No. S122611

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff and Respondent,	)	(Orange County Sup.
	)	Court No. 99ZF0023)
vs.	)	
	)	
MAURICE G. STESKAL,	)	
	)	
Defendant and Appellant.	)	
	)	

ON AUTOMATIC APPEAL
FROM A JUDGMENT AND SENTENCE OF DEATH
Superior Court of California, County of Orange
Hon. Frank F. Fasel, Judge

APPELLANT'S SUPPLEMENTAL BRIEF

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ADHERING TO UNITED STATES SUPREME COURT PRECEDENT AND CONTEMPORARY STANDARDS OF DECENCY, THIS COURT SHOULD OVERRULE *PEOPLE V. HAJEK & VO* (2014) 58 CAL.4th 1144 AND *PEOPLE V. BOYCE* (2014) 59 CAL.4th 672, AND HOLD THAT THE EXECUTION OF SEVERELY MENTALLY ILL OFFENDERS VIOLATES THE UNITED STATES AND CALIFORNIA CONSTITUTIONS.

A. Introduction.

The uncontroverted evidence at trial showed that appellant Maurice G. Steskal suffered from continuous, severe mental illness beginning in his childhood, that he was severely mentally ill at the time of his offense at age 39, and that the offense was the direct result of his psychosis.

In the Opening Brief in this case, appellant argued that the execution of persons such as he, who were severely mentally ill at the time of their crimes, and as a result were substantially impaired with respect to those offenses, was cruel and unusual punishment under the United States and California Constitutions, as well as violative of equal protection guarantees, and unconstitutionally disproportionate. AOB 151-189.

In *People v. Hajek & Vo* (2014) 58 Cal.4th 1144, 1250-1252 (hereafter, *Hajek*), this Court rejected a similar argument, holding that severely mentally ill offenders are not ineligible for the death penalty. In *People v. Boyce* (2014) 59 Cal.4th 672, 718-723 (hereafter, *Boyce*), the Court, relying on *Hajek*, again rejected a similar argument.

Appellant respectfully suggests that *Hajek* and *Boyce* should be revisited. In *Hajek*, the defendant's argument to this Court did not adhere to the analytic methodology employed by the United States Supreme Court in determining whether a punishment violates the Eighth Amendment's

Cruel and Unusual Punishment Clause. This Court, in its opinion in *Hajek,* did not analyze the issue in a manner that comports with United States Supreme Court precedent. *Boyce*, in turn, relied on *Hajek.*

When the issue of the execution of the severely mentally ill is straightforwardly considered within the jurisprudential framework used by the High Court in determining whether a punishment violates the Eighth Amendment, it becomes clear that only one answer is correct. *Hajek* and *Boyce* were wrongly decided. This Court should overrule or disapprove them.

B. The Supreme Court's Jurisprudential Method Used In Determining When a Categorical Restriction on the Death Penalty is Warranted Under the Eighth Amendment.

The Eighth Amendment restricts the ultimate sanction of capital punishment to those offenders with "a consciousness materially more depraved" than that of the typical murderer. *Godfrey v. Georgia* (1980) 446 U.S. 420, 433 (internal quotation marks omitted) (reversing a death sentence due to insufficient evidence that the defendant had "a consciousness materially more depraved than that of any person guilty of murder"). In other words, "capital punishment must 'be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.'" *Kennedy v. Louisiana* (2008) 554 U.S. 407, 420 (quoting *Roper v. Simmons* (2005) 543 U.S. 551, 568) (internal quotation marks omitted). The Supreme Court has recognized several "categorical restrictions on the death penalty." *Graham v. Florida* (2010) 560 U.S. 48, 59.

As more fully discussed in appellant's opening brief, the Supreme Court mandates an analysis that considers:

(1) whether there is a national legislative or legal consensus against the application of capital punishment to the particular class of offenders;

(2) whether there is a "broader social and professional consensus" against execution of the class of persons considered;

(3) the penological rationales of retribution and deterrence; and

(4) the special risk of wrongful execution of members of the subject class.

C. This Court's Decisions in *Hajek and Boyce* Fail to Correctly Apply the Supreme Court's Eighth Amendment Cruel and Unusual Punishment Doctrine.

