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

APPELLANT'S OPENING BRIEF

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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

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INTRODUCTION AND STATEMENT OF THE CASE

On April 24, 2006, Plaintiff, a taxpayer and resident of the County of Los Angeles, filed this action for declaratory and injunctive relief, naming the following nine defendants: the County of Los Angeles, the five members of the County's Board of Supervisors, the County's Chief Executive Officer, the County's Auditor-Controller, and the Division Chief of the Payroll Division of the County's Auditor-Controller (collectively "Defendants"). Clerk's Transcript (hereinafter "CT") at 000011-18. Invoking Code of Civil Procedure Section 526a, Plaintiff sought to enjoin Defendants from supplementing the compensation received by the judges of the Superior Court for the State of California, County of Los Angeles ("the State Court"). *Id.* Specifically, Plaintiff contended that Defendants' payment of supplemental benefits to the State Court's judges contravenes Article VI, Section 19 of the California Constitution, among other relevant statutes and provisions of law. *Id.*

On or about September 6, 2006, Defendants filed a motion for summary judgment or, in the alternative, for summary adjudication, which Plaintiff opposed. CT at 000006-7. The trial court heard oral arguments and, by Order entered on or about January 9, 2007, granted Defendants' motion for summary judgment. CT at 000009. The trial court found that the County of Los Angeles' payment of

supplemental benefits was neither a gift nor a waste of public funds. It also found that the benefits were authorized by the Lockyer-Isenberg Trial Court Funding Act of 1997 ("Lockyer-Isenberg"), Government Code § 77200, *et seq*. Plaintiff timely appealed the trial court's final judgment. CT at 000006.

This Court reversed. *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630 (2008). It found that the supplemental benefits paid by Defendants to the State Court's judges constituted compensation within the meaning of Article VI, Section 19 of the California Constitution and, as a result, must be prescribed by the Legislature. *Id.* at 644, 657. Because the benefits at issue had not been prescribed by the Legislature, this Court found that the benefits were unconstitutional and remanded the matter to the trial court for further proceedings. *Id.* at 657. Defendants moved for rehearing, but were denied. *Sturgeon v. County of Los Angeles*, 2008 Cal. App. LEXIS 1735 (Cal. App. 4th Dist. Nov. 7, 2008). Defendants petitioned the Supreme Court of California for review, but that petition was denied as well. *Sturgeon v. County of Los Angeles*, No. S168408 (Cal. Dec. 23, 2008).

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* (2008) 167 Cal. App. 4th 630, regarding

county-provided benefits for judges." Stats. 2009, ch. 9, § 1(a). The Legislature found: "These provisions were declared unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record." Stats. 2009, ch. 9. The new legislation 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). It also included a grant of immunity to any governmental entity, officer, employee, or judge based on Defendants' earlier provision of the unconstitutional, supplemental benefits:

> 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.

Most unusually, on March 13, 2009, the trial court authorized itself to intervene as a defendant in this matter to protect its purported interests in the

continuation of the county-provided benefits. CT at 000004 and 00000009; *see also* Reporter's Transcript (hereinafter "RT") at 1-67; CT at 000029-41.

On or about April 21, 2009, Plaintiff, Defendants, and Intervenor filed motions for summary judgment, all of which were opposed. *See, e.g.*, CT at 000002-4 and 000046-498. The trial court heard arguments on July 13, 2009 (CT 000008; RT at 68-105), and by Order dated July 27, 2009, granted Defendants' and Intervenor's motions for summary judgment. CT at 000008 and 000499-516. In so ruling, the trial court rejected Plaintiff's argument that Senate Bill X2 11 was invalid because the subject of judicial compensation had not been specified in the Governor's proclamation calling for a special session of the Legislature. CT 000507-09. The trial court acknowledged that "the subject of judicial compensation was not specifically identified as one of the subjects for which the Governor called the Legislature into the extraordinary session," but nonetheless "presumed" the Legislature had "deemed that subject subsumed within one or more of the specific objectives of the Governor's proclamation." CT at 000508. The trial court also "presumed that when the Governor signed the bill, he too believed it was embraced within the scope of his proclamation." *Id.* at 000509.

