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In the Supreme Court of the State of California

ST. JOHN'S WELL CHILD AND FAMILY CENTER, et al.,

Petitioners,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,

Respondents,

DARRELL STEINBERG, individually and as President pro Tempore, etc., et al.,

Interveners.

Case No. S181760

SUPREME COURT
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First Appellate District, Division Two, Case No. A125750

ANSWERING BRIEF ON THE MERITS OF THE GOVERNOR

EDMUND G. BROWN JR.
Attorney General of California
JONATHAN K. RENNER
Senior Assistant Attorney General
ZACKERY P. MORAZZINI
Supervising Deputy Attorney General
ROSS C. MOODY
Deputy Attorney General
State Bar No. 142541
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1376
Fax: (415) 703-1234
Email: Ross.Moody@doj.ca.gov
Attorneys for Respondent Governor's Office

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INTRODUCTION

Since 1879, the California Constitution has entrusted the Governor with the authority to control spending of public funds through use of the line-item veto. When the Governor's line-item veto power was expanded by initiative in 1922, the voters expressed their desire that the Governor stand as the critical check on whether a legislative spending item is approved, rejected, or reduced. The Constitution now provides that the Governor's power to reduce or eliminate state appropriations is subject only to override by a two-thirds vote of the Legislature.

In the decision below, the Court of Appeal upheld the Governor's use of his line-item veto power to reduce the dollar amounts in items of appropriation in a bill passed by the Legislature. Under the decisions of this Court, the line-item veto power is well understood to apply to any item of appropriation which is forwarded by the Legislature to the Governor for signature or veto. The decision below was a well-reasoned application of the California Constitution and case law regarding the roles of the Legislature and the Governor in California's budget process. Petitioners St. John's Well Child and Family Center, et al. and Interveners Darrell Steinberg and John Perez[1] (collectively, Petitioners) simply disagree with the result. Petitioners demand that the Governor's role in the state budget process be dramatically narrowed by limiting his veto power so that it only applies to appropriations that *increase* state spending. This request should be rejected because it ignores both the plain language of the Constitution and the voters' intent.[2]

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[1] The former Speaker of the Assembly, Karen Bass, was an Intervener in the petition filed below, but the current Speaker, John Perez, was substituted in for Ms. Bass by this Court's June 9, 2010 order.

[2] Respondent John Chiang, sued in his official capacity as California State Controller, does not take a position on the merits of this litigation. All (continued...)

Petitioners mistakenly assert that the Governor had no power to use his line-item veto to reduce appropriations in the spending bill passed by the Legislature on July 23, 2009. Petitioners contend that the Governor's power to veto appropriation items can only be used when the Legislature increases spending, not, as here, when it reduces spending. Yet no such limitation on the Governor's veto authority appears in the Constitution or case law. Rather, the Constitution ensures that any legislative appropriation remains subject to gubernatorial oversight. To hold otherwise would permit the Legislature to do indirectly that which it cannot do directly—shield state spending from gubernatorial oversight—and severely restrict the Governor's constitutional role in controlling state spending.

Petitioners are attempting to improperly limit the constitutional prerogative of the Governor to control spending. Petitioners' interpretation of the line-item veto power must be rejected because it is not supported by law and would upset the balance of power established by the people through the Constitution.

ISSUES PRESENTED.

1. Does the Governor's constitutional authority pursuant to article IV, section 10(e) of the California Constitution to "reduce or eliminate one or more items of appropriation" apply to a bill provision that reduces a previously enacted appropriation?

2. Does the Governor's attempt to apply his line-item veto power to bill provisions whose sole effect is to reduce previously enacted items of appropriation violate the separation of powers required by article III, section 3 of the California Constitution?

(...continued)
positions and argument on the merits of the petition advanced herein are made on behalf of Respondent Arnold Schwarzenegger, sued in his capacity as the Governor of California.

STATEMENT

A. The Governor's Constitutional Authority to Control the Spending of Public Money.

The source of the Governor's line-item veto power is found in California Constitution article IV, section 10(e). That section provides, in relevant part: "The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. . . ." Section 10(e) also provides that "[i]tems reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills," namely a two-thirds vote of both the Senate and Assembly.[3]

The line-item veto has been in the California Constitution in some form since 1879. Before its expansion in 1922, the line-item veto provided in article IV, section 16, permitted elimination of items of appropriation but not reductions: "[i]f any bill presented to the Governor contains several items of appropriations of money, he may object to one or more items, while approving other portions of the bill." In 1922 the Governor's authority was "amplified by amendment of this section to allow the governor to reduce items of appropriation (instead of eliminating them) . . . " (Grodin, et al., The Cal. State Constitution: A Reference Guide (1993) p. 97.)

The purpose of the expansion of the line-item veto was to "giv[e] the Governor power to control the expenditures of the state. . . ." (*Wood v. Riley* (1923) 192 Cal. 293, 305.) The Court in *Wood* emphasized that the

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[3] The legislative process for overruling a line-item veto has been used many times in the past. In 1979 alone, the Legislature overrode eight budgetary line-item vetoes. (Journal of the Senate, 1979-80 Regular Session, pp. 6027, 6028, 6029, Journal of the Assembly, 1979-80 Regular Session, pp. 8318, 8319, 8333, 8334, 8351.)

people gave the Governor the power of the line-item veto in order to control spending. "In plain English, they wished the Governor to have the right to object to the expenditure of money for a specified purpose and amount, without being under the necessity of at the same time refusing to agree to another expenditure which met his entire approval." (*Id.* at p. 304 [internal citation omitted].)

The ballot materials for the 1922 amendment explain that the purpose of the amendment was to give the Governor a way to ensure that the Legislature's spending proposals were within the financial means of the state:

> The proposed measure will [. . .] enable the Governor to reduce an appropriation *to meet the financial condition of the treasury*, which under our present system he can not do. Frequently a worthy measure is vetoed because the Legislature passes a bill carrying an appropriation for which sufficient funds are not available. Under present conditions the Governor is compelled to veto the act, no matter how meritorious, because of the excessive appropriation, whereas, if he had the power given by the proposed constitutional amendment, he could approve the bill with a modified appropriation to meet the condition of the treasury.

(Ballot Pamp., Gen. Elec. (November 7, 1922) argument in favor of Prop. 12, p. 79 [emphasis supplied].)[4]

When the voters expanded the Governor's veto authority in 1922, they recognized that the "financial condition of the treasury" was a key consideration for the Governor in employing the line-item veto. It is no secret that California and our nation are in the midst of the worst fiscal crisis since the Great Depression and that there has been a dramatic

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[4] The Court of Appeal took judicial notice of an excerpt from the Ballot Pamphlet for the 1922 Amendment, and a copy of it was attached to the Governor's Return to Petitions for Writ of Mandate as Exhibit B.

slowdown in the flow of revenues into the State's coffers. The condition of California's treasury is of grave concern to the Governor, and he has used his constitutional prerogative to ensure that state spending is consistent with our fiscal health.

