



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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OPPOSITION

CALIFORNIA SCHOOL BOARDS ASSOCIATION et al VS. STATE OF CALIFORNIA et al

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FILED
San Francisco County Superior Court

MAR 14 2012

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 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF SAN FRANCISCO

14 **CALIFORNIA SCHOOL BOARDS**
 15 **ASSOCIATION, ASSOCIATION OF**
 16 **CALIFORNIA SCHOOL**
 17 **ADMINISTRATORS, LOS ANGELES**
 18 **UNIFIED SCHOOL DISTRICT, SAN**
 19 **FRANCISCO UNIFIED SCHOOL**
 20 **DISTRICT, and TURLOCK UNIFIED**
 21 **SCHOOL DISTRICT,**

Petitioners,

v.

21 **STATE OF CALIFORNIA; ANA J.**
 22 **MATOSANTOS, in her official capacity as**
 23 **the DIRECTOR OF FINANCE; TOM**
 24 **TORLAKSON, in his official capacity as the**
 25 **SUPERINTENDENT OF PUBLIC**
 26 **INSTRUCTION; and JOHN CHIANG, in**
 27 **his official capacity as the STATE**
 28 **CONTROLLER,**

Respondents.

Case No. CGC-11-514689

OPPOSITION OF THE STATE OF
CALIFORNIA; ANA J. MATOSANTOS,
DIRECTOR OF FINANCE; AND JOHN
CHIANG, CALIFORNIA STATE
CONTROLLER TO VERIFIED
PETITION FOR WRIT OF MANDATE

Date: March 28, 2012
 Time: 9:30 a.m.
 Dept: 302
 Judge: Hon. Harold Kahn

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1 **INTRODUCTION**

2 Petitioners seek an unprecedented writ of mandate requiring the state to set aside an
3 additional \$2 billion for education funding in the current fiscal year. Incredibly, their argument is
4 premised on a ministerial duty that will not arise until March 2013, a year from when this petition
5 is set for hearing. Moreover, as they admit in their brief, the petition is not based on any express
6 constitutional or statutory duty. Rather, petitioners would have this Court graft on to Proposition
7 98 a complicated series of calculations that would immunize education funding from any changes
8 in tax or fiscal policy. All that Proposition 98 requires in this fiscal year, however, is that the
9 Legislature set aside the same percentage of “General Fund revenues” for education as were set
10 aside in 1986-1987. The Legislature has done so. Because petitioners cannot demonstrate that
11 any of the respondents has a present ministerial duty, and because in any event the current
12 statutory scheme is consistent with Prop. 98, this Court should decline to issue the writ of
13 mandate.¹

14 Petitioners’ claims arise out of California’s efforts to realign public safety functions that
15 were previously performed by the state so that they can be more efficiently performed by local
16 governments. As part of the 2011-2012 budget the Legislature set aside the proceeds of a sales
17 tax of 1.0625 percent, totaling \$5.1 billion, as well as \$462.1 million in Vehicle License fees to
18 fund this realignment of services. By law, these funds were not deposited in the General Fund.
19 Instead, they were deposited in Local Revenue Fund 2011 (LRF 2011), a special fund dedicated
20 to fund counties’ performance of functions newly mandated by the Legislature pursuant to
21 realignment. These revenues are special fund revenues, not General Fund revenues, and are not
22 available for appropriations unrelated to realignment. Petitioners, however, argue that the \$5.1
23 billion in sales and use tax revenues deposited in the LRF 2011 should be treated as if they were
24 General Fund revenues for purposes of calculating minimum education funding pursuant to
25 article XVI, § 8 (Proposition 98).

26 ¹ The State Controller takes no position regarding the validity of the alleged actions by
27 Respondents State of California, Director of Finance, or Superintendent of Public Instruction that
28 are challenged by the Petition. This brief is offered on behalf of respondents the State of
California and the Director of Finance only.

1 As an initial matter, petitioners are not entitled to a writ of mandate for the simple reason
2 that they have no *present* interest in the performance of a duty by respondents. The only
3 ministerial duty respondents possess is to certify the data required to make the Prop. 98
4 calculation. That duty, however, does not arise until March 2013. (Educ. Code, § 41206.)
5 Moreover, by law, the applicable method of calculation is contingent on whether the voters
6 approve a ballot measure by November 2012 that would raise the state income and sales tax. (*Id.*,
7 § 41201, subd. (b).) Governor Brown has proposed such a measure that would, *inter alia*, amend
8 the California Constitution to provide that the portion of the sales tax devoted to public safety
9 realignment is not General Fund revenue for purposes of Prop. 98. Any relief obtained by
10 petitioners would thus be speculative, at best. Since respondents' ministerial duty is not triggered
11 until March 2013, petitioners have no present interest in the performance of that duty, and the
12 writ should be denied for that reason alone.

13 Turning to the merits, petitioners ignore the fact that the proceeds of the special fund sales
14 tax are not General Fund revenues, and therefore are not considered when calculating the
15 minimum education funding under Prop. 98. As relevant in this case, Prop. 98 requires that the
16 Legislature set aside "the amount which, as a percentage of *General Fund revenues* which may be
17 appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues
18 appropriated. . . in fiscal year 1986-1987." (Cal. Const., art. XVI, § 8, subd. (b)(1) [emphasis
19 added].) Under Prop. 98, only General Fund revenues count.² The revenues petitioners have
20 placed at issue are special fund revenues that are never part of the General Fund. Accordingly,
21 consistent with Prop. 98, the Legislature directed that they not be considered when calculating the
22 minimum amount it set aside for education in the 2011-2012 budget.

23 The Legislature's treatment of the special fund sales tax in this year's budget is neither new
24 nor unprecedented. Special funds with dedicated revenue streams such as the LRF 2011 have
25 historically not been treated as General Fund revenue, and are excluded from the Prop. 98

26
27 ² For purposes of Prop. 98, "General Fund revenues" include only those General Fund
28 revenues that are proceeds of taxes that may be appropriated pursuant to Article XIII B. (See Cal.
Const., art. XIV, § 8.)

