APPEAL NO. D056266

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,

and

LOS ANGELES SUPERIOR COURT,
Intervenor and Respondent.

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

REPLY BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Counsel hereby discloses pursuant to Cal. Rule of Court 8.208 that the following entities or persons may have an interest in this case:

Appellant Harold P. Sturgeon

Respondent Los Angeles County (c/o Roy Sinclair)

Respondent Michael E. Antonovich (in his official capacity as Los Angeles County Supervisor)

Respondent Yvonne B. Burke (in her official capacity as Los Angeles County Supervisor)

Respondent Don Knabe (in his official capacity as Los Angeles County Supervisor)

Respondent Gloria Molina (in her official capacity as Los Angeles County Supervisor)

Respondent Zev Yaroslavsky (in his official capacity as Los Angeles County Supervisor)

Respondent Larry Gonzalez (in his official capacity as Division Chief of the Countywide Payroll Division of the Los Angeles County Department of Auditor-Controller)

Respondent David E. Janssen (in his capacity as Chief Administrative Officer of Los Angeles County)

Respondent J. Tyler McCauley (in his official capacity as Auditor-Controller for Los Angeles County)

Intervenor Los Angeles Superior Court

Attorneys for Appellant

Attorneys for Respondent

Attorneys for Intervenor

All judges of the Superior Court of the State of California, County of Los Angeles

Any judge who formerly served as a judge of the Superior Court of the State of California, County of Los Angeles who received benefits paid by the County of Los Angeles

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Constitutional Provisions

Rules and Statutes **Page**

Miscellaneous

INTRODUCTION

In their answer briefs, neither the County of Los Angeles ("the County") nor the Superior Court of California, County of Los Angeles ("the Superior Court") refute the compelling conclusion that the Legislature failed to make a fundamental policy choice when it enacted Senate Bill X2 11, Stat. 2009, ch 9 ("SBX2 11"). Instead, the Legislature purportedly authorized a "hodgepodge" or "patchwork quilt" of widely varying and vastly unequal systems for compensating state trial court judges and commissioned a study to analyze what it acknowledged were "the statewide benefits inconsistencies." Stat. 2009, ch 9 § 6. More succinctly, the Legislature abdicated its constitutional duty to "prescribe compensation for judges" by deferring to the policy choices of each of the fifty-eight counties in the State of California. For these and the other compelling reasons set forth below and in Appellant's Opening Brief, the judgment of the trial court should be reversed and remanded with instructions that summary judgment be entered in Appellant's favor.

ARGUMENT

I. SBX2 11 Violates Article IV, Section 3 of the California Constitution.

Both the County and the Superior Court construe article IV, section 3 of the California Constitution in a way that renders the provision completely meaningless. Because the Legislature was sitting in special session, article IV, section 3 limited its legislative powers to those subjects specified in the Governor's proclamation only. Cal. Const., article IV, § 3. The Legislature could only consider matters "relating to, germane to and having a natural connection with" the subject of the proclamation. *Martin v. Riley*, 20 Cal.2d 28, 39 (1942).

According to the County and the Superior Court, the Governor's proclamation -- which directed the Legislature to "consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy, create and retain jobs, and streamline the operations of state and local governments" -- encompasses legislation addressing this Court's finding that the supplemental benefits paid by the County to the judges of the Superior Court are unconstitutional.[1]

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[1] Neither the County nor the Superior Court even try to argue that the immunity provision of SBX2 11 addresses or stimulates the economy, creates or retains jobs, or streamlines the operations of state and local governments.

