

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT et al.,
Petitioner/Appellant,

vs.

ARNOLD SCHWARZENEGGER, as
Governor of the State of California,
etc. et al.,
Defendant/Respondent.

Supreme Court Case
No. _____
Court of Appeal, Third Appellate
District
Case No. C061011
Superior Court Case No.
34-2008-80000126-CU-WM-GDS

AND RELATED CASES

PETITION TO TRANSFER AND CONSOLIDATE
APPEALS

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I.

INTRODUCTION

In late 2008, California was faced with an unprecedented and escalating fiscal crisis. In order to remedy this crisis and ensure that California had sufficient cash to continue to operate and provide critical services, Governor Arnold Schwarzenegger issued Executive Order S-16-08 on December 19, 2008, which directed the Department of Personnel Administration (“DPA”) to implement two-day a month furloughs for the California state workforce. Once it became evident that additional savings would be needed to ensure the fiscal stability of California, Governor Schwarzenegger issued Executive Order S-13-09 on July 1, 2009, which directed a third furlough day per month for state employees.

Since the issuance of Executive Order S-16-08, twenty-six separate lawsuits have been filed by state employee organizations and individual petitioners. These twenty-six cases have been heard (or will be heard) by several different judges in four superior courts throughout the state: Sacramento County Superior Court, San Francisco County Superior Court, Alameda County Superior Court, and Los Angeles County Superior Court. Ten separate appeals stemming from trial court decisions in the above-referenced cases have been filed in the Third and First District Courts of Appeal. This spate of lawsuits throughout the state has resulted in inconsistent and conflicting rulings at the trial court level and potentially

will result in further inconsistent decisions in the Courts of Appeal. These conflicting rulings have resulted in uncertainty for the Governor and DPA in administering the statewide furlough program in the effective, consistent manner necessary to achieve budget and cash savings. Finally, these conflicting rulings also have resulted in uncertainty among the State's various agencies and departments in determining whether their employees are subject to furloughs.

The Governor's ability to ensure California's present and future fiscal stability through the exercise of his authority as the state employer to furlough state employees during a period of fiscal and budgetary crises – authority granted him by applicable provisions of the California Constitution, various statutes, and memoranda of understanding (“MOUs”) between the State and state employee organizations – involve issues of great public importance that require prompt resolution by this Court. Allowing the myriad legal challenges to the statewide furlough program to work their way through the numerous trial courts and appellate courts will lead to more inconsistent rulings and will delay final resolution of the legal issues regarding the Governor's authority to furlough state employees as one means of addressing a fiscal crisis. The nature and importance of the issues in these cases for the current Governor and future Governors, and their statewide impact on state employees, warrant speedy and final resolution by this Court.

The following parties, identified hereinafter as "State Petitioners," petition this Court pursuant to Article 6, section 12, of the California Constitution and Rule 10.1000 of the California Rules of Court to transfer the actions listed below to this Court for hearing and decision. "State Petitioners" consist of the following parties: Governor ARNOLD SCHWARZENEGGER, the DEPARTMENT OF PERSONNEL ADMINISTRATION, and the following individuals named in their present or former official capacities as heads of their respective state agencies or departments, PRESTON DUFAUCHARD, CINDY EHNES, JEFF DAVI, CARRIE LOPEZ, GEORGE VALVERDE, RONALD P. SCHAFFER, DOUGLAS BOSCO, JULIE NAUMAN, ALAN KERZIN, MARY-ANN WARMERDAM, WILLIAM HARAF, STEVE HARDY, FRED ARMENDARIZ, RAYNOR T. TSUNEYOSHI, TERRI CIAU, JOHN P. DONNELLY, J. A. FARROW, KIRK BREED, LLOYD THRONE, L. STEVEN SPEARS, MARK LEARY, RON DIEDRICH, DESTIE OVERPECK, DON KOCK, CALEB CHEUNG, BONNIE GARCIA, MARY D. NICHOLS, LYNN JACOBS, PATRICK HENNING, LESTER SNOW, PATRICK WRIGHT, BRIDGETT LUTHER, DOROTHY RICE, MARK HORTON, JOHN A. WAGNER, WILL KEMPTON, MAZIAR MOVASSAGHI, JON DUNCAN, LYNN DAUCHER, RUTH COLEMAN, DALE BONNER, KAREN HUMPHREY, JOSEPH MILLER, CHARLES PATILLO, PAUL D. THAYER, STEVE

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State Petitioners request that this Court transfer the following seven actions to itself for hearing and decision from the Third District Court of Appeal and the First District Court of Appeal:¹

¹ There are three other furlough cases on appeal in the First District Court of Appeal that State Petitioners have not included in this petition because they present limited issues of law not directly related to the threshold issue presented by this petition, namely, whether the Governor has the authority to furlough the California state workforce, in whole or in part.

Two of the excluded cases are *CASE, etc., et al v. Schwarzenegger, etc., et al.*, First District Court of Appeal Case No. A125292; and *SEIU, Local 1000, et al v. Schwarzenegger, etc. et al.*, First District Court of Appeal Case No. A126525, which both challenge whether employees of the State Compensation Insurance Fund (“SCIF”) may be furloughed in light of a statutory provision, Insurance Code section 11873(c), applicable only to SCIF employees. These cases were not included in this petition because they affect only SCIF employees.

The third excluded case is *California Correctional Peace Officers Association (“CCPOA”) v. Schwarzenegger, et al.*, First District Court of Appeal Case No. A127292 which concerns the use of “self-directed” furloughs for employees in State Bargaining Unit 6. This case was not included in this petition because it involves the implementation of furloughs through use of “self-directed” furloughs, as opposed to the threshold question of the Governor’s executive authority to furlough state employees.

