## UNITED STATES SUPREME COURT

**Legislature v. Eu,**

___U.S.___, Nos. 91-1113, 91-1114 (Mar. 9, 1992).

*Court Allows Legislative Term Limits of Proposition 140 to Stand*

On March 9, the U.S. Supreme Court denied the California legislature's petition for writ of certiorari seeking review of the California Supreme Court's ruling upholding Proposition 140, the "Political Reform Act of 1990" enacted at the November 1990 general election. In its petition, the legislature argued that Proposition 140—which restricts retirement benefits, limits state-financed incumbent staff and support services, and places limits upon the number of terms which may be served—"steals from every citizen the right to vote for the candidate of his or her choice." However, that issue was fully addressed by the California Supreme Court in its decision, which now stands as law. In that decision, the court acknowledged that Proposition 140 affects the rights of voters and candidates, but found that several mitigating factors exist and 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 legislature and the constituents who wish to perpetuate their incumbency." *[12:1 CRLR 196–97]*

**Yee v. City of Escondido,**

___U.S.___, 92 D.A.R. 4358, No. 90-1947 (Apr. 1, 1992).

*Rent Control Law for Mobilehome Parks Is Not an Unlawful Fifth Amendment Taking*

In this proceeding, the U.S. Supreme Court reviewed the California Mobilehome Residency Law (Civil Code section 798 *et seq.*), which limits the bases upon which a mobilehome park owner may terminate a mobilehome owner's tenancy and generally prohibits a park owner from requiring the removal of a mobilehome when it is sold, and the City of Escondido's rent control ordinance, which set mobilehome rents back to their 1986 levels and prohibits rent increases without the City Council's approval. Petitioners, mobilehome park owners, challenged the constitutionality of the ordinance, stating that it effected a physical taking by depriving park owners of all use and occupancy of their property and granting to their tenants, and their tenants' successors, the right to physically permanently occupy and use the property. Basing their argument on the unusual economic relationship between park owners and mobilehome owners and noting that park owners may no longer set rents or decide who their tenants will be, petitioners argued that any reduction in the rent for a mobilehome pad causes a corresponding increase in the value of a mobilehome, as the mobilehome owner now owns (in addition to a mobilehome) the right to occupy a pad at a rent below the value that would be set by a free market.

The Takings Clause of the Fifth Amendment provides that private property shall not be taken for public use without just compensation. The Court noted that where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation. However, "where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole." In other words, the Takings Clause requires compensation if the government authorizes a compelled physical invasion of property or requires a landowner to submit to the physical occupation of his/her land.

According to the Court, the state and local laws at issue in this proceeding merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant. Further, the Court noted that petitioners voluntarily rented their land to mobilehome owners; neither the city ordinance nor the state law compels petitioners, once they have rented their property to tenants, to continue doing so. "Put bluntly, no government has required any physical invasion of petitioners' property." Although agreeing that the rent control ordinance transfers wealth from park owners to incumbent mobilehome owners, the Court noted that "the existence of the transfer in itself does not convert regulation into physical invasion."

Although noting that petitioners' original complaint and subsequent briefing could be read either to argue a regulatory taking or to support a physical taking argument, the Court refused to consider whether or not the ordinance effects a regulatory taking, stating that petitioners failed to present that question in their petition for writ of certiorari. Although noting that "'[t]he statement of any question presented [in a petition] will be deemed to comprise every subsidiary question fairly included therein,'" and finding that whether the ordinance effects a regulatory taking is a question related to the one petitioners presented, and perhaps complementary to the one petitioners presented, the Court held that it is not "fairly included therein." In so doing, the Court stated that it is leaving "the regulatory taking issue for the California courts to address in the first instance."

## NINTH CIRCUIT COURT OF APPEALS

**Service Employees International Union, et al. v. Fair Political Practices Commission,**

955 F.2d 1312, Nos. 89-15771, 90-16200, 90-16372 (Feb. 7, 1992).

*Proposition 73 Unlawfully Discriminates Against Challengers for Office*

The U.S. Ninth Circuit Court of Appeals has affirmed a district court's decision striking down the contribution limits applicable to all campaigns for election to state and local office established in Proposition 73, passed by the voters in June 1988. *[10:4 CRLR 189]* Initially, the court found "ample evidentiary support" for the district court's finding that Proposition 73's fiscal year contribution limits discriminate against challengers as a class; that support was derived from the testimony of two expert witnesses, who opined that fundraising in the non-election years is primarily an incumbent activity.

