Case No. S238309

IN THE SUPREME COURT OF CALIFORNIA

En Banc

RON BRIGGS et al., Petitioners,

v.

JERRY BROWN as Governor, etc. et al., Respondents

APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AND DEATH PENALTY FOCUS FOR PERMISSION TO APPEAR AS *AMICI CURIAE* ON BEHALF OF PETITIONER(RULE 8.520(f)) AND BRIEF IN SUPPORT OF PETITIONER

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DEATH PENALTY FOCUS

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TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

California Attorneys for Criminal Justice (hereafter CACJ) and Death Penalty Focus (hereinafter DPF) apply to this Court for permission to appear as an *amici curiae* on behalf of petitioners within the meaning of California Rules of Court, Rule 8.520(f).

I. APPLICATION

Pursuant to California Rule of Court 8.520(f), the California Attorneys for Criminal Justice ("CACJ") and Death Penalty Focus ("DPF"), respectfully request permission to file the attached *amici curiae* brief in

support of Petitioners', Ron Briggs *et al.*, Amended Petition for Writ of Mandate.

This case concerns the validity of a ballot initiative which was proposed to counter any proposal to repeal the death penalty in California. As such it was titled a "Reform and Savings Act" but was neither and, instead, was a random collection of subjects that misled the voting public.

Amici are concerned about the fundamental fairness of the criminal justice process both as a leading and well established group of criminal defense lawyers in California and as the leading group of persons advocating for the abolition of capital punishment. Both *amici* are primarily concerned about the abuse of the initiative process which led to the voter approval of a measure that does not reform, that will cause chaos in the legal system, that will lead to a greater likelihood of wrongful executions and will cost tens of millions of dollars over and above the high costs of capital punishment each year for years. The concern is not only substantive but is focused in this brief on the failure of the voting public to have adequate notice of what they were voting on due to the lack of an intelligible single subject.

II. INTEREST OF *AMICI CURIAE*

Amici have an interest in the fair enactment and administration of laws, particularly those that affect the lives of people accused of capital

offenses. The capital punishment system in California is complicated and over the years since its enactment under the Briggs Initiative of 1978, has been interpreted and reinterpreted by state and federal courts. Although many flaws have been identified in the system that can lead to wrongful convictions and execution of the innocent, no reforms have been enacted over the last three and a half decades. The conglomeration of issues and subjects in the challenged initiative, Proposition 66, do not address any issues related to wrongful convictions and execution of the innocent but, instead, would seek to make such convictions and executions more likely.

A brief description of the specific interests of each amicus is set forth here:

California Attorneys for Criminal Justice (CACJ) is a non-profit California corporation found to support and protect the Constitution of the United States and the Constitution of California, and to protect the rights of individuals. CACJ's members are criminal defense lawyers and associated professionals, most of whom practice in California. CACJ is an organization of criminal defense lawyers, which has often appeared before this Court on matters of importance to its membership and to the fair administration of justice. The issues framed in this case have been of importance to CACJ for a number of years. CACJ was involved in the litigation of the single subject rule and submitted briefing in *Brosnahan v.*

Brown (1981) 31 Cal.3d 1, *Brosnahan v. Brown* (1982) 32 Cal.3d 236, *Raven v. Deukmejian* (1990) 52 Cal.3d 336 and *Manduley v. Superior Court* (2002) 27 Cal.4th 537. The members of CACJ continue to be concerned about the application of the single subject rule in the context of initiatives affecting criminal law, and have expressed their concerns about the initiative process to affect law reform in California in several other litigations.

Death Penalty Focus (DPF) is a not-for-profit organization based in San Francisco that , for almost thirty years, has brought together a broad and varied coalition of groups and individuals who as a matter of conscience or practical concerns oppose capital punishment -including law enforcement, corrections personnel, former prosecutors and judges, victims of crime and their families, death row inmates and their families, clergy and faith leaders, community leaders, elected officials, and exonerees-to promote fairness and justice in criminal prosecutions and sentencing; to examine the implications of the death penalty in individual cases and for society as a whole; to identify and raise public awareness of its flaws and the affirmative and irreparable injuries caused by capital punishment; and to advocate for alternatives.

