No. S277487

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

vs.

TONY HARDIN

Defendant and Petitioner.

Second Appellate District, Division Seven, Case No. B315434
Los Angeles County Superior Court, Case No. A893110
The Honorable Juan Carlos Dominguez, Judge

PETITIONER'S ANSWER TO AMICUS CURIAE BRIEFS

MUNGER, TOLLES & OLSON LLP
William D. Temko (State Bar No. 98858)
william.temko@mto.com
*Sara A. McDermott (State Bar No. 307564)
sara.mcdermott@mto.com
Adeel Mohammadi (State Bar No. 343137)
adeel.mohammadi@mto.com
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone:(213) 683-9100
Facsimile: (213) 687-3702

USC POST-CONVICTION JUSTICE PROJECT
Heidi Rummel (State Bar No. 183331)
hrummel@law.usc.edu
Michael Parente (State Bar No. 288652)
mparente@law.usc.edu
Danielle A. Wilkins (State Bar. No. 349271)
dwilkins@law.usc.edu
699 Exposition Blvd
University Park
Los Angeles, CA 90089
Telephone: (213) 740-2865
Facsimile: (213) 740-5502

Attorneys for Tony Hardin

TABLE OF CONTENTS

Page

INTRODUCTION 6

ARGUMENT 7

I. THE COURT SHOULD DECLINE TO CONSIDER PROPOSITION 7 AMICI'S NEWLY RAISED ARGUMENTS. 7

II. PROPOSITION 7 DOES NOT PROVIDE A RATIONAL BASIS FOR THE LEGISLATURE'S EXCLUSION OF YOUTHFUL OFFENDERS SENTENCED TO LIFE WITHOUT PAROLE FOR SPECIAL CIRCUMSTANCE MURDER FROM YOUTH OFFENDER PAROLE HEARING ELIGIBILITY. 9

A. The Legislature was free to amend the section 190.2 framework that provides the penalties for special circumstance murder. 10

B. In any event, granting youth offender parole hearing relief to youthful offenders sentenced to life without parole for special circumstance murder does not amend the statutory penalties created by section 190.2.....15

III. THE REMEDY FOR THE EQUAL PROTECTION VIOLATION HERE IS EXTENDING ACCESS TO SECTION 3051 PAROLE ELIGIBILITY. 16

CONCLUSION.....20

CERTIFICATE OF COMPLIANCE 21

TABLE OF AUTHORITIES

Page(s)

STATE CASES

Amwest Surety Ins. Co. v. Wilson
(1995) 11 Cal.4th 1243 16

Cal. Bldg. Industry Assn. v. State Water Resources Control Bd.
(2018) 4 Cal.5th 1032 8

County of San Diego v. Com. on State Mandates
(2018) 6 Cal.5th 196 13

Del Monte v. Wilson
(1992) 1 Cal.4th 1009 19

Johnson v. Dept. of J.
(2015) 60 Cal.4th 871 10

Kopp v. Fair Pol. Pracs. Com.
(1995) 11 Cal.4th 607 19

People v. DeLeon
(2017) 3 Cal.5th 640 16

People v. Franklin
(2016) 63 Cal.4th 261 16

People v. Hofsheier
(2006) 37 Cal.4th 1185 ..... 17, 18

People v. Kelly
(2010) 47 Cal.4th 1008 15

People v. Ramos
(1984) 37 Cal.3d 136 14

People v. Super. Ct.
(2010) 48 Cal.4th 564 15

People v. Valencia
(2017) 3 Cal.5th 347 14

Prof. Engineers in Cal. Gov. v. Kempton
(2007) 40 Cal.4th 1016 8

Rockwell v. Super. Ct.
(1976) 18 Cal.3d 420 11

Yoshisato v. Super. Ct.
(1992) 2 Cal.4th 978 13

FEDERAL CASES

Barr v. Am. Assn. of Pol. Consultants, Inc.
(2020) 140 S.Ct. 2335 18

Cal. v. Ramos
(1983) 463 U.S. 992 14

Califano v. Westcott
(1979) 443 U.S. 76 18

Tuan Anh Nguyen v. I.N.S.
(2001) 533 U.S. 53 18

CONSTITUTIONAL PROVISIONS

Cal. Const., Article II, § 10, subd. (c) 9, 11

Cal. Const., Article IV, § 9 13

STATE STATUTES AND REGULATIONS

Cal. Code Regs., Title 15, § 3375.3 16

Cal. Penal Code, § 190.2 ..... *passim*

Cal. Penal Code, § 3051 ..... *passim*

Cal. Penal Code, § 4801, subd. (c) 19

FEDERAL STATUTES

28 U.S.C. § 2244, subd. (d)(1) 16

OTHER AUTHORITIES

Steven F. Shatz & Nina Rivkind, *The California Death Penalty Scheme: Requiem for* Furman*?* (Dec. 1997) 72 N.Y.U. L. Rev. 1283 11

