



Lawsuits on IHSS Provisions of the State Budget Status as of June 23, 2010

* New information is highlighted.

Color Coding of Cases
Dominguez v. Schwarzenegger: regarding IHSS wages
V.L. et al v. Wagner: regarding Functional Index Score/Rank cuts
Ellis v. Wagner: regarding disqualifying crimes for IHSS providers and applicants
Northern California ADAPT v. Wagner: regarding Share of Cost Buy-out
Putz v. Schwarzenegger re: Public Authority funding reduction
St. John's Well Child and Family Center v. Schwarzenegger: re: Governor's line-item vetoes

Plaintiff(s) & Defendant(s)	Court	Case Number	Summary & Relief Sought	Status
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>(regarding state financial participation in IHSS provider wages)</p> <p>* This case was originally called "Martinez v. Schwarzenegger" – then renamed "Yang v. Schwarzenegger" – then renamed "Dominguez v. Schwarzenegger"</p>	<p>U.S. District Court California Northern District (Oakland)</p>	<p>4:09-cv-02306-CW</p>	<p>Enter a preliminary injunction, pending a decision on the merits, that (1) enjoins the State Defendants from taking any action (a) to implement Section 12306.1(d)(6) by reducing the maximum wage of IHSS providers that the State will help fund to \$9.50 per hour and the maximum benefit rate of IHSS providers that the State will help fund to \$.60 per hour, or (b) to approve or implement any county IHSS rate decreases adopted pursuant to Section 12306.1(d)(6), and (2) enjoins the Fresno County Defendants from taking any action to implement a wage and benefit reduction for Fresno County IHSS providers, and conditionally certify the proposed classes for the purpose of such relief.</p>	<p>Date Filed: May 26, 2009</p> <p>Preliminary Injunction Order on July 26, 2009 (and further clarifying injunctions) have been issued that require the state to pay IHSS providers, in all counties where the State has rescinded its approval of Rate Change Requests that proposed rate decreases to take effect July 1, 2009, at the correct, pre-July 1 rates in their regular paychecks for the pay period ending July 31, 2009. State Defendants must also pay all IHSS providers the correct amount owed for the pay period ending July 15, 2009 in a check or checks that issue no later than ten days after the provider submits his or her timesheet for that pay period, or seven business days from the date of this order, whichever is later.</p>
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>Renamed from "Martinez" and "Yang"</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	<p>09-16359</p>	<p>Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.</p>	<p>State Defendant's brief was filed on August 7, 2009.</p> <p>The Ninth Circuit Court affirmed the lower court ruling on March 3, 2010. The decision states (in part), "<i>The district court properly</i></p>

