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

First Appellate District, Division Two, Case No. A125750

ANSWER OF THE GOVERNOR TO THE PETITIONS FOR REVIEW

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INTRODUCTION

In the decision below, the Court of Appeal upheld the Governor's use of his line-item veto powers 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, which has been in the California Constitution since 1879, 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 is a well-reasoned application of the case law, and it creates no conflicts with other decisions. Petitioners St. John's Well Child and Family Center, et al. and Interveners Darrell Steinberg and Karen Bass (collectively, petitioners) simply disagree with the result. Further review is not warranted.

STATEMENT

1. The Governor's line-item veto power is found in article IV, section 10(e) of the California Constitution. 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.

The line-item veto has been in the California Constitution in some form since 1879. Before its expansion in 1922, the line-item veto 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 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].)

2. 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 looming California budget crisis. In response to the Governor's proclamation, 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 modified the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess.) and reduced a number of the appropriations in the Budget Act. On July 28, 2009, the Governor exercised his line-item veto and reduced or eliminated 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 from the amounts in the Budget Act of 2009. The Governor's signing 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., Rev. 2009 Budget Act, Governor's Veto Message for §§ 18.00, 18.10, 18.20, 18.40.)

3. Petitioners filed an original proceeding in the Court of Appeal seeking a writ of mandate invalidating the Governor's line-item vetoes as

beyond the scope of the Constitution. Thereafter, Interveners were permitted to join the action, and they also filed a petition seeking a writ of mandate on similar grounds.

The litigation below 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. Each of these sections added a new section to the Budget Act of 2009, thereby changing the dollar amounts of specific appropriations. Specifically, AB1 changed sections 17.50, 18.00, 18.10, 18.20, 18.30, 18.40 and 18.50 of the Budget Act.

Petitioners and Interveners claimed that the hundreds of millions of dollars in appropriations that were altered by the Legislature in AB 1 were insulated from the governor's line-item veto power. They labeled the vetoed items "non-appropriation measures" (St. John's P & A at p. 21) or "non-appropriation items" (St. John's P & A at p. 22), or contended that the items "merely . . . relate[d] to appropriations" previously made. (St. John's P & A at p. 29.)

The Court of Appeal disagreed. On March 2, 2010, citing two of this Court's longstanding precedents on what constitutes an "item of appropriation" subject to the Governor's line-item veto, *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078 and *Wood v. Riley* (1923) 192 Cal. 293, the Court of Appeal rejected the petitions for writ of mandate. The Court of Appeal held:

> In article IV, section 10, subdivision (e), the California Constitution grants the Governor the limited legislative power to exercise the line-item veto to eliminate or reduce "items of appropriation." For the reasons set forth in this opinion, we conclude that the particular Assembly Bill 4X 1 budget reductions at issue here were "items of appropriation" within the meaning of article IV, section 10, subdivision (e), and that the Governor's line-item vetoes reducing them, while approving

other portions of Assembly Bill 4X 1, was therefore constitutionally authorized.

(Slip Op., p. 33.)

REASONS TO DENY THE PETITIONS

I. THE COURT BELOW FOLLOWED EXISTING LAW AND CREATED NO CONFLICT AMONG THE LOWER COURTS.

The decision below is followed this Court's precedent and created no conflict. The scope of the Governor's veto power has been examined and developed at length by this Court. As the Court of Appeal observed, this Court's decision in *Harbor* "extensively described the constitutional framework under which the Governor exercises the line-item veto." (Slip Op., p. 8.) Likewise, in *Wood* this Court provided a key definition of an item of appropriation: "a definite sum of money as may be required for a designated purpose connected with the state government." (*Wood*, 192 Cal. at p. 303.) The Court of Appeal considered and applied these "two important cases" for "guidance" in resolving the petitions below. (Slip Op., p. 11.) In a straightforward application of the reasoning of both cases, the Court of Appeal found that each section at issue was an item of appropriation subject to the Governor's line-item veto. The decision neither created a conflict with other decisions nor misapplied existing precedent.

II. THE COURT BELOW CORRECTLY REJECTED PETITIONERS' NOVEL ARGUMENT THAT THE LINE-ITEM VETO IS LIMITED TO ITEMS OF APPROPRIATION THAT INCREASE SPENDING, RATHER THAN REDUCE SPENDING.