INTRODUCTION

Hoping to manufacture a rational basis for the exclusion of youthful offenders sentenced to life without parole for special circumstance murder from section 3051 eligibility, three amici curiae argue that they have discovered the historical smoking gun to explain the exclusion: the passage of Proposition 7 in 1978. These amici—the District Attorney of San Bernardino County, the District Attorney of Santa Clara County, and the Criminal Justice Legal Foundation (together, the "Proposition 7 Amici")—now propose a reading of Proposition 7 that neither the Attorney General's Office nor the Legislature itself has advanced. Proposition 7 Amici argue that Proposition 7 set the penalty for special circumstance murder as either death or life without parole, and that the Legislature was powerless to enact youth offender parole because of constitutional limitations on the ability to amend voter initiative statutes.

The problem for Amici is that they have misread the historical record. Proposition 7 did *not* set the penalties for special circumstance murder; those penalties predate Proposition 7 and were enacted by the Legislature through ordinary legislation in 1977, a year prior to the passage of Proposition 7. The Legislature was thus free to amend those penalties, codified at section 190.2 of the Penal Code, in the ordinary course. When, more than 35 years later, the Legislature created youth offender parole eligibility through the enactment and subsequent amendments to section 3051, it was fully able to extend that eligibility to youthful offenders convicted of special circumstance

murder. In light of the Legislature's singular focus on the rehabilitative potential of youthful offenders—a principle applicable regardless of the specific crime any individual prosecutor decided to charge a youthful offender with—the Legislature's decision to exclude youthful offenders convicted of special circumstance murder from youth offender parole hearing eligibility remains without a rational basis.

ARGUMENT

I. THE COURT SHOULD DECLINE TO CONSIDER PROPOSITION 7 AMICI'S NEWLY RAISED ARGUMENTS.

Proposition 7 Amici devote much of their briefs to arguments that were never before raised or briefed, either in front of this Court or at any other time in the proceedings below. They raise two novel arguments: *First*, that both Hardin and the government have overlooked the history of Proposition 7 and Penal Code section 190.2, which they allege provides a rational basis for the Legislature to exclude youthful offenders convicted of special circumstance murder from section 3051 eligibility; and *second*, that if an equal protection violation is found, the appropriate remedy—in accordance with their reading of Proposition 7—is to deprive some subset of youthful offenders of section 3051 youth offender parole hearing eligibility.[1] As an initial matter, the Court should decline to consider either argument as improperly raised.

---

[1] As discussed in section III below, it remains unclear which youthful offenders Amici propose should be deprived of parole eligibility and on what basis that decision should be made.

Because Proposition 7 Amici's arguments were "not raised by the parties," this Court should conclude that "it is unnecessary to address [them] at this time." (*Prof. Engineers in Cal. Gov. v. Kempton* (2007) 40 Cal.4th 1016, 1047, fn. 12.) "It is the general rule that an amicus curiae accepts the case as he finds it and may not launch out upon a juridical expedition of its own unrelated to the actual appellate record." (*Ibid.,* cleaned up.) "California courts will not consider issues raised for the first time by an amicus curiae." (*Cal. Bldg. Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1048, fn. 12, internal quotation marks omitted.)

There is good reason why this Court should adhere to these principles and decline to consider Proposition 7 Amici's eleventh-hour arguments here. As discussed infra, Proposition 7 Amici fundamentally misinterpret the enactment history of Penal Code section 190.2 and misattribute that section's provision of penalties for special circumstance murder to Proposition 7. Had these arguments been raised before this juncture, the factual and legal errors underlying Proposition 7 Amici's arguments would have been discovered and corrected before this case was fully briefed in front of this State's court of last resort. In accordance with this Court's "general rule," *id.*, the Court should therefore decline consideration of these newly raised arguments.