The trial court also found that Senate Bill X2 11 complied with this Court's interpretation of article VI, section 19 of the California Constitution, declaring that

Senate Bill X2 11 "'prescribe[s]' the fundamental policy of judicial compensation, with 'standards or safeguards which assure that the ... fundamental policy is effectively carried out.'" CT at 000511 (*quoting Sturgeon*, 167 Cal. App. 4th at 653). Finally, the trial court also found that Senate Bill X2 11 did not violate equal protection, as it "does not, by itself, establish differing levels of compensation for superior judges on a county basis." *Id.* at 000514.

A final judgment was entered on or about August 21, 2009. CT at 000002 and 000517-39. This timely appeal followed. *Id.* at 000002 and 000540-52.

ARGUMENT

I. Standard of Review.

The proper standard of review of a summary judgment ruling by a trial court is well established. This Court has stated that "in evaluating the correctness of a ruling under [Code of Civil Procedure] section 437c," it "must independently review the record before the trial court." *Ranchwood Communities Limited Partnership v. Jim Beat Constr. Co.*, 49 Cal. App. 4th 1397, 1408 (1996) (citations and internal quotation marks omitted). "Because the grant or denial of a motion under [Code of Civil Procedure] section 437c involves pure questions of law," the Court is "required to reassess the legal significance and effect of the papers

presented by the parties in connection with the motion." *Id.* Consequently, the Court "must apply the same three-step analysis" required of the trial court:

> First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond . . .. [Para.] Secondly, we determine whether the moving party's showing has established facts which negate the opponent's claim and justify a judgment in movant's favor . . .. [Para.] When a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue.

Id. "In practical effect," the Court must "assume the role of a trial court and redetermine the merits of the motion." *Id.* "In doing so," the Court "must rigidly scrutinize the moving parties' papers." *Id.* "Concurrently, application of a statute to a set of facts raises questions of law to which de novo review applies." *Id.*

II. The California Legislature Lacked Authority To Enact Senate Bill X2 11.

In February 2009, the Legislature enacted Senate Bill X2 11 in response to this Court's ruling that the supplemental benefits at issue were unconstitutional. The new legislation declared, "These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record." Stats. 2009, ch. 9. The new legislation purportedly authorizes the continued payments of county-provided benefits.

Importantly, the new legislation was enacted during an extraordinary session of the Legislature convened by proclamation of the Governor on December 1, 2008. Article IV, Section 3 of the California Constitution contains the following provision limiting the authority of the Legislature to act during special sessions:

> On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special sessions. When so assembled it has 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 (emphasis added). "The duty of the Legislature in special session to confine itself to the subject matter of the call is of course mandatory." *Martin v. Riley*, 20 Cal.2d 28, 39 (1942). The Legislature "has no power to legislate on any subject not specified in the proclamation." *Id.*; *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.

The Governor's proclamation convening the extraordinary session at which Senate Bill X2 11 was enacted stated as follows:

1. 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 government.

2. To consider and act upon legislation to address the housing mortgage crisis.

3. To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund.

CT at 000073; 000184; 000427; and 0000452. The Governor's proclamation made no reference whatsoever to any type of judicial compensation, much less any supplemental benefits paid by counties to state trial court judges. The proclamation also did not make any reference to addressing recent court decisions or, in particular, this Court's decision finding that the supplemental benefits paid by Defendants were unconstitutional. Nor did it make any mention of granting immunity from liability, prosecution, or disciplinary action to any governmental entity or officer or employee of a governmental entity because of the supplemental benefits paid to trial court judges.

