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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF CALAVERAS**  
10

11 COUNTY OF CALAVERAS and )  
12 CALAVERAS COUNTY SHERIFF GARY )  
KUNTZ, )

13 Petitioner, )

14 v. )

15 CALAVERAS COUNTY SUPERIOR )  
16 COURT, ADMINISTRATIVE OFFICE OF )  
THE COURTS and DOES 1 - 5, )

17 Respondent(s). )  
18 \_\_\_\_\_ )

Case No. 13CV39804  
[Petition filed: December 20, 2013]

**CALIFORNIA STATE ASSOCIATION OF  
COUNTIES AMICUS BRIEF IN SUPPORT  
OF CALAVERAS COUNTY PETITION  
FOR WRIT OF MANDATE AND  
DECLARATORY RELIEF**

Date: TBD  
Time:  
Dept:  
ICJ:

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1 **INTRODUCTION**

2 This case poses a question of first impression in the courts: If a court makes operational  
3 changes that result in a need for court security in excess of a county’s court security allocation  
4 from the State, is the county obligated to pay the difference from its own general fund, or is the  
5 court authorized to pay for the increased security from its own funding? In Calaveras County,  
6 the court recently moved from an approximately 7,000 square foot courthouse to an  
7 approximately 44,000 square foot courthouse. Calaveras County’s court security allocation is  
8 based on what it historically spent to secure the 7,000 square foot building. So while the parties  
9 disagree over the precise level of security needed to adequately protect court personnel and the  
10 public in the new building, the fundamental question of which party has the obligation to pay for  
11 security costs that exceed the County’s current court security allocation is at the heart of their  
12 inability to reach agreement.

13 The California State Association of Counties (“CSAC”) urges this Court to conclude that  
14 Calaveras County has no obligation to fund any security costs necessitated by Calaveras County  
15 Superior Court’s move into a new, larger court building, and that the Calaveras County Superior  
16 Court is authorized under State law to pay for costs that exceed the County’s current court  
17 security allocation from the State. As detailed in this brief, nothing in 2011 Realignment or the  
18 2012 Court Security Act can be read to impose an obligation on the County to pay for increased  
19 court security, and to read such an obligation into the law would unfairly and unreasonably  
20 cause counties to fund a portion of programmatic changes made by the State and courts over  
21 which counties have no control. This simply cannot be what the law requires. Once the  
22 respective financial obligations of the parties is made clear, this Court should direct the parties  
23 to enter into the 2013-2014 Memorandum of Understanding (“MOU”) proposed by the County  
24 and the Sheriff at the dispute resolution meeting, or direct Petitioners and Respondent to return  
25 to negotiations to develop an MOU for provision of court security in the new Calaveras County  
26 Superior Court building.

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1 **I**

2 **SUMMARY OF ARGUMENT**

3 Under the former Superior Court Law Enforcement Act of 2002 (“2002 Act”), associated  
4 statutes and court rules, counties were only required to deliver security services to the extent  
5 such services were paid for by the State or the courts. Levels of security were negotiated in the  
6 context of reasonable and allowable costs.

7 While the 2011 Realignment Legislation made significant changes to the court security  
8 funding mechanism, the 2012 Act made clear that counties would not have increased costs as a  
9 result. AB 118 required creation of state and local trial court security accounts wherein counties  
10 receive money from the State, the amount of which is tied to sales tax revenues. But AB 118  
11 did not shift the underlying obligation to provide these services, which must still be provided  
12 through a negotiated MOU.

13 The Superior Court Security Act of 2012 (“2012 Act”), considered in context and in  
14 entirety, continued that theme. Under the 2012 Act, just as before, security levels are to be  
15 negotiated based on needs and expenses. The State’s allocations to the counties, based on  
16 historical expenditures and tied to the economy by way of sales tax revenues, should cover  
17 incremental increases in the cost of security. But if, for example, the State’s construction of a  
18 new courthouse creates a significant increase in the court’s security needs, which combines with  
19 AB 118’s funding scheme changes to create a shortfall in the State’s allocation to the county, the  
20 statute authorizes the court to make up that shortfall out of its own State-provided funds.

