

Case No. S1689408

**IN THE SUPREME COURT  
OF THE  
STATE OF CALIFORNIA**

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HAROLD P. STURGEON,

*Plaintiff and Appellant,*

v.

COUNTY OF LOS ANGELES,

*Defendant and Respondent.*

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After a Decision by the Court of Appeal  
Fourth Appellate District, Division One  
Case No. D050832  
Los Angeles Superior Court Case No. BC351286  
Hon. James A. Richman, Trial Judge Sitting by Designation

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**ANSWER TO PETITION FOR REVIEW**

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## **SUMMARY OF GROUNDS FOR DECLINING REVIEW**

Contrary to the hyperbolic claims made by the County of Los Angeles (“the County”) in its Petition for Review, the ruling of the Court of Appeal, which declared unconstitutional a policy by which in 2007 the County paid \$46,436 in “benefits” to each state trial court judge within its jurisdiction, will not create havoc in California’s legal system. Not only will California’s trial court judges remain the highest paid state trial court judges in the nation, but the Court of Appeal’s ruling, which is completely consistent with well-established principles of constitutional construction and at least two Attorney General opinions, was based on the eye-popping amount and largely unrestricted nature of the “benefits” at issue, which represent an increase of approximately 27% on the salary prescribed for state trial court judges by the Legislature and cost taxpayers in the County of Los Angeles \$21 million in 2007. The ruling has no applicability to the compensation received by state trial court judges outside the County of Los Angeles. All state trial court judges in California, including those in the County of Los Angeles, will continue to receive their full salary and a full complement of benefits from the

State. Far from deviating from long-standing constitutional doctrines, the ruling restores the Legislature's proper constitutional role in setting the compensation received by state trial court judges, a role that had been usurped by the County. The petition for review should be denied.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Prior to 1997, there was no single, uniform state-wide system for administering or funding the compensation paid to state trial court judges. While the Legislature fixed the judges' salaries and apportioned the cost of those salaries between the counties and the State, at least some salaries were paid through county payroll systems by agreements between the county and the State Controller. Gov. Code §§ 68202, 68206, and 68206.6. With respect to judges whose salaries were paid from a county salary fund, the Legislature directed those counties to grant state trial court judges the same or similar benefits granted to the counties' employees. Gov. Code § 53200.3. Other counties, such as Yolo, San Deigo, and Riverside, were expressly authorized to provide benefits to the state trial court judges in their jurisdiction. Gov. Code §§ 69893.7 (authorizing Yolo County

to extend to state trial court judges the “management benefits package” it extends “to other officers and employees of the county”), 69907 (directing that the County of San Diego provide state trial court judges with the same benefits as provided by the County “for the classification of chief administrative officer”), and 69909 (directing that state trial court judges in Riverside County “shall receive the county flexible benefits plan”). Another statute authorized counties that paid state trial court judges’ salaries, in whole or in part, to allow the judges to participate in the counties’ deferred compensation plans. Gov. Code § 53214.5.

In the 1990s, the Legislature began examining the operation and financing of the state trial courts with the ultimate goal of “enabl[ing] the transition to full state funding of the trial courts.” Stats. 1994, ch. 308, § 1(e)(3). This process culminated with the passage of the Lockyer-Isenberg Trial Court Funding Act of 1997, Gov. Code § 77200 *et seq.* (“Lockyer-Isenberg”), the intent of which was to equalize and consolidate the funding of all trial court operations at the state level. *See* Stats. 1997, ch. 850, § 2; Gov. Code §§ 77100, 77101, 77200, and 77201(a). With the passage of

Lockyer-Isenberg, the State “assume[d] sole responsibility for the funding of trial court operations,” including “salaries, benefits, and public agency retirement contributions for trial court judges.” Gov. Code §§ 77200 and 77003(a)(1).