Senate Bill X2 11 obviously did not address the housing mortgage crisis or the solvency of the Unemployment Insurance Fund. Nor can it be said that it addressed the economy or created or retained jobs. Senate Bill X2 11 did not create a single new judgeship or eliminate any existing ones. State trial court

judgeships continued to exist in the same numbers as they existed prior to the passage of Senate Bill X2 11. The new legislation only purported to authorize the payment of supplemental benefits to sitting judges who never were at risk of having their positions eliminated because of the current economic downturn. If this authorization can be deemed to constitute "address[ing] the economy" for purposes of satisfying Article IV, Section 3, then this limitation on legislative power set forth in the California Constitution will have been rendered meaningless.

In addition, far from streamlining the operation of state and local government, Senate Bill X2 11 created redundancies, overlap, and substantial bureaucratic inefficiencies insofar as it purported to authorize overlapping state and county systems for compensating state trial court judges in those counties that had been paying supplemental benefits to judges prior to the enactment of the new statute. It also created inconsistencies between counties, as those counties that had not paid supplemental benefits prior to the enactment of the new statute were not authorized to begin doing so. Moreover, Senate Bill X2 11 also may require the County of Los Angeles to create an entirely new system to administer and provide benefits to the judges of the trial court. Such a result is not streamlining at all; it is the opposite of streamlining. If the Legislature intended to streamline judicial

compensation, it would have reaffirmed that the State and only the State is responsible for judicial compensation.

In short, Senate Bill X2 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 convening the extraordinary session of the Legislature at which this new legislation was passed. The new, purported legislation manifestly is not within the scope of the Governor's proclamation.

Nor does the fact that the Legislature passed the Senate Bill X2 11 or that the Governor signed the provision justify or excuse the Legislature's failure "to confine itself to the subject matter" of the Governor's proclamation. *Martin*, 20 Cal.2d at 39. It is not sufficient to simply "presume" that the Legislature and the Governor believed that Senate Bill X2 11 was within the scope of the Governor's proclamation. CT at 000508-09. If that were the case, then the limitation on legislative power set forth in Article IV, Section 3 of the California Constitution would effectively be written out of the constitution. Because the Legislature "ha[d] no power to legislate on any subject not specified in the proclamation," Senate Bill X2 11 is invalid. *Martin*, 20 Cal. 2d at 39-40; *Curry*, 130 Cal. at 90; Cal. Const., art. IV, § 3.

III. Senate Bill X2 11 Fails to "Prescribe" The Benefits At Issue.

Although Senate Bill X2 11 was specifically enacted to address this Court's ruling in *Sturgeon*, it completely fails to heed the clear mandate of the Court's ruling. In *Sturgeon*, this Court declared:

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

Sturgeon, 167 Cal. App. 4th at 653 (emphasis added). The Court continued:

> We have said that the 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 protect its abuse." [Citations] This doctrine rests upon the premise that ***the legislative body must itself effectively resolve the truly fundamental issue.*** 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 decisions.

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

The Court also declared:

> In the interests of bringing rationality and uniformity to judicial compensation, the responsibility with respect to judicial compensation, the responsibility of protecting the judiciary has now been left largely in the hands of the Legislature. Because the legislative responsibility with respect to judicial compensation, including of necessity the participation of the executive branch in the legislative process, is now the principal means of protecting the

> independence of the judicial branch, in considering compensation judges receive ***we must be careful that in fact the Legislature has exercised its prescriptive role***. In particular, unlike concerns employees might receive excessive pay which animated the litigation in *Kugler v. Yocum* and *Martin*, ***we must in addition be sensitive to the potential that judges might be subject to substantial variations in compensation determined solely by local authorities.***

Id. at 654 (emphasis added).

Senate Bill X2 11 purports to amend the Government Code to authorize the County of Los Angeles and various other counties currently providing supplemental judicial benefits to continue to do so. Stats. 2009, ch. 9, § 2(a). It also authorizes these same counties to terminate the supplemental benefits they pay to state trial court judges on 180 days notice. *Id.* at § 2(b). It directs the Judicial Council to report to various committees of the Senate and the Assembly on "statewide benefit inconsistencies."[1] *Id.* at § 6. It does not authorize those counties not currently paying supplemental benefits to begin doing so.

