No. C096838

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CALIFORNIA SCHOOL BOARDS ASSOCIATION, et al.,
Plaintiffs and Appellants,

v.

BETTY YEE, etc.,
Defendant and Respondent,

COUNTY OF SANTA CLARA, COUNTY OF MARIN, and
CITY AND COUNTY OF SAN FRANCISCO,
Intervenors and Respondents.

On Appeal of a Judgment by the Sacramento County Superior Court, Case No. 34-2021-80003680-CU-WM-GDS, Department 18, The Honorable Stacy Boulware Eurie, Presiding

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APPELLANTS' OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C096838
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 136285 NAME: Karen Getman FIRM NAME: Olson Remcho, LLP STREET ADDRESS: 555 Capitol Mall, Suite 400 CITY: Sacramento STATE: CA ZIP CODE: 95814 TELEPHONE NO.: (916) 442-2952 FAX NO.: E-MAIL ADDRESS: kgetman@olsonremcho.com ATTORNEY FOR (*name*): Appellants California School Boards Association, et al.	SUPERIOR COURT CASE NUMBER: 34-2021-80003680-CU-WM-GDS
APPELLANT/ PETITIONER: CALIFORNIA SCHOOL BOARDS ASSOCIATION, et al. RESPONDENT/ REAL PARTY IN INTEREST: BETTY YEE, etc.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name*): Appellants California School Boards Association, et al.

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 18, 2023

Karen Getman
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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MISCELLANEOUS:

INTRODUCTION

The dispute underlying this litigation began when a handful of counties, including those who have intervened as parties here, abruptly changed their method of calculating certain allocations from the county Educational Revenue Augmentation Funds ("ERAF") without any change in the statutes governing the calculations and despite disagreement from the California Department of Education, the California Department of Finance, and the Legislative Analyst's Office. *See* 2 AA 363-64, 372-74, 415. The Legislature enacted the statutes creating ERAF to divert property tax revenue from counties, cities, and special districts in order to provide additional property tax revenues for the support of the public school system, thereby lessening the burden on the state General Fund and ensuring adequate school funding during times of state revenue declines. The changes made by those counties turn that purpose on its head by sending *less* property tax revenue to the public school system and *more* to the county agencies, cities, and special districts within those counties. Tasked with issuing clarifying guidance on how to properly calculate the ERAF allocations, Appellee State Controller wrongly blessed the counties' incorrect methodology and the resulting decrease in property tax allocations to school entities, prompting Appellant California School Boards Association and its Education Legal Alliance to file this action.

The Controller's guidance is wrong as a matter of law. The entire reason for passage of the ERAF statutes was to

increase the share of property tax revenues being used to fund the public schools and satisfy the Proposition 98 constitutional minimum school funding guarantee, and to decrease the burden on the General Fund accordingly. *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 245 (2011). The Controller acknowledges this: "It is well established in case law that the Legislature has broad authority to reallocate property tax revenues from local governments to ERAF as a mechanism for fulfilling the state's funding obligation under Proposition 98. Indeed, that was the reason the ERAF mechanism was first created." 2 AA 326. But having acknowledged the fundamental purpose of the statute she was tasked with construing, the Controller then ignored that purpose altogether.

The Controller admits she took no notice of any school funding statutes when construing the language of the Revenue and Taxation Code's ERAF provisions, despite their statutory interaction with the Education Code and the clear legislative intent that ERAF be used to provide additional funding for schools and not counties. 2 AA 326. The Controller believes "consideration of such impacts was not part of the task assigned to the Controller." 2 AA 325-26 ("SCO gave no consideration to the impacts or effects that the ERAF Guidance may have on the revenues available to specific counties or local school districts."); 1 AA 22-23. That tunnel vision is entirely inappropriate here and led to an interpretation that turned the purpose of the ERAF statute on its head.

Unfortunately, the Superior Court felt bound to apply that same restrictive view. It misconstrued the import of a definitional section of the Revenue and Taxation Code, which nowhere defines the term "school district," and like the Controller refused to look at statutory provisions outside the Revenue and Taxation Code, including the Education Code sections defining "school district" to include charter schools for purposes of school funding calculations. These errors and more led the Superior Court to affirm the Controller's guidance even though it leads to less support for the public schools from ERAF.

This Court need not defer to either the Superior Court's ruling or the guidance of the Controller, as the contested matters here are solely issues of law. There is no question that the Legislature intended that ERAF operate to provide more funding to public school districts, rather than to other local government entities within the counties. There is no question that students educated in public charter schools are entitled to their full share of funding from both state and local revenues. There is no question that school districts are required by the Education Code to share their property tax revenues, including their ERAF revenues, with charter schools within their boundaries on an equal per-pupil basis. There is no question that the Legislature enacted provisions in the Education Code that provide the very definitions and guidance the Controller and the Superior Court found lacking in the Revenue and Taxation Code. Had they only looked to those provisions, the Controller and the Superior Court would have concluded – as had the California

Department of Finance, the California Department of Education, and the Legislative Analyst's Office – that the only reasonable interpretation of the ERAF statutes is one that sends additional ERAF revenues to school districts to accommodate the districts' transfer of those revenues to charter schools.

The Superior Court's ruling not only harms the school districts within the intervenor counties, but it also harms all school districts throughout the State, because it lowers the level of the constitutional minimum funding guarantee (Proposition 98). By virtue of Education Code provisions enacted simultaneously with ERAF's redirection of additional property tax funds to schools, the Legislature was able to decrease the Test 1 percentage of General Fund revenues required for schools yet still ensure that the total funds flowing to schools complied with Proposition 98's minimum funding guarantee. However, decreasing ERAF allocations to schools decreases the overall Test 1 funding guarantee, resulting in less guaranteed funding for all schools statewide. Interpreting the ERAF statutes to *lower* public school funding, rather than raise it, is contradictory on its face. Fortunately, that result is neither compelled nor suggested by the relevant statutory schemes when read in their proper context.

STATEMENT OF FACTS

A. School Funding in California

Under article IX, section 5 of the California Constitution, the Legislature is required to provide a free public

education for pupils from kindergarten through secondary school. The current funding system for California public education is enormously complex, having evolved over the years through voter initiatives, major court decisions, and legislation enacted as part of the Legislature's plenary role in establishing education policy and funding. For good reason, the courts have described California school finance as "[b]yzantine in its intricacy and complexity." *Cal. Teachers Ass'n v. Hayes*, 5 Cal. App. 4th 1513, 1525 (1992).

Before the 1970s, public schools were funded almost entirely by local property taxes. *Matosantos*, 53 Cal. 4th at 243. After the California Supreme Court declared that funding regime unconstitutional on equal protection grounds, the Legislature decided to supplement local property tax revenues allocated to schools with state General Fund dollars to more closely equalize funding among public school districts throughout the state. *Id.*; *Serrano v. Priest*, 18 Cal. 3d 728, 775-76 (1976).

That system was disrupted shortly after, in 1978, when voters enacted Proposition 13, which capped local property taxes at one percent of a property's value. Cal. Const. art. XIII A, § 1(a). With Proposition 13, funding for all local government, including public schools, fell drastically. In response, the Legislature enacted the "A.B. 8" allocation system (named after Assembly Bill No. 8 of the 1979-80 Regular Session (Stats. 1979, ch. 282, § 59)), by which local property tax revenues were distributed to school districts, community college districts, county superintendents of schools, cities, counties, local agencies, and

special districts within each county in proportion to the share of property taxes these entities had received prior to the passage of Proposition 13. *See* Rev. & Tax. Code § 95 et seq. The A.B. 8 allocation system remains in effect today.

1. Proposition 98

To ensure that the mix of local property tax revenues and state General Fund revenues resulted in certain and reliable funding for schools, in 1988 voters passed Proposition 98, modified by Proposition 111 in 1990.[1] Proposition 98 established for public K-12 schools and community colleges a constitutional minimum funding guarantee comprised of both state General Fund revenue and local property tax revenue. Cal. Const. art. XVI, § 8.

The minimum funding guaranteed for school districts and community college districts under Proposition 98 is determined each year by application of one of three tests, with schools getting the greater of the amount calculated under Test 1 or either Test 2 or 3, whichever is applicable. Test 1 requires that schools receive at least a set percentage of General Fund revenues – currently about 38 percent[2] – in addition to their share of local property tax revenues. *Id.* § 8(b)(1).

Test 2 requires that schools receive at least the same amount of total funding they received the prior year from General

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[1] Subsequent references to "Proposition 98" include the amendments made by Proposition 111.

[2] 1 AA 78.

