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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

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DAISY TAILFEATHER, LUCY RITORTO,	)	<b>CLASS ACTION</b>
ELIZABETH MENDLEY and ABELARDO	)	
RODRIGUEZ, on behalf of themselves and all	)	<b>Case No. B093679</b>
others similarly situated,	)	
	)	(Los Angeles Superior Court
Plaintiffs and Appellants,	)	No. <b>BC080929</b> )
	)	
vs.	)	
	)	
BOARD OF SUPERVISORS OF THE	)	
COUNTY OF LOS ANGELES, and ROBERT	)	
C. GATES, Director of the Los Angeles County	)	
Department' of Health Services,	)	
	)	
Defendants and Respondents.	)	

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APPELLANTS' REPLY BRIEF

Appeal from Superior Court of Los Angeles County  
The Honorable Malcolm Mackey, Judge

19

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## INTRODUCTORY STATEMENT

As this lawsuit has progressed, the arguments of defendants and respondents (“defendants”) have become more and more extreme. Previously, in accordance with decades of **caselaw** and practice, defendants acknowledged that the County of Los Angeles (“County”) and its Department of Health Services (“**DHS**”) are “legally required to meet the needs of the medically indigent.”<sup>1</sup> On appeal defendants, however, contend that “[n]o duty of care is mandated” by Welfare and Institutions Code §§ 17000, 17001 or 10000.’ Respondents’ Brief (“Resp. Br.”) at 25, 45.

Defendants, the County Board of Supervisors and DHS’ Director, are essentially asking this Court to overrule a long line of appellate cases, such as City of Lomita v. County of Los Angeles, 148 Cal.App.3d 671,673 (1983), Cooke v. Superior Court, 213 Cal. App.3d 401,414 (1989), and Kinlaw v. State of California, 54 Cal.3d 326, 336 n.8 (1991). All of these cases recognize the counties’ obligation to provide medical care, including emergency care, to indigent residents who cannot meet their own medical needs.

The central issue in this appeal is whether the County has any duty to adopt standards that ensure the timely provision of necessary outpatient and emergency medical care to the indigent. Plaintiffs and appellants (“plaintiffs”) have previously demonstrated that the County has such a duty under §§ 17000, 10000 and 17001 and the **caselaw** interpreting these three statutes. Appellants’ Opening Brief (“App. Br. ”) at 16-22. Given the indigents’ statutory entitlement to

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<sup>1</sup> DHS, Los Angeles County’s Health: Uniting for a Common Goal, Gates Exhibit (“**Ex.** ”) D, Appellants’ Appendix in Lieu of Clerk’s Transcript (“A.A. ”) 398; Gates Deposition (“Depo.”), A.A. 1894-1896.

<sup>2</sup> Hereinafter, all statutory references are to the Welfare and Institutions Code unless indicated otherwise.

receive medical care from the County, principles of substantive due process further dictate that the County establish some standards ensuring that care will be furnished in an appropriate time period. Id. at 44-48.

The brief that defendants filed with this Court is a “Respondents’ Brief” in name alone. They do not respond to most of plaintiffs’ arguments regarding the above statutes or the constitutional requirements of due process. Instead, defendants contend that several other statutes have supposedly abolished any requirement that the County “adopt ‘standards’ concerning the timely provision of ‘necessary’ medical services to the poor at County medical facilities.” Resp. Br. at 1. None of these other statutes is controlling in this case. See App. Br. at 22-38.

For example, defendants insist that in 1992 Assembly Bill No. (“**AB**”) 1012 repealed portions of the Beilenson Act, Health and Safety Code (“**HSC**”) § 1442.5, and thereby “eliminated any access standard ‘besides zero’ for county health care.” Resp. Br. at 16. Yet, neither the plain language of HSC § 1442.5 nor the legislative history of AB 1012 reveals any such intention to relieve the counties of their lesser obligation to provide minimum health care to the indigent pursuant to § 17000. Indeed, AB 1012 left intact language mandating such care.

As predicted by plaintiffs (App. Br. at **27-28**), defendants have constructed their interpretation of **AB** 1012 almost entirely from the fiery remarks of one of the bill’s opponents, Senator Diane Watson. It would doubtless come as a shock to the 80 assembly members and 40 senators that any one lawmaker purportedly speaks on behalf of all of them, especially on a measure that lawmaker opposed.

There is a reason for the County’s extreme positions. The right to receive medical care is meaningless unless there is a concomitant right to receive such care in a timely fashion. After

all, an indigent patient with internal bleeding could die from stomach cancer if forced to wait the full year for the next available appointment at the gastrointestinal clinic at Harbor/UCLA Medical Center. By denying that plaintiffs have any right to receive medical care from the County in the first place, defendants seek to avoid altogether the issue of how critical timing is to the delivery of appropriate care.

Ultimately, defendants are unable to justify the judgment in their favor. This Court, therefore, should not only reverse the judgment, but should also instruct the trial court to enter an order granting summary adjudication for the plaintiff class.

I. DEFENDANTS CANNOT REFUTE THE COUNTY'S MANDATORY OBLIGATIONS UNDER WELFARE AND INSTITUTIONS CODE §§ 17000, 17001 AND 10000 TO ADOPT STANDARDS THAT ENSURE THAT THE INDIGENT RECEIVE NECESSARY OUTPATIENT AND EMERGENCY MEDICAL CARE AT COUNTY FACILITIES IN A TIMELY FASHION.

As discussed in Appellants' Opening Brief (at 16-22), a county board of supervisors has the duty under §§ 17000, 10000 and 17001 to adopt some standards regarding the prompt delivery of medical care so that at a minimum the indigent will not needlessly suffer death, severe disabilities or crippling injuries. App. Br. at 16-22. Defendants have remarkably little to say about these provisions of the Welfare and Institutions Code even though these statutes form the basis of plaintiffs' lawsuit.

At one point, defendants make the sweeping assertion that: "Neither sections 17000, 17001 or 10000 mandate any specific action. No duty of care is mandated." Resp. Br. at 25. This argument flies in the face of the language of the statutes and decades of **caselaw**.

Section 17001 provides in pertinent part that "the board of supervisors of each county . . . **shall** adopt standards of aid and **care** for the indigent and dependent poor of the county. . . ." (emphasis added). Why would a board of supervisors be required to adopt standards of care

for the indigent of the county if a county supposedly has no “mandated” duty of care whatsoever? See also HSC § 1442.5 (refers expressly to county’s “duty to provide care to all indigent people”). Defendants cannot answer this question.

Section 17000 provides that every county “shall relieve and support all incompetent, poor, indigent persons” when those persons are otherwise unable to meet their basic needs. In an earlier case involving the County, this Court declared: “It is now established that it is the statutory duty of a County to provide hospital and medical services to all indigent County residents. ” City of Lomita v. County of Los Angeles, 148 **Cal.App.3d** at 673

City of Lomita notwithstanding, defendants protest that §§ 17000 and 17001 “have only been interpreted as requiring ‘standards’ for financial reimbursement of private providers of medical care to recipients eligible for such care under the county’s eligibility standards.” Resp. Br. at 25 (emphasis in original). Defendants purport to find authority for this statutory interpretation in Madera Community Hospital v. County of Madera, 155 **Cal.App.3d** 136, 145, 147 (1984), and Cooke v. Superior Court, 213 **Cal.App.3d** at 414. Resp. Br. at 25. Neither case stands for such a strained reading of these laws,

Madera Community Hospital held that:

Welfare and Institutions Code sections 17000 and 17001 impose on County a duty not only to provide for indigent residents of the county but to adopt appropriate standards for the medical aid and care of the indigent and dependent poor. The duty of a county to provide hospital and medical services to all indigent county residents is clearly established.

155 **Cal.App.3d** at 145, citing City of Lomita. Cooke v. Superior Court similarly held that “Section 17000 requires counties to provide ‘medical care,’ not just **emergency** care.”<sup>3</sup> 213

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<sup>3</sup> A county can discharge its duty to provide emergency care to the indigent by operating its own emergency rooms and/or by making “appropriate arrangements” with other hospitals. (continued.. )

Cal.App.3d at 414; accord, Board of Sunervisors v. Superior Court (Comer), 207 Cal.App.3d 552, 557 (1989).

A statute “should not be given a construction that results in rendering one of its provisions nugatory. ” Peonle v. Carvaial, 202 Cal.App.3d 487, 501 (1988). As plaintiffs have previously shown, indigents’ statutory right to receive hospital and medical services from the County becomes meaningless if they have no accompanying right to receive such care in a timely fashion. App. Br. at 17-1 8. Judging by their silence, defendants apparently concede this fundamental problem in their reading of § 17000.

