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Case No. S238309

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.

APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF LOS ANGELES COUNTY PROFESSIONAL PEACE OFFICERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CONTENTS (cont.)

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

STATUTES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

In the November 2016 general election, the people of the state of California passed Proposition 66, a voter initiative entitled, the "Death Penalty Reform and Savings Act of 2016." Proposition 66 amended and added provisions to the California Government Code and Penal Code with the purpose of fixing California's death penalty system to enforce capital judgments in a more efficient, timely, and inexpensive manner. *See* Proposition ("Prop.") 66.

In their Petition, Petitioners bring a facial challenge to Proposition 66 alleging that Proposition 66 violates: (1) Article VI, Section 10 of the California Constitution because it interferes with the jurisdiction of the courts; (2) the separation of powers doctrine set forth in Article III, Section 3 of the California Constitution; (3) the single-subject doctrine in Article II, Section 8 of the California Constitution; and (4) the equal protection clauses of the state and federal constitution. In addition, Petitioners bring a taxpayer action under Code of Civil Procedure section 526a to prevent the illegal expenditure of funds.

Each cause of action brought by Petitioners lacks merit. First, Proposition 66 does not violate Article VI, Section 10 of the California Constitution, which grants original jurisdiction in habeas corpus proceedings to the Supreme Court, Courts of Appeal, and Superior Courts. Cal. Const., art. VI, § 10. Proposition 66's venue provisions for habeas corpus petitions, which provide that such petitions should be transferred to the Superior Court unless good cause is shown, specifically acknowledge that the Supreme Court and Courts of Appeal have original jurisdiction and can choose to exercise that jurisdiction in their discretion. Prop. 66, § 6; Cal. Pen. Code § 1509(a). Similar procedural rules have been routinely upheld by the Supreme Court. *See e.g. In re Roberts* ("*Roberts*"), 36 Cal. 4th 575,

593-94 (2005). Nothing in Proposition 66 strips the Supreme Court or Courts of Appeal of original jurisdiction.

Proposition 66's timeframes and procedural rules also do not violate the separation of powers doctrine set forth in Article III, Section 3 of California's Constitution. *See* Cal. Const., Art. III, § 3. It is well settled that the legislature has the power to regulate criminal and civil proceedings, including by enacting procedural rules governing timing and other matters. *People v. Engram*, 50 Cal.4th 1131, 1146-53 (2010); *Le Francois v. Goel*, 35 Cal.4th 1094, 1101-04 (2005). Courts routinely uphold as constitutional laws imposing timeframes and procedural limitations on courts and laws setting forth which cases should have priority. *See Engram*, 50 Cal.4th at 1150; *In re Shafter-Wasco Irrigation Dist.* ("*In re Shafter-Wasco*"), 55 Cal.App.2d 484, 487-88 (1942). Proposition 66 is a valid legislative action which regulates criminal and civil proceedings in capital cases.

Third, the provisions challenged by Petitioners easily satisfy the single subject rule set forth in Article II, Section 8 of the California Constitution as each provision is "reasonably germane" to Proposition 66's title, "The Death Penalty Reform & Savings Act of 2016," and purpose, which is to make the enforcement of capital judgments more effective, more timely, and less expensive. *See* Cal. Const., Art. II, § 8; *Brown v. Superior Court*, 63 Cal.4th 335, 350 (2016); Prop. 66, § 2, Findings and Declarations. Petitioners' single-subject challenge (and other challenges) is based on their disagreement on the manner in which Proposition 66 achieves death penalty reform. Petitioners ignore that whether "provisions of an initiative are wise or sensible, and will combine effectively to achieve their stated purpose, is not [the Court's] concern in evaluating" a single-subject challenge. *Legislature v. Eu ("Eu")*, 54 Cal. 3d 492, 514 (1991); *see also Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization* ("*Amador Valley*"), 22 Cal.3d 208, 219 (1978).

Fourth, Proposition 66 does not violate the Equal Protection Clauses. Capital and non-capital defendants are not similarly situated in this case. *See People v. Mickel*, 2 Cal.5th 181, 221 (2016); *Massie v. Hennessey*, 875 F. 2d 1386, 1389 (9th Cir. 1989). In addition, there are numerous rational reasons for Proposition 66's provisions to apply only to capital defendants. *See Johnson v. Dep't of Justice*, 60 Cal.4th 871, 881 (2015).

Finally, in the unlikely event the Court finds that a provision in Proposition 66 unconstitutionally interferes with the jurisdiction of the courts, violates separation of powers, or violates the equal protection clause (which it should not), the Court should sever that portion of the statute and uphold the remainder of Proposition 66. Here, there is a presumption in favor of severance because Proposition 66 contains a severability clause. Prop. 66, § 21; *see Cal. Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231, 270-71 (2011). Furthermore, each of Proposition 66's various reforms are functionally and volitionally separable because they can be separately applied and effectuate Proposition 66's purpose.

For these reasons, and the reasons set forth below, the Court should uphold the will of the people of the California and deny the Petition in its entirety.

II. PETITIONERS FACE A HIGH BAR IN MAKING A FACIAL CHALLENGE TO PROPOSITION 66.

"A facial challenge to the constitutional validity of a statute . . . considers only the text of the measure itself, not its application to the particular circumstances of an individual." *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1084 (1999). "To support a determination of facial unconstitutionality, voiding the statute as whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute . . . . Rather,

petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." *Id.*

The initiative power must be liberally construed to promote the democratic process. *Eu*, 54 Cal. 3d at 501. The Court must "jealously guard the precious initiative power, and . . . resolve any reasonable doubts in favor of its exercise." *Id.* "[A]ll presumptions favor the validity of initiative measures and mere doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." *Id.*

III. PROPOSITION 66 DOES NOT VIOLATE ARTICLE VI, SECTION 10 OF THE CALIFORNIA CONSTITUTION

A. A Rule Setting Forth The Circumstances Under Which An Appellate Court At Its Discretion Should Transfer A Habeas Corpus Petition To The Superior Court Does Not Violate Article VI, Section 10 Of The California Constitution.

Petitioners' first cause of action alleges that Proposition 66 violates Article VI, section 10 of the California Constitution because it unlawfully interferes with the original habeas jurisdiction of the California Court of Appeal and Supreme Court. (*See* Petition, at ¶ 36, pp. 14, 20.) Petitioners' first cause of action lacks merit.

