

Case No.: _____

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT**

**ST. JOHN'S WELL CHILD AND FAMILY CENTER; ROSA
NAVARRO; LIONSO GUZMAN; CALIFORNIA FOUNDATION
FOR INDEPENDENT LIVING CENTERS; NEVADA-SIERRA
REGIONAL IHSS PUBLIC AUTHORITY; CALIFORNIANS FOR
DISABILITY RIGHTS; LIANE YASUMOTO; and JUDITH SMITH,**

Petitioners,

v.

ARNOLD SCHWARZENEGGER, in his official capacity as Governor of
the State of California and **JOHN CHIANG**, in his official capacity as
California State Controller,

Respondents.

**PETITION FOR WRIT OF MANDATE; MEMORANDUM OF
POINTS AND AUTHORITIES (EXHIBITS FILED SEPARATELY)**

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CERTIFICATE OF INTERESTED PARTIES AND ENTITIES

Petitioners hereby certify that they are not aware of any person or entity that must be listed under the provisions of California Rule of Court 8.208(e).

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PETITION FOR WRIT OF MANDATE

**TO THE HONORABLE PRESIDING JUSTICE AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA:**

PRELIMINARY AND JURISDICTIONAL STATEMENT

1. By this verified Petition, Petitioners St. John’s Well Child and Family Center; Rosa Navarro; Lionso Guzman; California Foundation For Independent Living Centers; Nevada-Sierra Regional IHSS Public Authority; Californians For Disability Rights; Liane Yasumoto; and Judith Smith (“Petitioners”) hereby seek a writ of mandate pursuant to Article VI, Section 10 of the California Constitution; California Code of Civil Procedure section 1085; and Rule 8.490 of the California Rules of Court enjoining State Controller John Chiang from enforcing or taking any steps to enforce, Governor Arnold Schwarzenegger’s purported vetoes to Assem. B. 1, 2009 Cal. Legis. Serv. 4th Ex. Sess. Ch. 1 (West) (hereinafter “A.B. 1”).

2. The Governor’s vetoes, piggybacking on Legislative cuts in A.B. 1 to target the most vulnerable Californians for billions of dollars in additional cuts, threaten unspeakable suffering to Petitioners, who include seniors, low income people needing medical care, domestic violence survivors, people with disabilities, and those who serve them. This Petition

is not about politics or abstractions. It challenges an illegal action that is already inflicting severe harm on the battered women, sick children, disabled adults, and other vulnerable populations that Plaintiffs represent and support.

3. This Petition is brought on the grounds that the Governor's vetoes are invalid because they constitute an impermissible use of the Governor's veto power as granted by the California Constitution article IV, § 10, and as such, are null and void as a matter of law.

4. Petitioners have no other plain, speedy or adequate remedy at law. There are no administrative or other proceedings available to enjoin the enforcement of the Governor's vetoes.

5. Petitioners respectfully invoke the original jurisdiction of this Court pursuant to California Constitution article VI, § 10; California Code of Civil Procedure section 1085; and Rule 8.490 of the California Rules of Court. Petitioners invoke such jurisdiction because the issues presented here are of great public importance and should be resolved promptly. It is in the public interest to resolve the questions presented in this Petition to provide certainty regarding the separation of powers and our system of checks and balances.

6. This Petition presents no questions of fact for the Court to resolve in order to issue the relief sought.

THE PARTIES

7. Petitioner St. John's Well Child and Family Center ("St. John's") is a resident of the City and County of Los Angeles. St. John's is a nonprofit network of five community health centers and six school based clinics in medically underserved areas. St. John's provides medical, dental, mental health, and other social services to uninsured, underinsured, and economically disadvantaged families. St. John's Expanded Access to Primary Care ("EAPC") Program provides a wide range of primary and preventative medical care to children and adults, who are not eligible for Medi-Cal, Healthy Families, or other government funded health programs. In 2008, St. John's served 33,000 unduplicated patients in 100,000 visits in its medical, dental, and mental health programs. As a result of the Governor's purported line-item vetoes, St. John's will lose a substantial amount of funding for its health care programs and will be forced to lay off at least 10 employees. The Governor's line-item vetoes include a \$25 million reduction in funding to the California Department of Health Care Services' Primary and Rural Health Care System, Healthy Families, and immunization and asthma programs. The cut to the Primary and Rural Health Care System, which administers and funds the state's EAPC Program, reduces funding for St. John's EAPC Program by \$255,149. This cut will force St. John's EAPC Program to do at least 3,500 fewer clinic visits than in 2008 and to reduce clinic hours at each of the five community

health centers by 10 hours per week. As a result of the cut, EAPC eligible patients will have to wait longer to get appointments. Some may not be able to receive St. John's services and will turn to emergency rooms for care. The long wait and the lack of care can exacerbate their conditions, especially patients with chronic conditions. For example, lack of medication will cause diabetic patients' conditions to deteriorate and may lead to blindness, limb amputation, and possibly death. The Governor's cuts to asthma and immunization programs will also force St. John's to immunize fewer children and treat fewer asthma patients. The effects of these cuts will have devastating impact on the health of St. John's patients and community.

8. Petitioner Rosa Navarro is a resident of the City of Cudahy and County of Los Angeles, California, and has received medical treatment for her diabetes, high blood pressure, and high cholesterol from St. John's Well Child & Family Center for approximately one year. Ms. Navarro has received medical examinations, blood testing, prescription medications, and diabetes education from St. John's. Without treatment from St. John's, she will be unable to obtain preventative care from any source. If her diabetes is uncontrolled, she will be at risk of heart attack, stroke, kidney complications, nerve damage, and blindness. Without St. John's, she will be able to access medical treatment only in the event of an emergency medical condition placing her health in serious jeopardy, such as a coma

caused by hypoglycemia or the need to amputate a limb due to diabetic complications.

