
APPEAL NO. D050832

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COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
—————

HAROLD P. STURGEON,
Plaintiff and Appellant,

vs.

COUNTY OF LOS ANGELES, *et al.*,
Defendants and Respondents.
—————

ON APPEAL FROM THE FINAL JUDGMENT OF THE
CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
CASE NO. BC351286
THE HONORABLE JAMES A. RICHMAN
—————

APPELLANT'S REPLY BRIEF
—————

Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601
Tel: (626) 287-4540
Fax: (626) 237-2003

Counsel for Appellant

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INTRODUCTION

Nowhere in Respondents' Brief do they refute the fact that the "local judicial benefits" the County provides to trial judges in Los Angeles County duplicate what is already being provided to these same judges by the State. Similarly, nowhere in Respondents' Brief do they refute the fact that benefits and compensation to trial judges have actually *increased by up to 19 percent* as a result of the County's payment of "local judicial benefits." Despite Respondents' soft peddling and misdirection, Appellant is confident this Court will be able to discern that this important action is not about reducing trial judges' benefits or compensation. Rather, it is about what Chief Justice Ronald M. George described as "double dipping for benefits" by trial judges in Los Angeles County. Clerk's Transcript ("CT") at 402 (Steve Berry and Tracy Weber, *L.A. County Lets Judges Draw Duplicate Benefits and Perks*, Los Angeles Times, August 20, 2000). The trial court erred in granting summary judgment to Respondents, as this "double dipping for benefits" violates the Lockyer-Isenberg Trial Court Funding Act of 1997 (hereinafter "the Act") and the California Constitution. It also constitutes an unconscionable waste of public assets. Accordingly, this extraordinary case requires a full and public trial on the merits and must be remanded for further proceedings.

ARGUMENT

I. The County's Unauthorized Payment of "Local Judicial Benefits" Violates Both the Act and the California Constitution.

In his opening brief, Appellant demonstrated that the County's unauthorized payment of "local judicial benefits" violates both the Act and the California Constitution. With respect to the Act, Appellant demonstrated that the County unlawfully continues to pay "local judicial benefits" to trial judges in Los Angeles County despite the State having assumed sole responsibility for the payment of trial judges' salary and benefits in 1998. Among other reasons, this is because the County never filed an appeal to the State Controller, as is expressly required by Cal. Gov't Code section 77201.1(b)(4) in order for the "adjustment" authorized by that subsection to apply. Appellant's Opening Brief at 14-24. This conclusion also is mandated by the fact that Cal. Gov't Code section 77201.1(b)(4) makes no reference to any continuing obligation or authorization for counties to pay benefits to trial judges in the event an "adjustment" is made. Cal. Gov't Code § 77201.1(b)(4). Surely the Legislature's express language should be given its full meaning and effect. *In re J.W.*, 29 Cal. 4th 200, 209 (2000) ("Every part of a statute serves a purpose and nothing is superfluous . . . The expression of one thing in a statute ordinarily implies the exclusion of other things.").

Respondents' counter-argument is that section 77201.1 expressly incorporates subdivisions (c) and (d) of Cal. Gov't Code section 77201 and therefore allows not only continued adjustments to a county's Maintenance of Effort, but also obligates or authorizes a county to continue to pay "local judicial benefits."¹ Respondents' Brief at 8-9. Even a cursory review of Cal. Gov't Code section 77201.1(b)(4) demonstrates that it only authorizes adjustments to the extent an appeal was filed with the State Controller and makes no reference at all to the payment of "local judicial benefits." The provision states:

. . . the amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) and (d) of Section 77201 as that section read on June 30, 1998, **to the extent a county filed an appeal with the Controller with respect to the findings made by the Department of Finance.** This paragraph shall not be construed to establish a new appeal process beyond what was provided by Section 77102, as that section read on June 30, 1998.

