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; Kamala Harris, in her official capacity as the Attorney General of California; Alex Padilla, in his official capacity as the Secretary of State of California, and California's Judicial Council, and Does I through XX,

Respondents,

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICUS CURIAE* IN OPPOSITION TO PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF

DAVID P. MASTAGNI, ESQ. (SBN 57721)
DAVID E. MASTAGNI, ESQ. (SBN 204244)
ISAAC S. STEVENS, ESQ. (SBN 251245)
MASTAGNI HOLSTEDT, APC
1912 "I" Street, Sacramento
California 95811-3151
Telephone: (916) 446-4692
Facsimile: (916) 447-4614

Attorneys for the Amicus Curiae
Peace Officers Research Association of California

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Peace Officers Research Association of California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court 8.208

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

Amicus Curiae, Peace Officers Research Association of California

Dated: January 9, 2017

MASTAGNI HOLSTEDT, APC

DAVID P. MASTAGNI
DAVID E. MASTAGNI
ISAAC S. STEVENS
Attorneys for the Amicus Curiae

APPLICATION TO FILE AMICUS CURIAE BRIEF

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

Pursuant to Cal. Rules of Court, Rule 8.520(f), the Amicus Curiae respectfully ask for leave to file the attached amicus brief in opposition to the Petition for Extraordinary Relief in this matter.

INTEREST OF THE AMICUS CURIAE

The Peace Officers Research Association of California ("PORAC") is a statewide, professional federation of local, state, and federal law enforcement agencies. Representing almost 70,000 public safety employees, it is the largest law enforcement organization in California, and the largest statewide association in the United States. As peace officers, PORAC's members are responsible for investigating capital crimes, apprehending perpetrators, and detaining them before and after their convictions. Their employing agencies' budgets are burdened by the expense of frivolous and dilatory appeals, which reduce the funding available to hire and retain officers, update equipment, improve working conditions, and serve the communities they police. As such, they have an interest in ensuring that the procedures governing the review and execution of death penalty sentences are carried out in a reasonable manner.

California classifies the killing of a peace officer as a special circumstance supporting the death sentence. (Penal Code § 190.2.) PORAC's members are peace officers, so they have a particular interest in maintaining the efficacy of the death penalty to deter people from targeting them for death. Proposition 66 was enacted to streamline the process of reviewing and carrying out death sentences. PORAC and its members have an interest in ensuring Proposition 66 is upheld.

As an organization dedicated to promoting public safety in the State of California, PORAC has an interest in ensuring the death penalty is applied fairly, and expediently in appropriate cases. The death penalty is necessary to deter the most violent crimes, and to punish those who commit them. Proposition 66 provides much-needed reforms to prevent inmates sentenced to death from engaging in dilatory tactics, such as initiating unnecessary, frivolous, and duplicative actions or appeals to unduly delay their executions.

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CONCLUSION

For the foregoing reasons, Amicus Curiae PORAC respectfully request this Court accept the accompanying brief for filing in this case.[1]

Respectfully submitted,

Dated: January 9, 2017

MASTAGNI HOLSTEDT, APC

DAVID P. MASTAGNI
DAVID E. MASTAGNI
ISAAC S. STEVENS
Attorneys for the Amicus Curiae

[1] Pursuant to California Rule of Court 8.520(f)(4), no other party to this case authored the accompanying amicus brief in whole or in part, and no party other than PORAC made a monetary contribution intended to fund the preparation or submission of the brief.

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I.
INTRODUCTION

The Peace Officers Research Association of California ("PORAC") submits this amicus curiae brief in opposition to the Petitioners' attempt to invalidate Proposition 66, the "Death Penalty Reform and Savings Act of 2016." The voters approved Proposition 66 in the 2016 general election to reform the procedures for handling death sentence appeals and habeas corpus petitions, to expedite such proceedings and address the costly, lengthy, and wasteful processes currently in place.

Proposition 66 does not infringe on the courts' jurisdiction, or impair the judiciary's functions. It streamlines the procedures for handling death sentence appeals and habeas proceedings for death penalty inmates, ensuring that justice is served in a timely manner. Accordingly, PORAC asks this Court to deny Petitioners' petition in its entirety.