9. Petitioner Lionso Guzman is a resident of the City of Compton and County of Los Angeles, California, and has received medical treatment for his diabetes and gastrointestinal problems at St. John's Well Child & Family Center for approximately two years. Mr. Guzman has received medical examinations, blood testing, prescription medications, and diabetes education and counseling from St. John's. Without treatment from St. John's, he will be unable to continue his prescription medications and will not be able to obtain preventative care from any source, placing him at high risk for diabetic complications such as kidney damage, nerve damage, blindness, heart attack and stroke. Without St. John's, he will be able to access medical treatment only in the event of an emergency medical condition placing his health in serious jeopardy, such as sudden vision loss or acute kidney failure due to diabetes.

10. Petitioner California Foundation for Independent Living Centers ("CFILC") is a resident of the City of Sacramento and the County of Sacramento, California. CFILC is a statewide, non-profit organization made up of twenty-five Independent Living Centers ("ILCs"), which are community-based organizations that provide services and advocacy by and for people with all types of disabilities. Founded in 1976, CFILC provides information, training, and peer support that enables ILCs to improve their

effectiveness in their local communities. ILC staff work with and for individuals with disabilities to promote their independence in the community. A key component of independent living is In Home Supportive Services (“IHSS”). The Governor’s line-item vetoes to IHSS strike a critical blow to CFILCs,’ and its member ILCs,’ ability to assist individuals with disabilities in achieving and maintaining independence in the community. In particular, the Governor’s elimination of exemptions to program cuts leaves people with profound disabilities at risk of losing assistance with basic activities of daily living, such as cooking, bathing, and cleaning. If people with serious disabilities are not given this assistance, they will be unable to live independent lives in their own homes.

11. Petitioner Nevada-Sierra Regional IHSS Public Authority (“Public Authority”) is a resident of the City of Grass Valley and the County of Nevada, California. The Public Authority is a public agency whose purpose is to make the IHSS program in every county work better for consumers. Specifically, the Public Authority offers services that give consumers greater access to providers, such as by creating a provider registry, investigating the qualifications and backgrounds of service providers, and providing training to consumers and providers. Without the assistance offered by Public Authority, consumers who cannot independently perform basic daily life functions would be forced to find a service providers on their own, potentially without having the resources to

check provider backgrounds. Due to the cuts, Public Authority is faced with operating on less than half of last year's budget.

12. Petitioner Californians for Disability Rights ("CDR") is a resident of the City of Sacramento and County of Sacramento, California. CDR is the oldest and largest membership organization of persons with disabilities in California. CDR seeks to improve the quality of life for all persons with any disability by conducting education and training, and by pursuing removal of barriers. CDR has nearly 600 members that include recipients of IHSS services and members who are insured through Medi-Cal. Additionally, CDR has members with children who use services from California's Early Start program, a program that provides services to children ages 0-3 at risk of having a developmental disability. Early intervention is critical in helping children with developmental and intellectual disabilities gain living skills that will allow them increased independence throughout life. If children do not receive services at the earliest possible moment, they risk missing a crucial window of time, during which interventions can help reduce cognitive delays and social functioning impairments. Early intervention also helps reduce parental and family stress. The cuts to this program will likely lead to a greater dependence on services from Regional Centers across the state and result in expenditures well beyond the state's savings from cutting this program.

13. Petitioner Liane Yasumoto is a resident of the City of Berkeley and County of Alameda, California, and is a recipient of IHSS. She is a C3-4 quadriplegic due to a car accident in 1987. She has only movement of her head and shoulders and very limited movement of her right arm. As a result, she receives 282 hours of IHSS to assist her with every daily living task she needs to do, from bathrooming, to bathing and grooming, to housekeeping and travel to appointments. A reduction in these hours would mean that she might have to go without bathing one day or having clean clothes. A significant reduction in hours would mean that she would need to live in a group home or some other assisted living facility, not independently in the community as she has been doing for the 20 years since the car accident. Cuts to the hourly wage for IHSS workers would mean that she would likely have a new IHSS worker who could afford the payout. Ms. Yasumoto has developed a very close relationship with her current attendant, and considering the very personal nature of the tasks with which she needs assistance, a change in attendants would be a significant hardship to her.

14. Petitioner Judith Smith is a resident of the City of Oakland and the County of Alameda, California. She receives 201 hours a month of IHSS services for some of the most personal activities she does daily, including bathing, using the bathroom, and grooming. Due to a spinal cord injury, she relies on her IHSS workers to do everything from shopping to

meal preparation and cleaning. Without these services, she would be unable to live independently in her own home.

15. Respondent Arnold Schwarzenegger is the Governor of the State of California. The Governor is the supreme executive of California, and it is his duty to see that the law is faithfully executed. It is his responsibility to submit an itemized budget to the Legislature within the first 10 days of each year. The Governor may veto any bill passed by the Legislature and return it with his objections to the house of origin, and he may also reduce or eliminate one or more items of appropriation while approving other portions of the bill. He is sued solely herein solely in his official capacity.

16. Respondent John Chiang is the State Controller of California. He is the state's chief fiscal officer and is charged with controlling the disbursement of public funds. He is sued herein solely in his official capacity.

