

DAVID L. LLEWELLYN, JR.
Attorney at Law, SBN 71706
Llewellyn Spann
5530 Birdcage Street, Suite 210
Citrus Heights, CA 95610
916.966-9036; 916.966-9033 fax

Attorneys for Petitioner, California Family
Bioethics Council, LLC

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT

California Family Bioethics	)	Case no.
Council, LLC,)	
	)	Alameda County Superior
	)	Court no. HG05206766
Petitioner,)	
	)	PETITION FOR WRIT OF
vs.	)	MANDATE; REQUEST FOR
	)	TEMPORARY STAY;
Superior Court of the State of	)	MEMORANDUM OF POINTS
California for the County of	)	AND AUTHORITIES;
Alameda,	)	DECLARATIONS
)	
Respondent.)	
)	
California Institute for)	
Regenerative Medicine, <i>etc.</i> ,)	
<i>et al.</i>,	)	Alameda County Superior
	)	Court, the Honorable Bonnie
Real Parties in Interest.	)	Lewman Sabraw, Judge
_____)	

 Petitioner, California Family Bioethics Council, LLC, petitions
this Court for a writ of mandate directed to respondent Superior
Court of the State of California for the County of Alameda and by this

verified petition alleges:

1. Petitioner is the plaintiff in an action which has been ordered to be transferred to the respondent Court and to be consolidated with a pending action in the respondent Court entitled *People's Advocate vs. Independent Citizen's Oversight Committee*, Alameda County Superior Court case number HG05206766 ("Alameda action"). The action in which Petitioner is plaintiff which has been ordered to be consolidated and transferred to respondent Court is *California Family Bioethics Council, LLC vs. California Institute for Regenerative Medicine*, Sacramento County Superior Court case number 05AS02927 ("Sacramento action"). As Plaintiff in the action which has been subjected to the improper change of venue which is the subject of this petition, Petitioner is an entity beneficially interested in the outcome of this petition.

2. Respondent is the Superior Court of the State of California for the County of Alameda which at all times mentioned in this petition has exercised judicial functions in connection with the cause of action described herein.

3. The real parties in interest in this petition are the defendants in the Sacramento action, who are identified as follows: California Institute for Regenerative Medicine ("CIRM"); the State of California;

the California Stem Cell Research and Cures Finance Committee (Doe 1); and All Persons Interested in the Matter of the Legality of Proposition 71 and Validity of Actions, Bonds and Financing of CIRM (as required for a validation action); the plaintiffs in the Alameda action, who are identified as follows: People's Advocate and National Tax Limitation Foundation; and the defendants in the Alameda action, who are identified as follows: Independent Citizen's Oversight Committee ("ICOC"); Robert N. Klein, in his official capacities as Chairperson and Interim President of the Independent Citizen's Oversight Committee; Arnold Schwarzenegger, in his official capacity as Governor of the State of California; Cruz Bustamante, in his official capacity as Lieutenant Governor of the State of California; Phil Angelides, in his official capacity as Treasurer of the State of California; and Steve Westly, in his official capacity as Controller of the State of California.

4. On April 6, 2005, real parties in interest People's Advocate and National Tax Limitation Foundation filed a taxpayer complaint in the respondent Court. A true and correct copy of the complaint in the Alameda action is attached hereto as Exhibit 1. The Alameda complaint is a taxpayer action for declaratory and injunctive relief to enjoin the existence and operation of the ICOC.

5. On July 6, 2005, Petitioner filed a validation action complaint in the Superior Court of Sacramento County. A true and correct copy of the Amended Complaint in the Sacramento action is attached hereto as Exhibit 2. The Sacramento action is a validation action to enjoin the issuance of bonds and other financing by or for the benefit of the CIRM.

6. On July 13, 2005, the California Attorney General on behalf of the defendants in the Alameda action and the Sacramento action (real parties in interest) filed a Motion to Transfer venue of the Sacramento action and to consolidate the Alameda and Sacramento actions in the respondent Court under Code of Civil Procedure §403 on the grounds that (a) a validation action can be consolidated with a non-validation action without prejudice to the parties and (b) after consolidation of the actions into one validation action venue still should be transferred from Sacramento County to the respondent Court, despite the venue mandate of Government Code §17700(c) which states that “For the purposes of Section 860 of the Code of Civil Procedure [validation actions], any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.” True and correct copies of Defendants’ Motion to Transfer and the proposed order are attached hereto as Exhibit 3.