II. PROPOSITION 7 DOES NOT PROVIDE A RATIONAL BASIS FOR THE LEGISLATURE'S EXCLUSION OF YOUTHFUL OFFENDERS SENTENCED TO LIFE WITHOUT PAROLE FOR SPECIAL CIRCUMSTANCE MURDER FROM YOUTH OFFENDER PAROLE HEARING ELIGIBILITY.

Despite offering no support in either the legislative record or the record in this appeal, Proposition 7 Amici raise the novel argument that a 45-year-old ballot initiative—Proposition 7—must be read to have tied the Legislature's hands and prevented it from enacting section 3051 relief for youthful offenders convicted of special circumstance murder. (CJLF Br. at 35-36; San Bernardino County DA Br. at 26-27; Santa Clara County DA Br. at 28-30.) In particular, Proposition 7 Amici argue that Proposition 7 created a penalty framework such that defendants convicted of special circumstance murder must either be sentenced to death or life without parole. Attempts to give youth offender parole hearing relief to youthful offenders convicted of special circumstance murder, they argue, would run afoul of the constitutional rule that voter initiative statutes cannot be amended by ordinary legislative acts. (See Cal. Const., art. II, § 10, subd. (c) ["The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval."].)

But Proposition 7 Amici are simply wrong on the facts: Proposition 7 did not create the penalty framework for special circumstance murder. That provision *predates* Proposition 7 and is therefore not subject to the constitutional rule limiting

amendments to initiative statutes. And even if the penalty framework were somehow subject to the constitutional limitation on amending initiative statutes, a legislative act to provide youth offender parole eligibility to youthful offenders like Hardin who were convicted of special circumstance murder would not have "amended" the penalty framework.

In short, the Legislature's otherwise irrational decision to exclude youthful offenders convicted of special circumstance murder from section 3051 eligibility is not cured by reference to Proposition 7. While it may be true that the Court is authorized to engage in "rational speculation" in reviewing Hardin's equal protection challenge, see *Johnson v. Dept. of J.* (2015) 60 Cal.4th 871, 881 (internal quotation marks omitted), because Proposition 7 Amici have misunderstood the legislative history and statutory framework surrounding Proposition 7, the Court should reject their invitation to engage in *ir*rational speculation here. The Legislature was fully authorized to enact section 3051 relief for youthful offenders convicted of special circumstance murder. Thus, even if the Legislature erroneously relied on Proposition 7 to justify its exclusion of individuals like Hardin from section 3051 relief—which, to be clear, there is no evidence to support—that reliance would be irrational and arbitrary.

A. The Legislature was free to amend the section 190.2 framework that provides the penalties for special circumstance murder.

Proposition 7, enacted by California voters in 1978, did *not* set the penalties for special circumstance murder. Instead, the operative language of section 190.2 of the California Penal

Code—which today states that the penalty for a defendant convicted of special circumstance murder is "death or imprisonment in the state prison for life without the possibility of parole"—*predates* Proposition 7 and was in fact enacted by ordinary legislation and not voter initiative. The statutory framework for special circumstance murder penalties is not, therefore, insulated by the California Constitution's prohibition on amending initiative statutes through ordinary legislation unless the initiative itself permits amendment. (See Cal. Const., art. II, § 10, subd. (c).) As a result, the Legislature's decision to exclude youth offenders sentenced for special circumstance murder to life without parole cannot be rationally explained by Proposition 7.

The Legislature first enacted section 190.2 in 1973. (Stats. 1973, ch. 719, § 5; see also Steven F. Shatz & Nina Rivkind, *The California Death Penalty Scheme: Requiem for* Furman*?* (Dec. 1997) 72 N.Y.U. L. Rev. 1283, 1307-1314 [describing the relevant history of section 190.2].) The 1973 statute created a mandatory death penalty for special circumstance murder. After this Court struck down the mandatory death penalty provision as unconstitutional, see *Rockwell v. Super. Ct.* (1976) 18 Cal.3d 420, 445, the Legislature amended section 190.2 in 1977 to provide that the penalty for special circumstance murder is "death or confinement in the state prison for life without possibility of parole," Stats. 1977, ch. 316, § 9.

Proposition 7—which voters enacted the following year—expanded the list of special circumstances. (Ballot Pamp., Gen.

