S_____

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

HAROLD P. STURGEON,
Plaintiff and Appellant,

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

PETITION FOR REVIEW

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

Counsel for Plaintiff and Appellant Harold P. Sturgeon

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ISSUES PRESENTED FOR REVIEW

1. Whether Senate Bill X2 11 is a valid delegation of the Legislature's constitutional duty to prescribe the compensation of state trial court judges.

2. Whether Senate Bill X2 11 violates equal protection.

3. Whether Senate Bill X2 11 violates article IV, section 3(b) of the California Constitution.

SUMMARY OF GROUNDS FOR GRANTING REVIEW

The Supreme Court of California should review this case to settle three important questions of law. First, this Court should decide whether Senate Bill X2 11 is a proper delegation of the Legislature's constitutional duty to prescribe the compensation of the State's trial court judges, as required by article IV, section 19 of the California Constitution. Senate Bill X2 11 provides no standards nor makes any fundamental policy choice about trial court judges' compensation. Instead, as the Judicial Council of California ("the Judicial Council") found, it purports to authorize 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. It allows judges sitting in the County of Los Angeles to receive nearly $50,000 in supplemental benefits while trial court judges sitting in other counties receive no supplemental benefits at all. Not only is Senate Bill X2 11 not a proper delegation of the Legislature's constitutional duty to prescribe the compensation of trial court judges, but, because judicial compensation is so integral to the administration of justice, this Court must address this vital issue.

Second, this Court should decide whether Senate Bill X2 11 comports with equal protection. There is neither a rational basis for nor a compelling state interest in differentiating between state trial court judges based on whether the county or court in which they happen to sit was paying supplemental benefits in 2008, when supplemental benefits paid by the County of Los Angeles were declared to be unconstitutional. Indeed, if supplemental benefits are necessary to retain well qualified judicial officials, then there is no rational or compelling reason why counties or courts that were not providing such benefits in 2008 should be prohibited from doing so now, which is exactly what Senate Bill X2 11 does.

Third, because of the increasing frequency of "extraordinary" sessions called by the Governor, it is important that this Court address the law governing such sessions. Article VI, section 3 of the California Constitution limits the Legislature, when sitting in an "extraordinary session," to considering only matters relating to, germane to, and having a natural connection with, the issues specified in the proclamation of calling the extraordinary session. Because Senate Bill X2 11 was outside the matters specified in the Governor's proclamation of the Governor calling the extraordinary session in question, Senate Bill X2 11 is unconstitutional.

FACTUAL AND PROCEDURAL BACKGROUND

On April 24, 2006, Harold P. Sturgeon filed this action for declaratory and injunctive relief against the County of Los Angeles and various county officials (collectively "Los Angeles County"). Clerk's Transcript in *Harold P. Sturgeon v. County of Los Angeles, et al.,*, Case No. D056266 at Vol. 1, pg. 000011-18 (hereinafter "___ CT at ___"). Sturgeon, a taxpayer and resident of Los Angeles County, seeks to enjoin Los Angeles County from paying supplemental benefits to the judges of the Superior Court for the State of California,

County of Los Angeles ("the Superior Court") pursuant to Code Civil Procedure § 526a. *Id.* Sturgeon contended that Los Angeles County's payment of supplemental benefits to the judges of the Superior Court contravened article VI, section 19 of the California Constitution, among other relevant provisions of law. *Id.*

On or about September 6, 2006, Los Angeles County filed a motion for summary judgment or, in the alternative, for summary adjudication, which Sturgeon opposed. 1 CT at 000006-7. The trial court heard oral arguments and, on January 9, 2007, granted Los Angeles County's motion for summary judgment. 1 CT at 000009. Sturgeon filed a timely appeal. 1 CT at 000006.

The Court of Appeal reversed. *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630 (2008) ("*Sturgeon I*"). It found that, as of January 1, 2007, the Legislature had set the salaries of superior court judges at $172,000 and that the additional, supplemental benefits paid by Los Angeles County raised that compensation by $46,346, or approximately 27 percent, to $218,346 for Fiscal Year 2007:

> In sum, in addition to the salary, benefits and retirement prescribed by the Legislature, in fiscal year 2007 each superior court judge in Los Angeles was eligible to receive $46,346 in benefits from the county. This amount represented approximately 27 percent of their prescribed salary and cost the county approximately $21 million in fiscal 2007.

Sturgeon I, 167 Cal. App. 4th at 635-36. It also found that, because this additional compensation had not been prescribed by the Legislature, it violated article VI, section 19 of the California Constitution. *Id.* at 644, 657. It declared Los Angeles County's payment of supplemental benefits to be unconstitutional and remanded the matter to the trial court for further proceedings. *Id.* at 657.