It is undisputed that, since the passage of Lockyer-Isenberg, trial court judges across California have received both a salary and a full complement of employment benefits from the State. Nonetheless, the County of Los Angeles (“the County”) has continued to provide state trial court judges within its jurisdiction with the same employment benefits received by the County’s employees as well as a “Professional Development Allowance.” Either intentionally or unintentionally, the tap of county-provided benefits was never turned off. Thus, as a result of Lockyer-Isenberg, a statute intended to equalize and consolidate the funding of all trial court operations at the state level, state trial court judges in Los Angeles County actually saw their total compensation increase substantially, as not only did they begin receiving employment and retirement benefits from the State, but they also continued to receive employment and retirement benefits and a professional development allowance from the County.

On April 24, 2006, Plaintiff Harold P. Sturgeon (“Plaintiff”), who Petitioner admits pays taxes to the County, initiated this taxpayer action challenging the County’s continued payment benefits to the state trial court judges. Clerk’s Transcript (“CT”) at 000005-12 (Complaint for Declaratory and Injunctive Relief) and 000145 (Defendants’ Responses to Plaintiff’s First Set of Requests for Admission) at Response to Request for Admission No. 1. The County and the other named defendants answered Plaintiff’s Complaint on August 11, 2006.<sup>1</sup> CT at 000021-24 (Defendants’ Answer to Plaintiff’s Unverified Complaint for Declaratory and Injunctive Relief). Throughout this litigation, the County has tried to justify its continued provision of these benefits as being necessary to attract and retain well-qualified judges, although it has failed to present any evidence to support the assertion that, in fact, this has been the County’s motivation.<sup>2</sup>

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<sup>1</sup> Plaintiff also named the members of the County’s Board of Supervisors, the County’s Chief Administrative Officer, Auditor-Controller, and the Division Chief of the Countywide Payroll Division as defendants in their official capacities.

<sup>2</sup> In its main brief on appeal, the County noted that, in 2000, the State created its own incentive program to attract and retain trial court

After Plaintiff was allowed limited written discovery only, the County moved for summary judgment in September 2006, asserting that there were no genuine disputes of material fact and that it was entitled to judgment as a matter of law. CT at 000025-000102 (Defendants' Notice of Motion and Motion for Summary Judgment or, In the Alternative, For Summary Adjudication). The trial court granted the County's motion on January 9, 2007. CT at 001237-1264 (Order Granting Motion for Summary Judgment). A final judgment was entered on February 7, 2007. CT at 001265-1267 (Judgment).

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judges:

In addition, in 2000, the California Legislature expressly recognized the public purpose behind providing judges with additional benefits when it enacted the Extended Service Incentive Program, which was designed to encourage judges with significant experience to remain on the bench rather than move to the far more lucrative fields of private practice or alternative dispute resolution. (See Gov. Code, § 75075 ("The program is intended to address the growing problem of judges retiring when they are first eligible to do so. The people of California are continuing to lose vital judicial resources and experience when long-serving judges leave public service."))

Respondent's Brief at 20, n.11.

Plaintiff filed a timely appeal that same day. CT at 001274-1276

(Notice of Appeal).

After a full briefing, the Court of Appeal requested the parties submit supplemental letter briefs related to the specific question of whether the Legislature had “prescribed” the County’s continued payment of benefits to the state trial court judges within its jurisdiction. These briefs were filed on February 25, 2008. After a lengthy oral argument on July 16, 2008, the Court of Appeal requested the parties submit another round of supplemental letter briefs addressing the specific question of whether any other statutes, not previously cited by the parties, “permit, authorize or prescribe payment of all or part of the judicial benefits which are the subject of this appeal.” The County submitted a lengthy letter brief on July 30, 2008, citing a host of newly identified statutes that, according to the County, authorized or supported its continued payment of benefits to the state trial court judges. Plaintiff’s letter brief asserted that no such statutes existed, but requested the opportunity to submit a response if the County cited any previously unidentified statutes. The Court of Appeal granted Plaintiff’s request, and Plaintiff submitted his

response in a supplemental letter brief filed on August 18, 2008. The Court of Appeal issued its ruling approximately two months later, on October 20, 2008. *Sturgeon v. County of Los Angeles* (2008) 167 Cal. App. 4th 630.