Turning to the third provision of the Welfare and Institutions Code, defendants contend that § 10000 “is inapplicable to this lawsuit” since § 10000 “states that public ‘aid’ shall be ‘administered promptly and humanely’” and “public ‘aid’ does not include medical care. ” Resp. Br. at 24. Defendants would do well to quote all of the relevant language of § 10000, which provides, in pertinent part, that “aid shall be administered and services provided promptly.” Defendants never mention the express reference to “services” in § 10000.

Defendants also fail to show how their argument can be reconciled with the interpretation of § 10000 in Cooke, 213 Cal.App.3d 401. There, the court specifically found a violation of § 10000 in the level of dental care that a county provided to its indigent residents. Id. at 413-414.

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<sup>3</sup>(. . . continued)

HSC § 1317.2a(b). Defendants have somewhat confused the issues by their reference to HSC § 1317(c). Resp. Br. at 10. Section 1317 addresses the separate issue of the obligations of each health facility with an emergency department. Whereas HSC § 13 17(c) alleviates any given hospital from liability for not providing emergency care due to the lack of appropriate facilities or qualified personnel, Cooke and other cases make clear that a county still has the overall obligation to provide emergency care to all its indigent residents pursuant to § 17000.

In tacit recognition that § 10000 does apply to this **case**<sup>4</sup>, defendants alternatively argue that the commands of this statute should be tempered by the language in the succeeding § 10001 that the “purpose of public social services is to provide ‘reasonable’ support and maintenance for the needy ‘within the limits of public resources.’ ” Resp. Br. at 24.

Section 10001 does **not** apply to this case. “Public social services” are “those activities and functions of state and local government administered or supervised” either by the State Department of Social Services or the State Department of Health Services. §§ 10051, 10054. The County’s delivery of medical services to its indigent residents does not fall within this definition of “public social services.” These activities of local government are not administered or supervised by either the State Department of Social Services or the State Department of Health Services.<sup>5</sup>

Assume for argument’s sake that county health services for the indigent are supervised by a state agency, like the State Department of Health Services. Even then, the court in Scott v. County of Los Angeles, 27 Cal.App.4th 125, 145-146 (1994), flatly rejected the County’s invocation of § 10001 as an excuse for noncompliance with state mandates. Scott was an appeal from a million-dollar judgment for serious injuries sustained by the plaintiff as a result of the

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<sup>4</sup> While defendants are correct that the counties are not required to provide indigent residents “with a Medi-Cal standard of care” [Resp. Br. at 37], the language in § 10000 that services shall be “provided promptly” is comparable to the language in 42 U.S.C. § 1396a(a)(8) that assistance under the Medicaid program “shall be furnished with reasonable promptness to all eligible individuals.” Thus, decisions interpreting the language of 42 U.S.C. § 1396a(a)(8), though obviously not controlling, could prove useful to this Court in interpreting the language of § 10000. App. Br. at 18-19. For their part, defendants never offer any interpretation of § 10000 besides denying that the statute even applies to this case.

<sup>5</sup> Unlike § 10001, § 10000 speaks more expansively of the “purpose of this division.” This reference to “division” is to Division 9 of the Welfare and Institutions Code, which includes § 17000 et seq.

County's negligence in supervising her foster care placement. Although the County presented evidence of its "extreme budgetary limitations," the Scott court held that "[f]inancial limitations of government have never been, and cannot be, deemed an excuse for a public employee's failure to comply with mandatory duties imposed by law." Id. at 146.

Local governments and their employees have the merely ministerial duty of carrying out these [state] requirements. If the requirements cannot be fulfilled with funding available to a local agency, the agency must address its concerns to those with the authority to set policy, not to the courts by way of excusing violations of mandatory requirements.

Id.

Since §§ 17000, 17001 and 10000 all impose mandatory obligations upon the County, defendants next resort to the argument that these statutes "have never been interpreted to require the adoption of 'standards' for care in county facilities." Resp. Br. at 25 (emphasis in original). This argument proves nothing other than that this appeal raises issues of first impression. By the same token, no appellate court has ever interpreted these three statutes as not requiring the adoption of standards of care in county facilities.

Defendants are hard pressed to justify their refusal to adopt **standards** that secure the timely provision of necessary outpatient and emergency care to the indigent at County facilities. In providing cash assistance to the indigent, defendants clearly recognize the need to adopt standards to address such basic questions as who is eligible for aid; what amount of benefits they are eligible to receive; where they can go to collect such assistance; and when (or how long) they must wait to receive such assistance. In providing medical care to **the** indigent, defendants have likewise recognized the need to adopt standards to address many of these same questions, such as who is eligible for such care from the County at little or no cost (General Relief ("GR") recipients, Ability-to-Pay ("ATP") participants and Medi-Cal recipients); what level of care they can receive (outpatient, inpatient and emergency care); and where they go to receive such care

(both County facilities and some private facilities with contracts with the County).

Defendants have inexplicably drawn the line on adopting standards concerning when such medical care will be given. Yet, delays in furnishing medical care can have potentially much more devastating consequences than delays in furnishing subsistence cash benefits.

Defendants' interpretation of §§ 17000, 17001 and 10000 leads to unjust and absurd results. See Lopez v. Tulare Joint Union High School Dist., 34 Cal.App.4th 1302, 1323 (1995) (the words of a statute should be interpreted to "avoid an unjust or absurd result"). If the County has no duty to adopt standards concerning the prompt provision of outpatient and emergency care to indigent patients, government officials can arbitrarily deny such care altogether.

To mitigate the harshness and injustice of their legal position, defendants eventually argue that "[u]nder triage procedures, emergencies are 'promptly' treated" at County facilities and that standards "for the professional practice of medicine within current capacity are already in place." Resp. Br. at 35, 37. The Court should not be distracted by these misleading references to the alleged facts of the case. At the outset, plaintiffs take serious issue with defendants' characterization that emergency and outpatient care is provided to the indigent at County facilities in a timely manner. App. Br. at 5-12, 14-16. Yet, this appeal, like the summary judgment below, is not the vehicle for resolving these factual differences between the parties.

As defendants themselves have represented, this appeal raises "an issue of law." Resp. Br. at 2. Under §§ 17000, 17001 and 10000, the County has the duty to adopt some standards to ensure that the indigent receive medical care in a timely fashion at County facilities. Hence, the Court should reverse the judgment for defendants and grant summary adjudication for the plaintiff class on this issue of duty. This appeal cannot resolve the remaining issues of whether the County has breached its duties under the Welfare and Institutions Code and, if so, what is

the appropriate remedy.

II. DEFENDANTS HAVE CITED A NUMBER OF OTHER STATUTES, NONE OF WHICH AFFECT THE COUNTY'S ONGOING OBLIGATION TO FURNISH MEDICAL CARE PROMPTLY TO ITS INDIGENT RESIDENTS.

After reading Respondent's Brief, one is almost left with the impression that §§ 17000, 17001 and 10000 are no longer on the books. Defendants argue at great length that these three statutes have been repealed, amended or otherwise altered by a number of other laws. On closer inspection, none of these other laws have the sweeping effects attributed to them by defendants. To this day the County still has the duty to provide medical care promptly to its indigent residents.

A. Section 17000.5 Does Not **Impose** a Limit on County Health Care Spending.

The trial court ruled that the "County has met its duty to provide medical care to GR recipients by enacting a sufficient standard of aid for GR under WIC § 17000.5." Judgment, A. A. 1853. Defendants contend that this ruling is "clearly correct under the Gardner decision." Resp. Br. at 29. To the contrary, the ruling flatly conflicted with Gardner v. County of Los Angeles, 34 Cal.App.4th 200 (1995), and cannot be justified under recent amendments to § 17000.5.

In Gardner, Division Three of this Court rejected the County's argument that the estimated value of the health care given to GR recipients could be credited against a county's obligations under § 17000.5 to provide recipients with monthly subsistence benefits. Because health care has always been treated differently from other subsistence needs in the statutes and in practice, the Court reasoned, it could not be subsumed within the § 17000.5 cap without "clear legislative authority." Id. at 226-27.

Recently, the Legislature provided some of that authority, but did so in a manner that

completely undercuts the County's position on appeal. Senate Bill 681 (Stats. 1996, ch. 6), which goes into effect January 1, 1997, amends § 17000.5(a) to permit a county to reduce its GR grant by "the monthly actuarial value of up to forty dollars (\$40) per month of medical care . . . ." At the same time, the Legislature specified, "This subdivision is not intended to either limit or expand the extent of the duty of counties to provide health care." § 17000.5(a).

Thus, whether the appeal is decided under the law as it stood as of the time of the summary judgment or as it will stand in 1997, the result is the same. Section 17000.5 does not limit the duty of counties to provide health care.

