

Court of Appeal Case No. C084869

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS,  
*Plaintiff and Appellant,*

v.

STATE PERSONNEL BOARD, DEPARTMENT OF HUMAN  
RESOURCES, and DEPARTMENT OF FISH & WILDLIFE  
*Defendants and Respondents.*

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On Appeal from the Superior Court, Sacramento County,  
Case No. 34-2016-80002426  
The Honorable Michael P. Kenny, Department 31

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**APPELLANT'S OPENING BRIEF**

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## **INTRODUCTION AND SUMMARY OF ARGUMENTS**

The Department of Human Resources (“CalHR”) and Department of Fish & Wildlife (“DFW”) impermissibly sought to alter the Personnel Classification Plan (“PCP”) by altering the reporting structure between two classes established by the State Personnel Board (“SPB” or “Board”). The Board, in turn, wrongly refused to exercise its jurisdiction over the Personnel Classification Plan when notified of CalHR and DFW’s plans to violate the PCP. It refused to act to resolve a controversy in an area under its exclusive control: the use of the Senior Environmental Scientist Supervisory classification. The trial court erred when it upheld CalHR and DFW’s actions and refused to grant the petition for writ of mandate.

The State Personnel Board establishes classifications into which all state employees are placed. The Department of Human Resources is the agency responsible for placing employees into the classifications SPB creates. This process of sorting employees into their appropriate classifications is called position allocation.

CalHR confuses its responsibility for allocating employees among classifications with the State Personnel Board’s exclusive jurisdiction over determining the duties and description of each classification when it alters the reporting relationship between classifications.

Board-established classifications are grouped by series and the hierarchical structure within each classification series is evident in the

classification specifications and the documents reviewed by the Board when it periodically amends, abolishes, or establishes classifications. Nothing in the statutory grant of allocation authority to CalHR grants them the authority to undermine reporting relationships among classifications.

The Court must remedy this failure by directing CalHR and the DFW to cease the impermissible use of Senior Environmental Scientist (Supervisory) employees to supervise their Senior Environmental Scientist (Specialist) peers. In the alternative, it must direct the State Personnel Board to take up the matter as required under the State Constitution and as requested by CAPS in its petition.

#### **STATEMENT OF APPEALABILITY**

This appeal is from final judgment of the Sacramento County Superior Court entered on April 28, 2017 denying the California Association of Professional Scientists' ("CAPS") petition for writ of mandate and dismissing its complaint for declaratory and injunctive relief. This appeal is taken from that judgment which finally disposes of all issues between the parties on the merits of this case. That judgment is made appealable by California Code of Civil Procedure Section 1285, et seq.

## **STATEMENT OF THE CASE**

### **Procedural History**

On September 15, 2014, the Department of Fish & Wildlife distributed a memorandum stating its intent to use Senior Environmental Scientist (Supervisory) to supervise peers in the Senior Environmental Scientist (Specialist) classification. In response, CAPS filed a merit issue complaint with the State Personnel Board on November 13, 2014. SPB denied the appeal on April 8, 2016. On April 18, 2016, CAPS petitioned for a writ of mandate and filed a complaint for declaratory and injunctive relief in Sacramento Superior Court. The superior court denied CAPS' petition and complaint and entered a final judgment on April 28, 2017. CAPS filed the instant appeal on May 25, 2017.

### **Statement of Facts**

#### ***The California State Personnel Board***

The California State Personnel Board is a California State Constitution-established political subdivision. The SPB is responsible for enforcing California's civil service statutes. (Cal Const. Article VII, Sec. 3) Additionally, the Board, by majority vote of its members, prescribes classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (Ibid) The Board also establishes rules implementing and enforcing the merit principle in the state civil service system. (Gov. Code § 18800; see Cal. Const., Article VII,

Section 1, subsection b) Consistent with the merit principle, the Board promulgates rules to govern classifications and other matters related to its authority under Article VII of the Constitution. The SPB retains the exclusive jurisdiction to classify positions in the state civil service under Government Code Section 18701 et seq., 19818.6, and Article VII of the California State Constitution.

California Government Code Section 18800 directs the SPB to create and adjust classes of positions in the State civil service. Classifications adopted by the SPB are known as the “Personnel Classification Plan of the State of California.” (Cal. Gov. Code §18800) The classification plan must include the title and scope of duties and responsibilities for each class of positions. (Ibid.)