Article VI, Section 10 of the California Constitution provides: "The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." Cal. Const., art. VI, § 10. The Supreme Court has held that a rule setting forth the circumstances under which a habeas corpus petition "should be" filed or transferred to the superior court does not unlawfully interfere with the original jurisdiction of the Court of Appeal or Supreme Court in Article VI, Section 10. *Roberts*, 36 Cal.4th at 593-94; *see also In re Steele*, 32 Cal.4th 682, 688 (2004); *Roma Macaroni Factory v. Giambastiani*, 219 Cal. 435, 436–438 (1933). The provisions of

Proposition 66 dealing with habeas corpus petitions do not unlawfully interfere with the Supreme Court's and Court of Appeal's original jurisdiction. *See* Prop. 66, § 6; Cal. Pen. Code § 1509. Section 6 of Proposition 66 adds Penal Code section 1509(a), which provides that habeas corpus petitions filed by a person in custody pursuant to a judgment of death "should be" transferred to the Superior Court which imposed the sentence "unless good cause is shown for the petition to be heard by another court." *Id.* (emphasis). The language of Penal Code section 1509(a) specifically acknowledges that the Supreme Court and Courts of Appeal have original jurisdiction and can choose to exercise that jurisdiction in their discretion. *Id.*

That the Supreme Court and Courts of Appeal have original jurisdiction in habeas corpus proceedings does not mean that those courts are required to exercise that jurisdiction in all cases or that procedural rules cannot be made regarding when that jurisdiction should be exercised. *Roberts*, 36 Cal.4th at 593-94; *see also Superior Court v. County of Mendocino*, 13 Cal.4th 45, 54 (1996); *Cal. Redevelopment Assn.*, 53 Cal.4th at 252-53. Despite the original jurisdiction conferred on appellate courts in Article VI, Section 10, the Supreme Court has dictated circumstances under which a habeas corpus petition (and other petitions over which it has original jurisdiction) should be filed in the superior court. *See Roberts*, 36 Cal.4th at 593-94 (stating that "among the three levels of state courts, 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."); *see also In re Steele*, 32 Cal.4th at 688 (stating that, in general, a Penal Code section 1054.9 discovery motion related to a petition for writ of habeas corpus challenging a judgment of death or life without possibility of parole first should be made in the trial court that rendered the judgment); *Roma Macaroni*

Factory, 219 Cal. at 436–438 (stating that applications for writ of mandate ordinarily "should first be made to the superior court"[1]). Indeed, it is well settled that appellate courts have discretion to refuse to issue a writ of habeas corpus as an exercise of original jurisdiction on the ground that the petition was not first brought in a lower court. *In re Johnson*, 246 Cal.App.4th 1396, 1402 (2016) ("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."); *see also In re Ramirez*, 89 Cal.App.4th 1312, 1316 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294 (1962) (declining to hear a petition for writ of habeas corpus because the superior court had not first had an opportunity to consider the issues).

B. Penal Code Section 1509 Does Not Violate Article VI, Section 10, Because It Allows The Appellate Court Discretion Regarding Whether To Exercise Original Jurisdiction Over A Habeas Corpus Petition Or To Transfer The Case To The Sentencing Court.

In re Kler ("*Kler*"), 188 Cal.App.4th 1399 (2010), relied on by Petitioners, actually demonstrates that Penal Code section 1509, which deals with venue for habeas corpus petitions, is lawful. In *Kler*, Kler filed a petition for writ of habeas corpus in the Court of Appeal without first seeking relief in the trial court. *Id.* at 1402. In opposition to the petition, the Governor argued that California Rule of Court 8.385(c)(2) prohibited the Court of Appeal from entertaining Kler's petition for writ of habeas corpus. *Id.* California Rule of

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[1] The Supreme Court, Courts of Appeal, and Superior Courts also have original jurisdiction over petitions for writ of mandate. Cal. Const., art. VI, § 10.

Court 8.385(c)(2) 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." *Id.* at 1402 (*quoting* former Cal. R. Ct. R. 8.385(c)(2)(emphasis)). The Court of Appeal noted that California Rule of Court 8.385(c)(2) was enacted in response to the California Supreme Court's decision in *Roberts*, which provides that petitions for writ of habeas corpus challenging denial or suitability for parole should first be adjudicated in the trial court that rendered the underlying judgment. *Id.* at 1402.

The Court of Appeal held that California Rule of Court 8.385(c)(2) was inconsistent with Article VI, Section 10 of the California Constitution, which provides original jurisdiction to the Supreme Court, Courts of Appeal, and Superior Courts in habeas proceedings. *Id.* at 1403. The Court of Appeal distinguished the language in *Roberts* (which did not divest the Courts of Appeal of original jurisdiction in habeas corpus proceedings) with the language in California Rule of Court 8.385(c)(2). *Id.* at 1404-04. The Court of Appeal noted that in *Roberts*, the Supreme Court "direct[ed] that, 'among the three levels of state courts, 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." *Id.* at 1403 (*quoting Roberts*, 36 Cal.4th at 593 (italics added)). The Court of Appeal explained,

> [T]he language in *Roberts* does not divest the Courts of Appeal of original jurisdiction in petitions for writ of habeas corpus, as granted by article VI, 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 (*Roberts, supra*, 36 Cal.4th at p. 593) unless "extraordinary reason exists for action by" the appellate court in the first instance (*In re Hillery*, at p. 294).

Id. at 1403-04.

The Court of Appeal explained that by contrast, California Rule of Court 8.385(c)(2), which used the word "must," mandated that an appellate court deny without prejudice a habeas corpus petition unless it was first presented to the trial court, leaving no discretion for the appellate court to exercise its jurisdiction over the case. *Id.* at 1402. The Court of Appeal concluded "rule 8.385 is inconsistent with the California Constitution to the extent it requires petitions for writ of habeas corpus challenging denial of parole to be first filed in the superior court; additionally, the rule goes beyond the dictates in *Roberts*, which states that such petitions 'should' first be heard at the trial level. (*Roberts*, at p. 593.)." *Id.* at 1404.

Unlike former California Rule of Court 8.385(c)(2), which was deemed unlawful by *Kler*, Penal Code section 1509(a) does not mandate that habeas corpus petitions in death penalty cases be filed in or transferred to the superior court that imposed the sentence. Penal Code section 1509(a) uses the non-mandatory language endorsed by the Supreme Court in *Roberts* that habeas corpus petitions "should be" transferred to the superior court, leaving open the option for the Supreme Court or Courts of Appeal to exercise their discretion in determining whether to exercise jurisdiction over the petition. Penal Code section 1509(a) also specifically contemplates that an appellate court may exercise its original jurisdiction if good cause is shown. *See* Cal. Pen. Code § 1509(a). Thus, unlike the rule in *Kler*, Penal Code section 1509 does not divest the Supreme Court or Court of Appeal of original jurisdiction over habeas corpus petitions. For this reason, Penal Code section 1509 does not violate Article VI, Section 10 of California's Constitution.

C. Petitioners Have Failed To Show That Other Provisions Of Proposition 66 are Incompatible With Article VI, Section 10 Of California's Constitution.

Petitioner incorrectly argues that other provisions of Proposition 66, namely Penal Code section 1509.1, Government Code 68662, and Penal Code section 3604.1, also divest the Supreme Court and Courts of Appeal of jurisdiction under Article VI, Section 10. Penal Code section 1509.1 sets forth the procedures for appealing a decision on a petition for writ of habeas corpus filed under Penal Code section 1509. Prop. 66, § 7; Cal. Pen. Code § 1509.1. Nothing in the language of Penal Code section 1509.1 strips the Courts of Appeal or Supreme Court of original jurisdiction to hear a petition for writ of habeas corpus. Petitioners have not explained how the language of Penal Code section 1509.1 does so.

Government Code section 68662 has nothing to do with the exercise of jurisdiction by any state court. Government Code section 68662 provides, in part, that the "superior court that imposed the sentence shall offer to appoint counsel to represent a state prisoner subject to a capital sentence for purposes of state postconviction proceedings." *See* Prop. 66, § 16; Cal. Gov. Code § 68662. Nothing in this section restricts the Supreme Court's or Court of Appeal's jurisdiction over petitions for writ of habeas corpus.