Los Angeles County petitioned the Court of Appeal for a rehearing, but its petition was denied. *Sturgeon I*, *supra*. It then petitioned this Court to review the Court of Appeal's decision, but its petition for review was denied as well. *Id.*

In February 2009, the Legislature, sitting in an extraordinary session, enacted Senate Bill X2 11 "to address the decision of the Court of Appeal in *Sturgeon v. County of Los Angeles* regarding county-provided benefits for judges." Stats. 2009, ch. 9, § 1(a)

(citation omitted). Importantly, the extraordinary session had been called by a proclamation of the Governor, issued on December 1, 2008, "[t]o 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 government." 1 CT at 000073 and 000184; 3 CT at 000427 and 000452. Nowhere did the Governor's proclamation make any reference to judicial benefits, judicial compensation, or the Court of Appeal's ruling in *Sturgeon I*. *Id.*

Nonetheless, the Legislature enacted Senate Bill X2 11, which provides, in pertinent part, as follows:

> Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

Stats. 2009, ch. 9, § 2(a); Gov't Code § 68220(a). The new legislation also included the following grant of immunity:

> Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a

> judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

Stats. 2009, ch. 9, § 5. Finally, the new legislation directed the Judicial Council to "analyze statewide benefits inconsistencies" and report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary before December 31, 2009. Stats. 2009, ch. 9, § 7.

Most unusually, on March 13, 2009, after the matter was remanded to the trial court, the trial court authorized the Superior Court to intervene as a defendant, purportedly to protect the judges' interest in continuing to receive the county-provided supplemental benefits. 1 CT at 000004 and 000009; *see also* Reporter's Transcript in *Harold P. Sturgeon v. County of Los Angeles, et al.*, Case No. D056266 (hereinafter "RT") at 1-67.

On or about April 21, 2009, Sturgeon, Los Angeles County, and the Superior Court filed motions for summary judgment, all of which were opposed. *See*, *e.g.*, 1 CT at 000002-4; 1CT at 000046 - 3 CT at 000498. Argument was heard on July 13, 2009. 1 CT at

000008; RT at 68-105. On July 27, 2009, the trial court granted summary judgment in favor of Los Angeles County and the Superior Court. 1CT at 000008; 3 CT at 000499-516. Final judgment was entered on or about August 21, 2009. 1 CT at 000002; 3 CT at 000517-39. Sturgeon again filed a timely appeal. 1 CT at 000002; 3 CT at 000540-52.

While Sturgeon's appeal was pending, the Judicial Council issued the report required by Senate Bill X2 11. *See* 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 and Assembly Committees on Judiciary*, December 19, 2009 ("Judicial Council Report"). In its report, the Judicial Council described the status of judicial benefits *after* the enactment of Senate Bill X2 11 as follows:

> [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.

Id. at 8. The Judicial Council found 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. It described the payment of judicial benefits in California as "more like a patchwork quilt, with a different history of each court." *Id.* at 13. This variance, the Judicial Council noted, "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.

According to the Judicial Council, "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 attract and retain high-quality judges, who are necessary to maintain a fair and impartial judicial branch." *Id.* at 20. The Judicial Council 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. at 17. The report declared, "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. With respect to Senate Bill X2 11 in particular, the Judicial Council found that the enactment "was not intended to be a global solution; it simply preserves the status quo for an indefinite period of time." *Id.* at 12-13.

On December 28, 2010, the Court of Appeal affirmed the trial court's ruling. *Sturgeon v. County of Los Angeles*, 191 Cal. App. 4th 344 (2010) ("*Sturgeon II*"). Despite the compelling findings of the Judicial Council that Senate Bill X2 11 was nothing but a stop-gap measure that preserved a "hodgepodge," "patchwork quilt" of supplemental benefits not based on any rational or consistent plan, but instead resulted from "the individual history of each court and county," the Court of Appeal found that the statute sufficiently "prescribed" the county-provided benefits challenged by Sturgeon, at least for the present. *Id.* at 352-54. In concluding its opinion, the Court of Appeal effectively conceded that Senate Bill X2 11 resolved nothing, including the issue of whether the payment of supplemental benefits is constitutional:

> [O]n its face, Senate Bill X2 11 is not a permanent response to either the constitutional issues we identified in *Sturgeon I* or the difficult problem of adopting a compensation scheme that deals with varying economic circumstances in an equitable and efficient manner. Thus, we would be remiss in discharging our duties if we did not state that while the Legislature's *interim* response to *Sturgeon I* defeats the particular challenges asserted by Sturgeon in this litigation, that interim remedy, if not supplanted by the more comprehensive response Senate Bill X2 11 plainly contemplates, most likely will give rise

> to further challenges by taxpayers or members of the bench themselves. As we noted at the outset, the issue of judicial compensation is a state, not a county, responsibility. We are confident that the Legislature within a reasonable period of time will act to adopt a uniform statewide system of compensation.

Sturgeon II, 191 Cal. App. 4th at 355-56 (emphasis original). No petition for rehearing was filed in the Court of Appeal.

Because it is extremely unlikely that the Legislature will ever enact comprehensive, statewide reform without action by this Court -- nearly two years have already passed since Senate Bill X2 11 was enacted and no effort has been made -- Sturgeon petitions for review.

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.

Article VI, Section 19 of the California Constitution states, in pertinent part: "The Legislature shall prescribe compensation for judges of courts of record." Cal. Const., art. VI, § 19. The provision quite

plainly commits to the Legislature both the power and the duty to set judicial compensation.