The court then considered whether the viewpoint and content neutral contribution limits which discriminate against challengers and their supporters are unconstitutional, noting that in *Austin v. Michigan Chamber of Commerce*, 110 S.Ct. 1391 (1990), the U.S. Supreme Court stated that when a statute regulating political campaigns discriminates against a class of participants in the political process, the discrimination must be independently justified, even where the statute is viewpoint and content neutral. The court then rejected appellants' argument that Proposition 73's contribution limits serve a compelling governmental interest

in preventing corruption and the appearance of corruption. Although acknowledging that the state has a legitimate interest in preventing corruption and the appearance of corruption, the court held that "this interest will not support a discriminatory formula for limiting contributions."

Similarly, the court held invalid Proposition 73's ban on intra-candidate transfers, its ban on inter-candidate transfers, and its prohibition on the expenditure of funds raised prior to January 1989.

**Chemical Specialties Manufacturers Ass'n, Inc. v. Allenby,**

958 F.2d 941, No. 90-16485 (Mar. 11, 1992).

*Consumer Product Warning Requirements Are Not Preempted Under Federal Laws*

The U.S. Ninth Circuit Court of Appeals has determined that Proposition 65 (the Safe Drinking Water and Toxics Enforcement Act of 1986), which among other things requires that manufacturers of products containing substances listed by the state as being carcinogenic or reproductively toxic provide adequate warnings to the consuming public that their products pose a health risk, is not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. sections 136–136y, and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. sections 1261–1277. Appellant, a national trade association of insecticide, disinfectant, and antimicrobial product manufacturers who sell their products to consumer, institutional, and industrial users, contended that the adequate warning requirements of Proposition 65, as applied to products regulated under FIFRA and FHSA, are preempted by those acts.

FIFRA requires the Environmental Protection Agency (EPA) to register a pesticide before the pesticide may be used or sold. Also, a pesticide may not be sold (with certain exceptions) unless the EPA first determines that the product's labeling contains warnings and directions for use that are adequate to protect the public from fraud and personal injury and to prevent unreasonable adverse effects on the environment. Once the EPA has registered a pesticide and approved its label, the manufacturer may not change the label without the EPA's prior approval. So long as additional labeling is not required, FIFRA expressly authorizes state pesticide regulation. FHSA requires labeling of certain consumer products intended for use in the household or by children. The central requirement of FHSA is that manufacturers of hazardous products provide cautionary labels clearly indicating the hazards and providing consumers with directions for use.

Initially, the Ninth Circuit stated that since the case involved a facial challenge to Proposition 65, appellant must establish that no set of circumstances exists under which the Act would be valid. Also, the court noted that in addition to there being a presumption against finding that state legislation is preempted by an act of Congress, courts should be especially unlikely to find preemption of state laws in the regulation of health and safety matters, which are primarily and historically matters of local concern. The court also stated that to find that Proposition 65 is preempted under FIFRA or FHSA, all possible consumer product warnings that would satisfy Proposition 65 must be found to conflict with provisions of the federal statutes. One method available to retail outlets to comply with Proposition 65 is by posting a sign in a visible place specifying the products that are known to the state to cause cancer or that are reproductively toxic. The district court found that such point-of-sale warnings constituted neither "labeling" under FIFRA nor "directions for use" under FHSA, and thus rejected appellant's preemption argument.

In affirming the district court, the Ninth Circuit noted that additional labeling requirements would be unconstitutional under FIFRA; however, the court found that the warning requirements of Proposition 65 do not constitute additional labeling. The court determined that labeling is generally conceived as being attached to the immediate container of a product in such a way that it can be expected to remain affixed during the period of use. Because point-of-sale signs are not attached to the immediate container of a product and will not accompany the product during the period of use, the court found that the term "labeling" does not apply to such point-of-sale signs.