Not a single state trial court judge, public official, or organization sought to appear as an *amicus curiae* in either the trial court or during the lengthy appellate court proceedings. It was only in response to the Court of Appeal's ruling that there was any outside interest in this litigation. Despite ample opportunity to do so, all of the entities that now seek to be heard in this matter either neglected to participate before the Court of Appeal issued its ruling or chose not to do so. They should not be heard to complain now that did not have input into the lower court proceedings.

## ARGUMENT

### I. Introduction.

The Court of Appeal's decision in this case does not create any lack of uniformity in California law that necessitates this Court's review. Cal. Rules of Court, Rule 8.500(b)(1). The petition for

review certainly does not demonstrate that any such lack of uniformity exists.

Nor does the Court of Appeal's ruling concern any "important question[s] of law" of California law that need to be settled by this Court. *Id.* This is not to say that the matters raised by Plaintiff's lawsuit are not significant. They are. However, the fact that a matter is important does not necessarily mean this Court should involve itself in it. Courts of Appeal across California resolve important matters every day. It is only unsettled, important questions of law that warrant review by this Court, and this appeal does not raise any such questions.

Rather, the Court of Appeal's ruling presents a careful and well-reasoned application of long-standing legal principles to an undisputed set of facts.<sup>3</sup> That is all it presents. The County's overblown, if not disrespectful rhetoric aside, the Court of Appeal did not void any duly enacted state statutes, much less void four of them. *See* Petition for Review at 1. It did not "cut a swath through the law"

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<sup>3</sup> The trial court granted *Petitioner's* motion for summary judgment, in which *Petitioner* asserted there were no genuine disputes of material fact.

or “imperil[] the livelihood of judges,” who will remain the highest paid state trial court judges in the nation and will continue to receive a full complement of benefits from the State. *Id.* at 1-2; National Center for State Courts, *Survey of Judicial Salaries*, Vol. 33, No. 1 (2008) (“Salary Survey”), at 2 (available at [http://www.ncsconline.org/D\\_KIS/Salary\\_Survey/](http://www.ncsconline.org/D_KIS/Salary_Survey/)).

Applying ordinary principles of constitutional interpretation to the undisputed facts before it, the Court of Appeal found that the County’s policy of supplementing trial judges’ state-provided salary and benefits with \$46,436 in additional “benefits” violated the express provision in the California Constitution requiring the Legislature to “prescribe” judicial compensation.<sup>4</sup> Cal. Const., art. VI, § 19. The term “prescribe” has a well-established meaning in California jurisprudence, and the Court of Appeal simply determined that the Legislature had not “prescribed” these supplemental “benefits” within the meaning of the term. Consequently, the

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<sup>4</sup> The “benefits” provided by the County appear to make state trial court judges in the County of Los Angeles the highest-paid judicial officers in the State. Salary Survey at 2. Their total compensation appears to exceed even the compensation received by members of this Court. *Id.*

County's provision of supplemental "benefits" to the state trial court judges usurped the Legislature's exclusive power to set judicial compensation.

In reaching this conclusion, the Court of Appeal examined a number of statutes identified by the County to determine whether these statutes "prescribed" the supplemental "benefits" at issue. While the Court of Appeal found the statutes identified by the County did not "prescribe" these benefits within the meaning of that term, it did not void even a single one of these statutes or otherwise declare them unconstitutional.

The Court of Appeal also made clear that its ruling applies to the supplemental benefits provided by the County only. It said so expressly:

We emphasize the record before us is limited to the benefits provided by the county. We express no opinion with respect to the judicial benefits provided under other authorities in other counties.

*Sturgeon*, 167 Cal. App. 4th at 657 n.12; *see also id.* at 652. Thus, the ruling has no applicability beyond the facts of this case.

There is no havoc to be stanchd, whatever that might mean.

Petition for Review at 2. California state trial court judges will remain the highest paid state trial court judges in the nation. The only result of the Court of Appeal's ruling is that state trial court judges in the County of Los Angeles, all of whom obviously are state officials, will have to be compensated in accordance with the policy determinations of the Legislature rather than those of the County. The Court of Appeal's ruling restores the Legislature's proper constitutional role in setting the compensation of state trial court judges, a role that had been usurped by the County. The petition for review should be denied.