To Sturgeon's knowledge, this Court has never issued an opinion directly applying Article VI, Section 19. Nonetheless, this Court previously declined to review the Court of Appeal's opinion in *Sturgeon I*, which applied Article VI, Section 19. *Sturgeon I* relied heavily on this Court's opinion in *Kugler v. Yocum*, 69 Cal.2d 371 (1968), which concerned the delegation of legislative functions generally.

In *Kugler*, this Court noted that "the doctrine prohibiting delegation of legislative power . . . is well established in California." 69 Cal.2d at 375. The Court also noted that "several equally well established principles . . . serve to limit the scope of the doctrine proscribing delegations of legislative power." *Id.* at 375-76. "For example, legislative power may be properly delegated if channeled by a sufficient standard." *Id.* at 376. "The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the 'power to fill up the details' by prescribing administrative rules to promote the purposes of the legislation and to carry it into effect." *Id.*

"[T]he purpose of the doctrine that legislative power cannot be delegated is to assure that 'truly fundamental issues [will] be resolved by the Legislature' and that a 'grant of authority [is] . . . accompanied by safeguards adequate to prevent its abuse." *Id.* (citations omitted). "This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues." *Id.* "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 *Sturgeon I*, the Court of Appeal found these principles directly relevant to Los Angeles County's payment of nearly $50,000 in supplemental benefits to the judges of the Superior Court. *Sturgeon I*, 167 Cal. App. 4th at 652-57. In *Sturgeon II*, it ignored them. *Sturgeon II*, 191 Cal. App. 4th at 352-355.

By any fair measure, Senate Bill X2 11 does not constitute a "standard" at all, much less a "truly fundamental" policy choice. Again, the operative provision states:

> Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental

> benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

Stats. 2009, ch. 9, § 2(a); Gov't Code § 68220(a). Rather than constituting a standard or fundamental policy choice, Senate Bill X2 11 merely authorizes the continuation of "significant compensation differences," that are "not based on any rational or consistent statewide plan or formula," but are based on the historical choice of each individual county or court. Judicial Council Report at 2 and 17.

Instead of providing a standard or making a fundamental policy choice, Senate Bill X2 11 merely authorizes the pre-*Sturgeon I* status quo. It purports to give effect to the different policy choices of each of the fifty-eight counties or trial courts in the State. It does not authorize any county or court not currently providing supplemental benefits to begin doing so, should it conclude that such benefits are necessary to attract or retain well-qualified judges. Quite simply, it tells Los Angeles County and other counties and courts currently providing supplemental benefits to "continue doing what you were doing." Thus, judges of the Superior Court continue to receive supplemental benefits worth nearly $50,000 a year, while trial court judges in other counties and courts

receive nothing. By defaulting to the unique history of each of the fifty-eight counties and trial courts across the State, the Legislature has not established any standard or made any truly fundamental policy choice, but instead has abdicated its constitutional duty to "prescribe" the compensation of the state trial court judges in California.

Nor does Senate Bill X2 11 contain meaningful safeguards to ensure that a standard of fundamental policy choice of the Legislature is being followed. The lack of any meaningful safeguards is particularly apparent with respect to Los Angeles County. Because Senate Bill X2 11 purportedly authorizes counties and courts currently providing supplemental judicial benefits to continue to do so "on the same terms and conditions" as were in effect on July 1, 2008, it is necessary to consider the "terms and conditions" under which such benefits were being provided to determine whether the newly enacted provision provides any meaningful safeguards.

As of July 1, 2008, it was the policy choice of Los Angeles County to allow the judges of the Superior Court to participate in the same "MegaFlex" cafeteria benefits program and the same retirement plans that Los Angeles County makes available to its employees.

Sturgeon I, 167 Cal. App. 4th at 635-36. Thus, the only "terms and conditions" that apply to the provision of supplemental benefits to the judges of the Superior Court is that the judges must be treated as if they were employees of Los Angeles County. *Id.*

This "safeguard" does not constitute any meaningful "safeguard" at all. Los Angeles County can be as generous or as stingy as it wants to be with respect to its employees, and whatever policy choices it makes with respect to those employees will apply to the judges of the Superior Court as well. Again, the only term and condition in effect on July 1, 2008 was that Los Angeles County treat the judges of the Superior Court as if they were Los Angeles County's own employees. If Los Angeles County decides to increase the benefits it provides to its employees, those increases will apply to the judges of the Superior Court as well.[1] If it decides to decrease the benefits it provides its

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[1] Los Angeles County clearly has not frozen the benefits it pays to the judges of the Superior Court at their 2008 level. According to its proposed budget for Fiscal Year 2010-11, Los Angeles 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 Los

employees, those decreases will apply to the judges as well. The only limitation is that, if Los Angeles County chooses to terminate supplemental benefits for the judges of the Superior Court completely, it may do so on 180 days notice only and only at the end of each individual judge's present term or when an individual judge leaves office. Stats. 2009, ch. 9, § 2(b); Gov't Code § 68220(b). This purported limitation does not "safeguard" any standard or fundamental policy choice of the Legislature, not only because it does not reflect a standard or fundamental policy choice of the Legislature, but because it leaves the County of Los Angeles with substantial ability to affect the total compensation package received by judges of the Superior Court without any oversight by the Legislature.

