



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF AUGUST 9, 2004**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#04-86 Californians For an Open Primary v. Shelley, S126780. (July 30, 2004, C047231) \_\_\_ Cal.App.4th \_\_\_ [<http://www.courtinfo.ca.gov/opinions/documents/C047231.PDF>]. Petitions for review after the Court of Appeal issued a writ of mandate. This case includes the following issues: (1) Did the Legislature's joining of two unrelated constitutional amendments in a single ballot measure violate the "separate vote" requirement of article XVIII, section 1 of the California Constitution, or was joining the two amendments permissible as a proposed partial revision of the Constitution or on some other ground? (2) If joining the two amendments violates the separate vote requirement, what is the appropriate remedy?

#04-87 People v. Chacon, S125236. (B164649; 118 Cal.App.4th 427; Los Angeles County Superior Court; BA219058.) Petition for review after the Court of Appeal reversed the dismissal of a criminal proceeding. This case presents the following issues: (1) When the trial court denies the prosecution's pretrial motion to exclude evidence relevant to a defense, and consequently the prosecution asserts that it is unable to proceed to trial and obtains dismissal of the action pursuant to Penal Code section 1385, do the People have a right to appeal from the dismissal order? (2) In what circumstances may a pretrial evidentiary ruling properly justify a discretionary dismissal in the furtherance of justice pursuant to Penal Code section 1385, subdivision (a), and

(over)

what factors should a trial court consider in exercising its discretion? (3) In an appeal from a pretrial order of dismissal pursuant to that section, when, if ever, are the merits of evidentiary rulings preceding the order of dismissal reviewable in that appeal?

(4) Should California law recognize the defense of entrapment by estoppel, and if so, can this defense bar a criminal conviction when the defendant relies on the advice of a city attorney regarding the legality of her actions under state law?

#04-88 Connerly v. State Personnel Board, S125502. (C043329; unpublished opinion; Sacramento County Superior Court; 96CS01082.) Petition for review after the Court of Appeal affirmed an order awarding attorney fees in a civil action. This case includes the following issue: Does the “private attorney general” fee shifting statute (Code Civ. Proc., § 1021.5) authorize an award of attorney fees against nongovernmental entities that initially filed amicus briefs on behalf of defendant state agencies and thereafter were designated real parties in interest by the trial court and continued to participate in the action, when the nongovernmental entities did not create the programs challenged in the underlying action and had no authority to terminate or modify those programs?

#04-89 Davis v. Oppenheimer, S125644. (A102929; unpublished opinion; San Francisco County Superior Court; CGC-03-416751.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. The court ordered briefing deferred pending decision in Jevne v. Superior Court, S121532 (#04-23), which includes the following issue: Are the California Ethical Standards for Neutral Arbitrators (Code Civ. Proc., § 1281.85; Cal. Rules of Court, appen. Div. VI [Ethics Standards for Neutral Arbitrators in Contractual Arbitration]) preempted by the federal Securities Exchange Act of 1934 and rules promulgated under that Act by the National Association of Securities Dealers?

## **DISPOSITIONS**

#03-88 Swann v. DaimlerChrysler Motors, S115864, was transferred to the Court of Appeal for reconsideration in light of Gavaldon v. DaimlerChrysler Corp. (2004) 32 Cal.4th 1246.

#03-162 Kadish v. Jewish Community Centers, S120631, was dismissed.

The following cases were transferred to the Court of Appeal for reconsideration in light of Gerawan Farming, Inc. v. Kawamura (2004) 33 Cal.4th 1:

#02-53 Wileman Bros. & Elliott, Inc. v. Lyons, S104020.

#02-54 Gerawan Farming, Inc. v. California Table Grape Commission, S103976.

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