**B. Neither the Language of Health and Safety Code § 1442.5 Nor the Legislative History of the 1992 Amendments to the Beilenson Act Evinces Any Intention to Abolish All Requirements on the Counties to Furnish Medical Care Promptly to the Indigent.**

Unable to rely on § 17000.5, defendants make constant references to the 1992 amendments to the Beilenson Act contained in AB 1012. Resp. Br. at 1, 15-17, 35, 36, **38-40** and 42. Defendants insist that AB 1012 repealed the "only statute requiring counties to maintain a particular level of access to county health care." Resp. Br. at 1; see also 16 (AB 1012 "eliminated any access standard 'besides zero' for county health care"); 38 ("access standards were specifically abolished by **AB** 1012 in 1992"). Saying something over and over again does not make it true.

In interpreting statutory language, a court begins with the language of the statute itself. In re York, 9 **Cal.4th** 1133, 1142 (1995). Not one mention is made in Respondents' Brief of the current language of the Beilenson Act. HSC § 1442.5 sets forth a county's obligations "[p]rior to closing a county facility, eliminating or reducing the level of medical services provided, or prior to the leasing, selling, or transfer of management."

Defendants do not contend (nor can they) that the Beilenson Act is itself an impediment to

plaintiffs' claims herein. This case does not arise out of a situation where **the** County closed one of its health care facilities or reduced the level of medical services to the indigent. Moreover, even when a county does reduce health care services, it still "shall provide for the fulfillment of its duty to provide care to all indigent people, either directly through county facilities or indirectly through alternative means." HSC § 1442.5.

Rather than discuss the language of the Beilenson Act in its current form, defendants have built their' argument on earlier amendments to this statute. In 1992 AB 1012 repealed what is commonly known as the community standard provision in the Beilenson Act:

Whether this duty is fulfilled directly by the county or through alternative means, the availability of services and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to **nonindigent people** receiving health services in **private** facilities in that county.

Former HSC § 1442.5(c) (emphasis added).

The changes wrought by AB 1012 are clear and unambiguous. Plaintiffs not only accept that there will be waits for medical care at County medical facilities, but also that these waits will likely be longer than those experienced by "nonindigent people receiving health services at private facilities" in this County. This lawsuit only asks that the Board of Supervisors adopt some minimal standards as to the timely provision of essential medical services so that plaintiffs do not needlessly suffer death, crippling disabilities or other irreparable harm. Defendants utterly fail to demonstrate how the repeal by **AB** 1012 of the community standard provision reflects an express or even implied intent by the Legislature to repeal a county's lesser residual obligations under §§ 17000 and 10000 to provide essential medical care in a prompt manner.

When the language of a statute "is clear and there is no uncertainty as to the legislative intent," a court "should look no further" and should "simply enforce the statute according to its terms." DuBois v. Worker's Comp. Appeals Bd., 5 **Cal.4th** 382, 387-388 (1993). Defendants

never identify any uncertainty in the meaning of the Beilenson Act.

For argument's sake, plaintiffs will nonetheless assume that the language of the statute is ambiguous and so will turn to the legislative history of the Beilenson Act. Two recognized sources of legislative history are floor analyses circulated to each member of the body voting on a bill [see, e.g., *Famow v. Superior Court*, 226 Cal. App. 3d 481, 490 (1990)] and the Legislative Counsel's digest accompanying a bill [see, e.g., *Crowl v. Comm'n on Professional Competence*, 225 Cal.App.3d 334, 347 (1990)].

Plaintiffs have previously referred to the floor analyses of AB 1012 and the Legislative Counsel's digest that accompanied this bill. App. Br. at 25. Defendants are conspicuously silent about these sources and for good reason. Neither the floor analyses nor the Legislative Counsel's digest offer any support for defendants' contention that AB 1012 was intended to abolish all access standards for county medical services. Exhibits in Support of Plaintiffs' Motion, A.A. 1394-1398; AB 1012, Stats. 1992, ch. 719, A.A. 609-610. One floor analysis described the repeal of the community standard provision in the Beilenson Act as simply a "change [that] removes the requirement that counties maintain services to indigents at the same level as other residents in the 'community.' " Id. at 1395.

Another important part of the legislative history of AB 1012 is Cooke v. Superior Court, 213 Cal.App.3d 401. See App. Br. at 25-27. Defendants do not deny the importance of Cooke inasmuch as it was decided three years before the enactment of AB 1012.

According to defendants, Cooke "determined that counties were not required to provide medical services under section 17000 that were not required under Beilenson. Under this decision, access standards abolished under Beilenson are not required under Section 17000." Resp. Br. at 40 (emphasis in original). Defendants have completely misread the holding in

Cooke.

Cooke concerned the “level of dental care counties must furnish to indigent residents in order to comply with Welfare and Institutions Code sections 10000 and 17000.” 213 Cal. App. 3d at 404. Butte County provided emergency dental care only in certain situations and did not “provide any diagnostic, preventive, therapeutic or restorative dental care to deal with pain or infection.” Id. at 405.

The court in Cooke found that this restricted level of dental care violated both §§ 10000 and 17000. 213 Cal.App.3d at 413-415. With regard to § 10000, the court held that a county has the duty to “provide a humane level of care.” Id. at 414. Turning to § 17000, the Court of Appeal reaffirmed that this statute “requires counties to provide ‘medical care,’ not just emergency care.” Id. (citation omitted).

On the other hand, Cooke found no merit to the petitioners’ separate contention that the county was required under the community standard provision in the Beilenson Act “to shoulder the expense of providing indigents every medical service potentially available to private patients.” 213 Cal.App.3d at 409-410. As the court reasoned, the former HSC § 1442.5(c) was inapplicable in Cooke since the statute was “a limitation on a county’s ability to close facilities or reduce services provided in those facilities” and since the petitioners had tendered “no claim that any county facility was closed nor that any services in any county facility were reduced.” Id. at 410. Under those circumstances, the Cooke court concluded that the former HSC § 1442.5(c) did not “require the County to provide petitioners the same level of services as are available to private patients.” Id. at 411.

Contrary to defendants’ mistaken argument, Cooke held that the counties are required to provide medical care under §§ 17000 and 10000 that they might not otherwise have been

required to provide under the community standard provision. Defendants do not quarrel with the presumption that the Legislature was aware of Cooke's interpretation of the Beilenson Act when the statute was amended in 1992. See also App. Br. at 25. Thus, when **AB 1012** repealed the higher community standard provision, the Legislature fully understood and expected that this statutory amendment would have no impact upon the county's obligations under the Welfare and Institutions Code to provide health care promptly to the indigent.

In the proceedings below, defendants based their interpretation of **AB 10 12** almost entirely upon the impassioned remarks of a single lawmaker, Senator Diane Watson. See App. Br. at 27-28. Defendants have done little better on appeal. Resp. Br. at 16-17, 35.

Generally, courts do not rely on "statements made by individual lawmakers as a reliable expression of the intent of the entire legislative body." Carmona v. Division of Industrial Safety, 13 Cal.3d 303, 311 n. 8 (1975) (emphasis in original). ~~e n m a d e t o~~ this reluctance "to rely on the position of one legislator to reveal legislative intent. . .when the speaker was the author of the bill and no other interpretations of the statutory language exist." Wells Fargo Bank v. Bank of America, 32 Cal.App.4th 424, 434 (1995). Even then, "the rule that legislative intent may be inferred from the statement of the sponsor only applies to a sponsor's statement that is itself unambiguous." Dubins v. Regents of University of California, 25 Cal.App.4th 77, 86 (1994).

Far from being the author or sponsor of **AB 1012**, Senator Watson was its principal opponent. It is a hombook principle of statutory construction that not much weight will be accorded to the statements of a bill's opponents since "the 'fears and doubts of the opposition are no authoritative guide to the construction of legislation." Shell Oil Co. v. Iowa Dent. of Revenue, 488 U.S. 19, 29 (1988).

Since Senator Watson's remarks about AB 1012 are such an unreliable indicator of the intent of the entire legislative body, defendants now cite the statements by two of the bill's sponsors - Senators Hill and Keene. Resp. Br. at 17. Both Senators have been quoted out of context.

Senator Hill did not state that AB 1012 was intended to create a "fiscal standard for county health care." Resp. Br. at 17. The Senator's exact statement was that "even if they [the counties] do all the terrible things that you're concerned that maybe they will - - at a minimum they would have to spend \$2.1 billion." A.A. 837 (emphasis added). A minimum is not its opposite, namely a maximum or a cap on spending as urged by defendants. In addition, Senator Hill repeatedly stated that AB 1012 was a "compromise" with concessions from both sides of the aisle inasmuch as "we wanted 17,000 repealed entirely whether it appealed [applied] to the GA or whether it appealed [applied] to the Health Side of the 17,000." A.A. 836-837.

Like Senator Hill, Senator Keene also attempted to assuage Senator Watson's concerns about the effects of AB 1012. A.A. 843. Senator Keene even read into the legislative record the text of § 17000 and reaffirmed that this statute "is not changed." A. A. 843.