If article IV, section 3 is to have any meaning at all, SBX2 11 must not be found to relate to, be germane to, or have a natural connection with "stimulat[ing] the economy." If that were the case, then practically any action taken by the Legislature could be deemed to "stimulate the economy." Article IV, section 3 would be rendered meaningless. The Superior Court's assertion that paying supplemental benefits to state trial court judges -- who already are among the highest paid judges in the nation -- assists the State's economy by "facilitat[ing] meaningful access to the Courts" is completely disingenuous, particularly at a time when the State has been forced to shut down courthouses and the Superior Court itself is laying off non-judicial staff and may be forced to reduce its work force by as much as one third due to an unprecedented, statewide fiscal crisis. *See*, *e.g.*, "Cash-strapped LA County courts to begin layoffs," *Associated Press*, March 8, 2010.

Nor does SBX2 11 "create or retain jobs." The County and the Superior Court cannot identify a single job created or retained by SBX2 11. The provision did not create any new state superior court judgeships. Nor did it prevent any existing state superior court judgeships from being abolished. No superior court judge was ever at risk of being laid off; the state was not considering outsourcing the work of trial court judges to some other state or overseas. If anything, SBX2

11 costs jobs, as the tens of millions of dollars the County spends on supplemental judicial benefits could have been used to avoid layoffs elsewhere. Nor is "retain[ing] jobs" the same as inducing any particular state trial court judge to remain on the bench. While judicial vacancies may arise for any number of reasons, no state superior court judgeship has been lost.

Finally, it simply cannot be said that SBX2 11 does anything to "streamline government." The County does not even try to argue that it does. The Superior Court argues that county-provided supplemental benefits "streamline government" because they "circumvents delays and inefficiencies" that allegedly would result if local entities were unable to attract and retain highly qualified judges. *See* Intervenor Los Angeles Superior Court's Response Brief ("Superior Court's Brief") at 14-15. Not only does the Superior Court's argument ignore the fact that superior court judges are state officials, not county officials, but the notion that having overlapping, inconsistent, and vastly unequal systems for compensating state trial court judges "streamlines government" is nonsensical, if not risible.[2]

SBX2 11 does nothing to "streamline government." As Appellant demonstrated in his opening brief, SBX2 11 creates substantial redundancies,

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[2] It also implicitly recognizes the important distinction between retaining jobs, *i.e.*, individual judgeships, and the creation of judicial vacancies.

bureaucratic inefficiencies, complexities, and inconsistencies. Far from creating what the Superior Court claims is the "false notion" that legislation must succeed in achieving its goals to be valid under article IV, section 3, these redundancies, inefficiencies, complexities, and inconsistencies demonstrate that SBX2 11 was never intended to "streamline" government at all. SBX2 11 does exactly the opposite.

In short, SBX2 11 simply does not relate to, is not germane to, and has no natural connection with any of the subjects specified in the Governor's proclamation. Rather, it is obvious that when, on December 23, 2008, the Supreme Court of California declined to review this Court's October 2008 ruling declaring the benefits at issue to be unconstitutional, the County and the Superior Court sought a quick legislative fix. When SBX2 11 was enacted less than two months later, no thought whatsoever was given to whether the Legislature, sitting in special session, had authority under the Governor's proclamation to enact such a statute. It did not. This Court should not countenance such a cavalier disregard for article IV, section 3. It should strike down SBX2 11 on this ground alone.

II. BX2 11 Violates Article VI, Section 19 of the California Constitution.

This Court's October 2008 ruling held that article VI, section 19 of the California Constitution requires that the Legislature "must itself effectively resolve the truly fundamental issue" of how the State's judges should be compensated. *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630, 653 (2008) (*quoting, Kugler v. Yocum*, 69 Cal.2d 371, 376-77 (1968)).