1 calculation. Indeed, the Legislature has previously reserved sales tax and other revenue solely for
2 the use of counties by placing it in a special fund rather than in the General Fund. When the state
3 realigned health care and other services in 1991, the Legislature dedicated 0.5 percent of sales tax
4 revenues to fund the counties to provide those services. (Rev. & Tax. Code, § 6051.2.) The
5 revenues reserved for the 1991 realignment were also deposited in a Local Revenue Fund, were
6 passed through to the counties from that fund, and like the LRF 2011, and were not treated as
7 General Fund revenues for purposes of Prop. 98. (*Id.*, § 6051.2, subd. (c)(1).) Here, just as in
8 1991, the portion of 2011-2012 sales tax revenues that are deposited in the Fiscal Recovery Fund
9 (Gov. Code, § 99008) and the Local Public Safety Fund (Cal. Const., art. XII, § 35) are not part
10 of the General Fund and cannot be treated as if they were. Petitioners' suggestion that a court can
11 take special fund revenues and transform them into General Fund revenues is simply
12 unprecedented.

13 Because the Legislature properly excluded the special fund sales tax revenues from the
14 Prop. 98 calculation, the Court should decline to issue a writ of mandate.

15 BACKGROUND

16 I. PROPOSITION 98

17 Prop. 98, entitled "The Classroom Instructional Improvement and Accountability Act," was
18 adopted by California's voters in 1988 as a constitutional amendment to article XVI, section 8, of
19 the California Constitution. The Act was further amended in 1990, when the voters adopted
20 Proposition 111. The principal purpose of Prop. 98 was to "take[] school financing out of politics
21 by ensuring a minimum funding level for schools which the Legislature and the Governor must
22 honor except in fiscal emergencies." (Plaintiff's Request for Judicial Notice (PRJN) Ex. A.,
23 Ballot Pamp., Gen. Elec. (Nov. 8, 1988), argument in favor of Prop. 98, p. 80.) Its effect was to
24 "grandfather in" state spending levels for education as a percentage of revenues deposited in the
25 General Fund based on 1986-87 allocations, and to have those allocations increase annually
26 thereafter with adjustments for enrollment and cost of living. Prop. 98 does not *appropriate*
27 specific amounts for schools. Instead it provides formulae that the Legislature must use to
28 calculate its annual appropriation to schools:

1 Proposition 98, adopted by the voters in 1988, amended article XVI, section 8 of the
2 California Constitution to provide a minimum level of funding for schools.
3 [Citation.] The measure, supported by the California Teachers Association and the
4 state Parent-Teacher Association, set up two tests, later expanded by the passage of
5 Proposition 111 in 1990 to three tests, for determining the mandated minimum
6 funding level for the coming year. (*Hayes* [*California Teachers Assn. v. Hayes* (1992)
7 5 Cal.App.4th 1513] at p. 1519, fn. 2.) [Footnote.] The first formula uses a
8 percentage of the General Fund revenues appropriated to schools in fiscal year 1986-
9 1987. The second and third formulas use a measure that includes both General Fund
10 revenues and ‘allocated local proceeds of taxes.’ (Cal. Const., art. XVI, § 8,
11 subd.(b).)

12 * * * * *

13 Proposition 98 does not appropriate funds The power to appropriate funds was
14 left in the hands of the Legislature. Proposition 98 merely provides the formulas for
15 determining the minimum to be appropriated every budget year. The state’s
16 obligation is to ensure [*sic* (that)] specific amounts of moneys are applied by the state
17 for education.”

18 (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1289-1290.)

19 Prop. 98 provides that the minimum education entitlement can be calculated in one of three
20 ways. Test 1 may apply in any year (Cal. Const., art. XVI, § 8, subd. (b)(1)); Test 2 and Test 3
21 come into play only when specified economic conditions occur. (*Id.*, art. XVI, §§ 8, subs. (b)(2)
22 & (b)(3).) Test 2 applies only in fiscal years in which the percentage growth in state per capita
23 personal income fails to exceed the percentage growth in “per capita General Fund revenues” by
24 at least ½ percent. Test 3 applies only in fiscal years when the percentage growth in state per
25 capita personal income exceeds the percentage growth in “per capita General Fund revenues” by
26 more than ½ percent. Roughly speaking, Test 1 applies in years where revenues are particularly
27 high or, as is the case now, particularly poor. Test 3 applies in years where there has been a
28 modest drop-off in state revenues. Test 2, on the other hand, generally applies when General
Fund revenues are relatively healthy. (Decl. of Nick Schweitzer in Support of Opposition of the
State of California; Ana J. Matosantos, Director of Finance; and John Chiang, California State
Controller to Verified Petition for Writ of Mandate (Schweitzer Decl.) at ¶ 3.) In addition, the
Legislature may decide to suspend the minimum funding requirement for one fiscal year, but such
suspension would generate a repayment obligation, or “maintenance factor.” (See *id.*, art. XVI,
§§ 8, subs. (d), (e), & (h).)

1 These three tests define the *minimum* level of state support for education in any given year.
2 Nothing prevents the state from funding education above that minimum level in good years, and
3 the state has done so from time to time. In practice, Test 2 has been the norm, not Test 1, because
4 application of Test 2 has yielded greater funding for schools in most years. In all but the first
5 fiscal year under Proposition 98, the combination of economic conditions and prior year
6 allocations has boosted Test 2 and Test 3 dollar amounts above Test 1 figures. (Petitioner's
7 Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate
8 (MPA) at p. 7.)

9 When it adopts the budget, the Legislature estimates the funds it must set aside pursuant to
10 Prop. 98 for the upcoming fiscal year, and budgets accordingly. Over the course of the year,
11 actual General Fund revenue and per capita income may come in higher or lower than forecast,
12 and K-12 attendance may also vary from projections. As a result, the exact amount of the Prop.
13 98 funding requirement (or even which Test applies) is not known until after the end of the fiscal
14 year on June 30. (Schweizer Decl., ¶ 6.) Within nine months of the end of any fiscal year, the
15 Superintendent of Public Instruction and the Director of Finance are required to recalculate and
16 jointly certify all actual data pertaining to school districts for the prior fiscal year. (Educ. Code,
17 § 41206, subd. (b)(1).) Thus, while the Legislature set aside \$32.879 billion for education in the
18 2011-2012 Budget Act that the Governor signed into law on June 30, 2011, the exact amount of
19 the Prop. 98 requirement will not be known until March 2013. (Respondents' Request for
20 Judicial Notice (RRJN), Ex. A, Section 12.32 of the Budget Act.) If the Legislature did not
21 appropriate sufficient funds to meet the certified amount, the Controller must set aside that
22 amount. (*Id.*, § 41206, subd. (b)(1).) The Legislature then has ninety days to appropriate the
23 additional funds, otherwise the Controller allocates them to school districts in proportion to
24 enrollment. (*Ibid.*) Alternatively, if the Legislature set aside more than was required, it can
25 retroactively reduce the appropriation.

