Case No. S214855

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

STATE DEPARTMENT OF FINANCE, et al.,
Plaintiffs and Respondents,

v.

COMMISSION ON STATE MANDATES,

Defendant and Respondent;

COUNTY OF LOS ANGELES, et al.,

Real Parties in Interest and Appellants.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF AMICI CURIAE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF REAL PARTY IN INTEREST COUNTY OF LOS ANGELES' OPENING AND REPLY BRIEFS

California Court of Appeal, Second District, Division One
Case No. B237153
Los Angeles Superior Court Case No. BS130730
Honorable Ann I. Jones, Judge

THOMAS E. MONTGOMERY, County Counsel
County of San Diego
By TIMOTHY M. BARRY, Chief Deputy
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
Telephone (619) 531-6259; Fax. (619) 531-6005

Attorneys for California State Association of Counties and the League of California Cities

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

In accordance with Rule 8.520(f) of the California Rules of Court, the California State Association of Counties ("CSAC") and the League of California Cities ("League") (collectively "Amici")[1] respectfully request permission to file the amici curiae brief included in this application.

The League is an association of 473 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, which is comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. Its members are the 58 California counties. CSAC sponsors a Litigation Coordination Program. The County Counsel's Association of California administers the program. CSAC's Litigation Overview Committee, made up of county counsels throughout the state, oversees the program. The Litigation Overview Committee monitors litigation that is of concern to counties statewide. It has determined that this case affects all Counties in California.

Amici and their city and county members have a direct interest in the legal issues presented in this case. Cities and counties operate municipal separate storm sewer systems (MS4s) throughout California. Every five years, the cities and counties must obtain a permit from one of nine regional

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[1] No party or counsel for a party authored the attached brief, in whole or in part. No one made any monetary contribution intended to fund the preparation or submission of this brief other than the contributions of time and preparation costs by the counsel who authored this brief.

water boards or from the state water board, the terms and conditions of which must be consistent with the National Pollutant Discharge Elimination System ("NPDES"), in order to operate their MS4s. Whether the mandates at issue in this case are found to be federal mandates or state mandates, and whether the state is obligated to reimburse cities and counties for the costs of complying with the NPDES permits issued by the state agencies will have potentially enormous financial impacts on all Amici's members. [2]

On a broader scale, the issue presented in this case – i.e., whether state imposed requirements on local public agencies relating to the implementation of federal statutes and programs constitute a reimbursable state mandate – extends beyond the federal vs. state dichotomy presented by stormwater regulation. Indeed, as discussed in the amicus brief, mandates imposed by the state on cities, counties, and school districts

[2] On June 20, 2008, the County of San Diego and the eighteen cities within San Diego County filed a test claim challenging the stormwater permit issued by the Regional Water Control Board, San Diego Region. In that proceeding, permittees sought recovery of costs imposed by the permit which were estimated to be in excess of $66 million during the five year term of the permit. The Commission issued its Statement of Decision on March 26, 2010, finding that substantially all of the activities for which reimbursement was sought constituted reimbursable state mandates. (Test Claim No 07-TC-09.) The Department of Finance, the State Water Resources Control Board, and the Regional Water Quality Control Board, San Diego Region filed an administrative mandamus in Sacramento Superior Court (Case No. 34-2010-80000604) and prevailed in reversing the Commission's decision. That matter is now pending before the Third District Court of Appeal (Case No. C070357.) In addition, there are currently twelve other test claims pending before the Commission relating to stormwater permits issued to numerous governmental agencies throughout the state (Test Claim Nos. 09-TC-03. 10-TC-01, 10-TC-02, 10-TC-03, 10-TC-05, 10-TC-07, 10-TC-10, 10-TC-11, 11-TC-01, 11-TC-03, 13-TC-01, 13-TC-O2.)

relating to a wide variety of governmental programs, are often related to an underlying federal program.

Amici therefore have a direct stake in the outcome of this case and believe that the brief will assist the Court in ruling on these issues. Amici therefore respectfully request leave to file the attached brief.

DATED: November 20, 2014

THOMAS J. MONTGOMERY,
County Counsel, County of San Diego

By
TIMOTHY M. BARRY, Chief Deputy
Attorneys for California State Association of Counties and the League of California Cities

I.