1. *California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment ("CASE") v. Arnold Schwarzenegger, as Governor of the State of California, etc., et al*, Third District Court of Appeal, Case No C061009;
2. *Professional Engineers in California Government ("PECG"), et al v. Arnold Schwarzenegger, as Governor of the State of California, etc. et al*, Third District Court of Appeal Case No. C061011;
3. *Service Employees International Union, Local 1000 ("SEIU") v. Arnold Schwarzenegger, etc., et al*, Third District Court of Appeal Case No. C061020;
4. *Schwarzenegger, etc., et al v. Chiang, etc. et al*, Third District Court of Appeal Case No. C061648;
5. *Union of American Physicians and Dentists ("UAPD") v. Schwarzenegger, etc., et al*, First District Court of Appeal, appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09456684;
6. *CASE v. Arnold Schwarzenegger, etc., et al.*, First District Court of Appeal, appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09453982;
7. *SEIU, Local 1000, et al v. Schwarzenegger, etc., et al.*, First District Court of Appeal, appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09456750.

A decision from this Court is necessary to define the scope of the Governor's executive authority to furlough state employees during a time of fiscal crisis. A prompt and final decision from this Court will ensure consistency in the management of the state workforce and provide definitive guidance to the current Governor and future Governors, recognized state employee organizations, and state employees. Accordingly, State Petitioners urge this Court to exercise its discretion under the Constitution of the State of California, Article 6, section 12, and California Rule of Court, Rule 8.552 to grant this petition to transfer these seven cases to itself from the California Courts of Appeal for the First and Third Appellate Districts.

State Petitioners further urge this Court to consolidate all of these appeals for hearing and decision. All of these appeals involve common issues of law and fact because they all present challenges to the Governor's authority to direct furloughs of state employees by way of Executive Order.

Finally, to prevent further conflicting rulings and confusion, State Petitioners request that this Court stay all pending trial court actions challenging either the Governor's authority to issue Executive Orders directing furloughs of state employees or the manner in which furloughs are being implemented by DPA for affected state agencies and departments until this Court has completed its review of the seven cases State Petitioners are requesting be transferred to this Court for final decision.

II.

ISSUES PRESENTED

1. Does the Governor of the State of California have authority to furlough California state employees by Executive Order?
2. Does the Governor have the authority to order furloughs of employees working for elected state civil executive officers?
3. Do furloughs of state employees amount to a *de facto* salary reduction in violation of California Government Code section 19826, subdivision (b)?
4. In exercising the discretion conferred by Government Code section 19851, subdivision (a) to establish workweek schedules of less than 40 hours per week through the furloughing of state employees, does the Governor have a mandatory duty to engage in an agency-by-agency or department-by-department analysis to determine whether such a workweek schedule meets the varying needs of the affected state agencies and departments?
5. Does the Governor have the discretion to implement furloughs for all California state employees regardless of the funding source of the agency or department in which they work?
6. Did the temporary furloughs of state employees working in special fund agencies or departments result in a transfer of assets from such agencies or departments that interfered with the object for which the

special funds were created in violation of Government Code section 16310, subdivision (a)?

7. Does the Governor violate the Ralph C. Dills Act ["Dills Act," Gov. Code § 3512, *et seq.*], specifically Government Code section 3516.5, by issuing Executive Orders directing the temporary furloughing of represented state employees during a fiscal emergency without prior notice to the recognized state employee organizations?

III. **STATEMENT OF THE CASE**

A. Statement of Facts

In the late summer of 2008, the State of California was facing an unprecedented fiscal crisis as well as a budget impasse. As a result, Governor Arnold Schwarzenegger issued Executive Order S-09-08, on July 31, 2008, directing various emergency measures, which included a directive to all state agencies and departments to cease and desist immediately authorization of overtime for all state employees.

On September 23, 2008, Governor Schwarzenegger signed a budget for the 2008-2009 fiscal year. However, shortly thereafter, a significant downturn in the national and state economy resulted in an unanticipated and significant reduction in revenues from those forecasted in the budget. The State of California's Department of Finance estimated a resulting budget deficit of \$11.2 billion and estimated that, at current rates of spending, the state would be entirely out of cash by February 2009.

As a result of this unanticipated and crippling deficit, the Governor issued a special session proclamation on November 6, 2008 calling for a special session of the Legislature to address the economy, budget, and fiscal crisis. However, the Legislature failed to resolve the budget and fiscal crisis in the November 2008 special session. At the same time, the Department of Finance recalculated its estimates and determined that revenues actually were predicted to be \$14.8 billion below the estimated revenues at the time of signing of the 2008-2009 budget. The deficit was predicted to reach \$21.6 billion by the end of the 2009-2010 fiscal year.

On December 1, 2008, the Governor issued a Fiscal Emergency Proclamation, pursuant to his authority under Article IV, section 10, subdivision (f) of the California Constitution. In this proclamation, the Governor specifically identified the nature of the fiscal emergency “to be the projected budget imbalance and insufficient cash reserves for Fiscal Year 2008-2009 and the projected insufficient cash reserves and potential budgetary and cash deficit in Fiscal Year 2009-2010 which are anticipated to result from the dramatically lower than estimated General Fund revenues in Fiscal Year 2008-2009.” This Fiscal Emergency Proclamation also convened the Legislature for another special session.

Faced with this severe and escalating crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08 on December 19, 2008, directing the implementation of two-day a month furloughs for all state

employees, regardless of the funding source for the agency or department in which an employee worked, beginning on February 1, 2009 and ending on June 30, 2010. Governor Schwarzenegger issued the Executive Order, in part, pursuant to the emergency provisions of Government Code section 3516.5, which allowed implementation of the furloughs without prior notice to the recognized state employee organizations.

Despite the various measures undertaken to address the ongoing budget and fiscal crisis, including directing furloughs of state employees pursuant to Executive Order S-16-08, California's financial condition continued to worsen. As a result, on July 1, 2009, Governor Schwarzenegger issued Executive Order S-13-09 directing the implementation of a third furlough day for all state employees, regardless of the funding source for their position.