Cal. Gov't Code § 77201.1(b)(4) (emphasis added). Certainly if the Legislature had intended to incorporate the entirety of subdivisions (c) and (d) of Cal. Gov't Code section 77201 into Cal. Gov't Code section 77201.1(b)(4), including the provision in subdivision (c) regarding counties' obligation to continue to pay

¹ Subdivision (c) of Cal. Gov't Code section 77201 contain a number of possible adjustments to a county's Maintenance of Effort for the first year of the new state funding scheme, not just and adjustment for "local judicial benefits." Cal. Gov't Code § 77201(c).

“local judicial benefits” in the first year of the new state funding scheme if an adjustment to its Maintenance of Effort had been made for that year, it could have done so expressly. It did not, however, and it expressly conditioned any continuing adjustments --again, without mentioning any obligation or authorization to continue to pay “local judicial benefits” -- on a county taking an appeal. Respondents admit that the County did not take an appeal. CT at 580 (Response to Special Interrogatory No. 7). As a result, the provision simply cannot be said to obligate or authorize the County to continue to pay “local judicial benefits.”

Respondents argue that the provision expressly limiting continued adjustments “to the extent a county filed an appeal” should not be read to mean that the continued payment of benefits is conditioned on a county having taken an appeal, but instead should only be read to mean that any adjustment to a county’s Maintenance of Effort pursuant to Cal. Gov’t Code section 77201.1(b)(4) must reflect the results of the appeal. Respondent’s Brief at 10-13. Respondents’ argument still does not address the lack of any provision in Cal. Gov’t Code section 77201.1(b)(4) obligating or authorizing counties to pay “local judicial benefits.” Nor does Respondents’ argument square with the words chosen by the Legislature. The Legislature chose to use words signifying that an adjustment is

dependent or conditioned on an appeal being taken, not inclusive or reflective of the results of the appeal. The Legislature also chose to add this specific language regarding an appeal after omitting it from both the original version of Cal. Gov't Code section 77201.1(b)(4) and the amended version of the provision that was operative from July 1, 1998 until July 1, 1999. *Compare* 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 46 *with* 1998 Cal. ALS 406, 1997 Cal. AB 1590, Stats. 1997 ch. 406, §§ 4 and 5. Its choice of these precise words clearly was intentional, and their ordinary meaning cannot be disregarded.

Moreover, Respondents' interpretation of Cal. Gov't Code section 77201.1(b)(4) to incorporate subdivisions (c) and (d) of Cal. Gov't Code section 77201 and therefore obligate or authorize counties to continue to pay "local judicial benefits" beyond the first year of the new state funding scheme defeats the overall purpose and intent of the Act, which was to equalize and consolidate responsibility for funding trial court operations at the state level, make the State solely responsible for funding trial court operations, and eliminate the counties' responsibility for funding trial court operations. 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 2; Cal. Gov't Code §§ 77100, 77101, 77200, 77201(a). While Appellant respectfully submits that the language of the statutory provisions at issue is not ambiguous and, therefore, there is no need to inquire

about the Legislature's intent (*Regency Outdoor Advertising, Inc. v. City of Los Angeles*, 39 Cal. 4th 507, 524 (2006)), the Legislature's intent is clear as well, and Respondents' proposed construction is contrary to that clear legislative intent.²

II. There Is No Conflict Between the Plain, Common Sense Reading of Section 77201.1 and the Uncodified Provision Cited By Respondents Because Benefits and Compensation Paid to Trial Judges Have Actually Increased by Up to 19 Percent.

Respondents argue repeatedly throughout their brief that Appellant's interpretation of the Act runs counter to an uncodified provision, set forth at 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 3(g)(1), which states, "No personnel employed in the court system as of July 1, 1997, shall have their salary or benefits reduced as a result of this act." Respondents' Brief at 5, 7.