Besides quoting Senators Hill and Keene out of context, defendants ignore the speeches of other proponents of AB 1012. App. Br. at 27-28. Senator Bergeson, for instance, spoke of how the bill was a "trade-off" and that "even with the elimination of the community standard of care, counties will still have an underlying obligation to provide indigent health care under 17,000." A.A. 830. In the same vein, Senator Thompson stated that:

- the "community standard of care" provision had entitled the indigent to the "the highest standard of care within that community";

- AB 1012 "merely removes. . . **counties** from the requirement that they have to provide . . . **health** care at the highest standard within the community"; and

- “this measure specifically maintains the 17,000 provisions as they relate to health care.”

A.A. 834-835.

Defendants resist the fact that AB 1012, like most legislation, was the product of **compromise**.<sup>6</sup> Whereas the counties were relieved from a number of state mandates, such as the “community standard of care” provision, they were not relieved of all obligations, most notably § 17000 and HSC § 1442.5. In short, neither the Beilenson Act nor **AB** 1012 affects plaintiffs’ claims in this lawsuit under §§ 17000, 17001 and 10000.

**C. Plaintiffs’ Claims Are Not Affected by the Funding Provisions Under Either the Realignment Statutes or Proposition 99.**

Leaving aside the Beilenson Act, defendants next contend that counties “are not required by section 17000 to exceed the funding levels required under” either the Realignment statutes, § 17600 et seq., or Proposition 99, § 16940 et seq. Resp. Br. at 28.

A threshold problem with this argument is its unfounded assumption that the instant lawsuit will entail spending beyond that required by either statutory scheme. Plaintiffs have previously pointed out (App. Br. at 36) that nothing in the record below supports the trial court’s conclusion that plaintiffs’ claims will require “higher levels of health care spending. ” Judgment; A.A. 1852. Notably, defendants are unable to marshal any evidence to support this unsubstantiated conclusion by the trial court. Nor do defendants pretend that the projected extra costs, if any, of this case are one of the undisputed material facts in the summary judgment

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<sup>6</sup> The County also overstated the effects of AB 1012 in Gardner, contending that the “Legislature could not have intended to relieve counties from the health care spending standards in the Beilenson Act, yet require what it characterizes as ‘open-ended health care spending under Section 17000. ’ ” 34 **Cal.App.4th** at 221-222. As the Gardner court explained: “we fail to see why the Legislature could **not** have intended to give counties partial, but not complete, relief from their admittedly onerous health care burdens. Legislatures make compromises of this kind in every legislative session, although the choices naturally become more difficult in hard times. ” **Id.** (emphasis in original).

proceedings below. Resp. Br. at 2-3

Defendants simply assume that the instant lawsuit is “seeking to impose greater costs.” Resp. Br. at 23. There is, however, considerable truth to the platitude that “an ounce of prevention is worth a pound of cure.” In recent years, one of the main reasons for the shift to managed care has been that it is much less expensive to treat an individual on an outpatient basis at the onset of some disease or medical condition than it is to treat that same individual in the emergency room or on an inpatient basis at a much later date when the disease or medical condition has worsened considerably. See also Resp. Br. at 9 (“Emphasis on primary care in out-patient facilities is a recommended solution to emergency room overcrowding”). Should the Board of Supervisors adopt standards to ensure that indigent patients receive outpatient care in a timely fashion, the County might well save millions of dollars.

Plaintiffs will nevertheless assume for argument’s sake that this lawsuit might eventually result in increased County spending on indigent health care. Defendants boldly proclaim that “Realignment changed county health mandates into a fiscal requirement. ” Resp. Br. at 22. Like the trial court, defendants are unable to identify a single Realignment statute that supposedly caps all county spending on indigent health care. App. Br. at 33-34. There is no such law.

The critical Realignment statute is § 17608.10(a), which sets forth the monthly amount that each county must appropriate for indigent health care to qualify for an “equal” amount of state funds from the Sales Tax Account.’ Section 17608.10(a) makes no reference whatsoever to a counties’ obligations under § 17000. Instead, § 17608.10(a) establishes the conditions for the

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<sup>7</sup> Section 17608.10(a) provides, in pertinent part, that: “As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county’s or city’s local health and welfare trust fund account, a county or city shall deposit county or city general purpose revenues into the health account each month equal to one-twelfth of the amounts set forth in the following schedule. . . . ” (emphasis added).

counties' receipt of matching Sales Tax funds; the statute does not purport to do anything more. Indeed, defendants admit that § 17608.10 only requires counties "to meet a fiscal standard" as a condition of "eligibility for Realignment health funds." Resp. Br. at 22.

The court below cited only the "Realignment statutes" as supposedly setting the "maximum amount that counties may be required to expend for" indigent health care. Judgment, A.A. 1852. As predicted (App. Br. at 34-35), defendants now make the additional argument that a county "fulfills its obligation for medical care under section 17000 by funding indigent health care at the levels specified in Prop. 99" (Proposition 99, also known as the Tobacco Tax Initiative). Resp. Br. at 28.

It is no accident that defendants never quote the language of § 16990, the Proposition 99 provision which governs State funding for the counties for the California Healthcare for Indigent ("CHIP") Program. Section 16990(a)(1) provides, in pertinent part, that:

Any county receiving an allocation pursuant to this chapter and Chapter 4 (commencing with Section 16990) shall, at a minimum, maintain a level of financial support of county funds for health services at least equal to the total of the amounts specified in subparagraphs (A) and (B).

(Emphases added). All § 16990(a)(1) does is set a "minimum" for county expenditures to receive State funding for the CHIP program; nothing more. In addition, another CHIP statute, § 16995.1, expressly provides: "Receipt of funding pursuant to this chapter shall not relieve a county of its obligation to provide indigent health care as required by Section 17000" (emphasis added).<sup>8</sup>

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<sup>8</sup> Defendants make too much out of the repeal by AB 1012 of the former §§ 16995 and 16995.2. Resp. Br. at 21, 36. Section 16995.1 has always made it clear that receipt of CHIP funding does not affect a county's obligation to "provide indigent health care as required by Section 17000." Neither § 16995 nor § 16995.2 purported to define the counties' obligations under § 17000 instead, both statutes had only imposed conditions on the receipt of CHIP

(continued.. .)

Given the plain language of §§ 16990 and 16995.1; defendants have built their argument about Proposition 99 almost entirely from two sentences of dictum in Gardner:

Read together, section 16990 and section 17000.5, which separately mandates a minimum GA standard, logically require counties both to (1) fund medical services for the indigent at the levels specified in section 16990, and (2) provide the minimum amount of GA specified in section 17000.5. These two requirements meet a county's two-part obligation under section 17000 to relieve and support the poor through assistance in securing the needs of basic survival and medically necessary health care services.

Gardner, 34 Cal.App.4th at 219 (emphasis in original), cited in Resp. Br. at 28.

Defendants conveniently omit any reference to the footnote that accompanied the latter sentence in the opinion. In that footnote, the court stated: "Section 16995.1 provides that the receipt of CHIP funds shall not relieve a county of its obligations to provide indigent health care as required by section 17000. " Gardner, 34 Cal.App.4th at 219 n. 17. Later in the opinion, the Gardner court again emphasized that Proposition 99 did not alter a county's obligations to provide health care under § 17000. Describing the changes by AB 1012, the court reiterated that "the Legislature did not repeal section 16995.1, which provides that receipt of CHIP funds does not relieve a county of its obligation to provide indigent health care required by section 17000." Gardner, 34 Cal.App.4th at 221-222 n.20 (emphasis in original).

Even if the Gardner language meant what defendants imagined it did, the decision would

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<sup>8</sup>(...continued)

funds by the counties: not restricting the eligibility standards or reducing the scope of benefits below those in effect on November 8, 1988 (§ 16995); and maintaining the number of outpatient visits at 1988-1989 levels (§ 16995.2). Hence, when these two statutes were repealed, all the Legislature did was lessen the conditions on receiving CHIP funds. Similarly, when the former §§ 16704(c)(1) and 16706.1(e) were repealed (see Resp. Br. at 19), all the Legislature did was lessen the conditions on the counties for receipt of another source of state funds, AB 8 monies, and, in any event, the counties no longer receive AB8 monies. Throughout all these changes to Proposition 99 and AB 8, the counties' underlying obligations under § 17000 et seq. have remained the same.

still not be dispositive. The Supreme Court has reiterated the “foundational principle” that the “language of an opinion must be construed with reference to the facts presented by the case, and the positive authority of a decision is coextensive only with such facts.” Harris v. Canital Growth Investors XIV, 52 **Cal.3d** 1142, 1157 (1991) (citation omitted). An opinion must be read in light of the facts and issues raised to determine which “statements of law were necessary to the decision, and therefore binding precedents,” and which statements of law were arguments and observations “unnecessary to the decision, i.e., dictum, with no force as precedent.” Santa Monica Hospital Medical Center v. Superior Court, 203 **Cal.App.3d** 1026, 1033 (1988).