Elec. (Nov. 7, 1978) text of Prop. 7, § 6, p. 42.) It did not, however, set the penalties for special circumstance murder. That framework predates Proposition 7 by at least one year and was enacted by the Legislature through its ordinary legislative process. Contrary to assertions by Proposition 7 Amici, nothing prevents the Legislature from amending that framework using the same ordinary legislative process.

It is true that in amending section 190.2, Proposition 7 first repealed the entirety of then-existing section 190.2 (including the provision concerning what penalties should apply to special circumstance murder) and replaced it with a new section 190.2, repeating almost verbatim the relevant provision about penalties.[2] (Ballot Pamp., Gen. Elec. (Nov. 7, 1978) text of Prop. 7, §§ 5, 6, pp. 41-42.) The repeal and reenactment of nearly identical statutory provisions is a quirk of the California statutory amendment process and does not alter the conclusion that the Legislature was free to change the penalties provided for in section 190.2 following passage of Proposition 7. "When an existing statutory section is amended—even in the tiniest part—the state Constitution requires the entire section to be reenacted

---

[2] The previous version of section 190.2 stated, in relevant part, that the "penalty for a defendant found guilty" of special circumstance murder "shall be death or confinement in the state prison for life without possibility of parole." (Stats. 1977, ch. 316, § 9.) Proposition 7 enacted virtually identical language, providing that the "penalty for a defendant found guilty" of special circumstance murder "shall be death or confinement in state prison for a term of life without the possibility of parole." (Ballot Pamp., Gen. Elec. (Nov. 7, 1978) text of Prop. 7, § 5, p. 41.)

as amended." (*County of San Diego v. Com. on State Mandates* (2018) 6 Cal.5th 196, 208; see Cal. Const., art. IV, § 9 ["A section of a statute may not be amended unless the section is re-enacted as amended."].)

To the extent that Proposition 7 Amici suggest that Proposition 7's wholesale repeal and reenactment of section 190.2 protects the entirety of that statute from amendment by ordinary legislative processes, this Court has squarely foreclosed such an argument. "[T]echnical reenactments"—like the reenactment of the relevant portion of section 190.2—which "involve no substantive change in a given statutory provision" are not covered by article II, section 10 of the State Constitution. (*County of San Diego*, *supra*, 6 Cal.5th at p. 214); see also *Yoshisato v. Super. Ct.* (1992) 2 Cal.4th 978, 989 [rejecting an interpretation that "assigns undue import to the technical procedures for amending statutes"].) The Legislature "retains the power to amend the restated provision through the ordinary legislative process." (*County of San Diego*, *supra*, 6 Cal.5th at p. 214.) Proposition 7, therefore, does nothing to provide a rational basis for the Legislature's decision to exclude youthful offenders sentenced to life without parole for special circumstance murder from youth offender parole hearing eligibility.

Not only do the Proposition 7 Amici disregard the enactment history of special circumstance murder in California, they also overlook the fact that Proposition 7 itself acknowledged that not every person convicted of special circumstance murder would spend the rest of his or her life in prison (or be executed).

Instead, the electorate recognized that defendants sentenced to life without parole may in fact be released at some future point. Among other things, Proposition 7 mandated the so-called Briggs Instruction, pursuant to which "the jury would have to be informed that life without the possibility of parole might at a later date be subject to commutation or modification, thereby allowing parole." (Ballot Pamp., Gen. Elec. (Nov. 7, 1978), Analysis by Legislative Analyst, pp. 32-33.)[3] The Briggs Instruction "bring[s] to the jury's attention the possibility that the defendant may be returned to society." (*Cal. v. Ramos* (1983) 463 U.S. 992, 1003.)[4] Thus, not only did the penalties for special circumstance murder predate Proposition 7, voters enacting Proposition 7 expressly rejected the erroneous interpretation pressed by Proposition 7 Amici here that Proposition 7 mandates that a defendant convicted of special circumstance murder either be executed or spend the rest of his or her life in prison.

---

[3] See *People v. Valencia* (2017) 3 Cal.5th 347, 357 (noting that the Legislative Analyst is "required by law to provide and explain to voters a measure's potential impacts" and relying on the Legislative Analyst's interpretation of an initiative statute).

Proposition 7 amended section 190.3 to mandate that the jury "shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California." (Ballot Pamp., Gen. Elec. (Nov. 7, 1978) text of Prop. 7, § 8, p. 44.)

