

## CAPS Urges Steinberg to Roll Back Furloughs



On October 15 Senate pro Tem Darrell Steinberg at a Capitol news conference unveiled a UC Berkeley study which concludes that the Schwarzenegger mandatory furlough program does not save the money it claims to, it creates a significant hardship for workers, and it cripples the ability of state government to deliver essential government services. Senator Steinberg spoke critically of the Governor's plan, but didn't say what he proposed to do about it.

CAPS President Patty Velez has a suggestion for Senator Steinberg: pressure the Governor to reduce the monthly furloughs from three to one as recommended by the UC Berkeley study, which can be viewed on the CAPS web page.

There are several special legislative sessions underway, dealing with taxes, water and other critical public issues. The Governor has made no secret in the recent past about leveraging the legislature to do HIS bidding by threatening to veto bills

important to lawmakers. CAPS has likewise urged Senator Steinberg to make reducing furloughs a priority in his own dealings with the Governor.

President Velez in an October 20<sup>th</sup> letter to Senator Steinberg said immediate action to reduce this ineffective and misguided program would help restore public confidence in state government by ensuring essential public health and safety services are provided. It will go far in restoring the financial health of the state workforce which is struggling with a nearly fifteen percent pay cut which no one expected just a few months ago.

CAPS has two lawsuits which challenge the Governor's authority to impose unpaid furloughs altogether, and his executive order authority to impose furloughs on scientists paid out of special funds.

## 2010-11 CAPS Board of Directors

The following state scientist volunteers will serve a two-year term on the CAPS Board of Directors. The new Board will be installed on November 7 in Sacramento. Congratulations to all who participated.

Name	Board Position	Classification	Department	Work City
Patty Velez	President	Staff Environmental Scientist	Fish and Game	Monterey
Valerie Brown	Vice President	Associate Health Physicist	Public Health	Sacramento
Ryan Kinsella	Secretary	Associate Industrial Hygienist	Toxic Substances Control	Chatsworth
Wes Carr	Treasurer	Associate Toxicologist	Pesticide Regulation	Sacramento
Stephanie Lewis	Director District I	Hazardous Substances Scientist	Toxic Substances Control	Chatsworth
Margarita Gordus	Director District II	Environmental Scientist	Fish and Game	Fresno
David Miller	Director District III	Senior Hazardous Substances Scientist	Toxic Substances Control	Sacramento
Chris Rogers	Director District IV	Research Scientist I (Chemical Sciences)	Public Health	Richmond
Scott Bauer	Director District V	Environmental Scientist	Fish and Game	Eureka
John Budroe	Director At-Large	Staff Toxicologist	OEHHA	Oakland
Melissa Boggs	Director At-Large	Staff Environmental Scientist	Fish and Game	San Luis Obispo
Yvonne Addassi	Supervisor Director	Senior Environmental Scientist	Fish and Game	Sacramento



# Lawsuit Summary

CAPS is a party to several lawsuits against the Schwarzenegger Administration seeking to protect the salary and benefits of state scientists. CAPS would prefer a more cooperative approach, one that results in a collective bargaining agreement that includes a definite end to unpaid furloughs and eventual salary increases.

While the Schwarzenegger administration initially seemed interested in working cooperatively, more recently it has been ruthless in reducing salaries and seeking wholesale benefit changes. Consequently, CAPS has filed several lawsuits which challenge the Governor's authority to slash the pay and benefits of state scientists and all state employees. Here is a summary:



**CAPS v. Schwarzenegger (First Furlough Lawsuit).** Last December, CAPS challenged Governor Schwarzenegger's executive order calling for a two-day furlough and corresponding 10 percent pay cut for state scientists. That lawsuit is pending at the Third District Court of Appeal. CAPS contends that state law and the now-expired CAPS MOU do not allow the Governor to unilaterally cut work hours or pay. It points out that several California governors, including Schwarzenegger, have negotiated or sought legislative approval for unpaid furloughs. The CAPS MOU calls for a 40-hour work week and requires specific salaries to be paid. It also refutes the notion that an "emergency" allows the Governor to take action inconsistent with the law and the MOU. Judge Patrick Marlette ruled for the Governor at the superior court. Briefing in the appeal will be finished on or about November 9, 2009. The case should be ready to be set for oral argument in early 2010.