B. Procedural Background of Appellate Cases to Be Transferred

The first litigation challenge to Executive Order S-16-08 was filed in December 2008. Since that time, an additional twenty five lawsuits have been filed in four state superior courts throughout the state: Sacramento County, San Francisco County, Alameda County, and Los Angeles County. Currently, ten cases are on appeal in the First and Third District Court of Appeal and State Petitioners seek to have this Court take jurisdiction over the seven appeals that directly concern the threshold question of the

Governor's authority to furlough state employees. A brief description of the procedural history and substance of each of these actions follows.

1. **Consolidated Third District Court of Appeal Cases: *CASE v. Arnold Schwarzenegger, et al*, Third District Court of Appeal, Case No C061009; *PECG, et al v. Arnold Schwarzenegger, as Governor of the State of California, etc. et al*, Third District Court of Appeal Case No. C061011; and *SEIU, Local 1000 v. Arnold Schwarzenegger, etc., et al*, Third District Court of Appeal Case No. C061020**

On December 22, 2008, two state employee organizations, PECG and California Association of Professional Scientists ("CAPS") filed a petition in the Sacramento County Superior Court for writ of mandate and complaint for injunctive and declaratory relief challenging Executive Order S-16-08 on the basis that the Executive Order and ensuing furloughs violated the California Constitution and Government Code section 19826, subdivision (b). A second petition for writ of mandate and complaint for injunctive and declaratory relief was filed on January 5, 2009 by CASE in Sacramento County Superior Court alleging that the Executive Order and ensuing furloughs violated Government Code section 19826, subdivision (b), the relevant Memorandum of Understanding, and the Fair Labor Standards Act ("FLSA"). On January 7, 2009, a third petition for writ of mandate and complaint for injunctive and declaratory relief was filed by SEIU, Local 1000 in Sacramento County Superior Court alleging that the Executive Order and resultant furloughs violated California Government Code section 19826, subdivision (b), the California Constitution, and the

FLSA. On January 9, 2009, the cases were consolidated for the purposes of hearing and decision. On January 30, 2009, the Sacramento County Superior Court issued an amended and final order denying the petitions and ruling that the Governor had the legal and contractual authority to furlough state employees by way of Executive Order. The Sacramento County Superior Court further ruled that the furloughs ordered by the Governor did not constitute a *de facto* salary reduction in violation of Government Code section 19826, subdivision (b).

All four of the state employee organizations involved in the Sacramento County Superior Court actions filed timely appeals in the Third District Court of Appeal. On its own motion, the Third District Court of Appeal consolidated all three appeals for the purposes of hearing and decision. The Teachers' Retirement Board of the California State Teachers' Retirement System has filed an amicus brief in the consolidated actions. Initial briefing by the parties is complete. However, on January 29, 2010, the Third District Court of Appeal issued a request for supplemental briefing on various questions posed by the court. The Appellants' opening supplemental briefs are due no later than March 1, 2010. Respondents' supplemental brief is due no later than thirty days from the filing of the Appellants' opening supplemental briefs. Appellants' supplemental reply briefs are due no later than twenty days from the filing of Respondents' supplemental brief.

2. **The “Civil Executive Officers” Appeal: *Schwarzenegger, etc., et al v. Chiang, etc. et al*, Third District Court of Appeal Case No. C061648.**

Immediately following the January 30, 2009 Sacramento trial court order, the Controller of the State of California, John Chiang, announced that he intended to implement the furlough program immediately. However, on February 3, 2009, Controller Chiang sent a letter to the Sacramento County Superior Court seeking clarification of the January 30, 2009 order on the question of whether the order applied to the employees of the State’s elected civil executive officers. Controller Chiang attached letters from other civil executive officers in which they took the position that Executive Order S-16-08 did not apply to their employees. The trial court issued a minute order on February 4, 2009 stating that it took no position regarding the applicability of the furloughs to civil executive officers because the state civil executive officers had not been parties to the union furlough cases and the issue had not been before the court at the hearing on January 29, 2009. Following the February 4, 2009 minute order, the Controller, and the other civil executive officers of the State (the Secretary of State, Attorney General, State Treasurer, State Superintendent of Public Instruction and the Board of Equalization) stopped applying furloughs to employees working in their departments. As a result, Governor Schwarzenegger and DPA filed an action in the Sacramento County Superior Court seeking a writ of mandate compelling the Controller

to comply with the January 30, 2009 order. On March 2, 2009, the civil executive officers intervened in the case, seeking a declaratory judgment that the order did not apply to them. On March 12, 2009, the court issued an order that Executive Order S-16-08 applied to the employees of civil executive officers. The civil executive officers timely appealed and an automatic stay went into effect. Briefing in the appellate court has been completed. As of the date of this Petition, oral argument has not been scheduled.

3. **The “Special Fund” Cases: *UAPD v. Schwarzenegger, et al*, First District Court of Appeal, Appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09456684; *CASE v. Arnold Schwarzenegger, et al*, First District Court of Appeal, Appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09453982; *SEIU, Local 1000, et al v. Schwarzenegger, et al*, First District Court of Appeal, Appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09456750.**

On May 22, 2009, CASE filed a petition for writ of mandate and complaint for declaratory and injunctive relief in the Alameda County Superior Court alleging that furloughing employees working in special fund agencies and departments constituted an abuse of discretion because furloughing these employees would not result in any savings to the General Fund. CASE alleged it was an abuse of discretion for Governor Schwarzenegger to furlough employees who were employed by agencies and departments not funded by the State’s General Fund.

