



**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SACRAMENTO SESSION  
NOVEMBER 1 and 2, 2016**

**FIRST AMENDED**

The following cases are placed upon the calendar of the Supreme Court for oral argument at its courtroom in the Stanley Mosk Library and Courts Building, 914 Capitol Mall, Sacramento, California, on November 1 and 2, 2016.

**TUESDAY, NOVEMBER 1, 2016—1:30 P.M.**

- (1) Association of California Insurance Companies et al. v. Dave Jones, as Commissioner, etc., S226529
- (2) People v. Sivongxay (Vaene) [Automatic Appeal], S078895  
*(To be called and continued to the December 2016 calendar)*
- (3) People v. Winbush (Grayland) [Automatic Appeal], S117489
- (4) People v. Corpening (Tory J.), S228258

**WEDNESDAY, NOVEMBER 2, 2016—9:00 A.M.**

- (5) City of San Jose et al. v. Superior Court of Santa Clara County (Ted Smith, Real Party in Interest), S218066  
*(To be called and continued to the December 2016 calendar)*
- (6) Barry (Patricia J.) v. State Bar of California, S214058
- (7) Kabran (Berthe Felicite) v. Sharp Memorial Hospital, S227393
- (8) People v. White (Billy Charles), S228049

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CANTIL-SAKAUYE  
*Chief Justice*

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA  
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The following case summaries are issued to inform the public about cases that the California Supreme Court has scheduled for oral argument and of their general subject matter. In most instances, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**TUESDAY, NOVEMBER 1, 2016—1:30 P.M.**

**(1) *Association of California Insurance Companies et al. v. Dave Jones, as Commissioner, etc., S226529***

#15-119 Association of California Insurance Companies et al. v. Dave Jones, as Commissioner, etc., S226529. (B248622; 235 Cal.App.4th 1009; Superior Court of Los Angeles County; BC463124.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does the Unfair Insurance Practices Act (Ins. Code, § 790, et seq.) give the Insurance Commissioner authority to promulgate a regulation that sets forth requirements for communicating replacement value and states that noncompliance with the regulation constitutes a misleading statement, and therefore an unfair trade practice, for purposes of the act? (2) Does the Insurance Commissioner have the statutory authority to promulgate a regulation specifying that the communication of a replacement cost estimate that omits one or more of the components in subdivisions (a)-(e) of section 2695.183 of title 10 of the California Code of Regulations is a “misleading” statement with respect to the business of insurance? (Cal. Code of Regs., tit. 10, § 2695.183, subd. (j).)

**(2) *People v. Sivongxxay (Vaene), S078895* [Automatic Appeal] *(To be called and continued to the December 2016 calendar)***

This matter is an automatic appeal from a judgment of death.

(3) ***People v. Winbush (Grayland), S117489*** [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(4) ***People v. Corpening (Tory J.), S228258***

#15-170 *People v. Corpening, S228258*. (D064986; nonpublished opinion; San Diego County Superior Court; SCS258343.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Did Penal Code section 654 bar the imposition of sentence for both robbery and carjacking when the two crimes were accomplished by a single act?

**WEDNESDAY, NOVEMBER 2, 2016—9:00 A.M.**

(5) ***City of San Jose et al. v. Superior Court of Santa Clara County (Ted Smith, Real Party in Interest), S218066 (To be called and continued to the December 2016 calendar)***

#14-62 *City of San Jose et al. v. Superior Court of Santa Clara County (Ted Smith, Real Party in Interest), S218066*. (H039498; 225 Cal.App.4th 75, Superior Court of Santa Clara County; CV150427.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are written communications pertaining to city business, including email and text messages, which (a) are sent or received by public officials and employees on their private electronic devices using their private accounts, (b) are not stored on city servers, and (c) are not directly accessible by the city, “public records” within the meaning of the California Public Records Act?

(6) ***Barry (Patricia J.) v. State Bar of California, S214058***

#13-101 *Barry (Patricia J.) v. State Bar of California, S214058*. (B242054; 218 Cal.App.4th 1435; Superior Court of Los Angeles County; BC452239.) Petition for review after the Court of Appeal reversed an order awarding attorney fees in a civil action. This case presents the following issue: If the trial court grants a special motion to strike under Code of Civil Procedure section 425.16 on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute, does the

court have the authority to award the prevailing party the attorney fees mandated by section 425.16, subdivision (c)?

**(7) *Kabran (Berthe Felicite) v. Sharp Memorial Hospital, S227393***

#15-135 Kabran (Berthe Felicite) v. Sharp Memorial Hospital, S227393. (D064133; 236 Cal.App.4th 1294; Superior Court of San Diego County; 37-2010-00083678-CU-PO-CTL.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. This case presents the following issue: Are the time constraints in California Code of Civil Procedure section 659a jurisdictional such that a court cannot consider late-filed documents?

**(8) *People v. White (Billy Charles), S228049***

#15-173 People v. White (Billy Charles), S228049. (D060969; 237 Cal.App.4th 1087, Superior Court of San Diego County; SCD228290.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant properly convicted of both rape of an intoxicated person and rape of an unconscious person for a single act of sexual intercourse?