FACTS

17. On February 20, 2009, Governor Schwarzenegger approved the Budget Act of 2009: "An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately." S.B. 1, 2009 Cal. Legis. Serv. 3rd Ex. Sess. Ch. 1

(West) (hereinafter the “Budget Act”). A true and correct copy of relevant excerpts from the Budget Act is filed separately as Exhibit 1 with this Petition.

18. On July 1, 2009 the Governor declared a fiscal emergency, and pursuant to Section 10(f) of Article IV of the Constitution of the State of California convened the California Legislature to meet in an extraordinary session to consider and act upon legislation to address the fiscal emergency.

19. On July 24, 2009, the California Legislature passed A.B. 1, which revised, amended and supplemented the Budget Act. A true and correct copy of relevant excerpts from A.B. 1 as passed by the Legislature is filed separately as Exhibit 2 with this Petition. Among other cuts, A.B. 1 greatly reduced funding to the critical medical, disability, and domestic violence service programs identified in this Petition.

20. On July 28, 2009 Governor Schwarzenegger signed A.B. 1 after purporting to make vetoes which have the effect of further reducing the amounts appropriated in the Budget Act by more than \$488 million beyond those passed by the Legislature. A true and correct copy of the Governor’s objections to A.B. 1 is filed separately as Exhibit 3 with this Petition.

Harm to Petitioners

21. The Governor's illegal budget cuts impose massive reductions in the medicine, mental health treatment, bathing, feeding, medicine, shelter and other services that Petitioners receive or provide. His tactics bypass the critical safeguards for politically powerless citizens that are built into the democratic process. The cuts to medical care, services for domestic violence survivors, and daily living support for people with disabilities are some, though by no means all, of the cuts that harm Petitioners.

Cuts to Medical Care

22. The Governor's line-item veto imposes an additional \$25 million reduction on the already-cut funding to the California Department of Health Care Services' Primary and Rural Health Care System, Healthy Families, and immunization and asthma programs. The cut to the Primary and Rural Health Care System, which administers and funds the state's EAPC Program, reduces funding for St. John's EAPC Program by \$255,149.

23. Cuts pursuant to the Governor's line-item veto will force St. John's EAPC Program to accept at least 3,500 fewer clinic visits than in 2008 and to reduce clinic hours at each of the five community health centers by 10 hours per week. As a result of the cut, EAPC eligible patients will have to wait longer to get appointments. Some may not be able to

receive St. John's' services and will turn to emergency rooms for care. Patients, who have to wait for care or who cannot receive care at St. John's, will turn to emergency rooms, where medical care is costlier than care provided in a primary care setting.

24. The long wait and the lack of care can exacerbate medical conditions, especially of patients with chronic conditions. For example, lack of medication will cause diabetic patients' conditions to deteriorate and may lead to blindness, limb amputation, and possibly death.

25. The Governor's cuts to asthma and immunization programs will also force St. John's to immunize fewer children and treat fewer asthma patients. The effects of these cuts will have devastating impact the health of St. John's' patients and community. Lack of immunization can lead to increase in incidents of many preventable diseases such as measles, mumps, and rubella. The Governor's cut to the asthma program will leave asthmatic patients without needed medication, which can lead to life threatening respiratory failure.

26. In addition, the Governor's cut to the Healthy Families Program will mean that tens of thousands of children in low-income communities served by St. John's will be uninsured. This cut to Healthy Families compounds the problems for these children. If they come to St. John's, they will be treated under St. John's' EAPC Program. But since the EAPC Program also faces cuts, some of these uninsured children will have

to wait longer to receive medical or may not be able to care at all. In sum, the effects of the cuts to the health care programs in the Governor's line-item veto will be devastating. Patients, who have to wait for care or who cannot receive care at St. John's, will turn to emergency rooms, where medical care is costlier than care provided in a primary care setting. Some patients may not receive care at all. The delay and the lack of care can exacerbate illnesses and place low-income children and adults at risk of death.

Cuts To Services For Domestic Violence Survivors

27. House of Ruth is a domestic violence service organization located in the City of Pomona and County of Los Angeles California, and provides services to homeless victims of domestic violence and their children. The Declaration of Sue Aebischer, Executive Director of the House of Ruth is filed separately as Exhibit 7 with this Petition. House of Ruth provides women and children safe and secure housing that promotes their physical safety and emotional well-being, as well as a comprehensive array of services including counseling, schooling, vocational training, medical care, assistance finding stable employment, and placement in permanent housing. Additionally, it operates a domestic violence hotline and provides case management and outreach services to men, women, and children who are victims of abuse. Until July 1, 2009, House of Ruth received funds from California's Maternal and Child Health's Domestic

Violence program and would have received \$144,000 in funding for Fiscal Year 2009-2010 but for the Governor's veto of the program. This loss of funding will force House of Ruth to cut 10 of its 30 transitional shelter beds, which house the most vulnerable clients who need a deeper level of assistance such as intensive psychological counseling. Last year, the transition shelter served approximately 18 to 20 families at any point in time, but will now be limited to 8 to 10 families at a time because of the funding cuts. This places families turned away from transitional shelter at high risk of violence or even death from the abuser. Additionally, the funding cut will cause House of Ruth to close "drop-in" services two days per month, making it likely that women who seek services but cannot obtain them will become discouraged and return to the abusive situation. The funding cut will also prevent House of Ruth from providing funds to clients for transportation to and from their appointments for domestic violence services, making it likely that many women will not be able to access ongoing counseling or other services, significantly impairing their ability to benefit from services and rebuild their lives. Thus, the combined effect of House of Ruth's funding loss is to place men, women and children at increased risk of domestic violence, and even death.