1 **II. THE LEGISLATURE’S DECISION TO REALIGN CERTAIN PUBLIC SAFETY FUNCTIONS**

2 As part of the 2011-2012 Budget Act, the Legislature directed a major realignment of
3 public safety programs from the state to counties. As part of realignment, counties were given
4 financial and operational authority over certain aspects of criminal justice and public safety. For
5 example, counties are now responsible for funding and administering the following programs, all
6 of which were formerly the responsibility of the state:

- 7 • Substance Abuse Treatment Programs
- 8 • Adult Protective Services
- 9 • Foster Care
- 10 • Child Welfare Services
- 11 • Adoptions and Adoption Assistance
- 12 • Child Abuse Prevention
- 13 • Mental Health Managed Care

14 (Assembly Bill 109, Stats. 2012, ch. 15. See also RRJN Ex. B, Governor’s Budget Summary –
15 2012-2013 at p. 71–73.)

16 The state also assigned to local governments the authority to house non-violent, non-serious,
17 and non-sex offenders in county jails instead of in state prison. Counties must now oversee the
18 post-release supervision of many of these offenders, rather than officials with the California
19 Department of Corrections and Rehabilitation (CDCR). Moreover, starting in 2013, the parole
20 revocation process, which formerly was conducted by the Board of Parole Hearings, will now
21 become a local court-based process. These changes are the cornerstone of California’s efforts to
22 reduce the number of inmates in the state’s prisons to 137.5 percent of design capacity by May 23,
23 2013, as ordered by the United States Supreme Court. (*Brown v. Plata* (2011) 131 S.Ct. 1910.)

24 In addition to ensuring California’s compliance with the Supreme Court’s decision,
25 realignment is part of a larger policy trend the process of returning to local control various
26 functions that the Legislature has determined that counties can perform better, and at lower cost.
27 This process began in 1991, when the state returned to local control many mental health and
28 health care programs (Welf. & Inst. Code, §§ 5600 et seq.) and will likely continue in the context

1 of education. In his proposed budget for 2012-13, the Governor has proposed that the Legislature
2 utilize block grants to local governments to give them greater flexibility to use those funds where
3 they are most needed. (RRJN, Ex. B, Governor's Budget Summary, 2012-13 at p. 132.)

4 The Legislative Analyst's Office has concluded that the 1991 realignment "has been a
5 largely successful experiment in state-county relationship" that could "serve as a useful model for
6 future program changes in the state-county relationship." (RRJN, Ex. C, Legislative Analyst's
7 Office (Feb. 6, 2001) Realignment Revisited: An Evaluation of the 1991 Experiment in State-
8 County Relationships at p. 1.) With respect to the provision of mental health services, one of the
9 largest programs transferred to the counties, the LAO found that "[t]he relative fiscal stability and
10 flexibility that has resulted from the shift of funding and program responsibilities from the state to
11 the counties has encouraged efficiency and innovation while resulting in modest revenue growth."
12 (*Id.* at p. 11.) In enacting public safety realignment the Legislature expressed many of the same
13 goals that animated the realignment of health care and other services in 1991. For instance, the
14 Legislature is forecasting that realigned public safety services will cost 25 percent less when
15 provided by the counties, which the Legislature believes will be more effective in providing these
16 services. (RRJN, Ex. B, Governor's Budget Summary, 2012-13 at p. 78.)

17 Like the 1991 realignment, the 2011 public safety realignment is funded with a portion of
18 the sales tax as well as a portion of the Vehicle License Fee (VLF). Under Revenue and Taxation
19 Code section 6051.15, the proceeds of a 1.0625 percent sales tax³ are deposited in the LRF 2011.
20 The Legislature has also allocated \$426.1 million in VLF to the LRF 2011. (Rev. & Tax. Code,
21 § 11005.) The monies in the LRF 2011 are continuously appropriated "exclusively for Public
22 Safety Services" as defined by the statute. (Gov. Code, § 30025, subd. (e).) Aside from
23 reimbursing state agencies for provided services to local governments during the first year of
24 realignment when services are being transferred from the state to local governments, all of the
25 funds in the LRF 2011 are paid to the counties to fund those programs.

26
27 ³ The Legislature made corresponding adjustments to the use tax. (Rev. & Tax. Code,
28 § 6201 et seq.)

1 Just as in 1991, when it segregated sales tax funds to pay for realignment, the Legislature in
2 the 2011-2012 budget specifically excluded from General Fund revenues the portion of the sales
3 tax directed to the LRF 2011. Education Code section 41210, enacted in a budget trailer bill,
4 expressly provides that “the revenues transferred pursuant to Sections 6051.15 and 6201.15 of the
5 Revenue and Taxation Code are not ‘General Fund revenues’ as that term is used in Section 8 of
6 Article XVI of the California Constitution.” (Educ. Code, § 41210, subd. (a).) That legislative
7 directive is consistent with the fact that these revenues are not part of the General Fund and are
8 not used for a General Fund purpose, but rather are dedicated solely to realignment purposes.

9 Operation of Education Code section 41210 is contingent on the passage of an initiative
10 measure by November 2012 that increases revenue in an amount necessary to offset the reduction
11 in funding required by Prop. 98 resulting from the public safety realignment. Subsection (b)
12 provides that:

13 This section shall be operative for the 2011-12 fiscal year and subsequent years so
14 long as one or more ballot measures approved before November 17, 2012, authorize
15 the determination in subdivision (a) and provide funding for school districts and
16 community college districts in an amount equal to that which would have been
provided if the revenues referenced in subdivision (a) were General Fund revenues
for purposes of Section 8 of Article XVI of the California Constitution.

17 Governor Brown has proposed such an initiative that would raise the sales and use tax by 0.5
18 percent for four years and increase the personal income tax on annual earnings over \$250,000 for
19 five years. (RRJN Ex. D, Initiative 12-001.) If successful, the revenue generated by that measure
20 would be dedicated to education.