In *Hajek*, the defendant raised the Eighth Amendment issue only in a 10-page supplemental brief. That brief did not address whether there exists a national legal or legislative consensus against the imposition of the death penalty on severely mentally ill defendants. The brief only cursorily discussed whether there was a broader social and professional consensus. The brief's discussion of the two penological justifications for the death penalty, retribution and deterrence, subsisted in a single unelaborated sentence in its conclusion; no attempt was made to analyze the practice of executing the mentally ill beyond the circumstances of the particular defendant. The concept of the special risk of wrongful execution was not even mentioned – let alone analyzed – by defendant Hajek in his supplemental brief. And this was the only brief in which he addressed the issue.

In a short discussion of the issue near the end of its lengthy opinion in that two-defendant automatic appeal, the *Hajek* court determined that

> Hajek . . . has not established the propriety of extending the categorical prohibition against executing mentally retarded offenders

to the broader category of mentally ill defendants . . . .

Hajek, supra, 58 Cal.4th at p. 1252. In view of the fact that Hajek had not attempted to make a showing in the terms of the Supreme Court's analytic methodology, the Court's conclusion that Hajek had "not established" his constitutional position is not surprising.

But more significantly, apart from the defects of Hajek's briefing, the Court's opinion itself failed to comply with the Supreme Court's analytic methodology.[1]

First, the *Hajek* opinion did not analyze whether there was a national legal or legislative consensus against executing individuals who were severely mentally ill and, as a result, were substantially impaired with respect to their offenses.

The *Hajek* opinion did state:

As for California law, we have held the analysis in *Atkins*

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1 In our federal system, state courts and inferior federal courts are no more free to reject the decisional methodology of the Supreme Court's opinions than they are to reject the Supreme Court's holdings. As Justice Scalia has written:

> [W]hen the Supreme Court of the federal system, or of one of the state systems, decides a case, not merely the outcome of that decision, but the *mode of analysis* that it applies will thereafter be followed by the lower courts within that system, and even by that supreme court itself.

Antonin Scalia, *The Rule of Law as a Law of Rules* (1989) 56 U. Chi. L. Rev. 1175, 1177 (orig. emphasis).

This principle is illustrated by *Neder v. United States* (1999) 527 U.S. 1, 18. There, in determining whether failure to instruct on an element of an offense could be harmless error, the Supreme Court found:

> we must look to other cases decided under *Chapman* for *the proper mode of analysis*.

Neder v. United States, supra, 527 U.S. at p. 18 (emphasis added), citing *Chapman v. California* (1967) 386 U.S. 18, 24.

> inapplicable in a similar situation. In *People v. Castaneda* [2011] 51 Cal.4th 1292, we found the defendant failed to establish that his condition, "an antisocial personality disorder," "is analogous to mental retardation for purposes of imposition of the death penalty." (*Id.* at p. 1345.) First, in contrast to the circumstance that numerous states have acted to prohibit execution of mentally retarded offenders, "there is no objective evidence that society views as inappropriate the execution of death-eligible individuals who have an antisocial personality disorder." (*Ibid.*)

Hajek, supra, 58 Cal.4th at p. 1251.

But the *Hajek* court's reliance on *People v. Castaneda* (2011) 51 Cal.4th 1292, was misplaced.

In *People v. Castaneda, supra*, 51 Cal.4th 1292, the defendant claimed he had an "antisocial personality disorder," as the *Hajek* court noted. But the very evidence on which Castaneda relied itself demonstrated that his particular condition was a far cry from the type of severe mental illness that would render his execution cruel and unusual punishment.

A prosecution expert on whom Castaneda chose to rely, psychologist Dr. Baca, "testified that defendant could have led his life differently, but 'he has chosen to exercise the wrong choices.'" *People v. Castaneda, supra*, 51 Cal.4th at p. 1316. And Castaneda's own defense expert, Dr. Hall, who had performed extensive testing, testified, without equivocation, that Castaneda displayed "*no evidence of psychosis or schizophrenia.*" *Id.* at p. 1311 (emphasis added).

Appellant Steskal respectfully submits that there is no substantial argument to be made that there is a national legislative or legal consensus against the execution of individuals who may have an antisocial personality disorder, but who display "no evidence of psychosis or schizophrenia."

In extending the reasoning of *Castaneda* beyond its facts, to cover individuals who, according to the evidence, *do* suffer from severe mental

illness such as psychosis, the *Hajek* opinion placed reliance on *Castaneda* that it simply cannot bear.

