IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO Respondent. BRYAN MAURICE JONES Real Party in Interest.	S255826 (Related to California Supreme Court Case No. S217284 [on Habeas Corpus]; No. S042346 on Direct Appeal]) Court of Appeal, Fourth District Division One, No. D074028 San Diego County Superior Court No. CR136371, Hon. Joan P. Weber, Presiding **CAPITAL CASE**

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to California Rules of Court, rule 8.520(f), the undersigned Private Practice Capital Habeas Corpus Attorneys, hereinafter "Amici," respectfully request leave of this court to file a Brief of Amici Curiae in Support of Real Party in Interest Bryan Maurice Jones, a copy of which is attached.

1. Identification and Interest of Amici

The undersigned attorneys are licensed members of the State Bar of California who, by appointment of this court, provide or have provided legal representation in postconviction habeas corpus proceedings to indigent persons under sentence of death in the State of California. Some of the undersigned attorneys also provide or have provided legal representation to indigent capital defendants in the federal courts. These attorneys are:

Wesley A. Van Winkle. Since 1996, Mr. Van Winkle, a solo practitioner, has directly represented six petitioners in original habeas corpus proceedings and seven petitioners in state exhaustion in state exhaustion proceedings before the California courts. He also serves as alternative assisting counsel in two state habeas cases, and several cases in which no habeas corpus counsel has yet been appointed. He is a member of California Attorneys for Criminal Justice and serves on the planning committee for the annual California Capital Defense Seminar. He is a former president of California Appellate Defense Counsel.

Robert Bacon. Mr. Bacon has represented California death-sentenced clients on state habeas corpus since 1990. Since 1997, he has been a solo practitioner. He is a former prosecutor and a former appellate court manager. He is a member of the California Academy of Appellate Lawyers.

Richard Targow. Mr. Targow has been appointed lead or associate counsel in two state capital habeas corpus cases and was alternative assisting counsel in another habeas corpus case that has now moved on to federal court. He also serves as alternative assisting counsel in three cases in which clients are awaiting appointment of habeas corpus counsel following affirmance of their appeals. He is a solo practitioner.

Lisa Short. Ms. Short was admitted to the state bar in 1979. She has been appointed by the California Supreme Court several times in state capital habeas

corpus cases.

Michael Snedeker. Mr. Snedeker has represented several California prisoners on habeas proceedings in state and federal court, and has served as alternate assisting counsel in California habeas cases. He is one of the attorneys retained by the Mexican government in the Mexican Capital Legal Assistance Program to assist counsel representing Mexican nationals in California who are challenging their death sentences.

Robert Sanger. Mr. Sanger was admitted to the California State Bar in 1973, has been a State Bar Certified Criminal Law Specialist since 1982, and is a Past President of CACJ. He has been appointed by the California Supreme Court on several capital habeas matters and currently represents five post-conviction clients in state and federal court proceedings. He has litigated 1054.9 issues, including an issue resulting in the Supreme Court decision in *Satele v. Superior Court*, 7 Cal. 5th 852, 444 P.3d 700 (2019).

The issues before this court relate to matters that particularly concern private counsel and the defendants they represent in habeas corpus proceedings. In the majority of such cases, it is necessary for such counsel to obtain postconviction discovery available to habeas corpus petitioners under California Penal Code section 1054.9 ("section 1054.9). (*See, In re Steele* (2004) 32 Cal.4th 682.) Obtaining such discovery is often critically important in order to reconstruct portions of the record that have been lost or damaged during the many years from the trial to the appointment of habeas corpus counsel, review evidence in the possession of the prosecution– such as expert bench notes or other materials– and obtain documents and other materials that would have been available to trial counsel. (*Ibid.*)

The proposed brief (see attached) was authored by Wesley A. Van Winkle. No party or counsel for a party authored any part of the proposed brief, nor did

they or any other person or entity make a monetary contribution intended to fund the preparation of the brief. (*See*, Rule 8.200(c)(3); Rule 8.520(f)(4)(A).)

II. The Proposed Brief Will Provide the Court with Information Regarding the Intent of the Legislature in Enacting Penal Code section 1054.9 and the Experience of Private Counsel in Seeking Discovery Under the Statute.