Gardner did not address whether county spending for all indigent health care is capped by § 16990 because that issue was not raised there. The sole issue in Gardner was whether the County could deduct from the monthly cash benefits to GR recipients the costs of providing health care to these recipients at County facilities. 34 **Cal.App.4th** at 204-205. Hence, that one reference to § 16990 in Gardner is, at most, pure dictum.

It is especially ironic that defendants now rely upon these two sentences of dictum from the Gardner opinion, having argued precisely the opposite to the California Supreme Court. County’s Petition for Review in Gardner at 28.<sup>9</sup> In their criticisms of this portion of the Gardner opinion, defendants additionally stated that Part 4.7 (§ 16901 et seq.) has “not been applied to GA medical requirements. Rather, GA medical requirements are construed under sections 17000, 17001, 10000, 17100, 17109, 17300 and other GA specific statutes.” Petition for Review in Gardner at 26.

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<sup>9</sup> Pursuant to Rule 452 and 459 of the Evidence Code, this Court is asked to take judicial notice of excerpts of defendants’ petition for review in Gardner (true copies of **pages 26-28** are filed concurrently herewith). An appellate court can take judicial notice of the files in other actions. See, e.g., City of Sacramento v. State Water Resources Control Bd., 2 **Cal.App.4th** 960, 968 n.3 (1992); County of Alameda v. Mosier, 154 **Cal.App.3d** 757, 759 n. 1 (1984).

Defendants rely upon Comer, 207 Cal.App.3d 552. Resp. Br. at 38, 41. Significantly, however, they make no attempt to argue that either the Realignment statutes or Proposition 99 contain any limitations on county spending comparable to those in Comer. See also App. Br. at 35. There, the court rejected a challenge under § 17000 to cutbacks in County mental health services because the former § 5709 “absolutely limits counties’ mental health obligations.’ Comer, 207 Cal.App.3d at 564. expressly provided: “In no event shall counties be required to appropriate more than the amount required under the provisions of this chapter” (emphasis added). By contrast, neither § 17608.10(a) nor § 16990 contains such a limitation.

Defendants are unable to explain why this Court should interpret the law in a way that the Legislature rejected just a few years ago. See App. Br. at 35-36. In 1992 the Legislature rejected an Administration proposal to amend the Beilenson Act and make the county “solely responsible for adopting the level of health care for its community” based on available revenues. Plaintiffs’ Supplemental Exs. A.A. 1723, 1735-1738. If the County wants to amend § 17000 or HSC § 1442.5 to impose a strict **financial** standard, its recourse should be in Sacramento, not the judiciary.

D. Neither HSC § 1441 nor HSC § 1445 Limits the County’s Health Care **Obligations** Under §§ 17000, 17001 and 10000.

As a last ditch defense to plaintiffs’ claims under the Welfare and Institutions Code, defendants make much of the discretionary language in HSC § 1441, authorizing counties to establish county hospitals, and HSC § 1445, authorizing the raising of taxes “under such limitations and restrictions as are prescribed by law” for care of the “indigent sick or dependent poor.” Their arguments, however, do not rebut plaintiffs’ showing (App. Br. 29-33) that the discretion granted to counties to determine how to meet the health care needs of the indigent

does not encompass discretion whether to provide such services.

With regard to HSC § 1441, defendants' argument is a straw man. That statute provides authority for, but does not require, counties to establish a county hospital. The implication that counties choosing not to operate a county hospital thereby escape their health care obligations to the indigent is conclusively rebutted by Cooke v. Superior Court, 213 Cal. App. 3d 401, which held that Butte County, a county with no county hospital, was nonetheless obligated to provide dental care sufficient to remedy pain and infection (as well as emergency care) to indigents.

Defendants' argument under HSC § 1445 fares no better. As commentators have noted, the statute "appears to be cast in discretionary terms." Workman, County Hospitals in Crisis: Legislative Response to Assure Indigent Health Care, 10 U.C. Davis L.Rev. 331, 333 n.15 (1977). "When referred to, however, it has been characterized as obligatory." *Id.*, citing Chavez v. Sprague, 209 Cal.App.2d 101, 107 (1962), Madison v. City and County of San Francisco, 106 Cal.App.2d 232, 242 (1951).<sup>10</sup> Defendants cite no cases, and there are none, holding that HSC § 1445 relieves a county of its mandatory health care obligations under § 17000.<sup>11</sup> Moreover, defendants fail to explain what possible meaning can be ascribed to HSC

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<sup>10</sup> See also tenBroek, California's New Medical Care Law and Program, 46 Cal.L.Rev. 558 (1958). Professor tenBroek cites the precursor to W&IC § 17000 (former W&IC § 2500), and to HSC § 1445 (former W&IC § 200), each worded identically in relevant respects to the current statutes. (See Historical and Statutory Notes following W&IC § 17000 and HSC § 1445). He notes that "[t]hese sections, currently in the California Welfare and Institutions Code, embody traditional American policy: local responsibility for the care of the poor and medical care as a recognized welfare need." *Id.* at 558. Professor tenBroek goes on to observe that in 1957, when federal funds became available for medical services to low-income persons, the state Legislature acted by "superimposing the new arrangement upon rather than displacing the county obligation." *Id.* at 559.

<sup>11</sup> Indeed, as far back as 1917 in what Professor tenBroek (46 Cal.L.Rev. at 559) calls "the famous case of Sacramento v. Chambers" (33 Cal.App. 142 (1917)), the Court of Appeal noted that while the California constitution "nowhere places the burden of maintaining, supporting, (continued.. )

§ 1442.5's reference to the county's "duty to provide care to all indigent people" (emphasis added) or § 16995.1's reference to county "obligation to provide indigent health care as required by Section 17000" if their view of HSC § 1445 is correct.

The county's suggestion that HSC § 1445 confers limitless discretion on the boards of supervisors to determine whether to provide care or to whom not only ignores decades of caselaw (see App. Br. at 31-32), but effectively repeals the indigent health care mandate found in §§ 17000, 17001, 10000, 16995.1 and HSC § 1442.5. Such repeals by implication are disfavored and will only be presumed when "the two statutes are so irreconcilable and inconsistent that [they] cannot stand together. The courts are bound if possible to maintain the integrity of both statutes if they can so stand." In re Executive Life Ins. Co., 32 Cal.App.4th 344, 373 (1995).

Here, as numerous courts have found, there is no irreconcilable conflict between the discretionary means of providing health care enumerated in the Health and Safety Code and the mandatory duty to do so found in the Welfare and Institutions Code, as well as HSC § 1442.5. See App. Br. at 31-33. Even Bav General Community Hospital v. County of San Diego, 156 Cal. App. 3d 944 (1984), cited by defendants (**Resp.** Br. at 13) for the proposition that "HSC §§ 1441 and 1445 make it clear that county boards of supervisors have wide discretion over  
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<sup>11</sup>(...continued)  
caring for, and treating the indigent sick upon the counties of the state", the Legislature has authorized the counties to establish hospitals and almshouses, prescribe rules for their management, etc. 33 Cal.App. at 148, citing former **Pol.Code §§** 4223, 4071, 4307). Despite the permissive language of these statutes, the Court of Appeal noted emphatically that "[t]here is no doubt that the legislature . . . intended to and did transfer from its own shoulders and so placed upon the counties the duty and burden of caring for, supporting, and treating" the indigent sick. **Id.** at 149.

health services for the poor in county medical facilities, " supports plaintiffs' argument perfectly. While acknowledging the county's discretion under HSC § 1445, the Court of Appeal in Bav General specifically analyzed the interplay of that statute with "the County's mandatory section 17000 duty to furnish medical care --not just emergency care-- to 'lawful residents'". 156 Cal. App. 3d at 957 (emphasis in original). Indeed, the court held that San Diego's policy of refusing to allow stabilized indigent patients to be transferred from private hospitals to county facilities violated § 17001:

As between the County and private hospitals, . . . the overall statutory scheme places the primary obligation to provide care to medically stabilized, indigent County residents on the County. The County's no-transfer policy therefore facially represents an impermissible exercise of section 17001 discretion in derogation of the County's mandate to provide medical care to indigent residents.

Id. at 958.<sup>12</sup>

Familiar canons of statutory construction require that "statutes or statutory sections relating to the same subject matter must be harmonized, both internally and with each other, to the extent possible" People v. Simmons, 9 Cal.4th 493, 514 (1995). See also, Hartford Fire Ins. Co. v. Macri, 4 Cal .4th 3 18, 326 (1992) ("A construction which makes sense of an apparent inconsistency is to be preferred to one which renders statutory language useless or meaningless. ")

As noted in Appellants' Opening Brief (at 33), every published case involving the counties' provision of health care to the indigent, including Bav General, has harmonized the counties' duties under §§ 17000, 17001 and 10000 with their discretion over the means of providing such care under the Health and Safety Code. Defendants have provided no reason for this Court to

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<sup>12</sup> Nonetheless, the Court denied the complaining private hospital's claim because of the "paradox" that the legal wrong produced no injury to those protected by § 17000, since the county had set its eligibility criteria at the same level as the state's Medi-Cal limits. Id.

do otherwise. In sum, none of defendants' references to these other statutes defeats plaintiffs' claims under the Welfare and Institutions Code.