Respondents are just plain wrong, as no such conflict exists. Again, the stated purpose of the Act was to equalize and consolidate funding of trial court operations at the state level and to have the State assume sole responsibility for trial court operations, including the salaries and benefits paid to trial court judges across the State. Cal. Gov't Code §§ 77003(a)(1), 77200. Giving section 77201.1

² By contrast, it certainly would have been reasonable for the Legislature to have intended to allow a one year period for state trial judges to transition from county-provided benefits to state-provided benefits. Such an interpretation is not only consistent with the express language of Cal. Gov't Code section 77201.1(b)(4), but also is consistent with the overall, express purpose of the Act.

its plain, common sense meaning -- the meaning advanced by Appellant -- would not result in the reduction of the salary or benefits paid to any trial judge. Only the source of the judges' salaries and benefits, not the amount of those salaries or benefits, was changed by the Act; the trial judges were to have received the same salary and benefits, albeit paid by the State rather than the counties. The County's payment of duplicate benefits and/or supplemental compensation, by contrast, has had the effect, not at all intended by the Legislature, of substantially increasing the remuneration paid to trial judges in the County.

Indeed, Respondents do not contest, nor even address, the dispositive facts presented by Appellant on this issue. As demonstrated by the record and cited in Appellant's Opening Brief, because of Los Angeles County's payment of "local judicial benefits," the benefits and compensation paid to trial judges in Los Angeles County have actually *increased by up to 19 percent* since the State took over responsibility for payment of salaries and benefits to trial judges statewide. *See* Appellant's Opening Brief at 9-11, 24-25, 33-34; *see also* CT at 562 (Response to Request for Admission ("RQA") No. 2) ("Defendants admit that the State of California has paid to judges of the Los Angeles County Superior Court their salary and most benefits; however, certain benefits that historically were paid by the County of Los Angeles continue to be paid by the County of Los Angeles . .

. .”), and 413-416 (2006 Annual MegaFlex Benefits Enrollment Guide at 1-4).³

And, the County continues to expend ever increasing amounts of taxpayer funds on these benefits, reaching more than \$21 million in fiscal year 2005-06. CT at 577, 582 (Response to Special Interrogatory No. 1 and Exhibit 1). The total cost to taxpayers for providing these duplicate benefits and/or supplemental compensation in fiscal years 2001-02, 2002-03, 2003-04, 2004-05, and 2005-06 was in excess of \$107 million. *Id.* In truth, then, benefits and salaries to trial court judges have substantially increased as a result of the Act, an outcome that is in clear contravention of the express purposes of the Act.

³ The MegaFlex benefits guide in particular demonstrates that the benefits at issue are not any unique “local judicial benefits,” as Respondents imply. Rather, the County continues to provide trial court judges in Los Angeles County with the very same cafeteria-style benefits package -- which includes medical and dental insurance, group life insurance, long and short-term disability insurance, and elective annual leave, among other benefits -- that they received prior to the Act and that is available to every Los Angeles County employee. Under the MegaFlex program, participants, including the trial judges, are given a monthly benefits allowance of up to nineteen percent (19%) of their monthly salary to use in purchasing the benefits of their choice on a “pre-tax” basis. CT at 413-416. If they elect not to use any or all of the county-provided allowance to purchase benefits, they receive the difference as additional, taxable pay. CT at 413. Thus, far from seeing their benefits reduced, the trial judges in Los Angeles County not only receive full compensation and benefits from the State, but they also receive an additional benefits allowance from the County of up to nineteen percent (19%) of their state-provided salary.

III. The Unauthorized Payment of “Local Judicial Benefits” Violates the California Constitution’s Prohibition on Gifts of Public Money.

Appellant also demonstrated in his opening brief that the continued unauthorized payment of “local judicial benefits” violates the California Constitution’s prohibition on gifts of public money.⁴ Appellant’s Opening Brief at 17-19.⁵ Respondents make the same mistake as the trial court and assert that, even if the payment of “local judicial benefits” is not authorized, the public purpose exception to the gift of public funds doctrine transforms the payment into a lawful appropriation of funds. Appellant easily defeated this argument in his opening brief by citing California Supreme Court cases clearly holding that any unauthorized payment of public money can “be regarded in no other light than as a simple gift,” which would violate the constitutional prohibition on gifts of public money despite any alleged public benefit. *Conlin v. Board of Supervisors*, 99 Cal. 17 (Cal. 1893) (Despite public benefit of city street work by contractor, payment

⁴ Contrary to Respondents’ assertion, this is not and never has been Appellant’s “primary challenge” to the County’s benefits payments. Respondents’ Brief at 3. Appellant’s primary challenge has always been that the County’s payment of violates the Act, although Appellant’s “gift” argument has always been a strong secondary argument.