**II. The Court of Appeal's Ruling Is Completely Consistent with Well-Established Principles of Constitutional Interpretation.**

The task before the Court of Appeal was to interpret and apply a straightforward provision in the California Constitution to a simple set of undisputed facts. The constitutional provision at issue states, in pertinent part, "The Legislature shall prescribe compensation for judges of courts of record." Cal. Const., art. VI, § 19.

While the term “compensation” is broad, there is nothing ambiguous about it, and the Court of Appeal’s decision meticulously detailed not only how the plain, natural, and ordinary meaning of the word “compensation” encompasses both salary and benefits, but also how various courts have interpreted the word in this same manner over the years. *Sturgeon*, 167 Cal. App. 4th at 645-652.

Under well-settled rules of constitutional interpretation, the Court of Appeal could have ended its analysis simply by giving this unambiguous word its plain, natural, and ordinary meaning. *See, e.g., Thompson v. Dep’t of Corrections* (2001) 25 Cal. 4th 117, 112. There was no need for the Court of Appeal to even consider any extrinsic evidence in interpreting the provision. *IIT World Communications, Inc. v. City and County of San Francisco* (1995) 37 Cal. 3d 859, 868 (“We resort to such extrinsic aids, of course, only when language is ambiguous.”). Nonetheless, out of a self-imposed “abundance of caution,” the Court of Appeal elected to consider whether anything in the history or purpose underlying article VI,

section 19 would warrant deviating from the plain, natural, and ordinary meaning of the provision.<sup>5</sup>

In carrying out this additional, “belt and suspenders” review, the Court of Appeal considered both Gov. Code § 1241, which the County had raised for the first time in its February 25, 2008 supplemental letter brief, and the historical origins of the term “compensation” as it had been used with respect to the judiciary. After conducting this additional review, the Court of Appeal’s conclusion was the same: the term “compensation” as used in article VI, section 19 was intended to have a broad, not a narrow or constrained meaning, and therefore the term encompasses both salary and benefits. *Sturgeon*, 167 Cal. App. 4th at 644-652.

The County, however, claims that the Court of Appeal deviated from long-standing rules of constitutional interpretation by not

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<sup>5</sup> Contrary to the County’s assertion, the fact that the Court of Appeal made this extra effort should not be equated with any “admitted ambiguity.” Petition for Review at 20. The Court of Appeal found no ambiguity in the term “compensation” as used in article VI, section 19, and its further analysis only confirmed this obvious conclusion. In addition, this Court has made clear that courts may always test their construction of disputed language against extrinsic aids bearing on the drafters’ intent. *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal. 4th 601, 613 n.7.

affording due deference to Gov. Code § 1241. There are numerous, substantial errors in the County’s argument.

First, and as the Court of Appeal found, California law is clear that, when a constitutional provision is ambiguous, a court may look to a *contemporaneous* legislative interpretation of the provision as a construction aid. This Court has repeatedly reiterated the requirement that such construction aids be contemporaneous. *See, e.g., City and County of San Francisco v. County of San Mateo* (1995) 10 Cal. 4th 544, 571 (noting that courts may “consult contemporaneous constructions by administrative agencies or the Legislature to clarify the scope” where a constitutional provision is ambiguous); *Heckendorn v. City of San Marino* (1986) 42 Cal. 3d 481, 488 (“Apparent ambiguities in a constitutional provision ‘frequently may be resolved by the contemporaneous construction of the Legislature . . . .’”); *ITT World Communication, Inc.* 37 Cal. 3d at 868 (examining ballot materials and “the contemporaneous construction of [a] provision by the Legislature” to “test” the construction of constitutional provision enacted as part of Proposition 13); *Los Angeles County Transp. Comm. v. Richmond* (1982) 31 Cal. 3d 197,

203 (noting that ambiguities in a constitutional provision may be resolved by referring to “the contemporaneous construction of the Legislature.”);<sup>6</sup> *Board of Supervisors v. Lonergan* (1980) 27 Cal. 3d 855, 866 (“[C]ontemporaneous constructions by the Legislature . . . may be relied on to resolve ambiguities.”); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 245 (declaring that “ambiguities” in constitutional provisions “frequently may be resolved by the contemporaneous construction of the Legislature or of the administrative agencies charged with implementing the new enactment”); *see also AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal. App. 4th 747, 759 (“If the amendment is ambiguous, a court may be able to defeat this analytical obstacle by referring to the contemporaneous construction of the Legislature . . .”).