Fund revenues and local property tax revenues combined, adjusted for changes in the cost of living and changes in enrollment. *Id.* § 8(b)(2). Test 3 is similar to Test 2 but adjusts the total by changes in per capita General Fund revenues, and can temporarily lower the amount of funding provided to schools in a recessionary year, while also guaranteeing that the funding is restored to the higher level when the economy recovers. *Id.* § 8(b)(3), (d), (e).

In other words, Proposition 98 requires that schools generally are guaranteed to receive at least as much as they received in the prior year, adjusted for changes in the cost of living and enrollment (Test 2), but they can receive more in good times when General Fund revenues and/or property tax revenues are high (Test 1) or they can temporarily receive less in recessionary times (Test 3). When schools receive more in a good Test 1 year, that becomes the new, higher benchmark against which succeeding years' minimum guaranteed funding is measured.

Importantly, the Constitution recognizes that state and local revenues must share in the burden of funding *all* the public schools. *Id.* § 8; Cal. Const. art. IX, § 6. The legislation providing for the funding of the public school system reflects that shared burden.

> The system of public school support should effect a partnership between the state, the county, and school districts, with each participating equitably in accordance with its relative ability. The

> respective abilities should be combined to provide a financial plan between the state and the local agencies for public school support. Toward this support program, each county and district, through a uniform method, should contribute in accordance with its true financial ability. [¶] The system of public school support should provide for essential educational opportunities for *all* who attend the public schools. Provision should be made in the financial plan for adequate financing of *all* educational services.
>
> Educ. Code § 14000 (emphasis added).

2. Charter Schools

In 1993, the Legislature authorized the creation of charter schools and began allowing public schools to be organized under charter petitions. Charter Schools Act of 1992, Stats. 1992, ch. 781, § 1 (S.B. 1448).

Although charter schools operate independently from traditional district schools, they nonetheless remain "part of California's single, statewide public school system." *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1137 (1999); Educ. Code §§ 47601, 47615(a)(1) ("Charter schools are part of the Public School System, as defined in Article IX of the California Constitution."). The Legislature funds charter schools through their authorizing school districts, from the same revenue sources that it uses to fund any other public school. "[C]harter schools fiscally are part of the public school system; they are eligible

equally with other public schools for a share of state and local education funding." *Today's Fresh Start, Inc. v. L.A. Cty. Office of Educ.*, 57 Cal. 4th 197, 206 (2013). In the 1992 Charter School Act, the Legislature deemed charter schools to be "school districts" for purposes of the Proposition 98 guarantee, meaning that charter schools would be eligible for, and accounted for in calculations of, Proposition 98 funding just like any other public school. Educ. Code §§ 41302.5, 47612(a), (c) (defining school districts for the purposes of Proposition 98 and deeming charter schools as "school district[s]" for determining student enrollment for all appropriations, disbursements, and apportionment of state funds to schools).

Charter schools also receive a portion of local revenues from their authorizing school district. Of course, when the Legislature created the post-Proposition 13 property tax allocation system of A.B. 8, there were no charter schools. Rather than amend A.B. 8's complicated allocation system to incorporate direct allocations of property tax to charter schools, the Legislature instead required that a proportionate share of the property tax revenues provided to school districts be shared with and passed through to charter schools in that same jurisdiction, which generally are educating the same students who otherwise would have been served directly by the school district. *Id.* § 47635. This payment is called "in lieu of property tax."[3] Under

[3] The Santa Clara County auditor-controller's calculation of ERAF capacity "includes calculating the amount of *property tax*

section 47635, the charter school receives a payment from a school district equal to the charter school's per-student share of the property tax revenues provided to the school district. *Id.* § 47635(a)(1). In this way, charter schools *effectively* receive property tax revenue, albeit in a slightly more roundabout way than non-charter schools.

3. The Local Control Funding Formula

In 2013, the Legislature replaced the post-*Serrano* school funding equalization system with the Local Control Funding Formula ("LCFF"). *Id.* § 42238.02. Under LCFF, each school district, including charter schools, receives a base funding allocation per student, plus supplemental funding depending on the district's population of English learners, low-income students, and foster youth, as well as the concentration of those students in the district. *Id.*; *Campaign for Quality Educ. v. California*, 2016 Cal. LEXIS 8386, *11-12 (2016) (Liu, J., dissenting from denial of review). Together, the base and supplemental funding

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each school district must transfer to charter schools pursuant to Education Code Section 47635." 2 AA 425 (emphasis added). That transfer is described as "in-lieu property tax payments to charter schools." *Id.* Likewise, the Marin County auditor-controller calculates ERAF capacity on the basis of property tax revenues owed to charter schools: "If a school district sponsors a charter school, the amount of in-lieu *taxes* is calculated and subtracted from *property taxes* of the sponsoring school district." 2 AA 412 (emphasis added). If those "in lieu property taxes" were not in fact property taxes transferred from the school district, it would make no sense to subtract them from the school district's property tax total.

amounts for all students make up a school district's LCFF entitlement.

Local property tax revenues are counted first toward each district's LCFF entitlement, with the state funding any remaining amount with General Fund revenues. Educ. Code § 42238.02(j). Charter schools are also funded under LCFF in a similar manner as a school district. *Id.* § 42238.02(a) ("the amount computed pursuant to this section shall be known as the school district and charter school [LCFF]"). The difference being that, while the law first counts local property tax revenues provided directly to school districts toward their LCFF entitlement, charter schools instead count the in-lieu property tax amount that is provided by the district pursuant to Section 47635. *Id.* § 42238.02(j)(1)(B). Regardless, the funds come from the same revenue pool.

After a school district transfers the "in lieu of property tax" to the charter school, that amount is deducted from the school district's property tax revenue received "pursuant to Chapter 3.5 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code." *Id.* § 47662. The transferred revenues are ascribed to the charter school's LCFF and any remaining LCFF entitlement due to the charter school and the school district alike is met by the state General Fund. *Id.* § 42238.02(j)(1)(B).

To summarize, funding for public schools across the state (including charter schools) follows the same two-step process. First, the Legislature determines the minimum amount

of both state General Fund dollars and property tax revenue that must be allocated to public schools across the state under Proposition 98. Second, the bulk of that amount is divided among all public schools according to LCFF.[4] Each school's funding entitlement under LCFF is met through a combination first of property tax revenue – through a direct allocation to school districts or that district's "in lieu of property tax" pass-through transfer to charter schools – and then state General Fund dollars make up the difference.

4. Educational Revenue Augmentation Fund (ERAF)

The question in this case is the proper interpretation of the ERAF statutes in chapter 6 (commencing with section 95) of part 0.5 of the Revenue and Taxation Code. The Legislature created ERAF in response to an unprecedented budgetary crisis in 1992. The purpose of ERAF was to help prevent state budget cuts to education by shifting additional property tax revenues to schools. The extra property tax revenues shifted to schools from ERAF replaced state General Fund dollars, allowing the state to continue to meet its minimum funding obligation for schools under Proposition 98, while reducing budget pressure on the General Fund. *See* Educ. Code § 41204.5(c). "Although this shift was implemented at the expense of cities, counties, and special districts, the Legislature was clearly authorized to make this

[4] Nearly three-quarters of the funding required by Proposition 98 is allocated to school districts, charter schools, and community college districts through the LCFF. 1 AA 214

redistribution, and '[i]t is not the province of the judiciary to second-guess the wisdom of legislative appropriations.'" *L.A. Unified Sch. Dist. v. Cty. of Los Angeles*, 181 Cal. App. 4th 414, 425 (2010) (citations omitted).

The ERAF statutes first require that county auditors reduce the local property tax revenues that otherwise would go to counties, cities, and special districts under A.B. 8 by the amount specified in statute and deposit those revenues instead in the county ERAF. Rev. & Tax. Code §§ 97.1, 97.2, 97.3. The ERAF statutes then require counties to allocate these ERAF funds to school districts, county offices of education,[5] and community college districts using a statutory formula. *Id.* §§ 97.2(d)(1), 97.3(d)(1).[6] Property tax revenue shifted to schools through the ERAF qualifies as property tax revenue to the school districts that receive it. *Id.* §§ 97.2(d)(5), 97.3(d)(5); *see L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 426.

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[5] County offices of education provide direct educational services to certain student populations, such as those housed in juvenile detention centers and those enrolled in alternative education programs. *See*, *e.g.*, Educ. Code § 56140.

[6] Revenue and Taxation Code section 97.3 was a second ERAF statute enacted in 1994, originally enacted as section 97.035 (Stats. 1994, ch. 1167, §§ 2, 3 (A.B. 3347)). Subdivision (d) of section 97.3 apportions ERAF revenue in the same manner as subdivision (d) of 97.2, and these two provisions are often construed together. *See*, *e.g.*, *L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 424 (interpreting subdivision (d)(5) of sections 97.2 and 97.3 "jointly").

