

SUPREME COURT COPY

Court of Appeal, Third Appellate District – Nos. C061011, C061009, C061020
S183411

IN THE SUPREME COURT OF CALIFORNIA

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,
Plaintiffs and Appellants,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al., Defendants and
Respondents;

JOHN CHIANG, as State Controller, etc., Defendant and Appellant.

CALIFORNIA ATTORNEYS, etc., Plaintiff and Appellant

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al., Defendants and
Respondents;

JOHN CHIANG, as State Controller, etc., Defendant and Appellant.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, Plaintiff and
Appellant,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al., Defendants and
Respondents;

JOHN CHIANG, as State Controller, etc., Defendant and Appellant.

**STATE RESPONDENTS' ANSWER BRIEF ON THE MERITS TO
BRIEF OF AMICUS CURIAE CALIFORNIA CONSTITUTIONAL
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Respondents Governor Arnold Schwarzenegger and the Department of Personnel Administration (“State Respondents”) submit this Answer Brief in response to the amicus curiae brief filed by Secretary of State Debra Bowen, Attorney General Edmund G. Brown, Jr., State Treasurer Bill Lockyer, Superintendent of Public Instruction Jack O’Connell, and the State Board of Equalization (collectively, the “constitutional officers”).¹

I.

ARGUMENT

A. The Action Involving The Constitutional Officers, Schwarzenegger, et al. v. Chiang, et al., Sacramento County Superior Court Case No. 34-2009-80000158-CU-WM-GDS, Third District Court of Appeal Case No. C061648, Remains Pending In The Third District Court Of Appeal.

Following the Sacramento County Superior Court’s January 30, 2009 ruling in favor of State Respondents in these consolidated actions, State Controller John Chiang made public comments to the effect that he would not reduce the wages of employees working for the constitutional officers to account for furloughs because it was his position the Governor did not have the authority to furlough those employees by Executive Order. (Petition for Writ of Mandate (CCP § 1085); Complaint for Injunctive and Declaratory Relief, *Schwarzenegger, et al. v. Chiang, et al.*, Sacramento

¹ By statute, the Secretary of State, Attorney General, State Treasurer, Superintendent of Public Instruction, and members of the Board of Equalization are defined as “civil executive officers.” (Gov. Code § 1001.) To avoid confusion, however, State Respondents will adopt the nomenclature used in the amicus curiae brief and refer to these parties as “constitutional officers.”

County Superior Court Case No. 34-2009-80000158-CU-WM-GDS, Third District Court of Appeal Case No. C061648, Clerk's Transcript, p. 7, ¶ 31.)² As a consequence, State Respondents filed an action in the Sacramento County Superior Court on February 9, 2009 seeking a writ of mandate compelling the Controller to comply with the trial court's January 30, 2009 order. On March 2, 2009, the constitutional officers intervened in that action seeking a declaratory judgment that the trial court's January 30, 2009 final order did not apply to them.

A hearing on the merits was held on March 12, 2009. Following the hearing, the trial court issued its ruling in the matter finding in favor of State Respondents on the ground that the Governor's Executive Order S-16-08, directing two-day-a-month furloughs for state employees, applied to the civil service employees of the Controller and the constitutional officers. Final judgment was entered on April 3, 2009.

The Controller and the constitutional officers timely appealed the Sacramento County Superior Court's judgment to the Third District Court of Appeal. Briefing was complete in that court as of December 9, 2009. The case has not been set for oral argument.

² The appeal in *Schwarzenegger, et al. v. Chiang, et al.*, Sacramento County Superior Court Case No. 34-2009-80000158-CU-WM-GDS, Third District Court of Appeal Case No. C061648 proceeded by way of Clerk's Transcript. Copies of the Petition for Writ of Mandate (CCP § 1085); Complaint for Injunctive and Declaratory Relief and of the entirety of the Clerk's Transcript are available upon request.

The constitutional officers argue in their amicus curiae brief that these consolidated actions “do[] not present the unique questions posed by the Governor’s attempt to compel the officers to furlough their employees.” (Amicus Curiae Br., at p. 6.) Based on these alleged “unique questions,” the constitutional officers ask this Court to “clarify that its decision in the instant matter is not intended to resolve the unique issues still pending in the proceedings in the Third District Court of Appeal.” (*Id.*)

It is premature to address the question of whether this Court’s ruling in these consolidated actions will or will not apply to the allegedly unique issues in the *Schwarzenegger v. Chiang* action. Until such time as this Court issues its ruling in this case, and without taking a position at this time on the constitutional officers’ claim that their action involves unique issues, State Respondents simply note that *Schwarzenegger v. Chiang* remains pending in the Third District Court of Appeal awaiting assignment of oral argument and decision.

B. The Arguments Contained In The Amicus Curiae Brief Regarding the Reduced Worktime Act And The Revised Budget Act of 2008 And Budget Act of 2009 Are Addressed Fully In The Letter Briefs Submitted By The Parties.

In their amicus curiae brief, the constitutional officers set forth their position regarding the questions posed by this Court in its June 9, 2010 Order. The questions posed in that Order regarding (1) the effect, if any, of the Reduced Worktime Act (Gov. Code, §§ 19996.19-19996.29) on the validity of the Governor’s furlough Executive Orders and (2) the effect, if

any, of the revised Budget Act of 2008 (SBX3 2) on the validity of the Executive Orders or the potential remedies in this case, already have been briefed fully by State Respondents, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, Service Employees International Union, Local, 1000, Professional Engineers in California Government, and California Association of Professional Scientists in their letter briefs to this Court. The constitutional officers do not raise any new arguments with respect to these questions and, therefore, State Respondents refer this Court to their previously filed letter briefs of June 23, 2010 and June 30, 2010 for their response to the constitutional officers' arguments on these issues.

II.

CONCLUSION

State Respondents take no position at this time regarding the constitutional officers' claim that *Schwarzenegger v. Chiang* involves unique questions distinct from the issues raised in these consolidated actions. That action remains pending in the Third District Court of Appeal awaiting argument and resolution.

State Respondents refer this Court to their letter briefs of June 23, 2010 and June 30, 2010 for their response to the arguments raised in the

amicus curiae brief relating to the Reduced Worktime Act and the revised
Budget Act of 2008.

Dated: July 13, 2010

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CERTIFICATE OF WORD COUNT

I, Meredith H. Packer, Attorney for Defendants/Respondents GOVERNOR ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION, hereby declare under penalty of perjury that the number of words in State Petitioners' Answer Brief on the Merits to Brief of Amicus Curiae California Constitutional Officers equals 955 words, as per the word count feature in Microsoft Word.

Dated: July 13, 2010

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PROOF OF SERVICE

I, May Marlowe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814-4416. On July 13, 2010, I served the within documents:

State Petitioners' Answer Brief on the Merits to Brief of Amicus Curiae California Constitutional Officers

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

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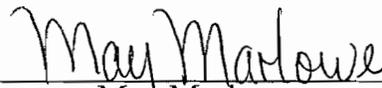
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Executed on July 13, 2010, at Sacramento, California.



May Marlowe