The instant litigation concerns the ability of habeas petitioners and their counsel to obtain the prosecutor's jury selection notes during postconviction discovery proceedings under Penal Code section 1054.9. Undersigned counsel Van Winkle has unique expertise regarding section 1054.9 and the legislative intent behind its passage. In September, 2001 Van Winkle first proposed to the board of directors of California Attorneys for Criminal Justice ("CACJ") that the organization draft and lobby for the passage of a bill providing for postconviction discovery. The board agreed and, in December of that year assigned Van Winkle to draft such a bill. Together with Mr. Scott Ciment, lobbyist for CACJ, Van Winkle then interacted with legislators and other organizations, such as the American Civil Liberties Union, to promote the bill's passage. The bill was ultimately sponsored by Senate Majority Leader John Burton and became Senate Bill 1391. The bill successfully passed both the Senate and the Assembly and was signed by the Governor. The bill became law in January, 2002 and was added to the Penal Code as section 1054.9.

Since the enactment of Penal Code section 1054.9, Van Winkle has continued to keep abreast of developments in the courts which interpret and apply the statute in cases involving postconviction discovery. He has presented seminar sessions on the statute for the Office of the State Public Defender, the California Appellate Project, and at the annual death penalty defense conference jointly sponsored by CACJ and the California Public Defenders Association. He also consulted with the Habeas Corpus Resource Center prior to the oral argument in *In*

re Steele, supra, 32 Cal.4th 682, the seminal case interpreting section 1054.9. Van Winkle has also pursued postconviction discovery on behalf of his habeas corpus clients and has filed and litigated section 1054.9 motions in most of the habeas corpus cases he has handled since the section became law.

By drawing on this unique background and expertise regarding section 1054.9, the proposed amicus brief will assist this court with the historical context necessary to understand how section 1054.9 was intended to be applied by the Legislature. More significantly, the proposed amicus brief will also provide the court with practical information regarding the unique challenges facing private counsel in conducting a habeas corpus investigation, particularly with regard to claims pursuant to *Batson v. Kentucky* (1986) 476 U.S. 79, and preparing and submitting a habeas corpus petition under the new statutes and rules adopted in the wake of 2016's Proposition 66.

For the foregoing reasons, Amici Curiae respectfully request that the Brief of Amici Curiae submitted concurrently with this application be filed and considered by the court.

Dated; March 6, 2020

Respectfully submitted,
Wesley A. Van Winkle
Attorney for Amici Curiae
Private Practice Capital Habeas Corpus
Attorneys

Robert Bacon
Richard Targow
Lisa Short
Michael Snedeker
Robert Sanger

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Pursuant to California Rules of Court, rule 8.520(f), the undersigned Private Practice Capital Habeas Corpus Attorneys, hereinafter "Amici," offer the following Brief of Amici Curiae in Support of Real Party in Interest Bryan Maurice Jones.

INTRODUCTION

This case presents the narrow issue of whether discovery of a

prosecutor's jury selection notes is appropriate in postconviction discovery proceedings under Penal Code section 1054.9 in view of the work product protections asserted by San Diego prosecutors. Both respondent San Diego Superior Court and the Court of Appeal for the Fourth Appellate District have answered that question in the affirmative. For the reasons set forth in the Answer Brief filed by the Habeas Corpus Resource Center on behalf of Real Party in Interest Bryan Maurice Jones and herein, Amici submit that both courts were correct and that their judgments should be affirmed.

ARGUMENT

PENAL CODE SECTION 1054.9 PLAINLY REQUIRES DISCLOSURE OF A PROSECUTOR'S VOIR DIRE NOTES UNDER THESE CIRCUMSTANCES, AND THIS COURT SHOULD FORMULATE A RULE PROVIDING FOR EXPEDITED DISCOVERY PROCEEDINGS DUE TO THE FORESHORTENED TIME PROVIDED FOR HABEAS CORPUS INVESTIGATION UNDER PROPOSITION 66

A. The purpose and history of section 1054.9.

Penal Code section 1054.9 was intended primarily to correct a series of Catch-22's that were created by *People v. Gonzalez* (1991) 51 Cal.3d 1179, 1259-1260 which held that habeas petitioners could not obtain post-judgment discovery until a petition had been filed and an order to show cause had issued, and to assist habeas corpus counsel to fulfill their duty to their clients and the courts. At the time the case was decided, and continuously since that time, state and federal law, rules of court, and both local and national professional standards required capital habeas corpus counsel to conduct reasonable investigations with the goal of including all available claims for relief in a single petition. (*See, In re Clark* (1993) 5 Cal.4th 750, 784; ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Rev. 2/03), Guideline 10.15.1,

Duties of Post-Conviction Counsel.) However, *Gonzalez* consistently thwarted such investigations by preventing habeas corpus counsel from obtaining basic documents and evidence necessary to investigate and raise potentially meritorious claims. (*Id.*, at 1259-1260.)