INTRODUCTION

Article XIII B of the California Constitution requires the state to provide a subvention of funds when it compels local governments to provide new programs or higher levels of service in existing programs that carry out the governmental function of providing services to the public or to implement a state policy that imposes unique requirements on local government that do not apply generally to all residents and entities of the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 49.) The requirements imposed by the Regional Water Quality Control Board compelling appellants (hereafter "Permittees") to install trash receptacles at transit stops and to inspect certain industrial and construction facilities are exactly the type of services for which subvention is compelled. The requirements to install trash receptacles at transit stops and to inspect certain industrial and construction facilities are unique services provided by the government for the benefit of the public. They are intended to implement a state policy and are not requirements generally imposed on all residents and entities of the state.

The Commission correctly found that the trash receptacle and inspection obligations imposed on Permittees were state mandates and not federal mandates because the Permit usurped Permittees' discretion as to how best to comply with the requirements of the federal Water Pollution Control Act ("Clean Water Act") (1 Clerk's Transcript ("CT") 124-125, 132, 141) and because the state freely chose to shift its responsibilities to Permittees.

The decision of the court of appeal ignored established case law, runs contrary to legal analysis utilized by the Commission for nearly thirty years, and the decision should be reversed.

II.

BY ELIMINATING PERMITTEES' DISCRETION AS TO HOW BEST TO COMPLY WITH THE FEDERAL MEP STANDARD AND MANDATING SPECIFIC ACTIVITIES THE STATE CREATED A REIMBURSABLE STATE MANDATE

The courts in California have recognized that "[t]here is no precise formula or rule for determining whether the 'costs' are the product of a federal mandate." (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 907, fn. 2.) The courts have also acknowledged that "the existence of a federal, as contrasted with a state, mandate is not easily ascertainable." (*Id.* at p. 914.) While this is true, the courts and the Commission in several instances have found that when the state enacts legislation or regulations implementing a federal program that mandates specific programs or activities, thereby removing discretion from local agencies, the state creates a reimbursable state mandate.

In, *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, the court of appeal considered whether costs incurred by the school district related to efforts to alleviate racial and ethnic segregation in its schools pursuant to an executive order issued by the California Department of Education were reimbursable state mandates. The state argued that the executive order "does not mandate a higher level of service – or a new program – because school districts in California have a constitutional duty to make an effort to eliminate racial segregation in the public schools." (*Id.* at p. 172.) While the court acknowledged that "school districts are required to 'take steps, insofar as reasonably feasible,

to alleviate racial imbalance in schools regardless of its cause'" it rejected the state's argument. The court held that once the state eliminated the school district's discretion in determining what steps were "reasonably feasible" and required the school district to implement specific actions, such requirements constituted a higher level of service and the costs incurred in performing such requirements were reimbursable. (*Id.* at p. 173.)

In *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, this Court was called upon to consider whether hearing costs incurred as a result of mandatory requirements related to expulsions compelled by California Education Code section 48915 were fully reimbursable. This Court concluded that insofar as Education Code section 48915 compels suspension and mandates a recommendation of expulsion for certain offenses, the statute mandates a "'higher level of service' under article XIII B, Section 6 and imposes a reimbursable state mandate for *all* resulting hearing costs – even those costs attributable to procedures required by federal law." (*Id.* at p. 591.)

In considering whether the due process hearing costs that are mandated by federal law, this Court found that even those costs are reimbursable stating:

> As noted above, Education Code section 48918 sets out requirements for expulsion hearings that must be held when a district seeks to expel a student – but neither section 48918 nor federal law requires that any such expulsion recommendation be made in the first place, and hence section 49818 does not implement any federal mandate that school districts hold such hearings and incur such costs whenever a student is found in possession of a firearm.
>
> ....
>
> Because it is state law (Education Code section 48915's mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require

> it to incur hearing costs, it follows, ... that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable).

(*San Diego Unified, supra,* 33 Cal.4th at p. 881.)

