In the Supreme Court of the State of California

RON BRIGGS and JOHN VAN de KAMP,

Petitioners,

v.

JERRY BROWN, in his official capacity as the Governor of California; XAVIER BECERRA, in his official capacity as the Attorney General of California, and California's Judicial Council, and Does I through XX,

Respondents.

Case No. S238309

RETURN TO PETITION FOR A WRIT OF MANDATE; SUPPORTING MEMORANDUM

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INTRODUCTION

Petitioners Ron Briggs and John Van de Kamp sue as taxpayers, asserting that Proposition 66, the "Death Penalty Reform and Savings Act of 2016," is facially invalid on four separate grounds, and requesting that the entire measure be invalidated.

First, they argue that the measure violates the California Constitution's single-subject rule. Focusing on the provision pertaining to victim restitution, the provision exempting the Department of Corrections and Rehabilitation's execution protocol from the Administrative Procedure Act, and the provision disbanding the Habeas Corpus Resource Center's Board of Directors, they contend that these provisions do not relate to the measure's purpose. But the single-subject rule is interpreted liberally, and courts resolve any reasonable doubts in favor of the initiative. A measure does not violate the single-subject rule if, its various effects notwithstanding, all of its components are "reasonably germane" to each other, and to the overall purpose of the measure. In this case, the "liberal interpretative tradition" applicable to initiatives shows that the provisions are reasonably related to death penalty reform, including time reductions and cost savings, the Proposition's stated goal. For this reason, the single-subject rule is not a basis to invalidate the measure.

Second, petitioners contend that the Proposition improperly interferes with the grant of jurisdiction to appellate courts to handle habeas corpus petitions by requiring that these be transferred to the court which issued the judgment of conviction. But on its face, the measure does not divest the appellate courts of original jurisdiction to consider habeas petitions. It merely provides that a petition filed in a court other than the sentencing court "should" be transferred to that court unless good cause is shown, with language that courts have previously determined does not defeat jurisdiction.

Third, petitioners argue that the measure violates separation of powers principles by, among other things, imposing strict deadlines for processing the habeas corpus petitions of individuals sentenced to death. But, as the petition acknowledges, the Legislature may place "reasonable restrictions" upon the courts' constitutional functions, as long as these restrictions do not defeat or materially impair the exercise of those functions. The challenged restrictions do not materially impair the courts' functions. And petitioners cite no case authority in which a court has struck down under separation of powers principles a statute governing court procedures.

Lastly, petitioners contend that the measure violates the equal protection rights of individuals convicted of capital crimes by limiting their ability to file successive habeas petitions. As petitioners concede, this claim is subject to deferential rational basis review because capital defendants do not form a suspect class. Under this deferential standard, petitioners cannot show that the measure unconstitutionally infringes upon their equal protection rights because capital defendants are not similarly situated to noncapital defendants. Ultimately, petitioners cannot meet their burden to negate every conceivable basis underlying any disparate treatment, as they must for their facial challenge.

For these reasons, the Court should deny the Amended Petition.

RETURN BY ANSWER TO AMENDED AND RENEWED PETITION FOR A WRIT OF MANDATE

Respondents Governor Edmund G. Brown Jr., and Attorney General Xavier Becerra answer the Amended and Renewed Petition for Extraordinary Relief, Including Writ of Mandate, as follows. All allegations not expressly admitted are denied.

1. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

2. Respondents admit that petitioners request that this Court issue a stay of the implementation of Proposition 66. Except as expressly admitted, respondents have no information or belief regarding the allegations of this paragraph, and on that basis deny them.

3. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

4. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

5. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

6. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

7. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

8. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

9. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

10. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

11. Respondents admit that Edmund G. Brown Jr. is the Governor of the State of California, and that the California Constitution vests him with the responsibility that the laws of the State of California be faithfully executed. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

12. Respondents admit that Attorney General Xavier Becerra is the Attorney General of the State of California, and that the California Constitution vests him with the responsibility to see that the laws of the

State are uniformly and adequately enforced. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

13. Respondents admit that the California Constitution tasks the Judicial Council with surveying judicial business and making recommendations to the courts, making recommendations annually to the Governor and Legislature, adopting rules for court administration, practice and procedure, and performing other functions prescribed by statute, in order to improve the administration of justice. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

14. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

15. Admit.

16. Respondents admit that Proposition 66 makes changes to state law, including judicial procedures governing death penalty appeals, requirements for and remuneration for counsel in direct appeal and state habeas corpus proceedings, housing of death row inmates, compensation of victims of death row inmates, and the applicability of the Administrative Procedure Act to California execution standards. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

17. Admit.

18. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

19. Respondents admit that Proposition 66 requires the Judicial Council to adopt rules and standards designed to expedite processing of capital appeals and state habeas corpus review, within 18 months of the measure's effective date. Except as expressly admitted, respondents lack

information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

20. Respondents admit that Proposition 66 requires that state courts complete the state appeal and state habeas corpus review within five years of the adoption of the Judicial Council's initial rules, or within five years of entry of judgment, whichever is later. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

21. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

22. Deny.

23. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

24. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

25. Respondents admit that Section 17 of Proposition 66 disbands the Habeas Corpus Resource Center's Board of Directors. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

26. Respondents admit that Section 17 of Proposition 66 states that Habeas Corpus Resource Center's attorneys (other than the Executive Director), shall be compensated at the same level as comparable positions in the Office of the State Public Defender. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

27. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

28. Respondents admit that section 6 of Proposition 66 requires trial courts to offer counsel to criminal defendants sentenced to death. Except as

expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

29. Deny.

30. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

31. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

32. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

33. Respondents admit that section 6 of Proposition 66 states that, "When necessary to remove a substantial backlog in appointment of counsel for capital cases, the Supreme Court shall require attorneys who are qualified for appointment to the most serious non-capital appeals and who meet the qualifications for capital appeals to accept appointment in capital cases as a condition for remaining on the court's appointment list." Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

34. Respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

35. Respondents admit that Proposition 66 requires that the California Department of Corrections and Rehabilitation "maintain at all times the ability to execute" death sentences, and exempts execution standards from the Administrative Procedure Act. Except as expressly admitted, respondents lack information or belief sufficient to admit or deny the allegations of this paragraph, and on that basis deny them.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

40. Deny.

41. Deny.

42. Deny.

AFFIRMATIVE DEFENSES

1. The petition fails to state facts sufficient to state a cause of action.

PRAYER

Respondents pray that:

1. Judgment be entered in favor of respondents and against petitioners, and that petitioners take nothing by the petition.

2. Respondents be awarded costs of suit and any other relief that the Court deems proper.

STATEMENT OF FACTS

Proposition 66, approved by the voters in the November 2016 election, declares that the death penalty system "is ineffective because of waste, delays, and inefficiencies." (Pets.' App. of Exhibits, Exh. 1 at p. 1.) It modifies the current death penalty process through a number of measures relating to "timely justice" for murder victims, and the process by which capital defendants may raise their claims. (*Id.* at p. 2.) It concludes that, "[b]ureaucratic regulations have needlessly delayed enforcement of death penalty verdicts," and seeks to curtail repetitive challenges to death penalty proceedings. (*Ibid.*) The measure's Findings and Declarations state that, "[d]eath row killers should be required to work in prison and pay restitution to their victims' families consistent with the Victims' Bill of Rights (Marsy's Law)." (*Ibid.*) They also state that, "[t]he state agency that is supposed to expedite secondary review of death penalty cases is operating

without any effective oversight, causing long-term delays and wasting taxpayer dollars." (*Ibid.*)

Proposition 66 enacts changes to the Government Code and Penal Code. As relevant to the claims raised in the Amended Petition, the measure enacts a number of changes, relating to (1) where habeas corpus petitions are filed; (2) expediting the resolution of filed petitions; (3) streamlining the execution of death sentences; (4) amending procedures for capital inmates to work while in prison to pay restitution obligations; and (5) changing the way the Habeas Corpus Resource Center is supervised, as explained below.

A. Under Proposition 66, Habeas Petitions Filed in Courts Other Than the Sentencing Court Should Be Transferred to That Court, Absent Good Cause.

Under the California Constitution, each of the State's courts has original habeas corpus jurisdiction. (Cal. Const., art. VI, § 10 ["The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings"].)

