UNITED STATED COURT OF APPEAL
FOR THE NINTH CIRCUIT

Court of Appeals Case No. 15-56402

MICHAEL M. SATO,

Appellant-Plaintiff,

vs.

ORANGE COUNTY DEPARTMENT OF EDUCATION

Appellee-Defendant.

AMICUS CURIAE BRIEF OF CALIFORNIA SCHOOL BOARDS ASSOCIATION AND ITS EDUCATION LEGAL ALLIANCE IN SUPPORT OF APPELLEE ORANGE COUNTY OFFICE OF EDUCATION AND IN SUPPORT OF AFFIRMANCE OF THE JUDGMENT

[All parties have consented. FRAP 29(a)]

Appeal from the Judgment of the United States District Court
For the Central District of California
D.C. Case No. 8:15-cv-00311-JLS-JCG
Honorable Josephine L. Staton, U.S. District Judge

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INTEREST OF AMICUS CURIAE

The Eleventh Amendment immunity of California's local education agencies (including school districts and county offices of education) has been established and settled law for several decades, beginning with *Belanger v. Madera Unified School District*, 963 F.2d 248 (9th Cir. 1992). In this case, Appellant seeks to reverse this well-established law and subject local education entities in California to liability. The potential impact of changing the law regarding liability of local education agencies is significant and would have far-reaching effects, including potentially adverse effects on the willingness of persons to serve as governing board members of education agencies.

Appellant's argument that education finance has fundamentally changed in California because of the adoption of the Local Control Funding Formula ("LCFF") appears to be based on a misunderstanding of the constitutional framework for education finance in California and the nature of the financial restrictions faced by local education agencies. As the *Belanger* decision recognized, these constraints are primarily due to constitutional changes that took place in the 1970's; they could not be, and have not been, reversed by the new LCFF statutory scheme adopted by the Legislature.

While the LCFF modifies the formulas for allocating state funding to local education agencies, it does not change the fundamental nature of education

finance in California. Indeed, despite its name, LCFF simply presents another *state-developed formula* for allocating *state funding* and, in return, imposes a new series of *state accountability requirements* on local education agencies to account for the use of the increased funding.

The California School Boards Association and its Education Legal Alliance have followed the development of the LCFF closely and have been involved in its implementation. CSBA and its Legal Alliance are in a unique position to explain not only the differences between the previous funding system and the new LCFF but, more importantly, the similarities between the two. CSBA and its Legal Alliance also hope to assist the Court in better understanding the true impact of the LCFF changes and the continuing constraints on local decision-making and local education finance.

IDENTITY OF AMICUS CURIAE

Amicus Curiae CALIFORNIA SCHOOL BOARDS ASSOCIATION ("CSBA") is a California nonprofit corporation formed under the law of the State of California. CSBA is composed of the governing boards of nearly 1,000 K-12 school district and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education before state and federal education policy-makers. CSBA's EDUCATION LEGAL ALLIANCE ("Legal Alliance") is composed of

almost 750 members of CSBA that are committed to addressing legal issues of statewide concern to school districts and county offices of education through litigation. The members of CSBA and its Legal Alliance are directly affected by the LCFF and would be directly and adversely affected by the abrogation of Eleventh Amendment immunity which Appellant seeks in this case.

CSBA and its Legal Alliance have authorized the filing of this amicus curiae brief and have engaged counsel to prepare it. The brief has not been authored in whole or in part by any party or party's counsel. No party or party's counsel has contributed money that was intended to fund the preparation or submission of this amicus curiae brief, and no other person has contributed money (other than the dues paid by members of CSBA and its Legal Alliance) to be used for the preparation or submission of this amicus curiae brief.

CONSENT OF PARTIES

All parties to the case have consented to the California School Boards Association and its Education Legal Alliance filing this amicus brief in support of the Appellee, Orange County Office of Education, and in support of affirmance of the judgment below.

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ARGUMENT

In determining whether local education agencies are arms of the state for Eleventh Amendment purposes, the touchstone is how California law treats those entities. *Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1041 (9th Cir. 2003). An examination of California's constitutional framework and its statutory structure for financing education demonstrates that school districts and county offices of education have long been treated, and continue to be treated, as agents of the state and are thus entitled to Eleventh Amendment immunity. Although the LCFF has changed the formulas by which California allocates education funding, it did not change the highly centralized nature of the state's education financing system nor the role of local education agencies as agents of the state within the public education system.

