



## UNITED STATES SUPREME COURT

### Hafer v. Melo,

\_\_\_ U.S. \_\_\_, 91 D.A.R. 13658,  
No. 90-681 (Nov. 5, 1991).

#### *Section 1983 Violations by State Officials Can Subject Them to Suit as Individuals*

In this proceeding, the U.S. Supreme Court ruled 8-0 that state officials sued in their individual capacities for civil rights violations are "persons" for purposes of 42 U.S.C. section 1983, which expressly creates a cause of action for improper deprivation of civil rights by "every person" acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." The Court expressly eliminated the ambiguity arising from its 1989 decision in *Will v. Michigan Department of State Police*, 491 U.S. 58, which held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability under section 1983. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 130 for background information on *Will*.)

The Court noted that personal-capacity suits seek to impose individual liability upon a government officer for actions taken under color of state law. According to the Court, "officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term 'person.'" The Court rejected Hafer's argument that section 1983 liability turns not on the capacity in which state officials are sued, but on the capacity in which they acted when injuring the plaintiff. The Court noted that her theory "would absolutely immunize state officials from personal liability for acts within their authority and necessary to fulfilling governmental responsibilities" and held that "[s]tate executive officials are not entitled to absolute immunity for their official actions." Thus, the Court concluded that state officers are not absolutely immune from personal liability under section 1983 solely by virtue of the "official" nature of their acts.

## NINTH CIRCUIT COURT OF APPEALS

### Corder v. Gates,

947 F.2d 374, 91 D.A.R. 12676,  
Nos. 88-5555, 88-5588 (Oct. 16, 1991).

#### *Trial Court Improperly Reduced Attorneys' Fee Award*

The U.S. Ninth Circuit Court of Appeals has determined that the U.S. District Court for the Central District of California erred when it reduced the amount of attorneys' fees awarded to civil rights plaintiffs under 42 U.S.C. section 1988; that statute authorizes courts to award reasonable attorneys' fees to prevailing parties in civil rights litigation. In the underlying action, plaintiffs brought suit against over 50 defendants, alleging that they illegally detained them and conducted an improper search of their residence in a misguided attempt to find an escaped prisoner. Prior to trial, plaintiffs rejected a \$45,000 settlement offer; that offer included \$39,000 worth of plaintiffs' attorneys' fees that had accrued and would have left plaintiffs with \$6,000. Following trial, a jury awarded plaintiffs a total of \$24,006 in compensatory and punitive damages against only three of the defendants; the district court subsequently awarded plaintiffs \$90,333 in attorneys' fees, after discounting the full "lodestar" amount by 20% to reflect plaintiffs' limited success against the defendants. Plaintiffs appealed the district court's award of attorneys' fees, arguing that the court erred when it adjusted the fee award downward to reflect limited success.

Although acknowledging that district courts have considerable discretion in determining attorneys' fees, the Ninth Circuit determined that the district court's 20% reduction of the full amount was based on clearly erroneous reasoning. When reducing the attorneys' fee award for limited success, the district court cited plaintiffs' rejection of the settlement offer, stating that the result of plaintiffs' decision to proceed to trial "was to win a much smaller figure than they could have obtained much earlier by simply accepting defendants' offer." In rejecting the district court's holding, the Ninth Circuit recognized that plaintiffs gained over \$18,000 by litigating their case to its conclusion. The Ninth Circuit remanded the matter to district court "with another opportunity to consider whether an adjustment to the lodestar amount is appropriate."

## CALIFORNIA SUPREME COURT

### Legislature v. Eu,

\_\_\_ Cal. 3d \_\_\_, 91 D.A.R. 12510,  
No. S019660 (Oct. 10, 1991).

#### *Legislative Term Limits of Proposition 140 Are Constitutional*

In this proceeding, the California Supreme Court determined that Proposition 140, the "Political Reform Act of 1990" enacted at the November 1990 general election, is constitutionally valid in all respects other than its proposed restrictions on the pensions of incumbent lawmakers. The stated purpose of Proposition 140 is to "restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office" by limiting "the powers of incumbency." The initiative measure sought to accomplish these goals by restricting retirement benefits, limiting state-financed incumbent staff and support services, and placing limits upon the number of terms which may be served.