On June 9, 2009, SEIU and its Local 1000 President, Yvonne Walker, filed a petition for writ of mandate and complaint for declaratory and injunctive relief in Alameda County Superior Court on the basis that the Executive Order was invalid as applied to employees working in special fund agencies or departments because furloughing those employees did not result in any direct savings to the General Fund. SEIU alleged it was an abuse of discretion for Governor Schwarzenegger to furlough employees who were employed by agencies and departments not funded by the General Fund.

On June 9, 2009 the Union of American Physicians and Dentists (“UAPD”) filed a petition for writ of mandate and complaint for declaratory and injunctive relief on the basis that the furloughs as applied to UAPD members were invalid because UAPD members worked for special fund agencies and departments and furloughing them would not have a direct effect on the General Fund.

The Alameda Superior Court heard these three matters concurrently with the CCPOA matter described in footnote 1 that is not included in this petition. On December 31, 2009 the court issued orders granting writs of mandate in all three actions. On February 22, 2010, the trial court held a hearing regarding the form of the judgments to be issued in these cases. The trial court issued orders on February 25, 2010 ruling that the writs of mandate in the cases would apply to *all* employees of the special fund

agencies and departments named in the actions regardless of whether the employees in question were represented by CASE, SEIU or UAPD. In the CASE and SEIU actions, the trial court also ordered that the employees of the special fund agencies and departments named in the action were entitled to have restored to them “any salary wrongfully withheld” as a result of the invalid furloughs. Based on a stipulation, this back pay relief was not granted to the petitioner in the UAPD action.² On February 25, 2010, the Alameda County trial court entered judgments in the CASE, SEIU, and UAPD matters consistent with its ruling. On February 26, 2010, timely appeals were filed. No briefing has occurred and oral argument has not been scheduled.

² The State Petitioners and UAPD stipulated that any issue regarding reimbursement for lost wages for employees represented by UAPD would be deferred to after the completion of all appeals in that action.

In addition to the conflict between the Alameda County Superior Court rulings and those of other trial courts (*see infra*), the distinction between the SEIU and CASE rulings and the UAPD ruling on the “back pay” issue underscores an internal conflict in the court’s rulings in those cases. On the one hand, the Alameda County Superior Court has awarded back pay to *all* employees working in the special fund agencies and departments named in the SEIU and CASE actions, which would include employees represented by UAPD who work in those agencies and departments. Yet, in the UAPD action the Alameda County Superior Court did not award back pay to employees represented by UAPD but deferred this issue, per the parties agreement, until all appeals are exhausted. These conflicting rulings create an untenable dilemma for State Petitioners regarding the payment of back pay to employees represented by UAPD who work in special fund agencies and departments named in the CASE and SEIU actions. At the February 22, 2010 hearing before the Alameda County Superior Court, State Petitioners urged the Alameda County Superior Court to defer the issue of back pay in all three cases. This argument was not accepted by the Alameda County Superior Court. Thus, this is one of the several conflicts in trial court rulings that will be resolved by this Court’s determination of the issues presented in the cases State Petitioners seek to have transferred to this Court.

IV.
ARGUMENT

A. This Court Should Transfer These Seven Furlough Appeals To Itself Because They Present Issues of Great Public Importance That Must Be Promptly Resolved.

California Constitution Article 6, section 12 authorizes the Supreme Court to transfer any case pending in a Court of Appeal to itself before decision on either its own motion or a party petition. The Supreme Court may transfer cases pending in the Court of Appeal to itself when the “cause presents an issue of great public importance that the Supreme Court must promptly resolve.” (Cal. Rules of Court, Rule 8.552; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241; *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 219.)

The Governor’s authority to direct the furloughs of California state employees is an issue of great public importance because it involves novel questions of executive authority that will affect current and future Governors and have a statewide impact on state employees. California still is suffering from the effects of the national recession, the worst recession since the Great Depression. The State is facing a current \$20 billion deficit. As a result of this continuing fiscal crisis, the issue of the Governor’s authority to furlough the state workforce via Executive Order is an issue likely to recur. Thus, the speedy and final resolution of the issues presented in this Petition will provide needed guidance to the current Governor and future Governors regarding the availability of furloughs to address budget

deficits and cash shortages when necessary to ensure California's fiscal stability.

The furlough program, as implemented, represents approximately \$3 billion of savings to the California budget, including \$1.66 billion savings to the General Fund. The continuing ability to direct furloughs of state employees protects the employment stability and security of the sizable California state workforce. The imposition of furloughs has avoided the need for widespread layoffs. The furlough program has allowed the State to maintain the vast majority of its workforce while still achieving significant and necessary savings.

This Court has previously taken original jurisdiction in cases where the issues presented were of great public importance. (See *Brosnahan v. Brown, supra*, 32 Cal.3d 236, 241; *Amador Valley Joint Union High School District v. State Board of Equalization, supra*, 22 Cal.3d 208, 219.) For instance, in *Brosnahan v. Brown, supra*, 32 Cal.3d 236, 241, this Court found that a constitutional challenge to Proposition 8, commonly known as the "Victim's Bill of Rights," presented issues of great public importance because the case involved the use of initiatives and referenda and their effect on the democratic process. (*Id.*, at 241.) In *Amador Valley, supra*, this Court determined that a challenge to Proposition 13, which added Article XIII A to the California Constitution, and "change[d] the previous system of real property taxation and tax procedure by imposing important

limitations upon the assessment and taxing powers of state and local governments” presented issues of great public importance. (*Id.*, at 218.)

The issues presented to this Court by this Petition are of similar weight and import as those in *Brosnahan* and *Amador Valley*. In *Brosnahan*, the issues addressed involved the constitutionality of the election process, which affects all voters, and citizens, in California. In *Amador Valley*, the issues addressed concerned property taxation, which affected all property owners and taxpayers in the State of California. The issues in this case affect all state employees and will decide the Governor’s authority to take steps to address a statewide fiscal crisis.