I. The California Constitution Makes Education a State Responsibility and Local Education Agencies Agents of the State

The California Constitution mandates a public education system in which overall management and control are centralized in the State Legislature. "The Legislature" must "provide for a system of common schools, by which a free school shall be kept up and supported in each district []." CA. CONST. art. IX, § 5. The Constitution defines the "Public School System," and creates several state and county educational offices to oversee the Public School System. *Id*. at §§ 2 - 7. It

establishes a State School Fund and requires that a minimum amount of state revenue be allocated annually to the Fund. CA. CONST. art. IX, § 6; art. XVI, §§ 8, 8.5. The Constitution authorizes the Legislature to create local school districts but it can only confer such authority on them as will not "conflict with the laws and purposes for which school districts are established." *Id*. at § 14.

From these constitutional provisions, the California Supreme Court has articulated several principles. Public education is "an obligation which the State assumed by adoption of the [California] Constitution." *San Francisco Unified Sch. Dist. v. Johnson*, 479 P 2d. 669 (Cal. 1971). Although administered through local school districts, the Public School System is "*one* system . . . applicable to all the common schools." *Kennedy v. Miller*, 32 P. 558 (1893) [original italics]. "Management and control of the public schools [is] a matter of state [, not local,] care and supervision." *Butt v. State of Cal*., 842 P.2d 1240, 1248 (Cal. 1992) [quoting *Miller*, 32 P. at 558]. The Legislature may "create, dissolve, combine, modify and regulate local districts at pleasure." *Id.* at 1254. The beneficial owner of public school property is the state itself and local districts are "essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs." *Hall v. Taft*, 302 P.2d 574 (Cal. 1956). Most significantly, local education agencies in California "*are the State's agents* for local operation of the common school system . . . and *the State's ultimate*

responsibility for public education cannot be delegated to any other entity." *Butt*, 842 P.2d at 1248 [italics added].

II. The History of Education Funding in California Underscores the Centralized Nature of California's Public Education System

In 1910, the California Constitution was amended to grant local governments exclusive control over real property taxation; each local jurisdiction, including school districts, could levy its own independent property tax in order to raise revenues. *California Redevelopment Assn. v. Matosantos*, 267 P.2d 580, 588-89 (Cal. 2011). This meant that different school districts could impose different taxes and generate vastly different revenue. That system was held to violate equal protection in *Serrano I* and *Serrano II*. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976).

In response, the Legislature enacted "revenue limits." Each district's combination of local property tax revenues and unrestricted state aid became its revenue limit entitlement; revenue limits in high-revenue districts were limited to smaller annual inflation increases, while low-revenue districts received were allowed larger inflation increases and additional state equalization aid. The intent was to limit property tax increases in high wealth districts in order to equalize per pupil spending over time. *Revenues and Revenue Limits*, p. 5 (School Services of California, 13th ed.).

The adoption of Proposition 13 in 1978 significantly altered revenue limits and education funding generally; it capped the statewide real property tax rate at 1% to be collected by the counties and "apportioned according to law to the districts within the counties." CA. CONST. art. XIIIA, § 1; *see also Wells. v. One2One Learning Foundation*, 141 P.3d 225 (Cal.2006). Whereas local governments previously imposed their own tax rates to raise revenues, Proposition 13 not only capped the tax rate, it also shifted *to the state* the authority to allocate the property tax revenues among local government entities. *City of Scotts Valley v. County of Santa Cruz*, 201 Cal.App.4th 1, 7-8 (2011). It "convert[ed] the property tax from a nominally local tax to a de facto state-administered tax subject to a complex system of intergovernmental grants." *CRA*, 267 P.3d at 589; s*ee also Butt*, 842 P.2 at 1255, fn. 17.) Local governments, including education agencies, could no longer increase property taxes to raise operating revenues and the property tax revenues raised were no longer subject to local control.[1] (In addition, a year later, voters adopted Proposition 4 – the "Gann" Amendment – which imposed spending limits on state and local entities, including school districts, and limited local spending flexibility even further. *See* CA. CONST. art. XIIIB.