(Exhibit 3 contains attachments A-L filed with the motion and identified in the motion. Exhibit 3-F is the same as Exhibit 1 hereto, the Alameda action complaint. Exhibit 3-H is the original complaint filed in the Sacramento action on July 6, which was replaced on July 8 by the Amended Complaint attached as Exhibit 2 to this petition.)

On July 14 the Attorney General served and filed a Supplemental Declaration in support of the motion to transfer, a true and correct copy of which is attached hereto as Exhibit 4. (Exhibit 4 includes an attachment, Exhibit 4-A, which is a copy of the Amended Complaint in the Sacramento action, which also is attached as Exhibit 2 to this petition.)

7. On July 21, Petitioner herein filed an Opposition to Motion to Transfer, a true and correct copy of which is attached hereto as Exhibit 5. The grounds of the opposition included *inter alia* points and authorities that (1) a non-validation action cannot be consolidated with a validation action and (2) the proper statutory venue for a validation action is in Sacramento County, pursuant to Code of Civil Procedure §17700.

8. On July 22, the plaintiffs in the Alameda action (real parties in interest herein) served and filed Plaintiffs' Opposition to Defendants' Motion for Transfer with a proposed order denying the

motion. True and correct copies of this opposition and proposed order are attached hereto as Exhibit 6.

9. On July 28, the Attorney General served and filed a Defendants' Reply Brief in Support of Motion for Transfer, a true and correct copy of which is attached hereto as Exhibit 7, including attachments 7-A and 7-B (procedural letters).

10. On July 29 Petitioner served and filed a Supplemental Opposition to Motion to Transfer, a true and correct copy of which is attached hereto as Exhibit 8.

11. On August 3, the respondent Court issued a tentative ruling, a true and correct copy of which is attached hereto as Exhibit 9.

12. The Motion for Transfer of venue and to consolidate the actions came on regularly for hearing on August 4, 2005, before the Honorable Bonnie Lewman Sabraw, Judge, in the respondent Court. Argument of counsel reviewed the issues raised and briefed in the supporting and opposition papers filed with the Court. (The only new issue discussed in oral argument does not pertain to this petition. The parties jointly requested, and the Court granted, that the publication of the validation action summons, required by Code of Civil Procedure §§861-863, as ordered by the Sacramento County

Superior Court, be permitted to continue to completion on August 31 and that it would satisfy the publication requirements of the Alameda action, which was not filed as a validation action but which was now, by order of the respondent Court, to be treated as a validation action and consolidated with the Sacramento validation action, albeit in the Alameda Court.)

13. Later on August 4, after the hearing, the Court issued an Order Granting Defendants' Motion To Transfer, which is the subject of this petition. A true and correct copy of the Order is attached hereto as Exhibit 10.

14. On August 15, Petitioner filed a Request for Reconsideration, to bring to the attention of the Court that the effect of the consolidation order was to create a single validation action, and that there was no longer any justification to retain venue in Alameda County, since Government Code §17700 establishes Sacramento County as the proper venue for validation actions involving state agencies. A true and correct copy of the Request for Reconsideration is attached hereto as Exhibit 11.

15. On August 22, the respondent Court issued a second order entitled "Order Granting Defendants' Motion to Transfer" denying Petitioner's request for reconsideration. A true and correct

copy of this Order is attached hereto as Exhibit 12.

16. The orders of the Respondent Court (a) require the Alameda taxpayer action to be treated as a validation action, (b) consolidate the Alameda and Sacramento actions into one validation action and (3) transfer the resulting validation action to the respondent Court in Alameda County. These rulings are unprecedented and erroneous as a matter of law (a) because they consolidate a validation action with a non-validation action and (b) because they transfer venue of a validation action involving a state agency out of the Superior Court of Sacramento County, with the result that a validation action that was filed properly in Sacramento County is now set to be heard in Alameda County, despite Government Code §17700 which mandates that validation actions are to be litigated in Sacramento County.