The non-delegation doctrine does not allow the Legislature to vest such unbridled authority in Los Angeles County. 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

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Angeles County's "Trial Court Operations" spending for these same benefits in Fiscal Year 2008-09. *Id.*

being executed. By enacting Senate Bill X2 11, a measure that indefinitely maintains the untenable status quo, it did neither.

Nor does it suffice to assert, as the Court of Appeal did in *Sturgeon II*, that Senate Bill X2 11 is only an "interim response" to the constitutional issues it identified in *Sturgeon I*. *Sturgeon II*, 191 Cal. App. 4th at 355. Having been enacted in February 2009, Senate Bill X2 11 already is nearly two years old. It is extremely unlikely that the Legislature will correct this untenable state of affairs unless this Court acts. The Court should grant review to address 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.

There can be no dispute that Senate Bill X2 11 establishes and perpetuates classifications of state trial court judges -- all of whom are state officials employed by the state in otherwise identical capacities -- based on whether the county or court in which they happen to sit was paying supplemental benefits at the time the Court of Appeal declared

Los Angeles County's payment of supplemental benefits to be unconstitutional in *Sturgeon I*. As the Judicial Council found, 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. The obvious question, then, is whether Senate Bill X2 11 violates equal protection. The Court of Appeal answered this question in the negative in *Sturgeon II*: "We consider the disparity under the rational basis test and have no difficulty finding such a basis in the Legislature's express recognition that payment of the benefits by various counties and courts is needed to retain qualified judicial officers." *Sturgeon II*, 191 Cal. App. 4th at 355.

Regardless of whether this differential treatment is analyzed under a "rational basis" or "strict scrutiny" test, the Court of Appeal's opinion is erroneous.[2] The Court of Appeal's ruling fails to explain

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[2] Sturgeon does not concede that only a "rational basis" test is appropriate. In *Serano v. Priest*, 18 Cal.3d 728 (1976), this Court used a "strict scrutiny" test to analyze disparities in financing between public school districts, finding that the disparities implicated a fundamental right to education. The right to seek justice and to have meaningful access to the courts is no less fundamental than the right to education. Moreover, disparities in compensation paid to trial court judges and the concurrent impact such disparities have on the administration of justice have no less of an impact on the right to seek

why, if supplemental judicial benefits are necessary to "retain qualified judicial officers," Senate Bill X2 11 did not authorize counties and courts not providing such benefits as of July 1, 2008 to begin doing so thereafter. It would appear to be so because Senate Bill X2 11 is not based on the rational or compelling need of any particular county or court to retain qualified judicial officers, but instead is based on the unique history of each county or court, and, more specifically, the fact that the Court of Appeal previously found that the supplemental benefits provided by Los Angeles County were unconstitutional.

There simply is no rational reason, much less a compelling reason, for the Legislature to have differentiated between trial court judges in different counties or courts based on whether the county or court in which the trial judges sit was paying unlawful benefits at the time of *Sturgeon I*. Nor does the fact that some trial court judges, primarily those in Los Angeles County, may have relied on these unlawful benefits justify prohibiting trial court judges in other high cost areas from receiving lawful benefits. The Court should grant review to

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justice and to have meaningful access to the courts than disparities in public school financing have on the right to education.

settle this important question of whether Senate Bill X2 11 violates equal protection.

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.

"Extraordinary Sessions" have become increasingly frequent in the California Legislature. In the decade since the 2001-2002 legislative calendar, no less than twenty-one extraordinary sessions have been held. Eight extraordinary sessions were held during the 2009-10 legislative calendar alone. One extraordinary session already has been called for the 2011-2012 legislative calendar, which only began in December 2010.

Article VI, section 3 of the California Constitution states:

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

Cal. Const. art. IV, § 3(b). What is supposed to be extraordinary has become an ordinary way of doing business for the government of the

State of California. Consequently, it is all the more important that the constitutional limitations governing such sessions be observed.

There appears to be very few court rulings applying article IV, section 3(b), however. The last time this Court addressed the provision was nearly seventy years ago in *Martin v. Riley*, 20 Cal.2d 28, 39 (1942). "The duty of the Legislature in special session to confine itself to the subject matter of the call is of course mandatory." *Martin*, 20 Cal.2d at 39. The Legislature "has no power to legislate on any subject not specified in the proclamation." *Id.*; *see also People v. Curry*, 130 Cal. 82, 90 (1900). It only may consider matters "relating to, germane to and having a natural connection with" the subject of the proclamation. *Martin*, 20 Cal. 2d at 39. Any other matters are invalid, although they should not be declared so unless they "manifestly and clearly" are not embraced in the Governor's call. *Id.* at 40.

Senate Bill X2 11 was the product of an extraordinary session. The Legislature's express intent to "address the decision of the Court of Appeal in [*Sturgeon I*] regarding county-provided benefits for judges," however, in no way relates to, is germane to, or has a natural connection with legislation that "address[es] the economy," much less "efforts to

stimulate California's economy, create and retain jobs or streamline the operations of state and local government." Stats. 2009, ch 9, § 1(a); 1 CT at 000073. To find otherwise, as the Court of Appeal did, renders article IV, section 3(b) virtually meaningless. The Court should take this opportunity to address the important question of whether Senate Bill X2 11 violates article IV, section 3(b), a question that is made all the more important because of the increasingly frequent use of extraordinary sessions of the Legislature.