The Governor’s authority and exercise of discretion to furlough state employees is unsettled as a result of the pending litigation and inconsistent and conflicting rulings. In a case involving the exercise of a chief executive’s discretion, this Court took original jurisdiction over an appeal to clear the way for the chief executive to exercise his discretion. (See *Perry v. Jordan* (1949) 34 Cal.2d 87.) In *Perry*, this Court stated as a reason for exercising original jurisdiction, “The exercise by the chief executive of his discretion is obstructed by pending litigation. Until the litigation is settled, he is not in a position to freely exercise his discretion and this court should clear the way for action or nonaction by him.” (*Id.* at 91.) This Court found such an issue to be one of great public importance justifying the Court’s exercise of its original jurisdiction.

There is no doubt the cases included in this Petition present issues of great public importance that require speedy and final resolution by this Court. Therefore, State Petitioners request that this Court transfer these cases to itself.

B. The Governor's Authority to Order Furloughs of State Employees Must Be Resolved Promptly in Order to Preserve Judicial Economy and to Resolve Conflicts Caused by Inconsistent and Irreconcilable Rulings.

This issue is one of great public importance that must be resolved promptly by the Supreme Court because the numerous lawsuits filed by employee organizations and individual petitioners throughout the State have become an enormous drain on the judicial resources of California. In the last year, twenty-six petitions have been filed in four different state superior courts. Ten cases are on appeal in two different appellate districts. Substantial judicial resources will continue to be devoted to these cases until this Court has determined the legality of the furlough program as implemented pursuant to Executive Orders S-16-08 and S-13-09. An issue of this level of public import necessarily requires Supreme Court review for final resolution. Granting this petition will allow this Court to resolve this dispute promptly and preserve judicial efficiency and economy.

In addition to taxing the already strained resources of the California judiciary, the twenty-six different lawsuits challenging Executive Orders S-16-08 and S-13-09 and the resultant furloughs have resulted in inconsistent and irreconcilable rulings. The first cases to be litigated were those decided

by the Sacramento County Superior Court, which ruled that furloughs applied to *all* state employees represented by the state employee organizations involved in those actions: PECG, CAPS, SEIU, and CASE. Despite the initial decision by the Sacramento County Superior Court, the Alameda County Superior Court ruled in *Union of American Physicians and Dentists v. Schwarzenegger, et al*, Alameda County Superior Court Case No. RG09456684; *CASE v. Arnold Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09453982; and *SEIU, Local 1000, et al v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09456750 that furloughing state employees working in special fund agencies and departments was improper. Furthermore, the Alameda County Superior Court ruled that furloughs were invalid not only as applied to the employees represented by the state employee organizations who were petitioners in those actions, *i.e.*, CASE, SEIU, and UAPD, but were invalid as applied to *all* state employees working in over 60 special fund agencies and departments named as respondents in those actions. In addition, although the Alameda County Superior Court chose not to extend its decision to General Fund departments, the court's order finds that furloughing general fund departments is also likely unlawful. These findings directly contradict the decision by the Sacramento Superior Court and will inevitably result in additional litigation challenging furloughs of state employees.

The decisions by the Alameda County Superior Court in the referenced cases not only conflict with the initial decisions by the Sacramento County Superior Court, which found that the furloughs were valid as applied to *all* state employees, but also conflict with two earlier decisions made by the San Francisco County Superior Court. In *Board of Administration of the California Public Employees Retirement Systems v. DPA, et al.*, San Francisco Superior Court Case No. CPF-09-509754, the San Francisco Superior Court ruled on December 18, 2009, prior to the Alameda County Superior Court's December 31, 2009 rulings on the cases before it, that the furloughs were applied properly to state employees working at CalPERS regardless of the fact that CalPERS is a special fund agency. Furthermore, in *CAPS v. Schwarzenegger, et al.*, San Francisco Superior Court Case No. CPF-09-509695, the San Francisco Superior Court ruled on January 21, 2010, prior to the Alameda County Superior Court's February 25, 2010 rulings invalidating furloughs for all employees working in the special fund agencies and departments named as respondents in the CASE and SEIU actions, that state employees represented by CAPS were subject to furloughs regardless of the funding source of the agencies and departments in which those employees worked.

These conflicting rulings have created difficulty and uncertainty regarding the implementation and administration of furloughs. For instance, in response to the argument that CalPERS employees should be

exempt from furloughs because CalPERS does not receive funding from the State's General Fund, the San Francisco County Superior Court, in *Board of Administration of the California Public Employees Retirement Systems v. DPA, et al.*, San Francisco Superior Court Case No. CPF-09-509754, rejected that argument and ruled that furloughs were valid as applied to CalPERS employees. In response to precisely the same argument as that raised before the San Francisco County Superior Court, the Alameda County Superior Court ruled on December 31, 2010 that the furloughs were invalid as applied to CalPERS employees.³ It is impossible for the State Petitioners to reconcile these decisions. Do State Petitioners follow the decision of the San Francisco County Superior Court because it was first in time and continue to furlough CalPERS employees? Do they follow the decision of the Alameda County Superior Court because it is the most recent and cease furloughing CalPERS employees? State Petitioners are faced with an untenable dilemma. This dilemma can only be resolved by a speedy and definitive resolution of the issues in these cases by this Court.

A similar dilemma is created by the conflict between the Alameda County Superior Court rulings and the San Francisco County Superior Court's ruling in *CAPS v. Schwarzenegger, et al.*, San Francisco Superior Court Case No. CPF-09-509695. On January 21, 2010, in response to the special funds versus General Fund argument, the San Francisco County

³ CalPERS was a named respondent in both the CASE and SEIU

Superior Court ruled that furloughs were valid as applied to state employees represented by CAPS. On February 25, 2010, the Alameda County Superior Court ruled that furloughs were invalid as applied to *all* employees employed in the special fund agencies and departments named as respondents in the CASE and SEIU actions, including those represented by CAPS. Once again, it is impossible for State Petitioners to reconcile these decisions. State Petitioners are faced with an untenable dilemma. That dilemma can be resolved only by a speedy and definitive resolution of the issues in these cases by this Court.

