

S190318

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

HAROLD P. STURGEON,
Plaintiff and Petitioner,

v.

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

and

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES,
Intervenor and Respondent.

After Decision by the Court of Appeal
Fourth Appellate District, Division One
Case No. D056266

REPLY BRIEF OF PETITIONER

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INTRODUCTION

Respondents' attempt to portray Petitioner's lawsuit as an inconsequential policy disagreement with the Legislature could not be further from the truth. As Petitioner demonstrated in his opening brief, the Legislature made no fundamental policy choice when it enacted Senate Bill X2 11. Rather, it merely rubberstamped the status quo that existed prior to the appellate court's ruling in *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630 (2008) ("*Sturgeon I*") -- a status quo that the Judicial Council of California ("Judicial Council") has described as a "hodgepodge," "patchwork quilt" of "inconsistent and fundamentally unequal judicial benefits that is the result of the individual history of each court and county rather than any rational or consistent statewide plan or formula." The issue of judicial compensation is of such obvious importance, not only in the County of Los Angeles but throughout the State of California, that, after this Court declined to review the appellate court's ruling in *Sturgeon I*, Respondents lobbied the Legislature to restore their supplemental benefits during a previously-called extraordinary session of the Legislature, and the Legislature purported to do so by enacting Senate Bill X2 11. In addition, the Legislature also

directed the Judicial Council to analyze what it characterized as “statewide benefits inconsistencies” and report back to it. Not only did the Judicial Council prepare an extensive, compelling report about the substantial disparities in existing judicial benefits, but it apparently plans to issue a second, follow-up report. Obviously, such substantial attention would not be afforded to a matter that was not important. Because Petitioner’s lawsuit thus raises issues of substantial public importance, and because it is extremely unlikely that, without action by this Court, the Legislature will ever remedy the enormous disparities in judicial benefits identified by the Judicial Council, the petition for review should be granted.

ARGUMENT

A. THE COURT SHOULD GRANT REVIEW TO SETTLE THE IMPORTANT QUESTION OF WHETHER SENATE BILL X2 11 IS A VALID DELEGATION OF THE LEGISLATURE'S CONSTITUTIONAL DUTY TO PRESCRIBE THE COMPENSATION OF STATE TRIAL COURT JUDGES.

Respondents do not rebut Petitioner's argument that, in order to satisfy the requirements of article VI, section 19 of the California Constitution, the Legislature was required, at a minimum, to make a fundamental policy choice and establish meaningful safeguards to ensure that its fundamental policy choice is carried out. *Kugler v. Yocum*, 69 Cal.2d 371, 375-76 (1968). "This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues." *Id.* at 376. "It cannot escape responsibility by explicitly delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decision." *Id.* at 376-77.

In his opening brief, Petitioner demonstrated that, rather than constituting a fundamental policy choice, Senate Bill X2 11 merely rubberstamps "significant compensation differences" that are "not based

on any rational or consistent statewide plan or formula,” but instead are based on the historical choice of each individual county or court.

Judicial Council of California, “Historical Analysis of Disparities in Judicial Benefits,” *Report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and the Senate Assembly Committees on Judiciary*, December 19, 2009 (“Judicial Council Report”) at 2 and 17. Thus, based on mere happenstance, Senate Bill X2 11 purportedly authorizes the County of Los Angeles to pay trial judges in the County of Los Angeles nearly \$50,000 in supplemental benefits, while trial judges in many other counties, as well as all appellate court judges in the County of Los Angeles and across the State and all of the justices of this Court, receive no supplemental benefits at all. Instead of making a fundamental policy choice, Senate Bill X2 11 merely adopts the pre-*Sturgeon I* status quo.

Respondents’ only retort to this obvious abrogation of the Legislature’s duty to prescribe judicial compensation is that adopting the pre-*Sturgeon I* status quo in each of the fifty-eight counties in California is its own policy choice. The Legislature’s purported “solution” to the appellate court’s ruling in *Sturgeon I*, however, does not resolve the “truly

fundamental issue,” which is establishing the level of total compensation received by all judges of the court of record across the State. *Kugler*, 69 Cal.2d at 376. Respondents’ acknowledgment that Senate Bill X2 11 is only a temporary, interim measure concedes as much. *See, e.g., Sturgeon v. County of Los Angeles*, 191 Cal. App. 4th 344, 355 (2010) (“*Sturgeon II*”).

Nor does Senate Bill X2 11 contain meaningful safeguards to ensure that any fundamental policy choice of the Legislature is being carried out. In its brief, Respondent Superior Court of California, County of Los Angeles admits, for the first time, that Senate Bill X2 11 “does not mandate any freeze in the *amount* of supplemental benefits” paid by the County of Los Angeles to trial judges in the County of Los Angeles.¹ Superior Court of California, County of Los Angeles’ Answer to Petition for Review at 6 n.2 (emphasis original). Thus, under Senate Bill X2 11, the dollar value of the supplemental benefits paid by the County of Los Angeles to state trial judges within the County of Los Angeles can continue to increase, while the dollar value of supplemental

¹ Contrary to Respondent’s claim, Petitioner has consistently made this argument in this litigation since the enactment of Senate Bill X2 11. *See Sturgeon II* Appellant’s Opening Brief at 17-20 and *Sturgeon II* Reply Brief of Appellant at 12 n. 5.

benefits paid to state trial judges in counties where supplemental benefits were fixed at a particular level must continue to remain fixed at that level and trial judges in counties where no supplemental benefits were paid must continue to receive no supplemental benefits. It simply is impossible to identify any meaningful safeguards in Senate Bill X2 11 that protect a fundamental policy choice of the Legislature when the statute allows the County of Los Angeles to continue to increase the total compensation package received by state trial judges in the County of Los Angeles without any oversight by the Legislature.