Proposition 66 adds section 1509 to the Penal Code, which states in part, "[a] petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court." (New Pen. Code, § 1509, subd. (a).) Relatedly, the proposition allows, but does not require, habeas petitions already pending in the Supreme Court to be transferred to the trial court for resolution. (*Ibid.*)

With respect to the appointment of counsel, the proposition requires the superior court, rather than this Court, to offer to appoint counsel to state prisoners subject to a capital sentence. (New Gov. Code, § 68662.) It also allows for appellate review of superior court rulings granting or denying habeas relief. (New Pen. Code, § 1509.1, subd. (a).) Reviewable issues are

limited to those presented to the superior court, except that the reviewing court could also "consider a claim of ineffective assistance of trial counsel if the failure of habeas counsel to present that claim to the superior court constituted ineffective assistance." (*Id.* at § 1509.1, subd. (b).) Any superior court decision granting relief on a successive petition could be appealed by the People, but a decision denying relief could not be appealed by the petitioner unless the superior court issues a certificate of appealability. (*Id.* at § 1509.1, subd. (c).) To obtain a certificate, the petitioner must show "both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of section 1509 [regarding actual innocence or ineligibility for death] have been met." (*Ibid.*)

B. Proposition 66 Requires Expedited Resolution of State Direct and Collateral Review.

Proposition 66 requires expedited resolution of direct and collateral review of death sentences by implementing three changes relevant to this action.

First, it requires state courts to complete the state appeal and the initial state habeas corpus review in capital cases in five years. The Judicial Council must, within 18 months of the effective date of the Proposition, adopt initial rules and standards of administration to expedite the processing of capital appeals and state habeas review. (New Pen. Code, § 190.6, subd. (d).) "Within five years of the adoption of the initial rules or the entry of judgment, whichever is later, the state courts shall complete the state appeal and the initial state habeas corpus review in capital cases." (*Ibid.*)

Second, the measure imposes a deadline for filing and for resolving habeas petitions. It requires that capital habeas petitions generally be filed in the trial court within one year following that court's order appointing

habeas counsel or the effective date of the proposition, whichever is later. (New Pen. Code, § 1509, subd. (c).) Under new Penal Code section 1509, subdivision (f), the superior court must resolve the initial petition within one year of filing "unless the court finds that a delay is necessary to resolve a substantial claim of actual innocence, but in no instance shall the court take longer than two years to resolve the petition."

Proposition 66 also restricts successive and untimely petitions. Previously, untimely and successive petitions were barred, subject to a variety of exceptions. (*In re Clark* (1993) 5 Cal.4th 750, 797-98 [noting that, absent allegations of fact that would establish "a fundamental miscarriage of justice" in the conviction or sentence, the general rule is that successive or untimely petitions should be summarily denied].) Under Proposition 66, any untimely petition must be dismissed unless the petitioner can demonstrate by "the preponderance of all evidence, whether or not admissible at trial," that he is factually innocent or ineligible for death. (New Pen. Code, § 1509, subd. (d).) The proposition also (1) requires any petitioner attempting to pass through this "gateway" for considering a successive or untimely petition to "disclose all material information relating to guilt or eligibility in the possession of the petitioner or present or former counsel for petitioner," and (2) authorizes (but does not require) dismissal of a successive or untimely petition for any "willful failure" to make or facilitate the required disclosure. (*Id.* at § 1509, subd. (e).)

C. The Measure Directs Streamlined Execution of Death Sentences.

Under Proposition 66, the Department of Corrections and Rehabilitation is required to "maintain at all times the ability to execute [capital] judgments." (New Pen. Code, § 3604, subd. (e).) If the Department "fails to perform any duty needed to enable it to execute the

judgment, the court which rendered the judgment of death shall order it to perform that duty on its own motion, on motion of the District Attorney or Attorney General, or on motion of any victim of the crime . . . ." (*Id.* at § 3604.1, subd. (c).)

The Penal Code tasks the Department with developing standards for implementing the death penalty. (Pen. Code, § 3604, subd. (a).) In 2008, the Court of Appeal held that these standards are a "rule of general application," and thus must comply with the Administrative Procedure Act (APA). (*Morales v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 729, 739-740.) Proposition 66 exempts the Department's execution protocols from the APA. (New Pen. Code, § 3604.1, subd. (a).) It further states that a physician may attend an execution and provide advice to the Department for developing an execution protocol, and that a pharmacist or other professional handling pharmaceuticals can dispense drugs to carry out an execution. (*Id.* at § 3604.3, subds. (a), (b).) The measure prevents a licensing board or other such accreditation agency from revoking the license or otherwise disciplining a health care professional "for any action authorized by this section." (*Id.* at § 3604.3, subd. (c).) Finally, the measure states that "the court which rendered the judgment of death" has "exclusive jurisdiction" for method-of-execution challenges. (New Pen. Code, § 3604.1, subd. (c).)

D. Proposition 66 Requires That Condemned Inmates Work to Pay Outstanding Restitution Orders, and Disbands the Board of the Habeas Corpus Resource Center.

The California Constitution requires that convicted criminals pay restitution to their victims. (Cal. Const., art. I, § 28; See also Pen. Code, § 1202.4.) Proposition 66 states that all death sentenced inmates "shall be required to work" while incarcerated by the Department. (New Pen. Code, § 2700.1.) It also sets the percentage of funds that can be drawn from a

condemned inmate's trust account to pay for a restitution fine or restitution order. (*Ibid.*) Further, the measure amends state law to disband the Habeas Corpus Resource Center's Board of Directors, and makes other changes to the way in which the HCRC operates. (New Gov. Code, § 68664, subds. (b), (c).)

LEGAL STANDARD

Petitioners bring a facial taxpayer challenge to Proposition 66. This Court has not articulated a single test for facial challenges. (*In re Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1126.) Under the strictest formulation, a challenged statute must be upheld unless the party establishes that the statute "inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions." (*Ibid.*, citation omitted.)

Under the more lenient standard, petitioners must establish at a minimum that Proposition 66 is unconstitutional "in the *generality* or *great majority* of cases." (*In re Guardianship of Ann S.*, *supra*, 45 Cal.4th at p. 1126, citation omitted; *Coffman Specialities, Inc. v. Dep't of Transportation* (2009) 176 Cal.App.4th 1135, 1145.) Such a challenge "considers only the text of the measure itself, not its application to the particular circumstances of the individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) Accordingly, to establish facial invalidity, "petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute." (*Ibid.*, citation omitted.)

ARGUMENT

Petitioners bring various claims against Proposition 66. They seek wholesale invalidation of the statute and a court order precluding enforcement of all its provisions. But petitioners can only achieve

invalidation of the entire measure if they succeed on their claim that it violates the California Constitution's single-subject rule. As explained below, this claim fails because all of the measure's challenged provisions are reasonably germane to one object, namely death penalty reform, including time reductions and costs savings. Although petitioners challenge four of the measure's provisions, they cannot show that the Proposition "clearly and unmistakably" violates the Constitution, particularly given the deferential standard this Court applies when assessing a challenge to an initiative.

Petitioners raise other challenges to the measure, arguing that certain provisions violate the original jurisdiction clause of the California Constitution and separation of powers, and other provisions violate the equal protection clauses under both the California and federal constitutions. But the measure does not violate the asserted constitutional provisions, instead making modest changes to procedural and venue provisions, including creating a presumption in favor of transferring habeas corpus petitions to the court which entered judgment, and limiting successive habeas petitions in ways analogous to what the case law already provides. Finally, petitioners' equal protection claim is subject to a deferential rational basis review, and must be rejected because the measure rationally distinguishes between successive petitions filed by capital versus non-capital convicts. Moreover, unlike the single-subject claim, petitioners cannot obtain wholesale invalidation of the measure if they succeed on any of these other claims. To the extent this Court agrees with the petitioners that any of these legal claims have merit, the Court can sever the offending provisions.

Ultimately, petitioners' legal claims fail, and the Court should deny the petition in its entirety, and enter judgment for respondents.