The rulings in the Sacramento County, Alameda County and San Francisco County Superior Courts are impossible to implement concurrently, efficiently, or in an equitable manner. These inconsistent rulings have placed State Petitioners and the individual state agencies and departments in an irreconcilable position in which it is impossible to comply simultaneously with different court rulings affecting the same state employees.

Furthermore, these contradictory rulings violate basic principles of labor parity by creating a discrepancy between the working hours and compensation of state employees. The principle of maintaining relative parity among state employees regarding the terms and conditions of employment is a well-established concept in state employment. (See e.g.,

Actions in Alameda County.

State Trial Attorneys' Association v. State of California (1976) 63 Cal.App.3d 298, 303, holding that paying attorneys in the Department of Transportation a salary lower than attorneys in other state agencies and departments violated the concept of "horizontal parity among comparable positions throughout the civil service structure.") This concept of internal parity is at the heart of the state civil service system. Government Code section 18500, subdivision (c)(1) provides that the purpose of statutes within the Government Code addressing wages, hours, and other terms and conditions of employment for state employees is, in part, "[t]o provide a comprehensive personnel system for the state civil service, *in which positions involving comparable duties and responsibilities are similarly classified and compensated.*" (Emphasis added. See also, *California State Police Association v. State of California* (1981) 120 Cal.App.3d 674, 677.)

Allowing these inconsistent judgments to stand any longer than necessary runs contrary to this concept of parity among similarly situated employees. For example, state attorneys in State Bargaining Unit 2 represented by CASE are subject to furloughs if they work in General Fund agencies and departments, but are not subject to furloughs if they work in special fund agencies or departments. Office and clerical personnel in State Bargaining Unit 4 represented by SEIU Local 1000 are subject to furloughs if they work in General Fund agencies and departments, but are not subject to furloughs if they work in special fund agencies or departments. In other

words, state employees performing comparable work are subject or exempt from furloughs simply as a matter of the agency or department in which they work. This situation violates concepts of labor parity. It also provides a significant incentive to state employees to seek transfer from General Fund agencies or departments to special fund agencies or departments. This hinders the State's ability to retain key personnel in General Fund agencies and departments.

The issue of the Governor's authority to furlough all state employees is a matter of great public importance. The conflicting trial court decisions rendered to date have left the utilization of furloughs uncertain and in flux. This uncertainty is negatively impacting the ability of the State Petitioners to address the fiscal crisis and manage the state workforce. Therefore, State Petitioners respectfully request that this Court exercise its discretion under the California Constitution and California Rule of Court, Rule 8.552 and take jurisdiction over these furlough appeals.

C. **These Cases Should Be Consolidated for the Purposes of Hearing and Decision To Preserve Judicial Economy Because They Present Common Issues of Fact and Law.**

State Petitioners request that this Court consolidate all seven appeals that were requested to be transferred to this Court for hearing and briefing.

Courts have discretion to consolidate appeals for judicial efficiency. (*Sampson v. Sapoznik* (1953) 117 Cal.App.2d 607, 609, quoting *Silver v. Bank of America* (1941) 43 Cal.App.2d 835, 838.) Appellate cases can be

consolidated if they share common issues of law and fact. (*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 165, fn. 3; *California Casualty Insurance Company v. Northland Insurance Company* (1996) 48 Cal.App.4th 1682, 1690.) Furthermore, when considering a motion for consolidation, the court should consider the factual questions as to whether “the questions presented are so related as to make it advisable to consolidate and whether the consideration of the appeal will be expedited by the consolidation.” (*Sampson, supra*, 117 Cal.App.2d at 609.) In this case, all seven appeals should be consolidated because they share common issues of law and fact.

All seven appeals concern common issues of law and fact because all seven cases concern the legality of Executive Order S-16-08, Executive Order S-13-09 and the ensuing furloughs. All of the cases involve the same essential legal question – can the Governor, through the use of an executive order, furlough California state employees as one means of addressing a statewide fiscal crisis? Many of the same legal and factual issues will have to be briefed, argued and decided in each of these appeals. Therefore, resolution of all seven appeals will be expedited by consolidation.

D. In the Alternative, this Court Should Transfer the Cases Currently Pending in the First District Court of Appeal to the Third District Court of Appeal for Decision.

State Petitioners urge this Court to transfer to itself for hearing and decision the seven cases that are the subject of this Petition. In the

alternative, if this Court is not inclined to transfer these cases to itself, State Petitioners request that this Court transfer the three cases currently pending in the First District Court of Appeal to the Third District Court of Appeal.

Under California Constitution, Article 6, section 12, and Rules of Court adopted pursuant to it, this Court may transfer actions from one Court of Appeal to another. (California Rules of Court, Rule 10.1000; *see also Zaremborg v. Superior Court* (2004) 115 Cal.App.4th 111, 114; *Haase v. Gibson* (1960) 179 Cal.App.2d 256, 258.)

Here, the need to avoid potentially conflicting appellate court adjudications of the issues in these cases warrants the transfer of the pending appeals to one appellate court. Furthermore, it makes sense that the cases be transferred to the Third District Court of Appeal if this Court is not inclined to transfer the cases to itself. The appeals from the CASE, SEIU, and UAPD Alameda County actions to the First District Court of Appeal were just filed on February 26, 2010. The other four cases that are the subject of this Petition have been pending for some time in the Third District Court of Appeal. The initial briefing in those cases is complete and the supplemental briefing the court has requested in the three original furlough challenges filed by PECG and CAPS, CASE, and SEIU will be completed no later than April 20, 2010. Thus, the cases in the Third District Court of Appeal are much closer to hearing and decision than those pending in the First District Court of Appeal. Furthermore, in light of the

fact that no briefs have been filed yet in the First District Court of Appeal, the Respondents in those cases will not be prejudiced by the transfer.