Cuts To In Home Support For People With Disabilities

28. The Governor's line-item veto eliminates \$37,555,000 in funding for the IHSS program, including reduction of services and reduced

funding for Public Authorities, which administer IHSS. IHSS workers assist people with severe disabilities in daily living tasks, such as bathing, meal preparation, and housekeeping. Without this daily assistance at home, IHSS recipients would risk being warehoused in institutions, unable to work in the community, isolated from friends and family, and unable to make basic choices about how to live their own lives. The cuts to IHSS put people with serious disabilities at risk of being forced into institutions due to a loss of vital support that allows them to live independently. Such a situation not only deprives people of their self-determination, it results in increased costs to the state, which is often responsible for expensive long-term care in facilities.

Harm To Petitioners As Californians

29. The Governor's vetoes will also harm Petitioners through their harm to California's finances and economic recovery. The cuts are penny-wise and pound-foolish for a variety of reasons including: (1) community-based services slashed by the Governor's vetoes cost less than the institutions that will replace them; (2) the preventive care destroyed by the Governor's vetoes will create greater costs to the state and local governmental; and (3) the vetoes thwart assistance from the federal government and charitable volunteers.

30. In the absence of community care clinics; domestic violence shelters; prenatal care and parenting support for pregnant teens; in-home

bathing, feeding, and other support for people with disabilities; and other services slashed by the Governor, emergency wards, police, and other parts of the remaining system will be swamped by greater burdens, with an increase in costs to the state.

31. The Governor's unilateral and draconian "solution" to the budget crisis will have a devastating ripple effect. In many cases, the cuts will cause programs to be forced to shut down, thereby losing the benefit of volunteers and charitable contributions to the important services the programs provide, as well as any federal grants to the programs or services.

CLAIMS ASSERTED

32. The Governor's vetoes to A.B. 1 constitute an impermissible violation of the separation of powers upon which our system of government is founded. Specifically, Petitioners challenge the Governor's vetoes to sections 568 and 570-575 of A. B. 1, pertaining to the following sections of the Budget Act of 2009: Sec. 17.50, increasing the General Fund reduction for the Department of Aging from \$9,483,000 to \$15,643,000; Sec. 18.00 subsection (a), reducing General Fund funds for local assistance of the Medi-Cal program by \$60,569,000; Sec. 18.00 subsection (e), eliminating funding for the Community Clinic Programs; Sec. 18.10, reducing the General Fund funding for the Office of AIDS by \$52,133,000, reducing funding for the Domestic Violence Program by \$16,337,000, reducing funding for the Adolescent Family Life program by \$9,000,000, and

reducing the funding for the Black Infant Health Program by \$3,003,000; Sec. 18.20, reducing \$50,000,000 from the Healthy Families program; Sec. 18.30, reducing Regional Center Purchase of Services by \$50,000,000 for services to children up to age 5; Sec. 18.40, reducing funding of the Caregiver Resource Centers by \$4,082,000; and Sec. 18.50, reducing General Fund funding to the In-Home Supportive Services Program by \$37,555,000.

33. These vetoes would encroach upon the legislative authority vested in the Legislature, and irreversibly expand the role and power of the executive at the expense of the other branches, threatening our system of checks and balances.

34. Petitioners, the residents of the State of California and others will suffer irreparable injury and damage unless this Court intervenes and directs Respondents to refrain from enforcing the Governor's vetoes.

35. There is no requirement in this circumstance to plead demand and refusal. Without prejudice to that position, Petitioners allege that any demand to Respondents to act or refrain from taking action as described in Paragraph 1 in the Relief Sought below would have been futile if made, and that only a court order will cause Respondents to refrain from taking those actions.

RELIEF SOUGHT

Wherefore, Petitioners request the following relief:

1. That this Court forthwith issue a writ of mandate directing

Respondents:

(a) To take all actions necessary to ensure that the moneys appropriated in the Budget Act of 2009, as amended and supplemented by A.B. 1, and excluding the Governor's purported vetoes thereto, be disbursed and continue to be disbursed as directed in accordance with the laws of California;

(b) To desist from any act enforcing the Governor's vetoes, giving effect to those vetoes, or directing any other person or entity to enforce or give effect to the Governor's vetoes;

(c) Or in the alternative, to show cause before this Court at a specified time and place why Respondents have not done so;

2. That 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.

3. That, upon Respondent's return to the alternative writ, a hearing be held before this Court at the earliest practicable time so that the issues involved in this Petition may be adjudicated promptly, and if this

Court deems appropriate, pursuant to an expedited briefing and hearing schedule;

4. That, pending such return and hearing, the Court grant an immediate injunction or order staying the enforcement of the Governor's vetoes pending the resolution of the instant Petition and prohibiting Respondents from taking any acts to enforce or from directing any persons or entities to enforce the Governor's vetoes during the pendency of these writ proceedings;

5. That, following the hearing upon this Petition, the Court issue a peremptory writ of mandate directing Respondents not to enforce the Governor's vetoes, and to desist in any act in aid of enforcing said vetoes;

6. That Petitioners be awarded their costs of suit and attorneys' fees, except that Neighborhood Legal Services of Los Angeles County makes no claim for fees; and

7. For such other and further relief as the Court may deem just and equitable.

VERIFICATION

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Governor's vetoes of the Legislature's proposed reductions to previously-enacted appropriations contained in the Budget Act exceeded the authority granted to him by the California Constitution and are void as a matter of law. The California Supreme Court has previously recognized that "in exercising the veto the Governor may act only as permitted by the Constitution." *Harbor v. Deukmejian* (1987) 43 Cal. 3d 1078. Such permission extends only to the veto of a "bill" (Cal. Const., art. IV, § 10(a)) or the reduction or elimination of one or more "items of appropriation," also known as a "line-item" veto. (*Id.* at § 10(b).) The reductions passed by the Legislature in A.B. 1 do not constitute items of appropriation under any reasonable definition of the term or the controlling case law, and if allowed to stand, the Governor's vetoes of these non-appropriation measures would irreversibly expand the power of the executive and threaten the separation of powers guaranteed by article III, § 3, and upon which our government is founded.

II. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE GOVERNOR'S VETOES EXCEED THE PARTIAL VETO POWER GRANTED BY THE CALIFORNIA CONSTITUTION AND VIOLATE THE SEPARATION OF POWERS

With few and strictly-limited exceptions, the power to legislate is the exclusive province of the Legislature. Cal. Const., art. III, § 3. One such

limited exception, as recognized by this Court, is that “in exercising the veto the Governor acts in a legislative capacity.” *Harbor*, 43 Cal. 3d 1078, 1089. As discussed below, the California Constitution and the decisions of this court limit the authority to exercise that veto only to an entire bill, or to reduce or eliminate an item of appropriation. Cal. Const., art. VI, § 10. When, as here, the Governor attempts to selectively veto non-appropriation items within in a bill, he exceeds his authority under the Constitution, infringes upon the province of the Legislature, and violates the separation of powers. Accordingly, any such veto is null and void. *Lukens v. Nye* (1909) 156 Cal. 498, 503.

A. Under the California Constitution, The Governor’s Line-Item Veto Power Is Limited To Items Of Appropriation.

“The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” Cal. Const., art. III, § 3. Bills are passed by the Legislature and become law if signed by the Governor, or if the Governor fails to act within a constitutionally-specified amount of time.¹

¹ Pursuant to Cal. Const art. IV, § 10(a), a bill passed by the Legislature “becomes a statute if it is signed by the Governor.” Alternately most bills presented to the Governor by the Legislature that are not returned by a Governor’s veto within 30 days “becomes a statute” (Cal. Const. art. IV § 10(b)(1)).

The Governor may veto a bill by “returning it with any objections to the house of origin,” and thereafter it will only become law if “each house then passes the bill by rollcall vote entered in the journal, [with] two-thirds of the membership concurring. . . .” Cal. Const, art. IV, § 10(a). “The Governor’s veto power is more extensive with regard to appropriations.” *Harbor*, 43 Cal. 3d at 1085. He “may reduce or eliminate one or more items of appropriation while approving other portions of a bill,” and such items “shall be separately reconsidered and may be passed over the Governor’s veto in the same manner as bills.” Cal. Const., art. IV, § 10(e). In either case, when the Governor exercises his veto power, he acts “as a legislative instrumentality,” and “may act only in the prescribed mode, and may exercise only the powers enumerated. . . .” In the case of a bill containing items of appropriation, the Governor “may approve one or more of them, and object to the others.” *Lukens*, 156 Cal. at 503.² “In no other case is he empowered to modify or change the effect of a proposed law, or to do anything concerning it except to approve or disapprove it as a whole.” *Id.*

In *Lukens*, the Legislature passed a measure appropriating funds to satisfy a claim against the state. After passage by both houses, but before

² *Lukens* was decided before the 1922 amendment to the Constitution which granted the Governor the power to reduce, as well as eliminate, items of appropriation.

signing the bill, the Governor informed the plaintiffs that he would not so sign unless the plaintiffs would agree to accept a significantly lesser sum. The plaintiffs agreed to the Governor's terms, and the Governor then signed the bill. Plaintiffs then sued for the full amount, and the Supreme Court held for the plaintiffs, expressing the rule that with respect to a bill "containing several items of appropriation of money, he may approve one or more of them, and object to the others. In no other case is he empowered to modify or change the effect of a proposed law, or to do anything concerning it except to approve or disapprove it as a whole." *Id.* (internal citation omitted). Moreover, the Governor's attempt to exceed his enumerated power is this manner, "will either be entirely nugatory and ineffectual, and leave the approval absolute, or it will completely nullify the approval and operate as a veto of the whole bill." *Id.*

Following the 1922 constitutional amendment which granted the Governor the power to reduce as well as eliminate items of appropriation, the central holding of *Lukens* was affirmed by the Supreme Court in *Cal. Mfrs. Ass'n v. Pub. Utils. Comm'n* (1979) 24 Cal. 3d 836. In that case, the Governor signed a non-appropriation bill, advising the Senate that he had done so only based on a legal opinion which stated that the measure, a rate refund statute would not preclude the Public Utilities Commission from "amortizing potential refunds in balancing accounts" *Id.* at 847. In holding that the Governor's statement had no effect, the Court reiterated

that the Constitution empowers the Governor either to accept or reject a non-appropriation bill “in its entirety.” *Id.* at 848. “From this it follows that, as we have said, he may not by qualifying his approval exercise what is in effect an ‘item veto.’” *Id.* (citing *Lukens*, 156 Cal. at 503.)

The Supreme Court reaffirmed these principles in *Harbor*, 43 Cal. 3d 1078. There, the Legislature enacted a Budget Act, which included an appropriation for Aid to Families with Dependent Children (“AFDC”), then ten days later adopted trailer bill legislation relating to various budget items. Section 45.5 of that legislation amended the Welfare and Institutions Code to change the timing of AFDC payments. The Governor exercised his line-item veto authority to reduce the AFDC appropriation by the amount the section was expected to cost the state, then purported to veto section 45.5 itself. The Court held that the veto of section 45.5 was unconstitutional, once again affirming the holdings of *Lukens* and *Cal. Mfrs. Ass’n* that the Governor may not disapprove or alter only a part of a bill, unless that part is an “item of appropriation.” *See Harbor*, 43 Cal. 3d at 1089.³

³ The Court nevertheless declined to invalidate the Governor’s veto on the grounds that the bill violated the Constitution’s single subject rule. Had the section been separately and lawfully passed, the Court reasoned, the Governor could have vetoed it in full. *Harbor v. Deukmejian* (1987) 43 Cal. 3d 1078, 1102.