I. PROPOSITION 66 DOES NOT VIOLATE THE SINGLE-SUBJECT RULE.

A. This Court Reviews Challenges to Initiatives Under A Deferential Standard.

Although the California Constitution vests the legislative power in the Legislature, "the people reserve to themselves the powers of initiative and referendum." (Cal. Const., art. IV, § 1.) "Accordingly, the initiative power must be *liberally construed* to promote the democratic process." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.) The courts' "solemn duty [is] to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Ibid.*)

Under the single-subject rule, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8, subd. (d).) This rule is designed to prevent voter confusion and manipulation, which can arise when a single initiative encompasses disparate subjects. (*Senate State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1168; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 251.) It was "not enacted to provide means for the overthrow of legitimate legislation." (*Fair Political Practices Com. v. Sup. Ct.* (1979) 25 Cal.3d 33, 38.)

When assessing a challenge to an initiative, this Court applies a presumption in favor of its validity. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814 [in case challenging initiative measure, noting that "Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears"].) "If the validity of the measure is 'fairly debatable,' it must be sustained." (*Ibid.*, citation omitted.) This applies with even greater strength to initiative measures regarding public safety. (*Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 248.)

B. Proposition 66's Provisions Address Death Penalty Reform and Cost Savings.

Petitioners argue that Proposition 66 violates the single-subject rule because some of its provisions are allegedly unrelated to death penalty reform. (Am. Pet. at 41-52.) But courts analyze initiatives broadly, in order to preserve this right. In light of the measure's overall goal of death penalty reform and cost savings, petitioners cannot show that it is "clearly and unmistakably" unconstitutional.

In assessing whether a challenged measure passes the single-subject test, the Court looks at the extent to which its provisions are germane to the general subject as reflected in the title and the field of legislation it suggests. (*Chemical Specialties Manufacturers Ass'n, Inc.*, *supra*, 227 Cal.App.3d at p. 667; *Brosnahan*, *supra*, 32 Cal.3d at p. 246 ["Numerous provisions, *having one general object*, if fairly indicated in the title, may be united in one act."].) Taking the measure's purpose as identified by its title, its findings, and declarations, courts apply the "reasonably germane" test. (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 575-76 [rejecting challengers' overbroad characterization of a proposition's purpose based on the purpose reflected in its title, findings, and declarations].) "[A]n initiative measure will pass the constitutional single subject test 'so long as challenged provisions meet the test of being reasonably germane to a *common* theme, purpose, or subject.'" (*Brown v. Superior Court* (2016) 63 Cal.4th 335, 350, citation omitted; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100 ["[A] measure complies with the rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment."].)

Proposition 66's title clearly announces the following: death penalty reform and cost savings. (Pets.' App. of Exhibits, Exh. 1 at p. 1.) Its findings and declarations state that the death penalty system "is ineffective

because of waste, delays, and inefficiencies," and that it seeks to balance the rights of capital defendants and those of their victims. (*Id.* at pp. 1-2.) Its provisions relate to these broad purposes, encompassing reform in a number of areas. (*Ibid.*) Petitioners acknowledge the measure's stated purpose, but they seek to set this aside and construe its purpose as limited to *expediting* the death penalty process. (Am. Pet. at 43.) They argue that the measure's stated goal is too general for purposes of the single-subject rule. (*Ibid.*) Although courts have struck initiatives employing inappropriately broad or general purposes as their subject, Proposition 66 does not run afoul of this case law. (See *Harbor v. Deukmejian*, *supra*, 43 Cal.3d at pp. 1100-01 [holding invalid subjects of "fiscal affairs" and "statutory adjustments"]; *San Joaquin Helicopters v. Dep't of Forestry & Fire Protection* (2003) 110 Cal.App.4th 1549, 1559-1560 [describing subjects of excessive generality under single-subject rule, including "government, public welfare, fiscal affairs, the business of insurance, or truth in advertising"].) Particularly given this Court's case law upholding "initiatives containing various provisions related to even broader goals in the criminal justice system," Proposition 66 passes constitutional muster. (*Manduley*, *supra*, 27 Cal.4th at p. 576.) The subject of this measure is death penalty reform and costs savings, a subject that is not excessively general. The Court should adopt this identification of the purpose of the measure in assessing the single-subject challenge.

C. The Proposition Does Not Violate the Single-Subject Rule.

Under the case law, a measure does not violate the single-subject rule if, "despite its varied collateral effects, *all of its parts are reasonably germane* to each other, and to the general purpose or object of the initiative." (*Brosnahan*, *supra*, 32 Cal.3d at p. 245, citations and quotations omitted; Accord *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 347

[upholding initiative under "reasonably germane" test where the challenged provisions "unite[d] to form a comprehensive criminal justice reform package"].) An initiative's provisions need not be "interlocking" or "interdependent" so long as they fall under a single purpose or topic. (*Brosnahan*, *supra*, 32 Cal.3d at p. 249; *Jones*, *supra*, 21 Cal.4th at p. 1157.) As long as an initiative's provisions are "auxiliary to and promotive of its main purpose, or [have] a necessary and natural connection with such purpose," they are germane within the meaning of the single-subject rule. (*Fair Political Practices Com.*, *supra*, 25 Cal.3d at p. 39.)

Petitioners contend that a number of Proposition 66's provisions are not reasonably germane to the goal of reforming the death penalty process by expediting it. (Am. Pet. at 43-46.) As noted above, the measure's "common purpose" is death penalty reform and cost savings, and its various provisions reasonably relate to and further that purpose. (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 575.) All of the challenged provisions are geared towards these stated goals.

Petitioners challenge the section increasing victim restitution from individuals sentenced to death and requiring them to work, a provision bearing a commonsense relationship to death penalty reform by ensuring that individuals convicted of capital offenses spend their time productively, and in a way that promotes payment of their restitution fines and restitution orders.[1] The imposition of restitution fines generally supports indemnification of crime victims and "ensures that amends are made to society for a breach of the law, serves a rehabilitative purpose, and acts as a deterrent for future criminality." (*People v. Bernal* (2002) 101 Cal.App.4th

[1] Notably, Proposition 62, which sought to repeal the death penalty, also included a provision regarding capital inmates' restitution obligations. (Proposition 62 <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/text-proposed-laws.pdf#prop62> [as of Feb. 20, 2017].)

155, 161-162, citation omitted.) As the Proposition's findings and declarations note, the voters concluded that "Death row killers should be required to work in prison and pay restitution to their victims' families consistent with the Victims' Bill of Rights (Marsy's Law)." (Pets.' App. of Exhibits, Exh. 1 at p. 2.) This provision ensures that individuals sentenced to death are not exempted from the general requirement under California law that inmates pay restitution. Requiring capital inmates to pay for the costs of their crimes during the time they are awaiting execution is therefore "reasonably germane" to death penalty reform.[2]

Petitioners also challenge the provisions waiving the requirements of the Administrative Procedure Act for execution protocols, (New Pen. Code, § 3604.1, subd. (a)), and barring medical licensing organizations from disciplining individuals who assist in the death penalty process, (New Pen. Code, § 3604.3, subd. (c)). (Am. Pet. at 47-49.) These provisions are also "reasonably germane" to death penalty reform and cost savings, because they seek to remove obstacles to implementing the death penalty, including subjecting execution standards to expensive and protracted litigation under the APA. Likewise, the provision stating that medical professionals cannot be disciplined merely for participating in lawful executions helps ensure that executions will not be thwarted by threats from organizations that seek

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[2] Petitioners argue that the money that is collected from death row inmates goes to the victims, rather than taxpayers and thus does not impact "the cost of capital appeals for the state." (Am. Pet. at 46-47.) This misses the point. Restitution fines "are paid into the Restitution Fund in the State Treasury [citation], which is used to compensate victims for specified 'pecuniary losses they suffer as a direct result of criminal acts.'" (*People v. Giordano* (2007) 42 Cal.4th 644, 651.) Thus, taking money from an inmate's trust account will offset the taxpayer costs doled out from the Treasury to crime victims.

to dissuade their members from such participation.[3] These provisions "fairly disclose a reasonable and commonsense relationship . . . in furtherance of a common purpose." (*Manduley*, *supra*, 27 Cal.4th at p. 579, fn.12.)

Petitioners argue that the Proposition's language and the Official Voter Information Guide did not provide information about the APA, thus allegedly failing to "help voters discover the function of the APA or the practical effects of exempting a state agency from its oversight." (Am. Pet. at 48-49.) This misstates the record. In fact, the "Background" section of the Analysis by the Legislative Analyst, under the heading "Executions Currently Halted by Courts," specifically discusses the APA, its purposes, and its effect on executions. (Pets.' App. of Exhibits, Exh. 2 at p. 9.) This section explains that "[t]hese procedures require state agencies to engage in certain activities to provide the public with a meaningful opportunity to participate in the process of writing state regulations." (*Ibid.*) In turn, the "Proposal" section, under "Enforcement of Death Sentence," makes clear that "[t]he measure also exempts the state's execution procedures from the Administrative Procedures [*sic*] Act." (*Id.* at p. 10.) Likewise, the Official Title and Summary informed the voters that the measure "[e]xempts prison officials from existing regulation process for developing execution methods." (*Id.* at p. 8.) Courts assume that voters "duly considered and comprehended these materials." (*Manduley*, *supra*, 27 Cal.4th at p. 580.) Because the voters here were properly informed about the measure's effects, the single-subject claim fails. (*Ibid.*; *Raven*, *supra*, 52 Cal.3d at 349 [rejecting single-subject challenge in light of the information provided

[3] Petitioners posit that this provision might violate the organizations' "right to free speech." (Am. Pet. at 49.) Whatever merit this argument might have, it does not impact the single-subject challenge at issue here.

to the voters, including a summary of the measure, a detailed analysis by the Legislative Analyst, and a complete text of the proposed measure, along with arguments for and against it.) Notably, petitioners point to no evidence that the voters were unaware of Proposition 66's effects.[4]

Lastly, petitioners claim that disbanding the Habeas Corpus Resource Center's Board of Directors is not related to the Proposition's purpose. (Am. Pet. at 49-50.) But the measure's declaration and findings state concerns that the "state agency that is supposed to expedite secondary review of death penalty cases is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars." (Pets.' App. of Exhibits, Exh. 1 at p. 2.) In context, the voters would have understood that provisions reorganizing the HCRC, including disbanding its Board of Directors, were aimed to reform the death penalty by expediting review and saving taxpayer money. Petitioners also contend that the measure was misleading because it states that the HCRC was "operating without any effective oversight," and claim that the "Official Voter Information Guide provides no information as to how and whether the dissolution" of the Board would lead to savings. (Am. Pet. at 50-51.) This disagreement about the accuracy of the measure's factual assertions was more properly an issue for an argument against the Proposition in the Ballot Pamphlet, or a challenge to the accuracy of the Proposition's language before it was submitted to the voters. (Elections Code, § 9092; *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 649 ["Even after a petition

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[4] As petitioners point out, neither the Proposition nor the Official Voter Information Guide provides "a citation to the governing statutes." (Am. Pet. at 48.) But there is no case law requiring such specificity, or holding that failing to include this information violates the single-subject rule. (Cf. *Manduley*, *supra*, 27 Cal.4th at p. 579 [rejecting single-subject claim premised on the fact that voters were not informed that statutory revisions "amended statutes adopted through prior initiative measures"].)

qualifies for the ballot, opponents have an opportunity to dissuade the electorate in the media, with debates, advertisements, circulars and ultimately with opposing statements in the ballot pamphlet."].) Whatever their merit as a matter of *policy*, these disagreements are not a basis for striking down the law under the single-subject rule. And petitioners cite no case law to support the contention that an initiative may be struck because the information it provided did not have this level of specificity. Requiring such minute detail would be at odds with the liberal interpretation courts afford the initiative process, and would be counter to the presumption courts apply in favor of the validity of initiatives.

D. Under the Liberal Interpretative Tradition Applied in Single Subject Claims, Petitioners' Challenge Fails.

Ultimately, "the single-subject provision does not require that each of the provisions of a measure effectively interlock in a functional relationship," and it is instead sufficient that "the various provisions are reasonably related to a common theme or purpose." (*Legislature v. Eu*, *supra*, 54 Cal.3d at p. 513.) The four provisions petitioners specifically challenge[5] fall far short of the type of situations where courts have struck initiatives under the single-subject rule—invalidation has been reserved for only the most extreme cases. For example, in *Jones*, *supra*, 21 Cal.4th at 1142, a ballot measure was struck down where it implemented two comprehensive, yet entirely separate schemes, the first focused on reapportionment of state and federal legislative districts, the second regarding compensation and benefits of state legislators and other state

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[5] Although petitioners ostensibly raise a blanket challenge to sections 8 through 14 and 17 and 18, (Am. Pet. at 46), their argument focusses on the four areas discussed. Respondents in turn focus on these same areas. Petitioners have waived any challenge for which they do not provide any argument. (Cal. Rules of Court 8.204(a)(1)(B).)

officials. In another case, the law at issue failed because it amended, added, or repealed 150 sections in over 20 codes or legislative acts. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1097; See also *Cal. Trial Lawyers Assoc. v. Eu* (1988) 200 Cal.App.3d 351 [finding single-subject violation where 120-page initiative regarding insurance included a provision regarding campaign contributions and conflicts of interest of elected officials], disapproved on another ground in *Lewis v. Superior Court* (1999) 19 Cal.4th 1232.) Proposition 66, on the other hand, enacts modest changes to only a handful of Government and Penal Code sections which all relate to death penalty reform.

In contrast, courts have found that laws pass muster under the "reasonably germane" test when their subject matter has been much more diverse than what is at issue here. In *Brosnahan*, *supra*, 32 Cal.3d 236, the court found that the provisions concerning (1) more severe punishment for, and more effective deterrence of, criminal acts, (2) protecting the public from the premature release into society of criminal offenders, (3) providing safety from crime to a particularly vulnerable group of victims, namely school pupils and staff, and (4) assuring restitution for the victims of criminal acts, all fell under the single subject of "promoting the rights of actual or potential crime victims." In *Evans v. Superior Court In & For Los Angeles County* (1932) 215 Cal. 58, the Court upheld a law with over 1,700 sections that dealt with the general subject of "probate law." These cases are illustrative of the "liberal interpretative tradition" surrounding the single-subject rule, and the reluctance of courts to use it as a means of striking down laws. (*Brosnahan*, *supra*, 32 Cal.3d at p. 253.) "[T]he single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Jones*, *supra*, 21 Cal.4th at p. 1157.) Accordingly, courts

"liberally construe the initiative power and '*resolve any reasonable doubts in favor of the exercise of this precious right.*'" (*Chemical Specialties Manufacturers Ass'n, Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 667, citation omitted.)

At heart, petitioners challenge the wisdom of the measure's provisions.[6] (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814 [in adjudicating constitutionality of an initiative, this Court "do[es] not consider or weigh the economic or social wisdom or general propriety of the initiative"].) "Whether or not these various provisions are wise or sensible, and will combine *effectively* to achieve their stated purpose, is not our concern in evaluating the present single-subject challenge." (*Legislature v. Eu*, *supra*, 54 Cal.3d at p. 514; *Calfarm Ins. Co. v. Deukmejian*, *supra*, 48 Cal.3d at pp. 841-42 [single-subject rule does not require determination whether each section effectively will further the measure's overall purpose].)

Petitioners have not established "clearly and unmistakably" that Proposition 66 is unconstitutional.

II. PETITIONERS ARE NOT ENTITLED TO INVALIDATION UNDER THEIR REMAINING ARGUMENTS.

Petitioners raise three additional claims against Proposition 66, claiming that it improperly interferes with the jurisdiction of the courts, that it violates separation of powers principles, and that it violates the Equal Protection Clauses of the federal and California Constitutions. These

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[6] Notably, despite their strenuous insistence that the measure violates the single-subject rule, petitioners did not challenge the measure before it was submitted to the voters. (See *Senate of State of Cal. v. Jones*, *supra*, 21 Cal.4th at p. 1154 [noting that "[w]hen a court determines that the challengers to an initiative measure have demonstrated that there is a strong likelihood that the initiative violates the single-subject rule, it is appropriate to resolve the single-subject challenge prior to the election."].)

claims all fail. Moreover, none of them is sufficient to invalidate the entire measure, but would at most warrant invalidation of a severable provision.

A. Proposition 66 Enacts A Lawful Rule of Procedure That Does Not Interfere with the Jurisdiction of California's Courts.

Petitioners contend that habeas jurisdiction is constitutionally based, and that Proposition 66 improperly tries to "strip the state courts of their authority to entertain and decide" habeas corpus petitions. (Am. Pet. at 20.) This argument exaggerates Proposition 66's effects; the measure merely enacts rules of judicial procedure, establishing a strong preference for channeling habeas claims to the court of conviction. By its own terms, it preserves the ability of the Courts of Appeal and this Court to accept appropriate cases, and to review a lower court's ruling on habeas petitions, through the appellate process. Such rules of judicial procedure are within the purview of the Legislature, and thus properly a subject for the initiative process.

The California Constitution states that "[h]abeas corpus may not be suspended unless required by public safety in cases of rebellion or invasion." (Cal. Const., art. I, § 11.) And every level of the state courts "and their judges have original jurisdiction in habeas corpus proceedings." (*Id.* art. VI, § 10.) Nevertheless, by rule, Courts of Appeal already have the authority to deny without prejudice habeas petitions challenging judgments of courts based outside their district. (Cal. Rules of Court, rule 8.385(c)(1)(A); 8.385(c)(2).)

Although original capital habeas petitions are usually filed in this Court, the Court is not required to retain these cases. Proposition 66, adjusts the existing procedural presumption that such cases will remain in this Court, in favor of a presumption that sentencing courts will handle these petitions in the first instance. The measure provides that "a petition

filed in any court other than the [sentencing court] should be promptly transferred to that court," absent good cause. (New Pen. Code, § 1509, subd. (a).) Proposition 66 further provides that a "successive petition shall not be used as a means of reviewing a denial of habeas relief." (New Pen. Code, § 1509.1, subd. (a).) These provisions are not invalid encroachments on the courts' habeas jurisdiction. (Am. Pet. at 23-24.)[7]

1. The measure does not mandate that habeas petitions be transferred to the sentencing court, and thus does not divest appellate courts of original jurisdiction.

Proposition 66 provides only that a petition filed in any court other than the sentencing court "should" be transferred to that court "unless good cause is shown for the petition to be heard by another court." (New Pen. Code, § 1509.) On its face, this provision does not divest the appellate courts of jurisdiction to consider habeas petitions, does not mandate that a petition filed in appellate courts be transferred to the sentencing court, and does not mention jurisdiction. (Cf. *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2016) 247 Cal.App.4th 284, 289 [holding that a challenged statute's "absolute preclusion of superior court jurisdiction, even in exceptional circumstances" violates California Constitution.) Rather, it tracks the language used by this Court in *In re Roberts* (2005) 36 Cal.4th 575, 593, which directs that "among the three levels of state courts,

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[7] This preference for the sentencing court is similar to that found in federal law. Under 28 U.S.C., section 2241, "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." Despite this broad jurisdiction, any of these three entities "may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it." (*Id.*, subd. (b); See also 28 U.S.C., § 2255, subd. (e); Fed. R. App. P. 22, subd. (a).)

a habeas corpus petition challenging a decision of the parole board *should* be filed in the superior court, which *should* entertain in the first instance the petition." (Emphasis added.) The Fifth District Court of Appeal found that this language in *Roberts* "does not divest the courts of appeal of original jurisdiction in petitions for writ of habeas corpus, as granted by article IV [*sic*], section 10 of the California Constitution. Nor does it dictate that in all cases such habeas corpus petitions must be filed in the superior court—only that challenges to parole 'should' first be filed in the superior court." (*In re Kler* (2010) 188 Cal.App.4th 1399, 1403.)

As it has in the past with other challenged statutes, this Court should construe Proposition 66 to avoid an impairment of constitutional jurisdiction. Where a regulation appears to interfere with the exercise of a court's constitutional jurisdiction, this Court has avoided constitutional conflict by construing the legislation "strictly against the impairment of constitutional jurisdiction." (See *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 253; See also *In re Smith* (2008) 42 Cal.4th 1251, 1270 [the common practice of the California Supreme Court is to "construe[] statutes, when reasonable, to avoid difficult constitutional questions"].) "An intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 87.) In *Matosantos*, a statute provided that all challenges to its validity must be brought in the Sacramento County Superior Court. (*Matosantos*, *supra*, 53 Cal.4th at p. 253.) A petition challenging the statute, however, was brought directly in this Court. (*Ibid.*) This Court held that it has original jurisdiction, provided by the Constitution, "in all proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." (*Ibid.*; Cal. Const., art. VI, § 10.) This Court thus construed the challenged statute narrowly as applying only to actions over which it retains appellate jurisdiction and having no bearing

over "special proceedings." (*Matosantos*, *supra*, 53 Cal.4th at p. 253.) The same considerations counsel in favor of construing Proposition 66 similarly.

2. Even if Proposition 66 is interpreted to require transfer of petitions to the sentencing court, it merely codifies a procedural rule that directs how habeas petitions should be processed by the courts.

As explained above, Proposition 66 does not mandate that habeas petitions be transferred to the sentencing court in all instances, does not limit or even mention jurisdiction, and therefore does not implicate the original jurisdiction provision. But even if the measure is interpreted as mandatory, it merely codifies rules of procedure governing how habeas petitions should be handled.

Where the California Constitution vests courts with original jurisdiction, the Legislature cannot defeat or impair that jurisdiction, but can still regulate matters of judicial procedure. (*Cal. Redevelopment Ass'n v. Matosantos*, *supra*, 53 Cal.4th at pp. 252-53.) The same limitation applies to laws passed by the initiative process. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674.) As noted above, every level of the state courts "and their judges have original jurisdiction in habeas corpus proceedings." (Cal. Const., art. VI, § 10.) Nevertheless, this constitutionally granted jurisdiction is properly subject to procedures enacted by statute. (*People v. Romero* (1994) 8 Cal.4th 728, 737 [in exercising original jurisdiction, Courts of Appeal "must abide by the procedures set forth in Penal Code sections 1473 through 1508", citation omitted.)

Petitioners' constitutional challenge to Proposition 66 must be assessed in the context of the legislative history of the original jurisdiction provision. This provision was revised in 1966. (*Griggs v. Superior Court* (1976) 16 Cal.3d 341, 344.) Before the revision, "it was recognized that a superior court had power to issue a writ of habeas corpus only on a petition by or on behalf of a person in custody within the same county." (*Ibid.*)

The 1966 revision did away with this geographical limitation, "and imposed no express limitation on the current power of the courts to exercise 'original jurisdiction in habeas corpus proceedings.'" (*Ibid.*) Although *Griggs* did not address the grant of original jurisdiction to this Court and the Courts of Appeal, it noted that the grant of original jurisdiction to the superior courts to entertain a habeas corpus petition without territorial limitation did not preclude the Court from setting out "rules of judicial procedure to be followed by superior courts in the exercise of that unlimited jurisdiction." (*Id.* at pp. 346-47; *In re Roberts* (2005) 36 Cal.4th 575, 583 [analyzing *Griggs* and noting that "the constitutional expansion of jurisdiction to consider the issuance of writs of habeas corpus did not signify that a superior court should give such consideration in every instance"].)

The original jurisdiction clause means that "a petition for writ of habeas corpus may be filed in the first instant [*sic*] in the superior court, Court of Appeal, or the California Supreme Court." (*In re Kler* (2010) 188 Cal.App.4th 1399, 1403.) But, although a party may file a petition in any court, the court need not adjudicate it in every instance. (*Ibid.* ["Having original jurisdiction and exercising it are two separate things"].) "It has long been the law in California that, while a Court of Appeal may have original jurisdiction in a habeas corpus proceeding, it has the discretion to deny a petition without prejudice if it has not been first presented to the trial court." (*Ibid.*) "[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court." (*In re Steele* (2004) 32 Cal.4th 682, 692; *Application of Hillery* (1962) 202 Cal.App.4th 293, 294 [interpreting prior version of the original jurisdiction clause].) And if the petition states a prima facie case for relief, and a petitioner challenges a particular judgment or

sentence, existing law is already that "the petition should be transferred to the court which rendered judgment if that court is a different court from the court wherein the petition was filed." (*Griggs v. Superior Court*, *supra*, 16 Cal.3d at p. 347; *In re Kler*, *supra*, 188 Cal.App.4th at p. 1403.) Thus, even after the 1966 grant of original jurisdiction to all superior courts to entertain any habeas petitions, this Court enacted "rules of judicial procedure" to channel the petition to the court that entered the judgment being challenged. (*In re Roberts* (2005) 36 Cal.4th 575, 582 ["In the wake of the constitutional amendment, this court issued several decisions providing 'rules of judicial procedure to be followed by [the] superior courts in the exercise of [their] unlimited jurisdiction'"].) Although this Court has not explicitly addressed whether the same authority holds for a grant of original jurisdiction to itself or the Court of Appeal, or whether that authority also inheres in connection with a law passed by the initiative process, the same rationale should apply.

Petitioners erroneously argue that Proposition 66 suffers from the same infirmity as the rule of court at issue in *In re Kler*. (Am. Pet. at 26-27.) There, the Court of Appeal struck a prior version of Rule of Court 8.385(c)(2), which stated that a "Court of Appeal *must* deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner's suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment." (*Kler*, *supra*, 188 Cal.App.4th at p. 1402, emphasis in original.) The court noted that this Rule was mandatory on the appellate court, and thus inconsistent with the original jurisdiction provision and this Court's rule in *In re Roberts*. (*Id.* at p. 1404.) Contrary to petitioners' argument, Proposition 66 does not *mandate* that habeas corpus petitions be transferred in every single instance, instead providing that such transfer need not take

place if "good cause is shown for the petition to be heard by another court." (New Pen. Code, § 1509(a).)

3. Petitioners' challenges to Proposition 66's limits on successive petitions and other provisions do not implicate the original jurisdiction clause.

Petitioners also challenge the provisions barring successive habeas petitions, allowing trial courts to appoint counsel for capital defendants, and giving exclusive jurisdiction to the sentencing court over challenges to execution methods, claiming that these provisions somehow impair this Court's original habeas jurisdiction. (Am. Pet. at 24-25.) Notably, petitioners do not demonstrate that any of these provisions actually conflicts with the original jurisdiction clause. (*Ibid.*) Ultimately, petitioners cannot establish that Proposition 66's provisions violate the original jurisdiction clause of the California Constitution.[8]

Contrary to petitioners' argument, the provision granting "exclusive jurisdiction" to the sentencing court over challenges to execution methods does not "rob" any court of habeas jurisdiction—both the Courts of Appeal and this Court retain jurisdiction to review such decisions on these cases through the appellate process. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 904.1(a).)) Indeed, it should be noted that habeas corpus is not generally the appropriate vehicle for challenging execution methods. (Pen. Code, § 1473 ["Every person unlawfully imprisoned or restrained of his liberty . . .

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[8] Although petitioners do not raise this claim, the "exclusive jurisdiction" provision for reviewing challenges to a method of execution could be read to conflict with the California Constitution's grant of original jurisdiction to all courts "in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." (Cal. Const., art. VI, § 10.) This Court should construe the provision to avoid any such conflict, just as it did with a similar provision in *Matosantos*. (*Matosantos*, *supra*, 53 Cal.4th at p. 253.)

may prosecute a writ of habeas corpus, to inquire into the *cause of such imprisonment or restraint.*"], emphasis added; *People v. Villa* (2009) 45 Cal.4th 1063, 1068.)

Further, this Court has previously pointed out that "[e]ntertaining the merits of successive petitions is inconsistent with [the] recognition that delayed and repetitious presentation of claims is an abuse of the writ," and, to that end, imposed limitations on successive habeas corpus petitions. (*In re Clark* (1993) 5 Cal.4th 750, 769.) Successive petitions "waste scarce judicial resources as the court must repeatedly review the record of the trial in order to assess the merits of the petitioner's claims." (*Id.* at p. 770.) Petitioners do not explain why limits on successive petitions developed by case law are proper, while statutory limits on the same vehicle violate the California Constitution. And courts have likewise approved legislation setting the appropriate venue for a given cause of action, which is all the exclusive jurisdiction provision essentially does. (*Alexander v. Superior Court* (2003) 114 Cal.App.4th 723, 731, citing *Caminetti v. Superior Court for the City & Cty. of S.F.* (1941) 16 Cal.2d 838, 843.) Petitioners thus cannot show an entitlement to relief for this claim.

B. The Separation of Powers Claim Lacks Merit.

Petitioners argue that Proposition 66 violates the separation of powers principle by "dictat[ing] the manner in which California's courts must control their dockets and decide cases when exercising constitutionally granted jurisdiction over automatic appeals and capital habeas corpus petitions." (Am. Pet. at 30.) They specifically challenge the time limitations on courts considering habeas corpus petitions[9], and the

[9] The five-year limit is not unreasonable, as former Chief Justice George noted. "[I]t makes sense to take the position that within five years, more or less, we should know whether a death judgment is valid and should (continued...)

provisions precluding review of certain habeas petitions, the availability of mandamus relief to remedy undue delays, and provisions governing appointment of counsel and extension of time requests. (*Id.* at 30-32.) These provisions are valid regulations of judicial procedure.[10]

1. The Legislature can enact reasonable restrictions on the constitutional functions of the court.

It is well established that the Legislature "may put reasonable restrictions upon constitutional functions of the courts," as long as these restrictions do not "defeat or materially impair the exercise of those functions." (*Brydonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 444) "The Legislature may regulate the exercise of the jurisdiction of the courts by all reasonable means." (*Solberg v. Superior Court* (1977) 19 Cal.3d 182 192.)

(...continued)
be carried out or, if it is not, the case should be remanded back to the trial court for a new trial." (George, Chief: The Quest for Justice in California (2013) p. 525.)

[10] In their reply in response to respondents' preliminary opposition, petitioners enumerated 16 different provisions that they purport to challenge under separation of powers clause, most of which are not discussed in the petition itself. (Compare Pets. Repl. Supp. Pet. at pp. 13-15 with Am. Pet. at pp. 35-40.) In any event, none of these provisions violate the general rule discussed above that the Legislature can place reasonable limitations on the courts' exercise of jurisdiction. Instead, most of these provisions involve routine procedural matters, such as grants of extensions of time, appointment of counsel, and prioritizing review of capital cases. Although some of these provisions require courts to process these types of cases on an expedited basis, none rises to the level of creating a constitutional problem. (Cf. *In re Shafter-Wasco Irrigation District* (1942) 55 Cal.App.2d 484 [analyzing statute that required that appeal be heard within three months as not requiring dismissal, in order to avoid constitutional friction].)

This principle has been applied in more recent decisions. In *Le Francois v. Goel*, this Court stated that "[t]he Legislature may regulate the courts' inherent power to resolve specific controversies between parties," subject only to the narrow limitation that the Legislature "may not defeat or materially impair the courts' exercise of that power." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103-1104.) Therefore, in most matters "the judicial branch must necessarily yield to the legislative power to enact statutes." (*Id.* at p. 1104.) In *Superior Court v. County of Mendocino*, the Court acknowledged that while courts have "inherent power" in certain areas, "[i]t does not follow . . . that the Legislature necessarily violates the separation of powers doctrine whenever it legislates with regard to such an inherent judicial power or function." (*Superior Court v. Cty. of Mendocino* (1996) 13 Cal.4th 45, 57.)

In this vein, this Court has upheld a statute allowing a party to disqualify a trial judge merely by filing an affidavit, without a judicial determination (*Johnson v. Superior Court* (1958) 50 Cal.2d 693, 696), and a statute fixing punishment for contempt of court (*In re McKinney* (1968) 70 Cal.2d 8, 10-11). This Court has also upheld a statute designating days on which a court shall or shall not be in session. (*Cty. of Mendocino*, *supra*, 13 Cal.4th at p. 58.) As this Court has noted, the Legislature has enacted numerous statutes governing procedures that litigants must follow in California courts. (*Le Francois*, *supra*, 35 Cal.4th at p. 1104.)

Petitioners cite no case where a court has struck down a statute that established court procedures under a facial challenge on separation of powers principles. (Am. Pet. at 31-35.) Instead, petitioners cite cases in as-applied contexts where courts expressed concerns about potential violations of this principle, and adopted a construction of the statute that would avoid constitutional friction. (Am. Pet. at 32-35.) For example, in *Oppenheimer v. Ashburn* (1959) 173 Cal.App.2d 624, the court confronted a statute

which imposed civil liability on judges for refusing to grant a writ of habeas corpus, and construed it to avoid separation of powers concerns. (*Id.* at p. 633 ["We therefore conclude that if the section is construed to mean that a judge in refusing to grant an order for a writ of habeas corpus . . . must do so at pain of forfeiture of the named amount, the section is unconstitutional."].) In *In re Shafter-Wasco Irrigation District* (1942) 55 Cal.App.2d 484, a statute required that an appeal "be heard and determined within three months" after it was filed. The court rejected a party's argument that a court's failure to meet this time limit divested the court of jurisdiction. (*Id.* at p. 488.) And this Court likewise interpreted a statute giving trial preference to criminal cases in such a way as to avoid a potential separation of powers problem. (*People v. Engram* (2010) 50 Cal.4th 1131, 1152-53; *Lorraine v. McComb* (1934) 220 Cal.753 [same].) In *Le Francois*, 35 Cal.4th at p. 1105, this Court noted that a statute which precluded courts from *sua sponte* reconsidering their own rulings "would directly and materially impair and defeat the court's most basic functions, exercising its discretion to rule upon controversies between the parties and ensuring the orderly administration of justice," and accordingly adopted a saving construction. (See also *Thurmond v. Superior Court* (1967) 66 Cal.2d 836, 839-40 [interpreting statute granting automatic continuance to be subject to the court's discretion, in light of "serious constitutional questions which would ensue"]; *Millholen v. Riley* (1930) 211 Cal.29 [statute allowing executive department to appoint and fix compensation construed as not applying to judicial secretary].)

2. Limitations on untimely and successive habeas corpus petitions do not violate separation of powers.

Petitioners claim that limitations on untimely and successive habeas petitions are also "impermissible" restrictions on the ability of the courts to

adjudicate habeas corpus petitions. (Am. Pet. at 35-36.) But they cite no constitutional provision at odds with these limitations, and indeed it would be highly anomalous to hold that an individual has a *constitutional* right to continually raise challenges to his conviction through a late or successive habeas corpus petition.[11] (*In re Clark* (1993) 5 Cal.4th 750, 769.) For one thing, habeas corpus "is no different from other types of civil writs that constitute extraordinary relief," and so may also be subject to strict limitations. (*In re Reno*, *supra*, 55 Cal.4th at p. 453; *People v. Duvall* (1995) 9 Cal.4th 464, 474 ["Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then to later *prove* them."].) By requiring prompt assertion of habeas challenges, "we vindicate society's interest in the finality of its criminal judgments, as well as the public's interest 'in the orderly and reasonably prompt implementation of its laws.'" (*Id.* at p. 459, citation omitted.)

Moreover, that a party has a right to file a habeas petition does not mean that the Legislature cannot impose limitations on that right: "A constitutional right is always subject to reasonable statutory limitations as to the time within which to enforce it, if the constitution itself does not provide otherwise." (*Muller v. Muller* (1960) 179 Cal.App.2d 815, 819, citation omitted [rejecting constitutional challenge to statute requiring dismissal of civil actions not brought to trial within 5 years].) This applies with even greater force to habeas petitions. (*In re Reno*, *supra*, 55 Cal.4th at p. 452 [noting "the ample opportunities available to a criminal defendant

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[11] Indeed, state habeas corpus is not required by the federal constitution. (*Murray v. Giarratano* (1989) 492 U.S. 1, 10.)

to vindicate statutory rights and constitutional guarantees" and "the importance of the finality of criminal judgments"].)

In fact, petitioners acknowledge that the case law has developed analogous limitations on habeas petitions, including procedural default and bars on repetitious petitions. (*In re Robbins* (1998) 18 Cal.4th 770, 778, fn. 1; *In re Clark*, *supra*, 5 Cal.4th at p. 767.)[12] If the voters can enact changes to this Court's case law through the initiative process, they can also codify these judicially-created limits on late and successive petitions. (See *Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 248 [upholding measure that purported to reverse court decisions, noting that "in the absence of some compelling, overriding constitutional imperative, we should not prohibit sovereign people from either expressing or implementing their will on matters of such direct and immediate importance to them as their own perceived safety."].)

Furthermore, because petitioners raise a *facial* challenge, they have a particularly heavy burden to establish an entitlement to relief. This Court has not articulated a single test for facial challenges, but petitioners must establish at a minimum that Proposition 66 is unconstitutional "in the *generality* or *great majority* of cases." (*In re Guardianship of Ann S.*

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[12] Notably, the United States Supreme Court has upheld similar limitations on federal habeas corpus petitions, enacted as part of the Antiterrorism and Effective Death Penalty Act. (*Felker v. Turpin* (1996) 518 U.S. 651, 664 ["The new restrictions on [federal] successive petitions constitute a modified res judicata rule, a restraint on what is called in habeas corpus practice 'abuse of the writ'"]; *Crater v. Galaza* (9th Cir. 2007) 491 F.3d 1119, 1127 [rejecting challenge to AEDPA, noting that "judgments for the proper scope" of habeas relief are within the purview of the legislative branch].) Under federal law, a successive petition must be dismissed unless it relies on a new retroactive rule of constitutional law, or facts that could not have been previously discovered and that establish a petitioner's innocence. (28 U.S.C. § 2244, subd. (b)(3).)

(2009) 45 Cal.4th 1110, 1126, citation omitted; *Coffman Specialities, Inc. v. Dep't of Transportation* (2009) 176 Cal.App.4th 1135, 1145.) "[T]he plaintiff has a heavy burden to show the statute is unconstitutional in all or most cases," and cannot prevail simply by pointing out that "in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute." (*Coffman Specialities, Inc. v. Dep't of Transportation*, *supra*, 176 Cal.App.4th at p. 1145, citation omitted.) Yet that is precisely what petitioners rely on—a litany of hypothetical scenarios where Proposition 66 *might* bar certain capital defendants from raising a habeas claim does not meet their burden. (Am. Pet. at 37-38.) This does not suffice under a facial challenge because it does not demonstrate that "*under any and all circumstances*," the measure "*necessarily* will 'defeat' or 'materially impair' a court's fulfillment of its constitutional duties." (*Superior Court v. Cty. of Mendocino*, *supra*, 13 Cal.4th at p. 60.)[13]

For these reasons, this Court should reject the separation of powers claim. While Proposition 66 imposes limitations on the scope of habeas corpus appeals and sets time limits for a court decision, those limitations do not "defeat" or "materially impair" the courts' exercise of their constitutional functions to resolve appeals and habeas petitions, and are a far cry from the statutes for which courts have expressed concerns about

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[13] Petitioners contend, without any factual support, that Proposition 66's provisions "make far more likely" the execution of an innocent person. (Am. Pet. at 39.) This disregards the fact that capital defendants are afforded numerous opportunities to raise viable legal claims. And the measure explicitly preserves a safety valve for actual innocence claims. (New Pen. Code, § 1509, subd. (d) [providing for dismissal of untimely or successive habeas petitions "unless the court finds . . . that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence"].)

separation of powers.[14] And no constitutional provision cited prevents enactment of statutes limiting repetitive or other procedurally improper habeas petitions.[15]

C. Petitioners' Equal Protection Claim Fails.

Lastly, petitioners raise an equal protection challenge to Proposition 66. They contend that the Legislature passed Senate Bill 1134 in 2016 to allow any criminal defendant, whether capital or non-capital, "to pursue a successive claim for habeas relief regarding factual innocence." (Am. Pet. at 52.) They argue that Proposition 66 violates the equal protection rights of capital defendants, because it somehow "removes [them] from the pool of persons who may pursue a successive petition" under Senate Bill 1134 by claiming factual innocence. (*Id.* at 52.) This argument fails.[16]

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[14] A defendant could seek individual relief if there were grounds to contend that the time limits imposed by Proposition 66 were inconsistent with due process on the facts of his or her particular case. Petitioners do not raise any due process arguments as part of their facial challenge. (See Am. Pet. at 10 ¶ 27.)