The Commission has also previously applied the standards elucidated by the courts in another test claim decision relating to the federal Individuals with Disabilities Education Act ("IDEA")[3]. The IDEA requires that all students be provided with a free and appropriate education. Nevertheless, when asked to consider whether regulations relating to the provision of special education services for children with disabilities imposed a reimbursable state mandate the Commission concluded that the California law and regulations requiring schools to create behavioral intervention plans constituted a reimbursable state mandate.

On September 28, 2000, the Commission adopted a Statement of Decision regarding the test claim entitled *Behavioral Intervention Plans* (CSM Case No. 4464) Sept. 28, 2000; amended Nov. 23, 2010.[4] In this matter, the Commission considered whether regulations enacted by the Superintendent of Public Instruction and the State Board of Education to implement provisions of Education Code section 56523 requiring an IEP[5] team to develop and implement a behavioral intervention plan whenever an

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[3] Originally enacted as The Education for All Handicapped Children Act of 1975.

[4] The Commission's Statements of Decision ("SOD") may be accessed on the Commission's website at http://www.csm.ca.gov/decisions.shtml.

[5] An Individualized Education Plan ("IEP") is defined in California Education Code section 56032 as "a written document described in Sections 56345 and 56345.1 for an individual with exceptional needs that is developed, reviewed, and revised in a meeting in accordance with Sections 300.320 and 300.328, inclusive, of Title 34 of the Code of Federal regulations and this part."

individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP was a reimbursable state mandate.

Test claimants argued that the requirement to develop and implement a behavioral intervention plan represented a new program or higher level of service that was not required under state or federal law before the adoption of the test claim legislation's implementing regulations. The State Department of Finance ("DOF") argued that the IDEA, which requires the states to have a policy that assures all children with disabilities, who meet the age requirements, the right to a free and appropriate public education ("FAPE"), mandated the development and implementation of behavioral intervention plans and therefore did not constitute a state mandate.

The Commission at page 12 of its SOD sided with the test claimants finding:

> ... although the IDEA paints the special education landscape with broad strokes, the specificity in the test claim legislation and implementing regulations do not fit onto that canvas. The state *requires* school districts to engage in functional analysis assessments and implement behavioral intervention plans whenever a disabled child exhibits serious behavior problems. Under the IDEA, if a disabled child exhibits such behavior, school districts are not tied to one response. Before, and even after, the IDEA Amendments in 1997, school districts are free to consider interventions as a possible approach, but are not required to use them. (Emphasis in original.)

The Commission at page 13 of its SOD also concluded:

> The Legislature has created a new program, one that was not described or outlined in federal law before the adoption of the test claim legislation's implementing regulations. Although behavioral intervention plans may aid the provision of a free appropriate public education to certain disabled children, so may other techniques or services, which IEP teams have at their disposal. The test claim legislation and implementing regulations take a step beyond federal law

by *requiring* the use of a technique which, under federal law, IEP teams have *discretion* to use. (Emphasis in original.)

Similarly, in *Voter Identification Procedures* (CSM Case No. 03-TC-23) October 4, 2006) the Commission found that an amendment to Elections Code section 14310 requiring local elections officials to "compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration" constituted a state mandate. The Commission found that while existing law required elections officials to "examine the records with respect to all provisional ballots case," it did not mandate that each signature on a provisional ballot be directly compared to the signature on the voter's registration affidavit. Applying the analysis utilized by the court in *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d at pp. 172, 173, the Commission found that because the statute, as amended, eliminated local elections officials' discretion and required them to perform the required activity in a very specific manner, it imposed a higher level of service on elections officials which required a state subvention of funds. See also, *Post Election Manual Tally* (PEMT), (CSM Case No. 10-TC-08) July 25, 2014) – Emergency regulations adopted by the Secretary of State requiring counties to conduct PEMTs of votes for races with very tight margins of victory during elections conducted in whole or in part utilizing an electronic voting system created a state mandate notwithstanding the requirements of the federal Help America Vote Act ("HAVA") mandating at least one voting system equipped for individuals with disabilities at each polling place for all federal elections.

The Commission's conclusion that the requirement "to place trash receptacles at all transit stops and maintain them is . . . a *specified action*

going beyond federal law" (1 CT 126 (emphasis in original)) and thereby constitutes a state mandate was correct and should be upheld.