**Gilb v. Chiang (Minimum Wage Case).** During July 2008, in the midst of a budget deadlock with the state legislature, Governor Schwarzenegger issued an Executive Order directing State Controller John Chiang to cut state employees' pay to the minimum amount required by the Fair Labor Standards Act. When Controller Chiang refused, the Governor's Department of Personnel Administration filed suit on August 11, 2008 seeking a court order precluding the Controller from paying employees above the FLSA minimums. CAPS intervened in support of the Controller and is a party to the case. Following a hearing in February 2009, the court ruled in favor of the Governor, meaning that in a future budget impasse, the Governor could direct the Controller to pay minimum wage. The Controller, CAPS, and other employee organizations have appealed the decision to the Third District Court of Appeal. Briefing is just beginning and will wrap up near the end of the year.



**CAPS v. DPA, Finance (Like Pay/Like Work).** In November 2006, CAPS challenged the salary ranges for 14 supervisory scientist classifications claiming that the pay violated the principle that "like salaries shall be paid for comparable duties and responsibilities." The quasi-legislative challenge was heard before the DPA through eight days of hearings. In an April 2008 administrative decision issued by DPA, CAPS prevailed in full. CAPS proceeded to court to enforce the decision, seeking to have the salaries paid. The court issued a writ commanding DPA and the Department of Finance to present the funding needed to pay the increased salaries to the Legislature for its consideration. Finance has appealed the decision; the DPA has not. Finance's appeal will make its way through the appellate process over the next several months. DPA will be expected to comply with the decision as the appeal proceeds. What that means won't be known until the Governor issues his draft budget for 2010-11. Regardless, CAPS will continue to push for payment as quickly as possible with full retroactivity.



**CAPS v Schwarzenegger (Second Furlough Lawsuit).** During July 2009 Governor Schwarzenegger added a THIRD unpaid furlough day to the mandatory program. On July 24, CAPS challenged it with another lawsuit, this one challenging the Governor's executive order authority to implement and extend furloughs to state scientists paid out of special funds. Savings in such funds do nothing to shore up the General Fund and thus do not meet the explicit goals of the Governor's executive order. This case will be set for trial in San Francisco Superior Court in the next few weeks.



**CAPS Holiday Lawsuit.** Most recently, the Governor ordered state employees to report to work on Columbus Day, October 12, historically a state holiday. Last February, Governor Schwarzenegger, with the cooperation of the state legislature, passed legislation at the 11<sup>th</sup> hour which eliminated both Columbus Day and Lincoln's birthday from the list of 14 state holidays. This action conflicts with state law which continues certain provisions of an expired MOU, including holidays. CAPS, like several other state unions, have filed a variety of actions disputing the loss of Columbus Day absent a negotiated agreement. The CAPS lawsuit was filed in Sacramento Superior Court and will be heard in the coming weeks.

# Getting Columbus Back

*By Patty Velez, President*

America was here long before Christopher Columbus discovered it. Nevertheless, it made Columbus a renowned historical figure and one of just THREE individuals for whom a US federal holiday is celebrated (the others are Martin Luther King and George Washington). There are actually 10 federal holidays, but seven of them commemorate events or groups. So it was disappointing to see the California state legislature collaborate with Governor Schwarzenegger to eliminate Columbus Day and Lincoln's Birthday as state holidays. In the case of Lincoln, his birthday is not a federal holiday, but he is a remarkable figure in American history. He was also the first president from the Republican Party, which makes its loss as a state holiday no less ironic by the fact that our current governor hails from the same party.