Petitioners also complain that Penal Code section 3604.1(c) interferes with the original habeas jurisdiction of the Court of Appeal and Supreme Court. Penal Code section 3604.1(c) deals with claims by a condemned inmate that the method of execution is unconstitutional. *See* Prop. 66, § 11; Cal. Pen. Code § 3604.1(c). Penal Code section 3604.1(c), however, does not specifically mention habeas corpus petitions. Rather, Penal Code section 1509 sets forth the rules for habeas corpus petitions and, as set forth above, does not improperly revoke the Supreme Court's or Court of Appeal's original jurisdiction over habeas corpus petitions.

For these reasons, the Court should reject Petitioners' first cause of action relating to Article VI, section 10 of California's Constitution.

IV. PROPOSITION 66 DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE SET FORTH IN ARTICLE III, SECTION 3 OF THE CONSTITUTION

A. The Legislative Branch Has The Broad Power to Regulate Criminal and Civil Judicial Proceedings.

Petitioners' second cause of action alleges that Proposition 66 is invalid because it violates the separation-of-powers doctrine set forth in Article III, Section 3 of the California Constitution by defeating and materially impairing the constitutional and inherent powers of the courts to resolve capital appeals and habeas corpus cases. (Petition, at p. 14, ¶ 37.) Petitioners' second cause of action also lacks merit. It is well settled that the legislature has the power to regulate criminal and civil proceedings, including enacting procedural rules governing timing and other matters. *Engram*, 50 Cal.4th at 1146-53; *Le Francois*, 35 Cal.4th at 1101-04. Proposition 66 is a valid legislative action which regulates criminal and civil proceedings in capital cases.

Article III, Section 3, of the California Constitution provides: "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. "[T]he separation of powers doctrine does not create an absolute or rigid division of functions." *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal.4th 348, 390 (2014) (quoting *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1068 (2004)). Rather, "[t]he substantial interrelatedness of the three branches' actions is apparent and commonplace: the judiciary passes upon the constitutional validity of legislative and executive actions, the Legislature enacts statutes that govern the procedures and evidentiary rules applicable in

judicial and executive proceedings, and the Governor appoints judges and participates in the legislative process through the veto power. Such interrelationship, of course, lies at the heart of the constitutional theory of 'checks and balances' that the separation of powers doctrine is intended to serve." *Id.* (*quoting County of Mendocino*, 13 Cal.4th at 52-53 (emphasis)).

A court has the inherent authority and responsibility to fairly and efficiently administer the judicial proceedings that are pending before it, and also "the power . . . to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Engram*, 50 Cal.4th at 1146. Despite this authority, however, "the judicial department . . . must in most matters yield to the power of statutory enactments." *Id.* at 1147. Indeed, "[t]he power of the legislature to regulate criminal and civil proceedings and appeals is undisputed." *Id.* (*quoting Brydonjack v. State Bar*, 208 Cal. 439, 442–443 (1929)). The legislature has broad power to regulate judicial proceedings and may put "reasonable restrictions upon constitutional functions of the courts provided they do not defeat or materially impair the exercise of those functions." [2] *Id.* (*quoting Brydonjack*, 208 Cal. at 444); *County of Mendocino*, 13 Cal.4th at 52–66; *Le Francois*, 35 Cal.4th at 1101-04 (referencing the Code of Civil Procedure and Evidence Code as examples of the legislative power to regulate the judicial procedure).

B. Courts Routinely Uphold Laws Imposing Timeframes And Procedural Limitations On Courts.

In their separation of powers argument, Petitioners complain that the timeframes and other procedural limitations set forth in Proposition 66

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[2] The "power of the people through the statutory initiative is coextensive with the power of the legislature." *Legislature v. Deukmejian*, 35 Cal. 3d 658, 675 (1983). Thus, references in this letter to the legislature also refers to acts of the people through statutory initiatives.

interfere with the Court's constitutionally inherent authority to control the disposition of cases on its docket. (Petition, at pp. 14 and 30, ¶ 37.) However, Petitioners have completely misinterpreted case law addressing statutes imposing timeframes and procedural rules on courts. (*See* Petition, at pp. 32-33.)

Courts routinely uphold as constitutional laws imposing timeframes and procedural limitations on courts and laws setting forth which cases should have priority. *See Engram*, 50 Cal.4th at 1150; *In re Shafter-Wasco*, 55 Cal.App.2d at 487-88. Indeed, the Supreme Court refuses to adopt interpretations of procedural statutes that render them unconstitutional. *See Engram*, 50 Cal.4th at 1150; *Lorraine v. McComb*, 220 Cal. 753, 756-77 (1934). Rather, such statutes are interpreted as directory (as opposed to mandatory) and must be applied in a manner that accords reasonable discretion to the court to safeguard the interests of all those before the court. *Engram*, 50 Cal.4th at 1149-50.

Petitioners mainly rely on *In re Shafter-Wasco*, incorrectly stating that the Court of Appeal rejected the statute at issue. (Petition, at pp. 32-33.) Contrary to Petitioners' statement, in *In re Shafter-Wasco*, the Court of Appeal actually upheld the statute at issue as not violating the separation of powers doctrine. *In re Shafter-Wasco*, 55 Cal.App.2d at 488. *In re Shafter-Wasco* involved a statute that stated that the Court of Appeal "must" hear and determine the type of appeal at issue within three months of the notice of appeal. *Id.* at 486. When the case had not been decided by the Court of Appeal within three months, the respondents filed a motion to dismiss. *Id.*

Despite the statute's using the mandatory term "must," the Court of Appeal refused to interpret the statute as mandatory and as divesting the court of jurisdiction to hear the appeal. *Id.* at 488-89. The Court noted that given the record in the case, there were serious questions for decision that

could not be rendered within the time provided by the statute. *Id.* The Court of Appeal reviewed the general rules of statutory construction that (1) the court must give effect to legislative intent, (2) absurd or unjust results will never be ascribed to the legislature, and (3) courts should construe statutes so they may be held constitutional where it is reasonably possible to do so. *Id.* at 488. The Court of Appeal stated, "In view of these rules we are required to so construe [the statute] so that it may be held to be constitutional rather than to construe it literally and thereby have to hold it an unreasonable limitation on the constitutional powers of the appellate and supreme courts." *Id.* The Court of Appeal concluded that the sentence of the statute requiring a decision within three months was "directory and intended to give this appeal as early a hearing as orderly procedure in this court will permit." *Id.* at 489.