Accordingly, for the sake of ensuring uniform appellate decisions in these important cases, State Petitioners request, in the alternative, that this Court transfer the cases pending in the First District Court of Appeal to the Third District Court of Appeal.

E. **This Court Should Stay All Lower Court Actions Concerning Executive Orders S-16-08 and S-13-09 and the Resultant Furloughs To Preserve Judicial Economy and Resources and Prevent Further Inconsistent Rulings.**

Finally, State Petitioners request that this Court stay all pending and any additional proceedings at the trial court level during the pendency of this Court's review of the seven appellate actions specifically named in this petition. At the time of filing this petition, 14 other actions are being litigated in various trial courts, all of which concern the Governor's authority to issue Executive Orders S-16-08 and S-13-09 and the legality of the ensuing furloughs. State Petitioners request that this Court stay these actions until this Court can issue a decision on the seven appeals State Petitioners request be transferred to this Court. State Petitioners request this stay to avoid further inconsistent rulings at the trial court level. These cases are, specifically, as follows:

Trial Court Actions

1. *CAPS v. Schwarzenegger, et al.*, San Francisco Superior Court Case No. CPF-09-509695 (Petition challenges Governor's authority to

furlough employees of agencies and departments funded in any part by special funds. The petition was denied, but final judgment has not yet been entered.)

2. *SEIU Local 1000 v. Schwarzenegger, et al.*, San Francisco Superior Court Case No. CPF-09-509782 (Petition alleges that Governor Schwarzenegger exceeded his authority and violated California law by issuing the subject Executive Orders. No hearing on the merits has been held.)
3. *Board of Administration of the California Public Employees Retirement Systems v. DPA, et al.*, San Francisco Superior Court Case No. CPF-09-509754 (Petition challenges Governor's authority to furlough employees of the California Public Employees Retirement System. The petition was denied, but final judgment has not yet been entered.)
4. *CDF Firefighters v. Arnold Schwarzenegger, State of California, Department of Personnel Administration*, Sacramento County Superior Court Case No. 34-2009-00032732-CU-WM-GDS (Petition alleges that Governor Schwarzenegger's Executive order violates California Government Code section 19826, subdivision (b) and the relevant Memorandum of Understanding. No hearing on the merits has been held.)

5. *Yvonne Walker and Service Employees International Union, Local 1000 v. Arnold Schwarzenegger, Department of Personnel Administration*, Sacramento County Superior Court Case No. 34-2009-80000150-CU-WM-GDS (Petition challenges the Governor's authority to enact furloughs by the use of Executive Orders and claims that Executive Orders S-16-08 violates California's Administrative Procedures Act. No hearing on the merits has been held.)
6. *CAPT v. Department of Personnel Administration*, Sacramento County Superior Court Case No. 34-2009-80000148. (Petition alleges that the furloughs violate California Labor Code section 212 and California Government Code section 19826, subdivision (b). A hearing on the merits is scheduled for March 19, 2010.)
7. *California Professional Public Employees Association, Kenneth Hamidi v. Department of Personnel Administration*, Sacramento County Superior Court Case No. 34-2009-800000308 (Petition alleges that the furloughs, as applied to members of CPPEA, violate California Labor Code section 212, that the furloughs are not being legally implemented on CPPEA employees, and that the furloughs impair CPPEA member contracts. A hearing on the merits is scheduled for March 26, 2010.)

8. *IUOE v. Schwarzenegger, et al.*, Los Angeles County Superior Court Case No. BC 423409 (Petition challenges Governor's authority to furlough employees of agencies and departments funded in any part by special funds. No hearing on the merits has been held.)
9. *IUOE v. Schwarzenegger, et al.*, San Francisco County Superior Court Case No. CGC-09-492675 (This complaint for declaratory and injunctive relief challenges the Governor's authority to implement furloughs on employees of the State Compensation Insurance Fund represented by IUOE. No hearing on the merits has been held in this action.)
10. *California Medical Association v. Schwarzenegger, et al.*, San Francisco County Superior Court Case No. 09-509896 (Petition alleges that Governor Schwarzenegger exceeded his authority in instituting the furloughs via the Executive Orders and that the furloughs prevent the Medical Board from discharging its statutory duties. A hearing on the merits of the petition is scheduled for March 4, 2010.)
11. *CASE v. Schwarzenegger, et al.*, San Francisco County Superior Court Case No. CPF-09-509629 (Petition alleges that the third furlough day required by Executive Order S-13-09 violates the California Constitution and California Insurance Code section 11873, subdivision (c) as applied to employees at the State

Compensation Insurance Fund. No hearing on the merits has been held.)

12. *Acosta, et al v. Patrick Henning, in his capacity as director of the California Employment Development Department*, San Francisco County Superior Court Case No. CPF-08-508192. (Petition alleges that the furloughs of Employment Development Department (“EDD”) and the California Unemployment Insurance Appeals Board (“CUIAB”) are invalid because the furloughs of EDD and CUIAB employees violate the California Constitution and Unemployment Insurance Code section 318. No hearing on the merits has been held.)
13. *PECG v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG10494800 (Petition challenges Governor’s authority to furlough employees of agencies and departments funded in any part by California Special Funds. No hearing on the merits has been held.)
14. *California Correctional Supervisor’s Organization v. California Department of Corrections and Rehabilitation, et al.*, Sacramento County Superior Court Case No. 34-2009-00063209. (Petition alleges that the furlough program violates Labor Code sections 212 and 1171. No hearing on the merits has been held.)

