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Los Angeles Superior Court

JUN 05 2009

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GLORIETTA ROBINSON

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 HAROLD P. STURGEON,

12 Plaintiff,

13 v.

14 COUNTY OF LOS ANGELES, *et al.*,

15 Defendants,

16 and

17 SUPERIOR COURT FOR THE STATE
18 OF CALIFORNIA, COUNTY OF
19 LOS ANGELES,

20 Intervenor.

) Case No. BC351286

) **PLAINTIFF'S OPPOSITION TO
INTERVENOR'S MOTION FOR
SUMMARY JUDGMENT**

) DATE: July 2, 2009
) TIME: 10:00 a.m.
) PLACE: Dep't 1
) JUDGE: Honorable James A. Richman
(Sitting By Designation)

) ACTION FILED: April 24, 2006
) TRIAL DATE: None Set

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1 Plaintiff HAROLD P. STURGEON, by counsel, respectfully submits this memorandum
2 of points and authorities in opposition to motion of Intervenor Superior Court for the State of
3 California, County of Los Angeles (“the Superior Court”) to enter summary judgment in favor of
4 itself. As grounds therefor, Plaintiff states as follows:

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION.**

7 Contrary to the Superior Court’s bold claim that there is “no room for debate” about
8 whether the enactment of Senate Bill X2 11 adequately prescribes the supplemental benefits the
9 County of Los Angeles pays to the Superior Court’s judges -- additional compensation that, when
10 combined with the salary and benefits the judges draw from the state, makes them the highest
11 paid trial court judges in the United States¹ -- there is substantial room for such debate. In fact,
12 any fair comparison of the new statute and the Court of Appeal’s ruling in *Sturgeon v. County of*
13 *Los Angeles*, 167 Cal. App. 4th 630 (2008) yields the opposite conclusion.

14 As Plaintiff demonstrated in his pending motion for summary judgment, Article VI,
15 Section 19 of the California Constitution vests the Legislature with both the power and the duty
16 to “prescribe” the compensation of judges statewide. In *Sturgeon*, the Court of Appeal found that
17 the County of Los Angeles usurped this duty by paying supplemental benefits to the Superior
18 Court’s judges without authorization from the Legislature. In response to the Court of Appeal’s
19 ruling, the Legislature, sitting in extraordinary session, enacted Senate Bill X2 11, Stats. 2009,
20 ch. 9, purportedly to “prescribe” the supplemental benefits at issue.² Far from “prescribing”
21 these benefits in the manner the Court of Appeal found necessary to satisfy Article VI, Section 19
22 however, Senate Bill X2 11 is a complete abdication of the Legislature’s constitutional duty.
23 Neither the County of Los Angeles’ earlier usurpation of the Legislature’s duty, nor the

24
25 ¹ National Center for State Courts, *Survey of Judicial Salaries*, Vol. 33, No. 1 (2008) at 2
(available at http://www.ncsconline.org/D_KIS/Salary_Survey/).

26
27 ² After the Court of Appeal’s decision in *Sturgeon*, the Superior Court reportedly hired a
28 lobbyist, at a rate of \$10,000 per month, to seek legislation that would preserve the supplemental
benefits paid by the County. See Ofgang, Kenneth “Lawmakers Pass Bill to Keep Local Benefits
for Trial Judges,” *Metropolitan-News Enterprise*, February 18, 2009 at 1.

1 Legislature's recent abdication of its duty, satisfies Article VI, Section 19 of the California
2 Constitution. For these and for the other compelling reasons set forth in Plaintiff's motion for
3 summary judgment and Plaintiff's opposition to Defendants' motion for summary judgment, the
4 Superior Court's motion for entry of summary judgment in favor of itself must be denied.

5 **II. ARGUMENT.**

6 **A. The California Legislature Lacked Authority To Enact Senate
7 Bill X2 11.**

8 Senate Bill X2 11 was enacted at an extraordinary session of the Legislature convened by
9 proclamation of the Governor on December 1, 2008. Article IV, Section 3 of the California
10 Constitution contains the following provision limiting the authority of the Legislature to act
11 during special sessions:

12 On extraordinary occasions the Governor by proclamation may cause the
13 Legislature to assemble in special sessions. When so assembled it has power to
14 legislate **only on subjects specified in the proclamation** but may provide for
15 expenses and other matters incidental to the session.