Moreover, *Hajek* also failed entirely to consider whether there was a "broader social and professional consensus" against executing the severely mentally ill.

As to the penological rationales of retribution and deterrence, the *Hajek* opinion stated:

> the circumstance that an individual committed murder while suffering from a serious mental illness that impaired his judgment, rationality, and impulse control does not necessarily mean he is not morally responsible for the killing. There are a number of different conditions recognized as mental illnesses, and the degree and manner of impairment in a particular individual is often the subject of expert dispute. Thus, while it may be that mentally ill offenders who are utterly unable to control their behavior lack the extreme culpability associated with capital punishment, there is likely little consensus on which individuals fall within that category or precisely where the line of impairment should be drawn. Thus, we are not prepared to say that executing a mentally ill murderer would not serve societal goals of retribution and deterrence.

Hajek, supra, 58 Cal.4th at p. 1252. There are several critical defects in this line of reasoning.

First, it is inarguable that a person who killed as a consequence of his severe mental illness may still be "morally responsible for the killing." But the question is not "moral responsibility for the killing" in the abstract – it is whether the particular sanction of capital punishment is appropriate for such persons. There is no suggestion in *Atkins v. Virginia* (2002) 536 U.S. 304 or *Roper, supra,* that due to their diminished culpability, the mentally retarded or juveniles have no "moral responsibility" for their acts – rather, the holdings of both Supreme Court cases are that the harshest penalty possible is categorically inappropriate in both circumstances. The

Hajek opinion's reasoning is flatly inconsistent with controlling precedent.

Second, the *Hajek* opinion stated it was "likely" that there was "little consensus on on which individuals fall within that category or precisely where the line of impairment should be drawn." *Hajek, supra,* 58 Cal.4th at p. 1252.

But this is also analytically unsound as a basis for rejecting the constitutional argument. This is demonstrated by consideration of *Atkins* and its progeny.

In *Atkins*, the Supreme Court held that the execution of persons who were intellectually disabled was unconstitutional, yet *Atkins* "'did not provide definitive procedural or substantive guides for determining when a person who claims mental retardation' falls within the protection of the Eighth Amendment." *Hall v. Florida* (2014) 134 S.Ct. 1986, 1998. In the dozen years after *Atkins* was decided, the States developed various, and inconsistent, methodologies for determining "which individuals fall within that category" of intellectually disabled persons ineligible for the death penalty, or "precisely where the line of impairment should be drawn." See *Hall v. Florida, supra*, 134 S.Ct. at pp. 1998-2000. But that inconsistency, and the difficulty of determining when a person claiming mental retardation is outside the protection of the Eighth Amendment, did not preclude the Supreme Court from recognizing a categorical prohibition on executing the mentally retarded. By obvious parity of reasoning, the alleged absence of a consensus on which individuals fall within a categorical prohibition, or on precisely where a line of impairment should be drawn with respect to severe mental illness, do not provide any reasoned justification for refusing to recognize constitutional limitations with respect to the execution of the severely mentally ill any more than they do with regard to execution of the mentally retarded. Again, the logic of *Hajek* is contrary to the logic of

controlling Supreme Court precedent.

Shortly after its decision in *Hajek*, in *People v. Boyce, supra,* 59 Cal.4th 672, 718-723, the Court, relying on its prior opinion in *Hajek*, and quoting at length from *Hajek* (*id.* at p. 722), again rejected a similar argument. Because *Boyce* relied on the faulty constitutional reasoning of *Hajek*, it is defective for precisely the same reasons.

Moreover, *Boyce* is also materially distinguishable from the present case.

> Although [Boyce] offered evidence of his schizotypal disorder and subaverage intelligence, there was no evidence that either condition played any role in the killing.

Boyce, supra, 59 Cal.4th at p. 720. Here, in stark contrast, there was uncontroverted evidence that appellant Maurice Steskal killed as a direct result of his extreme psychosis.

D. *Hajek* Reached the Wrong Result.

As the discussion immediately above has shown, this Court's opinion in *Hajek* is irreconcilable with the Supreme Court's Eighth Amendment mode of analysis, or "constitutional decision rule."