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(regarding IHSS provider wages)				<i>determined that Section 30(A) of the [federal] Medicaid Act applies to the State's enactment of California Welfare & Institutions Code Section 12306.1(d)(6). The district court correctly held that Plaintiffs demonstrated a likelihood of success on the merits of their Supremacy Clause claim, and did not abuse its discretion in holding that the balance of hardships tips sharply in Plaintiffs' favor. Accordingly, we affirm the district court's order granting the motion for a preliminary injunction"</i>								
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>Renamed from "Martinez" and "Yang"</p> <p>(regarding IHSS provider wages)</p>	U.S. Supreme Court	09-1158	Defendant's (State) petitioned the U.S. Supreme Court: petition for certiorari, which is a document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ.	<p>U.S. Supreme Court issued docket number on March 24, 2010 – which ties this case to David Maxwell-Jolly, Director, California Department of Health Care Services v. California Pharmacists Association, et al.</p> <table border="1" data-bbox="1362 862 1919 1170"> <tr> <td data-bbox="1362 862 1430 943">May 27 2010</td> <td data-bbox="1430 862 1919 943">Brief of respondents Lydia Dominguez, et al in opposition filed.</td> </tr> <tr> <td data-bbox="1362 943 1430 1024">May 27 2010</td> <td data-bbox="1430 943 1919 1024">Brief of respondents California Pharmacists Association, et al. in opposition filed.</td> </tr> <tr> <td data-bbox="1362 1024 1430 1105">Jun 7 2010</td> <td data-bbox="1430 1024 1919 1105">Reply of petitioners David Maxwell-Jolly, Director, California Department of Health Care Services, et al. filed. (Distributed)</td> </tr> <tr> <td data-bbox="1362 1105 1430 1170">Jun 8 2010</td> <td data-bbox="1430 1105 1919 1170">DISTRIBUTED for Conference of June 24, 2010.</td> </tr> </table>	May 27 2010	Brief of respondents Lydia Dominguez, et al in opposition filed.	May 27 2010	Brief of respondents California Pharmacists Association, et al. in opposition filed.	Jun 7 2010	Reply of petitioners David Maxwell-Jolly, Director, California Department of Health Care Services, et al. filed. (Distributed)	Jun 8 2010	DISTRIBUTED for Conference of June 24, 2010.
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<p><i>Oster et al v. Wagner</i></p> <p>(regarding Functional Index Score/Rank cuts)</p> <p>* This case was originally called V.L. et al v. Wagner.</p>	U.S. District Court California Northern District (Oakland)	4:09-cv-04668-CW	The class action lawsuit is filed on behalf of four low-income Californians who need IHSS to remain safely at home. The plaintiffs include two children with disabilities who need special care, an 81 year old senior who needs IHSS to remain in her apartment, and a young man with autism and bi-polar disorder whose IHSS provider assists him with basic tasks.	<p>Date Filed: October 1, 2009</p> <p>Judge Claudia Wilken issued an order on October 19, 2009 that stopped the State from moving forward on implementing cuts to eligibility and services that were scheduled to go into effect November 1st. Wilken ruled that the plaintiffs were likely to show at trial that the cuts to services, enacted in the recent state budget, violate federal law. The State said it</p>								

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			<p>The cuts in IHSS services are scheduled to take effect November 1, 2009. At least 40,000 people will lose services entirely and an additional 97,000 will have their services cut sharply. Among the services to be cut are help with cooking, food shopping, cleaning and assistance to medical appointments - cost-effective services which frail seniors and those with disabilities depend on to avoid more costly placement in institutions such as nursing homes.</p> <p>The plaintiffs in the lawsuit asked the federal court to issue an injunction to stop these IHSS cuts.</p>	<p>will appeal the decision.</p> <p>Plaintiffs filed a motion for Civil Contempt Sanctions on November 10, 2009. The motion was heard on November 19, 2009 and Judge Wilken ruled in favor of the plaintiffs, as follows:</p> <p>(1) By November 20, Defendants shall have sent to Plaintiffs and the appropriate counties the names and any other identifying information of all recipients whose records have not yet been restored, instructed counties to ensure that all such recipients have had their records restored, and instructed counties that any time-card submitted that generates an error message because either no hours or fewer hours are authorized than those claimed by the provider must be double-checked against the list of recipients and providers affected by the Court's injunction, and data corrected in the files as necessary.</p> <p>(2) By November 20, Defendants shall have begun calling each county to confer in real time about their progress in updating the files;</p> <p>(3) By November 20, Defendants shall have provided Plaintiffs' counsel with immediate discovery of the names and contact information of all 3,000 recipients whose records had not been restored by November 5, 2009 and the names and contact information of their 6,000 providers who will receive misleading time-cards. This information may be used only by (1) Plaintiffs' counsel to respond to inquiries from IHSS recipients in order to assure them that their IHSS services have not been eliminated or reduced and (2) Plaintiff unions to contact union-member IHSS providers and field inquiries from any providers to assure them that their authorized hours to provide IHSS services have not been eliminated or</p>