II.
SUMMARY OF THE CHALLENGED PROPOSITION

For years, death penalty advocates and opponents decried inadequacies in the State's procedures for handling death penalty appeals. In November 2016, the people of California approved Proposition 66, entitled the "Death Penalty Reform and Savings Act of 2016." Proposition 66 streamlines the appeals process for death penalty sentences and requires the Judicial Council to adopt streamlined procedures to expedite the processing of capital appeals and habeas corpus review.

Major reforms provided in Proposition 66 include:

- Adding section 1239.1 to the Penal Code, which requires the court to appoint counsel for indigent appellants quickly, and only grant extensions of time for briefing for compelling or extraordinary reasons;
- Adding section 1509 to the Penal Code, which provides that habeas petitions filed in any court other than the one that imposed a death sentence be transferred to that court unless good cause is shown for the petition to be heard by another court;
- Adding section 190.6(d) to the Penal Code, requiring the courts to complete the state appeal and initial habeas corpus review of death sentences within five years of the entry of judgment.
- Requiring the Judicial Council to promulgate procedures rules and standards to expedite the processing of capital appeals and habeas petitions.

In the same election, the voters rejected a competing proposition to repeal the death penalty, Proposition 61. The results of the election show that the people of California support the death penalty. Proposition 66 ensures that the death penalty is administered in a fair and timely manner.

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III.
DISCUSSION

The Court should reject the Petitioners' attempts to overrule the will of the people of California. Proposition 66 does not unconstitutionally interfere with the courts' power, or infringe on their jurisdiction. Rather, it expedites the process for appealing and adjudicating death sentences. Proposition 66 brings California's death penalty procedures in line with those of other states and the federal government.

Likewise, Proposition 66 does not violate the single subject rule. The name of the proposition – the "Death Penalty Reform and Savings Act of 2016" – clearly alerts the reader to its subject matter – death penalty reform. Because the provisions of Proposition 66 all relate to death penalty reform, it complies with the single subject rule.

Finally, to the extent the Court may find any provision of Proposition 66 invalid, there are no grounds for striking down the proposition down in its entirety. The various provisions of Proposition 66 at issue are independent from each other, and the unchallenged provisions of the proposition. As such, the Court should reject Petitioners' request to invalidate Proposition 66 in its entirety.

A. PROPOSITION 66 DOES NOT UNCONSTITUTIONALLY INTERFERE WITH THE COURTS' JURISDICTION TO HEAR HABEUS CORPUS PETITIONS

Proposition 66 does not unlawfully interfere with California's courts'

jurisdiction to hear petitions for habeas corpus by requiring petitioners to file them in the original trial court absent good cause. In fact, it merely reflects the policy this Court discussed in *Griggs v. Superior Court* (1976) 16 Cal.3d 341, where it opined that a challenge to a particular judgment or sentence "should be transferred to the court which rendered judgment if that court is a different court from the court wherein the petition was filed." (*Id.* at 347.)

Penal Code section 1509, as amended, provides that a habeas petition filed in any court other than the court which imposed a death sentence shall be transferred to the sentencing court unless good cause exists for it to be heard by another court. (Penal Code § 1509 (a.))

The Petitioners' claim that Penal Code 1509 deprives the courts of jurisdiction is not supported by *In re Roberts* (2005) 36 Cal.4th 575, 582, which Petitioners rely on in their opening brief. While *Roberts* stated that "generally speaking a petition for writ of habeas corpus should not be transferred to another court unless a substantial reason exists for such transfer," it went on to state that directing collateral attacks on criminal judgments to the original trial court *was* such a substantial reason. (*See* 36 Cal. 4th at pp.586-88.)

The appellate courts may still hear an original habeas petition under Proposition 66 – so long as good cause is shown for not having the original trial court hear it. As such, the Court should reject Petitioners' claim that Proposition 66 unconstitutionally interferes with the courts' jurisdiction to

hear habeas petitions.

B. PROPOSITION 66 DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE

Proposition 66 regulates matters of judicial procedure – it does not limit or impair the original jurisdiction of the appellate courts. (*Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 252.) The Legislature may put reasonable restrictions upon constitutional functions for the courts – they are only barred from taking actions that "defeat or materially impair the exercise of those functions." (*Bryndonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 444.) The restrictions set forth in Proposition 66 neither defeat nor materially impair the courts' functions.