⁵ Respondents’ comment that Appellant did not discuss the legal framework regarding the constitutionality of unlawful gifts is entirely untrue. See Appellant’s Opening Brief at 17-19.

to contractor was an unconstitutional gift because no enforceable claim existed for payment); *see also McBean v. San Bernardino*, 96 Cal. 183 (Cal. 1892) (Despite public benefit of sewer work by contractor, payment to contractor was an unconstitutional gift because no enforceable claim existed for payment.).

Respondents totally ignore Appellant's argument and do not attempt to distinguish these cases, nor even make mention of them in their brief. In this case, like in *Conlin* and *McBean*, there exists no authority for the payment of public money by the County for "local judicial benefits," and any such payment is an unconstitutional gift of public money despite any alleged public benefit.

Moreover, Respondents' entire assertion that the County's continued provision of benefits to trial court judges arose from "a legitimate need to attract and retain well-qualified judges" has no evidentiary support in the record. Respondents cite no agenda items, minutes, resolutions, transcripts, or other similar evidence in the record demonstrating that the County ever specifically authorized, approved, considered, or deliberated on the payment of duplicate county benefits to trial judges in Los Angeles County in light of the passage of the act, much less any evidence showing that they did so in order to attract and retain well-qualified judges. CT at 528-29. Nor to Appellant's knowledge is there any such evidence. Respondents' assertion is nothing more than a *post hoc* attempt by

their lawyers to try to justify the County's continued payment of benefits to trial court judges despite the clear provisions of the Act.

IV. Section 69894.3 Does Not Authorize the County's Payment of "Local Judicial Benefits."

Respondents argue that section 69894.3 lends additional authority for the County's continued payment of "local judicial benefits." Respondents' Brief at 13-16. Respondents are wrong again. As Appellant demonstrated in his opening brief, application of this general statute, which dates back to 1959, to the provisions of the Act, which became law in 1997, would lead to an interpretation that runs counter to both the express purpose of the Act and its legislative history. *See* Stats. 1997 ch. 850, § 1; Cal. Gov't Code § 77200 (stated purpose of Act is to require State to "assume sole responsibility for the funding of trial court operations"); Cal. Gov't Code § 77201(a) ("[c]ommencing on July 1, 1997, no county shall be responsible for funding court operations."). The Act's express purpose to require the State to "assume sole responsibility for the funding of trial court operations" can in no way be reconciled with the 1959 statute's broader pronouncement about "employees'" entitlement to "other benefits." As a result, principles of statutory construction dictate that the earlier, general statute be superceded by the later, more specific provisions of the Act. *See Collection*

Bureau of San Jose v. Rumsey, 24 Cal. 4th 301, 310 (2000) (“later enactments supersede earlier ones,” and “more specific provisions take precedence over more general ones.”) (internal citations omitted); *see also Santa Clara Valley Transp. Auth. v. Public Utilities Comm’n*, 124 Cal. App. 4th 346, 360 (2004); *Guardian North Bay, Inc. v. Superior Court*, 94 Cal. App. 4th 963, 972 (2001).

Appellant also demonstrated in his opening brief how the trial court erred in concluding that section 69894.3 is not in conflict with or superceded by the Act because the Law Revision Commission -- not, as the trial court found, the Legislature (*see* CT 1255-56) -- considered whether the provision should be repealed in light of the passage of the Act and decided to table a tentative recommendation to that effect for the time being. Appellant’s Opening Brief at 27-30. Specifically, Appellant demonstrated in detail how the documents relied upon by the trial court do not support its conclusion, but instead only prove that a tentative recommendation to repeal section 69894.3 was considered by the Commission, but, because of internal politics and the intervention of the “stakeholders,” namely Los Angeles County Superior Court Presiding Judge James A. Bascue, the tentative recommendation was never made final. Not surprisingly, Respondents entirely failed to address this evidence or refute Appellant’s arguments in their brief. Indeed, they cannot, because it is clear that

the Act made section 69894.3 obsolete. Appellant did not fail to “confront” this evidence below or in its opening brief, as Respondents incorrectly assert. *See* Reporters’ Transcript (“RT”) on Appeal at B-31; Appellant’s Opening Brief at 27-30. Appellant demonstrated that the Commission tentatively recommended the statute for repeal, but did not take any further action after Presiding Judge Bascue intervened. *Id.* Regardless, this Court should now declare that Cal. Gov’t Code section 69894.3 is obsolete and does not authorize the payment of additional benefits to trial judges by Los Angeles County.