The court also agreed that FHSA expressly preempts all state-mandated precautionary labeling that is not identical to that required by federal Act. Under FHSA, "all accompanying literature where there are directions for use, written or otherwise" is defined as cautionary labeling. However, the court found that Proposition 65 warnings are not "directions for use," stating that it did not believe Congress intended such a broad reading of that term. Further, the court found that Proposition 65 warnings are not necessarily nonidentical to the warnings required under FHSA, noting that FHSA does not require any specific language in its warnings and merely requires (1) that labels contain the signal word "WARNING" or "CAUTION" and (2) words which describe the potential hazard. In support of its finding, the court offered the following message with could comply with both Proposition 65 and FHSA: "Warning, this product contains materials known to the State of California to cause cancer."

**Meyerhoff v. U.S. Environmental Protection Agency,**

958 F.2d 1498, No. 90-15263 (Mar. 19, 1992).

*Reports by Agency's Advisory Panel Are Not Disclosable Under FOIA*

The U.S. Ninth Circuit Court of Appeals has determined that conflict of interest forms filed by members of the EPA's Scientific Advisory Panel (SAP) and Science Advisory Board (SAB) may be withheld under the Freedom of Information Act (FOIA), 5 U.S.C. section 552. Pursuant to the Ethics in Government Act, 5 U.S.C. App. 4 section 207(a)(1), the EPA requires the scientists on SAP and SAB to file conflict of interest reports that list their employment and financial interests, including the names of corporations and other institutions with which they are associated or in which they have a financial interest. In March 1986, appellant requested copies of documents concerning the scientists' employment and financial interests in the petrochemical and pesticide industries and revealing the interests and sources of income without regard to specific amounts; appellant limited his request to such statements filed between January 1, 1981 and November 27, 1985. In May 1988, the EPA denied appellant's request on the basis of FOIA exemptions 3, 4, and 6.

Exemption 3 of FOIA, codified at 5 U.S.C. section 552(b)(3), provides that the Government may withhold information that is "specifically exempted from disclosure by statute...provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." The Ninth Circuit explained that in applying Exemption 3 to the facts of the case at issue, it must inquire

(1) whether the Ethics in Government qualifies as an Exemption 3 withholding statute under either Part A or B of section 552(b)(3), and (2) whether the information withheld falls within the scope of the Ethics in Government Act.

Initially, the court found that the pre-1985 section 207(a) of the Ethics in Government Act provided that the President may require officers and employees in the executive branch not covered by sections 201–211 of the Act to submit confidential reports. Further, the pre-1985 version of section 207(a) specifically exempted the reports filed under that section from the Ethics Act's public disclosure requirements in sections 205(a), (b), and (d). Thus, the court found that this section did not leave discretion to the EPA to disclose to the public the confidential reports filed by SAP and SAB members.

Next, the court addressed Appellant's contention that, even if the Ethics Act is a withholding statute, it does not apply to the information sought. Appellant argued that the information sought was provided pursuant to Executive Order (E.O.) 11222, which required that "[e]ach agency shall, at the time of employment of a consultant, adviser, or other special Government employee require him to supply it with a statement of all other employment....In addition, it shall list such other financial information as the appointment department or agency shall decide is relevant in the light of the duties the appointee is to perform." Appellant further contended that the President had no authority under E.O. 11222 to obtain information that was not available to the public. However, the Ninth Circuit found that the President had the authority, under section 207 of the Ethics Act, to obtain information from SAP and SAB members which would not be publicly disclosed.

## CALIFORNIA SUPREME COURT

### Wilson v. Eu,

1 Cal.4th 707, No. S022835
(Jan. 27, 1992).

*Court Adopts Reapportionment Plan Recommended by Special Masters*

On January 27, the California Supreme Court adopted nearly all of the redistricting recommendations proposed by the Special Masters on Reapportionment, appointed by the court to draft reapportionment plans for the state's legislative, congressional, and Board of Equalization districts. *[12:1 CRLR 197]* The court ignored comments from various minority organizations, such as the National Association for the Advancement of Colored People, the Congress of Racial Equality, and the Mexican American Legal Defense and Educational Fund, which contended that revisions to the proposed plan were necessary in order to provide ethnic minorities with fair representation. The only concession made by the court was to modify two Assembly districts in South Central Los Angeles to increase Asian population in one district and avoid splitting the city of Torrance.