Both petitions for review 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. (Petitioners' Petition for Review at p. 9; Interveners' Petition for Review at p. 17.) The

court below correctly rejected this argument, and it does not merit further review.

Petitioners mistakenly attempt to argue that *Wood* establishes a legal rule for what constitutes an item of appropriation. Although the *Wood* Court concluded that the addition of funds to an existing appropriation qualified as an "item of appropriation" in the portion of the opinion quoted by Petitioners (St. John's P & A at p. 27), *Wood* did not hold that addition of funds is the legal test 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.

Likewise, *Harbor* noted that the United States Supreme Court has defined the term "appropriation" as an act that "adds an additional amount to the funds already provided." (43 Cal.3d at p. 1089.) But, significantly, *Harbor* 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 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. In providing the line-item veto power, 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, and the California Constitution itself defines "[a]ppropriations subject to limitation" as "any authorization to expend during a fiscal year. . . ." (Cal Const., art. XIIIB, §8.) Furthermore, *Wood* and *Harbor* provide strong support for the validity of the Governor's vetoes, and the Court of Appeal's reliance on these cases was well explained and cogent.

The Court of Appeal heeded this Court's warnings in *Wood* and *Harbor* that courts should not permit litigants to circumvent the Governor's veto power. In *Wood*, this Court emphasized the importance of maintaining the Governor's role in the system, and cautioned that "[t]o 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." (*Wood*, *supra*, 192 Cal. at p. 305.) In a similar vein, *Harbor* warned 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.) The Court of Appeal thus correctly found that the line-item vetoes at issue were "precisely the type of check on the Legislature intended by the constitutional initiative that adopted the line item veto . . ." (Slip Op., p. 31.) 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 the Court of Appeal's conclusion to that effect is unremarkable.

III. THE VETOED ITEMS WERE ITEMS OF APPROPRIATION.

Finally, Petitioners offer a factual argument that the items vetoed from AB 1 were not items of appropriation, and are therefore beyond the scope of the line-item veto. Historically, the only requirement for an item to be considered an appropriation is 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.)

The specific acts of the Legislature in cutting expenditures through AB 1 are items of appropriation. 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* (1937) 299 U.S. 410, 414-415.) Petitioners' characterization of the legislative acts at issue as mere adjustments and not appropriations is a post hoc attempt to recast the nature of the bill itself, as well as the nature of the items vetoed therein. As the Court of Appeal observed:

> 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.)

(Slip Op., p. 31.) There can be no serious doubt that AB 1 was an appropriations bill and that all of the items vetoed by the Governor were items of appropriation.

Indeed, the relief sought below by Petitioners effectively admits that the disputed provisions of AB 1 are "items of appropriation." Petitioners and Interveners both expressly conceded that any legislation which sets aside money for payment from the state treasury is an item of appropriation. (Interveners' P & A at p. 19; St. John's Reply at p. 6.) And both Petitioners and Interveners contended that the provisions of AB 1 did not meet this test because spending authority for these programs had been provided in the previously passed Budget Act. (Interveners' P & A at p. 19; St. John's Reply at p. 6.) Yet both Petitioners and Interveners asked the Court of Appeal 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].)

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.) Based upon these authorities, the Court of Appeal correctly concluded that "[i]n seeking payments from the Controller from state funds in the amounts set aside in Assembly Bill 4X 1, for the programs identified therein, and according to the terms of that bill, petitioners and interveners implicitly acknowledge that the provisions of that budget measure are items of appropriation." (Slip Op., p. 22.) This reasoning is legally sound, comports with constitutional and statutory law, and creates no conflict with existing precedent. Review is not warranted.

CONCLUSION

For the foregoing reasons, the Court should deny the Petitions for Review.

Dated: May 3, 2010

Respectfully submitted,

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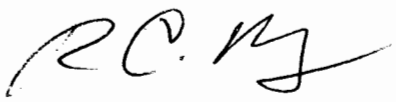

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER OF THE GOVERNOR TO THE PETITIONS FOR REVIEW uses a 13 point Times New Roman font and contains 2,776 words.

Dated: May 3, 2010

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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 May 3, 2010, I served the attached **ANSWER OF THE GOVERNOR TO THE PETITIONS FOR REVIEW** 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:

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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 May 3, 2010, at San Francisco, California.

Janet Wong
Declarant

Signature

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