In Test 1 years under Proposition 98, ERAF funding to schools can raise the Proposition 98 minimum guarantee. This is because it increases the amount of property tax revenues allocated to school districts, county offices of education, and community college districts, and those property tax revenues are added on top of the required percentage of General Fund revenues when determining the minimum level of funding that must be provided. In other words, in a Test 1 year, K-14 schools collectively get approximately 38 percent of the General Fund, plus their regular property tax allocations, plus their property tax allocated through ERAF; and all of that combined becomes the new aggregate minimum guarantee for the subsequent year. Test 1 has been applicable every year since 2018-19 and is projected to be applicable through at least 2025. 1 AA 211.

B. Allocation of ERAF Revenues to the Public Schools

Subdivision (d) of section 97.2 of the Revenue and Taxation Code describes the multi-step allocation of ERAF revenue to school districts, county offices of education, and community college districts. First, the county superintendent of schools calculates the proportion of K-14 property tax revenue allocated to the school districts and county offices of education and to community colleges in their county "in total" during the 1991-92 fiscal year. Rev. & Tax. Code § 97.2(d)(1). For the school districts' and county offices' share, the county superintendent of schools then determines the amount of the ERAF to be allocated to each school district and county office of education "*in inverse*

proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education," excluding districts and county offices that are "excess tax school entit[ies]." *Id.* § 97.2(d)(2)(A) (emphasis added).[7] The county auditor-controller determines each school district's ERAF entitlement based on that calculation. *Id.* § 97.2(d)(2)(A). As part of the allocation of ERAF revenue, the counties calculate the "ERAF capacity," which is the amount of funding needed to meet each school district, county office of education, and charter school's full LCFF funding entitlement. Educ. Code § 47612(c); 1 AA 46 (figure 3).

As with direct property tax allocations, each district's ERAF allotment counts toward that district's LCFF entitlement, including the LCFF entitlement of the charter schools in that area with whom the district is sharing its ERAF allocations through "in lieu" payments passed through to charter schools. The ERAF allotment reduces the amount of General Fund revenues that otherwise must be provided to the districts and charter schools. Educ. Code §§ 42238.02(j)-(k), 47635(a), 47662.

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[7] "Excess tax entities" or "basic aid districts" are school districts and county offices of education that receive more property tax revenue than the sum total of their LCFF entitlement. *See* Rev. & Tax. Code § 95(n). These are known as "basic aid districts" because the only funding they receive from the state General Fund are the basic amounts of $180 per pupil required by article IX, section 6 of the California Constitution and the $200 per pupil required by article XIII, section 36(e)(3)(B).

In almost all instances, revenue from the ERAF is not enough to meet funding entitlements under the LCFF, and a supplemental apportionment from the state General Fund is required. But in some counties with very high levels of property tax revenues relative to their overall student population, the amount of property tax revenue in their ERAF is more than the amount necessary to meet the ERAF capacity of all their school districts, county offices of education, charter schools, and community college districts. If there is more revenue than capacity, that county is known as an "excess ERAF" county. 1 AA 45.

The Legislature first specified that counties allocate excess ERAF to the county superintendent of schools for special education programs. *See* Stats. 1995, ch. 308, § 28 (A.B. 825). In 2000, the Legislature again amended the ERAF statute to allow any excess ERAF beyond that needed for special education to be allocated back to counties, cities, and special districts for any local purpose. Stats. 2000, ch. 611, § 1 (S.B. 1396); Rev. & Tax. Code § 97.2(d)(4)(B)(i)(III).

C. Certain Counties Abruptly Change Their Calculation Methodology to Decrease Allocation of ERAF Revenues to the Public School Districts

Until recently, Marin County was the only county reporting so much excess ERAF that it was being allocated back to the county, cities, and special districts. 1 AA 46. By 2019, however, four other counties in the Bay Area – San Mateo, San Francisco, Santa Clara, and Napa – had joined Marin in

reporting excess ERAF, and all had changed their method of calculating their ERAF allocations to send more of the excess to the cities, counties, and special districts rather than to school districts. 1 AA 46, 215. They did this by excluding the charter schools within the county and omitting their student population when calculating the ERAF capacity needs of the county school entities. 1 AA 215. In other words, the counties decided to calculate ERAF capacity only by looking at the needs of their traditional school districts – that is, the amount of ERAF funding that could be applied toward those districts' LCFF funding – and disregard the funding needs of the charter schools in the same area. They did this even though districts are required by law to share their property tax revenues, including their ERAF allocations, with those charter schools on a per pupil basis. Educ. Code § 47635(a). The end result was to artificially lower the ERAF capacity calculation, thus increasing the amount of "excess" ERAF that could be shifted back to other governmental entities in the county. 1 AA 215.

In the Superior Court, Marin County admitted that the county changed its ERAF methodology sometime between 2019 and 2020. 2 AA 363-64, 413-15. The City and County of San Francisco declared it learned of its excess ERAF in August 2018 and only sometime in the fall of 2019 "concluded" that charter schools should be excluded from its ERAF calculations. 2 AA 372-73.

The sudden increase in excess ERAF going to non-school district entities prompted inquiries by the California

Department of Finance, the Legislature, and the Legislative Analyst's Office ("LAO"). 1 AA 215-16. As admitted by the Marin County Director of Finance:

> Word of the pending ERAF revisions reached the Department of Education (CDE) and the California DOF, which provoked them to intervene in an attempt to prevent the submission of the ERAF revisions. Soon after, the Legislative Analyst's Office ("LAO") entered the picture, releasing a report on March 6, 2020, entitled "Excess ERAF: A Review of the Calculations Affecting School Funding." The LAO report, and the press that it generated, chastised the excess ERAF CACs [county auditor-controllers] and misrepresented the methods and motives employed those CACs to account for charter school in-lieu funding and excess ERAF.
>
> 2 AA 364.

These changes in practice were not precipitated or justified by any change in law. 1 AA 215. Rather, by excluding charter schools from their ERAF capacity calculations, the counties were able to claim that more discretionary "excess ERAF" funds were available for re-distribution to non-educational entities within their borders. 1 AA 215.

D. Department of Finance Guidance Confirms That Those Counties Are Mis-Calculating ERAF Allocations to Public School Districts

To clear up any possible confusion, the Department of Finance issued written guidance on June 5, 2020, to the county

auditor-controllers and county office of education chief business officials from the five counties, making clear that the calculation of ERAF capacity at the county level must incorporate the ERAF needs of charter schools. In relevant part, the guidance provided:

> State law provides for charter schools to receive a proportionate share of the property tax revenue collected in the jurisdiction of their sponsoring school districts, including ERAF (Education Code section 47635). There is nothing in current law that excludes charter schools from the K-12 ERAF allocation calculations. If the state had intended for charter schools to not receive ERAF, conforming language would have been added to Revenue and Taxation Code section 97 et seq. and to the relevant Education Code sections. *Thus, charter school ADA must be included when calculating excess ERAF.*
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> 1 AA 223 (emphasis added).

That guidance followed publication by the Department of Finance in May 2020 of proposed budget trailer bill language amending Revenue and Taxation Code section 97.2(d)(2)(B) to require county auditor-controllers to allocate ERAF revenue beginning in 2018-19 according to guidance set by the Department of Finance and authorizing the Department to file a writ against any county auditor-controller who failed to comply with the Department's guidance. 1 AA 237.

The five counties that had been benefitting by omitting charter schools from their ERAF calculations strongly

opposed the Department of Finance's guidance. In a letter to the Director of Finance, the counties sought more time from the Legislature to "resolve the existing disputes concerning the calculation and allocation of local ERAF monies." 1 AA 243. The Counties also "vehemently opposed" allowing the Department of Finance to issue the ERAF Guidance as well as proposed trailer bill language requiring county auditor-controllers to calculate ERAF revenue according to guidance set by the Department of Finance. 2 AA 365, 374-75.

E. The Legislature's Budget Act of 2020 Confirms That Charter School Students Must Be Included in Calculating ERAF Allocations Based on Average Daily Attendance

In response, the Legislature amended Revenue and Taxation Code section 97.2 as part of a legislative compromise. Stats. 2020, ch. 24, § 84 (S.B. 98). The legislation did not change the language of Revenue and Taxation Code section 97.2(d)(2)(A), which establishes the rule for calculating ERAF per school district average daily attendance ("ADA"), knowing that the Education Code had already defined "school district" to include charter schools since 1993. Educ. Code § 47612(c).

Instead, the Legislature enacted a "hold harmless" provision for the five counties' ERAF calculations up to and including the 2018-19 fiscal year. Rev. & Tax. Code § 97.2(d)(2)(C), (D). The "hold harmless" provision would not have been necessary if the Legislature agreed with the counties

that their disputed calculations complied with existing law. 1 AA 216.