Governor Schwarzenegger did not veto Bill A.B. 1 “in its entirety.” Instead, he purported to alter or eliminate twenty-seven distinct parts thereof.⁴ Therefore, based on the decisions of the Supreme Court discussed above and Article IV, Section 10, subsection (b) of the California Constitution, those purported vetoes are null and void as a matter of law unless they relate to “items of appropriation.”

B. The Challenged Vetoes Do Not Pertain To Items Of Appropriation

A long line of Supreme Court cases narrowly construes what constitutes an item of appropriation. In *Stratton v. Green* (1872) 45 Cal. 149, 151, the Court defined an appropriation as an act “by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand.” In *Wood v Riley* (1923) 192 Cal. 293, 303, an appropriation was held to be a “specific setting aside of an amount, not exceeding a definite fixed sum, for the payment of certain particular claims or demands,” which includes “add[ing] an additional amount to the funds already provided.” In *Harbor*, the Court approved of these prior cases, refusing to find an item of appropriation where the section at issue failed to set aside money for the payment of a claim, make an appropriation from the treasury, or add an additional amount to funds already provided

⁴ The specific vetoes challenged herein are listed in the Petition at ¶ 32.

for. *Harbor*, 43 Cal. 3d at 1089-90. Sections 17.50, 18.00, 18.10, 18.20, 18.30, 18.40 and 18.50 of A.B. 1 likewise neither set aside money for the payment of a claim, make an appropriation from the treasury, nor add any additional amount to funds already provided for. Accordingly, the Governor may not use the line-item veto on these provisions.

In *Wood*, the Court heard a challenge to the Governor's attempted line-item veto of a provision included within the Budget Bill which would have instructed the controller, at the request of the state director of education, to transfer a sum of money from another department's appropriation to the director of education. *See Wood*, 192 Cal. at 296. The petitioner, the Superintendent of Public Instruction, argued that the transfer was not an appropriation, as it took no money from the treasury. The Court rejected petitioner's argument and defined "appropriation" as "an Act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand . . . which balance cannot be thereafter *increased* except by further legislative appropriation." *Id.* at 303 (emphasis added). The transfer in *Wood* was an appropriation, wrote the Court, "because it *added* a specific amount to the allowance already made for the use of the state board of education and the state superintendent of schools." *Id.* at 305.

Applying the *Wood* holding to A.B. 1, the current Legislature was not required to make an appropriation to *decrease* the sums which had

already been set apart by the enactment of the Budget Act. Nor did the sections of A.B. 1 the Governor’s vetoes of which are challenged fit the definition of an appropriation, as they did not *add* any amount to allowances already made. Looking at one such provision clearly demonstrates this point.

Item 4265-111-0001 of Section 2.00 of the Budget Act as enacted reads:

4265-111-0001—For local assistance, Department of Public Health \$244,479,000.

Ex. 1 at p. 31.

Section 571 of A.B. 1, as passed by the Legislature in July, added the following to the Budget Act:

SEC. 18.10. (c) The amount appropriated in Item 4265-111-0001 of Section 2.00 is hereby reduced by \$62,967,000.

Ex. 2 at p. 89.

The addition of Section 18.10 does not *add* to the amounts which had “been set apart in the treasury and devoted to the payment” of Department of Public Health programs, including the Domestic Violence Program under the Budget Act. To do so would admittedly constitute an appropriation under *Wood*. Instead, the Legislature merely *reduced* the amounts already appropriated, which appropriations remain otherwise in force in the enacted Budget Act. Unlike an increase, such a reduction does not require “further legislative appropriation” under the Court’s holding,

and indeed, no such legislative appropriation was passed. Thus, the Governor's attempt to alter Section 18.10 and increase the reduction of Item 4265-111-0001 by \$80,473,000 to a total of \$143,440,000, *see* Ex. 3 at p. 98, is an impermissible exercise of legislative power, and is null and void as a matter of law under *Lukens v. Nye* and its progeny.

Importantly, as demonstrated by the Supreme Court's holding in *Harbor*, reductions to previously appropriated amounts do not themselves constitute appropriations merely because they relate to appropriations such as those in Item 4265-111-0001 of Section 2.00 of the Budget Bill. In *Harbor*, the Governor argued that his line-item veto of a provision which pertained to the timing of AFDC payments was in reality a component of an item of appropriation which, he argued, consists of two parts: the amount appropriated, and its purpose. *Harbor*, 43 Cal. 3d at 1090. In rejecting the Governor's argument, the Court explained that it was "aware of no authority which even remotely supports the attempted exercise of the veto in this manner." *Id.* Likewise, Governor Schwarzenegger may not use his veto power on the provisions at issue solely because they relate to previous appropriations by way of reduction.