Article VI, section 19 and the non-delegation doctrine do not allow the Legislature to vest such unbridled authority in the County of Los Angeles. The Legislature either must set judicial compensation itself, or it must make a fundamental policy choice, delegate responsibility for carrying out that choice, and provide safeguards to ensure that its fundamental choice is being executed. By enacting Senate Bill X2 11, a measure that rubberstamps the historical and geographic anomalies in supplemental judicial benefits that existed at the time of *Sturgeon I* and allows the County of Los Angeles to continue to increase the total compensation package paid to state trial judges in the County of Los

Angeles without any oversight by the Legislature, it did neither.

Consequently, the Court should grant review to settle this issue of substantial, if not vital, importance to the maintenance of a “strong, fair and impartial judicial branch.” Judicial Council Report at 4.

B. THIS COURT SHOULD GRANT REVIEW TO SETTLE THE IMPORTANT QUESTION OF WHETHER SENATE BILL X2 11 VIOLATES EQUAL PROTECTION.

Similarly, Respondents do not even try to rebut the Judicial Council’s finding that the substantial disparities in judicial benefits that exist across the State are the result of “the individual history of each court and county” and are “not based on any rational or consistent statewide plan.” Judicial Council Report at 2. Regardless of whether it is given strict scrutiny or analyzed under a rational basis test, Senate Bill X2 11 enshrines these irrational, historical disparities into law. It establishes and perpetuates classifications of state trial court judges -- all of whom are state officials employed in otherwise identical capacities -- based on whether the county or court in which they happen to sit were paying supplemental benefits at the time that the appellate court in *Sturgeon I* found the County’s payment of supplemental benefits to be unconstitutional.

There simply is no rational basis, much less a compelling reason, for the Legislature to differentiate between state trial court judges in this unequal manner. Nor does the reliance of some state trial court judges – primarily those in the County of Los Angeles – on previously unlawful supplemental benefits justify denying other state trial court judges similar benefits. Obviously, if the Legislature wanted to enact some form of “locality pay” to provide additional compensation to attract and retain well-qualified state trial court judges who serve in high-cost areas, it could do so. But to freeze in place a system that is based on nothing more than irrational, historical anomalies and whether supplemental benefits were being paid at the time that the appellate court in *Sturgeon I* declared the County’s payment of supplemental benefits to be unconstitutional violates equal protection. Having taken up the issue of supplemental benefits, equal protection required the Legislature to devise a system – even one that is only temporary – that, at a minimum, is both rationally related to some governmental purpose and fair to all judges across the State. The Court should grant review to settle this additional, obviously important question.

C. THIS COURT SHOULD GRANT REVIEW TO SETTLE THE IMPORTANT QUESTION OF WHETHER SENATE BILL X2 11 VIOLATES ARTICLE IV, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION.

Finally, this Court should grant review to decide whether Senate Bill X2 11 violates article IV, section 3(b) of the California Constitution. Only by construing the terms of the Governor's December 2, 2008 proclamation beyond all natural, ordinary, or reasonable meaning could the proclamation be found to embrace legislation addressing the appellate court's ruling in *Sturgeon I*. Doing so not only is at odds with this Court's long-established precedent (*e.g.*, *Martin v. Riley*, 20 Cal.2d 28 (1942)), but also effectively eliminates any limitations on the Legislature's authority when sitting in extraordinary sessions. Given the increasing frequency with which extraordinary sessions are being called, this Court should grant review to affirm that article VI, section 3(b) still has meaning.

CONCLUSION

In *Sturgeon I*, Petitioner demonstrated that, by paying supplemental benefits to the state trial court judges in the County of Los Angeles, the County of Los Angeles usurped the Legislature's duty to

prescribe judicial compensation. In *Sturgeon II*, Petitioner demonstrated that the Legislature abrogated that same duty by enacting Senate Bill X2 11, which rubberstamps the county-provided benefits without making any truly fundamental policy choice or establishing any meaningful safeguards to ensure that its fundamental choice is being carried out. Because of the obvious importance of judicial compensation to the proper functioning of the courts and the administration of justice in the State of California, and because the appellate court in *Sturgeon II* clearly departed from this Court's well-established precedent when it upheld the county-provided benefits under Senate Bill X2 11, Petitioner respectfully requests that this Court grant review of the Court of Appeal's December 28, 2010 ruling.

Dated: March 7, 2011

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CERTIFICATION OF COMPLIANCE

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, I hereby certify that this brief, including footnotes, is proportionally spaced, has a typeface of 13 points or more, and contains 1,768 words, which is less than the 4,200 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare the brief.

Dated: March 7, 2011

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PROOF OF SERVICE

I am a citizen of the United States and employed by Judicial Watch, Inc. in the City of Washington, District of Columbia. I am over the age of 18 and am not a party to the within action. My business address is 425 Third Street, S.W., Suite 800, Washington, DC 20024.

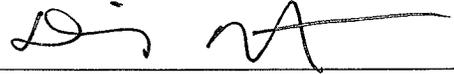
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A handwritten signature in black ink, appearing to read 'D. Rothstein', written over a horizontal line.

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