Likewise, in *Engram*, the Supreme Court upheld Penal Code section 1050, which required that, among other things, "all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time," that criminal proceedings should be expedited and "given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings," and "death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate." *Engram*, 50 Cal.4th at 1150, 1152. The Supreme Court noted that "[u]nder well-established precedent, of course, a statute must be construed, if reasonably possible, in a manner that avoids a serious constitutional question." *Id.* at 1161. The Supreme Court concluded that, in light of the constitutional separation of powers, "the relevant provisions of section 1050 cannot properly be interpreted to strip a

trial court of ultimate control over the cases within its jurisdiction so as, for example, to compel the court to postpone or totally forgo consideration of an urgent or extremely important civil proceeding in which time is of the essence in order to make way for the trial of a relatively less serious criminal matter." *Id.* at 1152. Nor could Penal Code section 1050 be properly interpreted to require a trial court to completely forgo or abandon consideration of all civil cases or proceedings over an extended period of time when the number of criminal cases filed and pursued to trial continually overwhelms the resources available to the court for the disposition of both criminal and civil matters. *Id.*

In *Thurmond v. Superior Court*, 66 Cal.2d 836 (1967), the Supreme Court considered the proper interpretation and application of two statutes providing that the trial of any proceeding or the hearing of any motion "shall be postposed" when any attorney of record is a member of the Legislature and the Legislature is in session, and that absent consent of the participating legislator/attorney, the proceeding shall not be brought on for trial or hearing before the expiration of thirty (30) days following final adjournment of the legislature. *Id.* at 838, fn. 2. The Supreme Court noted numerous instances in which an inflexible application of the statute could lead to obviously unjust consequences. *Id.* at 839-40. Nonetheless, the Supreme Court concluded: "We are convinced that such a result, with the serious constitutional questions which would ensue, was not intended by the Legislature, and that the statutory provisions here involved <u>are to be applied subject to the discretion of the court as to whether or not its process and order of business should be delayed</u>." *Id.* at 839-40 (emphasis). Thus, the Supreme Court did not hold that the statutory provisions in question were invalid on their face or were to be totally disregarded, but rather concluded that the statutes should be applied in a manner that accorded reasonable discretion to the court to safeguard the interests of all those

before the court. *Id.*; *see also Lorraine*, 220 Cal. at 754-77 (upholding statute requiring court to postpose trial when attorneys of record agree in writing to such a postponement and refusing to interpret the statute as totally supplanting the trial court's discretion to control the order of business before it to protect and safeguard the rights and interests of all litigants with matters before the court, and to promote the fair and efficient administration of justice).

C. Proposition 66 Does Not Unconstitutionally Deprive Courts Of Ultimate Control Over Cases Within Their Jurisdiction.

Like the statutes at issue in *In re Shafter-Wasco*, *Engram*, *Thurmond*, and *Lorraine*, Proposition 66 does not and cannot be interpreted to unconstitutionally deprive courts of ultimate control over cases within their jurisdiction in all cases. Indeed, under this well-settled case law, Proposition 66 must be interpreted in such a way as to accord reasonable discretion to the court to safeguard the interests of all those before the court. *See Engram*, 50 Cal.4th at 1150; *Lorraine*, 220 Cal. at 756-77; *Thurmond*, 66 Cal.2d at 839-40. Even the plain language of Proposition 66 recognizes that courts retain ultimate control over their cases. For example, (1) Penal Code section 190.6(e) indicates that the failure of the parties or of a court to comply with the time limitations shall not affect the validity of the judgment or require dismissal of an appeal or habeas corpus petition; (2) Penal Code section 1509(f), which applies to habeas corpus proceedings, provides that such proceedings shall be conducted "as expeditiously as possible consistent with a fair adjudication;" and (3) Penal Code section 190.6(e) specifically recognizes that there may be instances where there are compelling reasons justifying a court's delay. *See* Prop. 66, §§ 3 and 6, Cal. Pen. Code §§ 190.6(e), (f) and 1509(f). Nothing in Proposition 66 requires dismissal of a case that is not adjudicated within

Proposition 66's timeframes, including the five-year timeframe to complete a state appeal and initial state habeas corpus review in capital cases. *See* Cal. Penal Code §§ 190.6(d) and 1509(f). Nothing in Proposition 66 mandates a court to postpone or totally forgo consideration of an urgent or extremely important civil or criminal proceeding in which time is of the essence in order to make way for a habeas petition or direct appeal. *See Engram*, 50 Cal.4th at 1152. Surely, the citizens of California who enacted Proposition 66 did not intend the absurd result that Proposition 66 would unconstitutionally interfere in the courts' ability to control its cases so as to safeguard the interests of all those before the court. *See In re Shafter-Wasco*, 55 Cal. App. 2d at 488-89. To prevail on their facial challenge, it is not enough for Petitioners to argue that in some future hypothetical situation, problems may arise as to particular applications of Proposition 66's timeframes. *See Tobe*, 9 Cal.4th at 1084.

For these reasons, the Court should reject Petitioners' argument that the timeframes imposed by Proposition 66 violate the separation of powers doctrine.

D. Penal Code section 1509(d), Which Imposes Timeframes For Bringing Habeas Corpus Petitions And Limits Successive Habeas Corpus Petitions, Does Not Violate The Separation of Powers Doctrine.

Penal Code section 1509(c) provides that certain initial petitions for writ of habeas corpus must be filed within one year. Prop. 66, § 6; Cal. Pen. Code § 1509(c). Penal Code section 1509(d), provides, in pertinent part, that an untimely or successive habeas corpus petition in a capital case "shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence." Prop. 66, § 6; Cal. Pen. Code § 1509(d).

Petitioners incorrectly argue that the limitations on untimely and successive habeas corpus petitions in Penal Code section 1509(d) violate the constitutional separation of powers. Petitioners cite no case holding that the separation of powers doctrine prevents the legislature from enacting rules that place reasonable restrictions on the timing and ability of defendants to file successive habeas corpus petitions. In reality, both the Supreme Court and legislature have already placed restrictions on habeas corpus petitions relating to timeliness and successive petitions to control abuses of the writ of habeas corpus. *See e.g. In re Clark*, 5 Cal.4th 750, 770-74 (1993); *In re Reno*, 55 Cal.4th 428, 452 (2012); Cal. Pen. Code § 1475. In *In re Clark*, cited by Petitioners, the Supreme Court recognized that the legislature may properly enact and has enacted laws in order to "control abuses of the writ and thereby spare courts with jurisdiction over habeas corpus petitions the burden of repetitious petitions." *In re Clark*, 5 Cal.4th at 771 (discussing Penal Code section 1475, which imposes limits on successive applications for a writ of habeas corpus). In *In re Clark*, the Supreme Court also sharply limited the availability of relief on habeas corpus, noting that its limitations on entertaining untimely and successive petitions for writ of habeas corpus were intended to supplement legislative restrictions on such petitions and to curb abuse of the writ. *Id.* at 770-74.

Despite the limitations on successive habeas corpus petitions set forth in *In re Clark*, abuse of the writ of habeas corpus in capital cases continues. Eighteen years after the decision in *In re Clark*, the Supreme Court in *In re Reno*, 55 Cal.4th 428 (2012), discussed the continued abuse of the writ of habeas corpus, stating that "in capital cases, petitioners frequently file second, third, and even fourth habeas corpus petitions raising nothing but procedurally barred claims." *Id.* at 453, 458. The Supreme Court further stated that "[a]bsent the unusual circumstance of some critical evidence that is truly 'newly' discovered under our law, or a change in law,

such successive petitions rarely raise an issue even remotely plausible, let alone state a prima facie case for actual relief." *Id.* at 457-58.

Penal Code section 1509 reflects an intent by the people of the state of California to further curb abuses of the writ of habeas corpus in death penalty cases. Proposition 66's reasonable limitations on collateral attacks on final judgments of conviction in death penalty cases "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 law.'" *See In re* Reno, 55 Cal.4th at 459. Proposition 66's time limitations also "ensure that possibly vital evidence will not be lost through the passage of time or the fading of memories." *See Id.* In addition, Proposition 66's limitations on successive and delayed habeas corpus petitions benefit victims, or surviving family and friends of the victim, in that they result in the fair, effective, and timely implementation of justice. *See id.* Proposition 66's time limitations and limitations on successive petitions are not novel. Most states set determinate time limits for collateral relief applications. *Carey v. Saffold*, 536 U.S. 214, 222 (2002); *In re Reno*, 55 Cal.4th at 460.