B. The Governor's Proclamation of Fiscal Emergency.

On July 1, 2009, the Governor issued a proclamation pursuant to California Constitution article IV, section 10(f)(1), calling the Legislature back into special session to address the budget crisis. Article IV, section 10(f) was added to the Constitution by Proposition 58 in 2004. Proposition 58, the California Balanced Budget Act, allows the Governor to proclaim an emergency when general fund expenditures are expected to exceed estimated general fund revenues. In such a fiscal emergency, the Governor is empowered to call upon the Legislature to take steps to balance the budget through legislation. The Ballot Pamphlet for Proposition 58 makes this point expressly: "Proposition 58 requires the Legislature to enact a balanced budget and if circumstances change after they pass the budget, the Governor is required to call them into special session to make mid-year changes to the budget. . . ." (Supp. Ballot Pamp., Primary Elec. (March 2, 2004) rebuttal to argument against Prop. 58.)[5]

C. The Need to Amend the Budget for 2009-2010 and the Legislation Challenged in this Action.

In response to the Governor's proclamation of fiscal crisis, the Legislature passed Assembly Bill No. 1 of the 2009-10 Fourth Extraordinary session (AB 1) on July 23, 2009. AB 1 re-enacted and

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[5] The Court of Appeal took judicial notice of an excerpt from the Supplemental Ballot Pamphlet for the 2004 election, which was attached to the Governor's Return to Petitions for Writ of Mandate below as Exhibit D.

modified the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess.) and reduced many of the appropriations in the Budget Act.

On July 28, 2009, the Governor exercised his line-item veto in order to reduce or eliminate several items of appropriation, then signed AB 1 into law subject to those individual vetoes. Many of the items of appropriation reduced by the Governor had already been reduced by the Legislature. The Governor's veto message explained the reason for the cuts and eliminations to the spending bill: "to increase the reserve and to reduce the state's structural deficit." (See, e.g., Veto Message for Section 18.10, Exhibit A to Governor's Return to Petitions for Writ of Mandate, pp. 9-10.)

This litigation challenged the Governor's use of the line-item veto on seven sections of AB 1: Sections 568, 570, 571, 572, 573, 574 and 575. (St. John's Petition at pp. 16-17, ¶ 32; Interveners' Petition at p. 5, ¶ 11.) These sections appear on pages 432 through 434 of AB 1 as chaptered. Each "adds" a new section to the Budget Act, thereby changing the dollar amounts of certain items previously appropriated. Specifically, sections 17.50, 18.00, 18.10, 18.20, 18.30, 18.40 and 18.50 of the Budget Act are changed in these sections. For example, section 568 of AB 1 provides: "SEC. 568. Section 17.50 is added to the Budget Act of 2009, to read: Sec. 17.50. The amount appropriated in Item 4170-101-0001 of Section 2.00 is hereby reduced by $9,483,000." (AB 1 at p. 432.)

D. Proceedings in the Court of Appeal.

Petitioners and Interveners each filed a Petition for Writ of Mandate in the California Court of Appeal, First Appellate District, claiming that the billions of dollars in appropriations and hundreds of individual items of appropriation altered and re-enacted by the Legislature in AB 1 were somehow insulated from gubernatorial oversight via the line-item veto. After issuing an Order to Show Cause and receiving briefing and oral

argument from the parties, the Court of Appeal rejected the writ petitions in a published decision issued March 2, 2010. The Court concluded:

> There is no substantive difference between the gubernatorial reduction of an item of appropriation in the original 2009 Budget Act, to which interveners and petitioners do not object, and gubernatorial reduction of such item in a subsequent amendment to the 2009 Budget Act, i.e. Assembly Bill 4X 1. Both involve changes in spending authority.
>
> Adoption of the view of petitioners, interveners and their amici curiae that the challenged items were not "items of appropriation" would permit the Legislature, in a single bill, to selectively make multiple reductions to previous appropriations, leaving the Governor only the power to veto the entire bill—a limitation the 1922 amendment to article IV of the California was specifically designed to eliminate. If spending reductions are not items of appropriation, a simple legislative majority could not only overturn a two-thirds vote on the annual budget act, but insulate its new determination from gubernatorial oversight. This cannot be.

(Printed Op., pp. 17-18 [footnote and internal citation omitted].)

For the reasons that follow, the decision of the Court of Appeal should be affirmed.

ARGUMENT

I. THE GOVERNOR'S LINE-ITEM VETOES OF APPROPRIATIONS CONTAINED IN AB 1 WERE WITHIN HIS CONSTITUTIONAL AUTHORITY TO "CONTROL THE EXPENDITURES OF THE STATE."

A. The Seminal Cases of *Harbor v. Deukmejian* and *Wood v. Riley* Support the Conclusion That AB 1 Contains "Items of Appropriation" Subject to Line-Item Veto.

Two of this Court's cases, *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078 and *Wood v. Riley* (1923) 192 Cal. 293, provide significant guidance regarding what constitutes an "item of appropriation" subject to the Governor's line-item veto. Under the reasoning of both cases, the language

and intent of the sections of AB 1 at issue in this case demonstrate that each section is an item of appropriation subject to the Governor's line-item veto.

In *Wood*, the budget bill passed by the Legislature contained a "proviso" requiring the Controller to transfer a percentage of funds allocated for teachers' colleges and give this sum to the director of education to pay "salaries and support" of the department of education. (*Wood*, *supra*, 192 Cal. at p. 296.) The Governor used his veto power to strike the item from the budget bill, stating that the appropriation was "unnecessary" because the director of education already had "an ample allowance for running his department." (*Id.* at pp. 296-297.) This Court rejected the contention that the item at issue did not qualify as an item of appropriation simply because it did not take new money from the state treasury:

> In further support of his contention that the [item] inserted in the bill did not amount to an appropriation, petitioner argues that it took no money from the state treasury. On the surface, the argument seems plausible, but, correctly viewed, such allotment or direction was a specific setting aside of an amount, not exceeding a definite fixed sum, for the payment of certain particular claims or demands....

(*Wood*, 192 Cal. at p. 303.) The Court went on to conclude that the legislative item "appears to fill all the requirements of a distinct item of appropriation of so much of a definite sum of money as may be required for a designated purpose connected with the state government." (*Ibid.*)

In *Harbor*, this Court did not attempt to directly define "item of appropriation" but acknowledged that the term has "been defined in various ways." (43 Cal.3d at p. 1089.) The *Harbor* Court first recognized that *Wood* had defined the term as "a specific setting aside of an amount, not exceeding a definite sum, for the payment of certain particular claims or demands not otherwise expressly provided for in the appropriations bill." (*Ibid.*) The Court also surveyed how other courts have defined "item of

appropriation" and acknowledged, with approval, definitions from two other jurisdictions. These additional definitions included (1) "setting aside or dedicating of funds for a specified purpose" (*ibid*, quoting *Jessen Associates, Inc. v. Bullock* (Tex. 1975) 531 S.W.2d 593, 599) and (2) "an indivisible sum of money dedicated to a stated purpose" (43 Cal.3d at p. 1089, quoting *Commonwealth v. Dodson* (1940) 176 Va. 281, 11 S.E.2d 120, 127).

Ultimately, as explained more fully below, both *Wood* and *Harbor* compel the conclusion that the Legislature's reduction of various budget amounts in AB 1 involved the setting aside of money from the public treasury, and each was therefore subject to elimination or further reduction by line-item veto.

B. The Governor's Use of the Line-Item Veto Is Not Limited to Items of Appropriation That Increase Spending.

Petitioners and Interveners assert that the line-item veto can only be employed by the Governor when the Legislature is increasing spending through appropriations, not when it is cutting spending in the manner it did here in response to a fiscal emergency. (St. John's Merits Brief at pp. 13-14; Interveners' P & A at p. 19.) Petitioners argue that the authorization to spend money was already made in the 2009-10 Budget Bill, and that AB 1 does not confer any additional authority to spend funds from the treasury. (St. John's Merits Brief at pp. 14-15; Interveners' P & A at p. 19.) They further contend that *Wood* limits use of the line-item veto to appropriations where the Legislature "*added* a specific amount to the allowance already made. . . . " (St. John's Merits Brief at p. 11, quoting *Wood*, 192 Cal. at p. 305 [emphasis supplied by Petitioners].) Petitioners and Interveners misinterpret the holdings of the relevant cases, and would have this Court read words into the Constitution that the voters never intended.

