

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

CAMPAIGN FOR QUALITY  
EDUCATION, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA and  
ARNOLD SCHWARZENEGGER,  
GOVERNOR OF THE STATE OF  
CALIFORNIA,

Defendants.

No. RG10-524770

ORDER GRANTING MOTION FOR  
JUDGMENT ON THE PLEADINGS  
IN PART WITHOUT LEAVE TO  
AMEND AND IN PART WITH  
LEAVE TO AMEND

The motion of defendants the State of California and Governor Arnold Schwarzenegger<sup>1</sup> for judgment on the pleadings came on regularly for hearing on December 10, 2010, in Department 17 of this court, the Honorable Steven A. Brick, presiding. The parties were represented by counsel of record.

The motion was heard concurrently with the same defendants' demurrers and motion to strike in the related (but not consolidated) case of *Robles-Wong v.*

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<sup>1</sup> Between the hearing of this matter and the issuance of this order, Governor Schwarzenegger's term expired and Governor Edmund G. Brown, Jr. was inaugurated. The court refers to the pleadings as they currently stand.

*State of California*, Alameda County Superior Court case no. RG10-515768. A copy of the Court's separate ruling on those matters ("the *Robles-Wong* order") is attached hereto as Exhibit A.

The Court has considered the papers filed in connection with the motion, as well as the arguments presented at the hearing and, good cause appearing, HEREBY ORDERS that the motion for judgment on the pleadings is GRANTED WITHOUT LEAVE TO AMEND IN PART AND WITH LEAVE TO AMEND IN PART. The reasons follow.

**Preliminary Observations**

Plaintiffs are five nonprofit associations, 18 minor students in the California public schools, and three adult taxpayers and homeowners (at least two of whom are also parents of students). The operative pleading in this action is their First Amended Complaint, filed August 4, 2010. Plaintiffs allege three causes of action:

1. Failure of the school funding system to provide children with an opportunity to obtain a meaningful education in violation of the California Constitution, Article IX, sections 1, 5, and 6; and Article XVI, section 8(a);
2. Violation of the equal protection clauses of the California Constitution, Article I, sections 7(a) and (b); Article IV, section 16(a); and Article XVI, section 8(a); and
3. Unlawful expenditure of public funds pursuant to Code of Civil Procedure section 526, subdivision (a).

Plaintiffs seek declaratory and injunctive relief as well as reasonable attorneys' fees and expenses pursuant to section 1021.5 of the Code of Civil Procedure.

Defendants challenge the First Amended Complaint on many grounds, which will be discussed in the sections which follow.

### **Threshold Issues**

For the reasons set forth in the *Robles-Wong* order at pp. 4-7, the Court rejects defendants' arguments that they are entitled to judgment on the pleadings on the grounds that plaintiffs' claims are nonjusticiable or that such adjudication would violate the separation of powers doctrine, that plaintiffs lack standing, and that Plaintiffs have failed to name the proper parties. However, because the Court grants plaintiffs leave to amend in any event as indicated below, plaintiffs are also granted leave to amend, at their option, to include further allegations regarding their standing, to substitute the new governor as a defendant in place of the former governor, and to include additional defendants.

With respect to defendants' subvention argument (that some or all of plaintiffs' claims are barred by Article XIII B, section 6 of the California Constitution), the motion is GRANTED WITH LEAVE TO AMEND to allege, if possible, one or more causes of action that are not so barred. (See the *Robles-Wong* order at pp. 7-8.)

### **First Cause of Action: California Constitution, Article IX, sections 1, 5, and 6; and Article XVI, section 8(a)**

One difference between plaintiffs' first cause of action and the *Robles-Wong* plaintiffs' claims pursuant to the education clauses of the California Constitution is that the former includes a citation to article IX, section 6. Section 6

requires, *inter alia*, that teachers be paid at least \$2,400 per year; and that the State School Fund provide at least \$120 per pupil, and at least \$2,400 total, annually to each school district. This section does not provide a legal basis for plaintiffs' first cause of action.

Plaintiffs have not cited legal authority to the contrary. They do argue (in their opposition brief at p. 18) that the amounts prescribed in section 6 do not establish a ceiling that would bar their first cause of action. It is not necessary to resolve the point. For the reasons set forth in the *Robles-Wong* order at pp. 8-15, the Court cannot interpret sections 1 and 5 of article IX, or section 8(a) of article XVI, as supporting plaintiffs' claims. Therefore, the motion for judgment on the pleadings with respect to the first cause of action is GRANTED WITHOUT LEAVE TO AMEND.

**Second Cause of Action: Equal Protection**

The motion for judgment on the pleadings with respect to the second cause of action is GRANTED WITH LEAVE TO AMEND to allege, if possible, all elements of a cognizable claim for violation of the equal protection clauses of the California Constitution. The Court notes that plaintiffs have alleged, in conclusory fashion, that at least some of them have suffered harm resulting from policies and practices that distribute educational funding or other resources unequally to, or otherwise create unequal educational opportunity for, equally situated school districts, persons, or other identifiable groups. It would benefit the Court if any equal protection claim were supported by further allegations regarding the nature

of the unequal policies and practices. (See also the *Robles-Wong* order at pp. 15-25 and especially fn. 6, quoting *Serrano v. Priest* (1971) 5 Cal.3d 584, 590, fn. 1.)

**Third Cause of Action: Unlawful Expenditure of Public Funds**

The motion for judgment on the pleadings with respect to the third cause of action is GRANTED WITH LEAVE TO AMEND to allege, if possible, all elements of a cognizable claim pursuant to Code of Civil Procedure section 526, subdivision (a). The Court notes that plaintiffs have alleged that defendants' educational expenditures are unlawful because they violate the equal protection guarantee, and because they are wasteful. To the extent any amended pleading includes the latter claim, it shall be supported by allegations regarding the nature of the wasteful spending.

**Requests for Judicial Notice**

All parties' requests for judicial notice are GRANTED. The Court notes, however, that "although courts may notice official acts and public records, we do not take judicial notice of the truth of all matters stated therein. The taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom." (*People v. Castillo* (2010) 49 Cal.4th 145, 157 [internal citations and quotation marks omitted].)

## **Conclusion**

Any amended complaint shall be filed and served on or before February 14, 2011. In preparing any amended pleading, plaintiffs are advised to consider *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 217-218 [64-page complaint strains the reasonable limit of the length of a complaint].

IT IS SO ORDERED.

Date: January 14, 2011

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Steven A. Brick  
Judge of the Superior Court