Rather than follow this Court's clear mandate that article VI, section 19 requires a "fundamental policy choice" and "standards or safeguards which assure that the Legislature's fundamental policy is effectively carried out" (*Sturgeon*, 167

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[1] *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 Counsel Report").

Cal. App. 4th at 653), the Legislature did exactly the opposite. It deferred to the policy choices made by each of those counties that elected to provide supplemental benefits and their determinations about the level at which such benefits should be provided. It froze in place the status quo with respect to those counties that never considered the issue. Presumably, it also froze in place the status quo in those counties that decided they lacked authority from the Legislature to decide whether they even could provide supplemental benefits to the state trial court judges within their jurisdictions. Far from constituting one "fundamental policy choice" and providing "standards or safeguards" to assure that choice is effectively carried out, Senate Bill X2 11 creates a different outcome for each of the fifty-eight (58) counties in California. *See* Judicial Counsel Report at Appendix D, D-9 through D-14. In fact, the Judicial Council recently characterized Senate Bill X2 11 as "not intended to be a global solution; it simply preserves the status quo for an indefinite period." Judicial Council Report at 12-13.

It also creates exactly the type of "substantial variation in compensation determined solely by local authorities" about which this Court expressed concern in its prior ruling. *Sturgeon*, 167 Cal. App. 4th at 654. The Judicial Counsel Report describes the "current status of judicial benefits" as a "hodgepodge" and

"more like a patchwork quilt, with a different history in each court." Judicial Council Report at 8 and 13. Defendants themselves recognized in their motion for summary judgment that "[t]he Legislature's policy largely retains for the time being existing disparities in benefits." CT at 000205. It also "make[s] the overall compensation structure for judges inconsistent and, in some cases, result in justices of an appellate court receiving lower compensation that judges of a trial court in the same geographic area." Judicial Council Report at 2.

Indeed, the Final Report of the 2006-2007 San Bernardino County Civil Grand Jury, which examined the payment of supplemental benefits to state trial court judges, found a wide variance in the level of benefits paid by different counties:

> **Alameda:** In 2003-04, Alameda County paid $1,350 per judge for a "cafeteria" benefits plan for the 69 state trial court judges who sat in that county, for a total cost of $150,000.
>
> **Fresno:** In 2003-04, Fresno County paid $1,121.42 per judge for health insurance and $92.56 for a life insurance policy for each of the state trial court judges who sat in that county.
>
> **Riverside:** In 2003-04, Riverside County paid a car allowance to each of the state court trial judges who sat in that county. It also

provided the state court judges who sat in the county with deferred compensation and a life insurance policy.

San Diego: In 2003-04, San Diego County paid no benefits to the 128 state trial court judges who sat in that county.

Santa Barbara: In 2003-04, Santa Barbara County paid no benefits to the 19 state trial court judges who sat in that county.

Santa Clara: In 2003-04, Santa Clara County paid for a $25,000 life insurance policy for each of the 79 state trial court judges who sat in that county.

San Bernardino: In 2003-04, San Bernardino County provided $19,371.56 worth of benefits for each of the 83 state trial court judges who sat in the county, for a total cost of $1,607,839.

CT at 000074-75.[2] In marked contrast, each of the 429 state trial court judges in the County of Los Angeles was eligible to receive $46,436 in supplemental

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[2] These values appear to be for the years 2003-04. CT at 000073-74. For 2006-07, San Bernardino County provided supplemental benefits of $19,700 per judge for a total of $1,635,100 for 83 judges. CT at 000075. The Judicial Council Report, which was not available during the proceedings in the trial court, contains more recent data. *See generally*, Judicial Council Report at Appendix D, pages D10-D14.

benefits provided by the County in Fiscal Year 2007.[3] *Sturgeon*, 167 Cal. App. 4th at 636.