Although the *Wood* Court concluded that the addition of funds to an existing appropriation qualified as an "item of appropriation," *Wood* did not hold that addition of funds is a required legal element for determining the existence of an appropriation. Rather, the *Wood* Court explained that an item of appropriation is "so much of a definite sum of money as may be required for a designated purpose connected with state government." (*Wood*, *supra*, 192 Cal. at p. 304.) This test does not require the addition of funds to establish an item of appropriation; it merely requires earmarking of a specified sum for a specified public purpose. Petitioners' attempt to portray the facts in *Wood* as establishing a rule that an item of appropriation must contain an increase is simply a misreading of that case.

Likewise, the *Harbor* Court noted that the United States Supreme Court has defined the term as an act that "adds an additional amount to the funds already provided." (43 Cal.3d at p. 1089.) But, significantly, the *Harbor* Court did not adopt a definition of "item of appropriation" that limits the concept to only those legislative acts that add an additional amount to current spending levels. The relevant portion of *Harbor*, read in context, reveals that the Court considered the addition of funds as merely one of three possible tests for defining an item of appropriation, not an essential requirement:

> We do not see how it can be seriously claimed that section 45.5 qualifies as an item of appropriation under *any* of these definitions. It does not [1] set aside money for the payment of any claim and [2] makes no appropriation from the public treasury, nor does it [3] add any additional amount to funds already provided for. Its effect is substantive. Like thousands of other statutes, it directs that a department of government act in a particular manner with regard to certain matters. Although as is common with countless other measures, the direction contained therein will require the expenditure of funds from the treasury, this does not transform a substantive measure to an item of appropriation.

(*Harbor*, *supra*, 43 Cal.3d at pp. 1089-1090, [emphasis added].) Nowhere did the *Harbor* Court mention any requirement of an additional sum when it articulated the minimum definition of "item of appropriation" as including the "set[ting] aside a sum of money to be paid from the public treasury." (*Id.* at p. 1092.)

Petitioners cite no authority to support the contention that the Legislature is constitutionally permitted to make spending commitments of public money in a manner not subject to the line-item veto power of the Governor. *Wood* and *Harbor* provide strong support for the validity of the Governor's vetoes. In both of those cases, this Court warned that legislative attempts to circumvent the Governor's veto power should not be permitted. In *Wood*, the Court emphasized the importance of maintaining the Governor's role in the system:

> *To sustain the contention of the petitioner that the proviso in question did not amount to an item of appropriation and was therefore removed from the effect of the executive veto would be to hold that the legislature might, by indirection, defeat the purpose of the constitutional amendment giving the Governor power to control the expenditures of the state, when it could not accomplish that purpose directly or by an express provision in appropriation bills.* The present case may be used by way of illustrating this point, and we use it for that purpose only, and not to challenge or impugn the good faith of the legislature or petitioner. If, after providing for the salaries and support of the various teachers' colleges and special schools of the state, a distinct and definite purpose, and then providing that one per cent of this amount shall be set aside on demand as an administrative allotment for payment of the salaries and support of the general administrative office of the director of education, another and separable purpose, the Legislature may appropriate one per cent of a definite and fixed amount for such purpose, and such appropriation cannot be controlled by the Governor, the Legislature need not stop at one per cent, but may carry the so-called "administrative allotment" to any extent.

(*Wood*, *supra*, 192 Cal. at p. 305 [emphasis supplied].) Shielding the appropriations at issue here would run afoul of the *Wood* Court's directive that the Governor's crucial role in the spending process must not be defeated by legislative sleight-of-hand.

In a similar vein, the *Harbor* Court cautions about maintaining "an even-handed respect for the executive and legislative branches of government" and blocked a legislative attempt to "frustrate[]" the Governor's veto power. (*Harbor*, *supra*, 43 Cal.3d at p. 1102.)

Historically, the only requirement for an item to be considered an appropriation was a clear statement by the Legislature of "the amount and the fund out of which it is to be paid." (*Humbert v. Dunn* (1890) 84 Cal. 57, 59.) In 1895, this Court set forth the "true test" of whether the particular language in an act is sufficient to make an appropriation: "To [be] an appropriation, within the meaning of the constitution, nothing more is requisite than a designation of the amount and the fund out of which it shall be paid." (*Ingram v. Colgan* (1895) 106 Cal. 113, 117.) Analyzing these precedents, the court in *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, recognized that "[a] legislative 'appropriation' has been judicially defined as one 'by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand.'" (*Id.* at p. 1199 [internal citation omitted].)

Moreover, the plain language of the Constitution refers only to "items of appropriation," and it is not limited to increases or decreases thereof. The plain meaning of an appropriation does not require an increase in spending. Black's Law Dictionary (8th ed. 2004) defines "appropriation" as "1. The exercise of control over property; a taking of possession. . . . 2. A legislative body's act of setting aside a sum of money for a public purpose." Consistent with this common understanding, the California Constitution itself defines "[a]ppropriations subject to

limitation" as "any authorization to expend during a fiscal year. . . ." (Cal. Const., art. XIIIB, §8.)

In addition to the plain language of the Constitution, the ballot materials show that the Governor's veto power was enlarged in 1922 to permit reductions as well as eliminations of items of appropriations precisely because the voters wanted to "enable the Governor to reduce an appropriation to meet the financial condition of the treasury." (Exhibit A hereto, Ballot Pamp., Gen. Elec. (November 7, 1922) argument in favor of Prop. 12, p. 79.)[6] To carry out the intent of the voters in authorizing the Governor to make deeper cuts than the Legislature when he deems it necessary, the Governor's authority must include "the right to object to the expenditure of money for a specified purpose and amount, without being under the necessity of at the same time refusing to agree to another expenditure which met his entire approval." (*Wood*, *supra*, 192 Cal. at p. 304, [internal citation omitted].)[7]

In construing a factual setting similar to this case, and applying a similarly worded grant of veto authority, the Arizona Supreme Court expressly concluded that the term "items of appropriation" includes legislative action that reduces prior appropriations. (*Rios v. Symington*

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[6] "Where there is ambiguity in the language of the measure, [b]allot summaries and arguments may be considered when determining the voters' intent and understanding of a ballot measure." (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

[7] The broad sweep of the Governor's line-item veto power was confirmed in *Board of Fish and Game Commissioners v. Riley* (1924) 194 Cal. 37, a case decided two years after the expansion of the Governor's veto power. In *Board of Fish and Game Commissioners*, even though the Legislature had approved a continuing appropriation of money for the Commission, the Governor was permitted, via the line-item veto, to "impose a limitation upon the amount of money available to the commission during the biennium provided for in said budget bill." (*Id.* at p. 43.)

(1992) 172 Ariz. 3, 8-9.)[8] In *Rios*, the Governor of Arizona called the Legislature back into session to balance the state's budget. The Legislature undertook several steps to meet the fiscal crisis, including redirecting previously appropriated funds from special funds to the general fund. The Governor vetoed several of the fund transfers from the previous appropriations. The President of the Arizona Senate sought a judicial declaration that the vetoes were invalid. (172 Ariz. at p. 5.) The Arizona Supreme Court considered whether the Governor's line-item veto power extended to legislative action which *reduced* prior appropriations. The Court held that the power did reach reductions of prior appropriations, and its analysis and reasoning are compelling.