21 This balance maintains the cost burden status quo. The 2012 Act accomplishes this by  
22 (1) stating that it “should (not) result in reduced court security service delivery, increased  
23 obligations on sheriffs or counties, or other significant programmatic changes that would not  
24 otherwise have occurred absent realignment,” and (2) providing that courts “...may pay for trial  
25 court security service delivery or other significant programmatic change that would not  
26 otherwise have been required absent the realignment of superior court security funding enacted  
27 in Assembly Bill 118 ...”

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II

ARGUMENT

A. **Counties Are Not Required To Pay For Court-Driven Increased Security Costs That Exceed The Allocation Provided To Counties For Court Security.**

Prior to realignment, the State funded those superior court security costs allowed by statute and court rule by sending money to the superior courts which would, in turn, contract with their host counties for sheriff-provided security, subject to the funding provided by the State. If there was an increase to the County/sheriff’s cost of providing a certain level of service, the court and County/sheriff were required to renegotiate service levels within the MOU to remain with the total contract dollar levels specified in the MOU, and additional services provided when the Court could afford them. While AB 118 made major changes to the mechanics of the State’s funding, neither AB 118 nor the 2012 Act shifted the obligation to provide court security to counties irrespective of costs. Rather, court security is still provided through an MOU, with specific legislative direction that there are no increased obligations on sheriffs or counties.

1. **Prior to realignment, courts purchased security subject to funding**

The 2002 Act, related statutes, court rules and Administrative Office of the Courts documents clearly show that courts purchased security from counties based on available funding from the State.

a. **The 2002 Act**

The 2002 Act’s section 69921.5 provided as follows: “The duties of the presiding judge of each superior court shall include the authority to contract, subject to available funding, with a sheriff or marshal, for the necessary level of law enforcement services in the courts.” (Emphasis added.)

b. **Trial court funding statutes**

Chapter 13 of Title 8 of the Government Code is entitled “State Funding of Trial Courts” and section 77003 provides, in pertinent part, as follows: “(a) As used in this chapter, ‘court operations’ means all of the following: ... (3) Court security, but only to the

1 extent consistent with court responsibilities under Article 8.5 (commencing with Section 69920)  
2 of Chapter 5.” (Emphases added.) Section 77006.5 defines “trial court funding” as “the amount  
3 of state funds provided for the operation of trial courts, as defined in section 77003”. (Emphasis  
4 added.) Section 77009 is entitled “trial court operations fund.” It provides for the establishment  
5 of bank accounts and, alternatively, local county trial court operations funds, all of which are  
6 funded by the State or other sources - but not including counties.

7 **c. Court Rules**

8 Court Rule 10-810 detailed the costs to be included in “court operations” as  
9 defined in section 77003, including: “(3) salaries and benefits for those sheriff, marshal, and  
10 constable employees as the court deems necessary for court operations in superior and municipal  
11 courts and the supervisors of those sheriff, marshal, and constable employees who directly  
12 supervise the court security function...”

13 **d. Administrative Office of the Courts (“AOC”) documents**

14 AOC policy FIN 14.01 §6.4.6 is an extensive exposition from the AOC’s  
15 perspective on how trial court security should be delivered. It states:

16 If the sheriff’s law enforcement security costs increase, the court and sheriff must  
17 renegotiate service levels within the MOU to remain within the total contract dollar levels  
18 specified in the MOU. Notwithstanding, additional services deemed necessary by the  
19 court may be provided by the sheriff when funding is identified by the court and the  
20 MOU is amended. (See Petitioner’s Reply Brief 15:8-11; Ex. 20 at 142)