To prevent any further claims of confusion, the Legislature required the Controller to issue guidance to counties on how to calculate and allocate excess ERAF revenues from 2019-20 forward:

> (B) The Controller shall issue, on or before December 31, 2020, guidance to counties for implementation of subparagraph (A). Any guidance issued to counties pursuant to this subparagraph shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) or Section 30200 of Government Code. Commencing with the 2019-20 fiscal year, if a county auditor-controller fails to allocate Educational Revenue Augmentation Fund revenues in accordance with the guidance issued by the Controller pursuant to this subparagraph, the Controller may request a writ of mandate to require the county auditor-controller to immediately perform this duty. Such actions may be filed only in the County of Sacramento and shall have priority over other civil matters.
>
> (C) Calculations made pursuant to subparagraph (A) for fiscal years before the 2018-19 fiscal year shall be considered final as of the 2018-19 fiscal year second principal apportionment.

> (D) Calculations pursuant to subparagraph (A) for the 2018-19 fiscal year shall be considered final as of the February 20, 2020, certification.
>
> Rev. & Tax. Code § 97.2(d)(2).

Crucially, the Legislature's enacted 2020-21 Budget Act, passed contemporaneously with the amendments to section 97.2, assumed that the Controller's guidance would conform to section 97.2(d)(2)(A) and require the inclusion of charter schools in the calculation of ERAF capacity for "school districts." 1 AA 216. It set the Proposition 98 guarantee at the higher level that would result if charter schools were included and the five counties were required to make the larger allocations of property tax revenues to their ERAF.[8] *See* 1 AA 78.[9]

In sum, "the Legislature acknowledged the counties had erred in their calculations by holding them harmless for it in the past, requested the Controller to provide correct guidance for

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[8] Anticipating that some counties might continue to resist making the required allocation to their ERAF, the Legislature also provided the Controller with express authority to file a writ of mandate (with priority) to enforce the guidance. Rev. & Tax. Code § 97.2(d)(2)(B). Such authority would not have been necessary had the Legislature assumed the Controller would issue guidance agreeing with the counties' interpretation of their ERAF obligation.

[9] The 2021 May Revision lists the Proposition 98 guarantee for 2019-20, 2020-21 and 2021-22, and then the decreased property tax allocations over those three years that resulted from the Controller's erroneous ERAF guidance. For the property tax decreases, fiscal year 2020-21 is seemingly listed twice, but that is a typographical error, and the second listing should read fiscal year 2021-22.

the future, and set the guarantee assuming that the Controller's guidance would be consistent with how ERAF capacity should have been calculated under existing law, i.e. by including charter schools along with school districts." 1 AA 216.

F. The Controller, Tasked With Issuing Clarifying Guidance, Misinterprets the ERAF Legislation and Improperly Excludes Charter School ADA From the ERAF Calculations

On February 16, 2021, the Controller issued guidance for implementing ERAF allocations to public schools and for calculating the amount of excess ERAF, if any. 1 AA 93-94. Unfortunately, the Controller proved to be out of step with the Legislature, the Department of Finance, and the LAO in her understanding of the legal requirements. The guidance, which is less than one page long, mentions charter schools only in a one-sentence footnote:

> Charter schools are not included in the definition of school districts for the calculation of Excess ERAF because they do not directly receive property tax revenue pursuant to [Revenue and Taxation Code] sections 97.2 and 97.3, but from the sponsoring district in accordance with Education Code section 47635.

1 AA 94.

In the Superior Court, the Controller admitted that the guidance does not "address the level of school funding" provided to school districts and charter schools within the county;

nor did her office consider the impact on the Proposition 98 minimum funding guarantee. 2 AA 325, 324 ("SCO gave no consideration to the impacts or effects that the ERAF Guidance may have on the revenues available to specific counties or local school districts.").

The Counties claim to be following the Controller's guidance, but it appears they are neither following it to the letter nor following a consistent methodology among themselves. Regardless, the Controller's guidance does not reflect an accurate understanding of the law. The effect of the guidance has been to unlawfully lower property tax revenues going to schools and thereby unlawfully lower the Proposition 98 minimum funding guarantee, thus lowering the constitutionally required minimum funding for all school districts and county offices of education throughout the State. As a result of the Controller's Guidance, the Department of Finance, which certifies the Proposition 98 guarantee, was required to lower the guarantee in 2019-20 by $283 million. 1 AA 78, 217. This has ripple effects, as each year's calculation of the Proposition 98 guarantee starts with the funding amount provided in the prior fiscal year, which was improperly lowered as a result of the Controller's Guidance. 1 AA 217.

STATEMENT OF THE CASE

On July 16, 2021, appellants California School Boards Association and its Education Legal Alliance filed a verified petition for writ of mandate and complaint for

declaratory and injunctive relief against respondent/appellee State Controller Betty Yee,[10] challenging as unlawful the guidance issued by the Controller on February 16, 2021. 1 AA 8-28. The verified petition alleged that the guidance unlawfully permits counties to avoid allocating to school districts, county offices of education, and community college districts their lawful share of local property tax revenues from the counties' ERAF, thereby unlawfully decreasing the minimum school funding guarantee provided for in article XVI, section 8(b) of the California Constitution. 1 AA 9.

On October 5, 2021, the Counties of Santa Clara, San Francisco, and Marin filed an unopposed motion to intervene on behalf of respondent/appellee Controller, which was granted by the Superior Court on October 20, 2021. 1 AA 101. The Counties filed an answer to the petition and complaint on October 29, 2021, denying all claims. 1 AA 102-03. Respondent/ appellee Controller filed an answer denying all claims on December 30, 2021. 1 AA 112-13.

Petitioners/appellants filed their memorandum of points and authorities, supplemental request for judicial notice, and declarations in support of the petition for writ of mandate on April 5, 2022. 1 AA 121-243; 2 AA 247-301. On April 25, 2022,

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[10] On January 2, 2023, Malia M. Cohen was sworn in as California State Controller. Under Code of Civil Procedure section 368.5, the interest of former Controller Yee in this action has transferred to Controller Cohen. Thus, this action may proceed in the name of then-Controller Yee or it may proceed by substituting current Controller Cohen. *See id.*

respondent/appellee Controller filed an opposition brief, evidentiary objections, objections to the request for judicial notice, a motion to strike, and a declaration. 2 AA 304-07. That same date the intervenor Counties filed an opposition brief and declarations. 2 AA 334-452. On May 5, 2022, petitioners/ appellants filed a consolidated reply brief, and oppositions to the motion to strike, to the objections to the request for judicial notice, and to the evidentiary objections. 2 AA 453. Respondent/ appellee Controller filed a reply to Petitioners' opposition to the motion to strike on May 13, 2022.

The Honorable Stacy Boulware Eurie of the Sacramento County Superior Court issued a tentative ruling on May 19, 2022, denying the petition for writ of mandate and the requests for declaratory and injunctive relief. 2 AA 493. The court granted petitioners/appellants' requests for judicial notice, and declined to rule on respondent/appellee's motions to strike.[11] 2 AA 476, 487. After hearing oral argument on May 20, 2022, and taking the matter under submission, the court issued a final ruling on June 7, 2022, affirming the tentative ruling with additional findings. 2 AA 475-89.

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[11] Respondents/appellees did not demand a ruling on their motions to strike and thus have waived their objections to petitioners' declarations. *See Dodge, Warren & Peters Ins. Servs., Inc. v. Riley*, 105 Cal. App. 4th 1414, 1421 (2003) (if a party makes an evidentiary objection but fails to obtain a ruling on that objection for the record, on appeal the party is deemed to have waived any claim of error on that ground).

The court first determined it would review the Legislature's directive to the State Controller de novo. 2 AA 481. The court provided a separate level of review for the Controller's guidance, as an administrative action that contained both quasi-legislative and interpretative characteristics, although the court's ruling is not entirely clear on this point. 2 AA 481-82. The court rejected respondent/appellee Controller's arguments that her guidance was not subject to a writ petition and that the guidance was subject to a narrow standard of review over whether it was reasonably necessary to implement the purpose of the statute at issue. 2 AA 481-82.

The court then ruled that the plain language of the Revenue and Taxation Code supported the Controller's guidance. The court concluded that the Legislature's directive to the State Controller was broad, and that the Controller's guidance was consistent with the definitions in Revenue and Taxation Code section 95, which did not include charter schools. 2 AA 486.

At the May 20, 2022, hearing, appellant reiterated the argument that Revenue and Taxation Code section 97.2(d)(2)(c) must be read in conjunction with the Education Code, citing *L.A. Unified Sch. Dist. v. Cty. of Los Angeles*, 181 Cal. App. 4th at 423. 2 AA 487. The court distinguished that decision on the ground that "[h]ere, the statutory provisions at issue do not incorporate or reference one another. . . ." 2 AA 488. The court reiterated its conclusion that "the Legislature did not include charter school[s] within the

definition of 'school district' for the relevant statutory provisions." 2 AA 488.