First, the Court considered the meaning of "item of appropriations of money." The Court adopted a definition similar to that set forth in *Wood* and *Harbor*: "An appropriation is 'the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.'" (*Rios v. Symington*, *supra*, 172 Ariz. at pp. 6-7, quoting *Hunt v. Callaghan* (1927) 32 Ariz. 235, 239, 257 P. 648, 649.)

Second, the Court expressly rejected the contention that the Governor's line-item veto power did not extend to legislative measures which decreased prior appropriations:

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[8] The Arizona Constitution provides that "[i]f any bill presented to the Governor contains several items of appropriations of money, he may object to one or more of such items, while approving other portions of the bill." (Ariz. Const. art. 5, § 7.) Because of its similarity to California's line-item veto provisions, this Court has previously recognized that cases from Arizona are persuasive authority on the "veto power of the Governor." (*Wood*, *supra*, 192 Cal. at pp. 301-302.)

> When the Legislature transfers monies from a previously-made appropriation, the obvious effect is to reduce the amount of the previous appropriation. The Constitution does not permit such reductions free of gubernatorial oversight. To hold otherwise would permit the Legislature to do indirectly that which it may not do directly, and would seriously limit the Executive's constitutional role in the appropriation process. . . . In our view, if the Governor's constitutional power to line item veto an appropriation is to mean anything, *the Governor must be constitutionally empowered to line item veto a subsequent reduction or elimination of that appropriation.*

(*Rios*, *supra*, 172 Ariz. at p. 9 [emphasis supplied].)

The *Rios* Court expressed concerns about the use of legislative reductions in appropriations to get around the Governor's constitutional power to control spending. The role of the line-item veto in the Arizona Constitution is as "an additional executive check on the appropriation process..." (*Rios*, *supra*, 172 Ariz. at p. 6.) According to the Court, if reductions to appropriations were not deemed "items of appropriation," then "the Legislature could evade the Governor's line item veto power notwithstanding the fact that the later transfers completely alter the original appropriation." (*Id.* at p. 9.) Such a holding "would eviscerate the line item veto power which the Constitution intended the Governor to have. Although we are urged to construe the Governor's line item veto narrowly and strictly, we hold that it should be construed in such a way as to carry out the obvious constitutional intent." (*Ibid.*)

Petitioners contend that *Rios* favors their argument because in *Rios* the net effect of the line-item vetoes resulted in a reinstatement of the original appropriation. (St. John's Merits Brief at pp. 22-23.) However, the net effect of the Governor's action in *Rios* was not a controlling factor in the court's opinion, but rather was a consequence of the terms of the line-item veto in Arizona. Arizona's line-item veto only allows the Governor to eliminate an item of appropriation; in contrast, California's

line-item veto authorizes the Governor to not only eliminate an item of appropriation, but also to reduce it. If the provisions of AB 1 at issue here are items of appropriations, they are subject to elimination *or* reduction by the Governor. Nothing in the California Constitution or case law limits the net effect of the line-item veto to a previously appropriated amount.[9]

Petitioners fail to confront the core holding of *Rios*: that legislative reductions in spending are items of appropriation, and that preventing the Governor from exercising his line-item veto authority over such appropriations would thwart his critical role in the budgeting process. And the Governor's role is most critical during times of fiscal crisis.

Petitioners claim that the Governor had his chance to reduce those amounts of appropriations at the time that the Budget Bill was passed in February of 2009, and that it is improper to allow the use of the line-item veto on "A.B. 1 in July." (St. John's Merits Brief at p. 14.) Yet Petitioners freely concede that AB 1 is filled with items that "revised, amended and supplemented the Budget Act." (St. John's Merits Brief at p. 6.) And Interveners acknowledge the sweeping scope of the spending changes at issue: "AB 1 was a comprehensive revision of the earlier enacted budget, adding to some appropriations and reducing others." (Interveners' Merits Brief, pp. 26-27, n. 15.) But the Court in *Rios* correctly found that reductions in appropriations like those in AB 1 "completely alter" the original appropriation, and must be presented to the Governor for potential use of the line-item veto. (*Rios*, *supra*, 172 Ariz. at p. 9.) If Petitioners'

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[9] Petitioners also contend that *Wood, supra*, 192 Cal. at p. 306, only allows the Governor to reduce or eliminate an appropriation to the level of the "baseline appropriation." (St. John's Merits Brief at p. 12, fn. 3.) Not so. In *Wood*, the Governor vetoed only the "proviso," and did not try to use his veto power on the prior appropriation. Thus, the *Wood* Court neither considered nor limited the potential scope of the veto power in the manner claimed by Petitioners.

argument were accepted, the Legislature could evade the Governor's line-item veto power by passing a set of changes to appropriations after a Budget Bill is signed into law. This result would cause the Governor's constitutional veto power to be improperly "frustrated" (*Harbor*, *supra*, 43 Cal.3d at p. 1102) and disrupt the balance of power established by the Constitution. The Governor would then be faced with the Hobson's choice to either sign or veto the entire bill -- a situation the Constitution expressly avoids.

Instead, the reasoning and conclusion of the Arizona Supreme Court should apply equally to the facts presented here. Legislative acts reducing appropriations remain acts of appropriation and are crucial to the process of controlling state spending. In times when programs and services are being cut, the decisions about how much and where to cut are central to the appropriations process. The Governor's role is crucial during this process, and he must be allowed to utilize every tool provided him by the people through the Constitution.

C. The Vetoed Items Were Items of Appropriation Subject to the Line-Item Veto.

Petitioners repeatedly maintain that the items vetoed from AB 1 were not items of appropriation, and are therefore beyond the scope of the line-item veto. They label the items "a reduction to a prior-enacted appropriation" (St. John's Merits Brief at p. 19) or a "mid-year reduction" (St. John's Merits Brief at p. 26), or contend that the items "relate to previous appropriations by way of reduction." (St. John's Merits Brief at p. 13.) Interveners also persist in creative word substitutions, repeatedly referring to AB 1 as "legislation that makes spending reductions" (Interveners' Merits Brief at p. 38) and to the items themselves as "cuts in spending authority" (Interveners' Merits Brief at p. 40) or "provisions . . .

to reduce, rather than grant, spending authority." (Interveners' Merits Brief at p. 42.)

Petitioners' and Interveners' characterization of the legislative acts at issue are a post hoc attempt to recast the nature of the bill itself, as well as the nature of the items vetoed therein. But even a cursory examination of AB 1 reveals that it was as an appropriations bill and that all of the vetoed items challenged here were items of appropriation.