III.

THE STATE VOLUNTARILY INCORPORATED THE REQUIREMENTS OF THE CLEAN WATER ACT INTO PORTER COLOGNE AND THEN SHIFTED ITS RESPONSIBILITIES TO LOCAL MS4s THEREBY REQUIRING A SUBVENTION OF FUNDS

The Porter-Cologne Water Quality Act ("Porter-Cologne") was enacted by the state Legislature in 1969, three years before Congress enacted the Clean Water Act. Porter-Cologne established nine regional control boards responsible for coordination and control of water quality within the state. (Water Code § 13001.) The regional boards were also made responsible for the issuance of permits to any person who discharges or proposes to discharge "waste" that could affect the quality of the "waters of the state." (Water Code §§ 13260 & 13263.)

The Clean Water Act requires operators of MS4s that discharge pollutants to the waters of the United States to obtain a permit consistent with the NPDES. (33 U.S.C. §§ 1311, subd. (a), 1342, subds. (a) and (k).) The controls imposed by an NPDES permit must reduce the discharge of pollutants to the maximum extent practicable ("MEP"). (33 U.S.C. § 1342, subds. (p)(2)(C) and (p)(3)(B).)

When Congress enacted the Clean Water Act it preserved the state's right to administer its own NPDES permit program "in lieu of the Federal program under state law." (33 U.S.C. § 1342(b); 40 C.F.R. § 123.22.) In 1972, the Legislature opted to create its own stormwater regulatory scheme in compliance with the Clean Water Act when it amended Porter-Cologne by adding Chapter 5.5 of the Act (Sections 13370-13389) to the Water Code.

Had the state not amended Porter-Cologne to incorporate the requirements of the Clean Water Act, there would be no dispute that the activities required of MS4s to comply with permits issued directly by the United States Environmental Protection Agency ("US EPA") would be mandated by the federal government, not by the state, and would not require state subvention. (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593.) But that is not what the state did. In California, the state voluntarily assumed responsibility for compliance with the Clean Water Act. It was a conscious and voluntary decision by the Legislature "to avoid direct regulation by the federal government of persons already subject to regulation under state law." (Water Code § 13370, subd. (c).) As such, California's NPDES permitting system is a state program governed by state law. As noted by the Commission in its Statement of Decision, "[t]he federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits." (CT 121.)

When the state determined that it would be the entity regulating MS4s within California, it obligated itself, through its statutory scheme, to comply with the Clean Water Act. As a result all of the terms and conditions in a state issued NPDES permit mandating local agencies to perform a new program or a higher level of service in an existing program constitute state mandates, not federal, and the state is obligated to provide permittees with a subvention of funds for the costs incurred in complying with the state issued permits. "Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without a subvention merely because those costs were

imposed on the state by the federal government." (*Hayes, supra,* 11 Cal.App.4th at p. 1593.)

As stated by the Court in *Hayes*:

> In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

(*Hayes, supra,* 11 Cal.App.4th at pp. 1593-1594.)

"Reimbursement is required when the state 'freely chooses to impose on local agencies *any* peculiarly 'governmental' costs which they were not previously required to absorb.'" (*Hayes, supra,* 11 Cal.App.4th at p. 1578 quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70.)

It is in this context that the Court should consider whether the requirements imposed by the permit to install and maintain trash receptacles at transit stops and to inspect certain industrial and construction facilities. It is the local MS4s obligation to comply with the provisions of the NPDES permits issued by the regional boards. It is the state's obligation to ensure that the permits it issues to MS4s comply with the federal MEP standard.

If the Permittees fail to install and maintain trash receptacles at transit stops or fail to inspect the industrial and construction facilities as required under the permit, they will be in violation of the permit and subject to penalties imposed by the state. They will not be in violation of the Clean Water Act. Similarly, if the permits issued by the regional boards fail to comply with the federal Clean Water Act, and specifically the MEP

standard, US EPA's remedy is to suspend operation of the state's program in favor of the EPA approved permit system. (33 U.S.C. § 1342(c)(3).)

The respondents' reliance on *City of Sacramento, supra,* 50 Cal.3d at p. 51, before the trial court and the court of appeal for the proposition that the state lacked discretion whether or not to enact its own permitting program was misplaced. In *City of Sacramento,* this Court was called upon to decide whether state legislation extending mandatory coverage under the state's unemployment insurance law to include state and local governments constituted a state mandate vs. federal mandate.

In 1976, Congress enacted Public Law No. 94-566. Public Law 94-566 required states to develop a "certified" plan that included coverage for employees of public agencies. "States which did not alter their unemployment compensation law accordingly faced loss of federal tax credit and administrative subsidy." (*City of Sacramento, supra,* 50 Cal.3d at p. 58.) In response, the Legislature enacted legislation requiring local governments to participate in the state unemployment insurance system on behalf of their employees.

Concluding that the state had not imposed a mandate on local governments the court held:

> Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards. We therefore conclude that the state acted in response to a federal 'mandate' for purposes of article XIII B.

(*City of Sacramento, supra,* 50 Cal.3d at p. 74.)

While the Court did not formulate a final test for "mandatory" vs "optional" compliance with federal law the Court indicated that:

> .... A determination in each case must depend on such factors as the nature and purpose of the federal program;

> whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal or practical consequences of nonparticipation, noncompliance, or withdrawal.

(*City of Sacramento, supra,* 50 Cal.3d at p. 76.)

In this case, none of the factors suggested by the Court in *City of Sacramento* are present. Congress did not utilize the "carrot and stick" approach when it enacted the Clean Water Act as a means of coercing states to adopt their owned statutory scheme. (See, *Hayes, supra*, 11 Cal.App.4th at pp. 1587-1592.) Specifically, and most importantly, the state would not have incurred any penalties had it not amended Porter-Cologne to create its own statutory scheme in compliance with the Clean Water Act. Had the state failed to act, the US EPA would simply have issued NPDES permits directly to Permittees, without consequence to the state or any MS4 operators within the state.

The fact that there would have been no adverse consequences to the state or operators of MS4s within the state had the state not amended Porter-Cologne, is evidenced by the fact that many jurisdictions have not opted to create their own statutory scheme for the regulation of the discharge of stormwater, but rather have opted to be regulated directly by the US EPA. The US EPA currently issues 880 state and federal NPDES permits, including permits issued to four states (Idaho, Massachusetts, New Hampshire, New Mexico), Washington D.C., all U.S. territories, except the Virgin Islands, most Indian Country lands, and federal facilities in four additional states (Colorado, Delaware, Vermont and Washington). http://cfpub.epa.gov/npdes/permitissuance/genpermits.cfm. These permittees operate without penalty and without coercion by the federal government.

Another example of the Commission being called upon to determine whether activities mandated by state statute constitute a federal vs. state mandate can be found in the Commission's Statement of Decision relating to *Medi-Cal Eligibility of Juvenile Offenders* (Test Claim 08-TC-04) decided December 6, 2013. In this matter, test claimants sought reimbursement for the costs incurred in providing assistance to juveniles whose Medi-Cal coverage is terminated because of incarceration in a juvenile detention facility for 30 days or more to obtain Medi-Cal or other health coverage immediately upon release from custody. The statute at issue in that decision (Welf. & Inst. Code § 14029.5 (Stats. 2006, ch. 657), effective January 1, 2008) requires county juvenile detention facilities to provide specified information regarding Medi-Cal eligibility to county welfare departments and, if the ward is a minor, provide notice to the ward's parents or guardian. The county welfare department is also required to perform specified mandated activities relating to the initiation of an application for Medi-Cal benefits for the ward.

California participates in the federal Medicaid program through its Medi-Cal program. States that participate in the Medicaid program are required to comply with certain requirements, including a requirement to adopt procedures designed to ensure recipients make timely and accurate reports of a change in circumstances that impact eligibility. (42 U.S.C. § 1396a, subd. (a)(5); 42 C.F.R. § 431.11(d).) Federal law also requires recipient eligibility to be redetermined every 12 months, or when the agency receives information about a change in circumstances.

State agencies, including the Department of Health Care Services, opposed the test claim arguing, among other things, that the costs of complying with the test claim statute are incidental to a federal mandate

and do not exceed the requirements of federal law. In rejecting the state's argument the Commission found that even though the state's Medi-Cal program implements the federal Medicaid program the activities required by the test claim statute are mandated by state, not federal law. Citing *Hayes*, the Commission, specifically found that the key question was "how the costs of complying with the new requirements … came to be imposed on the counties" concluding that "[i]n this case, the state freely chose to impose the costs of terminating Medi-Cal benefits of incarcerated juveniles and establishing a process to determine eligibility before the juvenile was released."

Other examples of Statements of Decision issued by the Commission where the Commission was called upon to consider whether a program or activity constituted a federal mandate on local agencies include *Handicapped and Disabled Students* (CSM Case No. 4282, April 26, 1990) – statutes and regulations requiring counties participation in the mental health assessment, mandating participation on an expanded IEP team and to provide case management services for "individuals with exceptional needs" shifted state's responsibility to comply with the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974, as well as the responsibility to comply with The Education for All Handicapped Children's Act of 1975, and constituted a state, rather than a federal mandate; *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (CSM Case No. 97-TC-05, May 25, 2000) shifting responsibility to place, monitor, and pay for, SED pupils in out-of-state residential facilities to county mental health agencies in satisfaction of the state's responsibilities under IDEA constituted a state mandate; *Handicapped & Disabled Students II* (CSM Case No. 02-TC-40/02-TC-49,

May 26, 2005) – test claim statutes and regulations adopted by the state implementing the federal IDEA which shifted the responsibility to provide mental health and related services and activities to counties constituted a state mandate.

As noted above, the key question to be asked is "how … costs came to be imposed upon" the Permittees. In this case, the state voluntarily incorporated requirements of the Clean Water Act into Porter-Cologne and then shifted those requirements to Permittees. As a result, the requirement to install trash receptacles at transit stops and the requirements to inspect certain industrial and construction facilities are state mandates and the state is obligated to reimburse Permittees for all of the costs relating to those activities. This conclusion is consistent with prior decisions of the Commission, the courts of appeal, and decisions of this Court, and the decision of the court of appeal should be reversed.

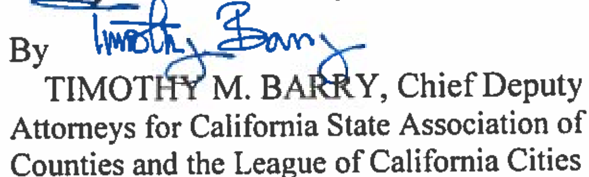
IV.

CONCLUSION

The Commission correctly concluded that the requirements of the permit issued by the regional board requiring Permittees to install trash receptacles at transit stops and to inspect certain industrial and construction facilities constituted a new program or higher level of service in an existing program requiring a state subvention of funds. The decision of the court of appeal ignored nearly thirty years of decisions by the Commission and the courts of this state and must be reversed.

DATED: November 20, 2014

THOMAS J. MONTGOMERY,
County Counsel, County of San Diego

By 
TIMOTHY M. BARRY, Chief Deputy
Attorneys for California State Association of Counties and the League of California Cities

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that the text of this application and brief consists of 4,685 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

DATED: November 20, 2014

THOMAS J. MONTGOMERY,
County Counsel, County of San Diego

By
TIMOTHY M. BARRY, Chief Deputy
Attorneys for California State Association of Counties and the League of California Cities

State Department of Finance, et al. v. Commission on State Mandates
Supreme Court Case No. S214855; Court of Appeal Case No. B237153;
Superior Court Case No. BS130730

PROOF OF SERVICE - CIVIL

I, the undersigned, declare that: I am over the age of 18 and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California; my business address is 1600 Pacific Highway, Room 355, San Diego, California.

	The business FAX number and/or electronic service address from which I served the documents is (*complete if service was by fax or electronic service*): nancy.beltran@sdcounty.ca.gov.