CONCLUSION

For the compelling reasons set forth above, Sturgeon respectfully requests that this Court grant review of the Court of Appeal's December 28, 2010 ruling.

Dated: February 2, 2011

JUDICIAL WATCH, INC.

By: Sterling E. Norris (PHV)
Sterling E. Norris

Attorneys for Plaintiff-Appellant

Of Counsel:

Paul J. Orfanedes
James F. Peterson
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

CERTIFICATION OF COMPLIANCE

Pursuant to Rule 8.204(c)(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 5,713 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.

Dated: February 2, 2011

Sterling E. Norris (PSD)

Sterling E. Norris

Attorneys for Plaintiff-Appellant

Filed 12/28/10

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HAROLD P. STURGEON, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, Intervenor and Respondent.	D056266 (Super. Ct. No. BC351286)

APPEAL from a judgment of the Superior Court of Los Angeles County, James A. Richman, Judge. Affirmed.

Sterling E. Norris, Judicial Watch, Inc., for Plaintiff and Appellant.

Jones Day, Elwood Lui, Brian D. Hershman and Erica L. Reilley for Defendants and Respondents.

Gibson, Dunn & Crutcher, Theodore J. Boutrous, Jr., and Kahn A. Scolnick, for Intervenor and Respondent.

This is the second time this case has reached us on appeal. In our first opinion, *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630 (*Sturgeon I*), we reaffirmed the principle that judicial compensation is a state, *not* a county, responsibility. We found that by providing substantial employment benefits to its superior court judges, defendant County of Los Angeles (the county) violated article VI, section 19 of our Constitution, which requires that compensation for judges be prescribed by the Legislature. Thus we reversed an order granting the county's motion for summary judgment on plaintiff Harold P. Sturgeon's claim payment of the employment benefits was unlawful.

Shortly after we filed our opinion in *Sturgeon I* and while the Legislature was in a special session, the Legislature passed and the Governor signed legislation which addressed the constitutional defect we identified in *Sturgeon I*. In particular, the legislation required that all counties continue to provide sitting judges with whatever benefits the counties had provided as of July 1, 2008. The Legislature permitted the counties to terminate this obligation, but not with respect to sitting judges and only after giving the Administrative Office of the Courts and any affected judges 180 days' notice.

On remand Sturgeon asserted the legislation was invalid on three grounds. He argued the legislation was outside the scope of the Governor's proclamation calling the special session, did not adequately prescribe benefits judges are to be provided, and in

any event violated equal protection principles by continuing a statewide system of unequal judicial benefits. The trial court rejected these contentions and granted the county's motion for summary judgment.

The legislation Sturgeon challenges, as enacted, implemented an *interim* response to the constitutional issues we addressed in *Sturgeon I.* As we shall explain, the legislation fell within the scope of the Governor's proclamation, adequately prescribed the benefits that must be provided to judges and did not intrude upon any judge's right to equal protection of the laws. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Sturgeon I*

Sturgeon commenced these proceedings in April 2006 by filing a taxpayer lawsuit against the county under the provisions of Code of Civil Procedure section 526a. Sturgeon's lawsuit challenged the county's annual payment of employment benefits to judges sitting in the county beyond the salary prescribed by the Legislature and in addition to employment benefits, including health care, disability insurance and life insurance provided to the judges by the state. In fiscal 2007 each judge in Los Angeles was eligible to receive $46,436 in benefits from the county, which amounted to approximately 27 percent of their prescribed salary and cost the county approximately $21 million. Among other claims, Sturgeon alleged the benefit payments violated article VI, section 19 of the California Constitution, which in pertinent part requires that the Legislature "*prescribe* compensation for judges of record." The trial court granted the county's motion for summary judgment, finding no merit in Sturgeon's claims under

article VI, section 19. Sturgeon also claimed the benefits were barred by the Lockyer-Isenberg Trial Court Funding Act of 1997 (Lockyer-Isenberg) (Gov. Code, § 77200 et seq.; Stats. 1997, ch. 850, §§ 1, 46) were unlawful gifts of public funds and amounted to an unlawful waste of public funds. The trial court rejected those claims as well.

On appeal we agreed with Sturgeon's article VI, section 19 contention and reversed the order granting summary judgment. (*Sturgeon I, supra*, 167 Cal.App.4th at p. 657.)[1] We held the benefits the county provided were compensation within the meaning of the Constitution and had not been prescribed by the Legislature. (*Ibid.*) We noted however that while the requirement of the Constitution that the Legislature prescribe judicial compensation was important, it was not onerous and required only that the Legislature "consider the specific issue and, at a minimum, establish or reference identifiable standards" by which benefits would be provided to judges. (*Ibid.*)

B. *Senate Bill X2 11*

Our opinion in *Sturgeon I* was filed on October 10, 2008, and modified on November 7, 2008.[2] On December 1, 2008, the Governor issued a proclamation calling the Legislature into a special session. The proclamation convened the Legislature in pertinent part: "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." During the special session, the

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1 We agreed with the trial court that the benefits were not barred by Lockyer-Isenberg and were neither a gift nor a waste of public funds. (*Sturgeon I, supra*, 167 Cal.App.4th at pp. 637-642.)

