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Public Finance, Stormwater, and the California Constitution: Who Pays for Trash Cans at Bus Stops?

INTRODUCTION

California voters and courts consistently support efforts to protect both the environment and taxpayers. These actions often spur changes in policy throughout the nation. For example, California passed comprehensive water quality legislation prior to enactment of the federal Clean Water Act.¹ California also pioneered air quality standards before the federal government enacted its own less stringent standards.² In addition, California's 1978 Proposition 13 voter initiative, which cut property taxes and limited future tax growth, led to similar policies in many other states and preceded the 1981 federal tax cuts.³ California policy decisions often lead to profound changes, for better or for worse, across the nation.

These deeply entrenched values—environmental protection and taxpayer protection—recently came into tension in the California Supreme Court's 2016 decision in *Department of Finance v. Commission on State Mandates*.⁴ This is the most recent California Supreme Court decision to weigh in on the longstanding debate over when the state must reimburse local governments for costs mandated by state laws.⁵ The court decided that certain conditions in a state stormwater management permit issued to local governments to comply with deliberately ambiguous federal regulations were mandates imposed at the state's discretion.

While *Department of Finance* protects local governments from the financial burden of implementing new state law, which affirms the California Constitution's taxpayer protection initiatives, this decision may expose the state

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1. See CAL. WATER CODE §§ 13000 *et seq.* (West 1970); *History of the Water Boards*, CAL. WATER BDS. (Jan. 30, 2018), https://www.waterboards.ca.gov/about_us/water_boards_structure/history_water_pollution.html.

2. See *History*, CAL. AIR RES. BD., <https://ww2.arb.ca.gov/about/history> (last visited Aug. 9, 2018).

3. Stephen Moore, *Proposition 13 Then, Now and Forever*, CATO INSTITUTE (July 30, 1998), <https://www.cato.org/publications/commentary/proposition-13-then-now-forever>.

4. 378 P.3d 356, 360–61 (Cal. 2016).

5. See *County of Los Angeles v. California*, 729 P.2d 202, 203–04 (Cal. 1987) (en banc).

to significant financial liability, threaten its environmental protection programs, and disincentivize the state from pursuing effective and innovative policy in light of federal ambiguity.

I. LEGAL BACKGROUND

A. Stormwater Regulation in California

Stormwater runoff is among the most significant sources of water pollution in the United States.⁶ The Clean Water Act (CWA), a “comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters,” prohibits the discharge of all pollutants not in compliance with a permit or established standards.⁷ The CWA’s National Pollution Discharge Elimination System requires certain operators of municipal separate storm sewer systems (MS4s) to obtain permits from the Environmental Protection Agency (EPA) before releasing stormwater discharge into waterways.⁸

California—the first state authorized by the EPA to administer its own permitting system—and the EPA work in tandem to regulate water quality.⁹ The legislature amended its Porter-Cologne Water Quality Control Act following passage of the CWA so the state could administer its own permitting system and “ensure consistency” with the CWA.¹⁰ The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board and nine regional water quality boards (collectively referred to as the Board) to oversee statewide water policy, implement water quality plans, and issue permits for the discharge of wastewater and stormwater.¹¹ The Board holds the “primary responsibility for the coordination and control of water quality” in California and ensures compliance with state and federal water quality law.¹²

B. Public Finance—Propositions 13, 4, and Article XIII

In the late 1970s, California voters reformed the state’s tax laws through two initiative measures, Propositions 13 and 4, which drastically changed both individual property tax bills and how governments fund essential services. In

6. Stormwater is defined by the federal government as stormwater “runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13) (2015).

7. *Dep’t of Fin.*, 378 P.3d at 362.

8. *Id.*; MS4s broadly refer to a conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that are owned or operated by governmental entities that include states, cities, special districts, and counties, which are designed or used for collecting or conveying stormwater and are not a combined sewer or part of a publicly owned treatment works). *See* 40 C.F.R. § 122.26(b)(8).

9. *Dep’t of Fin.*, 378 P.3d at 361–62.

10. *Id.*

11. *Id.* at 361–62.

12. *Dep’t of Fin.*, 378 P.3d at 361 (quoting CAL. WATER CODE § 13001 (West 1970)).