[4] This Court subsequently held that the Briggs Instruction violated the California Constitution. (*People v. Ramos* (1984) 37 Cal.3d 136, 159.)

B. In any event, granting youth offender parole hearing relief to youthful offenders sentenced to life without parole for special circumstance murder does not amend the statutory penalties created by section 190.2.

That section 190.2's penalty framework predates Proposition 7 should be enough to dispose of Proposition 7 Amici's arguments that the Legislature excluded certain youthful offenders from section 3051 eligibility to avoid running afoul of the State Constitution's restrictions on amending initiative statutes. But even if Proposition 7 Amici were correct that the statutory framework for penalties codified at section 190.2 cannot be amended except through voter initiative, granting youth offender parole hearing eligibility to youthful offenders sentenced to life without parole for special circumstance murder does not amend section 190.2's penalty framework. Thus, the Legislature was free to grant such relief at the time it enacted and amended section 3051, and its decision to exclude those youthful offenders remains without a rational basis.

To determine whether legislation amends a voter initiative, this Court asks whether the legislation "prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People v. Super. Ct. (Pearson)* (2010) 48 Cal.4th 564, 571.) "The Legislature remains free to address a 'related but distinct area' or a matter that an initiative measure 'does not specifically authorize or prohibit.'" (*Id.* [quoting *People v. Kelly* (2010) 47 Cal.4th 1008, 1025–1026].) If the Legislature had acted to create section 3051 eligibility for youthful offenders convicted of special circumstance murder, the article II, section 10 constitutional

analysis would "start with the presumption that the Legislature acted within its authority," *People v. DeLeon* (2017) 3 Cal.5th 640, 651, cleaned up, and "resolv[e] all doubts in favor of the [a]ct," *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252.

Here, creating section 3051 parole eligibility for youthful offenders convicted of special circumstance murder would not have amended Proposition 7. The sentence imposed on youthful offenders for special circumstance murder would remain life without parole. "The Legislature did not envision that the original sentences of eligible youth offenders would be vacated and that new sentences would be imposed to reflect parole eligibility during the 15th, 20th, or 25th year of incarceration." (*People v. Franklin* (2016) 63 Cal.4th 261, 278.) The youthful offender's sentence would remain the same for practical purposes as well. The sentence of life without parole would remain on the abstract of judgment; prisons would continue to use the sentence for purposes of calculating a youthful offender's classification score and custody level (see Cal. Code Regs., tit. 15, § 3375.3); and deadlines for seeking federal habeas relief would not be reset (see 28 U.S.C. § 2244, subd. (d)(1)). The section 190.2 penalties would therefore continue to be applicable.

III. THE REMEDY FOR THE EQUAL PROTECTION VIOLATION HERE IS EXTENDING ACCESS TO SECTION 3051 PAROLE ELIGIBILITY.

As the Court of Appeal concluded below, the appropriate remedy in this case is to grant Hardin a *Franklin* hearing to develop evidence for his youth offender parole hearing. Two

Proposition 7 Amici argue, however, that any equal protection violation should be remedied instead by *invalidating* section 3051 eligibility for some subset of youthful offenders. (See CJLF Br. at 38-39 [suggesting that the appropriate relief is to "strike[]" section 3051(b)(3), which creates youth offender parole hearing eligibility for youthful offenders who were sentenced to 25 years to life for a controlling offense]; San Bernardino County DA Br. at 27-28 [arguing, without further specification, that "the remedy is to withdraw youthful offender parole hearings from young adults"].)

These Proposition 7 Amici erroneously argue that the Court should look to the electorate's preference in deciding whether to expand or restrict section 3051 relief. This argument again rests on the mistaken assumption that in enacting Proposition 7, California voters were the ones who set the penalty for special circumstance murder as either death or life without parole. (See CJLF Br. at 38; San Bernardino County DA Br. at 27.) As discussed in section II.A *supra*, California voters did *not* set the penalty for special circumstance murder through initiative statute; that penalty scheme predated Proposition 7 and was enacted by the Legislature in the ordinary course.