In short, Petitioners have failed to cite any case law supporting their argument that Penal Code section 1509's limitation on successive and delayed habeas corpus petitions violates the separation of powers doctrine. For these reasons, the Court should reject Petitioners' second cause of action.

V. PROPOSITION 66 DOES NOT VIOLATE THE SINGLE SUBJECT DOCTRINE IN ARTICLE II, SECTION 8 OF THE CALIFORNIA CONSTITUTION

A. The Single Subject Rule Is Satisfied So Long As the Challenged Provisions Are "Reasonably Germane" To A Common Theme, Purpose, or Subject.

Petitioners' third cause of action alleging that Proposition 66 is invalid because it violates the single-subject rule in Article II, Section 8 of the California Constitution also lacks merit and must be rejected.

Article II, Section 8(d) provides that "[a]n 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 Court has "long held that the constitutional 'single subject' rule is satisfied 'so long as challenged provisions meet the test of being reasonably germane to a common theme, purpose, or subject.'" *Brown v. Superior Court*, 63 Cal.4th 335, 350 (2016) (*quoting Californians for an Open Primary v. McPherson*, 38 Cal.4th 735, 764 (2006)). The Court applies a "liberal interpretive tradition . . . of sustaining statutes and initiatives which fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." *Id.* (*citing Eu*, 54 Cal.3d at 512); *Brosnahan v. Brown*, 32 Cal.3d 236, 246 (1982) ("the single subject rule is to be 'construed liberally,' and . . . 'Numerous provisions, *having one general object*, if fairly indicated in the title, may be united in one act.'").

Importantly, whether various provisions of an initiative "are wise or sensible, and will combine effectively to achieve their stated purpose, is not [the Court's] concern in evaluating the present single-subject challenge." *Eu*, 54 Cal.3d at 514; *see also Amador Valley*, 22 Cal.3d at 219 ("We do not consider or weigh the economic or social wisdom or general propriety of the initiative. Rather, our sole function is to evaluate [the measure] legally in the light of established constitutional standards.").

The Supreme Court has routinely rejected single-subject challenges against multi-faceted measures like Proposition 66. For example, in *Brosnahan*, the petitioners brought a single-subject challenge to Proposition 8, known as the Victim's Bill of Rights, an initiative measure adopted by the voters in the June 1982 Primary Election. *Brosnahan*, 32 Cal.3d at 240. The initiative incorporated several provisions, which were, according to the measure's preamble, directed towards "ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights." *Id.* Proposition 8 included provisions relating to: (1) restitution for victims, (2) an inalienable right of public school students and staff to attend campuses which are safe, secure, and peaceful; (3) evidence admissibility; (4) factors to be considered in ruling on bail matters, and forbidding release on one's "own recognizance" for a person charged with any serious felony; (5) the unlimited use in a criminal proceeding of 'any prior felony conviction' for impeachment or sentence enhancement; (6) abolishing the defense of diminished capacity; (7) sentence enhancements for persons convicted of a serious felony; (8) victim statements; (9) plea bargaining; (10) sentencing of persons committing serious crimes when he or she is 18 or older; and (11) mentally disordered sex offenders. *Id.* at 244-45.

Despite that Proposition 8 was a "broad and multifaceted measure," the Supreme Court held that Proposition 8 met the "reasonably germane" standard. *Id.* at 247. The Supreme Court explained that each of Proposition 8's "several facets bears a common concern, 'general object' or 'general subject,' promoting the rights of actual or potential crime victims." *Id.* at 247. The Supreme Court rejected the petitioners' argument that the "safe schools" provision constituted a separate subject because it concerned an entirely unrelated matter, isolated from criminal behavior. *Id.* at 247. The petitioners argued that safe schools was an undefined, amorphous concept which could encompass such diverse hazards as acts of nature, acts of war, environmental

risks, or building code violations. *Id.* The Supreme Court rejected this argument noting that the preamble of the law stated that the rights of victims included the expectation that criminals be detained, tried, and punished so that public safety is protected and that such public safety extends to schools where students and staff have the right to safety. *Id.* at 247-48.

In another case, *Amador Valley*, on a single subject challenge, the Supreme Court upheld a four-pronged taxation measure that limited real property tax rates and assessments and restricted state and local taxes on the ground that such restrictions were reasonably germane to the general subject of property tax relief. *Amador Valley*, 22 Cal.3d at 231. In *Fair Political Practices Com. v. Superior Court*, 25 Cal.3d 33 (1979), the Court rejected a single-subject challenge to a lengthy political reform measure containing multiple complex features as follows: (1) establishment of a fair political practices commission; (2) creation of disclosure requirements for candidates' financial supporters; (3) limitations on campaign spending; (4) regulation of lobbyist activities; (5) enactment of conflict of interest rules; (6) adoption of rules relating to voter pamphlet summaries of arguments; (7) adoption of rules relating to location of the ballot position of candidates; and (8) specification of auditing and penalty procedures to aid in the act's enforcement. *Id.* at 37, 41.

In *Evans v. Superior Court*, 215 Cal. 58, 61-63 (1932), the Supreme Court upheld the adoption, in a single act, of extensive probate legislation consisting of 1,700 sections covering a wide spectrum of topics within the general area of probate law. The legislation included such disparate subjects such as the essential elements of wills, the rights of succession, the details of the administration and distribution of decedents' estates, and the procedures, duties, and rights of guardianships of the persons and estates of minors and incompetents. *Id.* at 61. Despite the extremely broad sweep of the legislation, the Supreme Court concluded that all of these matters were

"reasonably germane" to the general object of the legislation and did not embrace more than a single subject. *Id.* at 62-63.

By contrast, in *Chemical Specialties Mfrs. Ass'n. v. Deukmejian*, 227 Cal.App.3d 663 (1991), the Court of Appeal held that Proposition 105, an initiative entitled "Public's Right to Know Act," violated the single subject rule. *Id.* at 671. The measure sought 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 [in South Africa]; well-intentioned objectives but not reasonably related to one-another for purposes of the single-subject rule." *Id.* at 671.

Senate of the State of Cal. v. Jones ("*Jones*"), 21 Cal.4th 1142, 1160, 1167-68 (1999), relied on by Petitioners, involved a challenge to an initiative that contained at least two separate and unrelated subjects: (1) the transfer of power of reapportionment from the legislature to the Supreme Court, and (2) the compensation of state legislators and officers. *Id.* The Court rejected the proponent's argument that the subjects were reasonably germane because each of the subjects contained a provision for voter approval. *Id.* at 1162.

In *California Trial Lawyers Assn. v. Eu* ("*CTLA*"), 200 Cal. App. 3d 351, 361 (1988), also relied on by Petitioners, the Court of Appeal invalidated a proposed initiative for no-fault insurance. Inconspicuously placed in the middle of a 120-page document were two provisions addressing campaign contributions and conflicts of interests of elected officials who receive such contributions. *Id.* at 358-59. The Court found that there was no connection between the stated purpose of the initiative, to rein in increasing insurance premiums, and the two provisions. *Id.*

B. The Challenged Provisions Of Proposition 66 Easily Satisfy The Single Subject Rule.

As in *Brosnahan*, *Amador Valley*, *Fair Political Practices Com.*, and *Evans*, *supra*, each of the provisions of Proposition 66 challenged by Petitioners easily satisfies the single subject rule. Unlike the provisions in *Chemical Specialties Mfrs. Ass'n, Jones, and CTLA*, *supra*, which had a tenuous relation to the other provisions and purposes of the initiatives at issue, each of the provisions of Proposition 66 challenged by Petitioners is reasonably germane to Proposition 66's purpose.