The evidence in the record that AB 1 was filled with items of appropriation is overwhelming. First, AB 1 was labeled an appropriations bill, and was passed with a vote exceeding a two-thirds majority, as is required for an appropriations bill. Second, Chapter 1 of the bill recites that the Legislature is "making an appropriation" for the amended state budget. (AB 1, p. 4.) Third, AB 1 is entitled "[a]n act to amend and supplement the Budget Act of 2009" by "amending," "repealing," and "adding" specified sections of the Budget Act. (AB 1, p. 1.) Fourth, AB 1 contains four provisions that *increase* funding for specific programs – and thus constitute appropriations even under Petitioners' overly-narrow definition of appropriation.[10] Fifth, AB 1 expressly states a legislative intent to appropriate. In Section 583 for example, AB 1 recites that it "makes revisions in appropriations for the support of the government of the State of California and for several public purposes for the 2009–10 fiscal year." (AB 1, p. 437.) Finally, the digest for the bill includes the legend

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[10] Section 10 of AB 1 increased funding for the Judicial Branch (item 0250-101-0932), section 61 increased funding for the California Emergency Management Agency (item 0690-001-0001), section 149 increased funding for the Board of Pilot Commissioners (item 2670-001-0290) and section 318 increased an item for support of the Department of Public Health (item 4265-001-0890).

"Appropriation: yes." (AB 1, p. 13.) Specifically, the digest for AB 1 states:

> The Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) made appropriations for the support of state government for the 2009–10 fiscal year.
>
> This bill would make revisions in those appropriations for the 2009–10 fiscal year. The bill would make specified reductions in certain appropriations.
>
> The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.
>
> This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.
>
> This bill would declare that it is to take effect immediately as an urgency statute.
>
> Appropriation: yes.

(AB 1, pp. 12-13.)

By re-opening the Budget Act and adjusting hundreds of appropriations, then presenting the bill to the Governor for signature, the Legislature undoubtedly engaged in the act of appropriating. And while *Lukens v. Nye* (1909) 156 Cal. 498 prohibits a Governor from using the line-item veto on items which are not items of appropriation, Interveners freely concede that this case expressly acknowledges a Governor's right to disapprove or alter only a part of a bill if that part is an item of appropriation. (Interveners' Merits Brief at p. 33.)

Of course, one factor that can be used to determine whether a bill appropriates public funds is whether "the title of the act . . . suggests that what follows is an appropriation bill." (*Bengzon v. Secretary of Justice of*

the Philippine Islands (1937) 299 U.S. 410, 413.) Here, the fact that the Legislature entitled the measure "an appropriation bill" suggests that it contained items of appropriation, since "the words by which that body described and characterized its own proposed act" prior to passage are significant. (*Id.*, 299 U.S. at p. 416.) The Legislature's characterization at the time of AB 1's passage should be conclusive evidence that it was a bill containing items of appropriation.

AB 1's scope and breadth are as significant as its title. AB 1 is over 400 pages long and contains 583 individual sections. The topics covered in the measure range from the repair and modernization of a museum (section 562) to funding for charter schools (section 447) to firearm safety (section 69). The California Constitution expressly requires that a single statute embrace one subject. (Cal. Const., art. IV, sec. 9.) Courts have interpreted this provision to allow the Legislature to include all legislation germane to the general subject. (*Harbor v. Deukmejian*, *supra*, 43 Cal.3d at p. 1097, quoting *Evans v. Superior Court* (1932) 215 Ca. 58.) But no bill, other than the budget bill, is permitted to contain more than one item of appropriation. (Cal. Const., art. IV, sec. 12(d).) And in the Court of Appeal Petitioners admitted that AB 1 contains at least four appropriations that provide *more* money for certain programs than the 2009-10 Budget Act did. (St. John's Reply at p. 12.) The Court of Appeal concluded if AB 1 was not a budget bill, it "would be in direct conflict with the mandate of article IV, section 12, subdivision (d), that only a budget bill may contain more than one item of appropriation, as well as potentially running afoul of the single-subject rule of article IV, section 9." (Typed Opinion at p. 29.) The clear implication of the structure and size of AB 1 is that it was a measure supplementing, amending, and supplanting appropriations contained in the 2009-10 Budget Act.

Petitioners criticize the Court of Appeal's analysis about the single-subject rule as "improper[.]" (Petitioners' Merits Brief at p. 28.) But reference to the single-subject rule sheds light on the nature of AB 1. *Harbor* warns that a bill with the "number and scope of topics" as AB 1 violates the single subject rule unless that bill is a budget bill. (*Harbor, supra*, 43 Cal.3d at pp. 1100-1101.) And in *Planned Parenthood Affiliates, supra*, 173 Cal.App.3d 1187, the Court held that when a budget bill contains provisions that do not constitute appropriations, the single-subject rule is violated and the provisions are invalid. Here, Petitioners' repeated suggestions that AB 1 is not an appropriations bill would raise a serious issue if accepted: whether the legislative amendments to the budget bill contained therein, if not appropriations, violate the single subject rule. As explained above, however, AB 1 was a budget bill and thus was not violative of the single-subject rule.

In this case, the specific acts of the Legislature in cutting expenditures through AB 1 are "items of appropriation," as they are in a bill labeled "appropriations" and they specify amounts to be paid. "An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriations bill." (*Bengzon v. Secretary of Justice of the Philippine Islands*, *supra*, 299 U.S. at pp. 414-415.) As items of appropriation contained in a budget bill, the provisions of AB 1 are subject to the full extent of the line-item veto. Petitioners' and Interveners' attempt to characterize those sections of AB 1 at issue as something other than items of appropriation is unsupportable, and should be rejected.

The relief sought by Petitioners and Interveners also provides strong evidence that the disputed provisions of AB 1 are "items of appropriation." Petitioners and Interveners both expressly concede that legislation which sets aside money for payment from the state treasury is an item of

appropriation. (Interveners' Merits Brief at p. 4; St. John's Merits Brief at pp. 13-14.) But both Petitioners and Interveners contend that the provisions of AB 1 do not meet this test because spending authority for these programs had been provided in the previously passed Budget Act. (Interveners' Merits Brief at p. 22; St. John's Merits Brief at p. 12.) Yet both ask this Court to direct the Controller to pay state funds, in the amounts specified in AB 1, for the programs specified in AB 1, based upon the passage of AB 1. Petitioners' prayer for relief specifically asks that "the moneys appropriated in the Budget Act of 2009, *as amended and supplemented by A.B. 1*, and excluding the Governor's purported vetoes thereto, be disbursed and continue to be disbursed as directed. ..." (St. John's Petition at p. 18 [emphasis supplied]; see also St. John's Merits Brief at p. 7 [same].)

The California Constitution does not permit the relief sought unless appropriations directing it are in place. Article XVI, section 7, provides: "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Government Code section 12440 provides that the Controller shall not draw a warrant unless "unexhausted specific appropriations provided by law are available to meet it." Based on these provisions, this Court has held that the Controller is not authorized to make payments "in the absence of a duly enacted appropriation." (*White v. Davis* (2003) 30 Cal.4th 528, 572.) In seeking payments from the Controller from state funds under the terms of AB 1, Petitioners and Interveners implicitly acknowledge that the provisions of AB 1 are items of appropriation. Were they not, the Controller would be powerless to act on them in providing funds to the various entities identified by Petitioners and Interveners.

Petitioners acknowledge that under the Constitution and the Government Code the Controller is not free to issue payments except upon valid appropriations, but argue that they are asking for payment pursuant to

the 2009 Budget Act, not any "items of appropriation" in AB 1. Petitioners contend that the "previously-enacted appropriations remain intact, *subject only to a reduction in their amounts*" by AB 1. (St. John's Merits Brief at p. 38 [emphasis supplied].) Interveners advance a similar argument: "The relief requested simply was to provide the funding appropriated in the 2009 Budget Act, *as reduced by A.B. 1.*" (Interveners' Merits Brief at p. 28, n. 16 [emphasis supplied].) Petitioners and Interveners apparently fail to understand the significance of the portion of their contentions which is highlighted by italics above. They cannot have it both ways. Asking the Controller to pay the amounts specified in AB 1 is tantamount to conceding that each provision of AB 1 is an item of appropriation. Were they asking that the Controller pay under the 2009 Budget Act, they could point to valid items of appropriation upon which he could pay. But by pointing to AB 1 and demanding payment "as reduced" therein, the only conclusion which can be drawn consistent with article XVI, section 7 and Government Code section 12440 is that the provisions of AB 1 are "items of appropriation."