21 If the voters fail to approve that measure or another measure that would provide sufficient
22 revenue to offset the reduction in minimum funding that resulted from the public safety
23 realignment, then the Legislature has directed respondents to calculate the amount of funding that
24 would have been provided in the 2011-2012 fiscal year if the revenues from the portion of the
25 sales tax that were deposited in the LRF 2011 for realignment had been considered General Fund
26 revenues. Twenty percent of that amount is then appropriated to the Superintendent in each fiscal
27 year from 2012-13 to 2016-17 and distributed to schools in accordance with section 41211. (See
28

1 Educ. Code, § 41211.) Thus, the ultimate level of education funding will be decided by the voters
2 of California.

3 ARGUMENT

4 In order to obtain a writ of mandate pursuant to Code of Civil Procedure section 1085,
5 petitioner must show a clear, present, and ministerial duty on the part of respondents. (*Agosto v.*
6 *Board of Trustees of the Grossmont-Cuyamaca Community College Dist.* (2010) 189 Cal.App.4th
7 330, 335.) When considering acts of the Legislature, courts must presume that a statute is valid
8 “unless its unconstitutionality clearly, positively, and unmistakably appears.” (*People v. Falsetta*
9 (1999) 21 Cal.4th 903, 913.) This deference and the presumption of validity afforded all
10 legislative acts arises because the California Legislature “may exercise any and all legislative
11 powers which are not expressly . . . denied to it by the [California] Constitution.” (*Methodist*
12 *Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) “In other words, [courts] do not look
13 to the Constitution to determine whether the Legislature is authorized to do an act, but only to see
14 if it is prohibited.” (*Ibid.*) Any “restrictions and limitations [imposed by the Constitution] are to
15 be construed strictly, and are not to be extended to include matters not covered by the language
16 used.” (*Ibid.*) Thus, “[i]f there is any doubt as to the Legislature’s power to act in any given case,
17 the doubt should be resolved in favor of the Legislature’s action.” (*Ibid.*)

18 **I. BECAUSE RESPONDENTS WILL NOT CERTIFY THE AMOUNT OF FUNDS THAT MUST** 19 **BE SET ASIDE UNTIL MARCH 2013, PETITIONERS DO NOT HAVE A PRESENT** 20 **INTEREST THAT SUPPORTS ISSUANCE OF A WRIT OF MANDATE**

21 In order to obtain a writ of mandate under Code of Civil Procedure section 1085, petitioners
22 must show that respondents have a clear, *present*, ministerial duty to make the Prop. 98
23 calculation as petitioners would direct, and that petitioners have a beneficial interest in the
24 performance of that duty. (*California Ass’n. of Prof. Scientists v. Department of Finance* (2011)
25 195 Cal.App.4th 1228, 1236.) “A petition is defective if it fails to show that the respondent has a
26 present duty to perform the act that is sought to be compelled.” 8 Witkin, Cal. Procedure (5th ed.
27 2008) Extraordinary Writs, § 79.) This requirement is related to the requirement of ripeness,
28 which “is primarily bottomed on the recognition that judicial decisionmaking is best conducted in
the context of an actual set of facts so that the issues will be framed with sufficient definiteness to

1 enable the court to make a decree finally disposing of the controversy.” (*Pacific Legal*
2 *Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) The mere existence of a
3 dispute between the parties concerning the proper interpretation of the relevant constitutional
4 provisions does not render the issues ripe for immediate judicial resolution. (*Id.* at p. 172 [“It is
5 true that the parties’ interests are adverse, and the issues have been thoroughly addressed in the
6 voluminous briefs on file[, but] . . . the abstract posture of this proceeding makes it difficult to
7 evaluate [] the issues”].) Thus, even when parties have clearly adverse positions, a court should
8 decline to speculate about future events in order to evaluate the parties’ claims. (*Ibid.*)

9 Respondents have no present duty to calculate the Prop. 98 minimum funding requirement.
10 Respondents only duty is to “within nine months following the end of any fiscal year” to
11 “recalculate, as necessary, and jointly certify all actual data pertaining to school districts, as
12 defined, for the prior fiscal year.” (Educ. Code, § 41206.) The duty to make that calculation for
13 the current fiscal year will not arise until March 2013 – a whole year from the date this matter is
14 set to be heard. What petitioners effectively seek is a court order directing respondents to ignore
15 a particular provision of the Education Code (which may not even be in effect) when they
16 perform their Prop. 98 calculations a year from now.

17 The requirement that petitioners have a present interest in the performance of a duty is
18 especially important here, where the nature of the duty will not even be known until November
19 2012. As petitioners acknowledge, “the exclusion of these revenues [i.e., the special fund sales
20 tax revenues] is not this clear-cut” because section 41210 only excludes the revenues if a ballot
21 measure is approved by November 2012 that authorizes this transfer. (MPA at p. 9.) Indeed, the
22 initiative measure that is sponsored by Governor Brown would add section 36 to Article XIII of
23 the California Constitution, which specifically provides that “On and after July 1, 2011, the
24 revenues deposited pursuant to paragraph (1) [i.e., the special fund tax revenue] shall not be
25 considered General Fund revenues or proceeds of taxes for purposes of Section 8 of Article XVI
26 of the California Constitution.” (RRJN, Ex. D, Initiative 12-0001, Sec. 4.) While it is impossible
27 to know whether the voters will approve this measure, the possibility illustrates why the court
28 should decline to issue a writ of mandate where respondents have no *present* duty to act.

1 Even aside from the possible enactment of the initiative sponsored by Governor Brown, the
2 operative facts regarding respondents' duty to make the Prop. 98 certification will not be known
3 for quite some time. For instance, the amount of General Fund revenues, per capita income, or
4 student enrollment may be different than anticipated. Although unexpected, a dramatic change in
5 any of these data points could mean that the applicable test itself changes. So too could the
6 statutory underpinning of petitioners' case change. As petitioners themselves state in arguing that
7 the gradual increases to education funding over and above what is required by Prop. 98 do not
8 cure the alleged constitutional defect in current education funding, statutory provisions are
9 "completely subject to the political process" and may well change. (MPA at p. 16.) If
10 respondents are unable to rely on the current state of the law as a defense, petitioner may not rely
11 on the current state of the law in order to obtain relief, especially when it requires this Court to
12 guess what the state of the law will be in March 2013. For this reason alone, the petition for a
13 writ of mandate should be denied.

14 **II. THE SALES AND USE TAX PROCEEDS DEDICATED TO THE PUBLIC SAFETY**
15 **REALIGNMENT AND DEPOSITED IN THE LOCAL REVENUE FUND 2011 ARE NOT**
16 **GENERAL FUND REVENUES**

17 The sales and use tax proceeds that are deposited into the LRF 2011 are not General Fund
18 revenues. They are never deposited into the General Fund, and unlike General Fund revenues
19 they are not available for general appropriations and must instead be used only for realignment as
20 specified by statute. Rather, as provided by statute, these funds are deposited directly in the LRF
21 2011 until they flow through to counties and local governments to fund public safety programs.
22 Accordingly, and as the Legislature directed in Education Code section 41210, the funds in the
23 LRF 2011 are not included in the Prop. 98 calculation.