For example, the starting point for habeas corpus counsel's investigation is review of the record, the files of trial counsel, and documents and evidence relied upon by the parties and their experts at trial. However, during the 1990s, as the time between conviction and appointment of habeas corpus counsel grew ever-longer until it stretched into substantially more than a decade, documents of the kind relied upon by habeas corpus counsel were often lost, damaged, or destroyed. In some cases, entire trial files were destroyed in floods or fires. Trial counsel could not reconstruct or, often, even recall what had taken place at trials held more than a decade before habeas counsel were appointed; indeed, sometimes trial counsel had died before the habeas corpus investigation could even begin, and their files were often lost or destroyed by their relatives or executors. (*See, Barnett v. Superior Court* (2010) 50 Cal.4th 890, 899 [discussion problem of lost or destroyed files]; *In re Steele* (2004) 32 Cal.4th 682, 694-695 [discussing legislative committee materials on intent to permit postconviction file-reconstruction].)

In these situations, governing authority and professional standards required habeas corpus counsel to attempt to the extent possible to reconstruct the trial file, typically by seeking discovery from prosecuting agencies, experts, investigators, and others who had participated in the trial or investigation. However, most prosecuting agencies and their affiliated investigators and experts declined to assist habeas corpus counsel to reconstruct the file, citing *People v. Gonzalez, supra*. This created a Catch-

22 for habeas corpus counsel, who on one hand were required to conduct an investigation to include all claims in a single petition but could not effectively do so without first obtaining some form of discovery, which after *Gonzalez* was not available until after the petition was filed and an order to show cause was issued.

Similar issues arose with regard to obtaining evidence necessary to establish prejudice or materiality required by claims of ineffective assistance of counsel, improper suppression of evidence under *Brady v. Maryland*, false evidence, *Batson/Wheeler* violations, and other claims, particularly where counsel had neglected to investigate or file a motion or take other steps necessary to preserve an issue for review, or where the prosecution had improperly suppressed evidence or actually presented false evidence. For example, in a case that turned on the opinion of a prosecution ballistics expert but trial counsel failed to retain a defense expert, habeas corpus counsel might seek to retain an expert to review the prosecution expert's report only to find that a competent ballistics expert required not merely the report but also the bench notes of the prosecution expert and access to the bullets and casings themselves. In this and many analogous situations, prosecuting agencies again relied upon *Gonzalez* and refused to provide habeas corpus counsel with copies of expert notes or access to the physical evidence, thus effectively preventing habeas corpus counsel from even investigating potentially meritorious claims.

Section 1054.9 remedied the many Catch-22 situations created by *Gonzalez* by creating a procedure through which capital habeas corpus counsel can obtain limited postconviction discovery with which to investigate and prepare a petition. The statute permits habeas petitioners, *inter alia*, to reconstruct missing files and to obtain any materials to which

trial counsel would have been entitled at trial upon request. As discussed in Real Party's Answer Brief and in section C below, in a case in which the petitioner can show reason to believe such materials exist, this includes a prosecutor's voir dire notes. (*In re Barnett*, *supra*, 50 Cal.4th at pp. 898-899.)

B. Impact of Proposition 66 on investigating habeas claims

The passage of Proposition 66 in 2016 severely restricted private counsel's ability to provide competent habeas corpus representation to capital clients and, in the opinion of the undersigned, rendered it nearly impossible for private counsel to undertake capital habeas corpus representation at all.

For example, prior to the initiative's enactment, this court's policies and guidelines at least made clear how much counsel would be paid and what funding would be available for investigation, experts, and other related expenses. Even under these clear rules, however, private counsel so seldom applied for habeas corpus/executive clemency appointments that in the last several years prior to Proposition 66 there were only two or three such appointments per year.

But compared to the current situation under Proposition 66, the former system of appointment and compensation was a model of smooth and effective postconviction functioning. Proposition 66 includes no funding mechanism but simply relies upon the Legislature to provide for compensation of counsel and reimbursement of expenses. In the last two years, the Governor's budget has not included any line item designed to fund postconviction defense counsel at all, and it is not even clear whether funding capital habeas corpus proceedings is a state or county obligation. Penal Code section 1509, subdivision (d), one of the provisions added by

Proposition 66, also limits a habeas corpus petitioner's ability to file successive petitions– a practice effectively required by federal habeas corpus law, which compels counsel to "exhaust" claims discovered during federal pre-petition investigation by giving the state courts the first opportunity to rule on those claims.[1] Indeed, by potentially barring the filing of some exhaustion petitions that do not raise claims of actual innocence or ineligibility for the death penalty, Proposition 66 may have deprived California courts of the ability to rule on new federal claims, thereby excusing exhaustion of such claims under federal law. (*See*, 28 U.S.C. §2254(b)(1)(B)(i) [failure to exhaust claims in state court excused if "there is an absence of available State corrective process; . . ."].)