III. DISCLOSURE OF AUTHORSHIP AND MONETARY CONTRIBUTION

Pursuant to California Rule of Court 8.520(f)(4), *amici* state that no party or counsel for a party in the pending appeal authored the proposed *amici* brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed *amici* brief.

For the foregoing reasons, *amici* respectfully request that the Court accept and file the accompanying brief in this case.

BRIEF OF *AMICI CURIAE*

I. INTRODUCTION

Amici submits this brief for the following reasons:

First, Proposition 66 ("the Act") interferes not only with the writ of habeas corpus itself but with the actual jurisdiction of the courts. The Act is in direct conflict with the California Constitution which confers original jurisdiction for an original writ of habeas corpus on the Supreme Court, courts of appeal, and superior courts. Thus, the Act is unconstitutional.

Second, the Act violates the single subject rule on its face. It covers an array of subjects such that it would be almost impossible for an intelligent voter to know what they were voting for or against. The multiple subjects undermine the integrity of the criminal justice system as it pertains to capital cases, insults this Court, interferes with counsel,

denigrates institutions including the Habeas Corpus Resource Center (HCRC), exempts lethal injection from administrative procedures and review, changes procedures and timelines and, in general, makes it more likely that the innocent will be executed. These varied objects, each substantive standing alone, cannot be brought within the one subject requirement.

Third, the Act violates the separation of powers by restricting the court's constitutional jurisdiction through legislative enactment. The jurisdiction of the courts is defined by the Constitution and cannot ordinarily be diminished, enlarged or interfered with through legislation.

Fourth, to the extent that the Act is justified for what it is, a collection of laws to make sure people who have received a death judgment are executed quickly and cheaply with as little interference as possible from the courts, the HCRC or competent counsel, it renders the death penalty system in California unconstitutional. Proposition 66, if implemented, creates violations of due process of law, equal protection, the right to effective assistance of counsel and the right to heightened reliability in capital cases under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and, relevant provisions of the California constitution and case law.

ARGUMENT

A. The Act Deprives the Courts of their Constitutional Jurisdiction

1. The Act Deprives the Courts of their Constitutional Jurisdiction

The original jurisdiction over petitions for writ of habeas corpus not only lies with the California Supreme Court and the courts of appeal, but has routinely been exercised in the Supreme Court. The Act not only interferes with the writ of habeas corpus itself but with the actual jurisdiction of the courts. This conflicts with the California Constitution which confers original jurisdiction for an original writ of habeas corpus on all three of the California courts: "the Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas proceedings." (Cal. Const. art. VI, § 6.) This is related to the interference with the right to habeas corpus but is a separate constitutional defect in the Act relating to the constitutional jurisdiction of the courts.

In consequence of these facts, the Act is in direct conflict with the Constitution. Constitutional jurisdiction of the court cannot "be taken away or impaired by a legislative act." (*Great W. Power Co. v. Pillsbury* (1915), 170 Cal. 180, 149 P. 35; *see also* Cal. Const. art. VI, § 11(a).) Statutory initiatives are "subject to the same state and federal limitations as are the Legislature and the statutes which it enacts." (*Legislature v. Deukmejian*

(1983), 34 Cal. 3d 658, 674-75, 194 Cal. Rptr. 781, 669 P.2d 17.)

Therefore, the Act is unconstitutional.

2. The Act Specifically Diminishes the Jurisdiction of the California Supreme Court over Capital Cases and Removes Safeguards

Almost all the provisions of the Act are designed to interfere with the California Supreme Court's jurisdiction over capital cases. The Act grants the appointment of counsel for habeas proceedings to the trial judge taking that function away from the Supreme Court. (Cal. Gov. Code § 68662 (following amendment by the Act).) It provides that successive petitions cannot be filed in the court of appeal or the Supreme Court, and that the remedy for denial of a petition for writ in the trial court is to appeal to the court of appeal. (Cal. Pen. Code § 1509.1.) The Act purports to remove any jurisdiction from the Supreme Court or courts of appeal to hear "any claim by a condemned inmate that the method of execution is unconstitutional or otherwise invalid." (Cal. Pen. Code § 3604.1(c).) It interferes with the Court's appointment of counsel both on direct appeal and habeas. (Cal. Pen. Code § 1239.1(b) (appointing unwilling counsel); Cal. Gov. Code § 68665(b) (revising standards for the pool of attorneys for direct appeal as well as habeas, including people relying on prosecution experience).) It reduces of the time limits on proceedings. (Cal. Pen. Code