III. **CONTRARY TO DEFENDANTS' BELIEFS, THE COUNTY IS OBLIGATED TO FURNISH NECESSARY MEDICAL CARE TO ALL THREE GROUPS WITHIN THE PLAINTIFF CLASS: GENERAL RELIEF RECIPIENTS, ABILITY-TO-PAY PARTICIPANTS AND THOSE MEDICAL RECIPIENTS WHO CANNOT OBTAIN CARE FROM OTHER PROVIDERS.**

Defendants suggest that either every member of the plaintiff class is entitled to standards regarding the timely provision of medical care from the County or none of them is.<sup>13</sup> Resp. Br. at 44. Defendants want to make this case into an all-or-nothing position because they appear to concede that at least one group within the plaintiff class, GR recipients, "may be entitled to prompt medical care" from the County. *Id.* at 44. Certainly, the trial court concluded that GR recipients have a right to receive care from the County, and defendants admitted these rights of GR recipients as well in the court below. Judgment, A.A. 1853; Memorandum of Points and Authorities in Opposition to Class Certification, A.A. 85-86.

While defendants have previously acknowledged the County's duty to provide medical care to the other two groups within the plaintiff class - ATP participants and some Medi-Cal recipients<sup>14</sup> - they now disavow such an obligation to either group. Defendants are wrong about both groups.

A. ATP Participants Are Entitled to Receive Medical Care from the County.

Defendants make no attempt to square their position in this case with the plain language of

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<sup>13</sup> This is not the first time that defendants have alleged a conflict within the plaintiff class. Defendants raised a similar argument in their unsuccessful opposition to class certification. Memorandum of Points and Authorities in Opposition to Class Certification, A.A. 87-89.

<sup>14</sup> DHS, Los Angeles County's Health: Uniting for a Common Goal, Gates Ex. D, A. A. 398; Gates Depo., A.A. 1894-1896.

either § 17000, which requires the County to “relieve and support all incompetent, poor, indigent persons” or HSC § 1442.5, which refers to the County’s duty “to provide care to all indigent people” (emphases added). Defendants likewise make no attempt to distinguish the instant case from the cases cited by plaintiffs (App. Br. at 39), where the courts have invalidated comparable efforts by counties to exclude eligible persons from the benefits of § 17000. See Mooney v. Pickett, 4 Cal.3d 669 (1971) (denying aid to employable individuals), and Bemhardt v. Board of Supervisors, 58 Cal.App.3d 806 (1976) (denying aid to adults under age 21).

On the theory that the best defense is a good offense, defendants wrongfully accuse plaintiffs of espousing the “view that section 17000 requires counties to pay for medical care of ‘all’ indigents” without exception. Resp. Br. at 42. While this Court and others have spoken broadly about the counties’ duty to “provide hospital and medical services to all indigent County residents” [see, e.g., City of Lomita, 148 Cal.App.3d at 673], plaintiffs do not take quite such a far-reaching view of the counties’ obligations. The language of § 17000 requires the County to provide medical care only to those “incompetent, poor, indigent persons” who “are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.”

ATP participants fall within this statutory definition of those eligible to receive medical care from the County. They are “indigent” (poor and low income) persons whose “means” (their income and resources) are not enough to meet their own needs for medical care. County Flyer regarding ATP program, A.A. 1174.

Defendants nonetheless contend that ATP participants are not entitled to medical care because they have “sufficient resources to pay for some of the costs of care.” a t 4 3 (emphasis in original). Under this crabbed reading of § 17000, an indigent woman in the early

stages of breast cancer could not receive chemotherapy from the County so long as she had a few dollars in her purse to pay for “some” of her care, possibly a bottle of aspirin. This reading of the law would even deny cash assistance to the totally destitute, GR recipients, if these individuals happened to earn or borrow enough money to pay for “some” of their needs, such as a loaf of bread. Not surprisingly, defendants can find no authority to support such an extreme interpretation of § 17000.

Citing HSC § 1473, defendants note that the counties “may fix the rates for medical services.” Resp. Br. at 43. It is one thing to say that counties “are not required to provide medical services free of charge to those able to pay some of the costs of care.” *Id.* It is a very different thing to say that counties are not required to provide any medical services to those who are only able to pay some of the costs of care or that the counties can charge these individuals far more than they can afford for the costs of care.

Defendants conveniently avoid any discussion of §§ 16804.1 or 16818. *See* App. Br. at 40 n.33. These statutes recognize a “county’s authority to implement a reasonable sliding fee schedule based on ability to pay.” § 16804.1(b). These statutes also evince the Legislature’s clear intent that counties will be rendering “medically necessary services to persons entitled to services pursuant to Section 17000” [§ 16804.1(a)], including those persons who have the ability to pay for their care at a “reduced cost” [§16818(a)] based on a “reasonable sliding fee schedule” [§16804.1(a)].

To justify their position on ATP participants, defendants cite just one case - Bay General Community Hospital v. County of San Diego, 156 Cal. App.3d 944. The precise issue in Bay General, however, was whether San Diego County had to reimburse private hospitals for providing medical care to individuals whose income exceeded the Medi-Cal financial eligibility

standards. Id. at 955-956. As explained in Appellants' Opening Brief (at 40-41), plaintiffs would be enthralled if this County adopted the financial standards on eligibility for indigent health care in Bav General. The issue in the instant case is not whether a particular eligibility standard is permissible, but whether the County can categorically deny medical care to all indigent persons who can meet their other basic needs and may be able to pay for part of their medical care.

Plaintiffs have previously cited a number of cases that have affirmed the county's obligation to provide medical care to the "medically indigent," those low income persons who can meet some of their subsistence needs but who cannot afford the costs of their medical care. App. Br. at 3940. Defendants incorrectly contend that one of these cases, Goodall v. Brite, 11 Cal. App.2d 540 (1930), "did not hold that county hospitals must admit the 'medically indigent.'" Resp. Br. at 42.

Goodall was a challenge to the use of county funds to provide hospital care to two classes of patients: those "persons well able to pay for hospitalization in private institutions" and those "persons who can pay only part of the cost of their hospitalization." 11 Cal.App.2d at 542-543. The Goodall court ruled that the county could and indeed should provide hospitalization to the latter class of patients since "[it] is admitted that indigent persons are to be admitted when in need of hospitalization." Id. at 549. The Goodall court specifically held that "the word 'indigent', when used in connection with admission to county hospitals, includes" a resident of the county "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." Id. at 550.

Defendants are equally unsuccessful in their efforts to dismiss another of plaintiffs' citations, County of San Diego v. Vilorio, 276 Cal.App.2d 350 (1969) as a case about whether a county

was “permitted to recover the costs of hospital care of eligible indigents from non-relatives or relatives not liable for their support.” Resp. Br. at 44 (emphasis in original). As defendants recognize, Viloria did address the issue of which indigents are eligible to receive hospital care from the county. Citing a number of cases, the Viloria court stated:

State law requires the County of San Diego to furnish hospitalization to an indigent person. . . In the event the indigent person is able to pay a part of although not the total charge for hospital services rendered by the county, he is obligated accordingly. . . . The county is authorized to fix the rate to be charged the indigent and to direct its collection. . . . **Nevertheless**, the obligation is limited in amount to the extent of the indigent person’s ability to pay.

Id. at 352 (citations omitted).

Most telling of all, defendants fail to address, much less mention, the portion of the opinion in Kinlaw v. State of California, 54 **Cal.3d** 326, concerning the legal remedies available to medically indigent persons “if the county fails to provide adequate health care.” The Kinlaw court stated that this class of medically indigent persons “may enforce the obligations imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action.” Id. at 336 n.8. If, as defendants contend, the County has no obligation to provide medical care to ATP participants or any other indigent residents who can pay for some of their care, then how do these same individuals have the right to go into court and sue under §§ 17000 and 17001 for not receiving “adequate health care” from the County?

**B. Those Medi-Cal Recipients Who Cannot Obtain Care from Other Providers Are Entitled to Receive Medical Care from the County.**

Turning to the third group in the plaintiff class, defendants assert that the County has “no duty to Medi-Cal recipients under section 17000 as a matter of law, since Medi-Cal recipients are aided by other programs.” Resp. Br. at 43. No authority is offered in support of this assertion. Id.

Meanwhile, defendants fail to address the decisions cited by plaintiffs (App. Br. at 42-43), in particular, Madera Community Hospital v. County of Madera, 155 Cal.App.3d 136, where the court rejected a similar argument that the Medi-Cal program was “intended to supplant the obligations imposed by Welfare and Institutions Code section 17000 et seq. . . .” Id. at 150-151. The Madera court concluded that the “Legislature intended that [the] County bear an obligation to its poor and indigent residents” notwithstanding any concurrent federal or state programs. Id. at 151; accord, Comer, 207 Cal.App.3d at 558.