While the parties obviously have fundamentally different views of the constitutionality of SBX2 11, they agree that the Legislature purported to authorize the status quo that existed before this Court's October 2008 ruling and to study the issue further. *See, e.g.*, County's Respondent's Brief ("County's Brief") at 11 (noting that the Legislature "maintain[ed] the status quo ante pending the Judicial Council's report on statewide inconsistencies"); Superior Court's Brief at 17 and 18 (noting that the Legislature "preserve[d] the status quo" and "call[ed] for an end-of-2009 report from the Judicial Council . . . 'analyzing the statewide benefits inconsistencies'"). Appellant contends that authorizing the status quo and commissioning a study, especially where the status quo is a "patchwork quilt" in which some judges receive nearly $50,000 in supplemental benefits per year and others receive nothing, is not a fundamental policy choice and therefore fails to "prescribe" the benefits at issue. The County and the Superior Court contend that maintaining the status quo and promising to study the issue further -- essentially kicking the can down the road indefinitely -- is somehow a fundamental policy choice.

The Judicial Council Report, which all parties have referenced, demonstrates the error of the County's and the Superior Court's contention. It conclusively establishes that SBX2 11 does not represent a fundamental policy choice at all:

> [T]oday's system of supplemental benefits is a hodgepodge. Judges in some courts receive no supplemental benefits. Judges in other courts can receive a supplemental benefits package worth a significant percentage of their salaries and which is often tied to, or comparable to, the executive benefits package provided to officers and employees of the county . . . The current status of judicial benefits is much like the situation with judicial salaries decades ago, before the Legislature provided for uniformity and state funding. As it was in the past with judicial salaries, the current disparity in judicial benefits results from a long history of shared responsibility between the state and the counties for funding the judicial branch in California.

Judicial Council of California, "Historical Analysis of Disparities in Judicial Benefits," December 15, 2009 ("Judicial Council Report"), at 8. "Judicial benefits need the same kind of reform that the Legislature brought to judicial salaries . . . the Legislature can bring to judicial benefits the same stability, uniformity, and processes that it has already brought to judicial salaries . . . and doing so will help maintain a strong, fair and impartial judicial branch." *Id.* at 2, 4. Importantly, the Judicial Council Report was prepared *after*, not before, the enactment of SBX2 11. If, as the County and the Superior Court maintain, SBX2 11 represents the Legislature's resolution of a fundamental issue, then the findings and conclusions reached by the Judicial Council Report beg the question, "What, if anything, did SBX2 11 actually resolve?"

The Judicial Council Report makes clear that SBX2 11 did not resolve anything: "[T]he current status of supplemental judicial benefits is more like a patchwork quilt, with a different history in each court." *Id.* at 13. It notes that the current system of benefits "is the result of the individual history of each court and county and is not based on any rational or consistent statewide plan or formula." *Id.* at 2. It finds that "[t]he scope and scale of benefits received vary widely" and "[t]he cost of supplemental benefits, where they are provided, also varies widely." *Id.* at 17; *see also id.* at 19. According to the report, "Judges in some courts receive benefits that cost as little as $102 per year per judge, while judges in the Superior Court of Los Angeles receive benefits of approximately $50,000." *Id.* at 17. Again, the Judicial Council made these findings *after*, not before, the enactment of SBX2 11.

The Judicial Council Report also found that the payment of supplemental judicial benefits disrupts the Legislature's own efforts to set judicial compensation:

> The variation in supplemental benefits and their nonexistence at many courts, including appellate courts, results in other significant compensation differences. By way of example, the Legislature has specified a uniform salary for all superior court judges statewide and a salary for justices of the Courts of Appeal that is higher for judges of the superior courts. Yet if the full value of the supplemental benefits is included in the overall compensation paid to judges, there are counties in which superior court judges receive more valuable compensation packages than a justice of the Court of Appeal who serves the same county.

Id. The Judicial Council Report declared that SBX2 11 "was not intended to be a global solution; it simply preserves the status quo for an indefinite period of time." *Id.* at 12-13.

A place holder or stop gap measure is not a fundamental policy choice. Nor is maintaining a "hodgepodge" or "patchwork quilt" system of benefits that allows some judges to receive an additional $50,000 per year in compensation while others receive nothing, based not on "any rational or consistent statewide plan or formula," but on the "individual history of each court and county." Judicial Council Report at 2, 8, and 13. SBX2 11 does not reflect a fundamental policy choice. It did not resolve anything.