16 Cal. Const., art. IV, § 3 (emphasis added). "The duty of the Legislature in special session to
17 confine itself to the subject matter of the call is of course mandatory." *Martin v. Riley*, 20 Cal.2d
18 28, 39 (1942). The Legislature "has no power to legislate on any subject not specified in the
19 proclamation." *Id.*; *People v. Curry*, 130 Cal. 82, 90 (1900); it only may consider matters
20 "relating to, germane to and having a natural connection with" the subject of the proclamation.
21 *Martin*, 20 Cal. 2d at 39. Any other matters are invalid, although they should not be declared so
22 unless they "manifestly and clearly" are not embraced in the Governor's call. *Id.* at 40.

23 The Governor's proclamation convening the extraordinary session at which the new
24 legislation purportedly was enacted states as follows:

- 25 1. To consider and act upon legislation to address the economy, including but
26 not limited to efforts to stimulate California's economy and create and
27 retain jobs, and streamline the operations of state and local governments.
- 28 2. To consider and act upon legislation to address the housing mortgage
crisis.
3. To consider and act upon legislation to address the solvency of the
Unemployment Insurance Fund.

1 Plaintiff's Response to Intervenor's Separate Statement of Undisputed Material Facts; Plaintiff's
2 Statement of Additional Material Facts ("AMF") at No. 1. The Governor's proclamation makes
3 no reference whatsoever to the Legislature addressing any type of judicial compensation, much
4 less any supplemental benefits paid by counties to state trial court judges. The proclamation also
5 does not make any reference to addressing recent court decisions or, in particular, the Court of
6 Appeal's decision finding that the supplemental benefits paid by Defendants are unconstitutional.
7 Nor does it make any mention of granting immunity from liability, prosecution, or disciplinary
8 action to any governmental entity or officer or employee of a governmental entity because of the
9 supplemental benefits paid to trial court judges. Senate Bill X2 11 simply does not relate to, is
10 not germane to, and has no natural connection with any of the subjects specified in the
11 Governor's proclamation convening the second extraordinary session. The new purported
12 legislation manifestly and clearly is not within the scope of the Governor's proclamation.
13 Consequently, the legislation is invalid. *Martin*, 20 Cal. 2d at 39-40; *Curry*, 130 Cal. at 90; Cal.
14 Const., art. IV, § 3.

15 **B. Senate Bill X2 11 Fails To "Prescribe" The Benefits At Issue.**

16 In *Sturgeon*, the Court of Appeal declared, "Under our constitutional scheme, judicial
17 compensation is a matter of statewide concern and the Legislature must set policy with respect to
18 all aspects of judicial compensation." *Id.* at 657. The Court of Appeal declared further:

19 Importantly, even when a legislative body bears a nondelegable duty, it may
20 nonetheless permit other bodies to take action based on a general principle
21 established by the legislative body *so long as the Legislature provides either
standards or safeguards which assure that the Legislature's fundamental policy
is effectively carried out.*

22 *Sturgeon*, 167 Cal. App. 4th at 653 (emphasis added). The Court of Appeal also quoted
23 extensively from a ruling by the Supreme Court of California:

24 "We have said that the purpose of the doctrine that legislative power cannot be
25 delegated is to assure that '*truly fundamental issues [will] be resolved by the
Legislature*' and that a 'grant of authority [is] . . . accompanied by safeguards
26 adequate to protect its abuse.' [Citations] This doctrine rests upon the premise
27 that *the legislative body must itself effectively resolve the truly fundamental
issues*. It cannot escape responsibility by explicitly delegating that function to
28 others or by failing to establish an effective mechanism to assure the proper
implementation of its policy decisions."

1 *Id.* quoting *Kugler v. Yocum*, 69 Cal.2d 371, 376-77 (1968) (emphasis added). It further
2 declared:

3 In the interests of bringing rationality and uniformity to judicial compensation, the
4 responsibility with respect to judicial compensation, the responsibility of
5 protecting the judiciary has now been left largely in the hands of the Legislature.
6 Because the legislative responsibility with respect to judicial compensation,
7 including of necessity the participation of the executive branch in the legislative
8 process, is now the principal means of protecting the independence of the judicial
9 branch, in considering compensation judges receive *we must be careful that in
fact the Legislature has exercised its prescriptive role.* In particular, unlike the
concern employees might receive excessive pay which animated the litigation in
Kugler v. Yocum and *Martin [v. County of Contra Costa]*, *we must in addition be
sensitive to the potential that, in the absence of proper direction from the
Legislature, judges might be subject to substantial variations in compensation
determined solely by local authorities.*

10 *Id.* at 654 (emphasis added). Although Senate Bill X2 11 was enacted to address the Court of
11 Appeal's ruling specifically, it completely fails to heed the clear dictates of that ruling.