[1] While there are some limited options for financing school bonds or imposing local parcel taxes, these require approval by 55% or 2/3 of voters, respectively, and the use of the revenues is limited to specific purposes.

The immediate loss of over half of property tax revenues statewide directly impacted the State's role in education. The so-called "bailout legislation" that implemented Proposition 13 allocated most of the limited property tax revenues to local governments while using other state revenues to "backfill" education. The share of local property tax revenues allocated to schools dropped from approximately 53% to approximately 35%, with the balance of education funding coming from the state. *County of Sonoma v. Comm. on State Mandates*, 84 Cal.App.4th 1264, 1274 (2000). Although the precise formula has been modified several times, the critical point is that allocation of these property tax revenues is a matter of state discretion and has in fact changed. *Id*. at 1281-82 ["Allocation of local property tax revenues is an appropriate exercise of the Legislature's authority regarding taxes…The fact that the state shifted revenue away from schools and towards local government after Proposition 13 did not restrict the state's power to change the allocation again."]. [2]

[2] For example, the formula was modified in1987 by "tax equity allocation" legislation which reallocated revenues among non-school local entities, and was modified again between 1992 and 1995, when the state adopted the "ERAF" legislation. That legislation required local agencies to shift a portion of property tax revenues into ERAF accounts (Educational Revenue Augmentation Funds) to be used for education. See *County of Sonoma*, 84 Cal.App.4th 1264. In response to a 2004 shift in property taxes to schools, local governments sponsored Proposition 1A, which amended the Constitution to prohibit the State from further reducing the percentage of property tax revenues allocated to local governments. *See* CA. CONST. art. XIII, § 25.5.

The state's assumption of responsibility for education funding significantly altered the revenue limit formula. Prior to Proposition 13, a district computed its revenue limit entitlement, subtracted its state aid, and the balance was *the maximum amount that the district could raise from property taxes*. Because school agencies no longer had their own taxing authority, after Proposition 13 the calculation was essentially reversed, *i.e*., after a district computed its revenue limit entitlement, the district's share of property tax revenues – as determined by the State – was subtracted, and the balance was the amount that the state would be required to pay. *Revenues and Revenue Limits*, p. 6. *As a result, virtually the entire education finance calculation became controlled by, and dependent upon, the state*.

Finally, voters adopted Proposition 98 in 1988. That measure provides for a minimum level of education funding each year *from the state's general fund*. CA. CONST. art. XVI, § 8. Although Proposition 98 determines the minimum amount to be spent by the state each year on education, it does not allocate money directly to local education agencies – the actual distribution of education funding remains a matter of legislative discretion.

In sum, while revenue limits created in response to *Serrano* imposed some restrictions on each local education agency's ability to raise tax revenues,

proposition 13 closed that door almost entirely and resulted in the state effectively assuming responsibility for education funding.

III. The Local Control Funding Formula Does Not Change the Fundamental Nature of California's Education System

The "Local Control Funding Formula" ("LCFF") was adopted by the Legislature in 2013. An analysis by the State Legislative Analyst's Office indicates that the new formulas were designed to simplify a finance system that had become increasingly complex, and to allow additional funding to be directed toward students in need of additional resources such as English learners. See http://www.lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf. While it changes the formulas by which education agencies receive state funding and increases funding for certain at-risk students, it does not fundamentally change the state-local relationship or state control of education funding. Nothing in the LAO report suggests that the purpose or effect of the LCFF was to "decentralize control" of education. In fact, many of the "accountability" features actually increase state supervision and control over the use of education funding by requiring local education agencies to prepare annual reports that monitor progress on multiple state-defined priorities, including implementation of the state's academic content standards and increased student proficiency on the

state's numerous standardized examinations. CAL. EDUC. CODE §§ 52060-52075.

Under the prior revenue limit system, each district would take its post-*Serrano* per pupil revenue limit number and multiple it by the number of students to calculate the district's revenue limit entitlement. (All students were funded equally, but actual revenue limits varied among districts for historical reasons.) The district would then subtract the property tax revenues allocated by the state, and the difference would be the unrestricted state aid paid by the state.[3] CAL. EDUC. CODE § 42238. All education agencies, including those not receiving revenue limit funding, were also entitled to "categorical" funding – targeted funding for specified purposes, e.g., gifted and talented education funding, high school exit exam tutoring, etc. [4] Variations in the revenue limit numbers and wide variations in categorical funding led to significant complexity and some funding disparities.