24 The term "General Fund" has a precise meaning, a meaning the petitioners' argument
25 studiously ignores. The General Fund is made up of proceeds of taxes, and "consists of money
26 received into the treasury *and not required by law to be credited to any other fund.*" (Gov. Code,
27 § 16300 [emphasis added]; see also *Service Employees Intern. Union, Local 1000 v. Brown* (2011)
28 197 Cal.App.4th 252, 265 n. 7.) Special funds, like LRF 2011, are created by statute and contain
monies from a dedicated revenue stream that can only be used for specified purposes. (*Tomra*

1 *Pacific, Inc v. Chiang* (2011) 199 Cal.App.4th 463, 469.) In the 2010-2011 fiscal year,
2 expenditures from the General Fund totaled \$92 billion, while expenditures from special funds
3 totaled \$30 billion. (*Service Employees Intern. Union, Local 1000, supra*, 197 Cal.App.4th at p.
4 265 n. 7.) There are particular rules governing special funds. For instance, special funds cannot
5 be loaned to the General Fund if the loan would interfere with the object for which such funds
6 were created. (*Id.* at p. 470 [quoting *Daugherty v. Riley* (1934) 1 Cal.2d 298, 309].) General
7 Fund monies are used to secure General Obligation Bonds, which are guaranteed by the full faith
8 and credit of the State of California. General Fund revenues are also used to determine how
9 much the Legislature is required to transfer each year to the Budget Stabilization Account (Cal.
10 Const., art. XX, § 20) and the relative level of General Fund revenues determines whether the
11 Governor may declare a fiscal emergency (*id.*, art. 4, § 10, subd. (f)). Understanding what monies
12 are and are not “General Fund revenues” thus has wide-ranging implications.

13 Because the Legislature provided by law for the proceeds of the 1.0625 percent sales tax to
14 be deposited in the LRF 2011 rather than the General Fund, those revenues are special fund
15 revenues, not “General Fund revenues.” The operative provision of Prop. 98, known as Test 1,
16 requires that the state set apart for education a particular “percentage of General Fund revenues.”
17 (Cal. Const., art. XVI, § 8, subd. (a)(1).) Rather than being deposited in the General Fund where
18 they would be available for any appropriation in the Budget Act, proceeds from the 1.0625
19 percent sales and use tax that is dedicated to public safety realignment is deposited directly into
20 the LRF 2011, and may only be used by the counties for realignment purposes (and, for this fiscal
21 year only, to reimburse state agencies in providing services to local governments that are
22 transitioning to provide the realigned services). (Gov. Code, § 30025.) Revenues that are never
23 part of the General Fund cannot be treated as “General Fund revenues.” Indeed, DOF has
24 consistently not counted special fund revenues as General Fund revenues when making the Prop.
25 98 calculation. (Schweizer Decl., ¶ 10.) In both form and function, the special fund sales and use
26 tax revenues are not part of the General Fund. It would be an unprecedented transgression on the
27 Legislature’s authority for a court to decree that funds designated as special fund revenues be
28

1 treated as “General Fund revenues” for any purpose, including the calculation required by Prop.
2 98.

3 Petitioners’ brief incorrectly suggests that Education Code section 41202 provides a
4 definition of “General Fund revenues” more favorable to their argument that special fund
5 revenues should be treated as if they are General Fund revenues for purposes of the calculating
6 the minimum guarantee. (MPA at pp. 8–9.) It does not. Section 41202 defines “General Fund
7 revenues which may be appropriated pursuant to Article XII B” as “*General Fund revenues* that
8 are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the
9 California Constitution.” (Educ. Code, § 41202, subd. (b) [emphasis added].) This quoted
10 language cannot define the phrase “General Fund revenues” since it contains that very phrase in
11 the definition. Rather, it defines the type of revenues that can be considered for purposes of Prop.
12 98 to include tax revenues, regulatory licenses, user fees, etc., *provided that* they are deposited in
13 the General Fund.

14 Petitioners do not explain why the sales and use tax revenues deposited in the LRF 2011
15 should be treated as General Fund revenues for purposes of the Prop. 98 calculation, when no
16 other special fund revenues have been treated as General Fund revenues. Indeed, the Legislature
17 has treated the monies used to fund a previous realignment in precisely the same manner as it has
18 in this fiscal year. In order to fund the 1991 realignment, the Legislature increased the sales and
19 use tax by 0.5 percent, and directed that this increment be deposited in the Local Revenue Fund.
20 (Rev. & Tax. Code § 6051.2.) Like the LRF 2011, the Local Revenue Fund established in 1991
21 was a special fund, apart from the General Fund, and available only to fund realignment activities.
22 (See Welf. & Inst. Code, § 17600.) Importantly, the sales tax revenue collected pursuant to the
23 1991 realignment has *never been treated as General Fund revenue* for purposes of Prop. 98. The
24 Legislature directed that if a court ever determined that the 0.5 percent sales tax directed to the
25 Local Revenue Fund should be treated as General Fund revenue, Revenue and Taxation Code
26 section 6051.2 would be rendered inoperative. (Rev. & Tax Code, § 6051.2, subd. (c).) No court
27 has made such a determination since that provision went into effect in 1991. Similarly, the
28 revenue from a 0.25 percent sales tax must be deposited in the Fiscal Recovery Fund and used to

1 pay the Fiscal Recovery bonds issued pursuant to Proposition 57. (*Id.*, § 6051.5.) These revenues
2 have never been treated as General Fund revenues and are not part of the Prop. 98 calculation.
3 (*Id.*, § 6051.5, subd. (c).) Further, the California Constitution provides that the 0.5 percent sales
4 and use tax devoted to the Local Public Safety Fund shall not be included in the Proposition 98
5 calculation. (Cal. Const., Art. XIII, § 35, subd. (e).)

6 The myriad other special funds in the treasury are also excluded from the Prop. 98
7 calculation, regardless of the source of funding. (Schweizer Decl., ¶ 10.) For instance, taxes
8 raised pursuant to the Quality Assurance Fee Act are not considered General Fund revenues and
9 are not part of the Prop. 98 calculation. (*Ibid.*) The revenue from this tax, which is placed in the
10 Hospital Quality Assurance Revenue Fund (Welf. & Inst. Code, § 14167.35, subd. (a)), is used to
11 fund health care coverage for children, supplemental payments to public hospitals, and increased
12 mental health payments, among other purposes. (*Id.*, § 14167.35, subd. (c).) In the 2011-2012
13 fiscal year, the revenue from this tax is predicted to be in excess of \$2.6 billion, rising to over
14 \$2.9 billion in the 2012-2013 fiscal year. Like the other \$30 billion in special fund revenues,
15 these are not General Fund revenues and are excluded from the Prop. 98 calculation.

