

SUMMARY OF COURT HEARING HELD ON AUGUST 30, 2011 FRESNO SUPERIOR COURT

Judge Debra Kazanjian heard oral arguments August 30 in Fresno Superior Court on the challenge to AB 99. Attorneys from Orange, Fresno, and LA counties presented on behalf of the plaintiffs. Two attorneys from the AG's office represented the state, only one of whom spoke. (This description of the hearing highlights the arguments of the plaintiffs and the state. For a full understanding of their points, please refer to the written briefs submitted to the court and posted on the Association's website.)

PRESENTATION BY THE PLAINTIFFS

Attorneys representing the plaintiffs explained that their primary arguments revolve around whether AB 99 is in furtherance of Prop 10 and consistent with its purposes. They contended that the court must determine the intent of the voters by looking at the whole of Prop 10, including its purposes and how the voters intended those purposes to be met.

Following is a summary of the main arguments articulated by the plaintiffs' attorneys.

Intent of the voters as demonstrated by the language of Prop 10

- Voters intended the statutory structure of Prop 10 to bypass the Legislature and the state budget process. Tobacco tax revenues intentionally go directly to the Children and Families Trust Funds, without Legislative involvement.
- Voters intended the emphasis on local decision-making, local flexibility, and local administration by county commissions, and intended funding decisions to be made in accordance with locally-created strategic plans.
- Voters intended the 80% of revenues that go to county trust funds to be used differently by different counties, based on local decision-making, to serve the children in that county.
- Voters intended unspent money to stay in the county trust fund to be used in subsequent years according to local decision-making.
- Voters intended the Legislature to be permitted to amend the statute with a 2/3 vote, but only if the amendment furthers the act and is consistent with its purposes.

Inconsistency of AB 99 with Prop 10

The attorneys stipulated that AB 99 was passed by a 2/3 vote, but argued it is not consistent with and in furtherance of Prop 10 because it:

- Shifts decision-making authority from commissions to the Legislature. In 2009 the Legislature wanted to do this, but did it correctly by submitting the issue to the voters in the form of Prop 1D.

- Allows the transfer of funds from trust fund accounts into a non-trust account in the state treasury. Trust fund accounts are treated differently and are much more highly protected than other accounts in the treasury.
- Justifies AB 99 as an urgency bill (meaning it would go into effect upon being signed rather than on Jan. 1 of the following year) on the basis that the funds were needed for essential health and human services when no other funding is available. This implicitly demonstrates the Legislature's intent to use Prop 10 funds for existing levels of service rather to supplement existing levels of service as required in Prop 10.
- Defines the purpose of Prop 10 too broadly, without looking at the specific language of Prop 10. Attorneys cited case precedent for the court to review specific initiative language to determine the intent of the voters.

Constitutional power of voter initiatives

- The provisions of the state constitution related to voter initiatives prohibit the Legislature from re-appropriating Prop 10 revenues without seeking voter approval.
- The normal judicial practice of deferring to the Legislature is not applicable in this case because of the power given to voter initiatives in the state constitution.
- Under the constitution, a vote of the people can bind a future Legislature, even though the Legislature cannot bind a future Legislature

Severability

It is possible that the court could find some sections of AB 99 to be constitutional and some not to be. The plaintiffs' attorneys argued that no section of AB 99 can stand unless it is consistent with Prop 10 and argued that every section is inconsistent. The section that sets up a new fund in the state treasury could hypothetically be constitutional, but it would have no funding source without Prop 10 revenues being transferred to it.

Precedents and standards of review

In presenting their arguments, the attorneys cited case law that created precedent for the court to look at the intent of the voters at the time an initiative was passed as well as subsequent actions by the voters when attempts were made to amend the initiative. Thus they argued the outcome of Prop 1D is relevant for the court's consideration.

They cited precedents where the court determined that the Legislature cannot undermine the fundamental purpose of an initiative simply by declaring amendments to be consistent with it and cannot undermine specific rules in an initiative, even when the amendment is consistent with the purpose of the initiative.

Impact on state commission

Although most of the plaintiffs' discussion focused on the county commissions, attorneys did argue it is unconstitutional to transfer funds from the state trust fund. They said it is meaningless that AB 99 requires the funds to be transferred "upon approval of the state commission" because the very next sentence says the state commission "shall ensure these funds are available for the purposes described in this section."

PRESENTATION BY THE STATE

The presentation by the AG's office was much shorter, with the attorney stating that he was intentionally not repeating all the arguments presented in the AG's written brief in deference to the court's tight schedule.

Following is a summary of the main arguments articulated by the state's attorney.

AB 99's consistency with Prop 10

The state's attorney argued that AB 99 is, in fact, consistent with Prop 10 because:

- It dedicates the revenue to health and human services, which is a purpose of Prop 10
- It dedicates the revenues to children ages 0 - 5
- It ensures children in all counties will receive services essential to their health and well-being

Non-supplantation

- Because no Prop 10 funds have been included in the state budget, there is no way for the court to presume how a future Legislature will use the revenues and no reason to believe it will use the funds in violation of the provisions of Prop 10.
- It is common for the Legislature to include an urgency clause in a bill so that it will take effect immediately, but the urgency finding stated in AB 99 does not indicate the funds will inevitably be used to supplant state funds.

New fund established by AB 99

The Legislature set up a separate account in AB 99. Even though it is not called a trust fund, its purposes are defined in AB 99, and it would be treated no differently from a trust fund on a practical level. Thus the argument that voters intended the funds to be in a protected trust fund is a non-issue.

Precedents and standards of review

State's attorney cited specific case law related to the determination of whether a legislative amendment to a voter initiative is consistent with the initiative. In the precedent he cited, the appellate court

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concluded that the court shall uphold the validity of the legislative amendment if, by any reasonable construction, it can be said that it furthers the purpose of the initiative.

The attorney differed with the plaintiffs' interpretation of case law they cited and argued that ultimately case law demonstrates that each measure must be reviewed on its own, case-by-case.

He also objected to plaintiffs' citation of Prop 1D because AB 99 is not necessarily the same and it is unclear what voters intended in their vote on 1D.

Severability

The state's attorney argued that each section of AB 99 must be analyzed on its own, both in regard to its specific language and its function.

- Even if the court finds that county trust funds cannot be transferred to the state, that prohibition would not apply to state commission trust funds. He argued that section of the bill includes language requiring the commission's approval, and noted that the commission itself is the product of appointments by the Governor and the Legislature.
- The section that establishes the new state fund in the treasury is not even an amendment to Prop 10 and thus could stand on its own.

QUESTIONS FROM THE JUDGE

Judge Kazanjian directed her only questions to the state's attorney.

Following is a summary of the Q and A

- Q: What is the thinking about where the money will go?
A: It is not earmarked.
- Q: What are the options?
A: It has to be health or human services, which could mean direct health care. The Legislature will determine in a future budget how it will be used.
- Q: Will the county ever see the money again?
A: It will be spent statewide on programs consistent with Prop 10.
- Q: Why bother to craft a law with local control if it can be undone with a bill that takes local control away?
A: That is a different question; the real question is how to determine the purpose of Prop 10. The voters intended a system that could be changed. Nothing in Prop 10 requires a county to spend its money and nothing says that all children will benefit.

Judge Kazanjian said her written decision is not likely to be issued before 90 days, given the limited resources of the court.

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