Finally, it is not at all clear that trial judges should even be considered “employees” of the Superior Court, which section 69894.3 purports to govern.⁶

See Respondents’ Brief at 14.

V. The County’s Payment of “Local Judicial Benefits” Constitutes an Unlawful “Waste” of Assets.

Illegal, unauthorized, and void and inoperative acts are not protected by the courts as legitimate governmental acts, and, therefore, are considered waste by definition. See *Lucas v. Santa Maria Public Airport Dist.*, 39 Cal. App. 4th 1017, 1026-27 (1995) (illegal); *Terry v. Bender*, 143 Cal. App. 2d 198, 211-12 (1956)

⁶ Appellant has not “abandoned” this argument, as Respondents claim. Nor is the argument “curious” or “disingenuous” in the least. What is curious, if not disingenuous, is Respondents’ failure to even try to address the portions of the Act cited by Appellate regarding trial judges’ employment status in light of the passage of the Act. The relevant portion of the Act states that the Legislature intends to do the following: “[b]y January 1, 2001, to adopt a plan to transition all existing court employees into an appropriate employment status, recognizing the state assumption of trial court costs” and “[t]o consider providing courts in each county with the option for employees to transition to the status of employees of the state, the local court, or, with the concurrence of the county, continuation of the status as county employees, and a mechanism for involvement of the local judiciary in the negotiations regarding compensation of court employees.” CT 460 and 479 (citing 1979 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850 §§ 3(g)(2) and (3)). Appellant presently is not aware of how or whether the employment status of trial judges was ever resolved. Nonetheless, given these provisions, and the fact that trial judges receive full compensation and benefits from the State, plus additional benefits from the County, Appellant submits it is not at all clear that trial judges can be considered “employees of the superior court” for purposes of section 69894.3.

(unauthorized); *Harnett v. County of Sacramento*, 195 Cal. 676, 682-83 (1925) (void and inoperative). In his opening brief, Appellant argued that the payment of “local judicial benefits” by the County constitutes a waste because the payment of such benefits is contrary to the letter and the spirit of the Act.⁷ Appellant’s Brief at 31-32.

Appellant next argued that, even if the payment of “local judicial benefits” by the County was authorized, it still would constitute a wasteful, improvident, and completely unnecessary use of County taxpayer dollars because the State has assumed all responsibility for funding judicial benefits through the Act and, in fact, already pays salary and benefits to the trial judges of Los Angeles County. Appellant’s Opening Brief at 32-34. Again, Respondents wholly failed to address this argument in their brief. Nowhere in their brief do Respondents refute the fact that the State is already paying salary and benefits to the trial judges in Los Angeles County. It is the County’s duplication of these benefits that constitutes an unlawful waste. *See City of Ceres v. City of Modesto*, 274 Cal. App. 2d 545, 555 (1969) (unnecessary duplication of municipal services constitutes an unlawful

⁷ Stated in another way, Appellant submits that expenditures that are illegal must, by definition, also be considered wasteful.

waste) (endorsed by *Sundance v. Municipal Court*, 42 Cal. 3d 1101, 1138-1139 (1986)).

Respondents also argue that they do not have any burden at all to provide a basis for their spending. Respondents' Brief at 21-22. In essence, Respondents argue that they can spend taxpayer resources at will and the courts must stay out of their business. This argument is absurd. If this were the case, then courts could never determine whether spending was necessary or wasteful, and the law's provision proscribing illegal and wasteful expenditures would only be ineffectual surplusage.