As a preliminary matter, the court considered whether Proposition 140 imposes a "lifetime ban" on officers who have served the specified number of terms, or merely limits the number of consecutive terms they may serve. The court noted that the introduction to Proposition 140 refers to curtailing "[t]he ability of legislators to serve unlimited . . . terms," by limiting "the number of terms which may be served." Further, the court noted that the measure repeatedly announced its intent to eliminate "career politicians," and held that such language supports the view that a lifetime ban was intended. The court also reviewed the analysis and arguments in the official ballot pamphlets to determine the voters' intent regarding this matter. The court gave significant weight to the fact that the opponents' ballot arguments against Proposition 140 forcefully and repeatedly stressed the measure's "lifetime ban," noting that the proponents failed to contradict the "lifetime ban" contention in their ballot argument. The court thus concluded that Proposition 140's term limitations extend over the lifetime of each affected officeholder.

The court then considered whether the measure effected a constitutional revision—which may be accomplished only by convening a constitutional convention and obtaining popular ratification, or by legislative submission of the measure to the voters—rather than a mere amendment, which may be accomplished by citizens' initiative. According to the court, to find a revision, it must necessar-



ily or inevitably appear from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in the state constitution. "Proposition 140 on its face does not affect either the structure or the foundational powers of the Legislature, which remains free to enact whatever laws it deems appropriate. The challenged measure alters neither the contents of those laws nor the process by which they are adopted. No legislative power is diminished or delegated to other persons or agencies." The court held that petitioners' claims of momentous, detrimental consequences to the state's governmental scheme are "largely speculative," and added that "respondents argue with equal conviction that Proposition 140's term limitations will free the entire process from the control of assertedly entrenched, apathetic, veteran incumbents, thereby allowing fresh creative energies to flourish free of vested, self-serving legislative interests." In finding that nothing on the face of Proposition 140 effects a constitutional revision, the court also stated that "[t]o hold that reform measures such as Proposition 140, which are directed at reforming the Legislature itself, can be initiated only with the Legislature's own consent and approval, could eliminate the only practical means the people possess to achieve reform of that branch."

The court next addressed petitioners' claim that Proposition 140 violates the constitutional single-subject rule by combining in a single measure such "disparate" subjects as term and budgetary limitations and pension restrictions. According to the court, an initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are "reasonably germane" to each other, and to the general purpose or object of the initiative. The court found that the unifying theme or common purpose of Proposition 140 is "incumbency reform," and held that the various provisions of the measure are reasonably germane to that subject.

The court then considered petitioners' contention that the term limitations of Proposition 140 violate the first and fourteenth amendments of the federal constitution by substantially burdening two fundamental rights: the right to vote and the right to be a candidate for public office. The court determined that three separate elements must be considered in ascertaining the constitutionality of state laws restricting access to the ballot: (1) the nature of the injury to the rights affected; (2) the interests asserted by the state as justifications for that injury; and

(3) the necessity for imposing the particular burden affecting the plaintiff's rights, rather than some less drastic alternatives. The court acknowledged that Proposition 140 affects the rights of voters and candidates, but noted several mitigating factors, including the voters' continued right to vote for any qualified candidates and the candidates' ability to run for other public offices. As to the second element, the court stated that "[t]he universal authority is that restriction upon the succession of incumbents serves a rational public policy and that, while restrictions may deny qualified men an opportunity to serve, as a general rule the overall health of the body politic is enhanced by limitations on continuous tenure." Regarding the third element, the court determined that, realistically, "only a lifetime ban could protect against various kinds of continued exploitation of the 'advantages of incumbency' captured through past terms in office." The court thus concluded that "the interests of the state in incumbency reform outweigh any injury to incumbent office holders and those who would vote for them" and that "the legitimate and compelling interests set forth in the measure outweigh the narrower interests of petitioner legislators and the constituents who wish to perpetuate their incumbency."