17. Petitioner challenges the ruling of the Court to transfer venue of the validation action out of Sacramento County and into Alameda County. Petitioner collaterally challenges the ruling of the respondent Court to consolidate the actions only as it bears on the issue of venue, although the consolidation order is unprecedented and appears to be erroneous in that it prejudices the rights of the real parties in interest, the plaintiffs in the Alameda action, by placing

their taxpayer action under the special statutory constraints applicable only to validation actions, Code of Civil Procedure §860-§870.5. If the real parties in interest whose rights are prejudiced by the consolidation ruling do not object, Petitioner does not here urge reversal of the portion of the Order consolidating the cases.

18. The Orders of August 4 and August 22, Exhibits 10 and 12 hereto, transferring venue of the pending action to the respondent Court in Alameda County are erroneous and invalid. The proper county for the trial of the action is Sacramento County, on the grounds alleged at paragraph 7 of the Amended Complaint, that is: (a) pursuant to Code of Civil Procedure §393, because the actions of the public officers, including the Department of the Treasury, the office of the Controller and related officials and agencies of the State of California to authorize and issue bonds and other forms of interim and permanent financing for the CIRM are actions which have been performed and are to be performed in whole or in part in Sacramento; (b) pursuant to Code of Civil Procedure §860, §863 and Government Code §17700, because validation actions are to be heard in Sacramento County; and (c) pursuant to Government Code §955 and Code of Civil Procedure §401, because the plaintiff may elect to file an action against the state in any city in which the

Attorney General has offices, including Sacramento. The specific venue law applicable to validation actions, and therefore the controlling law, is Government Code §17700 which sets venue in Sacramento County, where the petitioner's action is now filed and where it should remain.

19. Unless corrected by this Court the consolidated validation action will be transferred to and tried in Alameda County, contrary to law. As alleged, the order transferring venue of the validation action away from Sacramento County is contrary to law and constitutes an abuse of judicial discretion.

20. A petition for writ of mandate or prohibition is the proper procedure for Petitioner to seek review of these Orders of the respondent Court. This petition is presented pursuant to Code of Civil Procedure §400 which provides in part that:

When an order is made by the superior court granting or denying a motion to change the place of trial, the party aggrieved by the order may . . . petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court.

Petitioner has no plain, speedy or adequate remedy other than this petition for writ of mandate.

21. Petitioner requests this reviewing Court to issue a stay of proceedings in the respondent Court pending review of this petition.

The transfer Orders will take effect on September 1, following completion of the time for filing pleadings pursuant to the published summons in the Sacramento action, and a Case Management Conference is scheduled for September 15 in the respondent Court.

WHEREFORE, Petitioner California Family Bioethics Council, LLC, requests:

1. That an alternative writ of mandate be issued directing the respondent Superior Court of the State of California for the County of Alameda to vacate its order transferring venue to Alameda County and to order transfer of venue of the consolidated validation action to Sacramento County, or to show cause before this Court, at a time and place to be specified by this Court, why it has not done so and why a peremptory writ should not issue;

2. That pending review and orders of this Court all further proceedings in respondent Court be stayed;

3. That a writ of mandate be issued directing respondent Court to issue an order transferring venue for the pending action to Sacramento County; and

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4. For any additional relief the Court deems appropriate.

August 24, 2005

David L. Llewellyn, Jr.
Llewellyn Spann
Attorneys for Petitioner

VERIFICATION

I, David L. Llewellyn, Jr., declare:

I am the attorney and an authorized agent of the Petitioner in the above-entitled action, whose officers and offices are not in the county in which I have my law office. I make this verification pursuant to Code of Civil Procedure §446, as facts within the knowledge of the attorney for the Petitioner. I have read the foregoing Petition for Writ of Mandate, and its contents are true to the best of my knowledge and belief, and those matters which are presented on information or belief I believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

August 24, 2005

David L. Llewellyn, Jr.