But the constitutional flaw of *Hajek* is not only that it employed a defective, non-complaint mode of analysis. Had *Hajek* applied the correct mode of analysis dictated by the Supreme Court's methodology, the result would have been different.

It is not the purpose of this supplemental brief to repeat the analysis of the opening brief. But with respect to *Hajek*, several points are salient.

1. There *is* a national legal and legislative consensus against the imposition of the death penalty on individuals who, as a result of their severe mental illness, were substantially impaired with respect to their

offenses. A *majority* of American jurisdictions do not apply the death penalty to such persons.

Eighteen states, as well as the District of Columbia and the Commonwealth of Puerto Rico, prohibit imposition of the death penalty entirely.[2] In seven states that authorize the death penalty, criminal defendants who as a result of mental illness were unable to conform their conduct to the law are exempt from any criminal sanction. In addition to these twenty-seven jurisdictions, in at least five additional states, proportionality review has been used to exempt severely mentally ill defendants from capital punishment. AOB 163-167.

The trend is clearly toward greater restriction of the death penalty, which includes greater restriction on its imposition on the severely mentally ill. See http://deathpenaltyinfo.org/states-and-without-death-penalty (last accessed March 6, 2015).[3]

The *Hajek* court, as mentioned previously, failed to take note of the fact that at least twenty-seven American jurisdictions do not permit the execution of the severely mentally ill.

2. There *is* a broad social and professional consensus against the imposition of the death penalty on the severely mentally ill. The critical importance of this factor is underscored by consideration of *Hall v. Florida,*

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2 In determining whether there is a consensus against execution of the severely mentally ill, it is appropriate to count jurisdictions that do not imposed the death penalty at all, as demonstrated by the Supreme Court's opinion in *Roper v. Simmons, supra,* 543 U.S. at p. 564.

3 The trend continues to gain momentum. For example, during the preparation of this supplemental brief, the Governor of Pennsylvania announced a moratorium suspending that State's use of the death penalty. http://www.governor.pa.gov/Pages/Pressroom_details.aspx?newsid=1566 (February 13, 2015) (last viewed March 6, 2015).

supra, 134 S.Ct. 1986, in which the Supreme Court, relying in significant part on the views of professional societies, held that a state's approach to determining intellectual disability failed to comply with the Eighth Amendment.

As discussed in the opening brief, as with intellectual disability, there is a consensus of professional organizations with relevant expertise that the death penalty should not be imposed on the severely mentally ill. The American Bar Association has adopted the position that the death penalty should not be imposed on persons who were severely mentally ill at the time of their offenses. American Bar Association, *Recommendation and Report on the Death Penalty and Persons with Mental Disabilities* (2006) 30 Mental & Phys. Disability L. Rep. 668, 668.[4] Nearly identical positions have been taken by the American Psychiatric Association, the American Psychological Association, and the National Alliance for the Mentally Ill.[5]

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4 The American Bar Association's Recommendation provides:

> Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law. A disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of voluntary use of alcohol or other drugs does not, standing alone, constitute a mental disorder or disability for purposes of this provision.

American Bar Association, *Recommendation and Report on the Death Penalty and Persons with Mental Disabilities, supra*, 30 Mental & Phys. Disability L. Rep. at p. 668 (emphasis added).

5 Am. Psychiatric Ass'n, Position Statement on Diminished Responsibility in Capital Sentencing (2004), available at http://www.psychiatry.org/advocacy--newsroom/position-statements (last

Moreover, public opinion continues to oppose the use of capital punishment against the mentally ill. In recent national polling on this topic, conducted in November 2014 by Public Policy Polling, a polling organization recognized for its accuracy, 58% of those queried stated they "oppose[d] the death penalty for those with mental illness"; only 28% favored the penalty for the mentally ill. See https://drive.google.com/file/d/0B1LFfr8Iqz_7RDJBZzA2NGJzWG8/view (last accessed Feb. 11, 2015).

The *Hajek* court, by confining its analysis to antisocial personality disorder as discussed in *Castaneda*, excluded discussion of the broad social and professional consensus against the execution of the severely mentally ill.

3. The penological goals of retribution and deterrence are *not* advanced by executing the severely mentally ill.

> Unless the imposition of the death penalty . . . "measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment."