The court then addressed petitioners' assertion that Proposition 140 is, in effect, an unlawful bill of attainder, defined as a "legislative punishment of any form or severity, of specifically designated persons or groups." The court stated that broad reform measures are frequently prompted by particular acts or circumstances involving specific individuals, but such measures would not constitute improper bills of attainder unless an intent to punish such individuals clearly appears from their face, or from the circumstances surrounding their passage. Although acknowledging that the measure's proponents sought to limit the terms of incumbent legislators such as Assembly Speaker Willie Brown (who has been in office since 1964) and Senate President pro Tempore David Roberti (who has been in office since 1971), the court pointed out that "Proposition 140 applies with equal force to all state legislators, current and future" and concluded that Proposition 140 does not constitute a bill of attainder.

Finally, the court considered petitioners' claim that Proposition 140's limitations on the pension rights of incumbent legislators are unconstitutional as an invalid impairment of contract under the federal constitution. The court agreed with petitioners that provisions of Proposition 140 terminate the pension system

entirely as to additional benefits accruing for future services; the court also agreed with petitioners that incumbent legislators have a vested right to earn additional pension benefits through continued service. The court thus concluded that the pension restrictions of Proposition 140 are unconstitutional under the federal contracts clause as applied to incumbent legislators because they infringe on the vested pension rights of those persons. However, the court also found that nonincumbent legislators first assuming office after Proposition 140 became effective acquired no vested or protectible right to a continuation of the pension system in operation prior to their employment and upheld the provisions as applied to them. Finally, the court found that "[a]lthough a portion of Proposition 140 is invalid as applied to incumbent legislators, its invalidity does not affect the remaining provisions of the measure, for those provisions can be given effect without regard to the validity or operation of the invalid pension restrictions."

#### Wilson v. Eu,

\_\_\_ Cal. 3d \_\_\_, 91 D.A.R. 13082  
No. S022835 (Oct. 23, 1991).

#### *Supreme Court Takes Over Redistricting Task*

On September 25, following Governor Wilson's veto of three plans containing new districts drawn by the Democrat-controlled legislature, the California Supreme Court exercised its original jurisdiction by ordering issuance of an alternative writ of mandate contemplating the drafting and adoption by the court of reapportionment plans for the state's legislative, congressional, and Board of Equalization districts (*Wilson v. Eu*, 54 Cal. 3d 471 (1991) (*Wilson I*)). The court appointed the Honorable George A. Brown, retired Associate Justice of the Fifth District Court of Appeal, the Honorable Rafael H. Galceran, retired Judge of the Los Angeles County Superior Court, and the Honorable Thomas Kongsgaard, retired Judge of the Napa County Superior Court, as Special Masters on Reapportionment. In *Wilson I*, the court also directed the Masters to commence public hearings within thirty days of their appointment, and to present their recommendations to the court no later than November 29; the court also called for a thirty-day period of briefing and public comment following the filing of the Masters' recommendations prior to the time set for oral argument before the court.



## LITIGATION

In this proceeding, the court considered proposals submitted by Secretary of State March Fong Eu for implementing reapportionment plans at a time and in a manner which would avoid postponing or bifurcating the June 2 primary election. Specifically, the court agreed with the Secretary's recommendations that (1) the court make the Masters' recommended plans available to county election officials as soon as available "in a computer-readable electronic medium with supporting maps and hard copy"; (2) the Secretary of State submit the recommended plans to the U.S. Department of Justice "on an informational basis" for eventual preclearance under the Voting Rights Act, immediately upon filing them with the court; (3) on the filing of the plans with the court, the Secretary immediately direct county election officials to begin encoding the Masters' recommended plans into their computer files; (4) the Secretary direct county election officials to postpone issuing petitions for gathering signatures in lieu of filing fees until the court files its opinion designating the proper district lines; (4) the court set January 28 as the deadline for filing its opinion; and (6) the Secretary direct county officials that the first day for circulating in lieu petitions, for filing declarations of intent for legislative office, and for filing declarations of candidacy and nomination papers for legislative and congressional seats is February 10.

On December 2, the Special Masters released their recommended redistricting plans, which were widely viewed as favorable to Republicans, while also increasing the chances of minority representation in the legislature and Congress. The court accepted written comments on the recommendations until January 13, when it was scheduled to conduct a hearing on the matter.

### **Rider v. County of San Diego,**

\_\_\_ Cal. 3d \_\_\_, 91 D.A.R. 15689,  
No. S017917 (Dec. 19, 1991).