One Court of Appeal held that a provision in a statute which limited the expenditure of funds to the amount which was appropriated for its designated purpose in the Budget Act, did not itself constitute an appropriation under the Constitution. In *California Assn. for Safety Educ.*

v. Brown (1994) 30 Cal. App. 4th 1264 (“*Safety Ed.*”), the court considered language in a statute which limited the amount which could be paid to high schools for driver training programs: The court declined to hold that the language at issue, which stated that “the amounts provided under [the section] for any fiscal year *shall be limited to the amounts appropriated in the annual Budget Act for the purposes of that section,*” worked to create an appropriation. *Id.* at 1272 (emphasis in original). In so holding, the Court adopted the definition of appropriation as “a legislative act setting aside a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purpose.” *Id.* at 1282 (quoting *Ryan v. Riley* (1924) 65 Cal. App. 181, 187). Under *Safety Ed.* then, a *limitation* upon an appropriation does not constitute an appropriation. By extension, this Court should hold likewise with respect to a *reduction* of an appropriation.

C. Only Items Of Appropriation Which Have Been Reenacted May Come Before The Governor For The Purposes Of The Line-Item Veto.

Even if this Court holds as a matter of law that in amending the Budget Act with A.B. 1, the Legislature was empowered to make appropriations, the Governor still does not have *carte blanche* to impose the line-item veto. As discussed above, the legislative authority is vested in the Legislature, and the governor may only veto bills or items of appropriation

presented to him by the Legislature. Thus, he may not veto items of appropriation already enacted in the Budget Act.

The Constitution states that a “*section* of a statute may not be amended unless the *section* is re-enacted as amended.” Cal. Const., art. IV, § 9. Indeed, the Supreme Court has held that the Legislature may change a statute by section-by-section amendment “so long as each section is published and reenacted at length, regardless of the number of sections so changed.” *People v. Western Fruit Growers* (1943) 22 Cal. 2d 494, 502. In presenting A.B. 1, the Legislature did exactly that — amending certain sections, repealing certain others, and adding yet more, while leaving those unmentioned intact and in force. So, rather than being free to exercise his line-item veto over any appropriation in the existing Budget Act, the Governor is clearly limited to those sections which, through the amendment process are re-presented to him, and of course, which are “items of appropriation” within the meaning of art. IV § 10(b) of the California Constitution.

This point is significant. The Legislature indeed sought to amend certain parts of the Budget Act containing items of appropriation. Thus, it is arguable that under article IV, § 9, those amended sections or parts must be reenacted and presented to the Governor, whereupon he may exercise his art. IV, § 10(e) prerogative to reduce or eliminate any such items of appropriation. However, the purported vetoes challenged in this Petition

relate to proposed additions to the Budget Act, which would not amend or replace any existing sections of the Act or any items of appropriation contained therein. Rather, the Legislature conspicuously left such appropriations intact in their original place, while adding an entirely new section reducing the amount appropriated.

The Court may be aided by a comparison of two particular changes to the Budget Act passed by the Legislature in A.B. 1. Section 399 of A.B. 1, as passed by the Legislature amended the Budget Act as follows:

SEC. 399. Item 6110-001-0001 of Section 2.00 of the Budget Act of 2009 is amended to read:

6110-001-0001—For support of Department of Education 38,210,000.⁵

Ex. 2 at p. 81. Note that this amendment makes no mention of the reduction from the previously appropriated amount; it simply proposes to replace the original text with a new sum. Thus, it may be argued, it represents an entirely new appropriation upon which the Governor may justly use his veto power.

Compare now the amendment proposed in Section 572 of A.B. 1, which will reduce funding for the Healthy Families Program:

⁵ The amount previously appropriated in Item 6110-001-0001 was \$43,139,000. Budget Act of 2009, Chapter 3 of the 2009-10 Third Extraordinary Session at p. 393.

SEC. 572. Section 18.20 is added to the Budget Act of 2009, to read:

Sec. 18.20. (a) The amount appropriated in Item 4280-101-0001 of Section 2.00 is hereby reduced by \$125,581,000.⁶

Ex. 2 at p. 89.

At first glance, these two types of amendments seem to have a substantially similar effect — to reduce the amount originally set aside under the Budget Act. However, the direct amendment and reenactment of previously passed items of appropriation in the manner of proposed Section 399 arguably exposes them to the governor’s line-item power under Cal. Const., art. IV, §§ 9 and 10(e); no such authority exists to with respect to the reductions made in the manner of Section 572.

D. The Challenged Vetoes Do Not Relate To Items Of Appropriation, As Evidenced By The Structure And Content Of A.B. 1.

“The legislative intent determines whether a statute contains an appropriation.” *Riley v. Johnson* (1933) 219 Cal. 513, 519. “In determining whether an appropriation has been made, the intention of the Legislature is to be ascertained from the entire statute.” *Id.* The Supreme Court has explained that “statutes must be harmonized, both internally and with each other, to the extent possible.” *California Mfrs. Assn.*, 24 Cal. 3d

⁶ The amount appropriated in Item 4280-101-0001 of the Budget Act is \$377,487,000.

at 844. In rejecting the Governor's interpretation or the provision at issue in *California Mfrs. Assn.*, the Court held that "both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." Here, based on such history and circumstances, the legislative intent is crystal clear.

In response to the Governor's declaration of a fiscal emergency, and his convening of the Legislature in an extraordinary session to consider and act upon legislation addressing the fiscal emergency, the Legislature directly amended 373 items of appropriation in the Budget Act in the manner shown above in Section 399 of A.B. 1. On the other hand, fewer than fifteen amendments added a reduction to previously appropriated sums in the manner of Section 572 — most of those pertaining to the public health. In answer to the Governor's request, these amendments severely affect programs of great necessity to the Petitioners in this case and others. In relation to some of the amendments to the Budget Act, the Governor may have the authority under the Constitution to impose even further harsh cuts beyond those passed, and it is apparent the Legislature was aware of this fact.