16 It is irrelevant to the analysis that the sales and use tax revenues deposited in the LRF 2011
17 are generated from pre-existing sales and use taxes rather than a new tax increment. In both
18 cases, sales and use taxes are collected by the State, deposited in a special fund, and distributed to
19 the counties. Test 1 requires only that a percentage of General Fund revenues be set aside for
20 education. (Cal. Const., art. XVI, § 8, subd. (b)(1).) Under Prop. 98 it makes no constitutional
21 difference whether the source of the revenues deposited in a special fund is a new tax or an
22 existing tax that has been dedicated for a new and specified purpose. It is indisputable that the
23 Legislature may reduce the sales and use tax, even though it would have a negative impact on
24 Proposition 98 funding. No law requires that the Legislature maintain a certain tax rate or even a
25 particular amount of funding, as evidenced by the fact that the state sales tax and income tax rate
26 is highly variable. When Prop. 98 was passed in 1988, the state sales tax rate was 4.75 percent,
27 has risen as high as 7.25 percent, and currently stands at 6.25 percent. (RRJN, Ex. E, California
28 Board of Equalization, History of Sales & Use Tax Rates.)

1 What Prop. 98 actually requires is that, when Test 1 is applicable, the Legislature set aside a
2 particular percentage of General Fund revenue for education. Under petitioners' theory, the
3 Legislature is prohibited from excluding from the Prop. 98 calculation the one percent of sales tax
4 revenues that in earlier years were deposited in the General Fund that are now deposited in a
5 special fund. Yet the Legislature is permitted to reduce the existing sales tax rate by one percent,
6 and then increase it by one percent, and direct that the revenue generated by the new tax
7 increment be deposited in a special fund and not subject to Prop. 98. The result under Prop. 98
8 would be the same in either case, and it makes no sense to prohibit the Legislature from doing in
9 one step what is permissible in two. That is particularly the case when the clear text of Prop. 98
10 does not compel that result.

11 Because revenues deposited in special funds such as LRF 2011 are not General Fund
12 revenues, the Legislature did not exceed its authority in enacting Education Code section 41210
13 and respondents are governed by it if it remains in effect when they make their Prop. 98
14 certification in March 2013. Nothing in the text of Prop. 98 requires the Legislature to maintain
15 any particular level of General Fund revenues. All that Prop. 98 requires is that for each fiscal
16 year, the Legislature set aside a percentage of the General Fund revenues collected *in that*
17 *particular fiscal year*. It does not require the Legislature to calculate the minimum guarantee
18 based on all state revenues. And while the Legislature is free to appropriate to education an
19 amount in excess of the Prop. 98 minimum guarantee, it is not required to do so. Accordingly,
20 petitioners are not entitled to a writ of mandate compelling them to treat the funds in LRF 2011 as
21 if they were General Fund revenues.

22 **III. PROPOSITION 98 DOES NOT REQUIRE THE LEGISLATURE TO HOLD EDUCATION**
23 **FUNDING "HARMLESS" FROM ANY CHANGES TO THE GENERAL FUND**

24 **A. "Rebenching" Is Nowhere Mentioned in the Text of Proposition 98.**

25 Petitioners also contend that Prop. 98 requires the Legislature to offset any change made in
26 the composition of the General Fund so as to hold public education harmless (i.e., through
27 rebenching). But this argument finds no support in the text of Prop. 98 or the ballot materials
28 accompanying it. Relevant here, Prop. 98 only requires that the Legislature set aside "[t]he

1 amount which, as a percentage of General Fund revenues which may be appropriated pursuant to
2 Article XIII B, equals the percentage of General Fund revenues appropriated for school districts
3 and community college districts, respectively, in fiscal year 1986-87.” (Cal. Const., art. XVI, § 8,
4 subd. (b)(1).) Nowhere does the Constitution *require* the Legislature to compensate for a change
5 (either an increase or a decrease) to the composition of the General Fund. “To insert these
6 suggested words into this section of the Constitution would give it an added meaning not to be
7 found in the definite language of the section as adopted by the people.” (*County of Orange v.*
8 *Bezaire* (2004) 117 Cal.App.4th 121, 129 [quoting *Ross v. City of Long Beach* (1944) 24 Cal.2d
9 258, 260]; see also *People v. Campbell* (1902) 138 Cal. 11, 15, 70 P. 918 [“The constitution is to
10 be interpreted by the language in which it is written, and courts are no more at liberty to add
11 provisions to what is therein declared in definite language than they are to disregard any of its
12 express provisions.”].)

13 In certain instances, the Legislature has made the policy decision to “rebench” the
14 percentage of General Fund revenues devoted to education in the 1986-87 base year. That is
15 because the decision to realign responsibility for providing a particular program from the state to
16 school districts (or a change in the state’s revenue) can effectively reduce the amount of Prop. 98
17 funding for education even when new funding is provided to the school districts to support the
18 realigned program. This is because Prop. 98 does not adjust for the addition or subtraction of new
19 programs; it focuses only on a minimum level of funding relative to General Fund revenues,
20 regardless of increases or decreases in the programming provided. Unless the Legislature
21 rebenches to account for the addition of a new program, new funding does not by itself increase
22 the amount of the minimum guarantee, and school districts are effectively forced to do more with
23 less.⁴

24 ⁴ In addition to rebenching the amount spent on public schools and community colleges in
25 1986-87, the Legislature may also rebench the amount of General Fund revenues that the state
26 received during the 1986-87 fiscal year. Thus, if a revenue stream that had previously been
27 considered General Fund revenue is eliminated, the Legislature can decide to reduce the amount
28 of General Fund revenue in 1986-87 by that same amount. This rebenching would also have the
effect of raising the percentage of General Fund revenues spent for education purposes in the
1986-87 Fiscal Year, thus holding education funding harmless for a decision by the Legislature to
eliminate or redirect a revenue stream.