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<sup>6</sup> In *Richmond*, the Court appeared to place a further limitation on the uses of such materials. Not only must they be the “contemporaneous construction of the Legislature,” but it appears they may be consulted in construing constitutional provisions adopted by initiative only. 31 Cal. 3d at 203. Under *Richmond*, the Court of Appeal need not have even considered Gov. Code § 1241.

Many of the County's own authorities are entirely in accord with this well-established principle. *Methodist Hospital v. Saylor* (1971) 5 Cal. 3d 685 concerned the interpretation of a 1968 constitutional amendment. The legislative interpretation of that amendment had been introduced "simultaneously" with the introduction of the proposed amendment and was "to take effect if and when the amendment was adopted." *Methodist Hospital*, 5 Cal. 3d at 695. After passage of the amendment, the legislative interpretation was "immediately adopted" by the Legislature. *Id.* This Court held that, "[i]n these circumstances, we cannot say the Legislature's construction of [the constitutional provision] was 'unreasonable or arbitrary.'" *Id.*

Similarly, at issue in *Pacific Indemnity Company v. Industrial Accident Commission* (1932) 215 Cal. 461 was a 1919 legislative interpretation of a constitutional amendment enacted that same year. *Mt. San Jacinto Community College Dist. v. Superior Court* (2007) 40 Cal. 4th 648 concerned a challenge to the constitutionality of two eminent domain statutes enacted by the Legislature in 1975 following

a 1974 amendment to the “just compensation” clause of the California Constitution passed by voters as part of Proposition 7.

Far from supporting the County’s position, *People v. Southern Pacific Co.* (1930) 209 Cal 578 confirms the correctness of the Court of Appeal’s interpretation of this long-standing rule of constitutional construction. In *Southern Pacific Co.*, this Court declared:

Although the legislature cannot authoritatively fix the meaning of the Constitution, and its interpretation is not controlling upon the Court, yet, where the meaning is doubtful, the *contemporaneous* and long continued construction thereof by the legislature is entitled to great deference and may be supposed to reflect the views of policy and of reasoning which prevailed among the framers of the Constitution.

*Southern Pacific Co.*, 209 Cal. at 595 (*quoting*, 5 Cal. Jur. 605)

(emphasis added). The 1987 statute was not contemporaneous with article VI, section 19, which was adopted in its present form on November 8, 1966.

Other cases cited by the County are inapposite. *People v. Giordano* (2007) 42 Cal. 4th 644 concerned the Victims’ Bill of Rights, which was an amendment to the California Constitution that was not self-executing and required the Legislature to adopt

implementing legislation. *Id.* at 652. The Legislature had “enacted, and frequently amended, a bewildering array of responsive statutes” in response to the amendment. *Id.* (quoting, *People v. Birkett* (1999) 21 Cal. 4th 226, 228). *California Housing Finance Agency v. Patitucci* (1978) 22 Cal. 3d 171 involved a legislative response to a court decision regarding a constitutional provision.

In addition, there is no indication that, in enacting Gov. Code § 1241, the Legislature even had article VI, section 19 or judicial benefits, compensation, or salary in mind. *Pacific Legal Found. v. Brown* (1981) 29 Cal. 3d 168, 180 (“[O]ur past cases establish that the presumption of constitutionality of legislative acts is particularly appropriate when the Legislature has enacted a statute *with the relevant constitutional prescriptions clearly in mind.*”) (emphasis added). The statute certainly does not reference article VI, section 19, judges, or judicial benefits, compensation, or salary.