Yet, there are certain programs the Legislature evinced an unmistakable intent to protect from the Governor's mighty blue pen. Under no obligation to make any reductions to these crucial programs which impact the health and welfare of the people of California, the Legislature

nevertheless did so, but did so in an entirely different manner and couched the reductions in entirely different language. These few amendments, which could have been passed in separate bills following a majority vote,⁷ and subject only to an all-or-nothing veto were clearly intended to stay above the line-item fray, or the Legislature would have presented them in the same vulnerable form as the 373 other items.

The Legislature's clear intent to impose reductions on certain previously-appropriated items rather than making a new appropriation should not be conflated with a legislative attempt to circumvent the veto power of the Governor. In *Wood*, the Court held that such an attempt had been made, and thus upheld the Governor's veto. But that case considered a proviso in the Budget Bill itself, which "added a specific amount," to the funds allotted to the board of education and superintendent of schools, and thus effectively worked an appropriation — an appropriation the Governor indicated he would have vetoed had an express appropriation for the same purposes had been made. *Wood*, 192 Cal. at 304-305.

Here, no attempt has been made to circumvent the Governor's rightful veto power. Indeed, the Governor used that power to make

⁷ Bills containing appropriations, including the Budget Act, require a two-thirds approval by the each house to be passed. Cal. Const., art. IV, § 12(d). A.B. 1 received more than two-thirds approval as was required because it was passed as an urgency statute, which is implemented immediately. Cal. Const. art. IV § 8(d).

significant cuts to the appropriations passed by the Legislature in February’s Budget Bill. And should this Court hold that the amendments to certain appropriations in A.B. 1 *replace* those appropriations, his reductions to those appropriations are likewise permissible. However, the Legislature was not obligated to make any reductions whatsoever such as those contained in §§ 17.50, 18.00, 18.10, 18.20, 18.30, 18.40, and 18.50 of A.B. 1, as it is obligated to pass a Budget Bill containing appropriations. These reductions represent the Legislature’s intent to address the current fiscal emergency, while neither repealing nor reenacting the appropriations passed and signed by the Governor in the Budget Act. Considering Section 572 of A.B. 1 once more, under the Governor’s theory, by making any reduction at all — even \$1 million — to the \$377,487,000 appropriated for the Healthy Families Program in the Budget Act, the Legislature thus allows the Governor to cut funding for the program in its entirety, if he so chooses. Such an interpretation of Cal. Const., art. IV, § 10(e) is unreasonable and unsupported by legal authority. If anything, such a holding would allow the Governor to circumvent the power of the Legislature, not prevent the converse.

III. THE COURT OF APPEAL HAS ORIGINAL JURISDICTION OVER THIS MATTER

This Court has original jurisdiction “in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.” Cal. Const.

art. IV, § 10. The Courts of Appeal and the Supreme Court should exercise their original jurisdiction where, as here, it can be “uniformly agreed that the issues are of great public importance and should be resolved promptly.” *Legislature of the State of California v. Eu* (1991) 54 Cal. 3d 492, 500.

Courts of Appeal have often exercised their original jurisdiction to hear challenges to statutes, initiatives, and constitutional amendments. For example, *Harbor*, 43 Cal. 3d 1078, was initially filed in the Court of Appeal. *Id.* at 1084. While *Harbor*, like this case, raised an important issue concerning the extent of the Governor’s line-item veto authority, the veto itself affected only one item pertaining to \$9 million in appropriation. In this case, 27 line-items are affected, with hundreds of millions of dollars in vital human services reductions at stake. *See also Independent Energy Producers Ass’n v. McPherson* (2006) 38 Cal. 4th 1020, 1023 (noting that the Court of Appeal had accepted writ review of proposed ballot initiative measure); *League of Women Voters of California v. McPherson* (2006) 145 Cal. App. 4th 1469 (noting that writ proceeding involving the meaning of article II, § 4 of the California Constitution is within the category where an appellate court properly exercises original jurisdiction); *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal. App. 3d 245, 264-65 (Court of Appeal exercising original jurisdiction in writ proceedings “[g]iven the need for prompt adjudication of a matter of important public interest and statewide impact”).

This case presents issues of utmost public importance, including the impermissible expansion of the power of the executive and the fundamental principles of separation of powers and checks and balances upon which our government is based. Petitioners in this case, being directly and immediately harmed by the Governor's purported vetoes, are entitled to a prompt determination of the constitutionality of the Governor's actions. Moreover, as the Governor's vetoes, if allowed to stand, take effect immediately under the urgency clause (Cal. Const., art. IV, § 8(d)), the issues considered herein must be resolved promptly. *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal. 3d 937, 944. Accordingly, this Court should exercise its original jurisdiction to provide its guidance on the important issues presented by this Petition "at the earliest practicable opportunity." *People v. Frierson* (1979) 25 Cal. 3d 142, 172.

IV. CONCLUSION

The current fiscal crisis does not permit the Governor to ignore the limitations placed on his power by the California Constitution, nor to unilaterally eviscerate the long history of separation of powers in our state and our country. The limits placed on the Governor's power when acting in a legislative capacity are clear, as is the intent of the Legislature in mitigating the fiscal emergency by the passage of A.B. 1. For the reasons discussed above, determination of the constitutionality of the Governor's

actions is of monumental importance, and this matter should be promptly and conclusively decided by this Court.

Dated: August 12, 2009

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this petition consists of 9,320 words as counted by the Microsoft Word program used to generate the Petition.

Dated: August 12, 2009

Respectfully submitted,

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