### *Sales Tax for Justice Facilities Is Invalid Under Proposition 13*

The California Supreme Court has struck down a tax imposed on sales occurring in San Diego County for the purpose of financing the construction and operation of criminal detention and/or courthouse facilities for the County, finding that the tax is invalid because it was not approved by at least two-thirds of the County's voters, as required by article XIII, section 4 of the California constitution (added by Proposition 13, a 1978 initiative measure), which requires a

supermajority vote with respect to any "special taxes" sought to be imposed by "cities, counties and special districts."

In 1987, the legislature enacted the San Diego County Regional Justice Facility Financing Agency, and directed the Agency to adopt a tax ordinance imposing a supplemental sales tax of 0.05% throughout the County for the purpose of financing the construction of justice facilities. The legislation also provided for a countywide election held for the purpose of approving the tax ordinance by simple majority vote, and specified that the Agency possesses no tax power other than the foregoing sales tax. At a June 1988 election, the County's voters approved the tax ordinance by a bare majority vote (50.8%); plaintiffs, a group of County taxpayers, filed the present suit to challenge the validity of the tax.

The Supreme Court determined that the Agency must be deemed a "special district" under section 4, despite its lack of power to levy a tax on real property; the court noted that to hold otherwise would create a wide loophole in Proposition 13 by allowing cities and counties to arrange for the formation of local taxing districts to finance municipal functions without securing the requisite two-thirds voter approval. Thus, the court held that the term "special district" includes any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13. As a result, the court invalidated the Agency's tax levy on the basis that it failed to secure the requisite two-thirds voter approval.

### **Whitman v. Superior Court,**

\_\_\_ Cal. 3d \_\_\_, 91 D.A.R. 15081,  
No. S018847 (Dec. 9, 1991).

### *Testimony by Reader of Police Report Does Not Establish Probable Cause*

In this case, the California Supreme Court resolved various issues presented by the June 1990 adoption of an initiative measure designated on the ballot as Proposition 115, the Crime Victims Justice Reform Act. Specifically, petitioner challenged the provisions of the measure that authorize the admission of hearsay evidence at preliminary hearings in criminal cases, and contested the sufficiency and competency of the evidence presented at his preliminary hearing. At petitioner's preliminary hearing on felony drunk driving charges, the People's only witness was Officer Bruce Alexander, who was not one of the arresting or investigating officers and who had no direct, personal knowledge of petitioner's

alleged offenses; Alexander first became aware of the investigating officer's report, and of the case against petitioner, on the morning of the preliminary hearing after the district attorney handed him a copy of the report. Over petitioner's objection, Alexander was allowed to recount to the magistrate various entries made in the report of the investigating officer, Officer Navin. Despite petitioner's objections and his argument that Alexander could not personally identify him as the suspect stopped by Navin, the magistrate held petitioner to answer on the counts charged.

On appeal, the California Supreme Court agreed with petitioner that, as a matter of sound statutory interpretation, Alexander should not have been permitted to relate the contents of Navin's investigative report because Alexander was not involved in the investigation of the case and had no personal knowledge of the circumstances under which Navin's report was prepared. "Proposition 115 does not authorize a finding of probable cause based on the testimony of a noninvestigating officer or 'reader' merely reciting the police report of an investigating officer." The court opined that the probable intent of the framers of the measure was "to allow a properly qualified investigating officer to relate out-of-court statements by crime victims or witnesses, including other law enforcement personnel, without requiring the victims' or witnesses' presence in court. The testifying officer, however, must not be a mere reader but must have sufficient knowledge of the crime or the circumstances under which the out-of-court statement was made so as to meaningfully assist the magistrate in assessing the reliability of the statement." This holding seemingly foreshadows the reversal of *Montez v. Superior Court of Los Angeles County*, 233 Cal. App. 3d 917 (1991), in which the Second District Court of Appeal held that no applicable law indicates that only so-called "first level hearsay" is admissible at the preliminary examination, and that the "voters did not approve an initiative . . . which contains . . . limitations on the use of [multiple level] hearsay"; the California Supreme Court granted *Montez'* petition for review in this proceeding on October 23. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 217-18 for background information on the *Montez* case.)