In fact, the legislative history of Gov. Code § 1241, which the County submitted to the Court of Appeal as part of its February 25, 2008 supplemental letter brief, demonstrates that the Legislature enacted Gov. Code § 1241 to address legislative benefits, not judicial

benefits, and that it had article IV, section 4 in mind, not article VI, section 19. According to the legislative history, the statute was intended “to provide technical clean-up” to legislation signed by the Governor in 1986 that granted members of the Legislature the same health care, dental care, and similar benefits available to other state officers and employees. Exhibit B to February 25, 2008 Supplemental Letter Brief at Enrolled Bill Report for SB 1357 (As Amended September 10, 1987) (*citing* Stats. 1986, ch. 971). If the Legislature had any constitutional provision in mind, it obviously was considering the version of article IV, section 4 in effect at the time, which used the terms “compensation” and “salary” interchangeably:

*Compensation* of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual *compensation* of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the *salary* in effect when the statute is enacted. Any adjustment in the *compensation* may not apply until the commencement of the regular session commencing after the next general election following the enactment of the statute.

Cal. Const., art. IV, § 4 (amended 1990) (emphasis added). An Attorney General opinion issued in 1984 had concluded that, consistent with the ordinary and natural meaning of the terms “compensation” and “salary” and in keeping with several court decisions on the subject matter, “the payment of health insurance premiums was a form of compensation and salary paid to legislators,” and because article IV, section 4 required compensation be “prescribed” by statute, such benefits must be authorized by the Legislature in order to pass constitutional muster. 67 Ops. Cal. Atty. Gen. 467 (1984). The provision that became Gov. Code § 1241 was drafted into its present form on September 10, 1987 and passed by both Houses the following day, without the benefit of any committee hearings, apparently to address this concern. Far from being a contemporaneous interpretation of article VI, section 19, Gov. Code § 1241 is a hastily enacted provision intended to address an issue relating to an entirely different subject and arising from an entirely different constitutional provision. The Court of Appeal’s conclusion that the statute did not warrant deviating from the plain, ordinary, and

natural meaning of the unambiguous language of article VI, section 19 was entirely consistent with long-standing precedent.

Moreover, since the passage of Gov. Code § 1241 in 1987, the Legislature itself has used the term “compensation” to refer to both salary and benefits in the context of judicial compensation. In 1990, the Legislature enacted Gov. Code § 69909, which expressly directed that “[i]n the County of Riverside, in addition to any other compensation and benefits, each judge of the superior court shall receive the county flexible benefits plan.” Gov. Code § 69909.<sup>7</sup> In enacting this provision directing that a particular county benefit be extended to state trial court judges, the Legislature noted that it “intends to examine *this compensation issue* for all counties.” Stats. 1990, ch. 1232, § 9.5. Similarly, a 1996 amendment to Gov. Code § 69893.<sup>7</sup> references “compensation, including salary, retirement, vacation, and other benefits” provided to Yolo County superior court and municipal court officers and employees. Gov’t Code §

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<sup>7</sup> Gov. Code § 66909 originally was numbered Gov. Code § 66908. It was renumbered in 1991. Stats. 1991, ch. 1091, § 66.

69893.7(b).<sup>8</sup> Clearly, if the Legislature intended for the term “compensation” to mean salary only when referring to judicial compensation, then it would not have used the term “compensation” interchangeably with “benefits” in legislation enacted after 1987.

Finally, the County’s argument about the Court of Appeal’s interpretation of article VI, section 19 ignores the substantial, factual component of that ruling. The Court of Appeal found:

The MegaFlex benefits provided by the county equal 19 percent of a judge’s salary and judges may elect to receive that benefit in cash as taxable income. The judges are not limited in the manner in which they choose to use their respective [Professional Development Allowances] and that, if they are willing to suffer the adverse tax consequences, they can have access to their 401(k) accounts. Thus, the judges have a great deal of control over the benefits once they are paid . . . *In this factual context*, any common understanding of the term “compensation” would include these benefits because of the judge’s access to them once they are paid and because of the purpose they serve.

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<sup>8</sup> In signing this legislation, then-Governor Pete Wilson noted that the provision “may be unconstitutional, because the language could be interpreted as delegating the Legislature’s authority to prescribe the organization of the courts to Yolo County.” Stats. 1996, ch. 1153. He requested that legislation be introduced the following year “correcting the unconstitutional provision.” *Id.* Nonetheless, it demonstrates that, nine years after the passage of Gov. Code 1241, the Legislature was using the terms “compensation” and “benefits” synonymously.