1978, California voters passed Proposition 13, which amended Article XIII of the California Constitution to create a “direct constitutional limit on state and local power to adopt and levy taxes.”¹³ The next year, in 1979, California voters approved another amendment to Article XIII, Proposition 4. Also known as the Gann limit, this amendment requires the state to reimburse local governments for the costs of new programs or services mandated by the state.¹⁴ Proposition 4 provided “significant protections” for local agencies against unfunded state mandates, but also included “crucial exceptions” for reimbursement, such as when a new program or increase in service is mandated due to a federal regulation or statute.¹⁵ This exception is at the core of *Department of Finance*. Proposition 4 also created an upper limit on state and local government appropriations and spending.¹⁶ Propositions 13 and 4 “work in tandem, together restricting California governments’ power both to levy [taxes] and to spend for public purposes.”¹⁷

C. State Agencies Involved

The legislature established the Commission on State Mandates (Commission) after Proposition 13 passed.¹⁸ The Commission is a quasi-judicial agency and adjudicates claims by local agencies, known as test claims, to decide if the state must reimburse local agencies for costs associated with its mandates, among other purposes.¹⁹ The State Department of Finance represents the state by appealing adverse Commission decisions. Appeals are first heard in Superior Court.

II. DEPARTMENT OF FINANCE V. COMMISSION ON STATE MANDATES

In 2001, the Board issued a permit to local agencies operating MS4s in Los Angeles County.²⁰ This permit required the local agencies to place trash receptacles at transit stops.²¹ It also required local agencies to conduct inspections at certain facilities, such as restaurants, gas stations, and construction sites, to ensure each facility met best management practices and permit

13. *Id.* at 366; Brad Williams & David Vasché, *The State Appropriations Limit*, LEGIS. ANALYST’S OFFICE (Apr. 13, 2000), http://www.lao.ca.gov/2000/041300_gann/041300_gann.html.

14. *Dep’t of Fin.*, 378 P.3d at 366; *Voter Information Guide for 1979, Special Election* (1979), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1864&context=ca_ballot_props.

15. *Dep’t of Fin.*, 378 P.3d at 366, 370, 377; CAL. GOV’T CODE § 17556(c) (West 2010).

16. *Dep’t of Fin.*, 378 P.3d at 366.

17. *City of Sacramento v. California*, 785 P.2d 522, 525 n.1 (Cal. 1990) (en banc).

18. *See CSM History*, CAL. COMM’N ON STATE MANDATES, <https://www.csm.ca.gov/history.php> (last visited Aug. 9, 2018).

19. CAL. COMM’N ON STATE MANDATES, GUIDE, <https://csm.ca.gov/docs/brochure.pdf>.

20. *Dep’t of Fin.*, 378 P.3d at 363.

21. *Id.*

conditions.²² The permit also included other provisions not at issue.²³ The local agencies filed a test claim with the Commission in 2003 contending the permit conditions were state mandates, not compelled by the CWA, and must be funded by the state.²⁴

The Commission determined the state must reimburse costs associated with the trash receptacle requirement because it was a state mandate.²⁵ It decided that although federal law did not mandate the inspection requirement, the state was not required to reimburse because local agencies could fund the inspections through a regulatory fee.²⁶ The Department of Finance appealed the Commission's decision to Los Angeles County Superior Court, which overturned the Commission's decision.²⁷ The California Court of Appeal held both permit requirements were not state mandates because they were intended to satisfy the CWA's requirement to reduce water pollutants by the "maximum extent practicable," an undefined standard in federal regulations.²⁸

On appeal, the California Supreme Court reversed.²⁹ The court sided with the Commission in a divided four to three decision.³⁰ The court determined the state imposed the permit conditions at its discretion because the CWA's "maximum extent practicable" standard did not compel these specific requirements.³¹ The court remanded the case to determine whether the local agencies can impose a fee to recover costs associated with the requirements.³² The state may not need to reimburse local agencies for these requirements if they can impose a fee.

In *Department of Finance*, the California Supreme Court established a new test to determine whether a requirement is a federal or state mandate:

If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.³³

22. See *id.* See also L.A. Reg'l Quality Control Bd., Comm'n on State Mandates Nos. 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (July 31, 2009), <https://www.csm.ca.gov/matters/03-TC-04/doc1.pdf> (noting that the Board issued a permit to Los Angeles County, the Los Angeles County Flood Control District, and eighty-four cities) [hereinafter 2009 Statement of Decision].

23. See *Dep't of Fin.*, 378 P.3d at 363.

24. See 2009 Statement of Decision, *supra* note 22, at 2.

25. *Dep't of Fin.*, 378 P.3d at 372.

26. See 2009 Statement of Decision, *supra* note 22, at 70; CAL. GOV'T CODE § 17756 (West 2010).

27. *Dep't of Fin.*, 378 P.3d at 365.

28. *Id.* at 363, 365.

29. *Id.* at 360.

30. *Id.* at 373, 379.

31. *Id.* at 360, 370.

32. *Id.* at 372.

33. *Id.* at 368.

Applying this test, the court determined the Board used its “true choice” and “true discretion” because it imposed inspection standards beyond what EPA regulations required.³⁴ Federal law did not “compel” or “explicitly require” the Board to impose the particular trash receptacle and inspection requirements, or any particular requirements at all.³⁵ The court determined neither the CWA nor corresponding EPA regulations required the local agencies to inspect the facilities in question.³⁶ Instead, federal law required the state to inspect the facilities in question.³⁷ The court noted the state deliberately chose to administer its own program to “avoid direct regulation by the federal government” through EPA-issued permits and enforcement.³⁸ Finally, the court held the state provided no evidence federal law compelled the state to use its own permitting system in order to comply with the “maximum extent practicable” standard.³⁹ Together, these factors made the requirements “overarching” state mandates, not federal mandates.⁴⁰

III. ANALYSIS

While this decision affirms taxpayer protection principles in the California Constitution, it also questions the utility of these principles given that the changing nature of federal-state cooperation hinders the state’s ability to implement intentionally vague or deferential federal regulations.

A. Upholding Voter Intent

Department of Finance upholds the intent of Proposition 4, a citizen initiative designed to protect local governments from the state’s “perceived attempt” to enact legislation and administrative orders to transfer fiscal responsibility from the state to political subdivisions such as municipalities and special districts.⁴¹ This decision recognizes the court’s longstanding belief that local governments are “ill equipped” to take on increased functions and responsibilities from state-imposed mandates because the Article XIII amendments “severely restrict the[ir] taxing and spending powers.”⁴² This decision ensures that tax revenues generated at the local level will be spent on

34. *See id.* at 372.

35. *Id.* at 366, 369, 371, 372.

36. *Id.* at 371.

37. *Id.*

38. *Id.* at 369 (quoting CAL. WATER CODE § 13370(c) (West 1970)).

39. *Id.* at 370–71, 372.

40. *Id.* at 371.

41. *County of Los Angeles v. California*, 729 P.2d 202, 208 (Cal. 1987) (en banc).

42. *See County of San Diego v. California*, 931 P.2d 312, 318–19 (Cal. 1997). Proposition 13 restricted the maximum amount of ad valorem property tax on any given property to 1 percent and reduced the authority of local and state governments to raise other taxes. *See id.* at 318, 340.

local rather than state priorities, which protects important elements of Proposition 4 and the legacy of other taxpayer protection initiatives.⁴³

B. Not What the Voters or Congress Wanted?

Historically, California voters are an electorate deeply supportive of environmental protection. They likely did not envision either the rise of state and federal governments working in tandem to implement regulations or the subsequent “devolution of federal environmental authority” to the states as they cast their ballots in 1979.⁴⁴

California voters also could not have anticipated the 1987 CWA amendments that required permits for discharge of MS4s serving a population greater than 100,000 people or the promulgation of an unintentionally defined standard, such as “maximum extent practicable.”⁴⁵ More broadly, voters likely did not understand how the far-reaching and technical scope of federal regulations would still leave substantial discretion to the states. Furthermore, voters could not have envisioned that these laws have been highly effective in achieving environmental protection goals.

Department of Finance does not reflect the reality of how federal and state governments jointly implement federal law. The CWA “anticipates a partnership” between the states and federal government.⁴⁶ This decision threatens to undermine this relationship. Cooperative federalism is “a concept central to the structure of our environmental laws” that allows states to enact and administer their own particular needs within limits established by federal minimum standards.⁴⁷ The CWA is a quintessential example of cooperative federalism.

This decision disregards the intended goals of the CWA and the National Pollution Discharge Elimination System program. For example, the *Department of Finance* dissent noted the federal National Pollution Discharge Elimination System program intended a “major” role for the states in its implementation.⁴⁸ Federal regulation states MS4 operators, states, and the EPA should “work as a team” and “site-specific controls” are “best handled” by local operators such as local governments with state-issued permits.⁴⁹ Also, the EPA Region 9 office

43. *What Is a Mandate: An Overview*, LEGIS. ANALYST’S OFFICE (Dec. 2006), http://www.lao.ca.gov/2007/whats_a_mandate/Acro/What_Is_a_Mandate.pdf.

44. HOLLY DOREMUS ET AL., ENVIRONMENTAL POLICY LAW 161 (6th ed. 2012).

45. 33 U.S.C. §§ 1342(p)(2)(C)–(D), (3)(B); *Dep’t of Fin.*, 378 P.3d at 362–63.

46. *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992).

47. See John Cruden, *Cooperative Federalism: A Central Concept of Environmental Law*, U.S. DEP’T OF JUSTICE: ARCHIVES (July 27, 2016), <https://www.justice.gov/archives/opa/blog/cooperative-federalism-central-concept-environmental-law>; *Hodel v. Va. Surface Mining and Reclamation Ass’n*, 452 U.S. 264, 289 (1981).

48. *Dep’t of Fin.*, 378 P.3d at 374 (Cuéllar, J., concurring in part and dissenting in part).

49. National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges 64 Fed. Reg. 68722-01, 68748 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

agreed with the state and sent a letter in support of the 2001 permit, noting that the permit provisions are “well within the scope” of the EPA’s regulations.⁵⁰

C. *The Unintended Consequences of Department of Finance*

Department of Finance may cause more state laws to be classified as state mandates. This will result in substantial costs to the state and lead to less innovative state policy.

1. *More State Mandates and Financial Burden on the State*

This decision may lead courts to classify many state laws implementing ambiguous federal laws and regulations as state mandates. The new *Department of Finance* test suggests any state-imposed permit conditions promulgated to comply with the undefined “maximum extent practicable” CWA standard will be considered state mandates. After *Department of Finance*, any state-issued MS4 permit could plausibly trigger a reimbursable state mandate.⁵¹ As a result, this “overly narrow approach” of determining what is either a federal or state mandate will likely define many state laws implementing purposely broad or ambiguous federal laws and regulations, meant to provide states with flexibility and encourage cooperative federalism, as state mandates.⁵²

Therefore, the state may incur substantial financial liabilities, perhaps reaching hundreds of millions of dollars statewide.⁵³ If the trial court finds that the local agencies cannot raise revenue for the state-mandated permit requirement, the state must reimburse the local agencies.

2. *Significant Policy Impacts*

This decision may deter the state from implementing new and innovative stormwater control programs. The potential for such a large financial impact will discourage the state from implementing effective stormwater management techniques encouraged and recognized by the EPA but not explicitly required by federal law and regulation.

For example, this decision may threaten the Board’s ability to impose permit conditions requiring the use of green infrastructure.⁵⁴ Green infrastructure

50. See Samuel L. Brown, *As Goes Calif. Stormwater, So Goes the Nation’s?*, LAW360 (May 5, 2015, 12:32 PM), <https://www.law360.com/articles/650816/as-goes-calif-stormwater-so-goes-the-nation-s->.

51. Richard Frank, *The Clean Water Act, Federalism, Big Money and the California Supreme Court*, LEGAL PLANET (Sept. 13, 2016), <http://legal-planet.org/2016/09/13/the-clean-water-act-federalism-big-money-and-the-california-supreme-court/>.

52. See *Dep’t of Fin.*, 378 P.3d at 375 (Cuéllar, J., concurring in part and dissenting in part).

53. Robert Egelko, *State May Have to Pay Local Water Agencies Millions*, SFGATE (Aug. 29, 2016), <https://www.sfgate.com/science/article/State-may-have-to-pay-local-water-agencies-9191732.php>.

54. See Brown, *supra* note 50.

uses natural or man-made systems that mimic natural processes to direct stormwater to areas where it is “infiltrated, evapotranspired or re-used”.⁵⁵ Green infrastructure can “effectively and affordably” complement traditional methods of grey infrastructure.⁵⁶ While the EPA “actively supports” the use of green infrastructure and notes that an increasing number of agencies are incorporating green infrastructure into MS4 programs, federal regulations do not explicitly list it as an available method for meeting MS4 standards.⁵⁷ A narrow view of what is considered a federal mandate may result in courts interpreting permits with these green infrastructure methods as state mandates.

These financial impacts may compel California to either withdraw from or limit participation in cooperative federalism arrangements. The potential costs resulting from this decision may compel California to withdraw from CWA permit programs.⁵⁸ The state may regret imposing these standards if it ends up footing the bill.⁵⁹ The state even suggested it may not want to impose permit conditions not specified in federal law and may want to give up its role of issuing permits.⁶⁰ Therefore, this decision may result in “profound, adverse public policy consequences” by threatening to unravel California’s participation in cooperative federalism programs beyond the CWA and environmental protection.⁶¹

This decision is unlikely to provide an impetus for the state to find funding for local agencies.⁶² First, previous efforts to create or provide funding sources for local agencies to meet the requirements of their state-imposed MS4 permits were unsuccessful.⁶³ Also, the history of broad-based state funding for stormwater suggests that this is unlikely to happen soon. For example, the 2014 Proposition 1 Water Bond, which authorized the issuance of \$7.5 billion in general obligation bonds, provided only \$200 million in grant funding for

55. Memorandum from Linda Boornazian, Dir. of Water Permits Div., EPA, and Mark Pollins, Dir. of Water Enf’t Div., EPA, to EPA Water Div. Dirs. et al. (Aug. 16, 2007), https://www.epa.gov/sites/production/files/2015-10/documents/gi_memo_enforce_0.pdf.

56. Jeffrey Odefey et al., *Banking on Green: A Look at How Green Infrastructure Can Save Municipalities Money and Provide Economic Benefits Community-wide* (Apr. 2012), https://www.asla.org/uploadedFiles/CMS/Government_Affairs/Federal_Government_Affairs/Banking%20on%20Green%20HighRes.pdf.

57. *What is EPA Doing to Support Green Infrastructure?*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/green-infrastructure/what-epa-doing-support-green-infrastructure-0> (last visited Aug. 9, 2018).

58. See *Dep’t of Fin. v. Comm’n on State Mandates*, 378 P.3d 356, 377 (Cal. 2016) (Cuéllar, J., concurring in part and dissenting in part); *Dean Reich Addresses Congress on Stormwater Management*, WHITTIER LAW SCH., <https://www.law.whittier.edu/index/news/article/dean-reich-addresses-congress-on-storm-water-management> (last visited Aug. 9, 2018).

59. See Richard Frank, *The California Supreme Court’s Top Environmental Law Decisions of 2016*, LEGAL PLANET (Dec 29, 2016), <http://legal-planet.org/2016/12/29/the-california-supreme-courts-top-environmental-law-decisions-of-2016/>.

60. Rebecca Andrews, *California Must Pick Up Stormwater Check*, PUBLICCEO (Nov. 28, 2016), <http://www.publicceo.com/2016/11/california-must-pick-up-stormwater-check/>.

61. See *Frank*, *supra* note 59.

62. See Andrews, *supra* note 60.

63. See *id.*

stormwater management.⁶⁴ Also, in June 2018, California voters approved a four billion dollar bond for state and local parks, environmental protection, water infrastructure, and flood protection projects.⁶⁵ While stormwater management is an eligible activity for multiple funding categories, it is not a primary purpose.⁶⁶ In addition, Internal Revenue Service regulations stipulate general obligation bond funds must be substantially spent on capital improvements, not for operations activities such as inspections or maintenance of trash receptacles.⁶⁷ These funding issues will not dissipate; stormwater management costs and needs have steadily increased over the years and likely will continue to do so in the future.

3. *Loss of State Autonomy*

This decision goes against the court’s longstanding description of how the state and federal government jointly implement federal law. The court previously explained how most “federal influence” is achieved through “inducement or incentive,” such as granting a state the ability to directly oversee regulation of its own waters, rather than through “direct compulsion,” such as laying out the specific methods a state must use.⁶⁸ The court previously noted that if “‘federal mandates’ were limited to strict legal compulsion by the federal government,” the proposition “would have been largely superfluous,” because federal mandates rarely lay out explicit directions for states to follow.⁶⁹ This decision does not align with the court’s previous recognition that “federal coercion” creates a “practical reality” leaving states with little choice to impose their own standards.⁷⁰

64. *Storm Water Grant Program (SWGPP)—Proposition 1 (Prop 1)*, CAL. WATER BDS. (Dec. 27, 2017), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/swgp/prop1/.