Nor can it be said that Senate Bill X2 11 presents a "maximum" and a "minimum" for county-provided benefits. First, far from establishing a single "maximum," Senate Bill X2 11 establishes fifty-eight (58) "maximums" for state trial court judges. There is a separate "maximum" for trial court judges in each county. These "maximums" range from $46,436 in Fiscal Year 2007 in the County of Los Angeles to zero in San Diego County and Santa Barbara County. Having fifty-eight (58) "maximums" constitutes no "maximum" at all.

Nor does Senate Bill X2 11 establish any true "minimum" with respect to those counties providing supplemental benefits. While the provision authorizes such counties to terminate the supplemental benefits they pay to their state trial court judges on 180 days notice, the statute further provides that "[t]he 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." Stat. 2009, ch. 9, § 2(b). Thus, counties providing

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[3] The state court trial judges in the County of Los Angeles receive the lion's share of county-provided benefits. Of the $30,288.298 in county funded supplemental benefits paid statewide in FY2007-08, $23,482.932 were paid by the County of Los Angeles. Judicial Council Report at Appendix D, pages D-11 and D-12. This represents seventy-seven percent (77%) of the total. *Id.*

supplemental benefits cannot even terminate the benefits that they pay judges unless or until an individual judge leaves the bench or his or her term expires. The result is different "minimums" for different judges even within the various counties that pay benefits. This is no "minimum" at all.

Second, and with respect to the County of Los Angeles in particular, Senate Bill X2 11 provides neither a "maximum" nor a "minimum," nor any safeguards that ensure a fundamental policy choice of the Legislature is being carried out. The statute authorizes counties currently providing supplemental benefits to continue to pay these benefits "on the same terms and conditions as were in effect on that date." Stats. 2009, § 2(a). The County of Los Angeles treats the state court trial judges of the Superior Court for the State of California, County of Los Angeles as its own employees for purposes of providing benefits. CT at 000213; 000348; Los Angeles County Code §§ 5.23 (Retirement), 5.25 (Retirement), 5.26 (Retirement), 5.28 (MegaFlex), 5.36 (MegaFlex), and 5.40 (Professional Development Allowance). With respect to the "MegaFlex" cafeteria benefits plan, for example, the County of Los Angeles "treats its superior court judges as salaried employees of the county for the purpose of the MegaFlex contributions and thus the county's superior court judges receive MegaFlex contributions equal to 19 percent of the salary." *Sturgeon*, 167 Cal. App. 4th at 634. Thus, the

"benefit" being provided by the County of Los Angeles is to treat the judges as if they were County of Los Angeles employees.

As a result, any changes the County of Los Angeles makes to the benefits package it provides to its employees will apply to the state court judges in the County of Los Angeles as well. The County of Los Angeles could increase or decrease the percentage of employees' salaries it contributes to the MegaFlex plan or otherwise change the cafeteria plan or the professional development allowance or retirement benefits it provides to its employees in whatever manner it sees fit, and those same changes would apply to the trial judges of the superior court under Senate Bill X2 11. Consequently, the statute provides no true "maximum" or "minimum" with respect to the County of Los Angeles in particular. Because Senate Bill X2 11 simply allows the County of Los Angeles to treat the state court trial judges within its jurisdiction as county employees, it does not represent any fundamental policy choice by the Legislature at all. *Sturgeon*, 167 Cal. App. 4th at 653.

Senate Bill X2 11 also does not provide for any safeguards or oversight of changes that the County of Los Angeles might make to the benefits package it extends to its employees, and, by reason of Senate Bill X2 11, to the state trial court judges within its jurisdiction. In this regard, Senate Bill X2 11 is nothing at

all like the statute at issue in *Martin v. County of Contra Costa*, 8 Cal. App. 3d 856 (1970). In that case, the Legislature enacted a statute directing municipal court employees in Contra Costa County to be compensated based on the same pay schedule the county used to pay its employees. The Legislature incorporated the county's pay schedule into the text of the statute. *Martin*, 8 Cal. App. 3d at 859, n.1. It also required that, should the county make any adjustments to its pay schedule, the adjustments would apply to the municipal court employees as well, but only after the Legislature had the opportunity to review them:

> 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.