POINTS AND AUTHORITIES

Forcing a private plaintiff to drive two-three hours each way to court, from Citrus Heights in Sacramento County, to Hayward in Alameda County, to try a validation action which, by law, has its venue set in Sacramento County is unfair. The Attorney General has offices, its primary state office in fact, in Sacramento County, within walking distance of the Sacramento County Superior Court where the validation action in this proceeding was filed, and easily can represent and defend the state defendants in this validation action in Sacramento. Moreover, having consolidated the two actions in this proceeding into a single validation action, there can no longer be any justification for refusing to set venue in Sacramento County since state law, Government Code §17700, sets the venue for all validation actions involving state officials and agencies -- such as the defendants in this action -- in Sacramento County.

The original taxpayer action filed in this proceeding was filed in Alameda County because that was the proper location under the then-applicable venue statutes, but now that the taxpayer action has by order of the respondent Court been converted into a validation action (Orders, Exhibit 10, 12), the original venue statutes no longer apply and the venue statute that governs validation actions involving

state officials and agencies governs, and that law sets venue in Sacramento County.

The State despises this lawsuit and scorns it in its pleadings. So be it. But the dislike of the State for the challenges this lawsuit requires the State to answer cannot justify the State in taking advantage of a private plaintiff, the Petitioner, by making the private plaintiff bear the excessive costs in time and travel to try this case for the convenience of the State and the Attorney General in a county and a court over 100 miles away from the offices of plaintiff's counsel and from the courts of Sacramento County where validation actions are supposed to be heard.

I. A PETITION FOR WRIT OF MANDATE IS THE PROPER PROCEDURE TO REVIEW ORDERS CONCERNING VENUE.

Venue rulings are to be reviewed by petitions for writ of mandate or prohibition, pursuant to Code of Civil Procedure §400:

When an order is made by the superior court granting or denying a motion to change the place of trial, the party aggrieved by the order may . . . petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court.

Hennigan v. Boren (1966) 243 Cal.App.2d 810, 52 Cal.Rptr. 748 (mandate); *Franchise Tax Board v. Municipal Court* (1975) 45 Cal.App.3d 377, 119 Cal.Rptr. 552 (mandate); *Marin Community*

College District v. Superior Court (1977) 72 Cal.App.3d 719, 140 Cal.Rptr. 310 (mandate); *Van Zanten v. Superior Court* (1963) 214 Cal.App.2d 510, 29 Cal.Rptr. 625 (prohibition).

II. VENUE FOR A VALIDATION ACTION IS DESIGNATED BY STATUTE IN SACRAMENTO COUNTY.

Having ordered that the Sacramento validation action and the Alameda taxpayer action must be consolidated into one validation action (Orders, Exhibits 10, 12), the respondent Court erred by not returning the validation action to Sacramento County Superior Court, which is the proper venue, by statute, for validation actions involving state agencies.

A special venue statute provides that venue for validation actions is to be in Sacramento County. Government Code §17700:

(a) The state or any state board, department, agency, or authority . . . may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. . . .

(c) For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.

CCP §863 requires that a validation action brought by an “interested person,” such as the Sacramento action herein, must be brought “in the court specified by Section 860,” and Government

Code §17700 requires that “For purposes of Section 860 of the Code of Civil Procedure” any validation action involving a state agency “shall be brought in the Superior Court of the County of Sacramento.”

Having ordered consolidation of the actions, the law now requires that the validation action be returned to Sacramento County Superior Court.

Legislative history. The legislative history of Government Code §17700 indicates that the Legislature intended to “require” venue for validation actions involving state agencies or authorities to be Sacramento County. The language of the Legislative Counsel for SB2701 (1994) states that Government Code §17700 was added to “*require* that any action initiated pursuant to this provision be brought in the Superior Court of Sacramento County” (emphasis added).

AN ACT to amend Section 870 of the Code of Civil Procedure, and to add Part 8 (commencing with *Section 17700*) to Division 4 of Title 2 of the *Government Code*, relating to validating proceedings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994.]
[Filed with Secretary of State July 21, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2107, Roberti. Validating proceedings: state authorization and appeals.

(1) Existing law authorizes a local agency to bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to specified procedures.