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				<p>reduced.</p> <p>(4) By November 23, at the State's expense, Plaintiffs' counsel shall have sent all 6,000 providers who received incorrect time-cards a supplemental time-card and a notice, informing providers that these time-cards were erroneous, that providers should continue to work and will be paid for the previously authorized hours, that providers should submit a supplemental timecard for any hours worked but not recorded on a previously submitted time card or worked in a later pay period to make up for hours not worked due to the incorrect time cards, and how providers can request a supplemental paycheck. These notices shall contain substantially the same language as that set forth in the Appendix to the proposed order submitted by Plaintiffs attached to their reply brief. The notices shall be in English, Spanish, Chinese, Hmong, Armenian, Russian and Vietnamese. On November 25, Defendants shall send a copy of this notice and a copy of a blank supplemental time-card to all counties along with an agreed-upon explanation of the procedures they must follow.</p> <p>(5) By November 23, Defendants shall have established a toll-free telephone number staffed by State employees to answer questions or concerns about recipients' and providers' eligibility;</p> <p>The Court further orders Defendants to:</p> <p>(1) Update manually by November 25, 2009 any files that have still not been updated.</p> <p>(2) Issue supplemental checks within four business days to any providers who were not paid for authorized hours that they worked in November, 2009, because of the erroneous time-cards they received or the State's failure to restore the eligibility of recipients for whom they provide services;</p> <p>(3) Pay all reasonable attorneys' fees and</p>

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				costs incurred by Plaintiffs in bringing the instant motion for contempt, including the costs of the mailing ordered above. Within thirty days of this order, Plaintiffs' counsel shall submit an application to the Court documenting their reasonable attorneys' fees and costs incurred in connection with this motion, and a proposed order.
<i>Oster et al v. Wagner</i> (regarding Functional Index Score/Rank cuts)	U.S. Court of Appeals, Ninth Circuit	09-17581	Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.	State filed the motion to appeal on November 18, 2009. The State (Appellant's) filed their Opening Brief on December 29, 2009; the Appellant's answering brief was filed March 3, 2010. On April 9, 2010 the State requested that the hearing for oral arguments be expedited. Appellate Judges are Diarmuid F. O'scannlain, A. Wallace Tashima And Carlos T. Bea Case argued before these judges on June 15, 2010. Audio of the hearing is online at http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000005720
<i>Beckwith v. Wagner</i> (regarding criminal background checks and felony crimes that are disqualifying offenses) [Renamed from Ellis v. Wagner)	Alameda Superior Court	RG09484 051	Requests a writ commanding respondents (CDSS) to rescind and set aside policy reflected in ACL 09-52 that all persons convicted of a felony at any time are ineligible to become or remain IHSS providers and immediately issue a new notice to counties, providers and recipients informing them of this change in policy and that the mandatory conviction disqualification provisions for IHSS providers are limited to the convictions in Welfare & Institutions Code 12301.6. Further, any actions taken on the basis of the policy in ACL 09-52 are null and void and must be set aside.	Alameda Superior Court Judge David Hunter issued an Alternative Writ on February 9, 2010. The order confirms that the state is not allowed to use all felonies and specified misdemeanors to disqualify individuals from being paid by the IHSS program. The order also says the petitioners must submit a proposed Writ of Mandate for the court's signature. Order re Writ of Mandate Filed March 26, 2010 requires defendants to: (1) rescind & refrain from enforcing the policy in ACL 09-52 that said any person who has ever been convicted if a felony or specified misdemeanors is ineligible to be an IHSS provider; (2) refrain from disqualifying applicants or