In this case, Respondents presented no evidence demonstrating that the County ever specifically considered or deliberated on whether there was any public benefit to providing trial judges additional benefits and/or compensation above and beyond what they are already paid by the State. In addition, Respondents never produced a single piece of evidence demonstrating that the County's Board of Supervisors specifically authorized, approved, considered, or deliberated on the payment of duplicate benefits and/or supplemental compensation to trial judges in light of the passage of the Act.⁸ CT at 528-29.

⁸ Again, in making this argument, Appellant draws a sharp distinction between line items in budget documents, which Respondents did produce, and agenda items, minutes, resolutions, transcripts or similar evidence demonstrating

And again, the record is devoid of any evidence that would support Respondents' *post hoc* assertion that the County affirmatively decided to pay duplicate benefits and/or supplemental compensation in order to "attract and retain well-qualified judges to serve the public in one of the most expensive regions in the state." *Id.*

Respondents again cite to a 1988 report commissioned by the County Chief Administrative Officer as evidence that the County decided to pay duplicate benefits and/or supplemental compensation in order to "attract and retain well-qualified judges to serve the public in one of the most expensive regions in the state." Respondents' Brief at 22-24. In doing this, Respondents recount the background of the commissioning of the report. Respondents efforts, however, are to no avail, because, again, the report was commissioned and completed years before the passage of the Act in 1997. CT at 1174. Therefore, *it is impossible* that any findings in the report could possibly include consideration of the Act, the stated purpose of which was to equalize and consolidate the funding of all trial court operations at the state level.

that the Board of Supervisors ever considered, much less debated, the County's continued payment of benefits to trial court judges in light of the passage of the Act, which Respondents did not produce. *See, e.g.*, Appellant's Opening Brief at 12 n.3. Respondents' attempt to characterize as "incorrect" Appellant's assertion that no such records were produced in discovery is itself incorrect.

Similarly, Respondents attempt to rely on a February 18, 1997 resolution of the Board of Supervisors by which the County apparently elected to “opt in” to the State Court Funding Program under the Brown-Presley Trial Court Funding Act of 1988. Respondents’ Brief at 27. This resolution also predated enactment of the Act, and, therefore, cannot constitute evidence of board deliberations on the payment of “local judicial benefit” after passage of the Act.⁹ Neither report, nor the budget documents produced by Respondents, show that the Board of Supervisors specifically considered or deliberated on the continued payment of benefits to trial judges in light of the passage of the Act, or whether there was any additional benefit to taxpayers by paying judges additional benefits and/or compensation above and beyond what they were already being paid by the State.

VI. The Trial Court Erred by Not Granting Appellant’s Motion for a Continuance Under California Code of Civil Procedure Section 437c(h).

Lastly, Respondents argue that Appellant failed to satisfy the requirements of Cal. Code Civ. P. § 437c(h) in seeking a continuance before being required to respond to Respondents’ summary judgment motion. Respondents assert that Appellant “made a one line request” to this effect in its summary judgment

⁹ The Act was approved by the Governor on October 10, 1997 and filed with the Secretary of State on that same date. CT at 477. It did not become effective until January 1, 1998. *Id.*

opposition. Respondents' Brief at 25. Respondents are wrong. Appellant's discussion of Respondents' withholding of relevant evidence sought by Appellant in discovery began on page 17 of his summary judgment opposition and continued until page 19, where it concluded with a request for a continuance. *See* CT 464-466. Respondents' assertion appears to rest solely on this last, concluding sentence and disingenuously tries to ignore everything that preceded it.

Respondents also attempt to ignore the fact that Appellant also set forth his efforts to obtain relevant evidence from Respondents in an accompanying declaration. *See* CT 526-29. Appellant's summary judgment opposition, accompanying affidavit, and arguments at the November 20, 2006 hearing satisfied all of the requirements of Cal. Code Civ. P. § 437c(h) for requesting a continuance of a summary judgment motion.

At the summary judgment hearing, Appellant's counsel also provided the trial court with additional reasons justifying a continuance. In particular, Appellant argued that he had received no privilege log and no itemization of documents that were withheld by Respondents allegedly under the legislative, deliberative, or attorney-client privileges. RT at B-17. Appellant indicated that a motion to compel was being contemplated to force Respondents to produce such log. *Id.* at B-19.