*Sturgeon*, 167 Cal. App. 4th at 652 (emphasis added). The Court of Appeal continued:

In addition, we believe the benefits are compensation within the meaning of the Constitution because collectively the benefits substantially increase the amount Los Angeles judges receive for their services. The size of the benefits and the resulting potential for disparity with the remuneration paid to judges in other counties directly implicates the very reasons the Legislature was given plenary power over judicial compensation by way of adoption of the precursor to section 19, article VI.

*Id.* The County does not even attempt to address this substantial, factual basis for the Court of Appeal’s ruling, obviously because it undermines any argument that the ruling applies beyond the specific “benefits” at issue.<sup>9</sup>

In sum, the Court of Appeal’s ruling was completely consistent with well-established rules of constitutional interpretation and was limited to the unique facts of this case. The County apparently would have this Court ignore the unique factual circumstances of this case and resolve a non-existent ambiguity in article VI, section 19 by applying an after-the-fact legislative pronouncement that concerns a

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<sup>9</sup> This same, factual aspect of the ruling also limits the ruling’s applicability to any other county benefit programs that might exist.

different constitutional provision and was intended to address an unrelated issue. The County's results-driven approach, not the Court of Appeal's deliberate and thoughtful ruling, is what would destroy uniformity with this Court's long-standing precedent.

**III. The Court of Appeal's Ruling Properly Construed and Applied the Legislature's Duty to "Prescribe" Judicial Compensation.**

The County seriously misconstrues the Court of Appeal's ruling with respect to the Legislature's duty to "prescribe" the compensation of state court judges. Far from holding the Legislature's approach unconstitutional, as the County claims (Petition for Review at 22), the Court of Appeal's ruling upheld the Legislature's constitutional authority to fix the compensation of state trial court judges. Again, it is the County's argument, not the Court of Appeal's decision, that is at odds with long-standing precedent.

Article VI, section 19 uses the word "prescribe," as did the predecessor to this provision,<sup>10</sup> and California law is very clear about

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<sup>10</sup> "The compensation of the justices or judges of all courts of record shall be fixed and the payment thereof prescribed by the legislature." Cal. Const., art. VI, § 11 (adopted 1924, amended 1966).

the meaning and effect of that word choice. It “invest[s] the state legislature with the fullest measure of control, direction, ordination, and dictation over the matter of the amount and payment of judicial salaries in and for courts of record of this state.”<sup>11</sup> *Sevier v. Riley* (1926) 198 Cal. 170, 176. Thus, it is the Legislature, not any individual county, that has both the sole power and the duty to set policy regarding compensation for the State’s judges.

In *Sevier*, the State Controller refused to pay a trial court judge in Humboldt County the compensation he was due under a statute enacted by the Legislature. This Court issued a writ of mandamus compelling the State Controller to pay the compensation, declaring that the predecessor to article VI, section 19 placed the authority to determine the compensation of judges within the sole provenance of the Legislature:

There is no room for doubt as to the interpretation to be given to this clause in said amendment to the

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<sup>11</sup> As the Court of Appeal noted, and the County has not challenged, at the time the 1924 amendment was made to the California Constitution, employment benefits were not as commonplace as they are today, but, by 1966, when the current version of the provision was added to the California Constitution, such benefits were widespread. *Sturgeon*, 167 Cal. App. 4th at 648.

constitution, since it makes manifest as clearly and tersely as words could do the intent of the framers thereof that the entire matter of compensation of justices and judges of courts of records in this state, both as to the amount thereof and as to the time and manner of payment thereof, should be transferred from the constitution and reposed in the legislature.

*Sevier*, 198 Cal. at 175. Like the State Controller in *Sevier*, the County supplanted the Legislature's judgment with its own policy choice. Like the State Controller in *Sevier*, the County usurped the Legislature's power to fix the compensation of state trial court judges by taking it upon itself to increase that compensation by more than \$46,000, an increase, as the County repeatedly emphasizes, that is approximately 27% of the salary established by the Legislature. The County as much as admits this usurpation when it boldly declares that the additional compensation is required to attract and retain well-qualified judges to serve in the County of Los Angeles. Under article VI, section 19, that is a determination only the Legislature can make, and the Court of Appeal correctly found the County's "benefits" program violated the Constitution.