Regulation provides that persons shall only be appointed to a civil service classification that is appropriate for the functions, duties, and responsibilities of the position the person is hired to perform. (2 CCR § 248)

### ***The California Department of Human Resources***

The California Department of Human Resources is a California state agency created by the Legislature for the purposes of managing the non-merit aspects of the state’s personnel system. (Gov. Code § 19815 et seq.) CalHR has jurisdiction over the state’s financial relationship with its employees, including matters of salary, layoffs, and non-disciplinary



demotions. (*Tirapelle v. Davis* (1983) 20 Cal.App.4th 1317, 1322; Gov. Code §§ 19816, 19816.2, 19825, 19826)

The Legislature has provided the CalHR with the statutory authority to set salaries for employees excluded from collective bargaining, including employees designated as supervisors. CalHR also negotiates salaries for represented employees under the Dills Act. (Cal. Gov. Code § 3512 et seq.) The matter of setting employee compensation is a legislative function which, in this instance, the Legislature has delegated to the CalHR. (*Tirapelle v. Davis* 20 Cal.App.4th 1322 citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 189.) CalHR can act only to the extent and in the manner consistent with the legislative delegation of authority.

As part of the salary setting delegation, the Legislature has stated that the salary ranges “shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities.” (Gov. Code § 19826.) This provision has been construed to mandate “horizontal parity among comparable positions throughout the civil service structure.” (*State Trial Attorneys’ Assn. v. State of California* (1976) 63 Cal.App.3d 298, 304.)

In addition to horizontal pay parity, CalHR tries to maintain a vertical salary relationship between classes. This vertical salary relationship reflects what it considers appropriate salary differentials between classes within the same career pattern. The maximum salary for a first-line

supervisor is generally 10 percent above the maximum salary for the full journey-level class it supervises. (JAI<sup>1</sup>, 149)

Regardless of its work to maintain horizontal and vertical pay relationships, CalHR is obliged to uphold the classification plan established by SPB to ensure allocation of every position to the appropriate class in the classification plan. (JAI, 153)

CalHR is only granted statutory authority to *recommend* changes in the Personnel Classification Plan to the State Personnel Board. (Cal. Gov. Code § 19818.10)

### ***The Senior Environmental Scientist Class Specifications***

In 2001, the State Personnel Board adopted the current Environmental Scientist deep-class series. (JAI, 118-140) It is currently comprised of six classifications: Environmental Scientist, Senior Environmental Scientist (Specialist), Senior Environmental Scientist (Supervisory), Environmental Program Manager I (Supervisory), Environmental Program Manager I (Managerial), and Environmental Program Manager II. (JAI, 71)

Senior Environmental Scientist Supervisory incumbents are described as supervising and directing the work of professional or technical staff. (JAI, 74) Environmental Program Manager I (Supervisory) incumbents are tasked with supervising a group of Senior Environmental

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<sup>1</sup> Joint Appendix Volume I

Scientists. (JAI, 74) This description in the specification does not break down the Senior Environmental Scientists class into its component peer classes of Supervisory and Specialist. (JAI 74)

The most recent changes to the Environmental Scientist class series were made in 2013 pursuant to a proposal submitted jointly by CalHR and CAPS. (JAI, 105-116) The changes were based on an intensive classification study conducted under a labor contract agreement between CalHR and CAPS to review scientific classifications and determine if some could be consolidated or revised. (JAI, 105) As the result of that proposal, the title of the Staff Environmental Scientist classification was changed to Senior Environmental Scientist Specialist. (JAI, 107) Other changes, such as the abolishment of other scientific classes and the consolidation of those positions into the Environmental Scientist classification series are not at issue here.

The 2013 class proposal documents reinforce that both species of Senior Environmental Scientist – Supervisory and Specialist – report to Environmental Program Manager I or higher incumbents. (JAI, 113) The reporting relationship in the other direction is also contemplated: Environmental Program Managers are described as supervising both Specialist and Supervisory Senior Environmental Scientists. (JAI, 113)

Additionally, the 2001 documents on which the Board relied in establishing the modern iteration of the class series says that Senior

Environmental Scientist Supervisory incumbents will supervise “subordinate level environmental scientists.” (JAI, 123) A Senior Environmental Scientist Specialist is not a classification “subordinate” to its peer Senior Environmental Scientist Supervisor. Such a span of control was never considered by the Board for this series. They have always been peer classes. The action challenged here has improperly subordinated a peer class in violation of the constitutionally adopted classification plan.