§§ 190.6(d) (five years to complete all appellate and habeas procedures), 1239.1(a) (the Supreme Court shall appoint counsel on direct appeal as soon as possible); § 1501(c) (one year to file initial habeas petition) (f) (one year for the court to decide); § 1509.1(a), (c) (limits on notice of appeal of habeas decision and on successor petitions).)It places the limitations on the Habeas Corpus Resource Center which has always been in the Court's budget. (Cal. Gov. Code §§ 68660.5 (requiring the HCRC to expedite capital habeas proceedings), 68661 (restricting representation to habeas corpus only), 68661.1 (restricting federal habeas representation to cases where full compensation is obtained from the federal court), 68664 (imposing an executive director appointed by the Supreme Court, requiring "expeditions" representation and limiting salaries).) It transfers writs from the Supreme Court to the trial courts, and places the limitation on the filing of the initial petition for writ of habeas corpus to one year. (Cal. Pen. Code § 1509(a); Cal. Pen. Code § 1509(c).) It places limitations on the subject matter of successor petitions and exempts lethal injection protocols from the Administrative Procedures Act and, therefore, court review. (Cal. Pen. Code § 1509(d) (limiting to actual innocence or restrictively defined ineligibility for execution); Cal. Pen. Code § 3604.1 (also limiting challenges to the mode of execution).)

The only conclusion that can be reached is that the Act is expressly intended to make it easier for the prosecution to have a judgment of death affirmed on direct appeal and habeas. It is a one-sided diminution of rights of the defendants and makes the execution of the innocent more likely. It does this by diminishing the power of the courts, including the Supreme Court, as safeguards against an improper execution.

The U.S. Supreme Court in *Pulley v. Harris*, considered the fact that the California death penalty system did not include some safeguards other states had. (*Pulley v. Harris* (1984) 465 U.S. 37, 104 S. Ct. 871, 79 L.Ed.2d 29.) In *Pulley*, the Court considered that the California capital punishment system lacked proportionality review which would be useful in avoiding unconstitutional death sentences under the Eighth Amendment. The Court held, however, that California had other safeguards, including review of death judgments by the California Supreme Court and that such review was one of the safeguards that compensated for not having the proportionality review safeguard. (In this case, the 1977 law was being reviewed. The subsequent Briggs initiative in 1978, the statute as amended by the Act under consideration here, added more special circumstances and diminished the protections of the 1977 law. Therefore, the safeguard of Supreme Court review would be even more important under the Briggs initiative than under the 1977 law considered by *Pulley*.)

The Act seeks to all but eliminate meaningful review by the California Supreme Court on habeas. In addition, the Act also seeks to significantly interfere with its direct appeal review in that it lessens the standards for qualification of counsel and places a limit on the time within which the Court must decide direct appeals. (Cal. Pen. Code § 190.6(d) ("shall amend the rules and standards" as necessary to meet the timelines); Cal. Pen. Code § 1239.1(b) (appointing unwilling counsel); Cal. Gov. Code § 68665(b) (revising standards for the pool of attorneys for direct appeal as well as habeas, including people relying on prosecution experience); Cal. Pen. Code § 190.6(d).) This concerted effort to eviscerate the jurisdiction of the Supreme Court and weaken the other California capital punishment system safeguards violates the assurances of *Pulley* and renders the Act unconstitutional.

B. On its Face Proposition 66 Violates the Single Subject Rule

The Death Penalty Reform and Savings Act, Proposition 66, was neither a reform nor a savings act. Its provisions are, instead, a conglomeration of provisions that are not on a single subject. Their effect, while not on a single subject, makes it easier to confirm death sentences at the greater risk of wrongful convictions and executions of the innocent while, at the same time, taking what seems to be revenge against the California Supreme

Court, the Habeas Corpus Resource Center (HCRC) and appointed criminal defense counsel.