1 For example, as petitioners point out, the responsibility for providing special education-
2 related mental health services was for many years assigned to the counties, and funding for
3 carrying out that program was not considered a Prop. 98 expenditure. In the 2011-2012 budget,
4 however, the Legislature realigned responsibility for providing these services from the counties to
5 the school districts, and the \$222 million cost for providing those services became a Prop. 98
6 expenditure. Since the minimum guarantee did not change, adding this \$222 million program to
7 the preexisting school district programs covered by Prop. 98 effectively meant that there would be
8 \$222 million less for all of the other services school districts were required to provide. The
9 Legislature, however, made a policy decision to hold education funding “harmless.” It could not
10 change the formula, but the Legislature could “rebench” Test 1 by adding \$222 million to the
11 amount actually set aside for education in the 1986-87 budget year. By adjusting the amount set
12 aside in 1986-1987, the Legislature effectively increased the percentage of General Fund
13 revenues that were appropriated for school districts and community colleges in 1986-87, which in
14 turn increased the minimum guarantee for 2011-2012 by \$222 million. By deciding to rebench,
15 the Legislature avoided decreasing education funding as a consequence of decision to transfer
16 responsibility for special-education related mental health programs to the school districts.

17 Rebenching does not always favor education spending. For instance, in 1992, when the
18 Legislature forced local governments to shift \$1.3 billion in local property tax revenues into an
19 Educational Revenue Augmentation Fund (ERAF), which the state then used to pay its Prop. 98
20 obligations, the Legislature directed that Test 1 be rebenched. (Educ. Code, § 41204.1.) That
21 “rebenching” (which was accomplished by deeming the shift in property tax revenues to have
22 occurred in 1986-87 instead of in 1992) resulted in a reduction in Test 1 from 40 percent to 34
23 percent. (MPA at p. 18; *County of Sonoma, supra*, 84 Cal.App.4th at p. 1277.)

24 **B. The Legislature’s Past Preference for Rebenching the 1986-87 Base Year**
25 **Does Not Now Prohibit it from Choosing Not to Rebench**

26 While rebenching has become a common practice, its genesis is not in the text of the
27 Constitution or Prop. 98, but rather in a statement of legislative intent. In 1989, the Legislature
28

1 enacted legislation implementing Prop. 98, including Education Code section 41204.⁵ This
2 provision, which is titled “Legislative intent,” provided that:

3 (a) It is the intent of the Legislature, pursuant to “The Classroom Instructional
4 Improvement and Accountability Act,” that school districts, as defined in Section
5 41302.5, and community college districts, as constituted during the 1986-87 fiscal
6 year, annually receive a basic minimum portion of the revenues that is equivalent to
7 the percentage of revenues that were deposited to the General Fund in that year.

8 (b) In recognition of this intent, it is further the intent of the Legislature that both
9 houses and the Governor be guided by the following:

10 (1) If revenues of a tax that were deposited in the General Fund in the 1986-87 fiscal
11 year are redirected to another fund, or level of government, then the percentages of
12 General Fund revenues required to be applied by the state for the support of [public
13 schools] shall be recalculated as if those revenues were not deposited in the General
14 Fund in the 1986-87. . . .

15 (Educ. Code, § 41204, subd. (b)(1).) By artificially excluding General Fund revenues and
16 recalculating the percentage of funds that were devoted to education in the 1986-87 fiscal year,
17 application of the principles in section 41204 would mean that education funding would not be
18 impacted by a decision to redirect certain revenues to special funds to support county operations.

19 Such indications of legislative intent, however, are neither binding on future legislatures nor
20 sufficient to support a writ of mandate. (*County Mobilehome Positive Action Committee, Inc. v.*
21 *County of San Diego* (1988) 62 Cal.App.4th 727, 734 [“It is clear that one legislative body cannot
22 restrict the powers of its successors by enacting legislation which is purported to be
23 nonrepealable.”]; *Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 491 [“Precatory

24 ⁵ Respondents note that a two-thirds vote was not required to amend Education Code
25 section 41200 et seq. Petitioners’ brief implies that the amendment of these statutes was
26 authorized by section 13 of Prop. 98, which provided that “No provision of this Act may be
27 changed except to further its purposes by a bill passed by a vote of two-thirds of the membership
28 of both houses of the Legislature and signed by the Governor.” (MPA at p. 11.) This is incorrect.
The quoted language permitted the Legislature to amend other Education Code statutes that were
originally adopted as initiative statutes as part of Prop. 98 itself, which did *not* include sections
41200 et seq. (See Cal. Const., art. II, § 10, subd. (c) [“[t]he Legislature ... may amend or repeal
an initiative statute by another statute that becomes effective only when approved by the electors
unless the initiative statute permits amendment or repeal without their approval”]; see also *Shaw*
v. Chiang (2009) 175 Cal.App.4th 577, 597.) Although the Legislature enacted section 41200 *et*
seq. by a two-thirds vote, this was necessary not because this was an amendment to an initiative
statute, but rather to allow the amendments to go into effect immediately, as urgency legislation.
(PRJN, Ex. J.) Petitioners make no express claim that the amendments to the Education Code
enacted through the budget trailer bill required a two-thirds vote, nor could they.

1 statements of intent ... do not impose an affirmative duty enforceable through a writ of
2 mandate.”].) While the Legislature may (and often does) decide to appropriate more for
3 education than required by Prop. 98 either directly or by artificially rebenching the 1986-87 base
4 year, nothing in Prop. 98 *requires* the Legislature to re-calculate the 1986-87 percentage as a way
5 of off-setting a present-day policy change. Test 1 requires the Legislature to provide the same
6 percentage of General Fund revenues that were *actually paid* in the 1986-1987 base year. If the
7 drafters of Prop. 98 intended to require the Legislature to rebench so that education funding could
8 never fall below a specified absolute, they needed to so provide. Such a requirement cannot be
9 read into Prop. 98.

10 Petitioner argues that because Education Code section 41204 was enacted
11 contemporaneously with Prop. 98, it “represented a considered legislative judgment as to the
12 appropriate reach of the constitutional provision ... [and] enjoys significant weight and deference
13 by the courts.” (MPA at p. 14.) While it is true that courts will give special deference to a
14 contemporary interpretation of a constitutional provision, this principle does not foreclose the
15 Legislature from revisiting the issue. “A corollary of the legislative power to make new laws is
16 the power to abrogate existing ones. What the Legislature has enacted, it may repeal.”
17 (*California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 255.) That is
18 particularly true here where the provision in question is not law, but only an indication of
19 legislative intent. The Legislature did not purport to give an authoritative interpretation of Prop.
20 98 in enacting section 41204; it merely stated the Legislative intent behind the legislation
21 implementing Prop. 98. Nowhere did the Legislature state that Prop. 98 *required* that the 1986-
22 87 base year be rebenched if the Legislature made a change to the composition of the General
23 Fund. While it may be a laudable goal for the Legislature to try to insulate education funding
24 from changes it makes to General Fund revenues, nothing in Prop. 98 requires this result. Prop.
25 98 did not prohibit the Legislature from revisiting whether a change in the composition to the
26 General Fund should be artificially reflected in the percentage allocated for education in the
27 1986-87 base year or from enacting Education Code section 41210.