As a result, "[i]n choosing the proper remedy for an equal protection violation, our primary concern is to ascertain, as best we can, which alternative the Legislature would prefer." (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1207, *overruled on other grounds by Johnson v. D.O.J.* (2015) 60 Cal.4th 871.) In fashioning an appropriate remedy to an underinclusive statute,

the courts have recognized a preference for extending rather than restricting benefits. (See, e.g., *Barr v. Am. Assn. of Pol. Consultants, Inc.* (2020) 140 S.Ct. 2335, 2354 ["The Court's precedents reflect th[e] preference for extension rather than nullification."]; *Califano v. Westcott* (1979) 443 U.S. 76, 89–90 [stating that "extension, rather than nullification, is the proper course" and noting that "equitable considerations" support the expansion of benefits to remedy an equal protection violation].) "The choice of extension over nullification also . . . ha[s] the virtue of avoiding injury to parties who are not represented in the instant litigation." (*Tuan Anh Nguyen v. I.N.S.* (2001) 533 U.S. 53, 96 (dis. opn. of O'Connor, J.).)

Here, it is clear that "[t]otal invalidation" of section 3051 parole eligibility for some subset of youthful offenders "would undoubtedly be unacceptable to the Legislature." (See *Hofsheier*, *supra,* 37 Cal.4th at p. 1208.) As discussed in Petitioner's Answering Brief, see, e.g., pp. 30-41, the Legislature's purpose in enacting youth offender parole hearing relief through section 3051 was singularly focused on the rehabilitative potential of youthful offenders. Indeed, in enacting the first bill creating section 3051, the Legislature expressly "recognize[d] that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society." (Stats. 2013, ch. 312, § 1 (S.B. 260).) Through two subsequent amendments to section 3051, the Legislature *expanded* eligibility for youth offender parole

hearings, first to individuals who were younger than 23 at the time of their crimes, Stats. 2015, ch. 471, § 1 (S.B. 261), and then to those who were 25 or younger, Stats. 2017, ch. 675, § 1 (A.B. 1308). The Legislature concurrently instructed the Board of Parole Hearings to "give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner" in determining whether to grant parole. (Pen. Code, § 4801, subd. (c).)

Nor do the Amici engage with the difficult question of how, under their proposal, the Court should decide which youthful offenders it strips of section 3051 eligibility in order to remedy the equal protection violation. The Court need not decide that question, of course, if it concludes that the appropriate remedy—in accordance with the statutory scheme and the Legislature's intent—is to extend and not restrict eligibility for youth offender parole hearings.

It is difficult to imagine that the Legislature would choose to fully undo this rehabilitative regime as to some subset of youthful offenders if this Court finds the section 3051(h) exclusion of youthful offenders sentenced to life without parole for special circumstance murder to be unconstitutional. Instead, this Court should be "guided by the intent of the Legislature" to recognize the potential for rehabilitation of youthful offenders, see *Kopp v. Fair Pol. Pracs. Com*. (1995) 11 Cal.4th 607, 651 [quoting *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1026], and conclude that the remedy for the equal protection violation here

is to allow youth offender parole hearings for youthful offenders convicted of special circumstance murder.

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: October 2, 2023

/s/ Adeel Mohammadi

William D. Temko
Sara A. McDermott
Adeel Mohammadi
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
William.Temko@mto.com
Sara.Mcdermott@mto.com
Adeel.Mohammadi@mto.com

Dated: October 2, 2023

/s/ Heidi Rummel

Heidi Rummel
Michael Parente
Danielle A. Wilkins
USC POST-CONVICTION JUSTICE PROJECT
699 Exposition Blvd, University Park
Los Angeles, CA 90089
Telephone: (213) 740-2865
hrummel@law.usc.edu
mparente@law.usc.edu
dwilkins2@law.usc.edu

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

I certify that the attached Answer to Amicus Curiae Briefs uses a 13-point Century Schoolbook font and contains 3,546 words.

/s/ Adeel Mohammadi
Adeel Mohammadi
MUNGER, TOLLES & OLSON LLP
Attorneys for Petitioner Tony Hardin

Case Name: *THE PEOPLE OF THE STATE OF CALIFORNIA v. TONY HARDIN*

Case No: S277487

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Sara A. McDermott, am employed in the City of Los Angeles, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, California 90071.

On October 2, 2023, I served the foregoing document(s) described as:

PETITIONER'S ANSWER TO AMICUS CURIAE BRIEFS

on the interested parties in the manner indicated below:

SEE ATTACHED "SERVICE LIST"

X (BY ELECTRONIC MAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through TrueFiling in portable document format ("PDF") Adobe Acrobat.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 2, 2023, at Los Angeles, California.