12 Senate Bill X2 11 purports to amend the Government Code to authorize the County of
13 Los Angeles and other various counties currently providing some form of supplemental judicial
14 benefits to continue to do so. Stats. 2009, ch. 9, at § 2(a). It also authorizes these same counties
15 to terminate the supplemental benefits they pay to state trial court judges on 180 days written
16 notice. *Id.* at § 2(b). It also directs the Judicial Council to report to various committees of the
17 Senate and the Assembly on "statewide benefits inconsistencies." *Id.* at § 6. Defendants
18 themselves recognize in their motion for summary judgment that "[t]he Legislature's policy
19 largely retains for the time being existing disparities in benefits." Defendants' Memorandum
20 of Points and Authorities in Support of Motion for Summary Judgment at 12 (emphasis added).

21 Senate Bill X2 11 is no policy choice at all, much less a fundamental policy choice by the
22 Legislature that fixes the level of compensation received by state trial court judges. *Sturgeon*,
23 167 Cal. App. 4th 653-54; *Martin v. County of Contra Costa*, 8 Cal. App. 3d 856, 862 (1970).
24 Rather, it is an abdication to the policy choices of each of the fifty-eight (58) counties in
25 California about whether to supplement state trial court judges' compensation with additional,
26 county-provided benefits and the level at which such supplemental benefits should be provided.
27 Those local policy choices range from \$46,436 per year (for fiscal year 2007) in the County of
28 Los Angeles to nothing at all in Santa Barbara County. *Sturgeon*, 167 Cal. App. 4th at 636;

1 AMF at 2-9. The statute does not bring “rationality and uniformity” to judicial compensation, as
2 the Court of Appeal found to be so important in *Sturgeon*. 167 Cal. App. 4th at 654. It is exactly
3 the type of “substantial variation in compensation determined solely by local authorities” about
4 which the Court of Appeal expressed substantial concern in its ruling. *Sturgeon*, 167 Cal. App.
5 4th at 654. The statute is a complete abdication of the Legislature’s duty to prescribe the
6 compensation of judges. Cal. Const., art. VI, § 19.

7 The Superior Court tries to avoid this obvious conclusion by focusing on the legislative
8 intent behind the new statute and pointing out the vote totals for the provision in both the Senate
9 and the Assembly. It is ironic that the Superior Court would choose to focus on the unusual
10 history of Senate Bill X2 11 because, if anything, it would appear that the provision was rushed
11 through the Legislature during a special session -- improperly as Plaintiff has shown -- to avoid
12 substantial public scrutiny. The Sacramento Bee has reported:

13 It’s another illustration of how state budget bills have become vehicles for matters
14 that have nothing to do with the budget but are slipped through without public
15 airing. Indeed, the package was enacted while most of California’s 38 million
16 residents were sound asleep early one Thursday morning.

17 One wonders how Los Angeles County’s taxpayers would have reacted had they
18 know that the Legislature was approving extra judicial payments while the
19 county’s supervisors are staring at a \$200 million budget deficit and
20 contemplating steep cuts in services, especially those to the poor and unemployed,
21 in a county with a jobless rate of nearly 11 percent

22 Walters, Dan, “Los Angeles Judges Given an Extra Bite,” *Sacramento Bee*, March 4, 2009 at A3.

23 Nonetheless, the text of the statute is unambiguous. As the Court of Appeal found, in
24 construing a constitutional or statutory provision, “we look first to the language of the . . . text,
25 giving the words their ordinary meaning. If the language is clear, there is no need for
26 construction. If the language is ambiguous, however, we consider extrinsic evidence of the
27 enacting body’s intent.” *Sturgeon*, 167 Cal. App. 4th at 645 (internal quotations omitted).

28 The Superior Court does not claim the text of Senate Bill X2 11 is ambiguous in any way. The
Superior Court’s references to the provision’s legislative intent and history are irrelevant.

The Superior Court also tries to defend the new statute by itemizing various things the
statute purportedly does. Intervenor’s Memorandum of Points and Authorities in Support of

1 Motion for Summary Judgment at 7-8. The Superior Court’s list of the statute’s purported
2 accomplishments is almost as long, if not longer, than the operative provisions of the statute
3 itself. However long the Superior Court tries to make its list, the statute still fails to accomplish
4 the most basic task required by Article VI, Section 19 and the Court of Appeal’s ruling applying
5 that provision: it fails to make a fundamental policy choice about the level of compensation,
6 including benefits, to be paid to state trial court judges throughout California and, to the extent it
7 authorizes counties and other entities to play any role in paying additional compensation to the
8 judges, if fails to provide adequate standards and safeguards to ensure that a fundamental policy
9 choice of the Legislature is carried out.