Atkins, *supra,* 536 U.S. at pp. 318-319. In *Hajek*, this Court actually *did* recognize that

> it may be that mentally ill offenders who are utterly unable to control their behavior lack the extreme culpability associated with

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visited March 30, 2014); National Alliance for the Mentally Ill, Policy Platform: Criminal Justice and Forensic Issues, Section 10.9, available at http://www.nami.org/Template.cfm?Section=NAMI_Policy_Platform&Template=/ContentManagement/ContentDisplay.cfm&ContentID=41302 (last visited March 30, 2014); American Psychological Association, Council of Representatives, Approved Minutes, Section IV.B.5, available at http://www.apa.org/about/governance/council/crminutef06.pdf (last visited March 30, 2014).

capital punishment . . . .

Hajek, supra, 58 Cal.4th at p. 1252. Yet the *Hajek* court failed to admit any constitutional significance to this fact, on the basis that "there is likely little consensus on which individuals fall within that category or precisely where the line of impairment should be drawn." *Id.*

As discussed above, the *Hajek* court's line of reasoning conflicts squarely with the reasoning of the Supreme Court in *Atkins* and *Hall*, and is thus insupportable. Moreover, the *Hajek* court overlooked that there *is* a legal and professional consensus on which types of severely mentally ill individuals should be categorically exempt from the death penalty.

4. The *special risk of wrongful execution of the severely mentally ill* strongly supports the conclusion the execution of such persons violates contemporary standards of decency and is unconstitutional.

In *Hajek*, this Court recognized the salience of the special risk factor to the Supreme Court's analysis in *Atkins,* writing that the *Atkins* Court:

> observed that mentally retarded defendants in the aggregate face an enhanced risk of execution in spite of factors which may call for a less severe penalty, not only due to the possibility of false confessions but also because of their lesser ability to make a persuasive showing of mitigation, to meaningfully assist counsel, to be effective witnesses on their own behalf, and to convey their remorseful demeanor.

Hajek, supra, 58 Cal.4th at p. 1251, discussing *Atkins*, *supra*, 536 U.S. at pp. 320-321. Yet *Hajek* did not discuss the implications of the Supreme Court's opinion in *Atkins* for the constitutionality of the death penalty as applied to the severely mentally ill. Instead, *Hajek* dealt with this important aspect of Eighth Amendment doctrine by changing its focus to a different class of offenders – those with antisocial personality disorders, as considered in

People v. Castaneda, supra, 51 Cal.4th 1292:

> the ability of offenders with an antisocial personality disorder "to charm and manipulate others, to deny responsibility, and to provide excuses for their conduct, enhances rather than diminishes their capacity to avoid wrongful conviction and execution."

Hajek, supra, 58 Cal.4th at pp. 1251-1252, quoting *People v. Castaneda, supra,* 51 Cal.4th at p. 1345.

But as demonstrated by *Castaneda* itself, the class of offenders with an antisocial personality disorder is not the same as the class of those with severe mental illnesses who, as a result of their illnesses, were substantially impaired in their ability to conform their conduct ot the law. Indeed, in *Castaneda*, there was no controversy that the defendant "displayed 'no evidence of psychosis or schizophrenia.'" *Castaneda, supra,* 51 Cal.4th at p. 1311. By contrast, the class of defendants to which appellant's argument applies, and appellant Steskal himself belongs, includes only those offenders who

> have a "severe" disorder or disability, which is meant to signify a disorder that is roughly equivalent to disorders that mental health professionals would consider the most serious "Axis I diagnoses." These disorders include schizophrenia and other psychotic disorders, mania, major depressive disorder, and dissociative disorders—with schizophrenia being by far the most common disorder seen in capital defendants. In their acute state, all of these disorders are typically associated with delusions (fixed, clearly false beliefs), hallucinations (clearly erroneous perceptions of reality), extremely disorganized thinking, or very significant disruption of consciousness, memory and perception of the environment.

ABA Recommendation and Report on the Death Penalty and Persons with Mental Disabilities, at p. 670 (footnotes omitted), citing to American Psychiatric Association, *Diagnostic and Statistical Manual of Mental*

Disorders (text rev. 4th ed. 2000).[6]

As the Supreme Court recognized, intellectual disability "can be a two-edged sword that may enhance the likelihood that the aggravating [fact] of future dangerousness will be found by the jury." *Atkins, supra,* 536 U.S. at p. 321. The same is true of severe mental illness, as two Justices of this Court have also recognized. *People v. Danks* (2004) 32 Cal.4th 269, 322 (conc. & dis. opn. of Kennard, J., with George, C. J., concurring). The concern is not merely hypothetical, as a study of recent executions up to June 2014 confirms:

> Over half (fifty-four) of the last one hundred executed offenders had been diagnosed with or displayed symptoms of a severe mental illness.