Columbus Day



CAPS doesn't think 14 is too many, and if the private sector has too few holidays, then they should get more. Furthermore, the way in which the holidays were removed is shameful both for Governor Schwarzenegger and state lawmakers, who supposedly are committed to a bilateral process for labor relations, otherwise known as collective bargaining. In spite of their intent to eliminate these state holidays, they overlooked separate provisions in the law which continues certain provisions of expired labor agreements, including holidays. The conflict in the two provisions suggests to CAPS that these two holidays do in fact continue until the last collective bargaining agreement is renegotiated. It was just HOW to resolve this difference of opinion that took center stage in the lead up to October 12<sup>th</sup>.

SEIU Local 1000 actively urged its members to stay home on Columbus Day as if it were still a legal holiday. CAPS, on the other hand, urged employees to report to work as scheduled and let CAPS fight the battle on everyone's behalf. CAPS has done just that, filing a lawsuit on

There's no question that the legislature intended to eliminate both Columbus Day and Lincoln's Birthday as state holidays, reducing the total number from 14 to 12. This ostensibly saves money in the midst of a serious financial crisis, but no one has given a credible estimate of the amount being saved. Rather, it seems a symbolic gesture to punish state employees who many say enjoy too many holidays compared to most working Californians.

behalf of all state scientists. You can read it on the CAPS web page: [www.capsscientists.org](http://www.capsscientists.org). Other groups have filed grievances, but CAPS believes a lawsuit gets the quickest answer and court is the best venue to get this question answered. Should CAPS win, all state scientists will receive retroactive reimbursement, including, likely, overtime compensation for all hours worked on October 12, AND a compensating day off.

## CAPS' Outstanding Young Scientist 2009

CAPS recognized three of California's Outstanding Young Scientists at an awards luncheon in Sacramento on Tuesday, September 22. Taking top honors was Marci Rosenberg, a junior at Torrey Pines High School in San Diego.

Madeline Sides, a senior at Davis High School in Davis, and Sheena Song, a senior at Palos Verde Peninsula High School in Rolling Hills, were runners-up.

CAPS' Outstanding Young Scientist Awards Program highlights students who excel in science research. The three finalists and their projects were judged by CAPS members to be the very best of more than 6,500 science projects that were entered into 15 regional science fairs throughout the state over the last year.





As CAPS' Outstanding Young Scientist for 2009, Ms. Rosenberg received a \$1,000 scholarship, and Ms. Sides and Ms. Song each received \$500 scholarships. All finalists also received a memento from CAPS. The awards were presented by CAPS Vice President Valerie Chenoweth-Brown and Public Relations Chairwoman and District III Director Yvonne Addassi.



Pictured (left to right) are runner-up Madeline Sides, 2009 Outstanding Young Scientist Marci Rosenberg, CAPS Public Relations Chair and District III Director Yvonne Addassi, and runner-up Sheena Song.

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## EnCAPsulations . . .



**JJ Jelincic for CalPERS.** No candidate received a majority of votes in the Position A election for the CalPERS Board of Administration. Joseph (JJ) Jelincic (endorsed by CAPS) received the highest number of votes. He will face Cathy Hackett in a runoff election. Ballots will be mailed to all CalPERS members. The return deadline is December 4. Kurato Shimada received a majority of votes in the Position B election and thus was reelected to the CalPERS Board of Administration.



**Contracting Ban Results in Slip'n Slide.** At the Public Health lab in Richmond, the vendor that supplies mats for building entrances has not been paid, another casualty of the ban on contracting for support services. The result: the vendor took the mats away, and entering building can be hazardous in the wet Fall weather. Enterprising employees placed their own mats inside several of the entrances to prevent slips and falls. Orange emergency cones have also been placed at the entrances as a precaution. The appalling lack of resources for this essential public health institution was apparently not addressed when Governor Schwarzenegger visited the lab on September 1.



**DPA Audits Like Pay Like Work Classes.** In a cruel irony, DPA now appears to be penalizing supervisory state scientists who came out winners in the LPLW decision. The DPA Classifications unit has begun an audit of positions affected by the LPLW decision. The effect has been to promote a further shift of supervisory work from scientific to engineering classifications. DPA denies it. If this continues or has any measureable impact on implementing the ruling, CAPS will ask Sacramento Superior Court Judge Lloyd Connelly to impose sanctions on the state.

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