As explained below, each of the provisions are germane to Proposition 66's title, "The Death Penalty Reform & Savings Act of 2016", and purpose, which is to make the enforcement of capital judgments more effective, more timely, and less expensive. *See* Prop. 66, § 2, Findings and Declarations.

1. Victim Restitution.

Proposition 66, Section 8, adds Penal Code § 2700.1, which requires inmates sentenced to death to work, and to pay owed restitution from the inmate's wages. *See* Prop. 66, § 8; Cal. Pen. Code § 2700.1. Victim restitution is reasonably germane to Proposition 66's purpose of enforcing capital judgments, including enforcing the imprisonment and restitution portion of a capital judgment. Proposition 66, Section 2, Findings and Declarations, Section 5, specifically states, in part, 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)." Prop. 66, § 2, Findings and Declarations, § 5. Requiring victim restitution makes the enforcement of a capital judgment more effective.

2. Administrative Procedures Act & Execution Protocol.

Proposition 66, Section 11, which adds Penal Code § 3604.1, exempts the Department of Corrections and Rehabilitation's death penalty standards and regulations from the Administrative Procedure Act. Prop. 66, § 11; Cal.

Pen. Code §§ 3604, 3604.1. This section is reasonably germane to Proposition 66's purpose of enforcing capital judgments, including the death sentence portion of the judgment, in a more timely and inexpensive manner. This section implements Proposition 66, Section 2, Findings and Declarations, Section 1, which addresses "waste, delays, and inefficiencies" in the death penalty system, and Section 9, which specifically provides: "Bureaucratic regulations have needlessly delayed enforcement of death penalty verdicts. Eliminating wasteful spending on repetitive challenges to these regulations will result in the fair and effective implementations of justice." Prop. 66, § 2, Findings and Declarations, §§ 1 and 9. Eliminating Administrative Procedure Act review makes the enforcement of the death penalty more efficient and cuts down on waste and delays resulting from such review. *See* Prop. 66, § 2, Findings and Declarations, § 1.

3. Medical Licensing Standards.

Proposition 66, Section 12, adds Penal Code section 3604.3, which exempts health care professionals who assist with executions from state laws and disciplinary actions by licensing agencies if those actions are imposed as a result of assisting with executions. Prop. 66, § 12; Cal. Pen. Code § 3604.3. This section is also reasonably germane to Proposition 66's purpose of enforcing capital judgments, including the death sentence portion of the judgment, in a timely and effective manner. It is basic knowledge that health care professionals are needed to assist with carrying out a death sentence. Health care professionals will be unwilling to assist with executions if they can be subject to disciplinary action for doing so. Thus, in order to recruit competent health care professionals to assist with executions, the state must exempt them from laws that would result in sanctions if they assist with executions. This section implements Proposition 66 Findings and Declarations Sections 1 and 9, which specifically address waste, delays, and inefficiencies in the death penalty system and the regulations that needlessly

delay enforcement of death penalty verdicts. Prop. 66, § 2, Findings and Declarations, §§ 1 and 9.

4. Habeas Corpus Resource Center ("HCRC") Oversight.

Proposition 66, Section 17, amends Government Code section 68664 to eliminate the Habeas Corpus Resource Center's ("HCRC") five-member board of directors and requires the Supreme Court to oversee the HCRC. Proposition 66, § 17, amending Cal. Gov. Code § 68664, subds. (b) and (c). As stated in Proposition 66's Findings and Declarations, the drafters of Proposition 66 determined that the HCRC, which is supposed to expedite secondary review of death penalty cases, operates "without effective oversight, causing long-term delays and wasting taxpayer dollars." Prop. 66, § 2, Findings and Declarations, § 8. The drafters of Proposition 66 also determined that "California Supreme Court oversight of [the HCRC] will ensure accountability." *Id.* Thus, changing the HCRC's oversight from a five-member board of directors to the Supreme Court is germane to Proposition 66's purpose of enforcing capital judgments, including the death sentence portion of the judgment, in a more timely and inexpensive manner.

Petitioners' entire argument challenging this provision is based on their disagreement with Proposition 66 regarding the effectiveness of the HCRC and whether replacing the HCRC's board will actually achieve the goal of expediting review of capital cases and eliminating waste. (*See* Petition, at pp. 50-52.) Petitioners' argument has no effect on a single-subject challenge. Whether Proposition 66's provisions "are wise or sensible, and will combine *effectively* to achieve their stated purpose, is not [the Court's] concern in evaluating the present single-subject challenge." *See Eu*, 54 Cal.3d at 514. The Court does "not review initiatives by attempting to predict whether each section actually will further the initiative's purpose. Instead, [the Court] inquires only whether the provisions are 'reasonably germane' to

the general purpose or objective of the initiative." *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805, 841-842 (1989).

Sensible or not, the foregoing provisions of Proposition 66 are reasonably germane to a common purpose, easily passing the single-subject test. Thus, Petitioners' third cause of action should be rejected by the Court.

VI. PROPOSITION 66 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSES.

A. Capital And Non-Capital Defendants Are Not Similarly Situated.

Petitioners' equal protection claim also lacks merit. In order to have a claim under the Equal Protection Clause, petitioners must show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. *People v. McCann*, 141 Cal.App.4th 347, 353 (2006). Petitioners' equal protection clause challenge also fails because "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." *People v. Mickel*, 2 Cal. 5th 181, 221 (2016); *People v. Watson*, 43 Cal.4th 652, 701 (2008)(denying equal protection challenge comparing capital and non-capital defendants); *see also People v. Manriquez*, 37 Cal.4th 547, 590 (2005) (same); *People v. Avila*, 46 Cal.4th 680, 724-25 (2009)(same). Indeed, the Supreme Court has routinely concluded that California does not deny capital defendants equal protection "by providing certain procedural protections to noncapital defendants but not to capital defendants." *Mickel*, 2 Cal.5th at 211.