1 **IV. THE EXISTENCE OF SPECIAL FUNDS AND THE LEGISLATURE'S AUTHORITY TO**
2 **DIRECT REVENUE TO A SPECIAL FUND DOES NOT UNDERMINE PROPOSITION 98**

3 The Legislature's authority to direct revenues from the General Fund to a special fund like
4 the LRF 2011 predated Prop. 98, and does not undermine it. The existence of special funds with
5 dedicated revenue streams is just one among many factors that can have an impact on the
6 minimum funding guarantee in a given year. As previously discussed, Prop. 98 does not establish
7 any specific level of funding for education. Rather, in a Test 1 year, Prop. 98 provides a formula
8 requiring for each fiscal year that the state maintain a specified relationship between the level of
9 education funding and the revenues deposited in the General Fund.

10 The dollar value of that formula in any particular year rises and falls because Prop. 98
11 created a system that is designed to be influenced by a complex set of external factors. These
12 external factors include but are not limited to: the economy and the rise and fall of revenues with
13 it; the fiscal and tax policy of the state, which may cause tax rates to rise or fall; and student
14 enrollment. Also complicating school funding is the addition or subtraction of state mandated
15 education programs and legislative rebenching in response to other changes. Another factor that
16 influences the dollar value of the minimum guarantee is a legislative policy decision to create a
17 new special fund and to redirect revenues that in earlier years were deposited in the General Fund
18 to the special fund. If the Legislature chooses to raise taxes to benefit the General Fund and the
19 programs funded by it, the Prop. 98 funding requirements will rise, just as it will fall if the
20 Legislature decides to reduce taxes, as it did this fiscal year when the temporary sales tax increase
21 enacted during the Schwarzenegger administration expired. Similarly, where the state changes its
22 fiscal policies, as it did here and in 1991 when it decided to transfer responsibility over certain
23 programs to the counties, those policy changes impact the funds that must be set aside for
24 purposes of Prop. 98.

25 That the Prop. 98 funding level is highly variable is evidenced by the "ERAF" legislation
26 noted by petitioner. (MPA at p. 18.) This legislation required counties to transfer \$1.3 billion in
27 property tax revenue to the State, which it in turn used to help meet its Prop. 98 funding
28 requirement. (Rev. & Tax. Code, §§ 97.2 & 97.3.) In order to ensure that the ERAF program had

1 no net effect on the level of education spending, the Legislature then directed DOF to rebench the
2 percentage of General Fund revenues that were appropriated for education in the 1986-1987 fiscal
3 year as if the ERAF legislation had been in effect that year. (Ed. Code, § 41204.5.) The effect of
4 this rebenching was to lower Test 1 from 40% to 34% from 1992-1994. (*County of Sonoma,*
5 *supra*, 84 Cal.App.4th at p. 1277.) Unlike the public safety realignment, which advances the
6 Legislature’s policy determination that counties can more effectively provide certain public safety
7 programs at lower cost and is required to comply with the unprecedented order of the federal
8 three-judge court in *Plata*, the primary purpose of the ERAF statute was to provide the State with
9 fiscal relief. (*Id.* at p. 1275.) By pegging education funding to General Fund revenues, which are
10 highly variable and subject to control by the Legislature, the drafters of Prop. 98 left education
11 funding subject to the influence of Legislative policies.

12 These legislative and other influences predated Prop. 98 and are built into its funding
13 structure. It is misleading to suggest that “the Legislature could simply define all General Fund
14 revenues as “not General Fund revenues,” bring the Test 1 amount down to zero, and eliminate
15 the minimum funding floor intended by voters.” (MPA at pp. 14–15.) First, Prop. 98 did not
16 establish an absolute minimum funding amount but rather established a minimum funding
17 *relationship* between education funding and General Fund revenues. Second, petitioners’
18 doomsday scenario ignores the practicalities of state finance. In order to redirect all revenues to
19 special funds, the Legislature would be forced to split up the sales and use tax, income tax, and
20 corporate tax into discrete revenue streams, and place each into a particular special fund that
21 funded particular programs. This would be a logistical nightmare, if not impossible. More
22 importantly, eviscerating the General Fund would effectively bar the state from issuing General
23 Obligation Bonds, the principal and interest for which are repaid from the General Fund. (Gov.
24 Code, § 16724, subd. (d).) And if the Legislature were to divert all revenues that currently are
25 deposited in the General Fund to another fund called Not General Fund, for instance, and then use
26 the Not General Fund in precisely the same way as the General Fund, a court would quickly see
27 through the ruse. Committing a portion of sales and use taxes to a special fund that may only be
28

1 used for specified purposes and is unavailable or general state appropriations, however, is a far
2 cry from this scenario.

3 Petitioners' argument also ignores the fact that there are two other tests under Prop. 98 that
4 provide additional protections for education funding. First and foremost, Test 1 is rarely
5 operative, applying only when General Fund revenues are particularly volatile. (Schweizer Decl.,
6 ¶ 3.) That is precisely when the State needs maximum flexibility to grapple with a serious fiscal
7 crisis, such as it is currently facing. The 2011-2012 fiscal year was the first time Test 1 was
8 operative since 1989, the first year after Prop. 98 was passed. Second, if the state were to
9 significantly reduce General Fund revenues, then Test 2 or Test 3 would apply, since they would
10 generate a greater minimum than a percentage of General Fund revenues. Since Test 2 and Test 3
11 apply most often, they provide significant protection against any efforts of the Legislature to
12 manipulate education funding. Thus, even if funding under Test 1 were more volatile than
13 petitioners would like, Prop. 98 will still provide significant protection for education funding, as it
14 has in previous years.

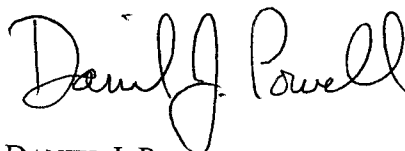
15 CONCLUSION

16 The petition for a writ of mandate should be denied.

17 Dated: March 14, 2012

18 Respectfully Submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *CSBA v. State of California, Mantosantos, et al.*

No.: **CGC-11-514689**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 14, 2012, I served the attached **OPPOSITION OF THE STATE OF CALIFORNIA; ANA J. MATOSANTOS, DIRECTOR OF FINANCE; AND JOHN CHIANG, CALIFORNIA STATE CONTROLLER TO VERIFIED PETITION FOR WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 14, 2012, at San Francisco, California.

Susan Chiang
Declarant



Signature