2 The Supreme Court denied review in *Sturgeon I* on December 23, 2008.

Legislature passed Senate Bill No. 11 (2009-2010 2d Ex. Sess.) (Senate Bill X2 11), which the Governor signed on February 20, 2009. Senate Bill X2 11 became effective on May 21, 2009.

Section 1 of Senate Bill X2 11 states: "(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.

"(b) These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county's maintenance of effort obligations if counties elected to provide benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

"(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 supplemental benefits provided by the counties or the court."

Section 2 of Senate Bill X2 11 added section 68220 to the Government Code. Section 68220 provides: "(a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

"(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with

180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county."[3]

Section 6 of Senate Bill X2 11 required that the Judicial Council analyze and report to the Legislature on statewide benefits inconsistencies on or before December 31, 2009.

C. *Proceedings on Remand*

On remand and following the Legislature's enactment of Senate Bill X2 11, the county again moved for summary judgment, arguing the Legislature had remedied the deficiency we identified in *Sturgeon I*. Sturgeon opposed the county's motion and moved for summary judgment himself. As we have noted, Sturgeon argued Senate Bill X2 11 was beyond the scope of the Governor's special session proclamation, did not adequately prescribe the benefits the county provided, and did not provide equal benefits which Sturgeon argued was required by the equal protection provisions of the state and federal Constitutions. The trial court granted the county's motion, denied Sturgeon's and entered judgment in favor of the county. Sturgeon filed a timely notice of appeal.

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3 Section 3 of Senate Bill X2 11 added Government Code section 68221, which provides in pertinent part that for purposes of Government Code sections 68220 and 68222: "(a) 'Benefits' and 'benefit' shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances."

DISCUSSION

I

We review de novo the trial court's order granting summary judgment. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) In particular, questions of statutory construction are questions of law and also subject to de novo review. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683.)

II

Article IV, section 3(b) of the California Constitution states in pertinent part: "On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has the power to legislate only on subjects specified in the proclamation . . . ." In *Martin v. Riley* (1942) 20 Cal.2d 28, 38-41, the court considered the nature of this limitation on legislative power during a special session. *Martin v. Riley* arose when, as a result of the attack on Pearl Harbor, the United States entered World War II and the Governor promptly called a special session of the Legislature to, among other matters " 'consider and act upon legislation augmenting the appropriation for the operation, maintenance and organization of the State Guard . . . and amending sections 321, 340, 395, and 555 of the Military and Veterans Code, with respect to the pay, privileges, allowances, and rights for the State Guard.' " (*Id.* at p. 38.) During the special session, the Legislature passed and the Governor signed legislation which, in addition to the specific matters set forth in the Governor's proclamation,

accomplished a major reorganization of the State Guard and gave the Governor the power to call guard members into active service. (*Id.* at p. 31.)

In *Martin v. Riley* members of the guard challenged the validity of the reorganization legislation on the grounds the legislation exceeded the scope of the Governor's proclamation. In rejecting their challenge, the court stated: "[W]hen the governor has submitted a subject to the Legislature, the designation of that subject opens *for legislative consideration matters relating to, germane to and having a natural connection with the subject proper.* [Citation.] Any matter of restriction or limitation becomes advisory or recommendatory only and not binding on the Legislature." (*Martin v. Riley, supra*, 20 Cal.2d at p. 39, italics added.) In broadly interpreting the Legislature's powers during a special session, the court relied on a Texas case interpreting a similar constitutional provision. In that case, *Baldwin v. State* (1886) 21 Tex. App. 591, although the Governor called the Legislature into session to reduce both ad valorem and occupation taxes, a bill which imposed taxes on occupations not previously taxed, was approved. In finding that the new taxes were within the call, the court found: " 'To so legislate as to *reduce the taxes*, and at the same time *provide for the support of an efficient state government*, in our opinion, includes the power to levy taxes upon property and occupations not taxed before. It might be wholly impracticable to accomplish a *reduction* of taxes and at the same time to maintain the state government, without the exercise of such power. . . . Legislative power, except where the constitution has imposed limits upon it, is practically absolute; and where limitations upon it are imposed they are to be strictly construed, and are not to be given effect as against the general

power of the legislature, unless such limitations clearly inhibit the act in question.' " (*Id.* at p. 39.) Thus in *Martin v. Riley* the court found that "when the Legislature acting under a special call, undertakes 'to consider subjects and pass laws in response thereto, and such laws receive the approval of the executive, courts are and should of right be reluctant to hold such action is not embraced in such call, and will not so declare unless the subject manifestly and clearly is not embraced therein.' " (*Id.* at pp. 39-40.)