In addition, the Legislature "cannot escape responsibility by explicitly delegating [its obligation to prescribe judicial compensation] to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decisions." *Sturgeon*, 167 Cal. App. 4th at 653. As Appellant demonstrated in his opening brief, not only does SBX2 11 not reflect a fundamental policy choice, but it also does not establish any safeguards to ensure that a fundamental policy choice of the Legislature is being carried out. While the County and the Superior Court contend that the Legislature created safeguards when it purportedly froze supplement judicial benefits at their July 1, 2008 level,[3] fifty-eight different "maximums" -- one for each county in the state -- constitutes no "maximum" at all, especially when one "maximum" is approximately $50,000 per year and other "maximums" are zero. Because SBX2 11 precludes counties from terminating supplemental benefits until an individual judge leaves the bench or his or her term expires, the statute also creates different "minimums" for each judge serving in a county that pays benefits. For the four hundred thirty-six

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[3] *See* County's Brief at 12 ("A county must maintain the status quo ante") and 14 ("If the County were to change its benefits package on some day *after* July 1, 2008, the new benefits would not be the benefits that were in effect on July 1, 2008, and therefore, would not apply to judges"); Superior Court's Brief at 21 ("SBX2 11 precludes any fluctuation in benefits other than those the Legislature has already approved").

judgeships in the County of Los Angeles (*see* Judicial Council Report at D-9), this potentially equates to as many as four hundred and thirty-six different "minimums." Just as fifty-eight "maximums" is no "maximum" at all, four hundred and thirty-six minimums is no "minimum" at all.

Moreover, the value of the benefits paid by the County appears to have increased already despite the Legislature's alleged "maximum." When this Court issued its 2008 ruling, it noted that, for Fiscal Year 2007-08, the benefits paid by the County amounted to $46,436 per judge. When the Judicial Council issued its report in December 2009, it found that the value of the benefits, presumably for Fiscal Year 2009-10, had risen to approximately $50,000 per judge. Judicial Council Report at 17. According to its proposed budget for Fiscal Year 2010-11, the County has proposed spending $17,622,000.00 in "cafeteria plan benefits" for "Trial Court Operations, which would appear to reflect the "MegaFlex" component of the supplemental benefits at issue. *See* County of Los Angeles 2010-11 Proposed Budget, Vol. I, at 60.3, available at http://file.lacounty.gov/lac/cms1_144813.pdf. This figure represents an increase of approximately $3,000,000 over the County's "Trial Court Operations" spending for these same benefits in Fiscal Year 2008-09.[4] *Id.* The increase begs the question, what safeguards or oversight mechanism did the Legislature create for reviewing such increases? The clear answer is none. The County's and the Superior Court's argument that SBX2 11 created a safeguard to make sure that the Legislature's fundamental policy choice is carried out by fixing the benefits at their July 1, 2008 level is demonstrably incorrect.[5] *Cf. Martin v. County of Contra Costa*, 8 Cal. App. 3d 856, 862 (1970).

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[4] The County's Fiscal Year 2010-11 proposed budget also reflects increases of nearly $450,000 over Fiscal Year 2008-09 for "other employee" benefits," which presumably refers to the "professional development allowance" paid by the County to the state trial court judges, and a combined total of $840,000 over Fiscal Year 2008-09 in retirement benefits. *Id.*

[5] The County takes issue with Appellant's argument that any changes the County makes to the benefits package it provides to its employees will apply to the judges of the Superior Court as well. *See* County's Brief at 14. However, the County's argument ignores the fact that SBX2 11 does not expressly state that the benefits are frozen at their July 1, 2008 level. Rather, it states that judges in counties that paid benefits shall continue to receive those benefits "on the same terms and conditions as were in effect on that date." Stats. 2009, ch 9, § 2(c). The "terms and conditions" by which judges of the Superior Court are paid benefits from the County is that the judges are treated as if they were the County's employees. This status, not any particular dollar value or level of benefits, would appear to be the operative "term and condition" of the benefits provided by the County. In this regard, it is ambiguous, at best, whether the Legislature intended to freeze the County's benefits at their July 1, 2008 level or if it only intended to freeze the County's treatment of the judges as if they were County employees. Consequently, SBX2 11 fails to provide a proper safeguard for this additional reason.