Petitioners' assertion that capital and non-capital defendants are considered not similarly situated for equal protection only in the context of sentencing laws is incorrect. Courts have held that capital and non-capital defendants are not similarly situated for equal protection purposes in other contexts as well, including in the context of appellate and habeas

procedures. For example, in *Massie v. Hennessey*, 875 F. 2d 1386, 1389 (9th Cir. 1989), the petitioner argued that the automatic appeal statute for death penalty judgments in California Penal Code § 1239(b) denied him equal protection as compared to a non-capital defendant. *Id.* The Ninth Circuit denied the equal protection challenge stating that the relevant comparison for equal protection purposes is two defendants, both of whom are sentenced to death, not one defendant sentenced to life imprisonment and one defendant sentenced to death. *Id.*

In another case, *Roybal v. Davis*, 148 F. Supp. 3d 958, 1103 (S.D. Cal. 2015), on a habeas corpus petition in a capital case, the petitioner brought an equal protection challenge to numerous aspects of the State of California's post-conviction procedures including challenges on the grounds that a habeas corpus petition is only heard by the California Supreme Court, that there are filing deadlines in capital cases that do not exist in noncapital cases, and that there are differences in the appellate review system for capital and non-capital prisoners. *Id.* at 1103. Notably, the District Court indicated that these equal protection claims had already been raised in the petitioner's state habeas petition and rejected by the California Supreme Court on the merits without a statement of reasoning. *Id.*; *see Roybal (Rudolph Jose) on H.C.*, No. S156846, 2013 Cal. LEXIS 11, at *1 (Jan. 3, 2013). The District Court also rejected the claims stating that "as capital and noncapital prisoners are not 'similarly situated' to one another, different rules regarding adjudication of their petitions do not appear amenable to an equal protection analysis." *Roybal*, 148 F.Supp 3d. at 1103 (*citing Massie*, 875 F.2d at 1389); *see also Rhoades v. Henry*, 638 F.3d 1027, 1055 (9th Cir. 2011)(rejecting a due process and equal protection challenge to an Idaho statute "which imposes a forty-two day time limit for the filing of post-conviction proceedings in capital cases whereas non-

capital defendants have five years within which to pursue post-conviction relief.").

Petitioners have failed to cite a California case in which a court found that a capital defendant and a non-capital defendant are similarly situated for equal protection purposes and *Amicus Curiae* has been unable to find one. For this reason, Petitioners' equal protection claim must be rejected.

B. There Is A Rational Basis For Proposition 66's Procedural Rules That Relate Solely To Habeas Corpus Petitions In Death Penalty Cases.

"Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, 'equal protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.'" *Johnson v. Dep't of Justice*, 60 Cal.4th 871, 881 (2015)(*quoting Turnage*, 55 Cal.4th at 74-75 (2012)). The law passes constitutional scrutiny as long as there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." *Turnage*, 55 Cal.4th at 75. "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." *Id.* To mount a successful rational basis challenge, a party must negate "every conceivable basis that might support the disputed statutory disparity." *Johnson*, 60 Cal.4th at 881 (quotations omitted). "If a plausible basis exists for the disparity, courts may not second-guess its wisdom, fairness, or logic." *Id.* (quotations omitted).

Petitioners have failed to negate "every conceivable basis" for Proposition 66's procedural restrictions on petitions for writ of habeas corpus in death penalty cases. One need only review Proposition 66's Findings and Declarations for multiple legitimate and rational bases for

Proposition 66's provisions. *See* Prop. 66, § 2, Findings and Declarations 1-11. With respect to procedural restrictions on habeas corpus petitions, the people of the State of California determined that, among other things, "California's death penalty system is ineffective because of waste, delays, and inefficiencies," "Fixing it will save California taxpayers millions of dollars every year," "Murder victims and their families are entitled to justice and due process," "Families of murder victims should not have to wait decades for justice," and "Reforming the existing inefficient appeals process for death penalty cases will ensure fairness for both defendants and victims." Prop. 66, § 2, Findings and Declarations 1, 2, 3, and 6. Furthermore, the people of the State of California determined that the procedures adopted in Proposition 66 will ensure that victims "receive timely justice and taxpayers will save hundreds of millions of dollars." Prop. 66, § 2, Findings and Declarations 9. These are issues that relate to capital defendants (as opposed to non-capital defendants) and have to do with fixing the death penalty system, which has numerous problems that do not arise in non-capital cases.

Furthermore, capital defendants are provided by the State of California many benefits that non-capital defendants are not provided, including, but not limited to, appointed counsel (Cal. Pen Code § 1509(b); Cal. Gov. Code § 68662), an automatic appeal to the Supreme Court (Cal. Pen. Code § 1239(b)), more money to pay postconviction counsel and for pre-petition investigation than other states provide (*see In re Reno*, 55 Cal. 4th at 456-57), and more pages in a habeas corpus petition (*see id.*). These differences from non-capital defendants are sufficient to provide a rational basis for the voters to determine that capital defendants should be subject to Proposition 66's procedural rules relating to habeas corpus petitions.

As set forth above, there are rational reasons for Proposition 66's provisions to only apply to capital defendants. Petitioners have failed to

negate any of these rational bases and any other conceivable basis for Proposition 66's rules relating to habeas corpus petitions by capital defendants as opposed to non-capital defendants.

For this additional reason, Petitioners' equal protection claim lacks merit and must be denied.

VII. IN THE EVENT THE COURT DETERMINES THAT PART OF PROPOSITION 66 IS INVALID (WHICH IT SHOULD NOT), THAT PART SHOULD BE SEVERED AND THE REMAINDER OF PROPOSITION 66 UPHELD.

In the unlikely event the Court finds that a provision in Proposition 66 unconstitutionally interferes with the jurisdiction of the courts, violates separation of powers, or violates the equal protection clause (which it should not), the Court should sever that portion of the statute and uphold the remainder of Proposition 66. In determining whether invalid portions of a statute can be severed, the court looks first to any severability clause. *Cal. Redevelopment Assn.*, 53 Cal.4th at 270. "The presence of such a clause establishes a presumption in favor of severance." *Id.* (*citing Santa Barbara Sch. Dist. v. Superior Court*, 13 Cal.3d 315, 331 (1975)). A severability clause "normally calls for sustaining the valid part of the enactment." *Id.* Nonetheless, courts also consider three additional criteria: "[T]he invalid provision must be grammatically, functionally, and volitionally separable." *Id.* at 271 (*quoting Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805, 821 (1989)).

Here, there is a presumption in favor of severance because Proposition 66 contains a severability clause in Section 21, which states:

> If any provision of this act or any part of any provision, or its application to any person or circumstances is for any reason held to be 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, and to this end the provisions of this act are severable.

Prop. 66, § 21; *see Cal. Redevelopment Assn.*, 53 Cal.4th at 271. Petitioners have failed to rebut this presumption in favor of severance.

A. Grammatical Separability.

"Grammatical separability, also known as mechanical separability, depends on whether the invalid parts can be removed as a whole without affecting the wording or coherence of what remains." *Id.* at 271 (quotations omitted). The valid and invalid parts of the statute can be separated by paragraph, sentence, clause, phrase, or even single words. *Abbott Labs. v. Franchise Tax Bd.*, 175 Cal.App.4th 1346, 1358 (2009). It is difficult to analyze grammatical separability without knowing the exact provisions at issue.

Petitioners list several provisions of Proposition 66 and state that they "depend" on each other; however, Petitioners fail to explain in any way how the provisions are grammatically unseverable. A review of the language of the provisions shows that the challenged provisions can be separated without affecting the coherence of the remainder of Proposition 66. For example, Petitioners challenge the five-year timeframe set forth in the third sentence of Penal Code section 190.6(d). That section could be eliminated without affecting the coherence of or remainder of the wording of Proposition 66, including Penal Code section 190.6(e).

Petitioners also challenge Penal Code section 1509(a), which provides that habeas corpus petitions should be transferred to the court which imposed the death sentence unless good cause is shown. *See* Cal. Pen. Code § 1509(a). If this provision were stricken (which it should not be), other provisions in Proposition 66 would not be grammatically affected.

Petitioners also challenge the first sentence of Penal Code section 3604.1(c), which provides venue in the superior court to claims by a condemned inmate that the method of execution is unconstitutional. If this provision were invalidated, the remainder of Proposition 66 would not be grammatically affected in any way.

