

February 8, 2019

Ms. Erika Li Department of Finance 915 L Street, 10th Floor Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand Sexually Violent Predators (CSM-4509), 12-MR-01-R Welfare and Institutions Code Sections 6601 through 6608 Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4 Department of Finance, Requester

Dear Ms. Li:

This letter requests written comment relating to the Commission's reconsideration of the *Sexually Violent Predators (SVP)* Mandate Redetermination on Remand, pursuant to court order.

The California Supreme Court, in *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, held the Commission's prior Decision in *Sexually Violent Predators* (*CSM-4509*), 12-MR-01 to be incorrect, and remanded the matter to the Commission, with instructions for reconsideration. Though the writ has not yet been issued by the Court, Commission staff are working to expedite the reconsideration on remand pursuant to the California Supreme Court decision. In preparation for the Reconsideration of the Request for Mandate Redetermination on Remand in accordance with the Supreme Court's direction, the Commission is seeking comment from parties, interested parties, and interested persons as stated below.

## **Background**

On January 15, 2013, the Department of Finance (Finance), in accordance with Government Code section 17570, filed a Request for Mandate Redetermination of the *SVP* Decision adopted on June 25, 1998. Finance alleged that Proposition 83, adopted by the voters in the November 2006 general election, constituted a "subsequent change in law," as defined, because the Welfare and Institutions Code sections approved in the Test Claim Decision were either expressly included in or necessary to implement Proposition 83.

On December 6, 2013, the Commission adopted the Decision partially approving Finance's Request for Mandate Redetermination. That Decision found that the State's liability pursuant to article XIII B, section 6 had been modified by a subsequent change in law, as defined, and that six of eight approved activities were no longer reimbursable pursuant to Government Code section 17556, beginning July 1, 2011. Several counties jointly filed a petition for writ of mandate seeking to overturn the Commission's Decision, and the case was ultimately heard by the California Supreme Court.

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On November 19, 2018, the California Supreme Court issued its decision in County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, finding the Commission's Decision on mandate redetermination relating to the SVP program was incorrectly decided, and directing the Commission to reconsider the matter, with instructions. Specifically, the Court did not agree with the Commission's findings that several of the approved activities were "expressly included in" Proposition 83, within the meaning of Government Code section 17556(f), because, the Court reasoned, the operative Welfare and Institutions Code provisions were only "technically reenacted" by the Proposition, and were "statutory bystanders," not actually amended by the ballot measure, but included only for context and clarity in accordance with article IV, section 9 of the California Constitution. Further, the Court disagreed with the Commission's reasoning that the Amendment Clause of Proposition 83, which prohibited any amendment by the Legislature that does not expand the scope of the SVP program absent a two-thirds majority vote, should be interpreted more narrowly, to apply only to those provisions actually altered by the ballot measure or "integral to accomplishing the electorate's goals..." Then, because the Court determined that the relevant Welfare and Institutions Code provisions were not "expressly included in" the ballot measure, the Commission's reasoning that the remaining activities were "necessary to implement" the other provisions also failed. For these reasons, the Court found that the Commission's Decision was incorrect, and not supported. However, the Court also determined that the Commission should consider whether Proposition 83 might have had an effect on the mandate more broadly, as a result of the expanded definition of an SVP:

Unfortunately, the Commission never considered whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. Its ruling granting the State respondents' request for mandate redetermination instead rested entirely on grounds that we now disapprove. Moreover, the parties admit — and the Court of Appeal found — that the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments. (See County of San Diego, supra, 7 Cal.App.5th at p. 36, fn. 14, 212 Cal.Rptr.3d 259; cf. San Diego Unified, supra, 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589 [additional state statutory protections that were "incidental" to federal due process requirements, "producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c)"].) Under the circumstances, we find it prudent to remand the matter to the Commission to enable it to address these arguments in the first instance.4

<sup>&</sup>lt;sup>1</sup> See, e.g., County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 209-210.

<sup>&</sup>lt;sup>2</sup> County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 212-214.

<sup>&</sup>lt;sup>3</sup> County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 215.

<sup>&</sup>lt;sup>4</sup> County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 217.

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## **Request for Simultaneous Briefing**

Accordingly, all parties, interested parties, and interested persons receiving this letter are requested to file written comments on or before **March 11, 2019**. Specifically, please brief the following issue:

"Whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."<sup>5</sup>

Please also comment on "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."

Please be aware that the Commission is beginning a new matter page for this remand which is located at: <a href="https://www.csm.ca.gov/matters/12-MR-01-R.php">https://www.csm.ca.gov/matters/12-MR-01-R.php</a>. You will note that after this letter, the most recent item currently on the page is the original "Request to Adopt a New Test Claim Decision filed by Department of Finance (Finance) on January 15, 2013." If you wish the Commission to consider comments that you have filed previously on the original 12-MR-01 matter in its new Decision on remand, please include that request in your comments in response to this letter and be specific regarding the date of the comments and who filed them.

Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief. (Cal. Code. Regs., tit. 2 §§ 1190.2 and 1187.5.) If representations of fact are made, they must be supported by documentary or testimonial evidence filed with the comments on the Mandate Redetermination. (Cal. Code. Regs., tit. 2 §§ 1190.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record. Requests for extensions of time to file comments may be filed in accordance with section 1187.9 of the Commission's regulations.

## **Process for Filing Comments**

The Commission has prepared a mailing list of parties, interested parties, and interested persons for this Mandate Redetermination. The mailing list will be uploaded to the Commission's website and an e-mail notification of its availability will be sent to everyone on the list who has provided an e-mail address. A hard copy will be provided to persons who have not provided an e-mail address and to any person who requests a hard copy. (Cal. Code. Regs., tit. 2 § 1181.4.)

You are advised that if written materials are filed in hard copy, the filing must simultaneously be served on everyone on the mailing list, and be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's

<sup>&</sup>lt;sup>5</sup> County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 217.

<sup>&</sup>lt;sup>6</sup> County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, 217.

<sup>&</sup>lt;sup>7</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

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website. For instructions on electronic filing, please see the Commission's website at <a href="http://www.csm.ca.gov/dropbox\_procedures.php">http://www.csm.ca.gov/dropbox\_procedures.php</a>. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.3.

# **Tentative Hearing Date**

Though the writ has not yet issued from the Court, in an effort to expedite this matter, this Reconsideration of the Request for Mandate Redetermination on Remand is tentatively set for hearing on July 26, 2019.

Sincerely,

Heather Halsey

**Executive Director** 

## **DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 8, 2019, I served the:

 Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to County of San Diego v. Commission on State Mandates (2018) 6 Cal.5th 196, issued February 8, 2019

Reconsideration of the Request for Mandate Redetermination on Remand Sexually Violent Predators (CSM-4509), 12-MR-01-R Welfare and Institutions Code Sections 6601 through 6608 Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4 Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 8, 2019 at Sacramento, California.

Jill L. Magee

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# **COMMISSION ON STATE MANDATES**

## **Mailing List**

Last Updated: 2/8/19

Claim Number: CSM-4509 (12-MR-01-R)

Matter: Sexually Violent Predators

Requester: Department of Finance

#### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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