In *Whitman*, however, the court rejected petitioner's claim that Proposition 115's authorization of the use of hearsay during a preliminary hearing violates the federal confrontation clause, holding that the constitutional right of confrontation is basically a trial right. The court also



rejected petitioner's claim that Proposition 115 denies him due process by impliedly providing that only the prosecution may introduce hearsay at the preliminary hearing. The court noted that defendants continue to enjoy the benefits of all preexisting hearsay exceptions, and that—theoretically—the new provision might be interpreted to permit the defendant to call a law enforcement officer to relate statements which might rebut a finding of probable cause. Finally, the court rejected petitioner's claim that the new hearsay procedures violate the constitutional doctrine of separation of powers in that the prosecutor is given excessive power to control the quantity and quality of the evidence admitted at preliminary hearings. The court noted that Proposition 115 amended the state constitution to allow admission of hearsay evidence at preliminary hearings; because such procedure is specifically authorized by the constitution, the general separation of powers doctrine does not apply. The court also stated that no separation of powers violation exists, as the magistrate retains full authority and discretion to rule on the sufficiency of the defendant's proof offer, to allow the admission of relevant defense evidence, and ultimately to determine whether the proffered evidence demonstrates probable cause to hold the defendant to answer for the charged offenses.

#### CALIFORNIA COURTS OF APPEAL

##### Beasley v. Wells Fargo Bank,

\_\_\_ Cal. App. 3d \_\_\_,  
91 D.A.R. 13951,  
No. A049948 (Nov. 12, 1991).

##### *Fee Award is Appropriate In Consumer Protection Action*

The First District Court of Appeal has upheld a judgment requiring Wells Fargo Bank to pay plaintiffs their attorney fees, costs, and expenses in the total sum of almost \$2 million, based on California's "private attorney general" statute (Civil Procedure Code section 1021.5). The underlying action involved a class action which challenged Wells Fargo Bank's assessment of fees against credit card customers who failed to make timely payments or exceeded their credit limits; in a companion case, the First District affirmed a \$5 million judgment in favor of the class.

Section 1021.5 permits a fee award when the following criteria are met: (1) the action has resulted in the enforce-

ment of an important right affecting the public interest; (2) a significant benefit has been conferred on the general public or a large class of persons; (3) the necessity and financial burden of private enforcement are such as to make the award appropriate; and (4) the fees should not in the interest of justice be paid out of the recovery, if any.

Initially, the court determined that if the estimated value of a class action common fund recovery, determined as of the time the vital litigation decisions were being made, does not exceed actual litigation costs by a substantial margin, the financial burden of private enforcement is such as to make it appropriate to award attorneys' fees under section 1021.5. After reviewing the relevant figures, the court found it to be "a close issue" whether estimated value exceeds by a substantial margin the actual litigation costs. However, the court stated that "even if the estimated value of this case is viewed as exceeding actual litigation costs by a substantial margin, the public benefits from the litigation are so significant that an award of fees under section 1021.5 is appropriate."

The court also concluded that the trial court's decision to apply a 1.5 lodestar multiplier to the award of attorneys' fees was appropriate, noting that the \$5 million award in the underlying action was an "excellent result" given the complexity of the case and the disparity in resources available to the opposing parties. (See *supra* agency report on STATE BANKING DEPARTMENT for more information.)

##### City of Gilroy v. State Board of Equalization,

\_\_\_ Cal. App. 3d \_\_\_,  
91 D.A.R. 13079,  
No. A052792 (Oct. 22, 1991).

##### *City's Tax Suit Entitles It to Recover Attorneys' Fees Under Equity Principles*

In this case, the First District Court of Appeal considered the first impression issue whether a public entity may recover attorneys' fees under the equitable common fund and substantial benefit doctrines, despite the fact that the codified private attorney general theory (Code of Civil Procedure section 1021.5) prohibits allowances in favor of public entities. The underlying lawsuit was prosecuted by the City of Gilroy against the State Board of Equalization (Board) and Scientific Games, a vendor of the California State Lottery Commission

(CSL), regarding whether Scientific Games' sale of printed tickets to CSL is exempt from taxation under the Lottery Act. In 1989, the First District determined that, contrary to the position taken by the Board, Scientific Games' sales of printed tickets to CSL are not exempt from state or local taxation. *City of Gilroy v. State Board of Equalization*, 212 Cal. App. 3d 589 (1989). Arguing that its successful litigation of that matter created a new fund of tax revenues for the state, Gilroy petitioned the court for an award of attorneys' fees under the common fund and substantial benefit doctrines. Although no relief was sought under section 1021.5, the trial court determined that the statutory provision controlled, and forbade, an award of fees to Gilroy.