On June 24, 2022, the court issued an order denying the petition for writ of mandate and incorporating the June 7 ruling that declined to rule on the motion to strike or evidentiary objections. 2 AA 491. On June 24, 2022, the court entered judgment in favor of respondents/intervenors. 2 AA 492-93. Petitioners filed a notice of appeal on August 18, 2022. 2 AA 511.

STATEMENT OF APPEALABILITY

The Superior Court entered final judgment on June 24, 2022. 2 AA 492-94. Appellants timely filed a notice of appeal on August 18, 2022. 2 AA 511. This Court has jurisdiction under Code of Civil Procedure section 904.1(a)(1).

STANDARD OF REVIEW

The judgment below raises a pure question of statutory interpretation, which the appellate court reviews de novo. *Lopez v. Ledesma*, 12 Cal. 5th 848, 857 (2022). Deference to administrative interpretation of a statute is always "situational" and depends on "a complex of factors." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998) ("*Yamaha*"). "Where the meaning and legal effect of a statute is the issue, an [administrative] agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth." *Id.* at 7-8. But the final word on questions of statutory interpretation always rests with the

judiciary. *Id.* at 7, 11. As discussed below, the Controller's interpretation is entitled to no deference.

ARGUMENT

I.

THE SUPERIOR COURT APPLIED THE INCORRECT STANDARD OF REVIEW AND THE CONTROLLER'S INTERPRETATION OF THE ERAF STATUTES IS ENTITLED TO NO DEFERENCE

Administrative rules fall on a continuum between quasi-legislative and interpretive rules, "depending on the breadth of the authority delegated by the Legislature." *Ramirez v. Yosemite Water Co.*, 20 Cal. 4th 785, 799 (1999). Quasi-legislative rules are the product of a delegated legislative power conferred on the agency to make law. *Yamaha*, 19 Cal. 4th at 10. Review of quasi-legislative rules is narrow, limited to determining whether the rule in question lies within the lawmaking authority delegated by the Legislature and is reasonably necessary to implement the purpose of the statute. *Id.* at 10-11.

By contrast, an interpretative ruling is merely an agency's legal opinion of a statute's meaning and effect; it commands a commensurably lesser degree of judicial deference. *Id.* at 11. "[T]he standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action." *Id.* at 8 (emphasis omitted).

Here, although the ruling is less than clear on this point, it appears that the Superior Court adopted a sort of hybrid approach whereby it applied standards of review applicable to both types of administrative rules. The court cited to case law holding that "'in certain circumstances, a regulation may have both quasi-legislative and interpretative characteristics – 'as when an administrative agency exercises a legislatively delegated power to interpret a key statutory term.'" 2 AA 482 (quoting *Christensen v. Lightbourne*, 7 Cal. 5th 761, 772 (2019)). Without further explanation, the court simply concluded that "[t]his is the situation at issue here." 2 AA 482.

The court fundamentally erred to the extent it determined that the Controller's ERAF Guidance has quasi-legislative characteristics and is entitled to deference. The opinion offered by the Controller in her Guidance that charter schools should not be included in ERAF allocation calculations was only interpretative in nature.

In enacting Revenue and Taxation Code section 97.2(d)(2)(B), there is no indication that the Legislature intended to delegate quasi-legislative power to the Controller to reinterpret the ERAF allocation statute. The Legislature simply asked the Controller to perform a ministerial, interpretive task: to instruct the counties on how to execute the ERAF calculation delineated in section 97.2(d)(2)(A). Subparagraph (A) is the long-standing directive that each county auditor and county superintendent of schools distribute revenue from the county's ERAF to school districts and the county office of education

according to a formula based on average daily attendance. Rev. & Tax. Code § 97.2(d)(2)(A). Notably, the Legislature did not change the allocation formula in section 97.2(d)(1)(A), leaving in place a formula that counties have applied for almost three decades.

The Legislature did not ask the Controller to "fill up the details" of the ERAF allocation scheme. *Ramirez*, 20 Cal. 4th at 799. The Controller's Guidance was intended to be merely a clarifying tutorial to the counties, not an opportunity for the Controller to recast the allocation formula by changing the funding equation. Therefore, the quasi-legislative standard of review is inapplicable here because the Controller was not exercising discretionary rulemaking power, but "merely construing a controlling statute." *Yamaha*, 19 Cal. 4th at 12 (emphasis omitted). By asking the Controller to develop guidance for counties on implementing a precise and prescriptive mathematical formula, the Legislature tasked the Controller with constructing a legal opinion that constitutes an interpretative rule. Significantly, the Legislature expressly authorized the development of the Guidance outside the rulemaking process of the Administrative Procedure Act, further evincing a legislative intent that the Guidance not receive the same level of deference as that afforded to formal regulations. *See id.* at 13.

Next, the factors that a court must consider when determining whether an agency's interpretative rule is entitled to any deference all militate against according any deference to the

Controller's Guidance. The California Supreme Court requires that "the standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action." *Id.* at 8 (emphasis omitted). Any deference due to agency interpretations turns on "a legally informed, commonsense assessment of their contextual merit." *Id.* at 14. That is, the weight given to an agency interpretation is situational and depends on such factors as whether the agency has a comparative interpretative advantage over the courts based on expertise and technical knowledge, the thoroughness evident in the agency's consideration of the issue, the validity of the agency's reasoning, and the consistency of the interpretation with earlier and later pronouncements of the agency. *Id.* at 12-15. None of these factors weigh in favor of the Controller's interpretation.

The Controller's conclusion regarding charter schools exceeded not only her statutory mandate but her scope of expertise. The status of charter schools as legal entities eligible for specified educational funding is governed not by the Revenue and Taxation Code but by the Education Code, a body of law outside the Controller's realm of technical expertise. As such, the Controller is no better positioned than the Court to interpret the legal status of charter schools. Indeed, it is significant that the Department of Finance, which helps prepare the statewide school funding allocations to public schools as part of the annual state budget process and interprets the Education Code provisions

controlling school funding, disagrees with the Controller's interpretation. 1 AA 215-16.

The Controller's Guidance also lacked any depth or thoroughness of reasoning that would instill confidence in its conclusion. As noted above, the entire Guidance is exceedingly brief. The total of the Controller's "analysis" of the charter school question consists of a single sentence in a footnote. The Controller admitted in the court below that, even though the Legislature envisioned the ERAF statute to allow the state to continue to meet its minimum funding obligation for schools under Proposition 98, in developing the Guidance the Controller did not consider or address the impact on the state minimum funding guarantee or the impacts or effects on the revenues available to specific counties or local school districts. 2 AA 325-26.

Finally, and most significantly, the validity of the Controller's reasoning does not withstand scrutiny given the relevant statutes and their history. Whatever deference is due to an administrative interpretation, that interpretation cannot override the plain language of the statutes and the import of the legislative history. *City of Scotts Valley v. Cty. of Santa Cruz*, 201 Cal. App. 4th 1, 44 (2011). Thus, where administrative interpretations are largely at odds with the language and intent of the statutes, they are entitled to no deference by a reviewing court. *Id.* at 45.

Put succinctly, the Controller's job was simply to explain to the counties how to do the math. Instead, the Controller offered an entirely new interpretation of the statute

that was beyond her office's expertise, with no analysis or consideration of its impact. Accordingly, the Court must exercise its independent judgment in this matter and accord the Controller's Guidance no deference.

II.

THE SUPERIOR COURT ERRED IN ITS INTERPRETATION OF THE REVENUE AND TAXATION CODE'S DEFINITIONAL TERMS

The Superior Court's analysis begins and ends with a review of the definitional terms provided for purposes of the ERAF allocation statute, chapter 6 of part 0.5 of division 1 of the Revenue and Taxation Code ("Chapter 6"). The court took note of the fact that "[t]he statutory scheme includes a definition section that governs the applicable statutes," namely section 95 of Chapter 6. 2 AA 485. In the court's reading, because "that definition does not include charter schools," charter schools must not be entitled to ERAF funding. 2 AA 485.

In reviewing the defined terms in section 95, the court noted that the term "excess tax school entity" is defined in section 95(n) as "'an educational agency for which the amount of the state funding entitlement determined under subdivision (e), (f), or (g) of Section 2575, or Section 84750.4, 84750.5, or 84751 of the Education Code, as appropriate, is zero, and as described in subdivision (o) of Section 42238.02 of the Education Code, as implemented by Section 42238.03 of the Education Code.'" 2 AA 483. In addition, the court noted that the term "jurisdiction" is defined in section 95(b)(1)(A) as "'a local agency,

school district, community college district, or county superintendent of schools.'" 2 AA 484. And the court observed that the term "school entities" is defined in section 95(f) as "'school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools.'" 2 AA 484.