This bill would authorize the state or any state board, department, agency, or authority, including without limitation, the State Public Works Board, to bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to specified procedures. *This bill would require that any action initiated pursuant to this provision be brought in the Superior Court of Sacramento County.* * * *

1994 Cal. Legis. Serv. Ch. 242 (S.B. 2107) (WEST), emphasis added.

Government Code §17700 was amended in 2004, effective January 1, 2005, to permit state agency validation actions relating to local agency financing, and the statute as re-enacted again specifically requires that venue for state agency validation actions is to be in Sacramento County. Government Code §17700, amended by Stats.2004, c. 470 (A.B.969), § 2.

Ch. 470, s 2

SEC. 2. Section 17700 of the Government Code is amended to read:

<< CA GOVT s 17700 >>

17700. <<+(a)+>> The state or any state board, department, agency, or authority, including<<-* * *->><<+, but not limited to+>>, the State Public Works Board, may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.<<-* * *->>

<<+(b)(1) Any state board, department, agency, or authority that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of one

or more local agencies, may bring an action to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of those local agencies to be purchased by, or used to evidence or secure loans by, the state board, department, agency, or authority, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.+>>

<<+(2) For purposes of this subdivision, "local agency" shall have the same meaning as set forth in Section 53510.+>>

<<+(c) *For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.*+>>

Emphasis added.

Venue of reported state agency validation actions. Since the validation action statutes were amended in 1994 by the addition of Government Code §17700 to permit validation actions by and against state agencies, the venue of the only reported validation action involving a state agency was Sacramento County. *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 100 Cal.Rptr.2d 173.

III. IF THE ALTERNATIVE VENUE PROVISIONS OF CODE OF CIVIL PROCEDURE §401 APPLY TO STATE AGENCY VALIDATION ACTIONS GOVERNED BY GOVERNMENT CODE §17700, THE VENUE OPTIONS ARE INTENDED NOT FOR THE BENEFIT OF THE ATTORNEY GENERAL BUT FOR THE BENEFIT OF PRIVATE PARTY LITIGANTS.

Code of Civil Procedure §401 provides alternative venue options for plaintiffs bringing actions against the state or a state

agency when venue is set by statute in Sacramento County.

Whether the venue designation of Sacramento County for state agency validation actions under Government Code §17700 is intended to be subject to the alternative venue options of Code of Civil Procedure §401 appears to be a matter of first impression. No reported case addresses this issue.

But (contrary to arguments raised by the Attorney General in the motion to transfer venue) the change of venue ordered in the present action cannot be based upon Code of Civil Procedure §401 because the venue options provided in that statute are for the benefit not of the Attorney General but of private party litigants.

(1) Whenever it is provided by any law of this State that an action or proceeding against the State or a department, institution, board, commission, bureau, officer or other agency thereof shall or may be commenced in, tried in, or removed to the County of Sacramento, the same may be commenced and tried in any city or city and county of this State in which the Attorney General has an office.

(2) Whenever it is provided by any law of this State that the State or a department, institution, board, commission, bureau, officer or other agency thereof shall or may commence an action or proceeding in the County of Sacramento, the same, on motion of the defendants or some of them, shall be removed for trial to the county or city and county in which the Attorney General has an office nearest to the county in which the defendants or some of them reside or have their principal office in this State.

Code of Civil Procedure §401.

Section 1 of §401 applies to actions “against the State” or any state agency and permits private party plaintiffs to choose to file actions in cities where the Attorney General has offices, Los Angeles or San Francisco, rather than in Sacramento. It provides no authority to change venue for the convenience of the Attorney General or the State; on the contrary it is intended to allow plaintiffs to choose their venue.

Section 2 of §401 applies when the State is the plaintiff. When a venue statute provides that “the State . . . shall or may commence an action or proceeding in the County of Sacramento,” §401(2) gives the defendants the right to change venue (“on motion of the defendants”) to cities where the Attorney General has offices, Los Angeles or San Francisco, rather than in Sacramento. When the State is a defendant, as in the present action, §410 provides no authority to change venue for the convenience of the Attorney General or the State.