Proposition 66 also eliminated the former practice of permitting capital habeas corpus counsel three years in which to complete investigation and file a petition and now compels counsel to do all of the habeas investigation and petition preparation within one year. The undersigned submit that while it may be possible for a large agency with ample staff and resources to competently investigate and prepare a petition in that period of time, private counsel cannot possibly do so– at least not competently. Postconviction discovery proceedings cannot be commenced until counsel has reviewed the record and the trial file, and even this can require months. The record gathering required for a habeas corpus petition can by itself require more than one year. Obtaining military records from the federal archive in St. Louis typically requires nine months or more and multiple requests. Medical records which could obtained with a simple release 20

[1/] The precise definition of the term "successive" as used in section 1509, subdivision (d), has not yet been determined. The issue is one of several pending in *In re Jack Friend* (S256914).

years ago now require a HIPPAA-compliant release, often an original release for each of several record custodians, and prepayment of substantial record copying fees. Until these records have been gathered, a competent social history cannot be prepared and investigators and experts will be flying, at least partially, blind. Instead of proceeding in an orderly fashion, habeas corpus record review, investigation, and petition preparation tasks must all be underway at once. Unless counsel is very experienced and has absolutely nothing else on his or her agenda, private counsel cannot hope to undertake an appointment requiring them to file within one year.

C. Private counsel's challenges in investigating *Batson* claims.

In few other areas was the *Gonzalez* Catch-22 more daunting than in the investigation of *Batson/Wheeler* claims, the specific claim at issue in the instant matter, particularly in cases where the record and/or percipient witnesses showed the prosecution had used peremptory challenges to systematically remove members of one race, ethnicity, or gender from the jury but trial counsel failed to raise or preserve the claim at trial. Such claims commonly rely upon research into census data or other sources to determine a juror's race where none is indicated on the record or in juror questionnaires, as well as statistical analysis to demonstrate that a particular peremptory challenge was race-based, and comparative analysis of, e.g., questions posed by the prosecutor to all potential jurors, their answers, and the consistency or lack of same of the prosecutor's reasons for exercising challenges to particular jurors. (*See, Miller-El v. Dretke* (2005) 545 U.S. 231, 238; *People v. Gutierrez* (2017) 2 Cal.5th 1150, 1158-1159, 1167-1170.)

In addition, *Batson* claims often require counsel to seek information about a prosecutor's own history of using peremptory challenges to excuse

jurors of a given race or gender, or even the relevant history of a district attorney's entire office in practicing such discrimination in jury selection. Counsel sometimes may be able to assemble and meet with other postconviction counsel who have cases involving the same prosecutor or district attorney's office and may be able to detect a consistent, long-standing pattern. However, such an investigation may also require obtaining prosecution training materials, jury selection notes, and other documentation that only became available to habeas corpus counsel with the passage of Penal Code section 1054.9.

The foregoing is merely a brief sketch of some of the work involved in establishing the prima facie case for ineffective assistance *Batson* claims, but even this description suggests just how daunting such an effort is. Large agencies, such as the Habeas Corpus Resource Center, may in some cases be able to reallocate staff and resources in order to conduct such an investigation in a relatively short period of time, perhaps even in as little as a few months.[2] However, even with the aid of Penal Code section 1054.9, private capital habeas corpus counsel, who typically work as solo practitioners or as members of small law firms, have experienced great

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[2/] This was not the case in this matter, however. Based upon the pleadings and record in this matter, it appears that the superior court's order granting postconviction discovery of the prosecutor's notes was not issued until approximately one year after Real Party's initial informal discovery request (Petitioner's Court of Appeal Exh. C, p. 57), and the issue is still being litigated nearly two years after that order. (Petitioner's Court of Appeal Exh. A, p. 4.) Prior to Proposition 66, litigation of this length could not have been completed within the three-year presumptive timeliness period for filing a habeas corpus petition. After Proposition 66 imposed a one-year limit on the filing of first habeas petitions, such litigation would be futile.