On November 20, 2014, I caused to be served the following document(s): **Application For Leave To File Amicus Curiae Brief Of Amici Curiae California State Association Of Counties And The League Of California Cities In Support Of Real Party In Interest County Of Los Angeles' Opening And Reply Briefs** on all other parties to this action in the following manner:

x	**(By U.S. Mail)** I enclosed the documents in a sealed envelope or package addressed to the persons shown below for collection and mailing at San Diego, California, following this office's ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with the postage fully prepaid.
	(By Overnight Courier) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) shown below. I placed the envelope(s) or package(s) for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
	(By Facsimile) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the person(s) at the addressee(s) and number(s) shown below. No error was reported. A copy of the record of the fax transmission, which I printed out, is attached.
	(By Electronic Service) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address listed below.

I caused to be served the documents on the **person or persons** below, as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 20, 2014

____
NANCY BELTRAN

State Department of Finance, et al. v. Commission on State Mandates
California Supreme Court Case No. S214855; Court of Appeal Case No. B237153;
Superior Court Case No. BS130730

SERVICE LIST

Attorneys for Plaintiff and Respondent State Department of Finance, State Water Resources Control Board, Los Angeles Regional Water Quality Control Board	Kathleen Ann Lynch Office of the Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Tel. (916) 445-7480; Fax. (916) 324-8835 Nelson Ryan Richards Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
Attorneys for Defendant and Respondent Commission on State Mandates	Camille Shelton Commission on State Mandates Commission Counsel 980 Ninth Street, Suite 300 Sacramento, CA 95814 Tel. (916) 323-3562; Fax. (916) 445-0278
Attorneys for Real Party in Interest and Appellant County of Los Angeles	Andrea Sheridan Ordin Judith Anne Fries County Counsel County of Los Angeles 648 Kenneth Hahn Hall of Admin 500 W. Temple Street Los Angeles, CA 90012 Tel. (213) 974-1923; Fax. (213) 687-7337 Email: jfries@counsel.lacounty.gov
Attorneys for Real Party in Interest and Appellant County of Los Angeles, Cities of Bellflower, Carson, Commerce, Covina, Downey, Signal Hill	Howard D. Gest Burhenn & Gest, LLP 624 S. Grand Avenue, Suite 2200 Los Angeles, CA 90017 Tel. (213) 629-8787; Fax. (213) 688-7716 Email: hgest@burhenngest.com
Attorneys for Real Parties in Interest and Appellants Cities of Artesia, Beverly Hills, Norwalk, Rancho Palos Verdes, Westlake Village	Ginetta Lorraine Giovinco Richards Watson & Gershon 355 S. Grand Avenue, 40th Floor Los Angeles, CA 90071 Tel. (213) 253-0281; Fax. (213) 626-0078 Email: ggiovinco@rwglaw.com

Attorneys for Real Party in Interest City of Monterey Park	Christi Hogin Jenkins & Hogin, LLP Manhattan Towers 1230 Rosecrans Avenue, Suite 110 Manhattan Beach, CA 90266 Tel. (310) 643-8448; Fax. (310) 643-8441
Attorneys for Real Party in Interest City of Vernon	Nicholas George-Rodriguez Zaynah Moussa City Attorney's Office of Vernon 4305 Santa Fe Avenue Vernon, CA 90058 Tel. (323) 583-8811; Fax. (323) 826-1438
City of Costa Mesa : Other	Baron Jacob Bettenhausen Jones & Mayer 3777 North Harbor Boulevard Fullerton, CA 92835
Attorneys for Amicus California Stormwater Quality Association	Theresa A. Dunham Nicholas A. Jacobs Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 Tel. (916) 446-7979; Fax. (919) 446-8199 Email: tdunham@somachlaw.com
Attorneys for Amicus Riverside County Flood Control and Water Conservation District and County of Riverside	Aaron C. Gettis County of Riverside 3960 Orange Street, Suite 500 Riverside, CA 92501 Tel. (951) 955-6300; Fax. (951) 955-6363 Email: agettis@co.riverside.ca.us
For Filing: Clerk of the Court (8 copies + Electronic Copy) Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797 Via Overnight Delivery (FedEx)	Clerk Los Angeles County Superior court 111 N. Hill Street Department 86 Los Angeles, CA 90012 Superior Court Case No. BS130730
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