[3] A district whose state-allocated property tax revenues met or exceeded its revenue limit entitlement was termed a "basic aid" district because it was only entitled to the $120 per pupil (or $2,400 per district) provided in the Constitution (CA. CONST. art. IX, § 6) and was not entitled to revenue limit funding. In 2012, there were more than 1,000 districts; only 55 were basic aid districts and that number appears to be diminishing under the LCFF.

[4] While both districts and county offices of education received revenue limit funding, formulas were slightly different. County offices provide some direct instruction (e.g., juvenile court schools), but also perform numerous administrative oversight and management functions at the direction of the state.

The LCFF eliminates most categorical funding and sets uniform, grade-span related rates which are combined with attendance to create the "base grant." (CAL. EDUC. CODE § 42238.02(d). The rates were designed to provide uniformity (in contrast to the varied revenue limit rates) and also to ensure that each education agency receives at least as much under the new formula as its 2012-13 combined revenue limit funding and categorical funding. The base grant can then be augmented in several ways. There is supplemental funding for English learners, foster youth, and low-income students, and districts with very large percentages of students in these categories are eligible for additional "concentration" funding. CAL. EDUC. CODE § 42238.02(e)-(f). Finally, certain "add-ons" may be available that reflect the remaining categorical programs (e.g., home-to-school transportation). CAL. EDUC. CODE § 42238.02(g).[5] From the total of these grants, the district subtracts any state-allocated property taxes and several other offsets.[6] CAL. EDUC. CODE § 42238.02(j)(1)-(8). The result is

[5] Funding for county offices of education varies slightly; funding for direct education activities (e.g., juvenile court schools) consists of a base grant and supplemental and concentration grants similar to districts (called an "alternative education grant" and calculated somewhat differently), but they also receive a separate operations grant for management and supervision. CAL. EDUC. CODE § 2574. Both districts and county offices are eligible for certain "add-ons," which reflect the remaining categorical programs, *e.g.*, home-to-school transportation.

[6] Since the adoption of Proposition 30 in 2013, state funding also comes from the Proposition 30 Educational Protection Account (which is

each district's LCFF "target" funding or entitlement to be reached over several years; section 42238.03 provides a complicated transition formula for each district to increase its "base entitlement" until it reaches its full LCFF funding in 2020. CAL. EDUC. CODE § 42238.03.

The basic calculation of each year's allocation to each education agency is performed in almost exactly the same way as the prior revenue limit calculation, i.e., the agency's LCFF "entitlement" (taking into account supplemental and concentration funding and add-ons) is reduced by the amount of state-allocated property tax revenue and other offsets; the remaining amount is the amount to be paid by the state. Appellant erroneously characterizes this process as providing only a minimum guarantee (AOB, p. 22-24); the district's LCFF entitlement – whether it consists only of the grade-span base grant or is augmented by supplemental and concentration funding or eligible "add-ons" – represents the maximum entitlement, an amount that is then reduced by state-allocated property taxes and other state-required offsets. Because local education agencies still have no ability to raise their own revenues, the district's entitlement under the LCFF operates as a maximum amount of funding, not a minimum, in exactly the same way that the revenue limit entitlement previously

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constitutionally required to be based on the prior revenue limit entitlement – see CA. CONST. art. XIII § 36(e)(3). This is one of the state-required offsets.

operated. Compare CAL. EDUC. CODE § 42238(h)(1)-(6) [revenue limits] with CAL. EDUC. CODE § 42238.02(j)(1)-(8) [LCFF].

Just as before, "state and local revenue is commingled in a single fund under state control. . . any use of the commingled funds is use of state funds." *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 250-52 (9th Cir. 1992). LCFF provides no additional authority for local education agencies to raise revenues nor does it impose any other change in the state-local relationship.

The LCFF does eliminate many of the previous categorical programs and thereby frees up some restrictions on funding, but it is misleading to consider all funding now unrestricted. First, districts are required to use supplemental and concentration funding to "increase or improve services for [English learners and low income students] in proportion to the increase in supplemental and concentration funds." CAL. EDUC. CODE § 42238.07. Second, school districts, county offices of education, and charter schools must develop annual Local Control and Accountability Plans ("LCAP"s) that describe how the agency will meet *eight separate state goals for districts and ten separate state goals for county offices of education*, including success in meeting the state's academic standards and success on numerous state standardized tests. LCAPs must address district or countywide goals as well as goals for numerically significant subgroups such as English learners or foster youth; goals must be linked to

specific proposed actions and actions must be aligned with the district or county office budget. CAL. EDUC. CODE §§ 52060-52075. LCAPs must be periodically reviewed and approved, and failure to make progress may result in various types of assistance and/or state intervention. *Id*.

IV. California's Centralized Public Education Is Distinguishable From Other States Where Local Educational Agencies Operate More Independently From the State

In determining whether a governmental entity is an arm of the state for Eleventh Amendment immunity, the courts have looked at five factors: (1) whether a money judgment would be satisfied out of state funds; (2) whether the entity performs central government functions; (3) whether the entity may sue or be sued; (4) whether the entity has the power to take property in its own name or only in the name of the state; and (5) the corporate status of the entity. *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988), cert. denied, 490 U.S. 1081 (1989).

This Court has previously observed that the structure of California's public education system is "unique" and the "outgrowth" of both the *Serrano* decisions and Proposition 13, as discussed above. *Holz v. Nenana City Pub. Sch. Dist*., 347 F.3d 1176, 1183 (9th Cir. 2003). In so doing, this Court has found California's public education finance system distinguishable from those of Arizona, Nevada, and Alaska, particularly in the application of the first *Mitchell* factor – whether a

money judgment would be satisfied out of state funds. While the California Constitution has always placed the ultimate responsibility for public education on the state, constitutional changes since the 1970's have shifted more direct responsibility to the state for education – and specifically education finance – and have significantly restricted the ability of local education agencies to raise funds independently. Nothing about LCFF changes these underlying principles, nor could it since they are based on limitations now enshrined in the State Constitution.

The education finance provisions in Arizona, Nevada, and Alaska are fundamentally dissimilar from California's; these states use state funds to guarantee only a *minimum* amount of state funding. *Savage*, 343 F.3d at 1042 (9th Cir. 2003)[Arizona guarantees only "minimum level of support"]; *Eason v. Clark County Sch. Dist*., 303 F.3d 1137, 1143-44 (9th Cir. 2002) [Nevada "uses state funds to guarantee . . . minimum amount" of funding"]; *Holz v. Nenana City Pub. Sch. Dist*., 347 F.3d 1176, 1184 (9th Cir. 2003) ["Alaska guarantees only a minimum amount of per pupil spending"]. If school districts in those states incur expenses in excess of the minimum level of state funding, those liabilities must be paid using locally-generated revenues, including possible tax override revenues. *Savage*, 343 F.3d at 1043; *see also Eason*, 303 F.3d at 1143. In fact, Arizona and Alaska specifically limit their liability for school district debt to the minimum

funding guarantee, thus shielding their respective state treasuries. *Savage*, 343 F.3d at 1043; *Holz*, 347 F.3d at 1182.

California law, by contrast, does not limit the state's legal obligation to a minimum funding guarantee. As explained above, the state currently sets a maximum entitlement, decides the amount of property tax revenues to be allocated in the state's discretion (which could theoretically be zero or near zero) and is directly responsible for the remainder. The state is thus completely responsible for the amount of funding received by each local education agency. Under the LCFF, additional funding is provided for certain higher need students, but that too is a matter of state discretion and could be modified; nothing in the LCFF changes the underlying control of the state over both the funding process and the amounts allocated to the various education entities.

Moreover, if a California school district experiences financial difficulties notwithstanding its state funding, the state has a legal obligation to provide *further* financial assistance. See *Butt*, 842 P.2d at 1254 [state role in education required state intervention to pay for completion of school year]. And California law, unlike that of Arizona, Nevada, or Alaska, authorizes school districts to obtain emergency funding from the state – in excess of the state funding already received by the district – when the school district's financial obligations exceed its budget. CAL. EDUC. CODE, §§ 41320-41328 [requiring a state-appointed administrator/

trustee, implementation of "improvement plans" recommended by a county fiscal oversight team, and annual financial audits by the State Controller].

The second *Mitchell* factor – whether the local entity performs central governmental functions – likewise weighs in favor of continuing to find that local education agencies are arms of the state for Eleventh Amendment purposes. As stated at the outset, the California courts have stated unequivocally that local education agencies "are the State's agents for local operation of the common school system." *Butt*, 842 P.2d at 1248. While many other states provide school districts broad autonomy in the management of public education, California law significantly limits the autonomy of school districts. (See *Butt*, 842 P.2d 1253-54 [describing state's "plenary" authority over education and detailing extensive "degree of supervision" of program retained by state in terms of both fiscal regulation and programmatic regulation]. In the mid-1990's, pursuant to a statutory directive, the State Board of Education developed "content standards" for each subject matter and each grade level; all teaching and instructional materials must be aligned to the standards and the state mandates various tests to determine proficiency on the state-developed standards. CAL. EDUC. CODE §§ 60601-60605. California thus regulates both finance and program extensively. The state also extensively regulates the employer-employee relationship for both teachers and other staff, including credentialing requirements, regulation of terms

and conditions of employment, requirements for collective bargaining and retirement and healthcare benefits, which also restrict local autonomy. *See* CAL. EDUC. CODE §§ 44000-45460; 22000-28101. This high degree of state regulation contrasts with the sentiment expressed by states like Nevada that "public education . . . is essentially a matter for local control by local school districts." Nev. Rev. Stat. § 385.005.

Appellant suggests that the LCAP requirement in LCFF is a "forceful rejection of statewide, centralized control." AOB, p. 29. This misconstrues the LCAP requirement. The LCAP must set goals "to be achieved for each of the state priorities . . ." and it must identify actions to be taken to meet the goals. CAL. EDUC. CODE § 52060(d). While a district can also identify "local" goals, the breadth and the pervasive nature of the state priorities are significant. Those priorities include: appropriate teacher assignments and credentialing *as prescribed by state law*; proficiency in meeting *the state's academic content and performance standards*, including progress by English learners in meeting the state's goals; student *achievement on statewide performance examinations* and completion of *state requirements* for college entrance; reducing dropout rates and absenteeism; increasing high school graduation rates; and reducing suspensions and expulsions. *Id*. While not all goals must be addressed "equally," *all must be*

addressed, not only for the district or county office as a whole but also for all numerically statistical subgroups. *Id*.

While the new LCFF system avoids some of the overly prescriptive aspects of categorical funding and allows somewhat more local flexibility deciding how best to reach the *state-prescribed goals*, it nonetheless makes clear that local education agencies must propose specific actions and plans for meeting all of those state-defined goals and will be held accountable for the failure to do so. CAL. EDUC. CODE §§ 52060-52075. If anything, the LCFF has used the slight increase in state funding to increase state oversight and ensure more accountability for failure to meet state goals.

Although the third and fourth *Mitchell* factors weigh slightly against finding that OCOE is an arm of the state for Eleventh Amendment purposes because OCOE can sue and be sued and can hold property in its own name,[7] those factors are entitled to less weight than the other three. And, with respect to the last *Mitchell* factor – whether OCOE has corporate status of state agent – as discussed previously, the California Supreme Court has determined that local educational agencies in this state are "the State's agents" for purpose of the public education system. Accordingly, the application of the *Mitchell* factors to California's

[7] Although districts may hold property in their name, property is considered to be held in trust for the benefit of the state. *Hall v. Taft*, 302 P.2d 574 (Cal. 1956).

centralized public education system continue to weigh in favor of finding that OCOE is an arm of the state for Eleventh Amendment purposes.

CONCLUSION

In conclusion, while the Legislature's adoption of the LCFF streamlined California's approach to education finance and changed the precise formulas for determining each local education agencies funding from the state, it did not in any way "decentralize" state control of the education process or the change the fundamental nature of the state's education finance system.

DATED: April 29, 2016

Respectfully Submitted,

OLSON HAGEL & FISHBURN LLP

By: _s/Deborah B. Caplan_____
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