### ***The DFW Memorandum***

On September 15, 2014, the Department of Fish and Wildlife distributed Human Resources Memorandum HR 14-048 with the subject “Change in Reporting Structure.” (JAI, 83) The memo explained that, *because of* the change in Senior Supervisor pay, the Senior Specialist class is no longer within transferable range of the Senior Supervisory classification. (JAI, 83) It noted that Specialists must now take an exam to promote into the Supervisor class. (JAI, 83) Prior to the salary change, employees could laterally transfer between the peer classifications. (JAI, 83) The memo also informed employees that DFW would allow Senior Environmental Scientist Supervisors to supervise Specialists. (JAI, 83)

### ***Problems Caused by Salary Disparities***

Historically, the Senior Environmental Specialists and Supervisors received the same salaries (JAI, 146) CalHR sets salaries for Senior Environmental Scientist Supervisors directly while salaries for the rank-

and-file Senior Environmental Scientist Specialists are set through the collective bargaining process under the Dills Act (Cal. Gov. Code § 3512 et seq.)

In 2008, CAPS successfully sued the State to enforce the like-pay-like-work principle as applied to 14 supervisor scientist classifications, including the Senior Environmental Scientist Supervisory classification (and related classes that have since been reorganized into the Senior Environmental Supervisory class). (See *California Association of Professional Scientists v. Department of Personnel Administration et al.* (2011) 195 Cal.App.4<sup>th</sup> 1228; and trial court decision at Super. Ct. No. 34-2008-00014476) These classes were underpaid, despite sharing historical horizontal pay parity with employees performing like work in various supervisory engineer classifications.

The court agreed and in 2014, Scientific Supervisory employees, including the Senior Environmental Scientist Supervisory class, received an average 42% increase in their salaries. (JAI, 101) The peer Senior Environmental Scientist Specialist classification, which is designated as rank-and-file and thus subject to the collective bargaining process, did not receive a similar pay increase from CalHR. Horizontal pay parity was restored between the previously equal senior supervisory scientists and senior supervisory engineers, but it was lost between the Senior Environmental Scientist Supervisory and their peer Specialists. (JAI, 141-

146) The loss of the horizontal pay parity relationship between the two Senior Environmental Scientist classes created a significant salary disparity at both ends (bottom and top) of the salary ranges of the two classes. A newly hired Senior Environmental Scientist Supervisor makes about 42% more than a newly hired Specialist and a Senior Environmental Scientist Supervisor at the top of the scale makes about 42% more than a Specialist at the top of the scale. The distance from the top of the Senior Environmental Scientist Specialist scale to the bottom of the Supervisory scale is slightly less dramatic at about 14%. (See JAI, 141-146)

CAPS appropriately brings this action as both the duly-certified exclusive collective bargaining representative (pursuant to Government Code § 3520.5) for the rank-and-file Senior Environmental Scientist Specialists and the recognized supervisory employee organization (pursuant to Government Code §§ 3527(c) and 3537) representing excluded-employee Senior Environmental Scientist Supervisors. The instant action is brought because of the impermissible change to the Personnel Classification Plan.

### **STANDARD OF REVIEW**

A writ of mandate will lie to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station and where there is no plain, speedy, or adequate remedy in the ordinary course of law. (Cal. Civ. Proc. §§ 1085, 1086)

When reviewing a trial court's judgment on a petition for a writ of mandate, the Court applies a substantial evidence test to the trial court's factual findings but exercises independent judgment on legal issues such as the interpretation of statutory requirements. (See *Cape Concord Homeowners Association v. City of Escondido* (2017) 7 Cal.App. 5<sup>th</sup> 180, citations omitted) Statutory interpretation is a question of law and entitled to de novo review of the trial court's determinations. (*Catalina Investments v. Jones* (2002) 98 Cal.App.4th 1, 6)

## **ARGUMENT**

### **I. THE STATE CONSTITUTION GRANTS THE STATE PERSONNEL BOARD EXCLUSIVE JURISDICTION OVER CREATING, DEFINING AND ENFORCING JOB CLASSIFICATIONS.**

This matter turns on questions of statutory (and constitutional) interpretation. Such questions are entitled to de novo review by this Court. (*Catalina Investments v. Jones* (2002) 98 Cal.App.4th at 6) The rules of statutory interpretation are the same for constitutional amendments as for statutes. (See *Williams v. Superior Court* (2001) 92 Cal.App.4<sup>th</sup> 612, 622) The Court must look to the language of the constitutional provision in question and give the words their usual and ordinary meaning. (*Id.* at 623) Only if the language is susceptible to more than one reasonable interpretation should the court resort to extrinsic evidence to determine the intent behind the provision. (*Ibid.*)

Here, the plain meaning of Article VII, Section 3 is not susceptible to more than one reasonable interpretation. It reads, in its entirety:

(a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under rules of the board.

