

Case No. S232642

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

ORIGINAL

GOVERNOR EDMUND G. BROWN, JR., MARGARET R. PRINZING  
and HARRY BEREZIN,  
*Petitioners,*

SUPREME COURT  
FILED

MAR 01 2016

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF SACRAMENTO,  
*Respondent.*

Frank A. McGuire Clerk  
Deputy

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, ANNE  
MARIE SCHUBERT, an individual and in her personal capacity, and  
KAMALA HARRIS, in her official capacity as Attorney General of the  
State of California,  
*Real Parties In Interest.*

On Appeal from the Superior Court of California, County of Sacramento  
Case No. 34-2016-80002293-CU-WM-GDS  
Hon. Shelleyanne Chang

**REPLY OF REAL PARTIES IN INTEREST, CALIFORNIA  
DISTRICT ATTORNEYS ASSOCIATION AND ANNE MARIE  
SCHUBERT TO PRELIMINARY RESPONSE BY REAL PARTY IN  
INTEREST ATTORNEY GENERAL KAMALA D. HARRIS**

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## INTRODUCTION

This Reply Brief responds to Real Party In Interest Attorney General, Kamala D. Harris' "Preliminary Response."

**A. THE RULING BY JUDGE SHELLEYANNE CHANG OF THE SUPERIOR COURT WAS REASONED, SUPPORTED, AND LIMITED TO THE FACTS OF THE PRESENT CASE; IT DID NOT REWRITE THE STATUTE OR INTRODUCE AN UNWORKABLE STANDARD.**

The Attorney General argues that the superior court's ruling "rewrites" section 9002. In fact, Judge Shelleyanne Chang's ruling was limited to the case at bar. She ruled unambiguously as follows:

The court finds that the Attorney General abused her discretion in accepting the amendment as reasonably germane to the theme, purpose and subject of the original initiative. The theme and purpose of the original initiative was reform of the juvenile justice system. The amendment deals with primarily reform of the adult justice system, including parole eligibility, status and credits of adult offenders. While some of the provisions may have some impact on youthful offenders, nevertheless, the court finds that the amendment deals primarily with the reform of the adult justice system.

(See Real Parties In Interest, Notice Of Lodging Reporter's Transcript, and Exh A (p. 39) thereto.)

Judge Chang also recognized that reducing overcrowding of the prison system pursuant to federal mandate only became a priority of the measure in the *new* language of the initiative, and was nonexistent in the original language: "I think it's instructive that one of the purposes of the amendment as articulated was to address federal court mandates of overcrowding of the adult prison system." (*Id.* at p. 40.) She also

apparently was troubled that the new language imposed a constitutional amendment that effectively repealed over 40 years of established criminal justice sentencing statutes, where the initial language did not: “I also find that it is significant that the amendment was a constitutional amendment which affects numerous statutes affecting adult offenders.”

In concluding her ruling, Judge Chang ruled that allowing the new language to be treated as an “amendment” violated the legislative intent of section 9002(b):

Finally, the court finds that the purpose and intent of 9002 has been violated. The purpose of the public comment period is not only, I think, to identify and correct flaws in a proposed initiative, but also to give voters an opportunity to comment on an initiative *me a sure* before the petition is circulated for signatures.

While it’s true that public comment may address perceived errors in the drafting of or perceived unintended consequences of the proposed initiative, I do think it’s important to point out the fact that the public comment period is to provide the public with an opportunity to comment on any perceived unintended consequences.

Thus, I find that the comment period serves as a mutual benefit to both the drafters and the public. That the drafters have submitted declarations indicating that they don’t need additional time or that they don’t intend to make any further amendments to their initiative, the court finds is, frankly, irrelevant. Here, under these particular facts, the amendment was submitted after the public comment period, thereby depriving the public of the ability to make a public comment.

As is obvious from a plain reading of Judge Chang’s reasoned ruling, no new standard was set-out and no rewriting of the statute occurred. Judge Chang merely applied law to facts and ruled that the Attorney General should not have accepted the new language as an

amendment to the existing measure. Judge Chang made no value judgment on the new language, and certainly did not preclude proponents from introducing their new language as a new initiative.

**B. THE QUESTION PRESENTED TO THE TRIAL COURT WAS WHETHER THE PURPORTED AMENDMENT WAS REASONABLY GERMANE TO THE ORIGINAL FILING, NOT WHETHER THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS ARE INTERCONNECTED.**

The Attorney General asserts that the trial court ignored that the juvenile and criminal justice systems are “interconnected,” and therefore the new language was reasonably germane to the original language of the initiative measure.

However, it is easy to see exactly why the superior court ruled as it did. As extensively briefed by Real Parties California District Attorneys Association and Anne Marie Schubert, the purported amendment to the initiative proposed broad, fundamental changes that wholesale transformed the initial version of the measure. The original measure proposed changes to the juvenile justice system, while the amendment proposed sweeping changes to the adult justice system, including parole eligibility, status, and credits of adult offenders. Importantly, California policy has long held that the juvenile justice system is in fact *not* interconnected with the adult system. The penal philosophy for adults is one of punishment. The philosophy for juveniles is one of rehabilitation. (*In re Eric J* (1979) 25 Cal.3d 522, 531–532.)

The Attorney General improperly relies on the case law surrounding the “single subject” rule, which have given those words in that context a very liberal meaning. This authority is inapposite and unpersuasive.

Although the same phrase is used, in the single subject rule context the “reasonably germane” standard protects the public’s right to vote on a measure. In the ballot measure amendment context, interpreting the standard the same way would deprive the public of the right to review and comment on the measure – instead requiring that they review and comment on a different measure entirely. Indeed, this is what occurred in the instant matter.

Finally, the Attorney General argues that since the law allows for the submission of amendments after the public comment period, the Legislature contemplated that the public would not have the chance to consider those changes. This is a red herring. The clear intent of the Legislature is that at some point public comment needs to conclude so that the proponents can get on with the process of gathering signatures. The Legislature intended that the changes submitted after the public comment period be responsive to the comments received after internal deliberation, provided they are “reasonably germane” to the original proposal.

Dated: March 1, 2016.      Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief of CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION is produced using 13-point Times New Roman type including footnotes and contain approximately 986 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: March 1, 2016      **BELL, McANDREWS & HILTACHK, LLP**

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**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On March 1, 2016, I served the following: **REPLY OF REAL PARTIES IN INTEREST, CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND ANNE MARIE SCHUBERT TO PRELIMINARY RESPONSE BY REAL PARTY IN INTEREST ATTORNEY GENERAL KAMALA D. HARRIS**

on the following parties:

**SEE ATTACHED SERVICE LIST**

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

X **BY FEDERAL EXPRESS MAIL:** By placing said documents(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the FEDERAL EXPRESS MAIL SERVICE BOX, in Sacramento, California, addressed to said party(ies).

     **BY EXPRESS MAIL:** By placing said documents(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the U.S.P.S. EXPRESS MAIL SERVICE BOX, in Sacramento, California, addressed to said party(ies).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 1, 2016, at Sacramento, California.



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