Throughout its review of the definitional terms applicable to Chapter 6, though, what the Superior Court failed to note is that the key terms referring to entities that are eligible for ERAF funding – "school districts and county offices of education" – are *not* defined. The term "school district" in particular appears in section 95 as a component of other definitions. Specifically, the terms "jurisdiction" and "school entities" are defined as including, among other entities, school districts. Rev. & Tax. Code § 95(b)(1)(A), (f). But the term "school district" itself, which is the specific entity identified by the ERAF statute as being eligible to receive ERAF funds, is not defined. *Id.* § 97.2.

Emblematic of the Superior Court's confusion on this point is its focus on the provision in section 95 declaring that "[a] jurisdiction as defined in this subdivision is a 'district' for purposes of Section 1 of Article XIII A of the California Constitution." 2 AA 484 (quoting Rev. & Tax. Code § 95(b)(1)(B)). That provision was added to Chapter 6 as part of a set of "nonsubstantive technical and clarifying changes" made by the Legislature to the local property tax allocation scheme in 1994. Stats. 1994, ch. 1167 (A.B. 3347); *see City of Alhambra v. Cty. of*

Los Angeles, 55 Cal. 4th 707, 727 (2012). The obvious purpose of the provision was to simply clarify that the entities identified in Chapter 6 as "jurisdictions," including school districts, were entitled to property taxes after Proposition 13 limited the amount of local ad valorem property taxes to 1% and declared that "[t]he one percent (1%) tax [is] to be collected by the counties and apportioned according to law to the *districts* within the counties." Cal. Const. art. XIII A, § 1(a) (emphasis added).

The effect of section 95(b)(1)(B) is to make clear that school districts and other "jurisdictions" within the meaning of Chapter 6 are districts, thereby eligible for property taxes, for purposes of section 1 of article XIII A. Unfortunately, the Superior Court cites section 95(b)(1)(B) as support for the Respondents' contention "that the definition of 'school district' in the constitutional provision is the basis for the definition of 'school district' in Revenue and Taxation Code section 97.2." 2 AA 484. Setting aside the fact that section 1 of article XIII A does not actually contain a definition of "school district," the constitutional provision does not inform the definition of "school district" in the ERAF statute. That is precisely backwards. Under the plain language of section 95(b)(1)(B), the statute's definition of "jurisdictions" informs the construction of "districts" in the Constitution, not the other way around.

The Superior Court compounded the confusion by fixating on the language of section 1(b)(3) of Article XIII A. That provision was added to the state Constitution by Proposition 39 in 2000, well after the reference to article XIII A was added to

section 95 in 1994. Moreover, the purpose of section 1(b)(3) is to exempt from the 1% property tax limit imposed by Proposition 13 those taxes levied to pay for bonded indebtedness incurred by educational entities by a 55% vote of the public to finance school facility construction. The provision does not purport to define "school districts" in any way, nor does it shed any light on the relationship between school districts and charter schools for purposes of property tax allocation. It is simply irrelevant to the question in this case. Yet the Superior Court strangely finds meaning in the fact that "[t]he section does not include reference to charter schools whatsoever." 2 AA 484. There is no reason why section 1 of article XIII A *would* make reference to charter schools. Charter schools did not yet exist when Proposition 13 was adopted in 1978, and the relationship between charter schools and school districts was not pertinent to the purposes of Proposition 39.[12]

Thus, the Superior Court was under the apparent misunderstanding that Chapter 6 somehow defines the term

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[12] Proposition 39 allows traditional school districts to issue general obligation bonds backed by property taxes with approval by only 55 percent of the vote, instead of the two-thirds vote requirement for other governments specified in paragraph (b)(1). Charter schools cannot issue general obligation bonds backed by property taxes, or hold bond elections. This case is about statutes that require the subsequent sharing of property tax revenue, not which entities can impose a property tax increase to fund a general obligation bond or the vote threshold necessary to do so. Thus, section 1(b)(3) of article XIII A has no bearing on the interpretation of Revenue and Tax Code section 97.2.

"school district" and, in doing so, excludes charter schools from that definition. It does not. Chapter 6 does not define the term "school district" at all, either directly or indirectly by reference to the state Constitution. What we are left with, then, is a statutory scheme in Chapter 6 that refers to "school districts," as one of the two types of entities that are entitled to ERAF funds, but does not define that term.

III.

THE SUPERIOR COURT ERRED BY FAILING TO LOOK TO RELATED PROVISIONS OF THE EDUCATION CODE

A. The Superior Court Failed to Acknowledge That the Revenue and Taxation Code Sections at Issue Here Expressly Cross-Reference the Education Code

When a statutory provision does not define a key term, the courts must look to how that term is used in related statutes. *Handyman Connection of Sacramento, Inc. v. Sands*, 123 Cal. App. 4th 867, 891 (2004). Indeed, the courts are "*required* to consider statutory terms in context of related statutes . . . ." *Int'l Bhd. of Boilermakers v. NASSCO Holdings, Inc.*, 17 Cal. App. 5th 1105, 1124 (2017) (emphasis added). "Where the same term or phrase is used in a similar manner in two related statutes concerning the same subject, the same meaning should be attributed to the term in both statutes unless contrary countervailing indications require otherwise." *Dieckmann v. Superior Court*, 175 Cal. App. 3d 345, 356 (1985).

Looking to related statutes to inform the understanding of undefined terms, though, is not simply a

fallback plan necessitated by the absence of a definition in the statute at issue. It is an inherent and organic element of statutory construction in all cases. Courts "do not seek the meaning of a statute or a statutory provision in isolation." *Peatros v. Bank of America*, 22 Cal. 4th 147, 167 (2000). Rather, they must look "to the 'entire scheme of law of which it is part.'" *Id.* (citing *Clean Air Constituency v. Cal. State Air Res. Bd.*, 11 Cal. 3d 801, 814 (1974)). Implicit in this process is looking "beyond neighboring law to the law as a whole." *Id.* As the courts have explained, "'[t]o seek the meaning of a statute' or a statutory provision is 'to discern' its 'sense . . . in the legal . . . culture' itself, which, of course, encompasses the law generally." *Id.* (citing *Kopp v. Fair Pol. Practices Comm'n*, 11 Cal. 4th 607, 673 (1995) (Mosk, J., concurring)).

The inescapable conclusion of those principles is that this Court, in construing the term "school district," as used in the ERAF allocation statute, must look to the definition of "school district" in the closely related education finance provisions of the Education Code. In fact, such cross-referencing is mandated not just by the tenets of statutory construction but by the terms of the ERAF statute itself. As described above, the ERAF statute defines the universe of eligible entities in terms of exclusion as only those school districts and county offices of education that are not excess tax school entities, as defined in subdivision (n) of section 95. Rev. & Tax. Code § 97.2(d)(2)(A). Section 95(n), in turn, defines "excess tax school entities" as educational agencies for which the amount of state funding entitlement is zero, as

determined by specified provisions of the Education Code. Thus, the ERAF statute, by design, uses the provisions of the Education Code to inform and give effect to its own provisions, including the definition of what entities are eligible for ERAF funding – i.e., school districts that are not excess tax school entities under the Education Code. There can be no clearer indication of legislative intent that the ERAF statute was designed to work in concert with the provisions of the Education Code related to education finance.

B. The Superior Court Failed to Acknowledge That the Education Code Sections Governing School Funding for Charter Schools Expressly Cross-Reference the Revenue and Taxation Code Sections At Issue Here

The Superior Court correctly noted that "Petitioner's argument would require that, in order to properly interpret Revenue and Taxation Code section 97.2, Respondent would need to expand beyond the definition within the statute at issue, and beyond the definition provisions provided for the chapter at issue, and even beyond the Revenue and Taxation Code." 2 AA 486. The court declined to look beyond the four corners of the Revenue and Taxation Code provision, however, because "[w]hen the plain language of a statute is clear, its plain meaning should be followed." 2 AA 486. But of course, the reason for requiring the Controller to issue guidance in the first place is because the counties did not find the plain language of the Revenue and Taxation Code section and its "plain meaning" to be clear enough to implement properly. 1 AA 242-43. Unlike the Revenue and

Taxation Code, the Education Code explicitly defines the term "school district" for the express purpose of the school funding system. Had the Controller read the two codes *in pari materia*, her guidance would have been quite different.