The new redistricting plan is viewed by many as extremely favorable to Republican interests, to the detriment of most other political parties and interests, and is expected to give Republicans a chance to control at least one house of the state legislature for the first time since 1970. Justice Stanley Mosk, the lone dissenter, sharply criticized the majority's adoption of the plan, stating that it "unfairly benefits Republicans" and improperly imposes "racial quotas."

On February 28, the U.S. Department of Justice approved the reapportionment plan, finding that it complies with the federal Voting Rights Act.

### Farmers Insurance Exchange v. Superior Court,

2 Cal.4th 377, No. S016912
(Apr. 6, 1992).

*Judicial Proceedings Are Stayed Pending Administrative Action*

The California Supreme Court has rebuffed a 1990 attempt by former Attorney General John Van de Kamp to force insurers into offering "good driver discounts" as required by Proposition 103. Frustrated at then-Insurance Commissioner Gillespie's failure to implement the initiative, Van de Kamp's office filed suit against Farmers, charging it (in part) with a violation of the unfair business practices act for its refusal to offer 20% good driver discounts as required by Proposition 103. Farmers demurred, claiming the state should exhaust its administrative remedies through the Department of Insurance (DOI). Although both the trial court and the court of appeal overruled the demurrer to the unfair business practices claim, the California Supreme Court reversed. Writing for the 6–1 majority, Chief Justice Malcolm Lucas stayed the case, relying on the primary jurisdiction doctrine developed in the federal courts and not the exhaustion doctrine argued by the insurer. Justice Mosk dissented, noting that the primary jurisdiction doctrine does not and never has existed in California, and that DOI is "understaffed and overburdened with litigation relating to Proposition 103," such that the Attorney General's assistance in enforcing the law was welcomed.

## CALIFORNIA COURTS OF APPEAL

### California Labor Federation AFL-CIO v. California Occupational Safety and Health Standards Board,

5 Cal.App.4th 985, No. A048574
(Apr. 24, 1992).

*Budget Act's Attorney Fee Cap Violates Single Subject Rule*

In the underlying action, the trial court awarded petitioners $114,266.25 in attorneys' fees pursuant to Code of Civil Procedure section 1021.5 (the private attorney general fee doctrine) and $2,820.30 in costs. When petitioners sought payment, respondent contended that the state had established—as part of the Budget Acts of 1990 and 1991—a $125 cap on the hourly fee payable for attorneys' fees awarded pursuant to section 1021.5; on that basis, the state was willing to pay only $55,422.75 of the attorneys' fee award. In this case, petitioners challenged that action on the basis that the budget provisions on which the state relied are void because they effect an amendment of existing law in violation of the article IV, section 9 of the California Constitution (the "single subject rule"), which requires that every statute "embrace but one subject, which shall be expressed in its title."

The First District Court of Appeal determined that the "subject" of the Budget Act is the appropriation of funds for government operations, and it cannot constitutionally be employed to expand a state agency's authority, or to substantively amend and change existing statutory law. Whether it effects an amendment of existing law for purposes of this prohibition is determined by an examination and comparison of its provisions with existing law. "If its aim is to clarify or correct uncertainties which arose from the enforcement of the existing law, or to reach situations which were not covered by the original statute, the act is amendatory, even though in its wording it does not purport to amend the language of the prior act."

The Budget Act provisions in question

place a cap of $125 per hour on fee award payments and condition payment on acceptance of this amount in "full and final satisfaction" of the fee claim. Comparing these provisions to existing law, the court noted that although section 1021.5 contains no express limitation on the size of the award, it has been universally understood to permit a "reasonable" award in light of factors derived from the statute's history and purpose. According to the court, the limitation to a reasonable fee is so inherent and essential to section 1021.5 that it must be considered necessarily implied, noting that the "statute limits fee awards to a 'reasonable' sum as surely as if it said so." Because the budget provisions purport to impose a different limitation, the court determined that they seek to effect an outright alteration of section 1021.5. Further, if section 1021.5 is viewed as ambiguous with respect to the amount of fees allowed, the court stated that the Budget Act provisions are still amendatory in that they purport to supersede the judicial resolution of that ambiguity with a legislative "clarification" set forth as an appropriation. The court concluded that although the legislature may limit attorneys' fees awards under section 1021.5, it may not "grant a substantive right to fees, as it has done in section 1021.5, and then retract or impair the right thus granted through amendments masquerading as Budget Act provisions. To hold otherwise would deny the people the legislative accountability they sought to secure by adopting article IV, section 9. The provisions under scrutiny violate the single subject rule and are void."