difficulty in completing this work and the investigation required for all the claims in a habeas corpus petition, even in the era when counsel had three years to investigate and prepare a petition. Prior to Proposition 66, private counsel were limited to a total of $50,000 for all habeas corpus investigation and to fixed ceilings on the amounts paid for expert witnesses without whom many claims simply cannot be made. Too often private counsel were required to make difficult choices in the allocation of strictly limited resources– choices made more difficult by the knowledge that if they failed in their duty to raise all potentially meritorious claims in a single petition, the client they represent could be held to have defaulted claims they raise later in state or federal court, and counsel themselves may be the subject of ineffective assistance claims. [CITE, MARTINEZ & PROP 66.] As set forth in the next section, Proposition 66 has made this already difficult situation worse and may have effectively made it impossible for private counsel to accept appointment in capital habeas corpus cases.

In addition to the daunting effort required to complete a *Batson* investigation in an ineffective assistance case, the increasing passage of time between the conclusion of the trial and the appointment of habeas corpus counsel only makes investigating and presenting a *Batson* claim that much harder. Shortly before the enactment of Proposition 66 the time from conviction to appointment of habeas corpus/executive clemency counsel approached 15 years.[3] (*In re Morgan* (2010) 50 Call.4th 932, 938-939; *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523, 533; Cal. Com. On the Fair Admin. Of Justice, Final Rep. (2008) p. 121.) This delay and

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[3/] Since the enactment of Proposition 66, new habeas corpus appointments have ground to a complete halt.

others inherent in California's death penalty system were discussed at length in *Jones v. Chappell* (2014) 31 F.Supp.3d 1050, 1062-1063, *revsd. on other grounds*, *Jones v. Davis* (9th Cir. 2015) 806 F.3d 538. Briefly, however, the *Jones* court found that "in California a Death Row inmate will likely wait at least 25 years before his execution becomes even a realistic possibility." (*Id.*, at p. 1065.) This delay is not attributable to habeas petitioners or their counsel, but rather to the State itself. (*Id.*, at p.1066.) In fact, the court in *Jones* considerably *underestimated* the length of the delay. The undersigned represents several clients who have been on the Row for 25-30 years, and whose cases are still in progress in federal court without having yet proceeded to the evidentiary hearing stage. In any event, to begin to investigate a *Batson* claim until as long as 15 years after trial places counsel and his or her client in a severely disadvantaged position.

When the record in a *Batson* case lacks evidence of the reason a prosecutor invoked a peremptory strike, particularly in cases where trial counsel failed to raise a *Batson* challenge, the parties and the court are left to speculate as to the reason for the strikes based on an insufficient record– a practice that does not comport with the purpose of *Batson*, which rejected such speculation and instead required counsel and the courts to identify the prosecutor's actual reasons for each contested strike. Yet after a lengthy delay of 15, 20, or even more years following judgment, the prosecutor who exercised the strikes may have forgotten why the peremptories were made, or the prosecutor may have retired or even died.

In cases with delays of this nature, the best evidence– indeed, in some cases the *only* evidence– of the prosecutor's reasons for striking jurors is likely to be the prosecutor's own notes of voir dire, such as the prosecutor's jury seating chart. In such cases, delay in obtaining this

evidence can effectively deny justice to a defendant tried in violation of equal protection by an improperly selected jury. (*See, People v. Johnson* (2006) 38 Cal.4th 1096, 1100 [reversal, rather than remand, required in case where voir dire occurred six years before appellate opinion held *Batson* error occurred because "it would be 'unrealistic to believe that the prosecutor could now recall in greater detail his reasons for the exercise of the peremptory challenges in issue, or that the trial judge could assess those reasons, as required, which would demand that he recall the circumstances of the case, and the manner in which the prosecutor examined the venire and exercised his other challenges'"].) Thus the passage of time and the speculation it too often necessitates threatens to defeat the entire purpose of *Batson*, particularly for habeas corpus petitioners whose trial counsel were ineffective in failing to raise and preserve a *Batson* claim.

However, obtaining discovery from the prosecution and other state actors under Penal Code section 1054.9 has often taken more than a year– in this case nearly three years so far– and even prior to Proposition 66 private counsel commonly lacked the time and the resources to engage in such extended litigation over a single issue. Today, under Proposition 66, counsel has only one year in which to read the entire record and trial file, organize a field investigation, prepare a social history, retain and consult with experts, conduct Penal Code section 1054.9 investigation, and research and draft legal claims for a habeas corpus petition. Under that one year limit, private counsel may be unable to fully utilize the 1054.9 discovery procedure as the Legislature intended without judicial rules permitting the process to be expedited.