In discussing the petitioners' specific objection, the court noted that the reorganization of the guard accomplished by the challenged legislation could be considered as pertinent to the " 'pay, privileges, allowances and rights for the State Guard,' " specifically set forth in the Governor's call. Importantly, however, the court went further and found that even if the changes made by the legislation were not pertinent to the specific matters set forth in the call "we are again brought to the realization that the call had submitted to the Legislature the subject matter of these sections and when so submitted the Legislature could not be circumscribed in the enactment of any appropriate legislation within that field." (*Martin v. Riley, supra,* 20 Cal.2d at pp. 40-41.)

Here, as we have noted, the Governor called a special session to, among other matters, address the economy and "streamline the operations of state and local governments." Thus, under *Martin v. Riley* the Governor's call opened up the subject of the operations of state and local governments. (*Martin v. Riley, supra*, 20 Cal.2d at pp. 40-41.) Whether the legislation in fact streamlined those operations is not of concern to us: the Governor's proclamation gave the Legislature the power to legislate in the area of state and local government operations. (*Ibid.*) Our opinion in *Sturgeon I* plainly

disturbed the existing relationship between the county and the judges sitting in the county's superior courts and by it terms required legislative action if the disputed benefits were to continue. In responding to our opinion, the Legislature plainly dealt with the operations of both state and local government by requiring that local governments continue to provide judges with the benefits pending the report of the Judicial Council with respect to statewide inequity in the payment of those benefits. The legislation, because it manifestly dealt with the operations of superior courts, their relationship with the county governments where they are located and the Legislature's duty to prescribe judicial compensation, was squarely within the area of state and local government operations and hence within the scope of the Governor's proclamation.

III

Contrary to Sturgeon's contention, Senate Bill X2 11, although an interim solution, satisfied the requirement of article VI, section 19 of the California Constitution that the Legislature prescribe the compensation of judges.

As we found in *Sturgeon I*, even when the Legislature bears a nondelegable duty, it may nonetheless permit other bodies to take action based on a general principle established by the Legislature so long as "the Legislature provides standards or safeguards which assure that the Legislature's fundamental policy is effectively carried out." (*Sturgeon I, supra*, 167 Cal.App.4th at p. 653.) In *Kugler v. Yocum* (1968) 69 Cal.2d 371, 377-382, the court approved a proposed ordinance which set the salary of firefighters in the City of Alhambra by reference to the average pay of firefighters in the City of Los Angeles. Although the ordinance did not set any explicit standards by which

salaries were to be set, the court nonetheless found the ordinance contained sufficient safeguards to ensure that the fundamental policy of parity would not be exploited to the detriment of the city: "The proposed Alhambra ordinance contains built-in and automatic protections that serve as safeguards against exploitive consequences from the operation of the proposed ordinance. Los Angeles is no more anxious to pay its firemen exorbitant compensation than is Alhambra. Los Angeles as an employer will be motivated to avoid the incurrence of an excessive wage scale; the interplay of competitive economic forces and bargaining power will tend to settle the wages at a realistic level. As we noted in an analogous area involving the establishment of prices: 'the Legislature could reasonably assume that competition . . . coupled with . . . bargaining power . . . would provide a safeguard against excessive prices. In all probability, that safeguard is at least as effective as any which the Legislature could be expected to provide by promulgating explicit standards . . . .' [Citation.]" (*Kugler v. Yocum, supra*, 69 Cal.2d at p. 382.)

The court reached a similar conclusion in *Martin v. County of Contra Costa* (1970) 8 Cal.App.3d 856 where a statute which set the salary of municipal court attaches in Contra Costa County at the same rate as comparable county employees. "This provision is not an abdication of the Legislature's duty to prescribe the compensation of the attaches of each municipal court. It fixes the compensation of the employees, declares a policy that such compensation shall be commensurate with that furnished county employees with equivalent responsibilities and provides for interim changes, subject to review by the Legislature, in the event there are local changes which would

otherwise cause discrepancies in compensation in violation of the legislative policy." (*Id.* at p. 862.)

As we have noted, Senate Bill X2 11 requires that counties continue to pay sitting judges the benefits judges in each respective county were receiving as of July 1, 2008, for the balance of any judge's term of office. As to those payments, the counties have no discretion. Thus, as to sitting judges, benefit payments for the balance of their terms are clearly now "prescribed" under even the strictest interpretation of the term.

Admittedly, under Senate Bill X2 11 counties are given the option of terminating benefits to judges who were not sitting when Senate Bill X2 11 was passed and terminating benefits for sitting judges when the terms they were serving when the legislation was adopted expire. However, this discretion to terminate benefits is subject to important and substantial safeguards which assure that the Legislature's fundamental decision to continue the benefits is not disturbed in the absence of legislative oversight. First, the face of Senate Bill X2 11 itself makes it clear the Legislature intended to recognize that benefits were paid as a means of attracting qualified judicial officers and that judges have a reasonable and legitimate expectation the benefits previously paid by each county or court will be a part of their compensation. (See Sen. Bill X2 11, § 1(c).) Moreover, the Legislature, by requiring a report from the Judicial Council with respect to inconsistencies in the payment of benefits, also expressed its intent that, as far as is practical, benefits should be provided to judges on an equitable basis. (Sen. Bill X2 11, § 6.) Finally, any county which terminates benefits must provide judges affected and the Administrative Director of the Courts 180 days' notice. (Gov. Code, § 68220, subd. (b).)