65. *California Proposition 68, Parks, Environment, and Water Bond (June 2018)*, BALLOTEDIA, [https://ballotpedia.org/California_Proposition_68,_Parks,_Environment,_and_Water_Bond_\(June_2018\)](https://ballotpedia.org/California_Proposition_68,_Parks,_Environment,_and_Water_Bond_(June_2018)) (last visited Aug. 9, 2018).

66. *See Text of Proposed Laws, Proposition 68*, CAL. SEC’Y OF STATE, <http://voterguide.sos.ca.gov/pdf/text-proposed-laws.pdf>.

67. INTERNAL REVENUE SERV., OFF. OF TAX EXEMPT BONDS, PUBLICATION 4078: TAX-EXEMPT PRIVATE ACTIVITY BONDS (2016), <https://www.irs.gov/pub/irs-pdf/p4078.pdf>; INTERNAL REVENUE SERV., OFF. OF TAX EXEMPT BONDS, PUBLICATION 4079: TAX-EXEMPT GOVERNMENTAL BONDS (2016), <https://www.irs.gov/pub/irs-pdf/p4079.pdf>.

68. *City of Sacramento v. California*, 785 P.2d 522, 535 (Cal. 1990) (en banc).

69. *See id.* Previously, the court noted that the existence of a federal regulation that described the process for taking action that is not by itself required by federal law is not a federal mandate. For example, the court held that federal rules specifying a process for public schools to follow when expelling a student were not sufficient to meet the standard of a federal requirement because federal law does not require expulsion. *San Diego Unified Sch. Dist. v. Comm’n on State Mandates*, 122 Cal. Rptr. 2d 614, 615 (Ct. App. 2002), *rev’d on other grounds*, 94 P.3d 589 (Cal. 2004). This case supports the idea that stormwater management techniques, such as green infrastructure measures “encouraged” or highlighted by the EPA in its reports, do not create a federal mandate.

70. *City of Sacramento*, 785 P.2d at 524, 535.

This decision may result in the unintended consequence of exposing the state to more direct federal regulation. It may prevent the state from using its own agencies and experts to implement federal regulation in order to best serve California's diverse geography, conditions, and population. Proposition 4 was implemented by taxpayer advocates who did not desire increased state or local spending. However, against their intentions, this decision may do just that. It may also result in the federal government directly imposing regulation on Californians. The court previously held that it may disregard the "literal language" of a constitutional amendment in order to "avoid absurd results" and to fulfill the "apparent intent" of the amendment's framers.⁷¹ The court also noted that constitutional provisions "must receive a liberal, practical common-sense construction" in order to meet the changing conditions of the state and needs of its people.⁷² A future court should consider how the current interpretation of Proposition 4 and Article XIII fit into the present reality of cooperative federalism, as well as California's long-demonstrated desire to act as a leader and innovator in environmental protection programs.

CONCLUSION

As California taxpayers and politicians bring renewed interest to the evergreen topic of reforming the property tax assessment limitations imposed in Proposition 13, they ought to also consider reforming the mandate requirements enacted in Proposition 4. These requirements should include a broader definition of federal mandates to better reflect the new face of cooperative federalism in America and California's leading role as both an economic power and innovator of regulation that protects its environment, communities, and individuals for generations to come.

Moving forward, taxpayer advocates and environmentalists alike will pay close attention to subsequent water district litigation. For example, a 2017 Court of Appeal decision followed *Department of Finance* and found that a number of conditions in similar MS4 program permits were state mandates.⁷³ The Commission and the courts will decide on a number of similar water agency cases in the coming months and years, including for MS4s in the Bay Area.⁷⁴ Subsequent litigation may also focus on what exactly triggers a reimbursable state mandate. Until then, the long-standing debate between local agencies and the state over who must pay to provide stormwater services, as well as the larger

71. *Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization*, 583 P.2d 1281, 1300 (Cal. 1978).

72. *Id.*

73. *Dep't of Fin. v. Comm'n on State Mandates*, 226 Cal. Rptr. 3d 846, 850 (Ct. App. 2017).

74. *See Pending Caseload*, CAL. COMM'N ON STATE MANDATES, https://www.csm.ca.gov/pending_caseload.php#TC (last visited Aug. 9, 2018).

question of who bears the costs of any state-administered program implemented to comply with federal requirements, will continue.⁷⁵

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75. See Michael G. Colantuono, *Courts Making Revenue Law*, COLANTUONO, HIGHSMITH & WHATLEY, PC (2016), <https://chwlaw.us/wp-content/uploads/Summer-2016-Newsletter.pdf>.

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