On appeal, the First District Court of Appeal rejected the trial court's holding on three grounds. First, the court noted that Gilroy had sought fees under the equitable common fund and substantial benefit doctrines, not section 1021.5, and the trial court gave no reason why those theories were unavailable to Gilroy. Second, the First District determined that section 1021.5 precludes an award of attorneys' fees in favor of a public entity only when the award is made pursuant to its own provisions. Third, the First District concluded that section 1021.5 does not purport to govern fee awards made on any other basis. "Thus it cannot be construed as abrogating the common fund and substantial benefit doctrines; these still remain viable predicates for fee awards under the appropriate circumstances."

The court then considered whether the substantial benefit and common fund theories are viable options for awarding attorneys' fees to public entities. The court noted that the substantial benefit doctrine rests on the principles that those who have been unjustly enriched at another's expense should under some circumstances bear their fair share of the costs entailed in producing the benefits they have obtained, and found that "because constituents of other public entities stood to benefit from Gilroy's efforts as a matter of course, it makes perfect sense under the common fund or substantial benefit theory to spread the cost of attorneys' fees among these entities." The court remanded the matter to the trial court to determine (1) the precise amount of the common fund of tax revenues generated by Gilroy's efforts; and (2) the amount of reasonable attorneys' fees to be paid from this fund.

## Benjamin v. County of Lake,

235 Cal. App. 3d 1574,  
91 D.A.R. 14187,  
No. A051411 (Nov. 19, 1991).

### *County Cannot Be Held Liable in Tort for Failing to Provide Health Benefits to Indigents*

The First District Court of Appeal has determined that a county cannot be held liable in tort for failing to provide health benefits to indigents as required by Welfare and Institutions Code section 17000 *et seq.* In 1986 and 1987, appellants Matthew Benjamin and Charlie Wilkerson sought dental care from Lake County's medically indigent adult (MIA) clinics; both men were improperly denied dental treatment and subsequently prepared to file lawsuits against Lake County. Through its county counsel, Lake County became aware of the actions in February 1987; county counsel apparently contacted the appropriate persons who shortly thereafter authorized the desired treatment for both Benjamin and Wilkerson. Although both men received the care they needed, the delay in treatment caused their conditions to worsen and caused them pain; they subsequently brought this action to seek damages for injury caused due to that delay.

Government Code section 815 states the general rule that "[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." An exception to that rule is provided in Government Code section 815.6, which provides that "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." This section provides a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered. The court determined that appellants failed to satisfy the first and second prongs of this test.

Regarding the first prong, the court noted that Lake County is not a health care provider. While Welfare and Institutions Code section 17000 *et seq.* defines the ultimate rights of patients, it "mandate[s] no specific acts by a county." Accordingly, "in order to meet the 'mandatory duty' prong of Government Code section 815.6, Benjamin and Wilkerson would have to show that Lake County failed to comply with applicable statutory or regulatory mandate in adopting its own health care standards, and/or in imposing those standards on the health care provider." While acknowledging that Lake County has a mandatory duty to adopt standards which provide for humane care, the court determined that "the discretion inherent in the process of developing and adopting these standards immunizes it from any claim for damages resulting from its actions."

As to the second prong, the court stated that Government Code section 815.6 authorizes governmental liability for negligence where there is a duty of care, negligence constituting a breach of the duty, and injury to the plaintiff as a proximate cause. The court rationalized that although Benjamin and Wilkerson are beneficiaries of the duty imposed by Welfare and Institutions Code section 17000, "it does not follow that Lake County owed Benjamin and Wilkerson a duty of care under those sections." According to the court, "[w]hether or not a duty of care will be recognized depends upon a number of factors reflecting public policy issues." The court concluded that consideration of those factors "leaves little doubt but that no duty of care to MIAs, such as Benjamin and Wilkerson, should be implied into section 17000 *et seq.*" Thus, the court held that no cause of action for damages exists against Lake County under section 17000.