Given the burden on private counsel under Proposition 66, coupled with the time required to litigate postconviction discovery issues like this

one, Amici urge this court to exercise its supervisory and administrative power to formulate and set forth a clear rule providing capital habeas corpus petitioners access to prosecutors' voir dire notes, under such circumstances as the court believes appropriate, in order to enable solo practitioners and other capital habeas counsel to investigate and plead potentially meritorious claims of *Batson* violations in their first state petition within the one-year limit imposed by Proposition 66. (*In re Reno* (2012) 55 Cal.4th 428, 522 ["It is well-established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them."].) Failure to adopt such a rule could leave many attorneys unable to utilize the discovery procedure as the Legislature intended, resulting in many attorneys unknowingly abandoning potentially meritorious *Batson* claims, forcing federal counsel to raise such claims for the first time in exhaustion petitions. Those exhaustion petitions would be filed years later, adding to the already decades-long delay and likely giving rise to the likelihood of further speculation regarding the prosecutor's reasons. Furthermore, such exhaustion petitions would be futile under the terms of Proposition 66 unless the petition otherwise contained a claim of actual innocence or ineligibility for the death penalty.

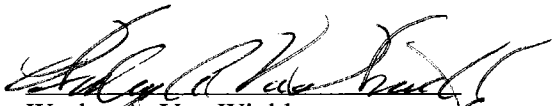
The rule requested by Amici would not only promote judicial economy and consolidating claims in a single petition, but would also comport with this court's recognition in *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 572, that section 1054.9 discovery may permit the petitioner to vindicate different rights than those at issue at trial, i.e., "whether the defendant (designated the petitioner on habeas corpus) can establish some basis for overturning the underlying judgment."

CONCLUSION

For the reasons set forth in Real Party's Answer Brief and herein, Amici respectfully submit that the judgment of the lower courts should be affirmed and that Real Party should be given access to the prosecutor's voir dire notes without further delay. Amici further submit that this court should exercise its supervisory power to devise a rule of procedure expediting postconviction discovery of prosecutors' voir dire notes under Penal Code section 1054.9 to permit habeas corpus petitioners to make effective use of that discovery process in investigating and preparing habeas corpus petitions, as the Legislature intended.

Dated: March 6, 2020

Respectfully submitted,



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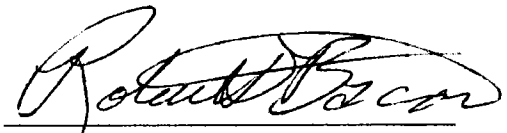
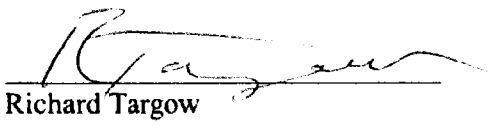


Robert Bacon



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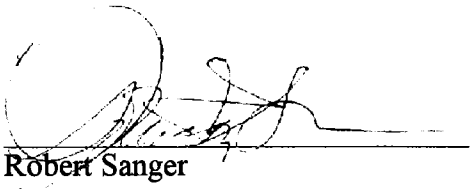

Robert Sanger

CERTIFICATE OF WORD COUNT

I declare that I am the attorney who prepared the Brief of Amici Curiae in this proceeding. On the date set forth below, I calculated the number of words in this petititon by using the word count calculator included in WordPerfect X9, the word processing system used to produce this petition. According to that calculator, this brief contains 3455 words, exclusive of tables of contents, authorities, and exhibits.

Executed this 6th day of March, 2020, at Eugene, Oregon.

Respectfully submitted,

Wesley A. Van Winkle

CERTIFICATE OF SERVICE BY MAIL

I declare that I am over the age of eighteen years and am self-employed in the City of Oakland, County of Alameda, State of California. On this date, I served the within **APPLICATION OF AMICI CURIAE PRIVATE PRACTICE CAPITAL HABEAS CORPUS ATTORNEYS FOR LEAVE TO FILE BRIEF IN SUPPORT OF REAL PARTY IN INTEREST BRYAN MAURICE JONES, AND BRIEF OF AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST** on the parties in said cause by placing true and correct copies thereof in envelopes with postage thereon fully prepaid in the United Sates mail at Berkeley, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California, on March 6, 2020.

Carol Friedman