The Superior Court dismissed Petitioners' citations to the Education Code provisions that marry with the ERAF statutes because it believed "the statutory provisions at issue do not incorporate or reference was another, as was the case in *Los Angeles County*." 2 AA 488. In that case, the county had not been including the school district's ERAF revenue when calculating the district's percentage share of property taxes, a calculation that impacted how much "passthrough" revenue goes to the district from redevelopment agencies pursuant to Health and Safety Code section 33607.5(a)(2). *L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 422-23. As described by the court of appeal, the lower court there sided with the county, reasoning "that because the passthrough legislation does not mention the ERAF legislation, the statutes 'are separate statutory schemes that were not intended to be read together. Conflating the statutes as LAUSD requests would result in LAUSD obtaining a financial windfall to the detriment of non-school taxing entities. The Legislature does not appear to have intended such a result.'" *Id.* at 423.

The court of appeal disagreed, on grounds that ring true here as well. First, the appellate court looked at the plain language of Revenue and Taxation Code sections 97.2(d)(5) and 97.3(d)(5), which state that for purposes of allocating

property tax revenues pursuant to section 96.1, "the amounts allocated from the [ERAF] . . . shall be deemed property tax revenue allocated to the [ERAF] in the prior fiscal year." *L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 424-25.

> By incorporating the ERAF legislation into section 96.1's yearly allocation of property taxes, the Legislature implemented an annual shift of property taxes to ERAF's for distribution to the schools. Although this shift was implemented at the expenses of cities, counties, and special districts, the Legislature was clearly authorized to make this redistribution . . . .

Id. at 425.

Second, the appellate court dismissed the County's argument that because the passthrough legislation (Health and Safety Code section 33607.5(a)(2)) does not mention the ERAF statutes, "the Legislature did not intend to include ERAFs in the passthrough allocations." *L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 426. As the court of appeal held,

> It is impossible to calculate correctly the property taxes that LAUSD receives while excluding the property taxes received from ERAFs. [¶] When faced with overlapping statutes such as the ERAF and passthrough legislation, we must read them together so as to give

> effect, to the extent possible, to all of their provisions.
>
> *Id.* (citing *De Anza Santa Cruz Mobile Estates Homeowners Ass'n v. De Anza Santa Cruz Mobile Estates*, 94 Cal. App. 4th 890, 909 (2001)).

Finally, the court of appeal confirmed that the Legislature had plenary power to authorize this shift of property taxes to schools even if it had the effect of decreasing the share of property taxes going to counties, cities, and special districts. *L.A. Unified Sch. Dist.*, 181 Cal. App. 4th at 425, 426-27.

As described previously, Revenue and Taxation Code section 95(n) provides an express link between the ERAF statutes and the Education Code school funding provisions. That linkage goes both ways, moreover. Education Code section 47662 provides the linkage between Revenue and Taxation Code section 97.2 and the statutory requirement that school districts share their property tax revenues proportionately with charter schools.

> For purposes of Section 42238.02, as implemented by Section 42238.03, the property tax revenues received by a sponsoring local educational agency pursuant to Chapter 3.5 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code shall be reduced by the amount of funding in lieu of property taxes allocated to a

> charter school or schools pursuant to Section 47635.
>
> Educ. Code § 47662.[13]

Thus the Education Code expressly links the amount of property taxes received by a district, whether directly or through ERAF, and the share of those revenues the district passes through to the charter school(s), to the calculation of the LCFF entitlement for each. The Revenue and Taxation Code provisions for ERAF are inextricably intertwined with the Education Code provisions for LCFF through Education Code section 47662.

Certainly that is how it is understood by those who are most closely involved with interpreting and applying the education funding statutes – the Department of Finance, which prepares the budget and budget revisions and calculates the Proposition 98 guarantee levels, and the Legislative Analyst, who advises the Legislature on all matters related to the budget and

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[13] Chapter 3.5 of Part 0.5 of Division 1 of the Revenue and Taxation Code concerns the "supplemental" property tax that is imposed whenever real property ownership is transferred or reassessed at a higher value during a calendar year. *See* Cal. Const. art. XIII A, § 2(a); Rev. & Tax. Code § 75.10. Section 75.70(c) of that chapter allocates those supplemental property tax revenues based on the A.B. 8 apportionment factors, with any remainder going to "all elementary, high school, and unified school districts within the county in proportion to each school district's [ADA] . . . ." While section 75.70 refers only to "school districts," nonetheless the supplemental property tax allocations are calculated by the California Department of Education based on total ADA in school districts *including charter schools*. 1 AA 162-69.

school funding.[14] As the experts in public education funding, their opinions are entitled to great weight.

The Controller's argument to the Superior Court did no more than give a passing citation to section 47662 with no substantive discussion and no apparent understanding of its import. 2 AA 312. The Superior Court's ruling similarly fails to grapple with section 47662. Yet that section provides the link between the two statutory schemes that the court was looking for.

The calculation of how much ERAF revenue to send to school districts turns on how much funding the school district and the charter schools need to meet their LCFF entitlement. Under the LCFF, the amount of funding the school district

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[14] *See* Gov't Code § 13308(a), (b) (requiring Department of Finance to prepare budget recommendations for the annual Governor's Budget submission each January); *id.* § 13308(e)(3) (requiring Department of Finance provide to the Legislature "[a]ll proposed adjustments to the Governor's Budget that are necessary to reflect updated estimates of state funding required pursuant to [the Proposition 98 guarantee] . . ."); *id.* § 13070 (Department of Finance has "general powers of supervision over all matters concerning the financial and business policies of the State and whenever it deems it necessary . . . ."); *id.* § 13337(b) ("the budget shall . . . include a section that specifies the percentages and amounts of General Fund revenues that must be set aside and applied for the support of school districts, as defined in Section 41302.5, and community college districts, as required by [the Proposition 98 guarantee]."); *see City of Brentwood v. Campbell*, 237 Cal. App. 4th 488, 499 n.13 (2015) (citing Legislative Analyst report for the conclusion that certain legislation "represents legislative rethinking" to address and correct a statutory loophole).

receives from the state's General Fund is its total LCFF entitlement minus the amount of local property tax revenues received by that district. Educ. Code § 42238.02(j)(1)(A). This is true as well for charter schools' LCFF entitlement. *Id.* § 42238.02(j)(1)(B), (k). As the Counties explain, "A school district's state funding entitlement is reduced by the property taxes it receives pursuant to the Revenue and Taxation Code. . . . [A] charter school's state funding entitlement is reduced by the in-lieu property tax payments it receives from its school district pursuant to Education Code section 47635." 2 AA 348 (emphasis in original).

A school district's state funding entitlement takes into consideration that the district is sharing a portion of its property tax revenues with the charter schools through the "in lieu of property tax" payments. Thus, in making the LCFF calculations for districts, Education Code section 47662 reduces the amount of local property tax the school district receives "by the amount of funding in lieu of property taxes allocated to a charter school or schools pursuant to Section 47635." This reduction applies to all the property tax revenues received by the district pursuant to "Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code," including the property tax revenues provided through ERAF, which is part of Chapter 6. Educ. Code § 47662.

Thus, the Legislature explicitly provided that school districts would be sharing with charter schools a proportional share of their direct property tax allocation and a proportional

share of the property tax revenue they receive through the ERAF. This allows the district and charter schools' LCFF entitlements to be met to the extent possible by a combination of direct local property tax revenues and ERAF revenues. Both those sources of local revenues are allocated in the first instance to the school district, which shares its property tax and ERAF revenues with the charter schools within its district boundaries based on the proportional share of ADA served by each.

In other words, if the district and charter schools in the county have *combined* LCFF entitlements of, say, $75,000,000 that could be met with local revenues,[15] and the district receives only $40,000,000 in direct property tax allocations, then the difference between those two amounts – $35,000,000 – can be allocated to the district from the county ERAF to meet the combined LCFF entitlement. After this calculation, any funds remaining in the ERAF (above the $35,000,000) are deemed "excess ERAF" that can be allocated to special education, cities, counties and special districts. The district shares the $75,000,000 in combined local revenues – direct property tax allocations and allocations from ERAF – proportionately, on a per ADA basis, with the charter schools.[16]

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[15] After accounting for the minimum state funding guaranteed to all schools.

[16] This follows the steps set forth on page 3 of the Department of Finance's June 5, 2020, guidance to the County Auditor Controllers and County Office of Education Chief Business Officers for the counties who are parties here. 1 AA 222-28. By

Yet the Controller's guidance tells the districts to ignore the charter schools in this calculation, because the Revenue and Taxation Code "does not provide by *its* terms that allocations from ERAF to school districts provide funding for charter schools." 2 AA 321 (emphasis added). The Superior Court, like the Controller, places all the weight on the Legislature's alleged failure to expressly include the phrase "charter school" in Revenue and Taxation Code section 97.2(d)(2)(A). But the Legislature had no need to do so, because it had elsewhere defined the term "school district" to include charter schools for these purposes and would have presumed the statutes would be read together. *E.g.*, *People v. Superior Court (Sahlolbei)*, 3 Cal. 5th 230, 238-39 (2017) ("public official" as used in Government Code section 1090 should be read as congruent with use of that term in the Political Reform Act); *S. Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781, 798-800 (2003) (construction of the Brown Act informs the interpretation of the Bagley-Keene Act).