10 By way of example, the new statute authorizes counties currently providing supplemental
11 benefits to the trial court judges of the local superior court to continue to pay these benefits “on
12 the same terms and conditions as were in effect on that date.” Stats. 2009, § 2(a). Again, this is
13 not a fundamental policy choice, it is an abdication to the policy choices of fifty-eight (58)
14 counties. With respect to the County of Los Angeles in particular, it is important that the county
15 treats the Superior Court’s judges as its own employees for purposes of benefits. *Sturgeon*, 167
16 Cal.App. 4th at 634; Los Angeles County Code sections 5.23 (Retirement), 5.25 (Retirement),
17 5.26 (Retirement), 5.28 (MegaFlex), 5.36 (MegaFlex), and 5.40 (Professional Development
18 Allowance); AMF at 9. If the County of Los Angeles increases or decreases the percentage of
19 employees’ salaries it contributes to the MegaFlex plan or otherwise changes the cafeteria plan,
20 the professional development allowances, or retirement benefits it provides to its employees,
21 those same changes will apply to the trial judges of the superior court. Senate Bill X2 11
22 certainly does not purport to govern the benefits package the County of Los Angeles provides its
23 employees. It does not require any such changes be approved or reviewed by the Legislature. It
24 does not even provide for an opportunity for legislative review. Nor does Senate Bill X2 11
25 purport to require the County of Los Angeles to create a separate, parallel system of benefits for
26 the judges of the superior court -- frozen to reflect the current benefits package -- if the county
27 seeks to change the benefits package it currently provides to its employees. Consequently,
28 Senate Bill X2 11 reflects no “fundamental policy choice” with respect to the County of Los

1 Angeles in particular and provides no standards or safeguards to ensure that any such choice is
2 carried out.

3 In this regard, Senate Bill X2 11 is nothing at all like the statute at issue in *Martin v.*
4 *County of Contra Costa*. In that case, the Legislature enacted a statute directing that municipal
5 court employees in Contra Costa County be compensated based on the same pay schedule the
6 county used to pay its employees. The Legislature incorporated the county's pay schedule into
7 the text of the statute. *Martin*, 8 Cal. App. 3d at 859, n.1. It also required that, should the county
8 make any adjustments to its pay schedule, such adjustments should apply to the municipal court
9 employees as well, but only after the Legislature had the opportunity to review the adjustment:

10 This provision is not an abdication of the Legislature's duty to prescribe the
11 compensation of the attaches of each municipal court. It fixes the compensation
12 of the employees, declares a policy that such compensation shall be commensurate
13 with that furnished county employees with equivalent responsibilities and
14 provides for interim changes, subject to review by the Legislature, in the event
15 there are local changes which would otherwise cause discrepancies in
16 compensation in violation of the legislative policy.

17 *Martin*, 8 Cal. App. 3d at 862. Senate Bill X2 11 does not contain any provision for legislative
18 review or oversight if the County of Los Angeles were to make any changes to the benefits it
19 provides its employees, and, by extension the judges of the superior court. Thus, Senate Bill X2
20 11 falls short of the requirements of Article VI, Section 19 for this reason as well.

21 The provision in Senate Bill X2 11 requiring the Judicial Council to "analyze the
22 statewide benefits inconsistencies" and report back to the Legislature by December 31, 2009 does
23 not provide any standards or safeguards that ensure a fundamental policy choice of the
24 Legislature will being carried out. At best, it offers nothing more than a vague suggestion that, at
25 some point in the future, the Legislature perhaps might revisit the issue of judicial compensation
26 in high cost-of-living areas and the need to attract and retain well qualified judges. Plaintiff
27 submits that the provision strongly suggests a recognition on the part of the Legislature that the
28 status quo is untenable. Rather than address the issue of attracting and retaining well qualified
judges in high cost areas however, the Legislature "kicked the can down the road." Regardless, it
is hardly a sufficient safeguard for fulfilling an important, non-delegable, constitutionally
mandated duty. Nor does the Superior Court provide any authority for the proposition that, when

1 the Constitution imposes a non-delegable duty on the Legislature, such standards and safeguards
2 can be implied from the text in a statute.