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				<p>finding persons ineligible to be an IHSS provider on the basis of criminal conviction, other than finding persons ineligible for 10 years following a conviction pursuant to Welfare & Institutions Code 12305.81 (a);</p> <p>(3) notify all individuals previously denied IHSS provider status pursuant to the policy in ACP 09-52 that the policy has been rescinded; that previously disqualified persons may re-apply; and that the standards for disqualification are specified in Welfare & Institutions Code 12305.81 (a)</p> <p>(4) CDSS to post a notice of this order on its website.</p> <p>CDSS filed an appeal on May 24, 2010. On June 10, 2010 the court notified CDSS that the appeal will be dismissed based on a technicality if CDSS fails to provide specified documents to the court within 15 days.</p>
<p><i>Northern California ADAPT (Bay Area) ET AL v. Wagner</i></p> <p>(regarding the Share of Cost Buy-Out)</p>	<p>San Francisco Superior Court</p>	<p>CPF-09-509912</p>	<p>Motion for preliminary injunction to enjoin the elimination of IHSS buy-out pending timely and adequate notice to affected IHSS beneficiaries.</p>	<p>Filed Oct 19, 2009.</p> <p>The Preliminary injunction hearing was Nov. 30, 2009. The court adopted its tentative ruling as follows: plaintiffs Ramon Avina, Margaret Belton and California Department Of Health Care services' motion for preliminary injunction is denied. The court finds that the injunction is not an appropriate vehicle because the thrust of the complaint is the issue on notice not the elimination of the subsidy by the state.</p> <p>Amended complaint filed January 27, 2010.</p> <p>Demurrer to 1st Amended Complaint to be heard April 20, 2010.</p>
<p>Putz et al v. Schwarzenegger et al</p> <p>(regarding the reduction in funding for Public Authority operations)</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	<p>4:10-cv-00344</p>	<p>Plaintiffs seek a declaratory judgment that reductions in funding for Public Authority operations embodied in AB X4 1 are unlawful and seek temporary and permanent injunctive relief to prevent Defendants from continuing to implement</p>	<p>Filed January 25, 2010. Case assigned to Judge Claudia Wilken on February 2, 2010.</p> <p>Hearing held April 15, 2010 at 2:00 pm.</p> <p>ORDER by Judge Claudia Wilken Denying</p>

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			these provisions.	Motion for Preliminary Injunction; Granting in Part and Denying in Part Motion to Dismiss Filed on 5/5/2010) Bench Trial (10 day) set for 3/12/2012 08:30 AM. Further Case Management Conference set for 11/10/2011 02:00 PM. Motion Hearing set for 11/10/2011 02:00 PM. Pretrial Conference set for 2/28/2012 02:00 PM.
<i>St. John's Well Child and Family Center et al. v. Schwarzenegger et al.</i> (regarding line-item vetoes to IHSS and other budget areas)	California Court of Appeal – First District	A125750	Requests this Court issue an order declaring that the Governor's vetoes are null and void in their entirety, and that the provisions of A.B. 1 are not items of appropriation, but instead reductions to previously appropriated sums not subject to the Governor's partial veto power under Article IV, Section 10, Subsection (e) of the California Constitution.	The State is required to file their letter in opposition by September 1, 2009. Response from plaintiff St. John then due by September 17, 2009. Darrell Steinberg and Karen Bass's Motion To Intervene filed August 26, 2009. Application filed August 26, 2009 to file amicus on behalf of Children Now, Valley Community Clinic, Eisner Pediatric & Family Medical Center, The Saban Free Clinic, YWCA Monterey County, Westside Family Health Center, Community Clinic Association of Los Angeles County, and The Legal Aid Association of California. Former Governors George Deukmejian, Pete Wilson, and Gray Davis filed on Schwarzenegger's side on October 14, 2009. Oral arguments presented on December 15, 2009. Petition for Writ of Mandate denied on March 2, 2010.
<i>St. John's Well Child and Family Center et al. v. Schwarzenegger et al.</i> (regarding line-item vetoes to IHSS and	California Supreme Court	S181760	Plaintiffs petitioned the Supreme Court asking it to review a recent Court of Appeal ruling. The ruling denied the coalition's petition against Governor Schwarzenegger and upheld the Governor's July 2009 line item vetoes that severely impacted state	Time for briefing in this matter, in which review was granted on June 9, 2010, is shortened pursuant to Rules of Court, rule 8.68 as follows: Petitioners and Interveners are directed to serve and file opening briefs on or before June 30, 2010. Respondents are

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other budget areas)			funding to the sick, disabled and victims of domestic violence.	directed to serve and file an answer brief on or before July 7, 2010. Petitioners and Interveners are directed to serve and file reply briefs on or before July 14, 2010.