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

In sum, while Senate Bill X2 11 purports to legalize the status quo that existed before this Court ruling, it fails to do so because the statute neither establishes nor reflects a fundamental policy choice of the Legislature. *Sturgeon*, 167 Cal. App. 4th 653-54. Nor does the statute reflect, establish, or otherwise provide any standards or safeguards to assure that a fundamental policy choice of the Legislature is being carried out effectively. *Id.* Instead, it legalizes judicial compensation chaos. It is a complete abdication of the Legislature's duty to prescribe the compensation of judges, and, consequently, it is unconstitutional. Cal. Const., art. VI, § 19.

IV. Senate Bill X2 11 Violates Fundamental Tenets Of Equal Protection.

Senate Bill X2 11 also is unconstitutional because it violates equal protection. It 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 the county in which they happen to sit and, more specifically, whether the county in which they sit previously paid supplemental benefits in contravention of Article VI, Section 19.

There are two principal tests for reviewing classifications that are challenged under the equal protection clause of the Fourteenth Amendment to the United States Constitution or Article I, Section 7 of the California Constitution.

Hernandez v. City of Hanford, 41 Cal.4th 279, 298 (2007). The first is the conventional test for reviewing economic and social welfare legislation in which there is discrimination or differentiation of treatment between classes or individuals. *Id.* This test requires that the distinctions drawn by a statute bear some "rational relationship" to a conceivable, legitimate state purpose. *Id.* at 299.

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

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

The issues raised by this case clearly touch on "fundamental interests." The compensation paid to state trial court judges undoubtedly affects the administration of justice throughout the State. This Court itself recognized the importance of "bringing rationality and uniformity to judicial compensation" as well as the need to "be sensitive to the potential that judges might be subject to substantial variation in compensation determined solely by local authorities." *Sturgeon*, 167 Cal. App. 4th at 653. The funding of trial court operations and the compensation paid to state trial court judges certainly are interests no less fundamental than the funding of state education, which was found to be a "fundamental interest" in *Serrano*. 18 Cal.3d at 766.

Perhaps even more critically, allowing counties to determine whether to supplement state trial court judges' compensation in whatever manner they deem fit raises the appearance of the counties having improper influence over the judges. This appearance is all the more troubling given that counties frequently have substantial amounts of litigation pending before the local state trial court. Certainly, private litigants could not "supplement" the compensation of the judges of a court before which they have litigation pending without doing substantial harm to the appearance of the court's impartiality and independence. This matter

clearly touches on "fundamental interests." Senate Bill X2 11 must be analyzed under a "strict scrutiny" test.

Senate Bill X2 11 fails this test. It completely ignores this Court's concern about state trial court judges being subject to substantial variations in compensation determined solely by local authorities. *Sturgeon*, 167 Cal. App. 4th at 654. The result is that state court trial judges in the County of Los Angeles receive up to $46,000 per year in supplemental compensation, and state court trial judges in other high-cost counties, such as San Diego County and Santa Barbara County, receive nothing. There is no "compelling state interest" in authorizing such gross disparities in compensation, especially when the disparities arose from the fact that the County of Los Angeles was paying supplemental benefits to judges without legal authorization from the Legislature and in contravention of the California Constitution. It simply cannot be said that there is a compelling state interest in differentiating between state trial court judges based on whether the county in which they happen to sit previously violated the California Constitution.

Nor can it be said that the distinctions drawn by Senate Bill X2 11 are "necessary" to further a "compelling state interest." *Hernandez*, 41 Cal.4th at 299. The statute differentiates between the counties that paid unconstitutional benefits in the past and counties that did not. Under Senate Bill X2 11, the judges who sit

in counties that paid unconstitutional benefits in the past are allowed to continue to receive those benefits, and the judges who sit in counties that did not pay unconstitutional benefits in the past continue to get nothing. The statute rewards the guilty and punishes the innocent, which is not consistent with either a strict scrutiny or a rational basis test.