The prescriptive “shall” confers an absolute authority to the State Personnel Board to prescribe classifications. The courts have confirmed the exclusive jurisdiction of the Board to classify positions many times. (See: *Lowe v. California Resources Agency* (1991) 1 Cal.App.4th 1140 citing *Stockton v. Department of Employment* (1944) 25 Cal.2d 264) At one time, the State Personnel Board also had jurisdiction over the administration of salaries, but that function was split and passed down to what is now CalHR in 1981. (*Id.* at 1146) The splitting of functions clearly indicates that each entity, the SPB and CalHR, has a sphere of control and the Legislature’s (and people’s) grant of specific authority and jurisdiction to each cannot be ignored.

CalHR correctly insists it has the authority to administer the Personnel Classification Plan, including the allocation of every position to the appropriate class of the classification plan under Government Code Section 19818.6. CalHR incorrectly implies, however, that the terms “allocation” and “classification” are synonymous. They are not. CAPS does



not dispute CalHR's authority over the allocation of positions, but that is not what is at issue here.

The SPB retains the exclusive jurisdiction to classify positions in the state civil service under Government Code Section 18701 et seq. and Article VII of the California State Constitution. Nothing in Section 19818.6 alters its exclusive jurisdiction. To use Respondent's interpretation of Section 19818.6 is to re-write the usual and ordinary meaning of the Constitution, which the Court cannot do. Section 19818.6 merely grants CalHR administration and *allocation* authority. To analogize: the Board creates a file folder for each type of work performed by the state, gives each a title and a description, and orders them in a file box. CalHR is responsible for filling each file with the resumes of qualified people to execute the duties described for each. State law calls the file folders "classifications" and the process of filling each file folder is called "allocation."

Government Code section 19818 vests CalHR with the power to administer, not create, the Personnel Classification Plan. Section 19818.6 gives CalHR the power to allocate each position to the appropriate class in the classification plan that is created by the State Personnel Board. Here, CalHR attempts to read into Section 19818.6 the authority to create reporting relationships. The statute grants no such authority.

CalHR asserts its allocation authority but fails to offer support for its ability to violate the Personnel Classification Plan. CalHR violates the Plan

when it directs Senior Environmental Scientist Supervisors to supervise Senior Environmental Scientist Specialists despite even its own documents clearly describing the classifications as peers to be supervised by an Environmental Program Manager I. (JAI, 123; JAI, 113) This is not an argument against CalHR's allocation of employees within the available civil service classifications. As evidenced by the 2014 DFW memorandum, CalHR was not reallocating people to positions but rather *reimagining the duties of the classifications themselves*. The State Personnel Board is the only state body with the authority to alter classifications.

II. **CALHR AND DFW IMPERMISSIBLY USURPED THE BOARD'S CONSTITUTIONALLY-GRANTED AUTHORITY.**

A. **CalHR's Salary-Setting Function Does not Trump the Board's Power to Determine Civil Service Classifications.**

CalHR believes the wide pay disparity between the previously equal classifications allows it to use the Senior Supervisors to supervise the Senior Specialists. That belief is wrong and CalHR has jumped into the SPB's arena of exclusive jurisdiction.

The courts have confirmed the State Personnel Board's exclusive jurisdiction over classification specifications and the administration of the civil service. In *Westly v. California Public Employees' Retirement System Board of Administration* (2003) 105 Cal.App.4th 1095, the State Controller challenged the CalPERS Board of Administration's attempt to exempt some of its employees from the state civil service system. The court held

that the “plenary authority” granted to the Board of Administration does not include the exclusive power to determine their civil service status. (*Id* at 1113) In *Westly*, the courts determined an issue pitting two provisions of the State Constitution against one another. Here, the fight is far more lopsided as the State Personnel Board derives its power from the State Constitution and CalHR attempts to overcome that constitutional mandate with its pay policies.

The State Constitution is clear: “the [State Personnel Board] shall enforce the civil service statutes and . . . shall prescribe probationary periods and classifications...” (Cal Const. Article VII, Sec. 3) There is no question that the Board alone defines how employees are classified and how those classifications relate to each other in the work they perform; this is the usual and ordinary meaning. Nothing about the peculiar situation the state created by breaking traditional pay parity within and among the scientific classes gives CalHR the authority to flout the State Constitution.