21 Shortly after Senate Bill 1396 passed and the 2002 Act became law, implementation and  
22 execution of the 2002 Act became the subject of state-wide training sessions and discussions.  
23 On July 10, 2003, the Northern/Central Regional Office published an extensive memorandum to  
24 sheriffs and court executive officers. It stated:

25 SB 1396 provides that any new court security costs permitted by this article  
26 shall not be operative unless the funding is provided by the legislature. This  
27 includes mid-year funding increases. The sheriff may not unilaterally impose cost  
28 increases at mid-year and the court may not require the sheriff to provide a  
continued level of service at the sheriff’s increased expense. The court and the  
sheriff should mutually agree upon service reduction that reflect and accommodate  
the constraints faced by the sheriff and the court. The sheriff and the county must  
resolve whether or not a sheriff must keep court security positions which can no  
longer be funded by the court. (Emphasis added.) (See Petitioner’s Reply Brief  
13:18-27; Ex. 20 at 131.)

1           **2. 2011 Realignment Legislation did not change the superior court law**  
2           **Enforcement Act of 2002 (“2002 Act”) or related statutes**

3           2011 saw the enactment of sweeping legislation dealing with the “realignment” of  
4 public safety responsibilities.

5           First, AB 109 implemented a major realignment of public safety responsibilities -- but  
6 made no changes to the 2002 Act or any of the related statutes or court rules. AB 109 (Chapter  
7 15 of the Statutes of 2011) “is titled and may be cited as the 2011 Realignment Legislation  
8 addressing public safety.” (2011 Cal ALS 15). Nowhere in its 200 pages and amendments to  
9 hundreds of statutes does it even mention trial court security.

10           Second, AB 118 then required major changes to the court security funding programs to  
11 facilitate implementation of AB 109 – but made no changes to the 2002 Act. AB 118 was  
12 approved by the Governor on June 30, 2011. The Legislative Digest states, in pertinent part, as  
13 follows:

14           This bill would establish the Community Corrections Grant Program for the  
15 purpose of funding various changes to the criminal justice system as required by  
16 Chapter 15 of the Statutes of 2011 (AB 109 or “the Act”). The bill would create  
17 the Local Revenue Fund 2011 in the State Treasury, and would create the Trial  
18 Court Security Account, ...within the Local Revenue Fund 2011. The bill would  
19 require moneys from specified tax sources and other moneys that may be  
20 specifically appropriated to be deposited in the Local Revenue Fund 2011 and  
21 would provide that the fund is continuously appropriated, thereby creating an  
22 appropriation.

23           The bill would require each county treasurer ... to create a County Local  
24 Revenue Fund 2011 for the county..., and to create ...the Trial Court Security  
25 Account ... within the County Local Revenue Fund 2011 for the county.... The  
26 bill would require that moneys in each County Local Revenue Fund 2011 for the  
27 county ...and its accounts shall be used exclusively for Public Safety Services, as  
28 defined, and for specific services, including funding grants solely to enhance the  
capacity of county probation, mental health, drug and alcohol, and other county  
departments to provide appropriate rehabilitative, housing, and supervision  
services to youthful offenders. By creating new duties for local governments to  
administer funds and implement the act, this bill would create a state-mandated  
local program . (Emphases added.)

2011 Cal ALS 40

Thus, while AB 118 changed the flow of court security funding, required new accounts  
and tied allocations to taxes, it did not shift the burden of all future cost increases in court  
security services to the counties.

1 In sum, the State paid for court security under the 2002 Act. That was “the law” and was  
2 reflected in the courts’ own documents. The 2002 Act was effective all through 2011 and well  
3 into 2012. AB 109 and AB 118 did nothing to change it.

4 **3. Superior Court Security Act of 2012 (“2012 Act”)**

5 Entering 2012, the following points were clear:

- 6 ➤ The 2002 Act did not require counties to pay for trial court security either  
7 in the first instance or by absorbing cost increases.
- 8 ➤ The 2002 Act was unchanged by AB 109 and AB 118.

