IN THE SUPREME COURT OF FREMONT

In re:	)	Case No. 23-04
ARIZONA SOLAR PANEL ACT	)	June 16, 2023

<u>BRIEF IN OPPOSITION TO *CERTIORARI*</u>
<u>AND ANSWERING BRIEF</u>

Question Presented

Whether the Act violates the Presentment Clause of the Fremont Constitution.

Introduction

Respondent, the Republic of Fremont (hereinafter, "the State"), hereby files its answer to the complaint in the above-captioned matter. Petitioner alleges that section 3(12) of the Arizona Solar Power Act (State Law 05-12) (hereinafter, "the reporting clause") violates the Presentment Clause because it permits the Legislature to direct that another state officer file a report in the Governor's stead, and that section 4(2) of the Act (hereinafter, "the amending clause") violates the same constitutional provision because it allows the Legislature to terminate authority for the solar project without being subject to gubernatorial signature or veto.

In the State's view, the complaint fails to state a claim for a violation of the Presentment Clause because it neglects that (1) the act of issuing a report does not as a threshold matter implicate the separation of powers because it is not executive in nature, and that (2) Petitioner's reading of the amending clause as to preclude gubernatorial veto is unnatural, manifestly unsound, and incorrect as a matter of law.

Arguments

A. As a threshold matter, the reporting clause does not implicate the separation of powers because submitting a report to the Legislature is not a core executive function.

The Fremont Constitution states at article III, § 8 that "[t]he Legislature may make no law except by statute and may enact no statute except by bill." Because the Presentment Clause only requires that "[e]ach bill passed by the Legislature [...] be presented to the Governor," it follows that presentment is only required if the Legislature is in fact enacting a statute. *Id.* at § 9.

The challenged section of the Act provides in relevant part that the Governor "shall be required to submit a report to the Assembly every six months on the construction process and state of the solar farm" and that "[i]f the [Governor] fails to submit his report [...] the Assembly may designate his responsibilities [...] to the [Lieutenant Governor] or to the [Speaker], who shall be required to submit the report in his stead."

Were the Legislature to have vested the Governor with an executive power by statute and then attempted to unilaterally give it to another state officer, such an arrangement would be constitutionally problematic. However, this section does no such thing.

In demanding a report from the Governor, the Legislature acts not in its lawmaking function but rather in its investigative function, which is "an indispensable incident and auxiliary to the proper exercise of legislative power." *In re Battelle*, 207 Cal. 227, 241 (1929). When the Legislature undertakes an investigation, it "must be allowed to select the means within reasonable bounds," *Parker v. Riley*, 18 Cal.2d 83, 91 (1941), so long as it is "in reference to which [the Legislature] has power to act," *Ex parte McCarthy*, 29 Cal. 395, 404 (1866), and does not "defeat or materially impair the exercises of its fellow branches' constitutional functions, nor intrude upon a core zone of another branch's authority." *Howard Jarvis Taxpayers Ass'n. v. Padilla*, 62 Cal.4th 486, 499 (2016).

The legislative nexus of this provision is clear: because the Legislature seeks to be apprised of progress on a statute in order to see whether it needs to be revised, it has directed the Governor to furnish materials to aid in its investigation. When the Governor complies, he does so not acting within his core executive function but rather as an agent of the Legislature, just as if he was a private citizen who had been subpoenaed for the same information. Because the

Legislature in requesting a report acts within the core of the investigative power rather than the lawmaking power, it is not enacting a statute and is consequently free to designate some other person to furnish the report, with or without the Governor's consent.

B. The plain meaning of the amending clause is constitutional.

Petitioner further challenges the Act by arguing that the amending clause reserves to the Legislature an unconstitutional power to amend the statute without the Governor's signature or veto. However, all the statute says is that "[t]he Assembly has the right to, by passing an amendment to this bill at any time, halt construction for any reason."

When faced with such plain and simple language, "it is the duty of the court to enforce it according to the obvious meaning of the words employed." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 51 (2d. ed 1911). In other words, the law "meant what it said and said what it meant." *In re Executive Order 22*, 4 West. 27 (Fre. 2019) (Cheatem, C.J., concurring). Moreover, when reading a statute, it is strongly presumed that it was enacted against the background of the Constitution, *San Francisco v. Industrial Accident Comm.*, 183 Cal. 273, 279 (1920), i.e., that the Legislature was plainly aware that the Constitution commands that it "may make no law except by statute and may enact no statute except by bill." Fre. Const., art. III, § 8.

Therefore in enacting the amending clause, the Legislature has simply affirmed that it may pass a new bill amending the construction scheme "at any time" or scrap the scheme altogether "for any reason." While Petitioner may find this clause to be a useless truism, redundancy does not create unconstitutionality. Indeed, the Legislature may have had many valid reasons to insert such a truism into the text of the statute, such as cautioning potential contractors that the authorization is subject to change or forestalling a successful legal claim against the State based upon detrimental reliance on the statute's promised funding.

For these reasons, or myriad others, it is not at all hard to believe that the Legislature would have inserted the language in spite of its obviousness in the eyes of Petitioner. *Contra,* Pet. for Cert. ("It is hard to believe that such a plainly obvious provision would be included in the bill.").

C. Even if an alternative interpretation were possible, bedrock principles of statutory interpretation require that the law be construed in a manner that is constitutional.

Even if Petitioner's interpretation of the amending clause were reasonable (which it is not), it must be rejected because a cardinal principle of statutory interpretation is that "all doubts" about the interpretation of a statute must be resolved "in favor of the Act" and "[u]nless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the Act." *Amwest Surety Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1252 (1995). As a result, a law will not be invalidated unless its unconstitutionality "clearly, positively, and unmistakably appears." *People v. Superior Court*, 10 Cal.2d 288, 298 (1937).

As Petitioner openly concedes, "[t]he respondent may argue that these subsections simply provide that such amendments can be made, of course requiring presentment pursuant to the Fremont Constitution." The fact that such an argument can reasonably be made alone is fatal to the constitutional claim, as it defeats a showing of clear and unquestionable unconstitutionality. As this Court has previously cautioned,

> To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute, or as to particular terms of employment to which employees and employer may possibly agree. Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.

Pacific Legal Foundation v. Brown, 29 Cal.3d 168, 180-81 (1981).

The alternative interpretation, acknowledged even by Petitioner, is entirely reasonable. *See*, *Martin v. Riley*, 20 Cal.2d 28, 40 (1942) ("Inasmuch as the presumptions are in favor of the constitutionality of the act, it will be held to be constitutional if by *any reasonable construction* of the language of the proclamation it can be said that the subject of legislation is embraced therein.") (emphasis added). As previously discussed, there are many reasons for which the Legislature may want to publicly announce that it did not consider itself bound by the timelines and projects announced in the statute—none of which are unconstitutional.

Conclusion

For the foregoing reasons, the Act comports with the Presentment Clause of the Fremont Constitution. The writ of certiorari should be denied, and the cause should be dismissed.

Respectfully submitted,

/s/ ModelAinin

Counsel for Respondent