Finally, the court rejected respondent's contention that, whether or not the budget provisions are void, the court may not direct payment of the full award because to do so would infringe legislative prerogatives and transgress the separation of powers doctrine. The First District explained that although the separation of powers doctrine has generally been viewed as prohibiting a court from directly ordering the legislature to enact a specific appropriation, it is equally well established that once funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the state controller or other similar official to make appropriate expenditures from such funds.

**Ingredient Communication Council Inc. v. Lungren,**

2 Cal.App.4th 1480, No. C007628 (Jan. 28, 1992).

*Phone Information System Fails to Warn Adequately of Products' Toxic Dangers*

In this proceeding, the Third District Court of Appeal reviewed the consumer notification and warning program of the Ingredient Communication Council, Inc. (ICC), a nonprofit membership corporation consisting of 37 manufacturers, retailers, and agricultural producers involved in marketing thousands of products in retail stores in California which may be subject to regulation pursuant to Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. Proposition 65 requires that no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.

In 1988, the state Health and Welfare Agency—the lead agency responsible for implementing Proposition 65—adopted section 12601(a), Title 22 of the California Code of Regulations (CCR), which states that "[w]henever a clear and reasonable warning is required..., the method employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure. The message must clearly communicate that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm...." Further, section 12601(b) of the CCR provides that warnings for consumer products exposures which include one or more of the following methods of transmission and the warning messages specified by section 12601(b) shall be deemed to be clear and reasonable: (1) a warning that appears on a product's label or other labeling; (2) identification, through shelf labeling, signs, menus, or a combination thereof, of the product at the retail outlet in a manner which provides a warning; or (3) a system of signs, public advertising identifying the system, and toll-free telephone information services that provides clear and reasonable warnings.

The system implemented by ICC included (1) an 8-1/2 by 11-inch sign that adhered to the glass on the entrance of participating retail stores, and which contained a toll-free telephone number by which consumers could obtain information about products containing chemicals known to the state to cause cancer or other reproductive harm or birth defects; (2) a newspaper advertisement campaign in which a "clip and save" quarter-page ad was run on a regular basis in 105 daily newspapers, providing the toll-free number; and (3) the toll-free 800 telephone line itself, through which consumers could listen to taped messages regarding specific products. Between 7,000–8,000 products were registered in the ICC warning system. Although ICC's system was designed to handle up to one million calls per year, only about 26,000 calls reached the toll-free number in the first year of operation; in response to those calls, only 488 warning messages were played.

The trial court declared the ICC warning system invalid for failure to give clear and reasonable warning. On appeal, the Third District noted that section 12601(b) specifies certain warning method systems which are considered "safe harbor"—compliance with such systems is deemed to provide clear and reasonable notice. However, section 12601(b) requires that the toll-free information services-based system independently meet the clear and reasonable standard. As such, the Third District found that the ICC system must be evaluated on its specific facts just as any other non-safe harbor method of warning, and noted that the system as a whole is adequate only if it gives clear and reasonable warnings. The Third District found substantial evidence in the record supporting the trial court's finding that the ICC system failed to provide clear and reasonable warnings, stating that the fact that, during its first year of operation, the system provided only 488 taped telephone warning messages to California consumers was sufficient in itself to support an inference that the system failed to make warnings available to consumers in any meaningful sense. Further, the court found that the ICC warning system "is also flawed by the sparseness and inconspicuousness of its in-store signs and infrequent newspaper advertisements, neither of which mention specific products requiring warnings."