In sum, article VI, section 19 requires that, to "prescribe" judicial compensation, the Legislature must make a fundamental policy choice and establish safeguards to ensure that its policy choice is carried out. *Sturgeon*, 167 Cal. App. 4th at 653-54. The Legislature did not make any such a choice or establish any such safeguards when it enacted SBX2 11. Consequently, the supplemental benefits paid by the County violate article VI, section 19 and are unconstitutional.

III. SBX2 11 Violates Equal Protection.

A. <u>The Superior Court's Procedural Arguments</u>.

The Superior Court, but not the County, takes issue with the procedural posture of Appellant's equal protection argument. The Superior Court first claims, correctly, that Appellant did not reference the equal protection clause in his Complaint. Of course, the Superior Court's argument ignores the fact that Appellant initiated this action *before* SBX2 11 was ever contemplated, much less enacted by the Legislature. Indeed, SBX2 11 was enacted *because* of Appellant's challenge to the legality of the County's payment of supplemental benefits. After this Court declared the benefits at issue to be unconstitutional and remanded this case to the trial court for further proceedings consistent with its ruling, the

Legislature enacted SBX2 11. The County and the Superior Court then moved for summary judgment on the basis of the newly enacted statute.

It was only in response to the County's and the Superior Court's argument that SBX2 11 legalized the benefits at issue that Appellant raised the issue of equal protection. Appellant has not asserted any new legal claim, however; he simply is rebutting a new legal argument raised by the County and the Superior Court based on the newly enacted statute. Appellant has always asserted that the benefits are illegal and that their payment should be enjoined pursuant to section 526a of the Code of Civil Procedure.

Moreover, if, as the Superior Court asserts, Appellant cannot raise an equal protection challenge to SBX2 11 because Appellant's did not reference the equal protection clause in his original Complaint, then it is equally the case that neither the County nor the Superior Court should be allowed to raise SBX2 11 as an affirmative defense to Appellant's lawsuit. Neither the County nor the Superior Court raised SBX2 11 in their respective pleadings. Nor did the County or the Superior Court ever seek to amend their respective pleadings to invoke SBX2 11 as an affirmative defense after the statute was enacted.

Of course, SBX2 11 post-dates Plaintiff's Complaint, the County's Answer, and the Superior Court's Complaint in Intervention.[6] Plaintiff obviously challenged the legality of the benefits, and the County and the Superior Court have argued in response that the benefits are lawful. The parties' respective arguments simply take into consideration the passage of SBX2 11 since the filing of their respective pleadings. Requiring the parties amend their respective pleadings after years of litigation to address an issue of law would place form over substance and cause needless delay.

The Superior Court's argument that Appellant cannot maintain an equal protection challenge to SBX2 11 because Appellant is not a judge also misses its mark. The Superior Court's argument ignores the fact that this lawsuit is a taxpayer action brought under section 526a of the Code of Civil Procedure, which expressly authorizes taxpayers to challenge illegal expenditures of taxpayer funds. Code of Civil Procedure section 526a contains no exception for equal protection violations. Rather, if an expenditure is illegal because it violates equal protection,

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[6] While Appellant does not specifically challenge the Superior Court's intervention in this litigation, the intervention is highly unusual. Neither the Attorney General nor the Judicial Counsel appears to have authorized the Superior Court's participation in this litigation or the hiring of the Superior Court's counsel, and the Superior Court's participation in a lawsuit pending before the Superior Court would appear to create an irreconcilable conflict. *See* Gov't Code §§ 960.5 and 11040; Cal. Rules of Court, Rule 10.14 and 10.202.