The Act seeks to conscript counsel from the lists of appointed counsel on direct appeal (Cal. Pen. Code 1239.1(b)); it imposes unrealistic time limits on proceedings (Cal. Pen. Code §§ 190.6(d), 1239.1(a), 1501(c) and (f), and 1509.1(a) and (c)); it provides for the movement of prisoners from San Quentin (Cal. Pen. Code § 3600); it places a ten-day window on executions (Cal. Pen. Code § 1227); it imposes limitations on the advocacy of and degrades the Habeas Corpus Resource Center (Cal. Gov. Code §§ 68660.5, 68661, 68661.1 and 68664); it seeks to reduce the requirements for appointment on direct appeal (Cal. Pen. Code § 1239.1(b) and Cal. Gov. Code § 68665(b)); it places limitations on the subject matter of successor petitions (Cal. Pen. Code § 1509(d)); it exempts lethal injection protocols from the Administrative Procedures Act and limits challenges to the mode of execution (Cal. Pen. Code § 3604.1); it requires stockpiling of means of execution (Cal. Pen. Code § 3604(d)); and it exempts medical personnel from ethical compliance or sanctions of their licensing agencies (Cal. Pen. Code §§ 3604.3(a), (b), and (c)).

In addition, the Act is unfunded and is inoperable until funded. The Act is also unconstitutional in that it interferes with the state right of prisoners to the writ of habeas corpus. (Article I, § 10 of the California Constitution).

As set forth above, it seeks to limit the original jurisdiction of the Supreme Court to hear petitions for writs of habeas corpus (Cal. Const. VI, § 10 and 11). It interferes with the litigation of capital cases, (Such as mandamus, prohibition and certiorari, (Cal. Const. VI, § 10) as well as other proceedings for extraordinary relief such as *coram nobis* and *coram vobis*, and civil litigation, including civil rights litigation (e.g., 42 U.S.C. § 1983). As set forth below, it also violates the constitutional separation of powers, (Cal. Const., Art. III, § 3) and, if sought to be applied retroactively, it violates the *ex post facto* clause (U.S. Const. Art. I, § 9, Cl. 3 and Cal. Const. Art. I, § 16).

The outline of the different subjects of the Act demonstrates a compelling violation of the single subject rule under the California Constitution that plainly states: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., Art. II, § 8(d)). This is a concern to *amici* -- CACJ as a group of lawyers and professionals concerned about criminal justice and DPF as a group of concerned individuals who advocate education and intelligent choices on the part of voters. The proponent of the proposed legislation has to establish that the initiative embraces only one subject in that all its provisions are "reasonably germane" to each other "and to the general purpose or object of the initiative." (*Lungren v. Deukmejian* (1983) 34

Cal.3d 658, 674-75). The claims on the ballot referred to above certainly do not fall within the general purpose or object of the Act as required by California case law. The California Supreme Court wrote that "proponents of initiative measures do not have 'blank checks' to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or to the general object which is sought to be promoted...The single-subject rule indeed is a constitutional safeguard adopted to protect against multifaceted measures of undue scope." (*Senate of the State of Cal. v. Jones* (1999) 21 Cal. 4th 1142, 1158.) In its analysis of the limits of the single-subject rule, the California Supreme Court turned to two California Courts of Appeal decisions to provide guidance of the limits on the single-subject rule.

> As the proponent of Proposition 24 correctly observes, over the past half-century the great majority of appellate decisions that have addressed single-subject challenges to initiative measures have found that the challenged measures satisfied the single-subject rule. In two decisions of relatively recent vintage, however, the Court of Appeal concluded in each instance that the challenged initiative measure violated the single-subject requirement. (*Cal. Trial Lawyers Ass'n v. Eu*, 200 Cal. App. 3d 351; *Chemical Specialties*, 227 Cal. App. 3d 663.) As we shall explain, these decisions provide important guidance with respect to the proper application of the single-subject rule embodied in article II, section 8(d), and demonstrate that the rule is neither devoid of content nor as "toothless" as some legal commentaries have suggested. (See generally, *The California Initiative Process: The Demise of the Single-Subject Rule* (1983) 14 Pacific L.J. 1095; *Putting the "Single" Back in the Single-Subject Rule: A Proposal for Initiative Reform in California* (1991) 24 U.C. Davis L.Rev. 879.)

(*Senate of the State of Cal. v. Jones* (1999) 21 Cal. 4th at 1158.)

In CTLA, a ballot initiative was stricken by the California Court of Appeals due to violating this rule. (*Cal. Trial Lawyers Ass'n v. Eu*, (1988) 200 Cal. App. 3d 351, 358). In striking the ballot initiative, the Court stated, "[I]t is apparent that initiatives encompassing a wide range of diverse measures will withstand challenge so long as their provisions are 'either functionally related to one another or . . . reasonably germane to one another or the objects of the enactments.'" (Id.)

Severance of the unrelated or non-germane issues is also not an option. Proposition 66 fails if the single-subject rule is violated. The California Supreme Court, while discussing its view that bifurcation is not a valid remedy for violation of the separate-vote provision, reiterated its acceptance of the appellate court interpretation regarding severance of ballot initiative provisions: "Finally, we find it instructive that the analogous initiative single subject provision (Cal. Const., art. II, § 8 (d)) precludes the related remedy of severance." (See *Jones*, 21 Cal.4th 1168 ["when an initiative measure violates the single-subject rule, severance is not an available remedy"]; see also *California Trial Lawyers Assn. v. Eu*, 200 Cal. App. 3d 351, 361–362 [concluding the same].) (*Californians for an Open Primary v. McPherson* (2006) 38 Cal. 4th 735, 781).

Clearly provisions in Proposition 66 that compel unfettered transfers between prisons of death row inmates and mandatory work for restitution

exceed the single-subject of speeding up executions. Likewise, changes in the competency of assigned counsel and dictating economic sanctions for not taking a capital case also exceed the single-subject rule. In a third separate subject Proposition 66 makes mandatory changes to state employee salaries and removes state procedures from scrutiny under the Administrative Procedures Act. In an analogous overly-broad proposition the Court held:

> Although the supporters of Proposition 105 asserted that all of its provisions were reasonably germane to the single subject of "public disclosure" or "truth-in-advertising," the Court of Appeal in *Chemical Specialties* rejected that argument, finding that such a subject was clearly one of "excessive generality" (227 Cal. App. 3d 670-671) and was "so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement." (*Id.* at 671.) Instead, the Court of Appeal concluded that "[i]n actuality, the measure seeks to reduce toxic pollution, protect seniors from fraud and deceit in the issuance of insurance policies, raise the health and safety standards in nursing homes, preserve the integrity of the election process, and fight apartheid; well-intentioned objectives but not reasonably related to one another for purposes of the single-subject rule." Accordingly, the court in *Chemical Specialties* found that the measure violated the single-subject rule and could not properly be given any effect. *Senate of the State of Cal. v. Jones* (1999) 21 Cal. 4th 1142, 1160.

Proposition 66 falls into the same unlimited array of provisions and should also be found to violate the single-subject rule.

C. The Act Violates the Separation of Powers

By imposing the requirements on the courts, including the California Supreme Court, as addressed in the preceding sections, the Act violates the separation of powers. ("The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Cal. Const. art. III, § 3.) Statutory initiatives are "subject to the same state and federal limitations as are the Legislature and the statutes which it enacts." (*Legislature v. Deukmejian* (1983), 34 Cal.3d 658, 674-75, 194 Cal. Rptr. 781, 669 P.2d 17.) Therefore, the Act is the same as a legislative enactment for a separation of powers analysis. "Courts have the inherent power, derived from the state constitution, to ensure the orderly administration of justice; this power is not confined by or dependent on statute." (*Case v. Lazben Financial Co.* (2002), 99 Cal.App.4th 172, 121 Cal.Rptr.2d 405.)

More specifically, it is a violation of the separation of powers for the legislature (or voters by initiative) to restrict the court's constitutional jurisdiction. "Where the jurisdiction of the court is defined by the Constitution, the legislature cannot ordinarily diminish, enlarge, or interfere with such jurisdiction." (*People ex rel. Dorris v. McKamy* (1914), 168 Cal. 531, 143 P. 752; *Chinn v. Super. Ct. of San Joaquin Cnty.* (1909), 156 Cal.

478, 105 P. 580.) For the reasons set forth in the preceding sections, the Act seeks to significantly diminish the jurisdiction of the courts both procedurally and substantively. As such, the Act is also unconstitutional as a violation of the separation of powers.

D. If the Object or Purpose is to Make Sure People who have Received a Death Judgment are Executed Quickly and Cheaply with as Little Interference as Possible from the Courts, the HCRC or Competent Counsel The Act Exacerbates the Flaws in an Already Flawed Capital Punishment System and Further Violates Due Process of Law, Equal Protection, the Right to Effective Assistance of Counsel and the Right to Heightened Reliability in Capital Cases

If proponents were to claim that the Act has an object or purpose to make sure people who have received a death judgment are executed quickly and cheaply with as little interference as possible from the courts, the HCRC or competent counsel it would still not save it from defeat under the single subject rule. However, the proponents would be describing an object or purpose that would better fit the conglomeration of provisions of the Act. In doing so, though, it would underscore the unconstitutionality of the Act as a violation of due process of law, equal protection, the right to effective assistance of counsel and the right to heightened reliability in capital cases under the Fifth, Sixth, Eighth and Fourteenth Amendments, relevant provisions of the California constitution and case law. (*People v. Lucas*

(2014) 60 Cal.4th 153, 270 (disapproved on other grounds by *People v. Romero* (2015) 62 Cal.4th 1; *Beck v. Alabama* (1980) 447 U.S. 625, 638.)).

It is understood that this Honorable Court and the United States Supreme Court have found the basic structure of the California death penalty system to pass constitutional muster. Neither *amici* nor the Petitioners herein are making the argument that this Court, in this case, rule on the constitutionality of the existing system as it existed before the passage of the Act. This Court has held that the existing policies and procedures give counsel in complex cases time to investigate issues that may have arisen over time and during the course of the appeal. (*In re Clark* (1993) 5 Cal.4th 750, 783-84.)

The California death penalty system has recently been the specific subject of criticism by Justice Breyer of the United States Supreme Court. Justice Breyer said, "Put simply, California's costly 'administration of the death penalty' likely embodies 'three fundamental defects' about which I have previously written: '(1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose.' [Citation]" (*Boyer v. Davis* (2016) 136 S.Ct. 1446 (Breyer, J., dissenting from a denial of certiorari)). This is nothing new. The California Commission for the Fair Administration of Justice made numerous adverse findings. (See, Final Report (2008), lodged at

Northern California Innocence Project Publications: http://digitalcommons.law.scu.edu/ncippubs/1). It has been deemed "dysfunctional" and "broken" by two successive Chief Justices of the Supreme Court (Chief Justice Ronald George quoted in David Kravets, Top Judge Calls Death Penalty "Dysfunctional": Legislature Blamed for Inadequate Funding, San Jose Mercury News, May 1, 2006, at B4; and Chief Justice Tani Cantil-Sakayue quoted in Maura Dolan, California Chief Justice Urges Reevaluating Death Penalty, Los Angeles Times (December 24, 2011), at: http://articles.latimes.com/2011/dec/24/local/la-me-1222-chiefjustice-20111221) and by federal Judges Arthur L. Alarcon (Arthur L. Alarcón & Paula M. Mitchell, Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle (2011) 44 Loy. L.A. L.Rev. S41, S61), and Cormac Carney (*Jones v. Chappell* (C.D. Cal. 2014) 31 F. Supp. 3d 1050 (order) rev'd sub nom. *Jones v. Davis* (2015) 806 F.3d 538) and by academics (See, e.g., Glenn L. Pierce and Michael L. Radelet, Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999, The Empirical Analysis, 46 Santa Clara L. Rev. 1 (2005); Gerald F. Uelmen, Death Penalty Appeals and Habeas Proceedings: The California Experience, 93 Marq. L. Rev. 495 (2009); Sara Colon, Capital Crime: How

California's Administration of the Death Penalty Violates the English Amendment, 97 Cal. L. Rev. 1377 (2009).)

However, even if the California death penalty is constitutional as written before, the passage of the Act makes it much less reliable and much more likely to result in the execution of the innocent. It risks habeas counsel not being appointed at all in that counsel could be "offered' by the trial judge to a defendant who is still reeling from the same judge denying a motion for new trial and accepting the jurors' verdict of death. (Cal. Pen. Code § 1509(a); and Cal. Gov. Code § 68662). It accelerates the process so much that there is insufficient time to read, review, investigate, discover, test and write a competent petition. (Cal. Pen. Code § 1509(c) and (f)). It limits successor petitions and narrowly defines actual innocence and ineligibility for death. (Cal. Pen. Code §§ 1509(c) and (d) and 1509.1(c)). It limits habeas review by the court of appeal to an appeal on the four corners of the hastily created trial court habeas record. (Cal. Pen. Code § 1509.1). It allows quick setting of executions. (Cal. Pen. Code § 1227). It eliminates other methods of reprieve. (Cal. Pen. Code § 1509(a)). It seeks to eviscerate the ranks of competent counsel to handle habeas matters and appeals. (Cal. Pen. Code § 1239.1(b)). It expands experience requirements to allow career prosecutors to qualify to represent people condemned to death based on their experience in putting people on death row. (Cal. Gov.

Code § 68665(b)). It imposes limitations on the advocacy of HCRC and degrades their pay and autonomy. (Cal. Gov. Code §§ 68660.5, 68661, 68661.1 and 68664).

The Act seeks to all but eliminate meaningful review by the California Supreme Court on habeas. In addition to the matters listed above, the Act also seeks to significantly interfere with its direct appeal review in that it lessens the standards for qualification of counsel (Cal. Pen. Code § 190.6(d), Cal. Pen. Code § 1239.1(b), Cal. Gov. Code § 68665(b)) and places a limit on the time within which the Court must decide direct appeals. (Cal. Pen. Code § 190.6(d)). This concerted effort to eviscerate the jurisdiction of the Supreme Court and weaken the other California capital punishment system safeguards violates the assurances of *Pulley* and renders the Act unconstitutional.

Therefore, to the extent that the Act has an object or purpose to make sure people who have received a death judgment are executed quickly and cheaply with as little interference as possible from the courts, the HCRC or competent counsel, it seems to accomplish that object or purpose. As such, the Act renders the death penalty system completely unconstitutional as a violation of due process of law, equal protection, the right to effective assistance of counsel and the right to heightened reliability in capital cases

under the Fifth, Sixth, Eighth and Fourteenth Amendments, relevant provisions of the California constitution and case law.

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II. CONCLUSION

Amici, California Attorneys for Criminal Justice and Death Penalty Focus, have abiding concerns about the fairness of the criminal process to determine whether a prisoner lives or dies and they also have abiding concerns about the fairness of the process by which laws can be amended and added. We respectfully submit that Petitioners' claims are well taken and that the Writ of Mandate/Prohibition should be granted.

Respectfully submitted,

Dated: March 28, 2017

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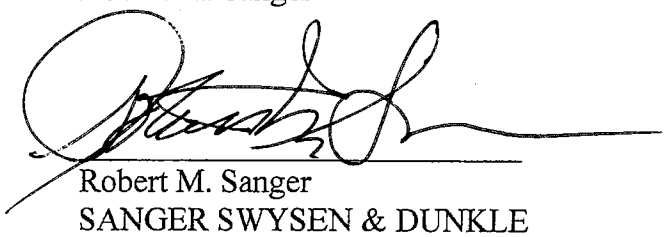

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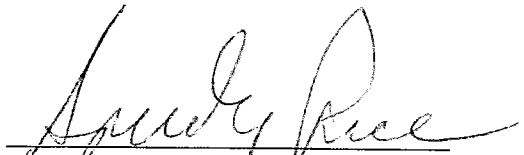
Dated: March 28, 2017

DEATH PENALTY FOCUS
Thomas H. Speedy Rice
Melissa Bobrow



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PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 125 E. De La Guerra Street, Suite 102, Santa Barbara, California, 93101.

On March 29, 2017, I served the foregoing document entitled: **APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AND DEATH PENALTY FOCUS FOR PERMISSION TO APPEAR AS AMICI CURIAE ON BEHALF OF PETITIONER(RULE 8.520(f)) AND BRIEF IN SUPPORT OF PETITIONER;** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

_X_ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

_X_ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this March 29, 2017 at Santa Barbara, California.

Jacob W. Swanson

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