/s/ Sara A. McDermott
Sara A. McDermott

SERVICE LIST FOR *THE PEOPLE OF THE STATE OF CALIFORNIA v. TONY HARDIN*

CALIFORNIA SUPREME COURT CASE NO. S277487

Representing Plaintiff and Respondent The People of the State of California: Nima Razfar **Office of the Attorney General** 300 South Spring Street, Ste 1700 Los Angeles, CA 90013 Helen H. Hong **Office of the Attorney General** 600 West Broadway, Suite 1800 San Diego, CA 92101	**Representing Defendant and Appellant Tony Hardin:** Heidi Rummel **USC Post-Conviction Justice Project** 699 Exposition Blvd University Park Los Angeles, CA 90089
Representing Amicus Curiae Amicus Populi: Mitchell Keiter **Office of the Orange County District Attorney** 1400 W. Lacey Boulevard Hartford, CA 93230	**Representing Amici Curiae Human Rights Watch, Loni Hancock, The Anti-Recidivism Coalition, The LWOP Alliance Group, and The National Life Without Parole Leadership Council:** Gregory Wolff **Complex Appellate Litigation Group LLP** 96 Jessie Street San Francisco, CA 94105

Representing Amicus Curiae Jeffrey Aaron, Apryl Alexander, Jeffrey Arnett, Arielle Baskin-Sommers, Sara Boyd, B. J. Casey, Hayley Cleary, Alexandra Cohen, Judith Edersheim, Adriana Galván, Catherine Hartley, Luke Hyde, Catherine Insel, Daniel Keating, Robert Kinscherff, Grace Mucci, Ashley Nellis, Cecil Reynolds, Joseph Ryan, Elizabeth Shulman, Jennifer Silvers, Leah Somerville, Elizabeth Sowell, Juvenile Law Center, American Academy of Pediatric Neuropsychology, Pacific Juvenile Defender Center, and The Sentencing Project: Kathleen R. Hartnett **Cooley LLP** 3 Embarcadero Center San Francisco, CA 94111-5800 Adam S. Gershenson **COOLEY LLP** 500 Boylston Street Boston, MA 02116 Marsha L. Levick **Juvenile Law Center** 1800 JFK Boulevard, Suite 1900B Philadelphia, PA 19103	**Representing Amicus Curiae Santa Clara Independent Defense Counsel Office:** Brian C. McComas **Law Office of B.C. Brian McComas, LLP** 77 Van Ness Avenue, Suite 101, PMB 1605 San Francisco, CA 94102 Eric Weaver **Attorney at Law** P.O. Box 6294 Albany, CA 94706

Representing Amicus Curiae District Attorney of the County of San Bernardino: Brent J. Schultze **San Bernardino County District Attorney's Office** 303 West Third Street, 5th Floor San Bernardino, CA 92415-0042	**Representing Amicus Curiae Criminal Justice Legal Foundation:** Kymberlee C. Stapleton **The Criminal Justice Legal Foundation** 2131 L Street Sacramento, CA 95816
Representing Amici Curiae ACLU, ACLU of Northern California, ACLU of Southern California, California Public Defenders Association, and Contra Costa Public Defender Office: Avram Frey **ACLU Foundation of Northern California** 39 Drumm Street San Francisco, CA 94111 Summer Lacey **ACLU Foundation of Southern California** 1313 West Eighth Street Los Angeles, CA 90017 Diana Garrido **Contra Costa Public Defender Office** 800 Ferry Street Martinez, CA 94553 Kimberly Saltz **ACLU Foundation** 125 Broad Street New York, NY 10004	**Representing Amicus Curiae Prosecutors Alliance of California:** Patrick J. Fuster **Gibson Dunn & Crutcher LLP** 333 South Grand Avenue Los Angeles, CA 90017

Representing Amicus Curiae Catherine M. Grosso: Michael Laurence **Law Office of Michael Laurence** 1770 Post Street, Suite 123 San Francisco, CA 94115	**Representing Amicus Curiae Santa Clara County District Attorney:** David R. Boyd **Office of the District Attorney of Santa Clara County** 70 West Hedding Street County Government Center, West Wing San Jose, CA 95110
Clerk of Court **Los Angeles Superior Court** 312 North Spring Street Los Angeles, CA 90012 VIA HAND DELIVERY	**Clerk of Court** **California Court of Appeal** Second District Ronald Reagan State Bldg. 300 S. Spring Street Los Angeles, CA 90013 VIA TRUEFILING SERVICE