Robert J. Smith, Sophie Cull, and Zoe Robinson, *The Failure of Mitigation?* (2014) 65 Hastings L.J. 1221, 1245.

E. This Court Should Overrule *Hajek* and *Boyce.*

Although *Hajek* was recently decided, as shown above, it failed to follow the Supreme Court's Eighth Amendment decisional methodology, and reached a demonstrably incorrect result. Accordingly, this Court should overrule *Hajek.*

Of course, overruling a prior decision is not a step to be taken casually.

> Like the United States Supreme Court, "[w]e do not lightly reconsider a precedent" and are mindful that "stare decisis is the 'preferred course' in constitutional adjudication." (*United States v.*

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6 There is a more recent edition of the *DSM.* American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (rev. 5th ed. 2013) (*DSM-5*). As noted in the opening brief, while a number of changes have been made in the newer edition, the basic diagnostic categories pertaining to psychosis are unchanged.

Dixon (1993) 509 U.S. 688, 711, 712.)

Johnson v. Department of Justice (2015) 60 Cal.4th 871, 875 (overruling *People v. Hofsheier* (2006) 37 Cal.4th 1185). Yet, as *Johnson* itself illustrates, stare decisis is not a strait-jacket. While "[s]tatutory precedents . . . often enjoy a super-strong presumption of correctness," stare decisis is a much weaker doctrine when it comes to constitutional analysis. William N. Eskridge, Jr., *Overruling Statutory Precedents* (1988) 76 Geo. L.J. 1361, 1362.[7] Thus,

> when governing decisions . . . are badly reasoned, "this Court has never felt constrained to follow precedent."

United States v. Dixon (1993) 509 U.S. 688, 712, quoting *Payne v. Tennessee* (1991) 501 U.S. 808, 827.

Hajek was "badly reasoned" and leads to unconscionable results. The execution of severely mentally ill defendants who, as a consequence of their severe mental illnesses, were seriously impaired with respect to the offenses of which they were convicted, is a barbaric and inhumane punishment that is inconsistent with contemporary standards of decency under the Eighth Amendment and Article I section 17 of the California Constitution. This Court should so hold in this case, and should overrule *Hajek*.

As also shown above, *People v. Boyce, supra,* 59 Cal.4th 672, 718-723, relies on *Hajek*'s faulty reasoning. For the same reasons, *Boyce*, too, should be overruled, or disapproved in pertinent part.

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7 See 1 Laurence H. Tribe, American Constitutional Law 248-49 (3d ed. 2000) ("By its very design, the Constitution guarantees the impermanence of judicial precedent.").

DATED: March 10, 2015

Respectfully submitted,

GILBERT GAYNOR
Attorney for Appellant
Maurice G. Steskal

CERTIFICATE OF WORD COUNT

I certify that the forgoing Appellant's Supplemental Brief contains 4,179 words, exclusive of tables, according to the word-count feature of Open Office.

DATE: March 10, 2015

GILBERT GAYNOR
Attorney for Appellant
Maurice G. Steskal

PROOF OF SERVICE

I, Gilbert Gaynor, am an attorney, over the age of 18 years and not a party to the within action. My business address is Gilbert Gaynor, Cal. Bar No. 107109, Law Office of Gilbert Gaynor, 244 Riverside Drive, No. 5C, New York, NY 10025-6142.

On March 10, 2015, I served the documents entitled APPELLANT'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN EXCESS OF 2,800-WORD LIMIT and APPELLANT'S SUPPLEMENTAL BRIEF by placing true and correct copies of the documents in an envelope addressed as indicated on the attached Service List.

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—— AS TO DAG K. JOHNSON ONLY

X (BY FEDERAL EXPRESS) I placed such envelope in the federal express drop off on March ~~12,~~ 10 2015 for delivery the next business day.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 10, ~~2~~ 2015 at New York, NY.

Gilbert Gaynor

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