The Board erred when it failed to exercise its jurisdiction over this matter and in doing so, failed in its responsibility over the civil service. Here, CalHR and DFW acted outside of their specific grant of authority and SPB failed to uphold its constitutional duty to enforce the civil service statutes under Article VII, Section 3. There is no discretion afforded to the Board in Article VII, Section 3. The State Constitution assigns the Board a

clear and present duty to “enforce the civil service statutes.” The Board cannot simply choose not to exercise its jurisdiction over this issue.

**B. CalHR Had the Opportunity to Propose Changes to the Senior Environmental Scientist Classes But Did Not Do So.**

CalHR’s own description of the classes for more than a decade confirms their peer structure. There was an opportunity in 2013 to propose changes in the class structure to allow Supervisory incumbents to supervise their Specialist peers. CalHR made no such proposals and, as a consequence, SPB considered no such proposals to the Environmental Scientist series reporting structure.

CalHR and CAPS frequently discuss classification and pay issues and, when necessary, present to the State Personnel Board requests for changes to the class structure (for example, by consolidation of classes, the creation of new classes, or the abolishment of obsolete classes). (JAI, 105-140) During classification proposal discussions in 2013, just one year prior to DFW issuing its memo regarding the novel use of the Senior Environmental Scientist Supervisory class, the peer classes were described as reporting to the Environmental Program Manager I position, as is appropriate under the SPB classification specification. (JAI, 105-116) CalHR was actively involved in the study of the Environmental Scientist series of classifications. CalHR did not request SPB consider changes to the reporting structure. (JAI, 105-116)

III. **THE ENVIRONMENTAL SCIENTIST CLASS SERIES  
CLEARLY DELINEATES REPORTING RELATIONSHIPS.**

Contrary to the trial court's findings, the express terms of the Personnel Classification Plan outline the reporting relationship between the Senior Environmental Scientist classes clearly. The lack of substantial evidence for Respondent's position is fatal.

The current iteration of this series came into being in 2001. (JAI, 118-140) The SPB amended the series in 2013. (JAI, 105-116) Had CalHR, or any department, desired to change the class structure to allow for Specialists to report to Senior Environmental Scientist (Supervisor), it could have proposed such a change to SPB for evaluation based on operational need. Yet, it proposed no such change because there is no operational need for such a change. Instead, CalHR attempts to create a loophole using pay rules through which it can, presumably, avoid the hiring or allocation of additional, more expensive, Environmental Program Manager I positions – a reason for classification changes the State Personnel Board would likely reject since it undermines the class structure they created. Allowing CalHR to do this renders constitutionally delegated authority meaningless.

Per the SPB classification, the Senior Environmental Scientist

(Specialist):

... is the advanced journey level of the series. Incumbents independently identify problems, develop courses of action, and conduct critical and/or sensitive scientific investigations and studies and may prepare guidance, policy, planning, or regulatory documents and legislative proposals on issues of importance to the employer, and do other related work. Decision making at this level has a higher consequence of error than that of an Environmental Scientist, Range C. Incumbents may be assigned lead responsibility for a specific project, program function, or area of expertise; may act as a mentor to lower level staff; and may act as consultants to other technical staff, management, and other agencies in those matters.

(JAI, 74) Per the SPB classification, the Senior Environmental Scientist (Supervisory):

... is the first supervisory level of the series. Incumbents supervise and direct the work of professional or technical staff, are responsible for staff development, performance evaluation, program budgeting, and work force planning, and do other related work. Incumbents performing in this capacity have the authority and responsibility in the interest of management to recruit, hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees. Incumbents have the responsibility to direct employees, adjust employee grievances, or effectively recommend such actions.

(JAI, 74) Additionally, supervision of Senior Environmental Scientists (of

both stripes) is specifically contemplated in the Environmental Program

Manager I (Supervisory) class specification. Incumbents may:

...supervise a group of Senior Environmental Scientists and other professional and technical staff working on a critical and/or sensitive public health, environmental, and natural resource management, regulation, compliance, or research

project. Incumbents have authority in the interest of management to recruit, hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees. Incumbents have the responsibility to direct employees, adjust employee grievances, or effectively recommend such actions.

(JAI, 74)

The trial court ignores the history of this class structure and documentation of its inception when it cites language that the Supervisory class “may” supervise professional and technical staff. Substantial evidence weighs in favor of CAPS’ petition.