Interveners rely on the opinion of the Legislative Counsel Bureau, one of their counsel of record herein, regarding the legislative intent behind AB 1. (Interveners' Merits Brief at p. 28.) The opinion they cite was issued August 5, 2009, nearly two weeks *after* AB 1 was passed by the Legislature. Ordinarily, opinions of Legislative Counsel are considered on the issue of legislative intent because "they are prepared to assist the Legislature in its consideration of pending legislation." (*California Association Of Psychology-Providers v. Rank* (1990) 51 Cal.3d 1, 11.) However, when the reasons which underlie an opinion of Legislative Counsel "are unpersuasive," the opinion "is of little weight." (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 238.) Here, the opinion at issue was provided after the controversy arose, not while AB 1 was pending. Moreover, it fails to account for the multiple

definitions of appropriation in the *Harbor* case. The Court of Appeal dismissed the conclusions of Legislative Counsel. (Typed Opinion at p. 21.) This Court should do likewise.

All relevant evidence and indicia of legislative intent demonstrates that those provisions of AB 1 at issue are items of appropriation subject to the full extent of the line-item veto power. A finding to the contrary would unnecessarily raise constitutional questions not presented in the petitions, and could deprive the Controller of the ability to issue warrants to fund the programs addressed in AB 1.

D. The Language Employed by the Legislature in Making Appropriations Cannot Shield Those Appropriations from Gubernatorial Oversight.

In the Court of Appeal, Petitioners argued that the Legislature found a method of appropriating money in a manner not subject to "the Governor's mighty blue pen." (St. John's P & A at p. 34.) They contended that in the seven sections of the Budget Act at issue in this case (sections 17.50, 18.00, 18.10, 18.20, 18.30, 18.40 and 18.50), the Legislature "neither repeal[ed] nor reenact[ed] the appropriations signed by the Governor in the Budget Act." (St. John's P & A at p. 36.) Accordingly, Petitioners claimed that although "the Governor may have the authority under the Constitution to impose even further harsh cuts beyond those passed" for the sections which amended and re-enacted sections of the Budget Act, the sections which did not amend and re-enact a prior section are not "vulnerable" to line-item veto. (St. John's P & A at pp. 34-35.)

The Court of Appeal rejected this contention:

> In essence, Petitioners argue that the Legislature may do by indirection that which it cannot do directly, that is, it may insulate certain items of appropriation from the Governor's line-item veto power by the language used, where other items having the identical effect of reducing the sums appropriated in the 2009 Budget Act would be subject to that power. This, the

> Legislature may not do. (See *Wood v. Riley, supra*, 192 Cal. at pp. 304-305, 219 P. 966.) As amici curiae former Governors observe: "If by simple wordsmithing the legislative branch can create an omnibus spending bill limiting the Governor's oversight only to veto of the entire bill, then the budgetary process is reduced to a game of 'chicken' daring a [G]overnor to bring state government to a halt through a veto."
>
> Whether identified in Assembly Bill 4X 1 as amendments of, revisions to, or additions to the 2009 Budget Act, it is clear that every provision of Assembly Bill 4X 1 changed a section of the 2009 Budget Act.

(Typed Opinion at p. 25.)

In briefing before this Court, Petitioners have changed tactics and now assert that AB 1 "did not repeal and reauthorize the appropriations in contained in the Budget Act." (Petitioners' Merits Brief at p. 34.) They maintain that AB 1 "left intact the Budget Act's authorization to spend for the programs at issue, but merely reduced the *amounts* appropriated." (Petitioners' Merits Brief at p. 34 [original emphasis].) But Petitioners' argument that AB 1 did not "repeal and reauthorize" appropriations in the 2009 Budget Act flatly ignores the constitutional requirement that "[a] section of a statute may not be amended unless the section is re-enacted as amended." (Cal. Const., art. IV, § 9.)[11]

Petitioners' attempt to parse the specific language used by the Legislature in reducing items of appropriation contained in the Budget Act through AB 1 results in nothing more than a distinction without a difference. Regardless of the language employed by the Legislature, to be valid, every item of appropriation contained in the Budget Act that would

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[11] The case relied upon by Petitioners, *People v. Western Fruit Growers* (1943) 22 Cal.2d 494, 503, fails to support their contrary argument, as it expressly holds that when the Legislature "add[s] a new section" to a statute, it is amending that statute.

have been reduced by AB 1 necessarily amended a section of the Budget Act, and therefore had to be "re-enacted as amended." Were this not so, AB 1 would have violated the requirement that each section of a statute that is amended is re-enacted as amended. (Cal. Const., art. IV, § 9.) Reenactments of appropriations are tantamount to new appropriations and are subject to the Governor's line-item veto.

The Court of Appeal also rejected the contention that Government Code section 9605[12] and the re-enactment rule of the Constitution allowed the Legislature to amend the Budget Act by only "the *amount* of each reduction" and protect those items from gubernatorial oversight:

> This argument would have us parse a putative "item of appropriation" into three separate parts: the "*setting aside*," the "*amount*" thereof, and the "*particular purpose*" to which that amount may be put. So divided, petitioners and interveners maintain that Assembly Bill 4X 1 changed only the "amount" of the items in Assembly Bill 4X 1 at issue, and none of the changes fit the tripartite definition of "item of appropriation." The flaw in this imaginative argument is that the "setting aside" and the "amount" thereof are fundamentally indivisible. The act of setting aside is meaningful only with respect to the designated amount. The "spending authority" granted by a proposed "item of appropriation" is the *combination* of a setting aside of a designated sum *and no more*, for a particular purpose.

(Typed Opinion at pp. 26-27[original emphasis].)

Petitioners criticize the Court of Appeal's conclusion that Government Code section 9605 does not support the claim that AB 1 did not "re-enact" but merely amended the prior Budget Act, making all

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[12] Section 9605 provides: "Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment."

"modifications" of appropriations in AB 1 "not subject to the Governor's line-item veto." (Petitioners' Merits Brief at pp. 33-34, quoting Children Now Brief amicus brief at pp. 23-34.) Petitioners' contention must be rejected, as it violates the clear language of article IV, section 9. This Court has cautioned against applying section 9605 in a manner "inconsistent with article IV, section 9." (*In re Lance W.* (1985) 37 Cal.3d 873, 895.) The "only effect of section 9605 is to avoid an implied repeal and reenactment of unchanged portions of an amended statute, ensuring that the unchanged portion operates without interruption." (*Ibid.*) Here, all of the relevant items of appropriation changed appropriations made in the Budget Act. Accordingly, section 9605 has no impact in this case.

E. The Fact That AB 1 Was Passed Pursuant to the Balanced Budget Act Does Not Limit the Governor's Ability to Use The Line Item Veto.

Interveners have placed great emphasis on the fact that AB 1 was passed as a result of a fiscal emergency declared under subdivision (f) of section 10 of article IV of the Constitution. They contend the Governor has a "limited" role in this process because two ballot measures that would have greatly expanded the Governor's unilateral authority failed to pass in recent years. Neither argument is persuasive.