In addition to being completely consistent with *Sevier* and other long-standing precedent, including *Kugler v. Yocum* (1968) 69

Cal. 2d 371, *County of Madera v. Superior Ct.* (1974) 39 Cal. App. 3d 655, and *Martin v. County of Contra Costa* (1970) 8 Cal. App. 3d 856,<sup>12</sup> the Court of Appeal’s ruling is on all fours with two attorney general opinions, which both concluded that, under article VI, section 19, counties could not provide superior court judges with the same employment benefits they provide their own employees. 61 Ops. Cal. Atty. Gen. 388 (1978); 59 Ops. Cal. Atty. Gen. 496 (1976). The County does not even try to distinguish these opinions.

In reaching its conclusion, the Court of Appeal looked carefully for any clear directive from the Legislature that might have authorized the County to supplement the salary and benefits the State pays to state trial court judges *and*, importantly, provided clear standards for it to do so. It gave the County multiple opportunities to identify any such clear authorization and direction from the Legislature, but the County could not do so. It likewise failed to identify any such legislative prescription in its Petition for Review.

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<sup>12</sup> As *Kugler*, *County of Madera*, and *Martin* did not concern constitutional provisions requiring the Legislature to “prescribe” certain acts or undertakings, they are only instructive.

Clearly, Lockyer-Isenberg does not do so. Far from authorizing or establishing clear standards and safeguards for the provision of such “benefits,” its express language declares that the State has “assume[d] sole responsibility for the funding of trial court operations,” including “salaries, benefits, and public agency retirement contributions for trial court judges.” Gov. Code §§ 77200 and 77003(a)(1). The provisions of the statute that allow counties to deduct from their Maintenance of Effort payments the amount each county paid in the 1994-95 fiscal year for “local judicial benefits” is hopelessly ambiguous as to whether its authorization extends beyond the 1999-2000 fiscal year. Gov. Code §§ 77201(c)(1) and 77201.1(b)(4). They also suffer from a complete lack of anything that could be characterized as standards or safeguards such that it can be said that the Legislature has “prescribed” the continued provision of “local judicial benefits.” Equally far, if not even further from lacking any standards or safeguards for county-provided “benefits,” is Gov Code § 69894.3, which effectively would give authority for setting judicial compensation to each individual court through its local rule

making authority.<sup>13</sup> Gov. Code § 53200.3 also suffers from a lack of standards or safeguards, in addition to the fact that, on its face, it only applies to the extent the salaries of state trial court judges are paid from a county salary fund and, since Lockyer-Isenberg, that has not been the case anywhere in the State.

Thus, the Court of Appeal's ruling is completely in line with long-standing precedent, as well as at least two Attorney General opinions addressing a substantially similar question. Under the circumstances, it cannot fairly be said that the Court of Appeal's ruling destroys the uniformity of California constitutional doctrine.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that the petition for review be denied.

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<sup>13</sup> The California Law Revision Commission had tentatively recommended this particular provision for repeal in light of the passage of Lockyer-Isenberg until the Hon. James A. Bascue, then-presiding judge of the Superior Court of the State of California in and for the County of Los Angeles, intervened. CT 001115 (November 2001 California Law Revision Commission Tentative Recommendation), 001127-28 (same), 001130-32 (March 4, 2002 California Law Revision Commission Memorandum 2002-14), and 001137 (February 14, 2003 Letter from Judge James Bascue to California Law Review Commission).

Dated: December 9, 2008

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that this brief, including footnotes, contains 6,883 words, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare the brief.

By: Sterling E. Norris 10/30  
Sterling E. Norris

**PROOF OF SERVICE**

I am a citizen of the United States and 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 December 9, 2008, I served a copy of the within document described as:

**ANSWER TO PETITION FOR REVIEW**

by placing a true and correct copy thereof in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery to the following:

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Associate Justice

Trial Judge, Sitting By  
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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.

Executed on December 9, 2008, at Washington, D.C.

  
\_\_\_\_\_  
DAVID F. ROTHSTEIN