

COURTS: COURT CRACKS DOWN ON LEGISLATURE'S USE OF 'SPOT BILLS' IN BUDGET

The Third District Court of Appeal has cracked down on the Legislature's use of "budget trailer bills" that are devoid of content when the main state budget bill is approved, stating that the use of such spot bills "sets up a shell game" that can be abused by the Legislature.

In *Howard Jarvis Taxpayers Association v. Debra Bowen*, the plaintiffs originally sought a court order to keep Secretary of State Debra Bowen from reordering measures on the November 2012 ballot, as required by AB 1499 (Assembly Budget Committee), approved by the Legislature and governor to ensure that the governor's tax increase initiative, Proposition 30, would appear first on the ballot – a position viewed by proponents of the tax as being advantageous.

The Court of Appeal noted that its decision was not filed until more than two months after the election was held, and said the decision will not affect the fate of Proposition 30. However, the court stated that other issues raised by the litigation must be ruled upon, as they are likely to recur, and are of continuing public interest.

The legislation in question was approved as a "budget-related bill," because it included a token \$1,000 appropriation from the general fund to the Secretary of State's Office. Under Proposition 25, approved by voters in 2010, the main budget bill and budget trailer bills can be approved with a majority vote, rather than the two-thirds vote previously required, and these majority-vote budget bills can take effect immediately upon being signed by the governor.

In its 14-page opinion, the court seized upon the fact that when the main budget bill was approved, **AB 1499** contained nothing but a statement reading, "It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012."

"The Legislature argues that it complied with ... constitutional requirements by appropriating \$1,000 to the Secretary of State to pay for expenses, by finding that Assembly Bill No. 1499 is related to the budget, and by identifying Assembly Bill No. 1499 at the time the budget bill was passed and designating it by number in the budget bill," the court wrote. "The problem, of course, is that Assembly Bill No. 1499 was nothing but a number, a placeholder, an empty vessel at the time the budget bill was passed. What was later to become the substantive content of Assembly Bill No. 1499 was not contained in the bill at the time it was passed. Did the electorate intend to allow the Legislature to amend spot bills after the budget bill is passed by a mere majority vote as urgency legislation?"

The answer, the court stated, is "no."

"If, as the Legislature suggests, it can comply with (the constitution) with a mere reference to blank bills, then (the constitutional language) does not perform any function of limiting the bills to those related to the budget at the time the budget is passed, but instead sets up a shell game whereby the Legislature can identify nothing more than a

bill number in the budget bill, pass it, and only then add substance to the bill. We will not presume the electorate intended (Proposition 25) to create such a transparent loophole in the budgeting process."

The Court of Appeal opinion was written by Presiding Justice Vance Raye, and was concurred in by Justices George Nicholson and Kathleen Butz.