Nos. 21-55395, 21-55404, 21-55408

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, ET AL.,

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, ET AL.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Case No. 2:20-cv-02291-DOC-KES
The Honorable David O. Carter

BRIEF OF *AMICUS CURIAE* LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANTS AND REVERSAL

George F. Schaefer
Assistant City Attorney
Elizabeth L. Atkins
Deputy City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
(619) 533-5800

Counsel for Amicus Curiae League of California Cities

DISCLOSURES

No amicus on behalf of which this brief is filed is a corporation that issues stock. None are subsidiaries or affiliates of any publicly held corporation. Fed. R. App. P. 26.1(a), 29(a)(4)(A).

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief, and; no person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund the preparation of submission of this brief. Fed. R. App. P. 29(a)(4)(E).

All parties consent to the filing of this brief. Fed. R. App. P. 29(a)(2); 9th Cir. R. 29-3.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The League of California Cities (Cal Cities) is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

STATEMENT OF SUPPORT

Amicus Curiae have reviewed both the City of Los Angeles' appellate brief and International Municipal Lawyers Association's (IMLA) appellate brief and fully support and join in the arguments made in both briefs. Amicus write separately to address a narrow issue regarding the District Court's incorrect expansion of California Welfare and Institutions Code section 17000 (Section 17000) to cities.

INTRODUCTION AND SUMMARY OF ARGUMENT

Addressing homelessness presents many challenges for governments, from the federal level down to the local city council. In response to these challenges, the California Legislature long ago mandated California's counties to provide support

for indigent residents. This legislative scheme required counties to provide an allowance for the necessities of life by setting general assistance standards for aid and care. To discharge this duty, counties were given broad discretion to determine eligibility for and the type/amount of indigent aid. Section 17000 does not mandate a specific form of relief, leaving counties to choose the means in which to discharge their duties. Although the statute provides direction to counties, no part of California Welfare and Institutions Code Part 5 or Section 17000 mentions or mandates any responsibility on California cities.

Yet, the District Court impermissibly transformed this entire statutory scheme in a preliminary injunction in response to an issue that was not even before the Court. Essentially, the District Court issued an advisory ruling undermining the California State Legislature's intent and expanding the scope of California Welfare and Institutions Code Part 5 regarding County Aid and Relief to Indigents in a way never intended by the Legislature. Acknowledging this, the District Court's order admits its usurpation of the Legislature's intent and court precedent, stating that "in the intervening decades [since *Tobe*], the institutional and financial landscape in this area has changed drastically in ways that neither the California Legislature nor the California Supreme Court could have reasonably foreseen, and the joint ventures long called for have taken robust form." (Doc. No. 277 at 89.) The District Court goes on to replace legislation and prior court precedent with its own

opinion of what the law should be. This was improper.

Amicus write to advise this Court of Section 17000's statutory history and more broadly, the Code chapter in which it is found. Once Section 17000 is viewed in this light, the District Court's reasoning clearly violates established principles of statutory interpretation.

ARGUMENT

The District Court's sweeping preliminary injunction holding that Welfare and Institutions Code section 17000 applies to cities flouts legislative intent, defies California Supreme Court precedent, and rewrites a 56-year-old statute in less than five pages. This advisory opinion on an issue not raised by Plaintiffs widened the scope of California cities' legal responsibilities and obfuscated the separation of powers between the Legislature and the court without thought as to the broader implications.

Amicus respectfully request this Court vacate the District Court's preliminary injunction for the following reasons. First, the statutory construction of Welfare and Institutions Code Division 9, Part 5 regarding County Aid and Relief to Indigents does not contemplate, or even mention, cities' involvement. Second, the California Supreme Court has already held that Welfare and Institutions Code section 17000 does not apply to cities. Third, the District Court's ruling

oversimplified the process related to housing and will create broad and inconsistent ramifications if allowed to stand.

I. Statutory Interpretation of Section 17000 Does Not Contemplate Cities, Negating the District Court's Finding Otherwise.

The District Court disregarded Welfare and Institutions Code section 17000's plain language and the Legislature's intent that Section 17000 does not apply to cities. Basic principles of statutory interpretation do not allow for such a conclusion.

In interpreting the statutory language at issue, "[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent." *Delaney v. Superior Court*, 50 Cal. 3d 785, 798 (1990). Statutory interpretation is a three-step process which must be done in the proper sequence. *Jensen v. BMW of North America, Inc.*, 35 Cal. App. 4th 112, 122 (1995). First, courts must look to the plain meaning of the statutory language, then to the statute's legislative history, and finally to the reasonableness of the proposed construction. *Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.*, 23 Cal. App. 4th 1120, 1126 (1994). Here, although the District Court was interpreting a statute and determining its applicability, it failed to follow this process or analyze any of the steps.

A. The Express Language of Welfare and Institutions Code Section 17000 Supports Application to Counties and Not Cities.

The first step of statutory interpretation looks to the words of the statute themselves. *Delaney*, 50 Cal. 3d at 798. The Legislature's chosen language is the most reliable indicator of its intent because "it is the language of the statute itself that has successfully braved the legislative gauntlet." *California School Employees Assn. v. Governing Board*, 8 Cal. 4th 333, 338 (1994) (internal quotations omitted). The Court is to give the words of the statute "a plain and commonsense meaning" unless the statute specifically defines the words to give them a special meaning. *Flannery v. Prentice*, 26 Cal. 4th 572, 577–78 (2001). If the statutory language is clear and unambiguous, the court's task is at an end, for there is no need for judicial construction. *California School Employees Assn.*, 8 Cal. 4th at 340; *Delaney*, 50 Cal. 3d at 798. In such a case, there is nothing for the court to interpret or construe. *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1239 (1992).

Section 17000 provides that "[e]very county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

First, the Court must look to the words of the statute and give them a plain and commonsense meaning. Here, the statute is directed at "[e]very county and

every city and county." Cal. Welf. & Inst. Code § 17000. "[C]ounty" is self-explanatory. However, "city and county" refers to any consolidated city and county in California. Currently, the City and County of San Francisco is the only consolidated city-county.[1] If cities were meant to be included in the phrase "city and county" under Section 17000, there would be no reason to pair "city and county" with the conjunctive "and" after using "county," as "county" was already included in the list. With the conjunctive "and," the statute is to be read as two identifiers: [county] and [city and county]. Thus, "city and county" is purposely conjoined as a phrase with its own obvious meaning and cannot mean both "city" and "county" separately, as that would be unnecessarily redundant.

This explanation of the statute's meaning becomes more obvious when construing the "city and county" phrasing in Section 17000 in other contexts within the same statutory scheme. For example, in Welfare and Institutions Code section 5454, the statute refers to "the County of Los Angeles, the County of San Diego, and the City and County of San Francisco," then in the same sentence discusses "the board of supervisors of the respective county or city and county. . . ." It is obvious here then that "respective county" is referring to the counties previously mentioned, Los Angeles and San Diego counties, while the "city and

[1] Cities 101 — Consolidations, National League of Cities, https://www.nlc.org/resource/cities-101-consolidations/.

county" is referring to the city and county previously mentioned, the City and County of San Francisco.

Conversely, this distinction is furthered when looking at Section 17600.20, which uses the phrase "county, city, or city and county" when discussing funding allocations. This language is purposely distinguishable from that of Section 17000 as it includes three types of governing scenarios present in California: counties, cities, and consolidated city-counties. Thus, if the California Legislature intended to include cities in Section 17000, it would have used similar language as Section 17600.20 to encompass that specific government type.

Additionally, the District Court's order rewrites an entire statutory scheme intended for counties, evident by the plain language found elsewhere in the statute. Counties and boards of supervisors that are given the authority under the statute to determine funding, eligibility, and reportable data to the California Health and Human Services Agency (HHSA). *See* Cal. Welf. & Inst. Code §§ 16937 (data reporting requirements), 17000.5 (general assistance guidelines), 17100 (residence eligibility). HHSA, notably, has no direction over cities, as counties act as an arm of the state through HHSA. The District Court, in holding cities liable for Section 17000's mandate, failed to consider how cities will fit into the existing statutory system. For example, it is not clear whether cities and city councils will now be required to make funding and eligibility determinations and also be subjected to

data reporting requirements. No piece of the current legislative scheme contemplates a city's involvement, thus mandating such a structural change touches every aspect of Part 5. Yet the Court's supplantation of the law leaves these questions unanswered—setting up an inevitable failure for any city if attempting to follow the District Court's directive.

However, the Legislature did not include such express language in Section 17000 because it never intended that section to apply to cities. Section 17000's plain and commonsense language supports this conclusion, which was simply ignored by the District Court. Under the first step of statutory interpretation, the words of Section 17000 do not apply to cities. The District Court's analysis should have ended here, as there is nothing more for the Court to have interpreted or construed. Thus, the Court's holding otherwise was improper and must be vacated.

B. The Statute's Legislative Scheme Also Supports Section 17000's Inapplicability to Cities.

Not only is it apparent from the statute's express language that Section 17000 does not apply to cities, it is also apparent from the subsequent sections of the same division and chapter.

First, Welfare and Institutions Code Division 9, Part 5 is titled "County Aid and Relief to Indigents." While perhaps a bit obvious, the title of the section must not be overlooked in determining Legislature's intent. Part 5, which begins with

Section 17000, discusses everything from adopting standards of aid, to eligibility, to funding and reporting. Sections 17000.5(a) and 17000.6 adopt a "general assistance standard of aid," which is to be established by "[t]he board of supervisors in any county." Section 17000.5(e) further states how specific counties can adjust assistance amounts to be given based on the counties' cost of living expenses. These sections simply do not mention or discuss the inclusion of a city council or cost of living reductions in any city. Section 17001 states "[t]he board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indignant and dependent poor of the county or city and county." The express terms do not allow for cities or city councils to adopt applicable standards of care to provide resources under Section 17000.

Moreover, under Section 17000, counties are responsible for providing "last resort" assistance to indigent residents who are not eligible for other forms of relief. *See, e.g.*, *County of San Diego v. State of California*, 15 Cal. 4th 68, 92, 98 (1997); *Watkins v. County of Alameda*, 177 Cal. App. 4th 320, 329 (2009). But Section 17000 does not prescribe any specific form or amount of assistance. Instead, the statutory scheme requires counties to adopt their own "standards of aid and care" and grants them "broad discretion to determine eligibility for - and the types of - indigent relief." Cal. Welf. & Inst. Code § 17001; *Hunt v. Superior Court*, 21 Cal. 4th 984, 991 (1999). In fact, the statute only grants a "board of

supervisors of each county, or the agency authorized by county charter," to adopt such standards. Cal. Welf. & Inst. Code § 17001. Similarly, the statute vests boards of supervisors with the responsibility of establishing polices as to "the amount of property, if any, a person shall be permitted to have while receiving assistance." Cal. Welf. & Inst. Code § 17107. Further code sections define continued responsibilities of boards of supervisors and counties. *See, e.g.*, Cal. Welf. & Inst. Code §§ 17109, 17110, 17111, 17400.

After reviewing the legislative scheme surrounding Welfare and Institutions Code section 17000, it becomes manifestly obvious that these sections were never intended to apply to cities. The District Court's injunction upsets the structure within the state mandated by Part 5. For these reasons, the District Court's order should be vacated.

II. The District Court's Preliminary Injunction Ignores California Supreme Court's Holdings that Section 17000 Does Not Apply to Cities.

The District Court's order contravenes case law discussing Section 17000 and its inapplicability to cities and *Amicus* could find no case agreeing with the District Court's interpretation of Section 17000. Rather, California precedent strictly limits Section 17000 to counties and no case in federal court has analyzed Section 17000 with respect to a City. *See, e.g., Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754, 765 (9th Cir. 2004) (noting that "Section 17000

mandates that the County" provide support). The District Court's order impermissibly supplants these prior rulings, including a California Supreme Court case directly holding Section 17000, does not apply to cities.

In the seminal case at hand, the California Supreme Court outright rejected an argument that Section 17000's mandate applies to cities. *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1104 n.18 (1995). In *Tobe*, Plaintiffs—primarily homeless individuals affected by the legislation—challenged the constitutionality of a City of Santa Ana ordinance banning camping and storage of personal property in certain public areas. *Id.* at 1080–83. Plaintiffs provided evidence showing the City of Santa Ana appeared to be discriminating on the basis of homelessness and had made a years-long effort to expel homeless individuals. *Id.* at 1082–83. Based on this evidence, the Court of Appeal found "that the purpose of the ordinance—to displace the homeless—was apparent," and held the ordinance violated Plaintiffs' constitutional rights. *Id.* at 1083. City of Santa Ana appealed, arguing the ordinance was constitutional on its face. *Id.* The Supreme Court agreed, noting Plaintiffs failed to make an as-applied challenge. *Id.*

As part of their argument that the ordinance was unconstitutional, Plaintiffs argued that the City of Santa Ana could not deny homeless individuals "the right to live on public property anywhere in the city unless it provides alternative accommodations. . . ." *Id.* at 1104 n.18. The Court found this argument unavailing,

noting it "overlooks the Legislature's allocation of responsibility to assist destitute person to counties." *Id.* (emphasis added). The California Supreme Court further held that "[i]f the inability of petitioners and other homeless persons in Santa Ana to afford housing accounts for their need to 'camp' on public property, their recourse lies not with the city, but with the county under those statutory provisions [section 17000]." *Id.* (emphasis added).

Other courts have followed this reasoning, upholding the notion that Section 17000 applies to counties, not cities. In one case, the court reaffirmed a counties' duty to provide housing for the homeless population. *Clinton v. Cody*, No. H044030, 2019 WL 2004842, at *8 (Cal. Ct. App. May 7, 2019). There, homeless plaintiffs in Santa Clara County filed a petition for a writ of mandate to compel the County to provide appropriate housing during the night to homeless residents. *Id.* at *1. To support their arguments, Plaintiffs primarily relied on Section 17000, contending the county had a statutory duty to provide safe sleeping sites to the indigent. *Id.* at *2. In finding that Section 17000 does not mandate a duty to provide safe sleeping sites for every homeless individual in the County, the Court analyzed what duties Section 17000 actually requires. *Id.* at *4–*8. The Court stated, "[a]s explained by the California Supreme Court, section 17000 imposes a 'mandatory duty' on counties to relieve and support an indigent or incapacitated

person when that person is not relieved and supported by some other means." *Id.* at *4 (emphasis added).

The Court in *Clinton* also cited to other cases discussing counties' duties under the statute. In discussing counties' duties, the Court noted that "'[t]wo distinct obligations arise out of section 17000—the obligation to financially support the indigent through [general assistance] and the obligation to provide health care.'" *Id.* at *4 (quoting *Watkins*, 177 Cal. App. 4th at 330). The Court quotes other California cases noting a county's obligation to provide medical care to indigent persons under section 17000. *Id.* at *4 (citing *Hunt*, 21 Cal. 4th at 1002; *Tailfeather v. Board of Supervisors*, 48 Cal. App. 4th 1223, 1234 (1996)).

The United States Supreme Court has held that federal courts do not have "any authority to place a construction on a state statute different from the one rendered by the highest court of the state." *Johnson v. Fankell*, 520 U.S. 911, 916 (1997). Despite acknowledging *Tobe*'s unambiguous authority in its order, the District Court nevertheless overruled it, believing a few recent examples of city/county collaboration reverses *Tobe*'s mandate that Section 17000 does not apply to cities. (Doc. No. 277 at 89–91.) The District Court reasoned, "[s]imply put, under the aegis of local, state, and federal initiatives, the City and County together have become jointly responsible for fulfilling the mandate of § 17000, at least as it pertains to confronting the crisis of homelessness." (*Id.* at 91.)

These cases are just a few among the many which discuss and analyze a county's obligations under Section 17000. Not surprisingly, none of these cases find a city has similar obligations as a county under the statute—and *Tobe* explicitly finds it does not. Because the District Court's order defies California Supreme Court and other precedent, the preliminary injunction order should be vacated.

III. The District Court's Order Oversimplifies the Housing Process, leading to Broad Implications Not Considered in the Order.

In two paragraphs, the District Court grossly oversimplifies the separation of powers between differing levels of California governance. (Doc. No. 277 at 91.) If left in place, the uncompelling order broadens not just the scope of liability for California cities, but for any agency or municipality that chooses to participate in a coordinated effort with a county to undertake homelessness. The Court's order will also have far greater implications than the Court considered. These unconsidered consequences evidence the reasonableness—or lack thereof—of the Court's proposed construction, failing the final step of statutory interpretation.

First, the Court's use of a few examples of recent collaboration during the pandemic assumes a simplicity that just does not exist in the housing realm and discounts the complex systems which govern counties and cities' housing structures. (Doc. No. 277 at 89–91.) For example, both the City of Los Angeles

and the City of San Diego have separate housing authorities/commissions. As the District Court notes, the City of Los Angeles operates housing through the Los Angeles Housing Services Authority. (*Id.* at 89.) The City of San Diego, likewise, operates its housing through the San Diego Housing Commission.[2] The order omits discussion regarding the complex relationships between city councils and housing authorities/commissions and fails to clarify if this mandate directed at cities is also directed at city housing authorities/commissions or the like—i.e., non-profits also collaborating with county authorities to home the homeless. Based on the order's reasoning, a housing authority/commission, although not directly or expressly associated with a county, could become a holder of the Section 17000 baton should it choose to collaboratively work with a county. It is unclear if a housing authority's board of directors would then step into the board of supervisors' role in making the decisions necessary to follow Part 5's directives. The very fact that these complex housing structures were not considered or addressed in the order shows the shortsightedness of the District Court's reasoning—and demonstrates why judges should not legislate from the bench.

Next, the consequences of the Court's logic are concerning as it raises additional implications to cities. Essentially, the District Court found that because

[2] San Diego Housing Commission, About Us, available at https://www.sdhc.org/about-us/.

the City of Los Angeles made policy decisions, and received funding, to assist with homeless housing projects, it is now subject to the Welfare and Institutions Code. Public policy decisions and resource allocations are properly within a city council's purview, as elected representatives. *Juliana v. United States*, 947 F.3d 1159, 1171–72 (9th Cir. 2020) (discussing the separation of powers doctrine).

Judge Carter's directive takes these policy decisions away from elected officials and instead mandates a right of funding. This creates a very different position for cities to be in, knowing should a city help collaboratively tackle homelessness, it would now be subjected to the Welfare and Institutions Code. While the District Court assumes its order would alleviate the issues surrounding homelessness, it would actually frustrate the very purpose it addresses, leading to a devastating loss of resources addressing homelessness. Cities should not be unlawfully chained to a statutory mandate for participating in the alleviation of this crisis.

CONCLUSION

For the reasons stated above, the District Court abused its discretion in issuing the sweeping preliminary injunction. *Amicus* respectfully request the Court vacate this order.

Dated: June 11, 2021

Respectfully submitted,

/s/ George F. Schaefer
George F. Schaefer
Assistant City Attorney
Elizabeth L. Atkins
Deputy City Attorney
City of San Diego
Counsel for *Amicus Curiae*
League of California Cities

CERTIFICATE OF COMPLIANCE

Per Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(C), I certify that the foregoing amicus curiae brief is proportionately spaced, has a typeface of 14 points, and contains 3,669 words, excluding the portions exempted by, and is prepared in a format, type face, and type style that complies with Fed. R. App. P. 32(a)(4)-(6).

Dated: June 11, 2021

/s/ George F. Schaefer
George F. Schaefer
Assistant City Attorney
Elizabeth L. Atkins
Deputy City Attorney
City of San Diego

Counsel for *Amicus Curiae League of California Cities*

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 11, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 11, 2021

/s/ George F. Schaefer
George F. Schaefer
Assistant City Attorney
Elizabeth L. Atkins
Deputy City Attorney
City of San Diego

Counsel for *Amicus Curiae*
League of California Cities