Defendants cite § 17030 as providing that counties are “not required to pay for services reduced or eliminated from Medi-Cal. ” Resp. Br. at 43. The statute says much more than that. Section 17030 provides, in pertinent part, that “nothing in Section 10000, 17000, or 17001 or any other provision of law shall require any county. . .to provide or pay for a service reduced or eliminated from the Medi-Cal program . . .to a person otherwise eligible to receive services under the Medi-Cal program” (emphases added). Defendants remain unable to offer ‘any explanation as to why the Legislature would enact a statute, like § 17030, if the counties had no duty in the first place to provide medical services to Medi-Cal recipients under any circumstances. See App. Br. at 43.

This lawsuit does not encompass all Medi-Cal recipients in the County. This lawsuit is intended only to cover those Medi-Cal recipients who depend on County facilities for their medical care because they are unable to obtain such care from other providers. See, e.g., Clark v. Kizer, 758 F.Supp. 572 (E.D. Cal. 1990) (describing unwillingness of dentists to treat Medi-Cal recipients). Defendants do not deny that for these indigent County residents their eligibility for medical coverage under the Medi-Cal program is as much a theoretical resource as were the prospects of employment for the recipients in Moonev v. Pickett, 4 Cal.3d at 679-680, or

support from one's parents for the recipients in Bemhardt v. Board of Supervisors, 58 Cal.App.3d at 8 12. Hence, in reversing the judgment in this case, the Court should determine that the County's duty to adopt standards applies to all members of the plaintiff class.

I v. AS THE TRIAL COURT RECOGNIZED, DUE PROCESS REQUIRES THE COUNTY TO ADOPT SOME STANDARDS CONCERNING THE TIMELY DELIVERY OF MEDICAL CARE TO **THE** INDIGENT.

As the preceding arguments have demonstrated (see Points I and III, supra), the County has a statutory obligation to provide medical care to the indigent and this statutory obligation extends to members of the plaintiff class besides GR recipients. Section 17001, in turn, commands the County Board of Supervisors to "adopt standards" of care for the indigent and dependent poor. However, even if there were no § 17001, the minimum requirements of state and federal due process of law would compel the County to adopt some standards regarding the timely delivery of medical care to the plaintiff class. See App. Br. at 4448.

Defendants nonetheless deny that they have any constitutional duty to adopt standards in this situation. Resp. Br. at 45-48. They note that "there is no constitutional right to publicly paid medical care," and, for that matter, "[t]here is no constitutional right to welfare." Id. at 45. Contrary to their beliefs, this case is not raising some abstract constitutional right to health care.

Years ago, the Supreme Court held that constitutionally-protected property interests can be based upon "state laws" that "secure certain benefits and that support claims of entitlement to these benefits." Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1977). Defendants wisely do not quarrel with the high court on this principle of law or on the principle that "when a State decides to alleviate some of the hardships of poverty by providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations." Maher v. Roe, 432 U.S. 464, 469 (1977).

While defendants concede that the "support of eligible indigents under section 17000 is viewed as an entitlement, or property right," they intimate that indigent health care is somehow a lesser obligation. Resp. Br. at 46 (emphasis in original). Defendants are, however, unable to cite any authority for this baseless proposition. The statutory source of the county's obligation to provide support and health care to the indigent is the same - § 17000. As the Gardner court recently reaffirmed, "Section 17000 requires every county in the state to 'relieve and support' all indigent residents. This requirement comprises a duty to provide both general assistance in securing the ordinary day-to-day needs of basic survival. . .and 'medically necessary' health care services. " 34 Cal.App.4th at 216 (citations omitted).

Since the County's provision of health care to the indigent is subject to Due Process protections, the constitutional question in this case is whether the County has been administering this mandatory program in accordance with some rational standards. In Carev v. Ouem, 588 F.2d 230 (7th Cir. 1978), for example, the court found due process violations in a county's failure to operate its GR program with administrative guidelines specifying which recipients received clothing allowances under what circumstances. Id. at 232. Similarly, in Daniels v. Woodbury County, Iowa, 742 F.2d 1128 (8th Cir. 1984), the court found that a county had violated the due process rights of both recipients and applicants for GR by failing to promulgate ascertainable standards about who should get how much assistance. Id. at 1134-1 135. Plaintiffs herein ask no more than that the Board of Supervisors promulgate some standards about who should have to wait how long to get the health care which state statutes require the County to provide.

Defendants never attack or distinguish any of the precedents on which plaintiffs' constitutional argument is based. See App. Br. at 45-48. Instead, they appear to contend that

due process protections do not extend to statutory rights because the “Legislature may change the rules of entitlement at any time, and the level of benefits at any time, and even may abolish entitlements altogether. ” Resp. Br. at 47. This argument proves too much. In every case involving a statutory entitlement, the legislative body retained the prerogative to amend or abolish the laws upon which these statutory entitlements are based, yet many courts have found due process violations. See also Cleveland Bd. of Education v. Loudermill, 470 U.S. 532, 541 (1985) (“The right to due process is ‘conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest. . .it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards’ ”; citation omitted). State laws, like § 17000, can be changed by the Legislature, but while they remain in force they continue to create rights which may not be denied absent due process of law. See, e.g., Griffeth v. Detrich, 603 F.2d 118 (9th Cir. 1979), cert. denied, 445 U.S. 970 (1980) (rights created by § 17000).

Defendants do not dispute the proposition that if state statutes create rights which merit due process protections, then the programs involved must be administered through rational standards. The trial court likewise accepted the principle that “‘Substantive’ due process protects vested or fundamental rights from arbitrary government action. ” Judgment, A.A. 1857; see also App. Br. at 44.

The court below, however, ruled that the “County has adopted standards for administering health services and. . .the standards are not arbitrary or capricious. . . . ” Id. Defendants have now failed to respond to plaintiffs’ invitation (App. Br. at 48) to cite those “standards for administering health services” which supposedly ensure that care is provided consistent with due process of law.

Defendants note that the County provides care to millions of people and offers the full range of medical services. Resp. Br. at 48. These actions, while laudatory, do not mean that the County has rational standards. As for the triage guidelines for emergency care, defendants may be correct that they “do not utterly lack rational justification” (Resp. Br. at 48), but they are unable to prove that these triage guidelines are being followed in County facilities. See also App. Br. at 9-11. Similarly, defendants cannot muster any evidence, much less undisputed evidence, to support the argument that specialty outpatient care is provided “as promptly as can be scheduled in view of demand and physician direction.” Resp. Br. at 48. If defendants could truly defend the trial court’s conclusion that the County actually has standards for its medical facilities which satisfy due process, their brief would cite the place in the record where those standards appear.

The trial court erred in granting summary judgment on plaintiffs’ due process claims based on factual findings that are not only unsupported by the record, but strongly disputed by the plaintiffs. At this stage of the litigation, the due process question is, however, a simpler one. Does the County have the constitutional duty to adopt some standards regarding when eligible individuals can receive necessary outpatient and emergency medical care at its facilities? Because the County plainly has this constitutional duty, this Court should remand plaintiffs’ due process claims to the trial court for determination of whether defendants have any standards and, if so, whether these standards live up to minimum due process requirements.

**V. UNLIKE THE TRIAL COURT, THIS COURT SHOULD DECIDE THE PURE LEGAL ISSUES IN THIS CASE WITHOUT RELYING UPON DISPUTED FACTS AND EVIDENCE OUTSIDE THE RECORD.**

Defendants maintain that the “judgment appealed from solely determined legal issues” and so the “sole question on appeal is the propriety of these legal determinations.” Resp. Br. at 29.

Meanwhile, they have filled their brief with factual assertions that do not appear in their separate statement of undisputed material facts (“Defendants’ Statement”) and that are vigorously contested by the plaintiffs.<sup>15</sup> Defendants cannot have it both ways.

The trial court unquestionably made a number of factual findings that are not contained in Defendants’ Statement. Comnare Judgment, A.A. 1852-1858, with Defendants’ Statement, A.A. 150-153; see also App. Br. at 13-16. To minimize the trial court’s error, defendants contend that these “determinations” either “reflect immaterial facts, or are conclusions of law that are fully supported by the undisputed facts in the record.” Resp. Br. at 29.

This characterization of the judgment is simply wrong. Most important, the court below found that “the County has adopted standards for administering health services” and “the standards are not arbitrary or capricious.” Judgment, A.A. 1857. Contrary to defendants’ beliefs, this determination is not just a conclusion of law inasmuch as it involves findings of fact regarding both the existence of certain standards and the content of these standards. The determination also involves a material, indeed a critical, fact inasmuch as the trial court stated that it would have decided for plaintiffs on their due process claim “[i]f there were no standards.” Reporter’s Transcript of May 3, 1995 hearing at 53-54. Finally, the determination is not supported by undisputed facts in the record.

