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17 Arnold Schwarzenegger, in his official
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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 IN AND FOR THE COUNTY OF SACRAMENTO

21 CALIFORNIA CORRECTIONAL PEACE)
22 OFFICERS ASSOCIATION, a California)
23 nonprofit mutual benefit corporation,)
24 CALIFORNIA TEACHERS ASSOCIATION,)
25 a California nonprofit mutual benefit)
26 corporation,)

27 Petitioners/Plaintiffs,

28 v.

29 ARNOLD SCHWARZENEGGER, in his)
30 capacity as Governor of the State of)
31 California,)

32 Respondent/Defendant.

Case No. 05CS01551

**ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS AND JUDGMENT OF
DISMISSAL**

Hearing Date: August 11, 2006
Hearing Time: 10:00 p.m.
Hearing Dept: 19

The Hon. Patrick J. Marlette

Action Filed: November 3, 2005
Trial Date: None set

33 On August 11, 2006, this Court heard Respondent/Defendant Arnold
34 Schwarzenegger, in his capacity as Governor of the State of California, ("Defendant") motion for
35 judgment on the pleadings. Stephen C. Ruehmann appeared on behalf of Plaintiffs California
36 Correctional Peace Officers Association ("CCPOA") and California Teachers Association
37 ("CTA"). Andrew W. Stroud appeared on behalf of Defendant.

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ENDORSED
AUG 28 2006
By: A. Moore Deputy

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After reviewing all papers and hearing arguments of counsel and for the reasons given in the tentative decision attached hereto and stated by the Court on the record at the hearing and good cause appearing therefor:

1. The Defendant's motion for judgment on the pleadings is hereby GRANTED.

2. It is further hereby, ORDERED, ADJUDGED and DECREED that this action is DISMISSED; that JUDGMENT is entered in favor of DEFENDANT; and that Plaintiffs take nothing by way of their Petition/Complaint.

IT IS SO ORDERED.

PATRICK MARLETTE

Hon. Patrick Marlette
Judge of the Superior Court



Approved as to form:

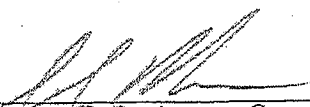

Stephen C. Ruehmann Counsel for California
Correctional Peace Officers Association
and California Teachers Association

EXHIBIT A

In light of its finding that this matter is moot, the Court finds it unnecessary to address the issue of whether petitioners are legally entitled to bring an action for declaratory and injunctive relief for actions that are alleged to violate Government Code section 8314.

Petitioners argue that they should be granted leave to amend the petition and complaint. The general rule is that leave to amend should be granted unless the pleading shows on its face that it is incapable of amendment to state a good cause of action. (See, *Virginia G. v. ABC Unified School District* (1993) 15 Cal. App. 4th 1848, 1852.)

In this case, the Court concludes that the petition and complaint cannot be amended to state a viable cause of action. The burden of proving that there is a reasonable possibility that the defects in the pleading may be cured by amendment is squarely on petitioners. (See, *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) Petitioners have not carried that burden here. An amendment will not cure the fundamental deficiency in this action described above, namely, that there is no longer any existing violation of law for this action to redress. Petitioners have not indicated to the Court that they are prepared to plead specific facts that would show that there is any new, existing violation of law, or any concrete, threatened future violation of law. Instead, petitioners have indicated that they would amend the petition and complaint to attempt to state a cause of action challenging the actions already alleged in the petition and complaint as an unlawful expenditure of public funds for campaign purposes under *Stanson v. Moti* (1976) 17 Cal. 3d 206.

The Court concludes that petitioners will not be able to state a viable claim through such an amendment. To the extent that the amended pleading focuses on the legality of the conduct already alleged, it will still fail on the basis that it addresses a dispute that has become moot. As respondents persuasively argue in their reply brief, whether or not a particular action constitutes an impermissible use of public resources for "campaign activity" under *Stanson* (or under Government Code section 8314) is not subject to a hard and fast rule, but requires careful consideration of factual issues relating to the style, tenor and timing of the publication (see, *Stanson v. Mott* (1976) 17 Cal. 3d 206, 222), as well as to whether the alleged use of public resources was substantial enough to result in a gain or advantage to the user or a loss to the state for which a monetary value may be estimated (see, Government Code section 8314(b)(4)). To address such issues with regard to an alleged past violation that has been remedied would be pointless. A ruling on these facts would give no useful guidance for the future because it is likely, as the Supreme Court recognized in *Stanson*, that each case will have different facts. Moreover, in the absence of any actual, existing alleged violation, any prospective relief would be necessarily vague and imprecise and therefore in no real sense meaningful.

To the extent that any proposed amended pleading goes beyond the declaratory relief, mandate and injunctive relief claims already asserted, to add a claim for recovery of the value of the use of the official State website for improper campaign activity (similar to the claim for recovery of campaign expenditures that was asserted in *Stanson*), the Court concludes that it still would fail to state a viable cause of action. Under Government Code section 8314(c)(1), a monetary recovery for use of public resources for campaign activity may only be sought in the form of civil penalties in an action brought by the state Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000. Petitioners in this action are public employee organizations and thus are not authorized to bring an action for monetary recovery under this statute.

The Court therefore grants respondents' motion for judgment on the pleadings without leave to amend. Judgment of dismissal shall be entered in favor of respondents.

In the event that the tentative ruling becomes the final ruling of the Court, counsel for respondents is directed to prepare the written order and judgment of dismissal in conformity with this ruling, in accordance with the procedure set forth in Rule of Court 391.

1 Case Name: *California Correctional Peace Officers Association, et al. v. Schwarzenegger*
Case No: 05CS01551

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3 **PROOF OF SERVICE**

4 I declare as follows:

5 I am a resident of the State of California and over the age of eighteen years, and
6 not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento,
California 95814. On August 22, 2006, I served the within documents:

7 **ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE**
8 **PLEADINGS AND JUDGMENT OF DISMISSAL**

9 by transmitting via facsimile from (916) 553-4011 the above listed
10 document(s) without error to the fax number(s) set forth below on this
date.

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

13 by placing the document(s) listed above in a sealed Federal Express
14 envelope and affixing a pre-paid air bill, and delivering to a Federal
Express agent for delivery.

15 by personally delivering the document(s) listed above to the person(s) at
16 the address(es) set forth below.

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18 Dale A. Stern
19 Stern, Van Vleck & Ruehmann, LLP
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24 Co-counsel for Respondent/Defendant Arnold Schwarzenegger, in his capacity as
Governor of the State of California

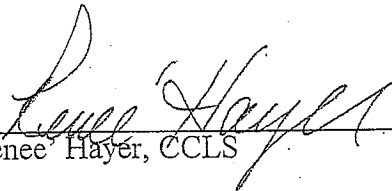
25 I am readily familiar with the firm's practice of collection and processing
26 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepared in the ordinary course of business.
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I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

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

Executed on August 22, 2006, at Sacramento, California.



Renee Hayer, CCLS