9 On June 27, 2012, the 2012 Act became law. Under the 2012 Act courts and counties are  
10 to negotiate a memorandum of understanding agreeing on the delivery of security services. The  
11 2012 Act was written with the intent of maintaining the cost burden status quo, i.e., it was not  
12 intended to shift security costs to the counties.

13 As noted, the State’s initial baseline allocations were based on historical expenditures.  
14 Funding for continuing annual allocations are tied to the economy by way of sales tax revenues.  
15 Thus, the allocations to the counties should cover incremental increases in the cost of security.  
16 In any event, as was the case before realignment and the 2012 Act, court security delivery is  
17 negotiated taking into account needs and expenses.

18 But the Legislature also realized that there could be a significant increase in the court’s  
19 security needs if, for example, the State builds a new courthouse six times the size of the old  
20 courthouse. Such a dramatic increase in the court’s security needs, combined with AB 118’s  
21 funding scheme changes, would result in a shortfall in the State’s allocation to the county. The  
22 Legislature’s answer was to allow the court to use its own State-provided funds to make up that  
23 shortfall and pay for whatever increased security delivery it negotiates for its new courthouse.

24 Two key provisions of the 2012 Act accomplish this balanced approach:

25 First, the 2012 Act’s section 69920 states as follows:

26 This article shall be known and may be cited as the Superior Court Security  
27 Act of 2012. This article implements the statutory changes necessary as a result of  
28 the realignment of superior court security funding enacted in Assembly Bill 118  
(Chapter 40 of the Statutes of 2011), in which the Trial Court Security Account  
was established in Section 30025 to fund court security. Although realignment

1 changed the source of funding for court security, this article is not intended to, nor  
2 should it, result in reduced court security service delivery, increased obligations on  
3 sheriffs or counties, or other significant programmatic changes that would not  
4 otherwise have occurred absent realignment. (Emphasis added.)

5 Thus, the Legislature did not want the 2012 Act to result in court security reductions,  
6 increased costs to counties or other programmatic changes that would not have occurred but for  
7 realignment.

8 Second, if there *were* any such programmatic changes, section 69923 provides as follows:

9 § 69923. Payment for court security services and equipment

10 (a) A superior court shall not pay a sheriff for court security services and  
11 equipment, except as provided in this article.

12 (b) Subject to the memorandum of understanding described in subdivision  
13 (b) of Section 69926, the court may pay for court security service delivery or other  
14 significant programmatic changes that would not otherwise have been required  
15 absent the realignment of superior court security funding enacted in Assembly Bill  
16 118 . . . , in which the Trial Court Security Account was established in Section  
17 30025 to fund court security.

18 Subdivision (b) clearly provides an avenue for the court to pay the difference between the  
19 State funding and the actual cost of court security service delivery where, as here, the State’s  
20 construction of a new courthouse and the shortfall in the allocation to the county combine to  
21 constitute a “significant programmatic change that would not otherwise have been required  
22 absent the realignment of superior court security funding enacted in Assembly Bill 118.”

## 23 CONCLUSION

24 While the parties disagree on the particular security needs of the new Calaveras County  
25 courthouse, the legal argument is simple.

26 The State and courts have historically paid for trial court security. The 2011 Realignment  
27 Legislation only changed the mechanism by which state funds flow to fund trial court security  
28 costs. At the same time, that change did not impact the obligation of counties to provide court  
security. Indeed, the 2012 Act expressly recognizes that there could arise court or state-driven  
programmatic changes that could result in funding shortfalls for counties, and provides the  
courts the option to make up the difference or negotiate different security levels.

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1 Amicus curiae respectfully recommend that this Court enter an order consistent with the  
2 legal conclusions stated herein and grant the relief requested by Petitioners.

3 DATED: THOMAS E. MONTGOMERY, County Counsel  
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5  
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