it still falls within the purview of section 526a. None of the authorities cited by the Superior Court were taxpayer actions. The Superior Court's authorities are inapposite. Rather, as Appellant demonstrated in the trial court and the trial court found, taxpayers have standing to bring an action to restrain or prevent an illegal expenditure of public money without a showing of special damage. *Connerly v. State Personnel Board*, 92 Cal. App. 4th. 16, 29 (2001).[7]

Finally, the fact that state trial court judges sit in different counties across the state does not mean they are not "similarly situated" for purposes of an equal protection analysis. State trial court judges are constitutional officers with identical duties, responsibilities, and powers. The fact that they may serve in different parts of the state does not undermine or negate the fundamental similarity of their positions for purposes of an equal protection analysis. *Vincent v. California*, 22 Cal. App.3d 566 (1971) (spouses of recipients of state aid to the aged, the blind, and the disabled are similarly situated by reason of "dut[ies]

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[7] The Superior Court identifies no reason why this Court should not follow *Connerly* other than to note that there is no "horizontal stare decisis" between the divisions of the Court of Appeal and to assert, without explanation, that *Connerly* was "wrongly decided." Nonetheless, *Connerly* certainly is persuasive authority and is entitled to respect, and appellate court rulings are "open for reexamination and critical analysis" only in "appropriate and rare cases." *In re Marriage of Shaban*, 88 Cal. App. 4th 398, 409 (2001). This is not such a case.

created by the marriage contract" despite "many differences among the three groups of recipients").

B. Strict Scrutiny vs. Rational Basis.

Both the County and the Superior Court misconstrue Appellant's equal protection argument, which they attempt to characterize as merely an issue of purely private economic gain. It is not. As this Court recognized in its prior ruling and the County and the Superior Court have repeatedly asserted when they invoked the need to attract and retain well qualified judges as justifying the County's payment of supplemental benefits, the issue of judicial compensation affects the administration of justice throughout the State. *Sturgeon*, 167 Cal. App. 4th at 639 ("there can be little doubt the benefits that the county provides its judges enhances the recruitment and retention of judges who serve in Los Angeles"); County's Brief at 1; Superior Court's Brief at 1 ("In order to attract and retain high-quality judicial officers, the [County] provides the judges of the [Superior Court] with supplemental benefits") and 33 ("[there is a compelling state interest in ensuring adequate judicial talent, particularly in counties where the cost-of-living is so high that it would otherwise preclude recruiting and retention of highly qualified judicial officers"); Judicial Council Report at 20 ("The inconsistencies and deficiencies in the benefits packages offered to judges in the

State of California have an impact on the state's ability to continue to attract and retain high-quality judges, who are necessary to maintain a fair and impartial judicial branch"). Obviously, if increased compensation is necessary to attract and retain well qualified judges in the County of Los Angeles, then similar concerns apply equally to other high-cost counties that are not allowed to pay supplemental benefits. The need to attract and retain well qualified judges and the administration of justice is no less important in high-cost counties that do not pay supplemental benefits than it is in the County of Los Angeles. Clearly, more is at stake than the purely private, economic interest of the judges.

The effect of disparities in judicial compensation is no less fundamental to the administration of justice than the effect of disparities in public school financing was to education in *Serrano v. Priest*, 18 Cal.3d 728 (1976). At issue in *Serrano* were disparities in public school funding between school districts. At issue here is disparities in judicial compensation between counties. In this regard, the trial court got it right when it noted that the administration of justice is undoubtedly of fundamental interest to all citizens of California. 3 CT at 000534-535. It got it wrong when it then limited its analysis of the equal protection issue to consideration of the purely economic interests of the judges only. *Id.*