When §401 has been applied to permit plaintiffs to sue the State outside of Sacramento, the alternative venues where qualifying Attorney General offices are located have been Los Angeles and San Francisco, not Alameda County. “If . . . C.C.P. 401 applies . . . the proper venue is Sacramento or San Francisco or Los Angeles

(cities and counties in which Attorney General currently has an office).“ 3 Witkin, Cal. Proc. 4th (1997) Actions, § 780, p. 965.

The only authority the state Attorney General has to demand change of venue, in certain cases, is to move venue *to Sacramento County*. Government Code §955.

CONCLUSION

The respondent Court did not have to convert the Alameda taxpayer action into a validation action nor to consolidate the Alameda action with the Sacramento validation action (Orders, Exhibits 10, 12), a ruling for which there is no known legal precedent and which prejudices the rights of the parties to the taxpayer action. Perhaps, although it seems doubtful, this comes within the discretion of the Court under Code of Civil Procedure §403. But having consolidated these actions into one validation action the venue law of the state governing validation actions involving state officials and agencies requires that this validation action be returned to Sacramento County, and refusal to do so exceeds the discretion of the respondent Court.

David L. Llewellyn, Jr.
Llewellyn Spann
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

I certify under California Rules of Court, Rules 14(c), that the foregoing Petition, with the points and authorities, contains 4,500 words as calculated by the word processing program in which it was composed.

David L. Llewellyn, Jr.

DECLARATION RE REPORTER'S TRANSCRIPT

I, DAVID L. LLEWELLYN, JR., declare:

The reporter's transcript has not yet been ordered. The ruling denying the request for reconsideration was received by fax on August 23 and all efforts have been turned toward preparing this petition for timely filing. Nor would the reporter's transcript add anything material to the record. The respondent Court issued a detailed Tentative Ruling, Exhibit 9, and the subsequent orders of the Court, Exhibits 10 and 12, follow the Tentative Ruling in all material respects. The oral argument on the motion to transfer discussed matters in the written submissions (with the sole exception of a matter not pertinent to this petition, that is, the ruling of the Court that the publication of the validation action summons in the Sacramento action would be deemed to satisfy the publication

requirements of the Alameda action which was converted into a validation action by the Court's order). Preparation of a reporter's transcript would delay action on the petition, but if this Court issues an alternative writ, the reporter's transcript can then be ordered and submitted to the Court, if that would assist the Court in its review.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Citrus Heights, California, August 25, 2005.

David L. Llewellyn, Jr.

PROOF OF SERVICE

I am over the age of 18 and not a party to this action. I am a resident of or employed in the county where the document(s) described below were presented for overnight delivery. My business address is 5530 Birdcage Street, Suite 210, Citrus Heights, California 95610. I served the document(s) described below on the interested parties in this action by depositing a true and correct copy thereof, enclosed in a sealed envelope, with Federal Express or with the United States Postal Service (USPS) for next day delivery.

Date of deposit: August 26, 2005
Location of deposit: Citrus Heights, California

Description of document(s): Petition for Writ of Mandate; Request for Temporary Stay; Memorandum of Points and Authorities; Declarations

Addressee(s):

Tamar Pachter Attorneys for Defendants
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
415.703-5607

Leslie R. Lopez Attorneys for Defendants
Deputy Attorney General
1300 I Street
Sacramento, CA 94244-2550
916.327-0973

Dana Cody Attorneys for Plaintiff,
Life Legal Defense Foundation Alameda action
7653 Away Way
Citrus Heights, CA 95610
916.727-4396

Robert M. Taylor Attorneys for Plaintiff.
30942 Via Mirador Alameda action
San Juan Capistrano, CA 92675
949.481-6230

Terry L. Thompson
P.O. Box 1346
Alamo, CA 94507
925.855-1507

Attorneys for Plaintiff,
Alameda action

Catherine W. Short
Life Legal Defense Foundation
P.O. Box 1313
Ojai, CA 93024
805.640-1940

Attorneys for Plaintiff,
Alameda action

Alameda County Superior Court
Hayward Hall of Justice, Department 512
The Honorable Bonnie Lewman Sabraw, Judge
24405 Amador Street
Hayward, CA 94544
510.670-6312

Respondent

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Citrus Heights, California, August 26, 2005