**A. The Senior Environmental Scientist Supervisor and Specialists Classes Were Designed to Be Peer Positions.**

Each time SPB has amended the now-Environmental Scientist deep class, the documents produced in the review process reinforce that both species of Senior Environmental Scientist – Supervisor and Specialist – should report to Environmental Program Manager I or higher incumbents.

(JAI, 105-140) Additionally, the 2001 class proposal says that Senior Environmental Scientists will supervise “subordinate level environmental scientists.” (JAI, 124) A Senior Environmental Scientist (Specialist) is not a classification “subordinate” to its peer Senior Environmental Scientist (Supervisor). Such a span of control was never considered by the Board for this series, as the Constitution requires.

Likewise, in the 2013 proposal to SPB, both Senior Environmental Scientist Supervisory and Specialist incumbents are described as reporting

to Environmental Program Managers (or in some instances, certain Supervising Engineer classifications). (JAI, 113) The alternate view is also considered: Environmental Program Managers are described as supervising both Specialist and Senior Environmental Scientists. (JAI, 113)

CalHR proposed no changes to the reporting structure and the Board adopted no changes to the reporting structure in 2001 or 2013. Accordingly, due to the overwhelming evidence that all parties involved with the study, development, and SPB adoption of these classifications intended for them to be peer classes and not dominant/subordinate classes, the court must find this use of the classes in violation of the State Constitution, state law, and SPB rules. Allowing DFW's use of the classes to continue would impermissibly subordinate the Senior Environmental Scientist Specialists to their Supervisory peers in a manner not contemplated in the Board approved class specifications, nor permitted by law.

The trial court's conclusion that the 2001 and 2013 information does not support CAPS' claims is erroneous. SPB relied on the information provided to it when it adopted recommended changes. The 2001 and 2013 information is akin to a bill analysis forming the basis for statutory interpretation of a disputed statutory provision. Similarly, in this case, the background information provides valuable insight into the SPB's intent when it adopted changes to the classification structure and insight into all



three parties' understanding of the reporting relationships between the two classes.

### **CONCLUSION**

The State Constitution imbues the State Personnel Board with exclusive jurisdiction over the creation and administration of the merit-based state civil service classifications. The Board establishes classifications and creates classification specifications. The Board created the Environmental Scientist class series with a specific reporting structure contemplated. The Senior Environmental Scientist, superior to the Environmental Scientist class and subordinate to the Environmental Program Manager class was split into Supervisory and Specialist components in recognition of a need to allow for promotional opportunities and subject-matter specialization by incumbents. Nothing in that split of duties allows for a change in the reporting structure established by the State Personnel Board. CalHR's failure to preserve horizontal pay parity within the Senior Environmental Scientist classifications does not provide it with the authority to violate the State Constitution by usurping the State Personnel Board's role in prescribing classifications.

Senior Environmental Scientist Supervisory incumbents must not continue to supervise their Specialist peers in violation of the State Personnel Board created classification specifications. For these reasons, the Court should grant the writ.

Respectfully Submitted,

**CALIFORNIA  
ASSOCIATION OF  
PROFESSIONAL  
SCIENTISTS**

DATED: January 22, 2018

  
\_\_\_\_\_  
CHRISTIANA DOMINGUEZ  
Attorney for CAPS

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I certify that the foregoing Appellant's Opening Brief is proportionately spaced, uses a 13-point typeface, and, according to Microsoft Word, the word processing program used to generate this brief, contains 4,899 words, excluding the cover, the certificate of interested parties, the tables, and this certificate.

Dated: January 22, 2018

By:   
Christiana Dominguez

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, <b>THIRD</b> APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: <p style="text-align: center; font-weight: bold;">C084869</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christiana Dominguez (SBN 243547) California Association of Professional Scientists 455 Capitol Mall, Suite 500 Sacramento, CA 95814 TELEPHONE NO.: 916-441-2629 FAX NO. (Optional): E-MAIL ADDRESS (Optional): cdominguez@capsscscientists.org ATTORNEY FOR (Name): California Association of Professional Scientists	Superior Court Case Number: <p style="text-align: center; font-weight: bold;">34-2016-80002426</p>
APPELLANT/PETITIONER: California Association of Professional Scientists  RESPONDENT/REAL PARTY IN INTEREST: SPB; CalHR DFW	FOR COURT USE ONLY
<p style="text-align: center; font-weight: bold;">CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</p> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<p><b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b></p>	

1. This form is being submitted on behalf of the following party (name): California Association of Professional Scientists

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------


- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 22, 2018

Christiana Dominguez  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY)