No. S277487

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

TONY HARDIN,
Defendant and Petitioner.

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

OPENING BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page

ISSUE PRESENTED

Does Penal Code section 3051, subdivision (h), violate the Equal Protection Clause of the Fourteenth Amendment by excluding young adults sentenced to life without the possibility of parole from youth offender parole consideration, while young adults sentenced to parole-eligible terms are entitled to such consideration?

INTRODUCTION

California's youth offender parole statute offers certain offenders who committed offenses under the age of 26 the opportunity to seek early parole. The statute was initially enacted to conform sentences to Eighth Amendment requirements articulated by the United States Supreme Court for juvenile offenders who committed offenses under age 18. Later, the Legislature in its discretion expanded the statute to certain young adult offenders who committed eligible offenses under age 26, in recognition of research showing that the mitigating factors of youth, including lack of maturity and impulse control, may for some persist into young adulthood. But the Legislature also remained focused on ensuring an appropriate level of punishment for more serious crimes. That additional legislative purpose is reflected in the statute's graduated parole eligibility dates of 15, 20, or 25 years—depending on the length of the originally-imposed sentence—and its exclusion of certain offenders convicted of particularly serious offenses from the parole scheme altogether. Those statutory exclusions encompass offenders, like petitioner Tony Hardin, who were sentenced to life without the possibility of parole for a robbery special-circumstance murder.

Until the decision below, the state courts had uniformly rejected equal protection challenges to the Legislature's exclusion of young adult inmates sentenced to life without the possibility of parole from the youth offender parole statute. The Court of Appeal in this matter issued the only published decision holding that the exclusion fails rational basis review and violates the Equal Protection Clause. That holding is flawed because the Court of Appeal viewed the statute's purpose too narrowly—as accounting only for youth-related mitigating factors—and applied an unduly demanding form of rational basis review.

Viewed in light of a more comprehensive understanding of the Legislature's purposes, and analyzed under the settled understanding of the rational basis standard, the challenged exclusion satisfies the Equal Protection Clause. The Legislature understood and carefully considered the mitigating attributes of youth in enacting and expanding the youth offender parole statute. It permissibly concluded that young adult offenders who have committed the most serious crimes—"even with diminished culpability and increased potential for rehabilitation—are nonetheless still sufficiently culpable and sufficiently dangerous to justify lifetime incarceration." (*In re Williams* (2020) 57 Cal.App.5th 427, 436.) The exclusions enacted by the Legislature may be debatable as a matter of policy, but they do not offend the Constitution.

LEGAL BACKGROUND

A. Evolution of the youth offender parole statute

In 2013, the California Legislature enacted a juvenile offender parole reform statute in response to a series of United

States Supreme Court decisions imposing constitutional limits on sentences for juveniles. (See *People v. Franklin* (2016) 63 Cal.4th 261, 277 [citing *Roper v. Simmons* (2005) 543 U.S. 551; *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460].) Those decisions rested on research demonstrating that children "'lack maturity'" and have "'an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking"; "are more vulnerable . . . to negative influences and outside pressures"; have "limited 'control over their own environment'"; and have character traits that "are 'less fixed'" so their actions are "less likely to be 'evidence of irretrievable depravity.'" (*Miller*, *supra*, 567 U.S. at p. 471.) The Court explained that these "distinctive attributes of youth" "diminish the penological justifications for imposing the harshest sentences on juvenile offenders." (*Id.* at p. 472) As a result, under the Eighth Amendment, no juvenile may be sentenced to life without the possibility of parole for a non-homicide offense, and juveniles who commit a homicide offense may not be sentenced to life without the possibility of parole unless the sentence is based on a particularized inquiry into potentially mitigating factors and the nature of the crime. (*Graham*, *supra*, 560 U.S. at p. 74; see also *Miller, supra*, 567 U.S. at p. 471.)[1]

[1] This Court held that those limitations apply to sentences that are the functional equivalent of life without parole sentences. (*People v. Caballero* (2012) 55 Cal.4th 262, 268; *Franklin*, *supra*, 63 Cal.4th at p. 276.)

To bring California's juvenile sentences in line with those requirements, the Legislature established the youth offender parole process, contained in Penal Code section 3051.[2] The statute "cap[s] the number of years" that an eligible juvenile offender "may be imprisoned before becoming eligible for release on parole." (*Franklin*, *supra*, 63 Cal.4th at p. 278; see § 3051.) The statute does not "vacate[]" and "impose[]" new sentences for juvenile offenders, but it does "change[] the manner in which the juvenile offender's original sentence operates" by offering a parole hearing in the 15th, 20th, or 25th year of incarceration, depending on the length of the original sentence. (*Franklin*, *supra*, 63 Cal.4th at p. 278; *see also id.* at p. 281 [section 3051 "effectively reforms the parole eligibility date of a juvenile offender's original sentence"].) The parole scheme thus "establishes what is, in the Legislature's view, the appropriate time to determine whether a juvenile offender has 'rehabilitated and gained maturity' . . . so that he or she may have a 'meaningful opportunity to obtain release.'" (*Id.* at p. 278.)

The Legislature opted not to extend the parole scheme to all juveniles. It excluded repeat offenders sentenced under the Three Strikes law (§ 3051, subd. (h), citing §§ 1170.12 and 667, subds. (b)-(i)); offenders sentenced under the "One Strike" law after being convicted of a serious sex offense (*ibid.*, citing § 667.61); offenders sentenced to life without the possibility of

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[2] Except as otherwise noted, all statutory references are to the Penal Code.

parole (*ibid.*); and offenders who, after becoming an adult, committed an additional crime for which malice aforethought is a necessary element or for which the individual was sentenced to life in prison (Stats. 2013, ch. 312, § 2; see also § 3051, subd. (h)).

In 2015 and 2017, the Legislature expanded the statute, extending parole eligibility to certain young adult offenders who committed their offenses after age 18 but before age 26. (Stats. 2015, ch. 471, § 1 [Sen. Bill No. 261] [extending to adults under age 23]; Stats. 2017, ch. 675 [Assem. Bill No. 1308] [extending to adults under age 26].) In amending the statute, the Legislature considered emerging scientific evidence that young-adult brains do not develop until the early- to mid-20's, "particularly [areas of the brain] affecting judgment and decision-making." (Sen. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) Apr. 27, 2015, p. 3; see also Assem. Comm. on Public Safety, Rep. on Assem. Bill No. 1308 (2017-2018 Reg. Sess.) Apr. 24, 2017, p. 2.) The Legislature viewed that research as "relevant to [young adult offenders'] culpability for criminal behavior and their special capacity to turn their lives around." (Sen. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) Apr. 27, 2015, p. 3.) As in its enactment of the juvenile scheme, however, the Legislature also considered the seriousness of the offense of conviction in establishing eligibility for parole consideration. The Legislature carried over for young adult offenders all of the then-existing exclusions for juvenile offenders—including for offenders sentenced to life without the possibility of parole. (§ 3051, subd. (h).)

Later in 2017, the Legislature amended the statute to address another Eighth Amendment issue relevant only to juvenile offenders who were sentenced to life without the possibility of parole. (Stats. 2017, ch. 684 [Sen. Bill No. 394].) Under a sentencing reform statute passed in 2012, most juvenile offenders serving such a sentence could petition the trial court to reduce their sentences to a term of 25 years to life. (Stats. 2012, ch. 828 [Sen. Bill No. 9]; § 1170, subd. (d).) This Court held in April 2017 that the re-sentencing provision did not fully remedy Eighth Amendment error for juvenile offenders who were sentenced to life without the possibility of parole. (*In re Kirchner* (2017) 2 Cal.5th 1040, 1053.) Several months later, citing *Kirchner*, the Legislature expanded the youth offender parole scheme to encompass all juvenile offenders sentenced to life without the possibility of parole, stating that the amendment would "remedy the now unconstitutional juvenile sentences." (Senate Rule Comm., Rep. on Senate Bill 394 (2017-2018 Reg. Sess.) Sept. 15, 2017, p. 4.) In doing so, the Legislature repeatedly stated that it was not extending the statute to *young adult* offenders sentenced to life without the possibility of parole. (Sen. Comm. on Public Safety, Rep. on Sen. Bill No. 394 (2017-2018 Reg. Sess.) March 21, 2017, p. 2 ["This bill clarifies that it does not apply to those with a life without parole sentence who were older than 18 at the time of his or her controlling offense."]; see also Assem. Comm. on Public Safety, Rep. on Sen. Bill No. 394 (2017-2018 Reg. Sess.) June 26, 2017, p. 1 [the bill "[c]larifies that youth offender parole does not apply to those sentenced to

LWOP for a controlling offense that was committed after the person had attained 18 years of age"].)

B. The youth offender parole statute today

In its current form, section 3051 requires a "youth offender parole hearing" for every eligible offender "for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger . . . at the time of his or her controlling offense." (§ 3051, subd. (a)(1).) The timing of a parole hearing under section 3051 depends on the length of an eligible offender's sentence for his or her "controlling offense," defined as the "offense or enhancement for which any sentencing court imposed the longest term of imprisonment." (*Id.* § 3051, subd. (a)(2).) Those serving an indeterminate term of 25 years to life or a term of life without parole for a controlling offense committed as a juvenile receive a hearing after 25 years. (§ 3051, subds. (b)(3), (b)(4).) Those serving an indeterminate term shorter than 25 years to life receive a hearing after 20 years. (*Id.*, subd. (b)(2).) And those serving a determinate term receive a hearing after 15 years. (*Id.*, subd. (b)(1).) In conducting a youth offender parole hearing, the Board of Parole Hearings must consider the "diminished culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual." (*Id.*, subd. (f)(1).)

Section 3051, subdivision (h), identifies the classes of young adult offenders who are not eligible for the youth offender parole regime: offenders sentenced under the one-strike or three-strikes laws, young adult offenders sentenced to life in prison without

the possibility of parole, and otherwise eligible offenders who commit additional, specified crimes after turning 26.

C. Past equal protection challenges to the exclusion of young adult offenders sentenced to life without the possibility of parole

Before the Court of Appeal's decision in this case, courts had uniformly concluded that the exclusion of young adult offenders sentenced to life without the possibility of parole does not offend equal protection. (See *In re Williams* (2020) 57 Cal.App.5th 427, review den. Feb. 10, 2021, No. S266154; *People v. Acosta* (2021) 60 Cal.App.5th 769, review den. June 9, 2021, No. S267783; *People v. Jackson* (2021) 61 Cal.App.5th 189, review den. June 9, 2021, No. S267812; *People v. Morales* (2021) 67 Cal.App.5th 326, review den. Oct. 20, 2021, No. S270807; *People v. Sands* (2021) 70 Cal.App.5th 193, review den. Dec. 22, 2021, No. S271797.)

Those courts emphasized the deferential nature of rational basis review and concluded that the seriousness of an offense supporting a parole-ineligible life sentence supplies a rational basis to treat such offenders differently from offenders sentenced to parole-eligible terms. (See *Acosta*, *supra*, 60 Cal.App.5th at p. 780 ["There is also a rational basis for [excluding offenders sentenced to life without parole]: the severity of the crime committed."]; *Jackson*, *supra*, 61 Cal.App.5th at p. 200 ["[T]he difference in the underlying crimes, and the fact that special circumstance murder is punished more harshly, provide a rational reason for distinguishing between the two groups of first degree murderers."]; *Morales*, *supra*, 67 Cal.App.5th at p. 348 ["[T]he severity of the crime and the offender's culpability provide a rational basis for the differing treatment."]; *Sands*, *supra*, 70

Cal.App.5th at p. 204 ["The Legislature may rationally treat offenders in this group less harshly because it deems their underlying crimes, such as first degree murder, less grave than special circumstance murder."].)

STATEMENT OF THE CASE

A. Hardin's conviction and sentence

Petitioner Tony Hardin was convicted and sentenced to life without the possibility of parole for a special-circumstance murder that he committed in April 1989 when he was 25 years old. (CT 25, 26.) The jury found Hardin guilty of the first degree murder of an elderly neighbor, and found true the special-circumstance allegation that the murder occurred during the commission of a robbery under Penal Code section 190.2, subdivision (a)(17), making Hardin eligible for the death penalty. (Opn. 4, *People v. Hardin* (July 19, 1993) B051873 [nonpub. opn.].) The penalty-phase jury declined to return a verdict of death, and the sentencing court imposed a sentence of life imprisonment without the possibility of parole. (*Ibid.*; *People v. Hardin*, No. A 893 110, 20 RT 2638.)[3]

On direct appeal, the Court of Appeal affirmed the conviction and sentence. The court concluded that there was substantial evidence of premeditation and deliberation to sustain the first degree murder conviction, as well as substantial evidence to support a finding that Hardin committed robbery, felony murder based on robbery, and murder during commission

[3] "RT" refers to the Reporter's Transcript filed in the Court of Appeal during Hardin's direct appeal of his conviction.

of a robbery. (Opn. 13, 19, *People v. Hardin* (July 19, 1993) B051873 [nonpub. opn.].) This Court denied Hardin's petition for review. (*People v. Hardin*, No. S034590 (Oct. 21, 1993).)

B. Proceedings below

In August 2021, Hardin filed a petition for a "*Franklin*" proceeding to preserve evidence for use in an eventual youth offender parole hearing.[4] Hardin acknowledged that he was statutorily ineligible for youth offender parole under the terms of section 3051, subdivision (h), but argued that the exclusion violated his right to equal protection because "the statute reaches almost all youthful offenders who draw life terms or long determinate sentences," including "youthful first degree murderers," while excluding young adult offenders, "like [him], who were sentenced to life without the possibility of parole." (CT 25, 27.) The superior court denied the motion, reasoning that section 3051, subdivision (h), is not "unconstitutional as applied to persons sentenced to life without the possibility of parole." (CT 31.)

The Court of Appeal reversed, holding that there was no rational basis for excluding young adult offenders sentenced to

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[4] In *People v. Franklin* (2016) 63 Cal.4th 261, 284, the Court established a process through which inmates may "place on the record any documents, evaluations, or testimony" that may be relevant at an eventual youth offender parole hearing. The "goal of any such proceedings is to" generate an "accurate record" of the offender's characteristics at the time of the offense, so that the Board of Parole Hearings may, "years later," carry out its obligation to give great weight to youth-related factors in determining whether to grant youth offender parole. (*Ibid.*)

life without the possibility of parole from the youth offender parole scheme. (Opn. 25.) Focusing on certain statements in the legislative history about the neuroscience of the developing brain, the Court of Appeal asserted that the law's only purpose was to account for youth-related mitigating factors. (*Id.* at pp. 17, 20.) Working from that premise, it then held that "for that purpose there is no plausible basis for distinguishing between same-age offenders based solely on the crime they committed." (*Id.* at 19-20.) The court also dismissed the argument that the Legislature rationally considered culpability in drawing the eligibility lines contained in the statute. The court reasoned that "[b]y defining the youth parole eligible date in terms of a single 'controlling offense,' rather than by the offender's aggregate sentence, the Legislature has eschewed any attempt to assess the offenders' overall culpability, let alone his or her amenability to growth and maturity." (*Id.* at 21, 22.)[5]

The People filed a petition for review, requesting that the case be held behind *People v. Williams* (2020) 47 Cal.App.5th 475, review granted July 22, 2020, S262229. In the alternative, the People requested that the Court grant plenary review to address

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[5] The court rejected Hardin's argument that he was denied equal protection because juvenile offenders sentenced to life without the possibility of parole are eligible for youth offender parole. (Opn. 10, 15; *see also* § 3051, subd. (b)(4).) The court explained that "the Legislature could rationally decide to remedy" any Eighth Amendment issues "but go no further." (Opn. 15.) Hardin did not raise that separate equal protection claim in response to the petition for review. (See Petn. 7; see generally Ans. to Petn.; Cal. Rules of Court, rule 8.516.)

the square conflict created by the decision below. This Court granted plenary review.

ARGUMENT

The question before this Court is whether the Legislature violated the Equal Protection Clause by excluding young adult offenders sentenced to life without the possibility of parole from youth offender parole consideration, while allowing parole-eligible offenders to participate. Because Hardin's claim does not involve a suspect classification or implicate a fundamental right, the Legislature's line-drawing is subject (at most) to rational basis review. That standard preserves the Legislature's broad discretion to define crimes and specify punishment; the Equal Protection Clause is satisfied so long as there is any reasonably conceivable state of facts that could provide a rational basis for the Legislature's eligibility classifications. Here, the Legislature reserved the sentence of life without the possibility of parole for a handful of the State's most serious offenses—including the crime of special-circumstance murder committed by Hardin. It was rational for the Legislature to decide that young adult offenders who commit those types of particularly serious offenses should have no opportunity for relief from lifetime incarceration.

I. RATIONAL BASIS REVIEW APPLIES TO HARDIN'S EQUAL PROTECTION CHALLENGE

The constitutional guarantee of equal protection "ensures that the government does not treat a group of people unequally without some justification." (*People v. Chatman* (2018) 4 Cal.5th

277, 288.)[6] Assuming that "an individual serving a parole eligible life sentence" is "similarly situated" to "a person who committed an offense at the same age serving a sentence of life without parole," as the Court of Appeal held (Opn. 18), the question is whether the statute's exclusion of the latter offender from the youth offender parole scheme is sufficiently justified. (See, e.g., *Chatman*, *supra*, 4 Cal.5th at p. 290 ["assum[ing] without deciding" that groups were similarly situated]; *Johnson*, *supra*, 60 Cal.4th at p. 882 [similar].)

"The extent of justification required to survive equal protection scrutiny in a specific context depends on the nature or effect of the classification at issue." (*Chatman*, *supra*, 4 Cal.5th at p. 288.) Where the government draws a distinction that is "based on a suspect classification such as race" or gender, or that "affect[s] a fundamental right," varying degrees of heightened scrutiny apply. (*Ibid.*; see also, e.g., *People v. Wilkinson* (2004) 33 Cal.4th 821, 836.) But "where the law challenged neither draws a suspect classification nor burdens fundamental rights," courts ask only whether there is a "*rational* relationship between [the] disparity in treatment and some legitimate government purpose." (*Chatman*, *supra*, 4 Cal.5th at pp. 288-289.)

As the court below observed, Hardin "effectively conced[ed] rational basis review applies" to his challenge to the youth

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[6] This Court "has not distinguished the state and federal guarantees of equal protection for claims arising from allegedly unequal consequences associated with different types of criminal offenses." (*Chatman*, *supra*, 4 Cal.5th at p. 287.)

offender parole statute. (Opn. 14.) Hardin's equal protection claim is based on an alleged disparity in treatment between young adult offenders sentenced to life without the possibility of parole and other young adult offenders convicted of serious offenses, including first degree murder, who were sentenced to parole-eligible terms. That disparity does not turn on any suspect classification, nor does it implicate a fundamental right. Rather, the core of the claim is that the Legislature has imposed "allegedly unequal consequences" for "different types of criminal offenses." (*Chatman*, *supra*, 4 Cal.5th at p. 287.) Rational basis review governs such a claim because "[a] defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.'" (*Wilkinson*, *supra*, 33 Cal.4th at p. 838.) Indeed, "[a]pplication of the strict scrutiny standard in this context would be incompatible with the broad discretion the Legislature traditionally has been understood to exercise in defining crimes and specifying punishment." (*Ibid.*) It would represent "a highly intrusive judicial reexamination of legislative classifications" that would "intrude too heavily on the police power and the Legislature's prerogative to set criminal justice policy." (*Id.* at pp. 837, 838, internal quotation marks, alterations, and citation omitted.)

A defining feature of rational basis review is its "deferential nature." (*People v. Turnage* (2012) 55 Cal.4th 62, 77.) The Equal Protection Clause is satisfied if "there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482,

italics omitted.) "A classification is not arbitrary or irrational simply because there is an 'imperfect fit between means and ends,' or because it may be 'to some extent both underinclusive and overinclusive.'" (*Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871, 887, internal quotation marks and citations omitted.) "Nor does the logic behind a potential justification need to be persuasive or sensible—rather than simply rational." (*Chatman*, *supra*, 4 Cal.5th at p. 289.)

Rational basis review also does not demand an extensive showing in defense of the Legislature's chosen policy. The Legislature's "underlying rationale" need not "be empirically substantiated," and it does not matter "whether lawmakers ever actually articulated the purpose they sought to achieve." (*Johnson*, *supra*, 60 Cal.4th at p. 881.) Instead, "a court may engage in 'rational speculation' as to the justifications for the legislative choice"—regardless of whether "such speculation has 'a foundation in the record'"—and a challenger must "'negative every conceivable basis' that might support the disputed statutory disparity." (*Ibid.*, citations omitted.) "If a plausible basis exists for the disparity, courts may not second-guess its 'wisdom, fairness, or logic.'" (*Ibid.*) A court "conducting rational basis review" need not delve into the details of complex legislative choices; it "must accept any gross generalizations and rough accommodations that the Legislature seems to have made." (*Turnage*, *supra*, 55 Cal.4th at p. 77.)

II. THE LEGISLATURE HAD A RATIONAL BASIS FOR EXCLUDING YOUNG ADULT OFFENDERS SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FROM THE YOUTH OFFENDER PAROLE SCHEME

Here, a proper application of the rational basis standard establishes that the Legislature did not violate Hardin's equal protection rights by deciding not to extend the opportunity for early parole consideration to young adult offenders sentenced to life without the possibility of parole. In enacting and preserving that exclusion, the Legislature reasonably could have decided that young adult offenders who have committed the most serious offenses are sufficiently culpable to warrant lifetime incarceration.[7] Perhaps that decision is debatable as a matter of policy. As a constitutional matter, however, the Legislature acted permissibly in excluding young adult offenders convicted of crimes that—in the Legislature's judgment—are the most serious.

A. The youth offender parole statute reflects a combination of legitimate purposes, including the Legislature's penological interests

A court conducting rational basis review must consider whether the "distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose." (*Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 299.) Oftentimes a "legislative measure" may "aim[] at achieving multiple objectives," which "in some respects[,] may be in tension

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[7] See *In re Williams* (2020) 57 Cal.App.5th 427, 436; *People v. Acosta* (2021) 60 Cal.App.5th 769, 780; *People v. Jackson* (2021) 61 Cal.App.5th 189, 200; *People v. Sands* (2021) 70 Cal.App.5th 193, 204; *People v. Morales* (2021) 67 Cal.App.5th 326, 348; *People v. Bolanos* (2022) 87 Cal.App.5th 1069.

or conflict." (*Id.* at p. 300; *see also U.S. Railroad Retirement Bd. v. Fritz* (1980) 449 U.S. 166, 181 (conc. opn. of Stevens, J.) [observing that "often," "legislation is the product of multiple and somewhat inconsistent purposes that led to certain compromises"].) A statute will not be struck down under rational basis review "'unless the varying treatment of different groups or persons is so unrelated to the achievement of *any combination of legitimate purposes* that [a court] can only conclude that the legislature's actions were irrational.'" (*Id.* at p. 301, quoting *Kadrmas v. Dickinson Public Schools* (1988) 487 U.S. 450, 462-463.)

The youth offender parole statute reflects a combination of legitimate purposes. One purpose is expressly reflected in the text and in the legislative history. Section 3051 provides that the parole scheme offers certain young adult offenders a "meaningful opportunity to obtain release" at a parole hearing to account for the "diminished culpability of youth as compared to that of adults." (§ 3051, subds. (e), (f)(1).) When the Legislature expanded the scheme to young adults, it explained that one impetus for the expansion was "[n]euro-scientific research find[ings] that the process of cognitive brain development continues into early adulthood" and observed that those "still-developing areas of the brain, particularly those that affect judgment and decision-making, are highly relevant to criminal behavior and culpability." (Sen. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) Apr. 27, 2015, p. 4; see also Assem. Comm. on Public Safety, Rep. on Assem. Bill No.

1308 (2017-2018 Reg. Sess.) Apr. 24, 2017, p. 2 [bill would "align public policy with scientific research," which showed that "certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early-to-mid-20s"].) Crediting that research, the Legislature explained that the expansion of the youth offender parole scheme would allow the scheme to "focus on rehabilitation," by mitigating sentences for certain young adults. (Assem. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) June 29, 2015, p. 4; see also Assem. Comm. on Public Safety, Rep. on Assem. Bill No. 1308 (2017-2018 Reg. Sess.) Apr. 25, 2017, pp. 2, 5 ["[s]ince the passage of SB 260 and SB 261, motivation to focus on rehabilitation has increased" and there was an emerging "desire for rehabilitation over incarceration"].)

Focusing on that part of the legislative history, the Court of Appeal asserted that that the law's *only* purpose was to account for youth-related mitigating factors. (Opn. 17; see also *id.* at p. 19 ["[T]he goal of section 3051 was to apply the *Miller* youth-related mitigating factors to young adults up to the age of 26 in light of neuroscience research that demonstrated the human brain continues to develop into a person's mid-20's, and thus to permit youth offenders a meaningful opportunity for parole if they demonstrate increased maturity and impulse control"].) Working from that premise, it then held that "for that purpose there is no plausible basis for distinguishing between same-age offenders based solely on the crime they committed." (*Id.* at pp. 19-20.) The court reasoned that the "nature" of a young adult

offender's crime would not "provide any indication" about his or her "potential for growth and rehabilitation." (*Id.* at p. 20; see also *Miller*, *supra*, 567 U.S. at pp. 472, 473 ["distinctive attributes of youth" are not "crime-specific"].)

But accounting for the mitigating aspects of youth was not the Legislature's only purpose. A comprehensive examination of the statutory language, its context, and the legislative history establishes that the Legislature balanced its concerns about youth-related mitigating factors with concerns about culpability and the appropriate level of punishment for certain particularly heinous crimes. The Court of Appeal's unduly narrow view of the statutory purpose is similar to the error identified by this Court in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 299-300. In that decision, this Court observed that the appellate court had identified "a single purpose underlying the challenged ordinance." (*Ibid.*) The lower court "was of the view that the disparate treatment in the ordinance . . . was not rationally related to *that* purpose" and it held that the law violated equal protection under rational basis review. (*Id.* at p. 300.) But this Court reversed, explaining that the "terms and legislative history" of the challenged law "disclose . . . that the ordinance was intended to serve *multiple* purposes." (*Ibid.*) In view of those several aims, the Court held that the differential treatment was "rationally related to one of the legitimate legislative purposes of the ordinance." (*Id.* at p. 302.)

The youth offender parole statute likewise reflects additional legislative purposes, including penological aims. For example,

the Legislature tied the parole eligibility date in the text of the statute to the offender's "longest term of imprisonment," establishing a graduated scheme that required young adults to spend at least 15, 20, or 25 years in custody based on the length of the underlying sentence. (§ 3051, subds. (a)(2), (b)(1)-(b)(3).) That concern was also expressed in the legislative history, with supporters pointing out that an offender would be required to serve "at least 15 years of his or her sentence, and even longer *for more serious crimes*." (Sen. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) Apr. 27, 2015, pp. 4-5 [emphasis added]; see also Assem. Comm. on Public Safety, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) June 29, 2015, p. 2 ["SB 261 holds young people accountable and responsible for what they did. They must serve a minimum of 15 to 25 years in prison depending on their offense."].)

The statutory exclusions likewise reveal the Legislature's concern with assigning an appropriate punishment to particular offenses. Subdivision (h) excludes offenders who, in the Legislature's judgment, do not warrant an automatic parole opportunity because of the nature of their crimes, including offenders sentenced to life without the possibility of parole for the most serious offenses. (§ 3051, subd. (h).) Those exclusions were preserved throughout several rounds of legislative revisions, reflecting the Legislature's deliberate and "express policy decision" that sentencing relief is not warranted for young adult offenders convicted of the most serious crimes. (*Johnson*, *supra*, 60 Cal.4th at p. 883.) Indeed, the Legislature repeatedly clarified

that it was not extending the statute to young adult offenders sentenced to life without the possibility of parole when it extended the statute to juvenile offenders subject to the same sentence. (Sen. Comm. on Public Safety, Rep. on Senate Bill No. 394 (2017-2018 Reg. Sess.) March 21, 2017, pp. 2, 4; see also Assem. Comm. on Public Safety, Rep. on Senate Bill No. 394 (2017-2018 Reg. Sess.) June 27, 2017, p. 1.)

The Legislature's penal purpose is also reflected in the way the parole process operates. The youth offender parole statute is not formally a "sentencing" statute, in the sense that it is not applied by a trial judge to affix the penalty after conviction.[8] But it nonetheless "set[s] the consequences of criminal offenses." (*Johnson*, 60 Cal.4th at p. 887.) As this Court has described it, the youth offender parole statute "change[s] the manner in which" a young adult offender's "original sentence operates by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole." (*Franklin*, *supra*, 63 Cal.4th at pp. 279, 278.) It "convert[s]" a lengthy sentence from "the functional equivalent" of a life term without the possibility of parole to a "life sentence that includes the meaningful opportunity for release" in the 15th, 20th or 25th year of incarceration. (*Id.* at p. 280.) The statute "establishes

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[8] See also *Morales*, *supra*, 67 Cal.App.5th at p. 351 (dis. opn. of Pollak, J.) ("Section 3051 is not a sentencing statute. Although whether the section applies may of course affect the length of a person's imprisonment, section 3051 is not designed to determine the sentence that is appropriate for the crime the particular person has committed.").

what is, in the Legislature's view, the appropriate time to determine whether a juvenile offender has 'rehabilitated and gained maturity' . . . so that he or she may have a 'meaningful opportunity to obtain release.'" (*Id.* at p. 278.)

The parole scheme thus operates like a sentencing statute by setting the minimum penalty for an offense committed by a young adult offender. (See *In re Murray* (2021) 68 Cal.App.5th 456, 464 ["While section 3051 is not a sentencing statute per se, it nevertheless impacts the length of the sentence served."]; *People v. Sands* (2021) 70 Cal.App.5th 193, 205 [same].) "Criminal punishment can have different goals" and "choosing among them is within a legislature's discretion." (*Graham*, *supra*, 560 U.S. at p. 71.) While the Legislature may have focused in part on the rehabilitative potential of many young adult offenders, it did not ignore the other sentencing goals of "retribution, deterrence, [and] incapacitation" when it established graduated parole eligibility dates and declined to extend the benefits of the parole statute to offenders convicted of the most serious offenses. (*Ibid.*; see also *Jones v. United States* (1983) 463 U.S. 354, 369 [penal statutes reflect Legislature's "view of the proper response to [the] commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation"].)

B. The Legislature's exclusion of young adult offenders convicted of serious crimes is rationally related to legitimate penological purposes

In view of the "combination of legitimate purposes" (*Hernandez*, *supra*, 41 Cal.4th 279 at p. 301) reflected in the youth offender parole statute, including the Legislature's penal

goals, the Legislature acted permissibly in declining to extend the parole scheme to young adult offenders convicted of the most serious crimes and sentenced to parole-ineligible life terms.

It is the "Legislature's prerogative to distinguish crimes by degree of severity and 'assign them different punishments based on its view of the crimes' comparative gravity and on policy objectives like deterrence, retribution, and incapacitation.'" (Opn. 20.) As this Court has explained, "[t]he decision of how long a particular term of punishment should be is left properly to the Legislature. The Legislature is responsible for determining which class of crimes deserves certain punishments and which crimes should be distinguished from others." (*Wilkinson*, *supra*, 33 Cal.4th at 840; see also *Chatman*, *supra*, 4 Cal.5th at p. 287; *Turnage*, *supra*, 55 Cal.4th at p. 77.)

The Legislature's exclusion of young adult offenders sentenced to life without the possibility of parole is consistent with those principles. In California, only a handful of serious offenses support a sentence of life without the possibility of parole. Those offenses include aggravated murders under the special-circumstance statute (§ 190.2); aggravated kidnaping resulting in death or the intentional confinement of a victim in a manner that exposes the victim to a substantial likelihood of death (§ 209, subd. (a)); certain serious sex offenses under the One Strike Law (§ 667.61, subds. (j)(1), (l)); certain felonies committed by habitual offenders and involving great bodily injury (§ 667.7, subd. (a)(2)); use of a weapon of mass destruction causing death (§ 11418); and ignition of an explosive device

causing death (§ 18755, subd. (a)).[9] Those "are the crimes the Legislature deems so morally depraved and so injurious as to warrant a sentence that carries no hope of release for the criminal and no threat of recidivism for society." (*In re Williams*, *supra*, 57 Cal.App.5th at p. 460; *see also Morales*, *supra*, 67 Cal.App.5th at p. 348 [sentence is "reserved for crimes of the most heinous nature"].)

Among those serious offenses, the statute under which Hardin was convicted identifies designated special-circumstance murders for either death or life imprisonment without the possibility of parole. (§ 190.2, subd. (a).)[10] Under the Eighth Amendment, "[a]n aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." (*Zant v. Stephens* (1983) 462 U.S. 862, 877.) This Court has

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[9] The Penal Code requires a sentence of life without the possibility of parole for certain other murders and crimes. (See, e.g., § 190, subd. (a); § 190, subd. (c) (second degree murder of peace officer in specified circumstances); § 190.03, subd. (a) (hate-crime first degree murder); § 190.05, subd. (a) (recidivist murder); § 190.25, subd. (a) (certain transportation-related murders); §§ 218-219 (intentional derailing of trains). The special-circumstance murders include hate crime murders (§ 190.2, subd. (a)(16)); murder committed with the intentional infliction of torture (§ 190.2, subd. (a)(18)); and murder of judges, prosecutors or government officials (§ 190.2, subds. (a)(11), (a)(12), (a)(13)).

[10] The statute was enacted by the voters through the initiative process in 1978. (See, e.g., *People v. Cooper* (2002) 27 Cal.4th 38, 44.)

repeatedly held that California's special-circumstance statute satisfies those requirements. (See, e.g., *People v. McDaniel* (2021) 12 Cal.5th 97, 155 ["Penal Code sections 190.2 and 190.3 are not impermissibly broad."]; *People v. Redd* (2010) 48 Cal.4th 691, 756 [special-circumstance statute adequately serves narrowing function]; *People v. Ochoa* (2001) 26 Cal.4th 398, 458-459 [same]; *People v. Kraft* (2000) 23 Cal.4th 978, 1078 [same].) The Court has also concluded that section 190.2 does not violate equal protection because the Legislature could rationally judge special-circumstance murders to be more severe and more deserving of punishment than other first degree murders. (See, e.g., *People v. Anderson* (1987) 43 Cal.3d 1104, 1147 ["It also appears to be generally accepted that a death penalty law that makes the felony murderer but not the simple murderer death eligible does not violate the equal protection clause."]; *People v. Taylor* (1990) 52 Cal.3d 719, 748 [same].)

Just as the Legislature could rationally isolate those offenses for the most serious forms of punishment, it could rationally rely on similar penological considerations to deny young adult offenders who are convicted of a special-circumstance murder the opportunity for eventual parole consideration. As the great majority of courts of appeal to consider this question have held, "the Legislature reasonably could have decided that youthful offenders who have committed such crimes—even with diminished culpability and increased potential for rehabilitation—are nonetheless still sufficiently culpable and sufficiently dangerous to justify lifetime incarceration."

(*Williams*, *supra*, 57 Cal.App.5th at p. 436; see also *Acosta*, 60 Cal.App.5th at p. 780 [same]; *Jackson*, *supra*, 61 Cal.App.5th at p. 200; *Sands*, *supra*, 70 Cal.App.5th at p. 204; *Morales*, *supra*, 67 Cal.App.5th at p. 348; *Bolanos*, *supra*, 87 Cal.App.5th at p. 1069.)

The Court of Appeal below was the first court to conclude that the culpability-based lines drawn by the Legislature were not rational, and its analysis amounts to an impermissible disagreement with the sentencing judgment of the Legislature. (Opn. 21-22.) In the court's view, the Legislature did not rationally account for the seriousness of an offender's crime when it designed the statute to assess eligibility based on a "single 'controlling offense,' rather than by the offender's aggregate sentence." (*Id.* at p. 22.) The court observed that an offender eligible for youth parole consideration could have been sentenced to the functional equivalent of a parole-ineligible life term for "multiple violent crimes (albeit not special-circumstance murder)." (*Id.* at p. 21.) And, in the court's judgment, a single special-circumstance murder "cannot rationally be considered more severe" than "multiple violent crimes." (*Ibid.*)

That reasoning is flawed in multiple respects.[11] Fundamentally, the Court of Appeal's assessment of the relative seriousness of two offenses improperly intrudes on the Legislature's prerogative to set the appropriate penalties for a

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[11] Moreover, the Court of Appeal's analysis ignores that the Legislature *did* create a statutory exclusion for at least some offenders convicted of "multiple violent crimes" (under the Three Strikes law). (§ 3051, subd. (h)).

crime. (See *Wilkinson*, *supra*, 33 Cal.4th at 840; *Johnson*, *supra*, 60 Cal.4th at p. 887.) The Legislature could rationally conclude that a hate crime murder, or a murder committed with the intention to inflict torture, or the murder of a judge or government official, or a robbery special-circumstance murder, or any of the other special-circumstance murders warrants more severe punishment than a spree of other violent crimes. (See, e.g., § 190.03, subd. (a); § 190.2, subds. (a)(11)-(a)(13), (a)(16), (a)(17), (a)(18).) It was not for the Court of Appeal to "second-guess" that conclusion. (*Johnson*, *supra*, 60 Cal.4th at p. 881.)

The Court of Appeal did not address the comparative severity of those other special-circumstance murders.[12] The court instead focused on the severity of a robbery special-circumstance crime relative to other serious, but parole-eligible offenses. (Opn. 21.) But rational basis review does not require mathematical precision or a perfect fit. Courts are required to accept any "generalizations and rough accommodations that the Legislature seems to have made." (*Turnage*, *supra*, 55 Cal.4th at p. 77.)[13] "A classification is not arbitrary or irrational simply

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[12] Nor did it address the comparative severity of other crimes for which life without the possibility of parole may be imposed, such as the offense of using of a weapon of mass destruction. (§ 11418.)

[13] See also *Kimel v. Fl. Bd. of Regents* (2000) 528 U.S. 62, 84 ("Where rationality is the test, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect."); *Heller v. Doe by Doe* (1993) 509 U.S. 312, 319 ("A classification does not fail rational-basis review because

(continued…)

because there is an 'imperfect fit between means and ends' . . . or because it may be 'to some extent both underinclusive and overinclusive.'" (*Johnson*, *supra*, 60 Cal.4th at p. 887, internal citations omitted.) And here the Legislature could rationally rely on an underlying parole-ineligible sentence as a proxy for the seriousness of a crime to identify the class of offenders it wished to exclude from parole consideration.

Indeed, in a closely-related context, this Court has rejected doubts similar to those expressed by the Court of Appeal. For example, the Court has explained that it is "generally accepted" that a death penalty scheme like section 190.2 "that makes the felony murderer but not the simple murderer death eligible does not violate the equal protection clause." (*People v. Anderson* (1987) 43 Cal.3d 1104, 1147; see also *People v. Covarrubias* (2016) 1 Cal.5th 838, 934 [rejecting argument that "felony-murder special circumstance is unconstitutional because it . . . violates equal protection"]; *Taylor*, *supra*, 52 Cal.3d at p. 748 [same]; *People v. Diaz* (1992) 3 Cal.4th 495, 569 [same].)

This Court has also cited with approval a federal appellate decision concluding that a legislature could rationally impose "the death penalty on people who commit murder during the course of a felony but not impos[e] it on people who commit" simple murders, even "especially atrocious" simple murders.

(…continued)

it is not made with mathematical nicety or because in practice it results in some inequality.").

(*Gray v. Lucas* (5th Cir. 1982) 677 F.2d 1086, 1104, cited with approval in *Anderson*, *supra*, 43 Cal.3d at p. 1147.) As the cited decision explained, a legislature could, for example, rationally conclude that "felony murders pose a problem different from atrocious simple murders and could have sought to cure the felony murder problem first." (*Ibid.*) Or the legislature could have rationally concluded that simple murderers are less effectively deterred "since such people are likely as a group to act on passion or impulse and thus be unmindful of the consequences of their crime." (*Ibid.*) Similar considerations support the exclusion of felony-murder special-circumstance offenders, including robbery special-circumstance murderers, from the youth offender parole scheme.

The decision below also pointed to studies asserting that an individual prosecutor's discretion to charge the special-circumstance allegation often governs whether a defendant will be sentenced under the special circumstance statute. (Opn. 22.) In light of those studies, the Court of Appeal expressed its judgment that "any purported legislatively recognized distinction in culpability between individuals serving a parole-eligible indeterminate life sentence and those sentenced to life without parole is illusory." (*Ibid.*) But that line of argument has already been rejected by this Court in the context of an equal protection challenge to a death judgment. As the Court explained, "[p]rosecutorial discretion to select those eligible cases in which the death penalty will actually be sought does not in and of itself evidence an arbitrary and capricious capital punishment system

or offend principles of equal protection." (*People v. Ray* (1996) 13 Cal.4th 313, 324.)[14] Moreover, Hardin never asserted in the proceedings below that his prosecution or underlying life sentence violates equal protection principles.

The Court of Appeal's searching application of rational basis review amounts to a "highly intrusive judicial reexamination of legislative classifications" that "intrude[s] too heavily on the police power and the Legislature's prerogative to set criminal justice policy." (*Wilkinson*, *supra*, 33 Cal.4th at pp. 837, 838, internal quotation marks, alterations, and citation omitted.) The decision below also ignores other concerns the Legislature considered when expanding the parole statute. For example, the Legislature considered the administrative and financial burdens of expanding the scheme. (See, e.g., Sen. Comm. on Appropriations, Rep. on Sen. Bill No. 261 (2015-2016 Reg. Sess.) May 28, 2015, pp. 1, 3 [considering administrative and financial burden of expansion]; Assem. Comm. on Appropropriations, Rep. on Assem. Bill No. 1308 (2017-2018 Reg. Sess.) May 8, 2017, p. 1 [same].) It would not have been irrational for the Legislature to

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[14] Cf. *United States v. Batchelder* (1979) 442 U.S. 114, 125 ("Just as a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution neither is he entitled to choose the penalty scheme under which he will be sentenced."); *Wilkinson*, *supra*, 33 Cal.4th at pp. 835-836 ("Batchelder instructs us that neither the existence of two identical criminal statutes prescribing different levels of punishments, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles.").

rely on those burdens to support the statutory exclusions. (*Chatman*, *supra*, 4 Cal.5th at p. 290; *People v. Barrett* (2012) 54 Cal.4th 1081, 1134 (conc. opn. of Liu, J.).) The Legislature was also asked to evaluate the "impact and consequences of early release for 'youthful offenders'" before expanding further. (Sen. Rules Committee, Rep. on Assem. Bill No. 1308 (2018-2018 Reg. Sess.) Sept. 4, 2017, p. 8 ["The impact and consequences of early release for 'youthful offenders' is still being calculated because the law has barely been in effect for a year. We believe it is far too soon to take a second bit of the 'youthful offender' parole program by raising the age to 25 years and younger."].) It would not be irrational for the Legislature to await additional data on how the parole process operates in practice before deciding whether to extend the scheme to offenders convicted of the most serious offenses. (*F.C.C. v. Beach Communications, Inc.* (1993) 508 U.S. 307, 316 [legislature may proceed "one step at a time"].)

The Legislature or the electorate surely could have designed the youth offender statute in different ways, including by affording inmates like Hardin an opportunity to seek youth offender parole. And perhaps they may one day choose to make that policy change. Under rational basis review, however, they are allowed to "address[] . . . the phase of the problem which seems most acute to the legislative mind." (*Beach Communications, Inc.*, *supra*, 508 U.S. at p. 316, quoting *Williamson v. Lee Optical of Okla., Inc.* (1955) 348 U.S. 483, 489.) The "Legislature has 'broad discretion' to proceed in an incremental and uneven manner without necessarily engaging in

arbitrary and unlawful discrimination." (*Barrett*, *supra*, 54 Cal.4th at p. 1110.)

The constitutional question is not whether the Legislature's decision is "wise," or whether "it best fulfills the relevant social . . . objectives," or whether "a more just and humane system" could "be devised." (*Dandridge v. Williams* (1970) 397 U.S. 471, 487.) The only question is whether there exists a "*rational* relationship between [the] disparity in treatment and some legitimate government purpose." (*Chatman*, *supra*, 4 Cal.5th at pp. 288-289.) The Legislature's decision to exclude young adult offenders sentenced to life without the possibility of parole from the youth offender parole statute satisfies that deferential standard.

The Legislature has been proactive in addressing a range of criminal justice issues in recent years, including by guaranteeing youth offender parole hearings to most categories of young adult offenders. Under rational basis review, the Legislature's willingness to enact bold criminal justice reforms with respect to some young adult offenders does not "render void its remedial legislation" just because it could have gone further. (*McDonald v. Bd. of Election Comrs. of Chicago* (1996) 394 U.S. 802, 810-811.) A proper understanding of the rational basis standard preserves space for our elected leaders to take incremental legislative steps and to enact laws that reflect compromise.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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March 13, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached Opening Brief uses a 13 point Century Schoolbook font and contains 8,161 words.

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March 13, 2023

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William Temko
Counsel for Petitioner

Courtesy Copy Via Email
Steven Katz, Deputy District Attorney

CAP – L.A.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 13, 2023, at San Diego, California.

Helen H. Hong — Declarant for eFiling

/s/ Helen H. Hong — Signature

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Department H
Pomona, CA 91766

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Helen H. Hong — Declarant for U.S. Mail

/s/ H. Hong — Signature

STATE OF CALIFORNIA
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California Department of Justice, Office of the Solicitor General

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