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. HARDIN**
Case Number: **S277487**
Lower Court Case Number: **B315434**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **sara.mcdermott@mto.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Amicus Answer Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
David Boyd Office of the District Attorney of Santa Clara County	dboyd@dao.sccgov.org	e-Serve	10/2/2023 2:48:31 PM
Patrick Fuster GIBSON, DUNN & CRUTCHER LLP 326789	PFuster@gibsondunn.com	e-Serve	10/2/2023 2:48:31 PM
Kathryn Parker Complex Appellate Litigation Group LLP	paralegals@calg.com	e-Serve	10/2/2023 2:48:31 PM
Diana Garrido Contra Costa Public Defenders Office 243343	diana.garrido@pd.cccounty.us	e-Serve	10/2/2023 2:48:31 PM
Michael Laurence Law Office of Michael Laurence 121854	mlaurence@mlaurence.org	e-Serve	10/2/2023 2:48:31 PM
BLANCA ROMERO Department of Justice, Office of the Attorney General-San Diego	blanca.romero@doj.ca.gov	e-Serve	10/2/2023 2:48:31 PM
Brian McComas Law Office of B.C. McComas 273161	mccomas.b.c@gmail.com	e-Serve	10/2/2023 2:48:31 PM
Avram Frey ACLU Foundation of Northern California 347885	afrey@aclunc.org	e-Serve	10/2/2023 2:48:31 PM
Mitchell Keiter Office of the Orange County District Attorney	mkeiter@msn.com	e-Serve	10/2/2023 2:48:31 PM

Kymberlee Stapleton The Criminal Justice Legal Foundation 213463	kym.stapleton@cjlf.org	e-Serve	10/2/2023 2:48:31 PM
Heidi Rummel USC Post-Conviction Justice Project 183331	hrummel@law.usc.edu	e-Serve	10/2/2023 2:48:31 PM
Nima Razfar Office of the Attorney General 253410	nima.razfar@doj.ca.gov	e-Serve	10/2/2023 2:48:31 PM
Brian Mccomas Law Office of B.C. Brian McComas, LLP	mccomas.b.c@mccomasllp.com	e-Serve	10/2/2023 2:48:31 PM
Matt Nguyen Cooley LLP 329151	mnguyen@cooley.com	e-Serve	10/2/2023 2:48:31 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	10/2/2023 2:48:31 PM
Sara Mcdermott Munger, Tolles & Olson LLP 307564	sara.mcdermott@mto.com	e-Serve	10/2/2023 2:48:31 PM
William Temko Munger, Tolles & Olson LLP	william.temko@mto.com	e-Serve	10/2/2023 2:48:31 PM
Helen Hong Office of the Attorney General 235635	helen.hong@doj.ca.gov	e-Serve	10/2/2023 2:48:31 PM
Kathleen Hartnett Cooley LLP 31467	khartnett@cooley.com	e-Serve	10/2/2023 2:48:31 PM
Kimberly Saltz ACLU Foundation	ksaltz@aclu.org	e-Serve	10/2/2023 2:48:31 PM
Brent Schultze San Bernardino District Attorney 230837	bschultze@sbcda.org	e-Serve	10/2/2023 2:48:31 PM
Greg Wolff Complex Appellate Litigation Group LLP 78626	Greg.wolff@calg.com	e-Serve	10/2/2023 2:48:31 PM
Summer Lacey ACLU Foundation of Soutern California 308614	slacey@aclusocal.org	e-Serve	10/2/2023 2:48:31 PM
Sara Cooksey American Civil Liberties Union Foundation of Northern California	scooksey@aclunc.org	e-Serve	10/2/2023 2:48:31 PM
David Boyd Office of the District Attorney - Santa Clara County 184614	dboyd@da.sccgov.org	e-Serve	10/2/2023 2:48:31 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/2/2023

Date

/s/Sara McDermott

Signature

McDermott, Sara (307564)

Last Name, First Name (PNum)

Munger, Tolles & Olson LLP

Law Firm