IV.

THE SUPERIOR COURT'S RULING STANDS THE LEGISLATURE'S INTENT ON ITS HEAD

Most inexplicably, the court below held that Petitioners "do not demonstrate that Respondent's ERAF Guidance is at odds with the Legislature's intent." 2 AA 486.

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contrast, the Controller's guidance would have the counties consider the ERAF capacity for school districts only, not counting the needs of charter schools. 1 AA 93-94.

The Legislature's intent in enacting the ERAF statute could not have been clearer – it wanted to shift a greater portion of the burden of supporting the public schools from the General Fund to local property tax revenues. Indeed, "to meet the state's minimum guaranteed education funding requirements under Proposition 98, in 1992 the Legislature enacted legislation creating ERAF's in each county and shifted billions of dollars in property tax revenues from cities, counties, and other local entities into them." *Alhambra*, 55 Cal. 4th at 713-14 (internal citation omitted). "The overall result of these statutes is that the tax revenues of the counties are decreased, school revenues remain the same, and the minimum school funding guarantee of Proposition 98 is satisfied in part by the ERAF funds." *Cty. of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th 1264, 1275 (2000).

The Controller's guidance does exactly the opposite. Neither the Controller, nor the Counties, nor the Superior Court has an answer for why the Legislature would have intended the ERAF statutes to provide more local funding for school districts but not charter schools, despite the Legislature's express, and repeated, intent that charter schools receive the same proportional share of state and local funding as district schools. Knowing that the Legislature enacted the ERAF statute to increase local revenue funds available for schools, why would the Legislature have intended the statute be construed to *lower* the amount of local revenue sent to school districts simply because

some of the schools being funded are charter schools, rather than ordinary district schools?

Nor do the Counties, the Controller and the Superior Court explain why the 2020-21 Budget Act, enacted on the assumption that charter schools would be included in the ERAF calculations, is not direct evidence of legislative intent.

V.

THE SUPERIOR COURT'S RULING SANCTIONS AN UNLAWFUL DECREASE IN THE PROPOSITION 98 SCHOOL FUNDING GUARANTEE

The Controller's unilateral decision to redefine the term "school districts" to exclude charter schools from the ERAF funding calculations impermissibly lowers the constitutional funding guarantee for schools throughout the state. 1 AA 217. The voters enacted Proposition 98 to provide stability and security in school funding by defining a constitutionally guaranteed minimum funding level for schools each year. *See* 1 AA 171. Under the Proposition 98 Test 1 formula, the minimum level of school funding is a defined percentage of the State's General Fund proceeds of taxes plus the total amount of property taxes allocated to schools, including allocations made through the county ERAF. Cal. Const. art. XVI, § 8(b)(1); Educ. Code §§ 41204-41204.5.

Over time, the percentage mix of General Fund revenues and property tax revenues has fluctuated. In particular, in times of fiscal crisis, the Legislature has increased schools' share of property tax revenues and proportionally

decreased the General Fund obligation under Proposition 98, including through enactment of ERAF following the recession of the early 1990's. *Matosantos*, 53 Cal. 4th at 245.

The enactment of the ERAF statutes included adjusting the Test 1 percentage of General Fund revenues downward to account for the Legislature's decision to redirect additional local property taxes to schools. At that time, the state was facing an "unprecedented budgetary crisis" – a projected $14 billion budget deficit – and the Legislature needed to reduce pressure on the state General Fund in order to avoid significant budget cuts. *See Sonoma*, 84 Cal. App. 4th at 1274. To ensure that school funding met the level guaranteed by Proposition 98, and simultaneously reduce pressure on the state General Fund, the Legislature redirected local property tax revenues to schools so that it could adjust the Test 1 percentage of General Fund revenues downward without decreasing the overall level of education funding.[17] Importantly, the Legislature recognized that this changing mix of revenues needed to be done in a manner that preserved the integrity of the guarantee. Accordingly, the Legislature enacted Education Code section 40214.5 at the same time it passed the ERAF legislation, which lowered the Test 1 percentage to the level it would have been had the ERAF allocations of local property taxes flowed to school

[17] 1 AA 188.

districts in the 1986-87 fiscal year.[18] In other words, because ERAF redirected additional property tax funds to schools, the Legislature was able to decrease the Test 1 percentage of General Fund revenues required for schools yet still ensure that the total funds flowing to schools complied with Proposition 98's minimum funding guarantee.

The Legislature's ability to reduce the percentage of General Fund revenues guaranteed to schools under Test 1 while still complying with Proposition 98 was predicated on its simultaneous allocation of ERAF dollars to school districts in an amount determined by the school districts' ADA. From inception, ERAF allocations to school districts have been based on the number of all students attending all K-12 public schools in the state. While at the time ERAFs were first established charter schools had not yet been authorized, there is nothing in the statutory history since indicating any intent to decrease the amount of ERAF funding going to the public school system. As the Department of Finance's Proposition 98 expert states, had there been any such intent, the Legislature would have amended the statute; by not amending the statute, the Legislature assumed that ERAF would continue to play the same role in funding the entire K-12 public school system. 1 AA 216.

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[18] 1 AA 195-96. This again demonstrates the necessarily symbiotic relationship between the Revenue and Taxation Code provisions establishing ERAFs, and the Education Code provisions governing public school funding.

Thus, when the Legislature dropped the Test 1 percentage, easing pressure on the state General Fund, and relied on property tax allocations to make the schools whole, it did so with the intention and understanding that ERAF funding would be allocated in an amount reflecting the full population of students served by California's K-12 public schools.

The Superior Court's ruling entirely ignores the detrimental impact on Proposition 98 of lowering the amount of property tax revenues flowing to schools through the county ERAF. The Counties admit that the Controller's guidance permits them to withhold tens of millions of dollars from public schools. For fiscal year 2020-21 alone, the City and County of San Francisco states it withheld $42 million; Santa Clara County withheld $30 million; and Marin County withheld $500,000.[19]

As of the 2021 May Revision, the damage to statewide education funding from the Controller's guidance was estimated to have exceeded $200 million in 2019-20 alone, with increasing amounts in future years.[20] While these numbers can change as state budget figures are calculated and revised, the fact remains that the impact of the Controller's guidance "lowers the Proposition 98 guarantee" which has "continuing and growing impacts on schools . . . ." 1 AA 217.

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[19] 1 AA 147-48.

[20] 1 AA 217, 2 AA 251; *see* 1 AA 98. As with all budget items, there will be updates and revisions to these numbers throughout each budget year.

The consequences for Proposition 98 are substantial. Because Test 1 currently is operative, the Controller's guidance results in the Proposition 98 guarantee being lowered by the amount of ERAF funds that are being held back from schools in five counties. 1 AA 217. The damage will compound because current budget projections anticipate that school funding will continue to be based on Test 1 for the foreseeable future,[21] which means that in each year the Proposition 98 guarantee will be lower in direct relationship to how many ERAF dollars are withheld from schools. Because each year's Proposition 98 guarantee calculation is dependent on the prior year's guarantee, the Controller's guidance will cement that harm for all the years to follow regardless of whether Test 1, 2, or 3 is operative. 1 AA 217; 2 AA 250-51. Initial estimates were that the Proposition 98 guarantee could be almost $2 billion lower than it otherwise would have been by fiscal year 2024-25 if the Controller's guidance is left to stand. 2 AA 253-54. This will have consequences for students and districts across the state, since a drop in the Proposition 98 guarantee inevitably results in a corresponding reduction in per-pupil funding. 2 AA 251.

CONCLUSION

The trial court's ruling below, like the Controller's Guidance that it blessed, does exactly the *opposite* of what the Legislature intended. It decreases the funding that flows to the

[21] 1 AA 96 (Test 1 will be operative for every fiscal year through 2025), 211; 2 AA 252.

public school system, even though the ERAF statutes were enacted to augment such funding. If allowed to stand, the trial court's fundamental errors in construing the relevant statutes will permanently decrease the constitutional minimum funding guarantee for schools. Such a result turns the legislative intent on its head.

Dated: January 18, 2023

Respectfully submitted,

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BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 13,123 as counted by the Microsoft Word 365 word processing program used to generate the brief.

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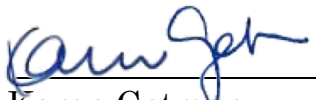

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 555 Capitol Mall, Suite 400, Sacramento, CA 95814.

On January 18, 2023, I served a true copy of the following document(s):

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