If the Legislature articulated any state interest at all, it would appear to be an interest in "retain[ing] qualified applicants for judicial office" and protecting judges who purportedly relied on the unconstitutional benefits. 2009 Stats., § 1(c). It certainly cannot be said that the State has a compelling interest in protecting persons, much less judges, who rely on ill-gotten gains.[4] To the extent the Legislature's goal was to retain qualified judges, it was not necessary to differentiate between otherwise identically situated state trial court judges based on whether the counties in which the judges happened to sit previously violated the California Constitution. Senate Bill X2 11 also clearly does nothing to advance the goal of retaining well-qualified judges in high-cost counties like San Diego County or Santa Barbara County, which historically had not provided unconstitutional benefits to trial court judges. If anything, as the Judicial Council

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[4] The Legislature obviously recognized that it would be problematic for judges to retain past, unconstitutional benefits because it provided them with immunity from liability, prosecution, or discipline. 2009 Stats., ch. 9, § 5.

Report noted, "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." Judicial Council Report at 20. The means chosen by the Legislature in Senate Bill X2 11 -- which reward the guilty and punish the innocent -- are just as likely to have a detrimental effect.

Nor is it even rational. The Judicial Council Report concluded that the variance among supplemental benefits provided to superior court judges and purportedly authorized by Senate Bill X2 11 "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." Judicial Council Report at 2. Senate Bill X2 11 cannot survive either a strict scrutiny or a rational basis test, and, consequently, is unconstitutional for this additional reason.

CONCLUSION

The California Constitution vests the Legislature with both the power and the duty to "prescribe" the compensation of judges. This Court previously found that Defendants had usurped this duty by paying supplemental benefits to state trial court judges in the County of Los Angeles without authorization from the Legislature. In enacting Senate Bill X2 11, the Legislature has now abdicated this

very same duty. Neither Defendants' earlier usurpation of the Legislature's duty, nor the Legislature's recent abdication of its duty, satisfies Article VI, Section 19 of the California Constitution. In addition, not only is the Legislature's attempt to address this Court's ruling while sitting in a special session constitutionally infirm, but the statute also runs afoul of the requirements of equal protection. Consequently, the trial court's judgment should be reversed and the matter should be remanded with instructions that summary judgment should be granted in Plaintiff's favor.

Dated: March 30, 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 6,895 words.

Dated: March 30, 2010

Sterling E. Norris, Esq. /PSO

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 501 School Street, S.W., Suite 700, Washington, DC 20024.

On March 30, 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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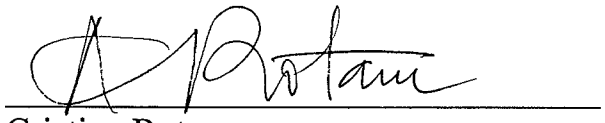
I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at Washington, D.C. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same 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 March 30, 2010 at Washington, D.C.



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ATTACHMENT

Senate Bill No. 11

CHAPTER 9

An act to add Sections 68220, 68221, and 68222 to the Government Code, relating to judges.

[Approved by Governor February 20, 2009. Filed with Secretary of State February 20, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 11, Steinberg. Judges: employment benefits.

The California Constitution requires the Legislature to prescribe compensation for judges of courts of record. Existing law authorizes a county to deem judges and court employees as county employees for purposes of providing employment benefits. These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record.

This bill would provide that judges who received supplemental judicial benefits provided by a 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. The bill would authorize a county to terminate its obligation to provide benefits upon providing 180 days' written notice to the Administrative Director of the Courts and the impacted judges, but that termination would 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 bill also would authorize the county to elect to provide benefits for all judges in that county. The bill would require the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

This bill would provide that 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 the bill on the ground that those benefits were not authorized under law.

This bill would provide that nothing in its provisions shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(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.

SEC. 2. Section 68220 is added to the Government Code, to read:

68220. (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.

SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(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.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

SEC. 4. Section 68222 is added to the Government Code, to read:

68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

SEC. 5. 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.

SEC. 6. The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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