This lengthy notice period provides the Legislature ample time in which to review and abrogate any termination of benefits it believes is inappropriate. In sum, the Legislature has plainly articulated its desire that judges continue receiving benefits from counties and courts and that the benefits be paid on an equitable basis. Moreover, by way of the notice requirement it imposed, the Legislature has established a powerful procedural safeguard in the event any county or court acts in a manner inconsistent with the broad policies the Legislature has articulated. By setting broad policies and establishing a safeguard which will prevent any deviation from those policies, the Legislature has fully satisfied the requirements of the Constitution. (See *Kugler v. Yocum, supra*, 69 Cal.2d at pp. 381-382; *Martin v. Contra Costa, supra*, 8 Cal.App.3d at pp. 863-864.)

IV

Finally, Sturgeon argues Senate Bill X2 11 is invalid because it does nothing to immediately address the disparity in judicial benefits paid by various counties throughout the state. Because Senate Bill X2 11 is an interim measure, awaiting further legislative action, we find this argument unpersuasive.

We will assume without deciding that as a taxpayer Sturgeon has standing to assert his equal protection argument under Code of Civil Procedure section 526a. (See *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29.) However, contrary to Sturgeon's contention, the disparity in judicial compensation is not subject to strict scrutiny. Unlike the discrimination based on wealth which was subject to strict scrutiny in *Serrano v. Priest* (1976) 18 Cal.3d 728, 765-766, here discrimination based on the geographic location of judges is not a suspect classification. Moreover, the right to

employment as a judge is not a fundamental right (see *Rittenband v. Cory* (1984) 159 Cal.App.3d 410, 418-419) and there is no fundamental right to a certain level of compensation. (See *American Federation of Teachers v. Los Angeles Community College Dist.* (1980) 111 Cal.App.3d 942, 945, fn. 1) Thus we consider the disparity under the rational basis test and have no difficulty finding such a basis in the Legislature's express recognition that payment of the benefits by various counties and courts is needed to retain qualified judicial officers. (See *Sturgeon I*, *supra*, 167 Cal.App.4th at p. 639.)

CONCLUSION

As the parties have recognized, SBX 211 both preserved the *status quo ante Sturgeon I* and commenced a process by which the Legislature looks to adoption of a comprehensive judicial compensation scheme. As we have explained, this response to *Sturgeon I* meets the requirements of the Constitution and is wholly sensible under the circumstances. The Legislature is uniquely competent to deal with the complex policy problem of establishing a judicial compensation scheme which both assures recruitment and retention of fully qualified judicial officers throughout the state while at the same time providing equity between judges in different parts of the state. By the same token our role in ensuring that the more general requirements of the Constitution have been met is, under our system of separate governmental powers, quite limited. (See *Community Redevelopment Agency v. Abrams* (1975) 15 Cal.3d 813, 831-832.) Thus, whatever permanent remedy the Legislature eventually adopts will be entitled to the well-established "judicial deference to the legislative branch." (*Ibid.*)

However, on its face SBX 211 is not a permanent response to either the constitutional issues we identified in *Sturgeon I* or the difficult problem of adopting a compensation scheme that deals with varying economic circumstances in an equitable and efficient manner. Thus, we would be remiss in discharging our duties if we did not state that while the Legislature's *interim* response to *Sturgeon I* defeats the particular challenges asserted by Sturgeon in this litigation, that interim remedy, if not supplanted by the more comprehensive response SBX 211 plainly contemplates, most likely will give rise to further challenges by taxpayers or members of the bench themselves. As we noted at the outset, the issue of judicial compensation is a state, not a county, responsibility. We are confident that the Legislature within a reasonable period of time will act to adopt a uniform statewide system of judicial compensation.

Judgment affirmed.

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BENKE, Acting P. J.

WE CONCUR:

_____

NARES, J.

_____

HALLER, J.

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.

On February 2, 2011, I served a copy of the within document described as: **PETITION FOR REVIEW**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Washington, D.C. addressed as set forth below.

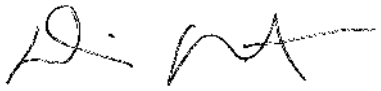
☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the addresses(es) set forth below.

***See* ATTACHED SERVICE LIST**

I am readily familiar with the firm's practice of collection 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 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 in affidavit.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on February 2, 2011 at Washington, D.C.



David F. Rothstein

SERVICE LIST

Elwood Lui, Esq. (1 copy)
Brian Hershman, Esq.
JONES DAY
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300

Theodore J. Boutrous, Jr., Esq. (1 copy)
Kahn A. Scolnick, Esq.
GIBSON, DUNN & CRUTCHER, LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

Clerk of the Court (1 copy)
Court of Appeal
4th Appellate District, Division 1
Symphony Towers
750 B Street, Suite 300
San Diego, CA 92101

Clerk of the Court (1 copy)
Superior Court of California, County of Los Angeles
111 N. Hill Street
Los Angeles, CA 90012