In addition, Appellant had sought to take only one deposition in this entire litigation -- that of Los Angeles County Supervisor Don Knabe. On October 20, 2006, only one month before the November 20, 2006 hearing on Respondents' summary judgment motion, the trial court granted, albeit without prejudice, a motion by Respondents for a protective order preventing the deposition of Supervisor Knabe from going forward. RT at A-24-27. The whole tone of the trial court's ruling at the October 20, 2006 hearing was that, if additional information Respondents were to provide in interrogatory form in lieu of Supervisor Knabe's deposition was not provided, the matter would be revisited. *Id.* Respondents' subsequent interrogatory answers, provided just seven days before Appellant's summary judgment opposition was due and only three weeks before the summary judgment hearing,¹⁰ did not provide the information Appellant sought, and Appellant thus should have been entitled to a continuance in order to depose Supervisor Knabe and/or obtain the evidence at issue from alternative sources.

¹⁰ The interrogatories in question were served on October 23, 2006, and Respondents provided answers on October 30, 2006. *See* CT at 528 (para. 9) and 599-625. Appellant filed and served his summary judgment opposition on November 6, 2006. CT at 443 and 467.

Respondents rely heavily on portions of their answers to these very same interrogatories, along with documents submitted therewith -- only seven days before Plaintiff was required to respond to the summary judgment motion -- as evidence that Respondents did comply with the discovery sought by Appellant. As discussed in full in Appellant's opening brief, however, these answers and documents do not demonstrate that the Board ever considered or deliberated, let alone voted upon, whether to pay duplicate benefits and/or supplemental compensation in light of the Act. Although the County's budget records contain line items for the payment of "local judicial benefits," this fact alone does not answer the question of whether the County purposefully decided to continue to pay "local judicial benefits" in light of the passage of the Act, as opposed to simply failing to "turn off the tap" after the Act came into effect. Appellant's Opening Brief at 36-37. Similarly, these answers and documents do not demonstrate that the Board ever considered or deliberated upon whether there is any "additional benefit" to paying these judges benefits and/or compensation above and beyond what they already are receiving from the State. *Id.* Because Appellant should have a full opportunity to obtain the evidence it legitimately sought from Respondents on these points, a continuance should have been granted under Cal. Code Civ. P. § 437c(h). Consequently, this Court should reverse the

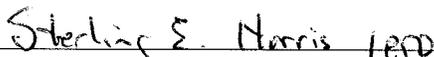
trial court's judgment and order it to grant Appellant a continuance so that he may complete the clearly relevant discovery that he requires to oppose Respondents' summary judgment motion.

CONCLUSION

For all the reasons set forth herein, this Court should reverse the Order granting summary judgment and remand this case for further proceedings.

Dated: October 4, 2007

Respectfully submitted,


Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601
Tel: (626) 287-4540
Fax: (626) 237-2003

Paul J. Orfanedes Esq.
JUDICIAL WATCH, INC.
501 School Street, S.W., suite 500
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

Counsel for Appellant

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 8.520(c)

I certify that pursuant to Rule 8.520(c), the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains 5,014 words.

Dated: October 4, 2007

Sterling E. Norris
Sterling E. Norris, Esq. 1950

PROOF OF SERVICE

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 501 School Street, S.W., Suite 500, Washington, DC 20024.

On October 4, 2007, I served the foregoing document described as:

APPELLANT'S REPLY BRIEF

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 4, 2007 at Washington, D.C.



David F. Rothstein

SERVICE LIST

Elwood Lui, Esq. (1 copy)

Jason C. Murray, Esq.

Erica L. Reilley, Esq.

JONES DAY

555 South Flower Street, Fiftieth Floor

Los Angeles, CA 90071-2300

Clerk of California Supreme Court (4 copies)

350 McAllister Street

San Francisco, CA 94102-4797

The Hon. James A. Richman (1 copy)

c/o Clerk of the Court

Superior Court of California, County of Los Angeles

111 N. Hill Street

Los Angeles, CA 90012