As noted, inconsistent rulings have already occurred in the trial court. The cases still pending in the trial court seek resolution of many of the same issues the State Petitioners are asking this Court to resolve in the seven cases State Petitioner seek to transfer to this Court. All of the cases challenge, in one form or another, State Petitioner's authority to institute and/or implement furloughs of state employees. Many of the cases involve the identical issues raised in the seven cases that are the subject of this Petition. For instance, the *IUOE* action (case no. 8 above) and the *PECG* action (case no. 12 above) raise the special funds versus General Fund argument. The *CDF Firefighters* action (case no. 4 above) argues that furloughs are a *de facto* salary reduction in violation of Government Code section 19826, subdivision (b). The *CAPS* (case no. 1 above), *CalPERS* (case no. 3 above), and *CMA* (case no. 10 above) actions involve the special funds versus General Fund argument.

A ruling on the issues raised by the seven cases State Petitioners are requesting be transferred to this Court will provide definitive guidance to the trial courts facing these same issues. Thus, transfer of these cases to this Court will promote judicial economy by providing direction to trial courts still facing issues similar to those this Court will resolve in deciding these cases. On the other hand, if these 14 trial court cases are allowed to continue during the pendency of this Court's review of the seven appeals that State Petitioners have requested be transferred in this Petition, there is

a significant risk of further inconsistent rulings in both the trial courts and also in the appellate courts (based on the reasonable assumption that the trial court rulings will be appealed.)

Therefore, State Petitioners request that this Court stay all proceedings in these actions during the pendency of this Court's review of the seven appeals State Petitioners have requested be transferred to this Court.

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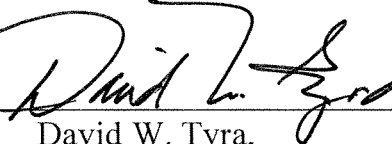
CONCLUSION

For all of the foregoing reasons, Petitioners Arnold Schwarzenegger, in his capacity as Governor of the State of California, and DPA respectfully request that this Court transfer the seven aforementioned appellate cases concerning Executive Orders S-16-08 and S-13-09 and the resultant furloughs to this Court for decision as all seven cases present issues of great public importance that this Court must promptly resolve. Additionally, as all seven cases present common issues of law and fact, State Petitioners request that this Court consolidate all seven actions for purposes of hearing and decision. Lastly, to avoid further inconsistent rulings and conserve judicial resources, State Petitioners request that this Court stay all pending trial court actions challenging Executive Orders S-16-08 and S-13-09 and the resultant furloughs during the pendency of this Court's review and until

this Court issues a decision on the seven appeals State Petitioners seek to have transferred to this Court.


Dated: March 1, 2010

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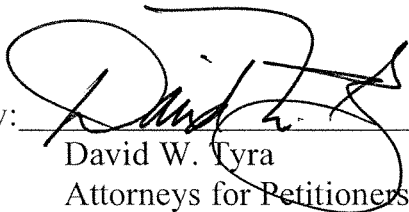
CERTIFICATE OF WORD COUNT

I, David W. Tyra, Attorney for Petitioners ARNOLD SCHWARZENEGGER, as Governor of the State of California and CALIFORNIA DEPARTMENT OF PERSONNEL ADMINISTRATION hereby declare under penalty of perjury that the number of words in the Petition to Transfer and Consolidate Appeals equals 8,064 words, as per the word count feature in Microsoft Word.

Dated: March 1, 2010

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I, Sherry Ramirez, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On March 2, 2010, I served a copy of the within document(s):

• **Petition to Transfer and Consolidate Appeals**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

CASES IN APPELLATE COURT TO BE TRANSFERRED

Service Employees International Union, Local 1000, et al v. Schwarzenegger, et al, First District Court of Appeal, appeal filed on February 26, 2010 from Alameda County Superior Court Case No. RG09456750

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22 *Schwarzenegger, etc., et al v. Chiang, etc., et al*, Third District Court of Appeal Case No.
23 C061648

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1 CASES IN TRIAL COURT TO BE STAYED

2 *California Association of Professional Scientists v. Schwarzenegger, et al*, San Francisco County
3 Superior Court Case No. CPF-09-509695

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12 San Francisco Superior Court Case No. CPF-09-509754.

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CDF Firefighters v. Schwarzenegger, et al, Sacramento County Superior Court Case No. 34-2009-00032732-CU-WM-GDS

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Yvonne Walker and SEIU, Local 1000 v. Schwarzenegger, etc., et al., Sacramento County Superior Court Case No. 34-2009-80000150-CU-WM-GDS

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CAPT v. Department of Personnel Administration, Sacramento County Superior Court Case No. 34-2009-80000148

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California Professional Public Employees Association, Kenneth Hamidi v. Department of Personnel Administration, et al, Sacramento County Superior Court Case No. 34-2009-80000308

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IUOE v Schwarzenegger, et al., Los Angeles County Superior Court Case No. BC423409

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23 *Acosta, et al v. Patrick Henning, etc, et al*, San Francisco County Superior Court Case No. CPF-
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2 Superior Court Case No. RG10494800

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12 *California Correctional Supervisor's Organization v. California Department of Corrections and*
13 *Rehabilitation, et al.*, Sacramento County Superior Court Case No. 34-2009-00063209

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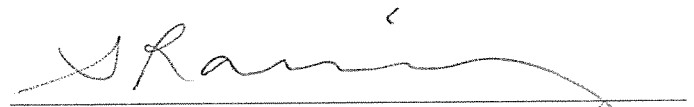
19 *CASE v. Schwarzenegger, et al*, San Francisco County Superior Court Case No. CPF-09-509629

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27 I am readily familiar with the firm's practice of collection and processing correspondence
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motion of the party served, service is presumed invalid if postal cancellation date or postage
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 2, 2010, at Sacramento, California.



Sherry Ramirez