3 Finally, the Superior Court’s “delegation” cases are inapposite. None of these cases
4 concern Article VI, Section 19 or any other constitutional provision that requires the Legislature
5 to “prescribe” a particular action. As the Court of Appeal made clear, Article VI, Section 19
6 imposes a non-delegable duty on the Legislature to undertake the prescribed action itself.
7 *Sturgeon*, 167 Cal. App. 4th at 652. (“When the Constitution itself has ‘prescribed’ a duty ‘the
8 named authority must itself exercise the function described; in other words, it imposes a
9 nondelegable duty.”). At issue in *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1134
10 (1999) was a constitutional provision that required the Legislature to “provide” for a school
11 system; it did not require the Legislature to “prescribe” such a system. As the Court of Appeal
12 declared, the two terms have distinctly different legal implications. *Sturgeon*, 167 Cal. App. 4th
13 at 652-53. Neither *Coastside Fishing Club v. Cal. Resources Agency*, 158 Cal. App. 4th 1183
14 (2008) nor *Wilkerson v. Madera Community Hosp.*, 144 Cal. App. 3d 436 (1983) concerned
15 actions to be “prescribed” or “provided” by the Legislature. Rather, both cases concerned
16 whether the Legislature, after enacting statutes in areas clearly committed to its sound discretion
17 (environmental protection in *Coastside Fishing Club* and medical malpractice insurance in
18 *Wilkinson*), could delegate authority to administer or apply the law to private or governmental
19 entities. No non-delegable legislative duties were at issue in either case. *Coastside Fishing Club*
20 also is readily distinguishable because it primarily was a separation of powers case, and no such
21 concerns are present here. Thus, none of the cases support this Court’s entry of summary
22 judgment in favor of itself.

23 **C. Senate Bill X2 11 Violates Fundamental Tenets Of Equal
24 Protection.**

25 Defendants also cannot rely on Senate Bill X2 11 to support entry of summary judgment
26 because the statute violates equal protection. Senate Bill X2 11 establishes and perpetuates
27 classifications of state trial court judges -- all of whom are state officials employed by the state in
28 otherwise identical capacities -- based on the county in which they happen to sit and, more

1 specifically, based on whether that county previously determined -- without authorization from
2 the Legislature -- to pay supplemental benefits despite the requirement of Article VI, Section 19.

3 There are two principal tests that generally have been applied by the courts of the United
4 States and the State of California in reviewing classifications that are challenged under the equal
5 protection clause of the Fourteenth Amendment to the United States Constitution or Article I,
6 Section 7 of the California Constitution. *Hernandez v. City of Hanford*, 41 Cal.4th 279, 298
7 (2007). The first is the conventional standard for reviewing economic and social welfare
8 legislation in which there is discrimination or differentiation of treatment between classes or
9 individuals. *Id.* This test requires that the distinctions drawn by a challenged statute bear some
10 rational relationship to a conceivable, legitimate state purpose. *Id.* at 299. This first equal
11 protection test generally is referred to as the “rational relationship” or “rational basis” test. *Id.*

12 The second equal protection test is a more stringent test that is applied in cases involving
13 “suspect classifications” or that touch on “fundamental interests.” *Id.* In such cases, courts adopt
14 “an attitude of active and critical analysis, subjecting the classification to strict scrutiny.” *Id.*
15 Under the strict standard applied in such cases, not only must there be a compelling state interest
16 that justifies the law, but the distinctions drawn by the law must be proven necessary to further
17 this compelling state interest. *Id.* This second test generally is referred to as the “strict scrutiny”
18 test. *Id.*

19 California’s equal protection provisions, while substantially the equivalent of the
20 guarantees contained in the Fourteenth Amendment to the U.S. Constitution, “are possessed of an
21 independent vitality which, in a given case, may demand an analysis different from that which
22 would obtain if only the federal standard were applicable.” *Serrano v. Priest*, 18 Cal.3d 728, 764
23 (1976). Rather than looking to federal law, California courts thus apply their own standards in
24 determining whether to apply a “strict scrutiny” or a “rational basis” test to an equal protection
25 challenge.

26 The issues raised by this case clearly touch on “fundamental interests.” The
27 compensation paid by state trial court judges involves the administration of justice throughout
28 the State. Indeed, in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, the

1 Legislature sought to complete a process, begun years earlier, of equalizing and consolidating the
2 funding of all trial court operations at the state level. 1997 Cal. ALS 850, 1997 Cal. AB 233,
3 Stats. 1997 ch. 850, § 2. Similarly, the Court of Appeal recognized the importance of “bringing
4 rationality and uniformity to judicial compensation” as well the need to “be sensitive to the
5 potential that judges might be subject to substantial variation in compensation determined solely
6 by local authorities.” *Sturgeon*, 167 Cal. App. 4th at 653. The funding of trial court operations
7 and the compensation paid to state trial court judges certainly are no less fundamental than the
8 funding of state education, which was found to be a “fundamental interest” in *Sorrano*. 18
9 Cal.3d at 766.

