



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF OCTOBER 25, 2004**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#04-122 *Bighorn-Desert View Water Agency v. Beringson*, S127535. (E033515; 120 Cal.App.4th 890; San Bernardino County Superior Court; SCV 097005.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does the state Constitution permit water rates to be reduced by voter initiative? (See Cal. Const., arts. XIII C, § 3, XIII D, § 6, subd. (c).)

#04-123 *People v. Partida*, S127505. (B161356; 121 Cal.App.4th 202; Los Angeles County Superior Court; TA061403.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Did defendant forfeit his federal due process claim on appeal by failing to object on that ground in the trial court? (2) Does the forfeiture exception articulated in *People v. Yeoman* (2003) 31 Cal.4th 93, 117, apply when the appellate claim is otherwise governed by Evidence Code section 353, subdivision (a)? (3) Did the admission of testimony from a gang expert violate either Evidence Code section 352 or federal due process?

#04-124 *S. B. Beach Properties v. Berti*, S127513. (B168950; 120 Cal.App.4th 1001; Santa Barbara County Superior Court; 01110911.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Does a trial court have jurisdiction to consider a motion for attorney

(over)

fees under Code of Civil Procedure section 425.16 if the action was voluntarily dismissed before the special motion to strike was filed?

#04-125 *People v. Velez*, S128081. (F042668; Fresno County Superior Court; unpublished opinion; 658120-1.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Lopez*, S119294 (#03-136), which presents the following issue: Is a defendant who is convicted of first degree murder with a finding that the crime was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22 subject to an enhancement of 10 years under section 186.22, subdivision (b)(1)(C) or instead to a minimum parole eligibility term of 15 years under section 186.22, subdivision (b)(5), which applies where the defendant is convicted of “a felony punishable by imprisonment in the state prison for life”?

## **DISPOSITION**

#03-101 *People v. Gilmore*, S116235, was dismissed.

## **STATUS**

#04-110 *People v. Adams*, S127373. In this case in which review was previously granted, the court ordered further action deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. \_\_\_, 14 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

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