of funds. *See* Cal. Const., art. XIII B, § 6(a).

The State's answer to the petition for review does not come to grips with these issues. It asserts that the Court of Appeal did not except clean water claims from mandate jurisprudence, but does not address the Court's holding that "general-purpose mandate analysis is of limited utility in the area of clean water law." *Mandates*, 220 Cal.App.4th 740, 772 (2013). The State further does not address the Court's conclusion that it did not have to review the Commission's decision under the substantial evidence standard, as required by Government Code section 17559(b). Cities and counties are thus now left with great uncertainty as to the state of the law in this area.

In 1979, the voters approved Proposition 4, which added Article XIII B to the California Constitution. The Proposition was touted as a means to impose a "limit on the rate of growth of governmental spending." *See Cal. School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, 1512. Among the provisions of the constitutional amendment was Section 6, "which provided for reimbursement to local governments for the costs of complying with certain requirements mandated by the [S]tate." *Id.* Section 6 was included among the provisions as a means "to preclude the [S]tate 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." *County of San Diego v. State of California* (2008) Cal.App.4th 580, 588. Following the adoption of Article XIII B, the Legislature enacted a comprehensive statutory and

[1] A copy of the Statement of Decision is available at: http://www.csm.ca.gov/pendingclaims/documents/08-TC-04_AdoptedSOD120613proof.pdf.

administrative scheme for enforcing it. *See* Gov. Code § 17500 et seq. The Court of Appeal's decision in *Mandates* discounts the historical operation of this voter-approved constitutional amendment and the legislature's statutory scheme that implements it.

III. Conclusion

For these reasons and those stated in the petition for review and by other amici curiae, *Mandates*, if allowed to remain a part of California's subvention jurisprudence, will mark a significant departure from prior precedent, impacting cities and counties throughout California. It will inject uncertainty into cities and counties' ability to plan for and project their obligations, financial and otherwise, under their respective municipal stormwater systems and other federal and state regulatory programs. We therefore urge the Court to grant the petition for review.

Respectfully submitted,

MORRIS POLICH & PURDY LLP

Steven L. Hoch (State Bar No. 59505)
Christopher W. Smith (State Bar No. 256494)

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