Petitioners also challenge Penal Code § 1509.1, which relates to appeals to the court of appeal of initial petitions filed in the superior court under Penal Code section 1509(a). Should either section be invalidated, the wording of the other also would not be affected nor would the remainder of Proposition 66.

B. Functional And Volitional Separability.

Functional separability depends on whether the remainder of the statute is complete in itself and capable of independent application. *Cal Redevelopment Assn.*, 53 Cal.4th at 271 (quotations omitted); *Abbot Labs*, 175 Cal.App.4th at 1358. As written, the different aspects of the reforms set forth in Proposition 66 are capable of independent application. Petitioners have failed to explain how the provisions of Proposition 66 they attack cannot be independently applied.

"Volitional separability depends on whether the remainder would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute." *Cal. Redevelopment Assn.*, 53 Cal.4th at 271 (quotations omitted). If part of an initiative to be severed "reflects a 'substantial' portion of the electorate's purpose, that part can and should be severed and given operative effect." *Gerken v. Fair Political Practices Com.*, 6 Cal.4th 707, 715 (1993). Each of the provisions in Proposition 66 are related to its title, "The Death Penalty Reform & Savings Act of 2016," and common purpose, which is to make the enforcement of capital judgments more effective, more timely, and less expensive. *See* Prop. 66, § 2, Findings and Declarations. Even if the Court were to invalidate a portion of

Proposition 66, the other provisions of Proposition 66 would still further this purpose. Thus, it is basic to conclude that the voters would have enacted Proposition 66 even if a particular portion of the Proposition were not included.

Petitioners incorrectly contend that the electorate was not focused on Proposition 66, Section 11, relating to Administrative Procedure Act review or execution protocols because it was not mentioned in the arguments in favor of the initiative. Petitioners' argument on this point is insincere. A similar argument was rejected by the Court in *Gerken*, where the fact that a "ban on public funding of mass mailings" was not expressly addressed in the ballot, arguments did not foreclose volitional separability. *Gerken*, 6 Cal.4th at 719. In reality, with respect to Proposition 66, the voters were provided information on the Administrative Procedure Act and Execution Protocols in the Official Voter Information Guide. (Petitioners' Appendix of Exhibits ISO Amended and Renewed Petition ("Petitioner's Appendix"), at pp. 8, 10.) These issues were mentioned in the Official Title and Summary and the Analysis By The Legislative Analyst specifically discussed Administrative Procedure Act Review and Execution Protocols. *See Id.* Furthermore, these issues are referenced in Paragraph 9 of the Findings and Declarations in Section 2 of Proposition 66. (*Id.* at p. 2.)

Petitioners' reliance on *Hotel Emps. And Rest. Emps. Intl' Union v. Davis*, 21 Cal.4th 585 (1999) is also misplaced. That case dealt with voter initiative, Proposition 5, which had the primary purpose of authorizing various forms of tribal gaming casinos. *Id.* at 589. Proposition 5 set forth a model tribal-state compact which contained numerous provisions setting forth the scope of casino gambling permitted and other provisions relating to the manner in which tribal gaming facilities are to be licensed, staffed, and operated. *Id.* at 599. The Supreme Court found that the provisions of the model tribal-state compact authorizing casino gambling (gaming terminals

and certain card games) were invalid as inconsistent with California's constitution insofar as they authorized proscribed casinos. *Id.* at 613-14. The Supreme Court also found that the additional provisions of the model state-tribal compact were not functionally or volitionally separable from the compact's authorization of casino gambling. *Id.* at 613. The Supreme Court explained that without the provisions authorizing casino gambling, tribal gaming facilities would remain authorized but without resolution of the chief issue of gambling that prompted the measure's circulation and passage. *Id.* By the measure's own declaration, its authorization of gambling, including that authorized by the model tribal-state compact, was intended to be comprehensive and to resolve uncertainties regarding gambling, including tribal gaming terminals and card games. *Id.* "The scope of authorized gambling was of 'critical' importance to the 'enactment' of the measure, including its offer of a model compact [citation], because the scope of gambling was of critical importance to the measure itself." *Id.*

Notably, the Supreme Court went on to uphold and sever a different section of Proposition 5, which dealt with a "functionally separate subject—the state's waiver of immunity from suit in disputes arising out of negotiations for new or amended tribal-state compacts *other* than the measure's model compact." *Id.* at 614 (emphasis in original). The Supreme Court reasoned that this provision was functionally separable because it did not concern the scope of gambling permitted or the implementation of the model compact, but rather the resolution of future disputes concerning the negotiation, amendment, and performance of compacts different from Proposition 5's model compact. *Id.* at 614. The provision was also volitionally separable because it effectuated one of the express goals of Proposition 5, to expedite the process for achieving Indian gaming compacts. *Id.* at 615. Thus, the Court concluded that it was confident the electorate

would have approved that portion of the measure even if they had known that the remainder could not constitutionally be given effect. *Id.* at 615.

Proposition 66's provisions are nothing like the unseverable model tribal-state compact in *Hotel Emps. And Rest. Emps, Intl' Union*. None of the death penalty reforms in Proposition 66 is of "critical importance" to the enactment of the initiative. Each of the reforms in Proposition 66 have the common purpose of making the enforcement of capital judgments more effective, more timely, and less expensive; however, each of the reforms attack a separate part of the problem and could stand alone in achieving Proposition 66's purpose.

On the contrary, Proposition 66's various reforms are similar to the immunity provision upheld and severed in *Hotel Emps. And Rest. Emps. Intl' Union*, in that they are both functionally and volitionally separable because they can be separately applied and effectuate Proposition 66's purpose.

VIII. CONCLUSION

For these reasons, Petitioners have failed to make a valid facial challenge to Proposition 66 and the Petition should be denied in its entirety.

DATED: March 22, 2017

HAYES & ORTEGA, LLP

By: 

Dennis J. Hayes
Michelle C. Hribar

Attorneys for *Amicus Curiae* Los Angeles County Professional Peace Officers Association

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court, Rule 8.204 , I hereby certify that this brief contains 10,650 words, including footnotes and uses a 13 point Times New Roman font. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

DATED: March 22, 2017

HAYES & ORTEGA, LLP

By: 

Dennis J. Hayes
Michelle C. Hribar

Attorneys for Amicus Curiae Los Angeles County Professional Peace Officers Association

PROOF OF SERVICE

Briggs, et al. v. Brown, et al., No. S238309

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is Hayes & Ortega, LLP, 3625 Ruffin Road, Suite 300, San Diego, California 92123.

On March 22, 2017, I served the document named below on the parties in this action as follows:

DOCUMENT SERVED:

1. **APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF LOS ANGELES COUNTY PROFESSIONAL PEACE OFFICERS ASSOCIATION IN SUPPORT OF RESPONDENTS**

SERVED UPON:

PLEASE SEE ATTACHED SERVICE LIST

BY THE FOLLOWING MEANS:

[xx] BY OVERNIGHT MAIL. I caused such envelopes to be delivered overnight by **UPS NEXT DAY AIR** to the below addresses.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made. Executed on March 22, 2017 at San Diego, California.

Barbara Janiec

BARBARA JANIEC

SERVICE LIST

Briggs, et al. v. Brown, et al., No. S238309

Supreme Court of California
Earl Warren Building
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Original and 8 Copies

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