**Williams v. Superior Court (Daily Press Division of Freedom Newspapers, Inc.),**

3 Cal.App.4th 1292, No. E009855 (Feb. 25, 1992).

*Public Disclosure Exemption is Qualified For Law Enforcement Investigatory Files*

The Fourth District Court of Appeal has determined that law enforcement investigatory records and files enjoy only a qualified exemption from the California Public Records Act, Government Code section 6250 *et seq.* The Daily Press Division of Freedom Newspapers, Inc., Real Party In Interest, sought to obtain various reports, files, and investigatory records from the office of petitioner Dick Williams, Sheriff of San Bernardino County. In response to Williams' claim that the documents being sought were exempt from public disclosure pursuant to Government Code section 6254(f), the trial court conducted an *in camera* inspection of the subject documents; section 6254(f) provides that (1) records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of the office of the Attorney General, the Department of Justice, and any state or local police agency, and (2) any investigatory or security files compiled by any other state or local police agency or any other state or local agency for correctional, law enforcement, or licensing purposes, are exempt from public disclosure. Following its review of the documents, the trial court ordered certain documents disclosed, declared certain documents exempt, and ordered certain documents disclosed only after particular, otherwise protected information, was redacted therefrom. Williams petitioned the Fourth District for a writ of mandate/prohibition ordering the trial court to vacate its disclosure order on the basis that the documents in question have an absolute exemption from disclosure under section 6254(f).

The Fourth District found that section 6254(f)'s disclosure exemption for law enforcement investigatory files is a qualified exemption which acknowledges the reality that such files may (and almost undoubtedly do) contain a variety of documents—some of which are subject to their own independent grounds for disclosure exemption and some of which are exempt from disclosure only because they have been placed in an investigatory or security file compiled by an appropriate agency for correctional, law enforcement, or licensing purposes; documents of the latter sort, noted the Fourth District, are not exempt from public disclosure unless they relate to a "concrete and definite" prospect of law enforcement proceedings.

Regarding law enforcement investigatory records, the court stated that applicable caselaw reveals a general guideline that information in such records is exempt from public disclosure only to the extent that disclosure of the information would interfere with enforcement proceedings; deprive a person of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of personal privacy; disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source; disclose investigative techniques and procedures; or endanger the life or physical safety of law enforcement personnel. The Fourth District remanded the matter to the trial court, stating that these criteria should be applied in deciding whether particular law enforcement investigatory records are exempt under section 6254(f).

**Claypool v. Wilson,**

4 Cal.App.4th 646, No. C011580 (Mar. 12, 1992).

*Changes in State Pension Fund Uses Arise From Legally Valid Statutes*

In this original mandamus proceeding, members of the Public Employees' Retirement System (PERS) and their employee organizations challenged the constitutionality of two parts of Chapter 83, Statutes of 1991. One part repeals three funded supplemental cost of living (COLA) programs and directs that the funds be used to offset contributions otherwise due from PERS employers; the other transfers the responsibility for actuarial determinations from the PERS Board to an actuary acting under a contract with the Governor. Petitioners contended that the repeal of the supplemental COLA programs and reallocation of the funds to offset employer contributions unconstitutionally impair the contract rights of PERS beneficiaries and, along with the transfer of actuarial functions, violate California Constitution, article XVI, section 17, which declares that the assets of a public pension or retirement system are trust funds.

The court initially determined that only persons employed after January 1, 1989, could have vested rights to the former COLA benefits which were eliminated by Chapter 83, since prior to that time supplemental COLA programs were subject to expiration by sunset provisions. Regarding those employees, the court stated that under California law, an employee's vested contractual pension rights may be modified prior to retirement provided that the modifications are reasonable; such a modification is reasonable only if it bears some material relation to the theory of a pension system and its successful operation, and changes in it which result in disadvantage to employees are accompanied by comparable new advantages. According to Governor Wilson, the changes provide a more certain source of long-term funding for supplemental COLA benefits as well as helping to alleviate the state budget deficit; further, Governor Wilson presented evidence showing that the projected new benefits are likely to be equivalent to or greater than those available under the former program. After reviewing the projections, the court agreed that the modifications to the retirement system were reasonable.

The court similarly rejected petitioners' claims that the use of former supplemental COLA funds to reduce the state's employer contributions otherwise required impairs employees' funding rights and unconstitutionally invades the PERS trust. Among other things, the court determined that the use of the funds to meet the employers' continuing funding obligation is no more proscribed by the state constitution than is the use of earnings attributable to the employer accounts of the PERS fund for the same purpose.

Finally, the court found that the Governor's appointment of an actuary does not present an intolerable conflict of interest, stating that the safeguards enacted in Government Code section 20006 sufficiently insulate the actuary from control by the Governor so as to permit the actuary to function as a fiduciary.