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<sup>15</sup> At one point, defendants boldly state that the adoption of standards concerning the “timely provision of ‘necessary’ medical services to the poor at County medical facilities” will necessitate the “expansion of the County’s network of hospitals and outpatient facilities” and will require the County to spend above current levels. Resp. Br. at 1. Yet, at a later point, defendants maintain that “the standards that are required for the professional practice of medicine within current capacity are already in place.” Id. at 37. Not only is the County speaking out of both sides of its mouth, but it is not even attempting to rely on any of their statements of the undisputed material facts in this case or, for that matter, on any evidence in the record.

Defendants now contend that there are just five “undisputed material facts” in this case.<sup>16</sup> Resp. Br. at 2-3. Even if one accepts this latest statement of the undisputed material facts as true, the judgment still went far beyond these facts,

To give one illustration, the trial court found that “County facilities meet all state requirements and medical standards.” Judgment, A.A. 1858. This finding is not reflected in any of defendants’ five undisputed material facts. Resp. Br. at 2-3. In defense of this finding, defendants make an unbelievable leap of faith - the licensure and regulation of County medical facilities by the State signifies that these facilities “operate according to statutory requirements as a matter of law.” Resp. Br. at 30. This sweeping inference by defendants finds no support in the record below and defies common sense. Just as the issuance of drivers’ licenses does not prevent people from committing millions of violations of the Vehicle Code each year, so too the issuance of licenses to hospitals, clinics and practitioners does not prevent them from committing violations of important statutory provisions each year. Furthermore, defendants have ignored the rules that all evidence in support of a motion for summary judgment is “strictly construed,” that any evidence in opposition to the motion is “liberally construed,” and that any doubts about granting the motion are “resolved by denying summary judgment.” Stratton v. First. Nat. Life

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<sup>16</sup> With this latest statement of undisputed material facts, defendants even have taken liberties with the record. Their third “fact” regarding the licensure and regulation of all County medical facilities by the State Department of Health Services does not appear in either parties’ separate statement of undisputed material facts (A.A. 150-153, A.A. 1439-1445) and plaintiffs seriously dispute the extent of the monitoring of County facilities by the State Department of Health Services. Defendants’ fourth “fact” is correct insofar as it alleges that the County’s Community Health Plan (“CHP”) is licensed by the State Department of Corporations under the Knox-Keene Act. Resp. Br. at 2. Yet, defendants have gone beyond their original statement of undisputed material facts (Def. Statement, A.A. 152) by now adding the critical assertion that CHP meets Knox-Keene requirements for appointment availability (a fact which plaintiffs dispute). As to the fifth undisputed material fact, plaintiffs acknowledge that triage standards exist in each County hospital’s emergency room, but dispute whether these hospitals actually follow these triage standards. See App. Br. at 9-11.

Ins. Co., 210 Cal.App.3d 1071, 1083 (1989).

For all their talk about how the only issue on review “is an issue of law” (Resp. Br. at 2), defendants argue at some length against the admissibility of certain declarations that plaintiffs filed in the court below. Resp. Br. at 31-32. Defendants have mischaracterized the scope of the trial court’s ruling on these declarations. Id. The judgment only stated that “the Court is disregarding all the portions of evidence that it considers to be incompetent and [sic] inadmissible” in response to objections filed by both plaintiffs and defendants. A. A. 185 1. The trial court failed to specify which portions of plaintiffs’ declarations were inadmissible except to state that “predictions” in these declarations regarding the negative effects of long waits on patients for non-emergency services were “totally irrelevant to the legal issues” since “counties are not required by the Legislature to eliminate long waits.” Judgment, A.A. 1854-1855

Plaintiffs introduced declarations from County medical staff for two reasons: first, to demonstrate that the alleged inhumane consequences of the County’s lack of standards were not just theoretical, but all too real; and second, to raise triable issues of material fact to the extent that defendants sometimes appeared to be arguing more than pure legal issues. If the court below did exclude all of these declarations, as argued by defendants, such a ruling only further supported plaintiffs’ request to conduct discovery in the event that the court was going to rule on the existence of any triable issues of fact. Supplemental Dec. of Robert D. Newman, A. A.

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<sup>17</sup> The trial court was grossly mistaken in its additional finding that “declarants did not purport to testify to the standard of care in County medical facilities. ” Judgment, A. A. 1854. Speaking from personal experience, these doctors and nurses often described the standard of care in County medical facilities. See, e.g., Declaration (“Dec. ”) of Ruthie Munoz, Nurse Manager of two Adult Medicine Clinics at County/USC Medical Center, A.A. 1019, 1022 (“clinic is not operating at the ordinary standard of care, due in large part to the long waits for patient appointments”); Dec. of Dr. Mark Goldberg, Chairman of Department -of Neurology at Harbor/UCLA Medical Center, A.A. 1014 (“the patients we do accept are subject to unacceptable waiting times for initial appointments and follow-up appointments”).

1672. Instead, the trial court granted defendants' request to stay all discovery, since only a "pure legal issue" was involved. Supplemental Dec. of Robert D. Newman, A. A. 1672.

Because the judgment plainly made impermissible findings of fact, defendants alternatively argue that their motion for summary judgment should now be treated as a challenge to the "sufficiency of the complaint." Resp. Br. at 2. If defendants' motion is tantamount to a motion for judgment on the pleadings or a demurrer, then this Court should liberally construe the complaint in plaintiffs' favor, should accept as true all material facts properly plead, and should uphold the complaint if "it appears that the plaintiff is entitled to any relief" against defendants. Gruenberg v. Aetna Ins. Co., 9 Cal.3d 566, 572 (1973); Croeni v. Goldstein, 21 Cal.App. 4th 754, 758 (1994).

Plaintiffs' first amended complaint alleges that the County has failed to adopt both written standards concerning "reasonable waiting times" for the poor for a scheduled appointment at a County outpatient clinic and "some system or plan for monitoring the poor's access to necessary medical care at County facilities." A. A. 44. The first amended complaint further alleges that:

- (a) the "backlogs in [outpatient] appointments endanger poor people's lives and health, exceeding reasonable limits given the need for prompt medical care and treatment";
- (b) delays in the emergency room "not only imperil the health of the individual in need of emergent care, but increase the exposure of others in the emergency room to a variety of diseases "; and
- (c) members of the plaintiff class have suffered the "outright denial of necessary medical care" as well as "life- and health-threatening delays in receiving necessary medical care."

Id. at 44, 46.

Having called for a "test of the sufficiency of the complaint," defendants are nonetheless unwilling to accept as true any of the above factual allegations in the first amended complaint. Defendants refuse to do so because they cannot admit the harsh and absurd consequences of their

legal posture in this case. If, as they contend, the County has no duty to establish standards regarding the timely provision of outpatient and emergency care to the indigent, then the inevitable consequences are delays that can imperil the health of the individual and can easily be life-threatening.

Plaintiffs agree with defendants that this appeal raises only issues of law. Hence, this Court should not repeat the errors of the trial court and rely upon disputed facts and evidence outside the record. On the pure legal issues, the Court should reverse the judgment and rule in plaintiffs' favor.

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## CONCLUSION

For the foregoing reasons, plaintiffs respectfully submit that the Court should: (a) reverse the judgment for defendants; (b) instruct the trial court to enter a new order granting summary adjudication for plaintiffs on the issues that defendants have the legal duty to adopt standards concerning the timely provision of outpatient and emergency medical care to all members of the plaintiff class - GR recipients, ATP participants and Medi-Cal recipients - under §§ 17000, 17001 and 10000 of the Welfare and Institutions Code (first cause of action) and the due process clause of the California and United States Constitutions (third cause of action)<sup>18</sup>; and (c) remand this case to the court below for further proceedings consistent therewith these rulings.

Dated: February 13, 1996

Respectfully submitted,

By: *Robert D. Newman*  
Robert D. Newman  
Attorneys for Plaintiffs/Appellants

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<sup>18</sup> The fourth cause of action in the complaint is a claim for peremptory writ of mandate and incorporates by reference all of plaintiffs' other legal claims. Summary adjudication should be granted for this cause of action as well consistent with the rulings on the other claims.

**PROOF OF SERVICE BY MAIL**

I, Jessica A. Crenshaw, declare:

I am a resident of the County of Los Angeles, am over the age of eighteen and not a party to the within action; my business address is 3701 Wilshire Boulevard., Suite 208, Los Angeles, California 90010-2809.

On February 13, 1996 I served the within **APPELLANTS' REPLY BRIEF** on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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**303** Second Street, South Tower  
San Francisco, CA 94107  
(5 copies)

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

Executed this 13th day of February 1996 at Los Angeles, California.

  
\_\_\_\_\_  
JESSICA A. CRENSHAW