The County and the Superior Court make this same mistake. The authorities on which they rely do not even implicate, much less mention, the interest in the administration of justice and the impact that the need to attract and retain well qualified judges has on the administration of justice. *American Federation of Teachers v. Los Angeles Community College District.*, 111 Cal. App. 3d 942 (1980) concerned rules limiting salary credits for occupational experience allowed to some, but not all, journalism instructors at a community college. *California State Employees' Association v. Flournoy*, 32 Cal. App. 3d 219 (1973) concerned salary increases for faculty members and academic employees of the University of California and California State Colleges. In neither of these cases was it even asserted that anything other than the purely economic interests of the plaintiffs was at issue. *Rittenband v. Cory*, 159 Cal. App. 3d 410 (1984) concerned a legal challenge to the reduced pension benefits received by judges who remain on the bench past age seventy. The judges claimed that the reduction in benefits impermissibly infringed on fundamental rights to seek and hold elective office, to vote, and to pursue a lawful occupation. Again it was not even claimed that any fundamental right was involved.

In fact, the County and the Superior Court actually bolster Appellant's argument that SBX2 11 violates equal protection. Both argue that there is a compelling state interest in ensuring adequate judicial talent, attracting new judges, and reducing delays in filing vacancies, particularly in high cost-of-living counties. County's Brief at 20-21; Superior Court's Brief at 33. However both the County and the Superior Court ignore the fact that SBX2 11 does not attempt to address these concerns, other than, perhaps, by commissioning a study. *See* Stats. 2009, ch 9, § 6. At most, the new statute attempts to address this Court's October 2008 ruling and those state trial court judges who relied on the ability to continue to receive supplemental benefits that this Court declared to be illegal. *See* Stats. 2009, ch 9 § 1(a) ("It is the intent of the Legislature to address the decision of the Court of Appeal in Sturgeon v. County of Los Angeles (2008) 167 Cal. App. 4th 630, regarding county-provided benefits for judges") and § 1(c) ("Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding judicial benefits . . .").

There simply is no compelling reason for the Legislature to differentiate between state trial court judges based on whether the county in which they serve happen to have paid illegal benefits in the past or whether judges in those counties relied on their ability to continue to receive illegal benefits. Nor have the County and the Superior Court identified any reason why this differential treatment is necessary to further a compelling state interest.

Nor can it even be said that there is a rational basis for differentiating between judges in this manner. Again, judges who sit in counties that paid unconstitutional supplemental benefits in the past are allowed to continue to receive supplemental benefits, and the judges who sit in counties that did not pay unconstitutional supplemental benefits in the past continue to get nothing. Again, the Judicial Council found that this differential treatment "is the result of the individual history of each court and county and is not based on any rational or consistent statewide plan." Judicial Council Report at 2. SBX2 11 authorizes and therefore perpetuates this non-rational, inequitable state of affairs.

Finally, compliance with the requirements of equal protection does not require an "inflexible uniform state-wide standard for judicial compensation," as the County and the Superior Court assert. Judicial compensation can and should take into account differences in the cost of living across the state without violating equal protection. SBX2 11falls short because it made no effort to take these differences into account, but instead purports to legalize the status quo and perpetuates the chaotic and inequitable state of affairs that existed prior to this Court's October 2008 ruling.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff's Opening Brief on Appeal, the judgment of the trial court should be reversed and this matter should be remanded with instructions that summary judgment should be granted in Plaintiff's favor.

Dated: June 8, 2010

Respectfully submitted,

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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 5,884 words.

Dated: June 8, 2010

Sterling E. Norris /PSO

Sterling E. Norris, Esq.

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 425 Third Street, S.W., Suite 800, Washington, DC 20024.

On June 8, 2010, I served the foregoing document described as:

APPELLANT'S OPENING BRIEF

by placing a true and correct copy thereof in a sealed envelope addressed as follows:

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I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at Washington, D.C. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Washington, D.C. in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

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 June 8, 2010 at Washington, D.C.

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