10 Perhaps even more critically, Article VI, Section 19 of the California Constitution
11 expressly requires that the compensation of state judges be set by the Legislature. The California
12 Constitution entrusts the Legislature with this obviously important task in order to protect the
13 judicial branch from excessive and improper political influences. *Sturgeon*, 167 Cal. App. 4th at
14 654. To allow the counties to determine whether to supplement state trial court judges’
15 compensation in whatever manner they deem fit, however, raises the appearance of the counties
16 having improper influence over the judges. This appearance is all the more troubling given that
17 counties frequently have substantial amounts of litigation pending before the local state trial
18 court. Certainly, private litigants could not “supplement” the compensation of the judges of a
19 court before which they have litigation pending without doing substantial harm to the appearance
20 of the court’s impartiality and independence. This matter clearly touches on “fundamental
21 interests.” Senate Bill X2 11 must be analyzed under a “strict scrutiny” test.

22 The new statute fails this test. It is completely the opposite of the Court of Appeal’s
23 concern about judges being subject to substantial variations in compensation determined solely
24 by local authorities. *Sturgeon*, 167 Cal. App. 4th at 654. State court trial judges in the County of
25 Los Angeles receive up to \$46,000 per year in supplemental compensation, while state court trial
26 judges in other high-cost counties, such as Santa Barbara County, receive nothing. There is no
27 “compelling state interest” in authorizing such gross disparities in compensation, especially when
28 the disparities arose from the fact that the County of Los Angeles was paying supplemental

1 benefits to judges without proper legal authorization from the Legislature. It simply cannot be
2 said that there is a compelling state interest in differentiating between state trial court judges
3 based on whether the county in which they sit violated Article VI, Section 19 of the California
4 Constitution.

5 Nor can it be said that the distinctions drawn by Senate Bill X2 11 are “necessary” to
6 further a “compelling state interest.” *Hernandez*, 41 Cal.4th at 299. The statute differentiates
7 between the counties that provide unauthorized benefits and counties that do not. Under Senate
8 Bill X2 11, the judges who sit in counties that pay unauthorized benefits would be allowed to
9 continue to receive the benefits, and the judges who sit in counties that do not pay unauthorized
10 benefits would continue to get nothing. The statute rewards the guilty and punishes the innocent,
11 which clearly is not consistent with equal protection.³ If the Legislature articulated any state
12 interest at all, it would appear to be an interest in “retain[ing] qualified applicants for judicial
13 office” and protecting judges who purportedly relied on continuing to receive the unauthorized
14 county benefits. 2009 Stats., § 1(c). Obviously, there can be no “compelling state interest” in
15 continuing to receive unlawfully bestowed benefits. To the extent the Legislature’s goal was to
16 retain qualified applicants for judicial office, it was not at all necessary to differentiate between
17 those counties that paid unauthorized benefits in the past and those counties that did not. The
18 Legislature could have undertaken a comprehensive, state-wide reform independent of what any
19 county had done in the past. Differentiating between those counties that pay unauthorized
20 benefits and those counties that do not does not survive a rational basis examination, much less
21 strict scrutiny. The statute merely rubber stamps an unlawful status quo ante. It violates equal
22 protection, and Defendants cannot rely on it to support the continued payment of the County of
23 Los Angeles’ benefits.

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27 ³ The Legislature obviously saw some possibility of liability, prosecution or disciplinary
28 action, as it granted immunity to judges, counties, and county officials in connection with the
payment of the supplemental benefits at issue. 2009 Stats., ch. 9, § 5.

1 **III. CONCLUSION.**

2 For the foregoing reasons, and for the reasons set forth in Plaintiff's motion for summary
3 judgment and Plaintiff's opposition to Defendants' motion for summary judgment, the Superior
4 Court's motion to have summary judgment entered in favor of itself should be denied.

5 Dated: June 5, 2009

Respectfully submitted,

6 JUDICIAL WATCH, INC.

7 By: Sterling E. Norris [signature]
8 Sterling E. Norris (SBN 040993)

9 *Attorneys for Plaintiff*

1 **SERVICE LIST**

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