[15] Petitioners claim that the time limitations that the measure imposes will be unworkable, result in increased expenditures, and "will result in confusion and upheaval in this Court." (See, e.g., Am. Pet. at pp. 2-3 ¶ 5; pp. 6-8 ¶¶ 18, 20-21.) Such predicted dire consequences and forecasts of "judicial chaos" do not suffice, without more, to invalidate a measure approved by the voters. (See *Raven v. Deukmejian*, *supra*, 52 Cal.3d at p. 349 [rejecting constitutional challenge based on purported "great delays and soaring financial costs"]; Cf. *Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 261 ["[P]etitioners' forecast of judicial and educational chaos is exaggerated and wholly conjectural, based upon essentially unpredictable fiscal or budgetary constraints."].)

[16] In their Amended Petition, petitioners raised an argument under Penal Code section 1485.55. (Am. Pet. at 52-53.) As respondents' preliminary opposition explained, this statute does not authorize the filing of habeas corpus petitions at all. (Resps.' Prelim. Opp. at 20-21.) In their subsequent pleadings, petitioners have withdrawn any claim under section

(continued...)

Although Senate Bill 1134 added provisions to the Penal Code to allow individuals to bring a habeas petition in certain situations, it did not address successive petitions. Apart from amending section 1485.55 (which does not address habeas petitions), Senate Bill 1134 amended Penal Code section 1473. But these amendments did not make available to any criminal defendant, capital or otherwise, the ability to file *successive* habeas petitions. Petitioners' factual premise for their equal protection claim is therefore faulty.

Additionally, petitioners cannot establish that capital defendants are similarly situated to non-capital defendants for purposes of their equal protection claim. When a law is challenged under the equal protection clause, the court first ascertains whether it affords different treatment to similarly situated groups. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) "This initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" (*Ibid.*, citation omitted.) As this Court has previously and unambiguously determined, "capital and non-capital defendants are not similarly situated and therefore may be treated differently without violating constitutional guarantees of equal protection of the laws or due process of law." (*People v. Manriquez* (2005) 37 Cal.4th 547, 590; *People v. Jennings* (2010) 50 Cal.4th 616, 690 ["Because capital defendants are not similarly situated to noncapital defendants, California's death penalty law does not deny capital defendants equal protection by providing certain procedural protections to noncapital defendants but not to capital defendants."].)

(...continued)
1485.55, and respondents accordingly will not address that. (Pets.' Reply Supp. Pet. at 45 fn.10.)

Here, there are numerous reasons why the voters could have rationally elected to limit the availability of successive habeas petitions for individuals convicted of capital offenses. Death penalty cases are different, and are afforded a panoply of added protections that are not available to other defendants. For example, indigent capital defendants are entitled to appointed counsel for postconviction proceedings. (New Pen. Code, § 1509(b); New Gov. Code, § 68662.) They are entitled to seek second trial counsel. (*Keenan v. Superior Court* (1982) 31 Cal.3d 424, 431.) Capital defendants also receive an automatic appeal to this Court. (Pen. Code, § 1239, subd. (b).) On appeal, capital defendants are entitled to "an examination of the record and the preparation of a formal opinion and decision from which it should appear that no miscarriage of justice has resulted." (*People v. Stanworth* (1969) 71 Cal.2d 820, 833.) Indeed, as this Court has noted in the past, "vis-à-vis other states, we authorize more money to pay postconviction counsel, authorize more money for postconviction investigation, [and] allow counsel to file habeas corpus petitions containing more pages." (*In re Reno* (2012) 55 Cal.4th 428, 456-57, footnotes omitted.) In light of these and other robust procedural and substantive protections, the voters could properly choose to apply a more stringent standard to successive petitions filed in capital cases.[17]

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[17] Additionally, the voters could have reasoned that successive habeas corpus petitions rarely raise meritorious claims, a fact borne out by this Court's past observations. (*In re Reno*, *supra*, 55 Cal.4th at p. 457 ["Absent the unusual circumstance of some critical evidence that is truly 'newly discovered' under our law, or a change in the law, such successive petitions rarely raise an issue even remotely plausible, let alone state a prima facie case for actual relief"]; *In re Clark*, *supra*, 5 Cal.4th at p. 806 ["[D]eath row inmates have an incentive to delay assertion of habeas corpus claims that is not shared by other prisoners."] (conc. & dis. opn. of Kennard, J.).)

Further, petitioners' equal protection claim also fails because they cannot meet the high standard to show that any legislative distinction was irrational. Absent a legislative classification that treats similarly situated individuals "on the basis of race, gender, or some other criteria calling for heightened scrutiny, [courts] review the legislation to determine whether the legislative classification bears a rational relationship to a legitimate state purpose." (*People v. Moreno* (2014) 231 Cal.App.4th 934, 939.) "This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve. Nor must the underlying rationale be empirically substantiated." (*Johnson v. Dep't of Justice* (2015) 60 Cal.4th 871, 881, citation omitted.) This Court may "engage in 'rational speculation' as to the justifications for the legislative choice,'" and it is immaterial whether such speculation "has a foundation in the record." (*Ibid.*, citation omitted.) Thus, under rational basis review, it is the petitioners' burden to "'negative every conceivable basis' that might support the disputed statutory disparity." (*Ibid.*) And if there is a "plausible basis" for the challenged disparity, "courts may not second-guess its 'wisdom, fairness, or logic.'" (*Ibid.*, citation omitted.)

In applying rational basis review, courts defer to the Legislature's classifications. (*Johnson v. Dep't of Justice*, *supra*, 60 Cal.4th at p. 887.) "A classification is not arbitrary or irrational simply because there is an 'imperfect fit between means and ends'" or because it may be under or over-inclusive. (*Ibid.*) Here, any of the aforementioned reasons are valid and rational distinctions why the voters could have decided to enact limitations on the ability of capital defendants to bring successive petitions. And the measure retains a safety valve for claims of actual innocence. (New Pen. Code § 1509, subd. (d).) Petitioners have simply not "'negative[d] every conceivable basis' that might support the disputed statutory disparity." (*Johnson v. Dep't of Justice*, *supra*, 60 Cal.4th at p.

881.) Under the deferential rational basis review, the measure amply meets the test.[18]

III. IF THE COURT CONCLUDES THAT PROPOSITION 66 UNLAWFULLY INTERFERES WITH THE JURISDICTION OF CALIFORNIA'S COURTS, VIOLATES SEPARATION OF POWERS, OR VIOLATES EQUAL PROTECTION, THE COURT CAN SEVER THE OFFENDING PROVISIONS.

Although petitioners request that this Court invalidate Proposition 66 in its entirety, they are only entitled to that remedy if they succeed on their single-subject claim.

The measure contains a severability clause, which states that if any of its provisions are deemed invalid or unconstitutional, "the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect." (Pets.' App. of Exhibits, Exh. 3 at p. 28.) Although such severability clauses are not conclusive, "a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable." (*Calfarm Ins. Co. v. Deukmejian*, *supra*, 48 Cal.3d at p. 821, citation omitted.) Three criteria are necessary for severability: "the invalid provision must be grammatically, functionally, and volitionally separable." (*Ibid.*) "The remaining provisions must stand on their own, unaided by the invalid provisions nor rendered vague by their absence nor inextricably connected to them by policy considerations." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 332.)

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[18] Petitioners raise an equal protection claim under the California and federal constitutions. (Am. Pet. at 15, 53.) Both equal protection clauses are "substantially equivalent and analyzed in a similar fashion." (*People v. Cruz* (2012) 207 Cal.App.4th 664, 674.)

To the extent the Court determines that any of the provisions are unlawful, these provisions can be severed to allow the remaining aspects of the measure to take effect.

CONCLUSION

For these reasons, the Court should deny the petition.

Dated: February 27, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RETURN TO PETITION FOR A WRIT OF MANDATE; SUPPORTING MEMORANDUM** uses a 13 point Times New Roman font and contains 11,265 words.

Dated: February 27, 2017

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Ron Briggs, et al. v. Jerry Brown, et al.*** No.: **S238309**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 27, 2017, I served the attached **RETURN TO PETITION FOR A WRIT OF MANDATE; SUPPORTING MEMORANDUM** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 27, 2017, at San Francisco, California.

M. T. Otanes
Declarant

Signature

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