Article IV, section 10(f), which was added by Proposition 58 (the California Balanced Budget Act), permits the Governor to proclaim an emergency when general fund expenditures are expected to exceed estimated general fund revenues, and directs the Legislature to take steps to balance the budget through legislation which will then be sent to the Governor. In the Court of Appeal, Interveners noted that the Legislature is not required to "pass a new budget" or "even amend the old one" by subdivision (f). (Interveners' P & A at pp. 26-27.) Accordingly, Interveners contended that the "Governor's role" in solving the fiscal crisis

declared pursuant to subdivision (f) is "a limited one." (Interveners' P & A at p. 27.) Not so.

It is true that subdivision (f) does not require the passage of a new budget, nor does it require the passage of any specific legislation at all. However, subdivision (f) establishes that the Governor has a crucial role during times of fiscal crisis. Per subdivision (f), the Governor first determines if a fiscal emergency exists, then issues a proclamation directing legislative action. Once a proclamation of fiscal emergency has been issued, the Legislature must "pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation..." (Cal. Const., art. IV, § 10(f)(2).) In addition, the Legislature is prohibited from acting on any other bill, or adjourning for a joint recess, until it passes legislation which addresses the fiscal emergency. (*Ibid.*) The types of legislation which could conceivably satisfy this requirement include raising taxes, selling assets, or taking other steps to increase revenues. However, at the time that it was placed on the ballot, it was understood that one of the most likely methods of addressing the fiscal emergency would be to alter and amend the state budget to reduce spending. The Ballot Pamphlet for Proposition 58 made this point expressly: "Proposition 58 requires the Legislature to enact a balanced budget and if circumstances change after they pass the budget, the Governor is required to call them into special session *to make mid-year changes to the budget...*" (Supp. Ballot Pamp., Primary Elec. (March 2, 2004) rebuttal to argument against Prop. 58, attached to the Governor's Return to Petitions for Writ of Mandate below as Exhibit D [emphasis supplied.].)

In this case, the Legislature's response to the declaration of a fiscal emergency was to re-open and revise the 2009 Budget Act via AB 1. As Petitioners conceded in the Court of Appeal, there were other "avenues" the

Legislature could have taken, but the avenue it chose was to make "[r]eductions and increases to prior-appropriated items in the Budget Act" in AB 1. (St. John's Reply at p. 13.) Having elected to re-open the Budget Act, the Legislature forwarded a bill to the Governor which was filled with items of appropriation. Nothing in the text of Proposition 58, or the ballot materials presented to the voters, supports a conclusion that the voters intended to restrict the Governor's line-item veto when the Legislature makes mid-year adjustments to the budget in response to a fiscal crisis.

F. The Line-Item Vetoes Did Not Violate Separation of Powers.

Both Interveners and Petitioners contend that the line-item vetoes of AB 1 by the Governor "expanded" the Legislature's actions in violation of principles of Separation of Powers. (Interveners' Merits Brief at p. 42; Petitioners' Merits Brief at p. 20.) Because the Governor made "*more* cuts in order to keep a larger budget reserve," Interveners maintain that he "expanded AB 1 to reach beyond the limits of what the Legislature had passed." (Interveners' Merits Brief at p. 40 [original emphasis].) Petitioners accuse the Governor of improperly "substituting his greater reductions rather than rejecting, in whole or in part, those passed by the Legislature." (Petitioners' Merits Brief at p. 20.) This argument, which is based on wordplay and misdirection, must be rejected.

The Constitution expressly gives the Governor the power to "reduce or eliminate" an item of appropriation via his line-item veto power. In AB 1, the Legislature delivered to the Governor for signature or veto a bill which provided for billions of dollars in state spending in hundreds of individual items described by their 11-digit item number. Each of these items provided a sum certain and a designation of purpose. Most items decreased the sums being spent by the State, while a few increased spending. As to each item which provided for an expenditure of funds for a

specified account—the classic definition of item of appropriation from *Ingram v. Colgan, supra,* 106 Cal. at p. 117—the Governor was entitled to eliminate them entirely or reduce the sum expended. Word games about "increasing a reduction" cannot camouflage the true nature of the Governor's actions: reducing the amount of money expended by the State. Nothing in any of the vetoes at issue did anything more than "reduce or eliminate" an item of appropriation consistent with the Governor's line-item veto power in the Constitution. As the Court of Appeal observed:

> The difference of opinion between the Legislature and the Governor was not whether the amount of particular items of appropriation enacted in the 2009 Budget Act needed to be reduced, but the *magnitude* of the reductions. What mattered in the end were the amounts set aside for particular purposes; the Legislature wanted higher amounts than did the Governor. While the Governor's line-item vetoes may be said to have "increased" the reductions made by the Legislature as to the items at issue, the most significant effect of the vetoes, and their purpose, was to further reduce the amounts set aside by the Legislature. The Governor's wielding of the line-item veto was therefore quintessentially negative, as it lowered the cap on the spending authority for specified purposes, providing precisely the type of check on the Legislature intended by the constitutional initiative that adopted the line-item veto, empowering the Governor "to reduce an appropriation to meet the financial condition of the treasury." (Ballot Pamp., Gen. Elec. (Nov. 7, 1922), argument in favor of Prop. 12, pp. 78-79.)

(Typed Opinion at p. 31 [original emphasis].)

Petitioners suggest that the voters' failure to pass Proposition 76 in 2005 and Proposition 1A in 2008 demonstrates that they intended to limit the Governor's role in controlling state spending to "eliminat[ing] *spending proposals* made by the Legislature" and not to allow him the power to make "any cuts to existing appropriations made by the Legislature." (Petitioners' Merits Brief at pp. 39-40 [original emphasis].) First, those propositions, which would have expanded executive power and permitted

unilateral spending cuts by the Governor, are irrelevant to the issues presented here. (See *American Civil Rights Foundation v. Berkeley Unified Sch. Dist.* (2009) 172 Cal.App.4th 207, 219 fn. 9 [declining to judicially notice ballot arguments regarding subsequent, failed initiative on same general topic as Proposition 209 and instead "focus[ing] our attention on the voters' intent in 1996, when they adopted Proposition 209"].) Second, the distinction between an item of appropriation which cuts spending and one that increases spending has no constitutional significance. The line-item veto provision used in this case has been in the Constitution in some form since 1879, and is subject to legislative override. When the veto power was expanded in 1922, it was done to "enable the Governor to reduce an appropriation to meet the financial condition of the treasury," and that is what the Governor has done here.

Interveners have suggested that the conclusions of the Court of Appeal will lead to unintended, negative consequences. Interveners contend that the interpretation of the Court of Appeal that AB 1 was a budget bill which required a two-thirds vote for passage will impede the ability of the Legislature to pursue the "timely enactment of legislation that makes spending reductions" when it is called into emergency session by the Governor pursuant to article IV, section 10(f). (Interveners' Merits Brief at p. 38.) But the issue raised by Interveners is based on the Constitution itself: "Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring." (Cal. Const., art. IV, § 12, subd. (d).) Moreover, the Constitution requires a two-thirds vote by the Legislature to override a veto by the Governor. (Cal.Const., art. IV, § 10, subd. (a).) The two-thirds requirement applied by the Court of Appeal is compelled by the Constitution, and Interveners fail to establish otherwise. Interveners'

notion that the Court of Appeal has derailed the opportunity of state government to address a fiscal crisis fails to acknowledge or address key provisions of our Constitution.

CONCLUSION

The Governor's role as the final authority on state spending is established by the Constitution. The voters entrusted the Governor with the authority to control spending of public funds through use of the line-item veto. This authority is crucial in times of fiscal emergencies. The Governor's constitutional power to reduce or eliminate state appropriations is subject only to override by a two-thirds vote of the Legislature. Reversing the Court of Appeal and granting the Petitions would dramatically narrow the Governor's role in the appropriation process, and would permit the Legislature to have the final say on certain appropriations, depending solely upon the language employed by the Legislature in altering an existing appropriation. Such a result, based upon nothing more than semantics, would cancel out both the plain language of the Constitution and the voters' expressed intent.

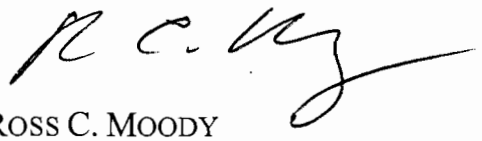
Petitioners' and Interveners' assertion that AB 1 contained no "items of appropriation" subject to veto must be rejected. The items at issue meet the core definition of appropriation, as they set aside specified state sums for a public purpose. Petitioners and Interveners implicitly acknowledge that AB 1 contains items of appropriation when they ask that the Controller issue warrants based upon it. The reductions made by the Legislature in AB 1 had the effect of significantly altering the manner in which public funds were to be spent. Shielding any legislative increase or reduction in an appropriation from gubernatorial oversight would permit the Legislature to do indirectly that which it cannot do directly, and severely restrict the Governor's constitutional role in controlling state spending.

This Court should reject Petitioners' and Interveners' attempt to limit the constitutional prerogative of the Governor to control spending. Invalidating the challenged vetoes would upset the balance of power established by the Constitution, is not supported by case law, and would defeat the voters desire to have the Governor control state spending – especially in times of fiscal crisis. For all of the foregoing reasons, the Court should affirm the decision of the Court of Appeal denying the petitions in their entirety.

Dated: July 7, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
JONATHAN K. RENNER
Senior Assistant Attorney General
ZACKERY P. MORAZZINI
Supervising Deputy Attorney General



ROSS C. MOODY
Deputy Attorney General
Attorneys for Respondent
Governor's Office

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWERING BRIEF ON THE MERITS OF THE GOVERNOR uses a 13 point Times New Roman font and contains 10,351 words.

Dated: July 7, 2010

EDMUND G. BROWN JR.
Attorney General of California

ROSS C. MOODY
Deputy Attorney General
Attorneys for Respondents
Governor's Office

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **St. John's Well Child & Family Center, et al. v. Schwarzenegger, et al.**

No.: **S181760**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 7, 2010, I served the attached **ANSWERING BRIEF ON THE MERITS OF THE GOVERNOR** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 7, 2010, at San Francisco, California.

Janet Wong
Declarant

J Wong
Signature

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Case Name: **St. John's Well Child & Family Center, et al. v. Schwarzenegger, et al.**

No.: **S181760**

Kirkland & Ellis LLP Robert Alexander Pilmer Derek Milosavljevic 333 S. Hope Street, Suite 2900 Los Angeles, CA 90071 Telephone: (213) 680-8400 Attorneys for Petitioner St. John's Well Child and Family Center	Neighborhood Legal Services of Los Angeles County Abby Jean McClelland Katherine E. Meiss David Pallack Barbara Siegel Nu Usaha 13327 Van Nuys Boulevard Pacoima, CA 91331-3099 Telephone: (818) 834-7572 Attorneys for Petitioners Rosa Navarro and Lionso Guzman
Western Center on Law & Poverty Richard A. Rothschild, Esq. 3701 Wilshire Boulevard, Suite 208 Los Angeles, CA 90010 Telephone: (213) 487-7211 Attorneys for Petitioner California Foundation for Independent Living Centers	Disability Rights Advocates Sidney Wolinsky, Esq. Katrina K. Corbit Anna Levine 2001 Center Street, Third Floor Berkeley, CA 94704 Telephone: (510) 665-8644 Attorneys for Petitioners Californians for Disability Rights; California Foundation for Independent Living Centers; Nevada-Sierra Regional In-Home Supportive Services Public Authority; Liane Yasumoto; and Judith Smith
Remcho, Johansen & Purcell, LLP Robin Johansen Karen Getman James C. Harrison Thomas A. Willis 201 Dolores Avenue San Leandro, CA 94577 Telephone: (510) 346-6200 Attorneys for Interveners Darrell Steinberg, President pro Tem of the Senate and John A. Perez, Speaker of the Assembly	Rothner, Segall, Greenstone & Leheny Anthony R. Segall 510 S. Marengo Avenue Pasadena, CA 91101 Phone: (626) 796-7555 Amicus Curiae for Petitioners (in Court of Appeal) United Domestic Workers of America, AFSCME, Local 3930, AFL-CIO

Altshuler Berzon LLP Scott A. Kronland Danielle E. Leonard 177 Post Street, Suite 300 San Francisco, CA 94108 Phone: (415) 421-7175 Amicus Curiae for Petitioners (in Court of Appeal) SEIU California State Council and California United Homecare Workers	O'Melveny & Myers LLP Robert M. Schwartz Robert C. Welsh David A. Lash Sandeep N. Solanki Jordan P. Raphael Robert Silvers 1999 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 Phone: (310) 553-6700 Amicus Curiae for Petitioners (in Court of Appeal) Children Now (Oakland, California), Valley Community Clinic (North Hollywood, California), Eisner Pediatric & Family Medical Center (Los Angeles, CA), The Saban Free Clinic (Los Angeles and Hollywood, CA), YWCA Monterey County (Monterey, California), Westside Family Health Center (Santa Monica, California), Community Clinic Association of Los Angeles County (Los Angeles, CA), and The Legal Aid Association of California (statewide)
Reich, Adell & Cvitan Laurence S. Zakson William Y. Sheh Aaron G. Lawrence 3550 Wilshire Boulevard, Suite 2000 Los Angeles, CA 90010 Phone: (213) 386-3860 Amicus Curiae for Petitioners (in Court of Appeal) Los Angeles County Democratic Central Committee	Paul, Hastings, Janofsky & Walker LLP Eve M. Coddon Cameron W. Fox Amanda A. Bolliger 515 S. Flower Street, Twenty-Fifth Floor, Suite 2300 Los Angeles, CA 90017 Phone: (213) 683-6000 Amicus Curiae for Petitioners (in Court of Appeal) Aids Project Los Angeles

Miguel A. Marquez, Acting County Counsel Tamara A. Lange, Lead Deputy County Counsel Juniper Lesnik, Deputy County Counsel Greta S. Hansen, Deputy County Counsel Santa Clara County Office of the County Counsel 70 West Hedding Street, Ninth Floor, East Wing San Jose, CA 95110 Phone: (408) 299-5900 Amicus Curiae for Petitioners (in Court of Appeal) Santa Clara County	Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP Steven A. Merksamer Richard D. Martland Kurt Oneto 1415 "L" Street, Suite 1200 Sacramento, CA 95814 Phone: (916) 446-6752 Amicus Curiae for Respondents (in Court of Appeal) George Deukmejian, Pete Wilson, Gray Davis, California Chamber of Commerce, California Taxpayers' Association, California Business Roundtable
Clerk of the Court Court of Appeal of the State of California First Appellate District, Division Two 350 McAllister Street San Francisco, CA 94102 (via hand delivery)	