It is axiomatic that the legislative branch of the government is empowered to establish the rules of law that courts must use to decide future cases. The Legislature has the power to prescribe the rules, and the judiciary has the power to interpret them. (*Plaut v. Spendthrift Farm* (1995) 514 U.S. 211, 222.) The legislative branch has the right to determine the procedural and substantive rules of law by which causes of action will be decided by the courts. Habeas corpus is not an excluded from this principle. While there are limits on the legislative authority's power – for example, the California Constitution prohibits cruel and unusual punishment[2], or grossly unfair

[2] Cal. Const., art. I §§ 17, 27.

procedures[3], the Petitioners have not claimed Proposition 66 contravenes such limits.

The Petitioners cannot impede the will of the people by claiming Proposition 66 imposes new burdens on the judiciary, or restrict authority they previously exercised. As set forth in *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 59, a statute is not unconstitutional merely because it "increases a court's burden" or "restrict[s] the authority previously exercised by the court."

1. Proposition 66's Filing Deadlines Do Not Impair the Court's Constitutional Functions

Proposition 66's new timeliness requirement for filing habeas petitions does not materially impede or impair the judiciary. Indeed, the U.S. Supreme Court previously suggested that "the California Legislature might itself decide to impose more determinate time limits, conforming California law in this respect with the law of most other States." (*Evans v. Chavis* (2006) 546 U.S. 189, 199.)

There is no merit to Petitioner's claim that Penal Code section 1239.1 overrules California Rules of Court Rule 8.63, which allows courts to extend filing timelines upon a showing of good cause. Penal Code section 1239.1 (a) provides that the court shall only grant extensions of time for briefing for "compelling or extraordinary reasons." Good cause is still the standard of

[3] *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 314.

review for extensions of time to file appellate briefs. 1239.1 emphasizes that such extensions are for compelling reasons – not mere convenience of the parties. This is not a deviation from the existing good cause standard.

2. Proposition 66's Adjudication Deadlines Do Not Infringe on the Courts' Constitutional Functions

Likewise, Proposition 66's timeliness requirement for adjudicating habeas petitions does not, as a matter of law, unconstitutionally impair or impede the judiciary. Pursuant to Proposition 66, Penal Code section 190.6(d) would require the courts to complete the state appeal and initial habeas corpus review in capital cases within five years after the entry of judgment. While Petitioners claim this requirement would infringe on the court's ability to decide cases, they do not – and cannot – offer any facts showing such a time limitation is unreasonable, or that it would deprive the courts of their ability to control their business or give due consideration to capital cases. As such, there is no merit to the Petitioners' argument that placing a time limit on the time to adjudicate appeals infringes on the judicial branch's powers.

Merely establishing a time limit by which proceedings must be completed does not impair the courts' functions, nor is it without precedent. The Legislature already requires civil matters to be brought to trial within five years pursuant to Code of Civil Procedure section 583.310. Code of Civil Procedure section 582.360 provides an action shall be dismissed by the court

on its own motion if it is not brought to trial within five years of filing. This five-year limitation has survived constitutional scrutiny. (*See Muller v. Muller* (Cal. App. 1st Dist. 1960) 179 Cal.App.2d 815, 819 ("The power of the legislature to provide reasonable periods of limitation, therefore, is unquestioned, and the fixing of time limits within which particular rights must be asserted is a matter of legislative policy the nullification of which is not a judicial prerogative."))

Penal Code section 190.6(d) does not mandate dismissal if an appeal or habeas petition is not brought to trial within five years. It merely provides that the court may be subject to a writ of mandate to decide the matter.

There is no basis for Petitioners' claim that legislation authorizing a higher court to issue a writ of mandate to a lower court to remedy undue delay would somehow violate the separation of powers. Proposition 66 does create an absolute or inflexible rule requiring the courts to wrap up capital appeals without regard to the circumstances. It recognizes the fact that some proceedings may take longer than five years, and limits the use of mandamus to cases of unjustified delay. As such, the plain language of the proposition contradicts Petitioners' claim that courts would be subjected to mandamus to compel action when adjudication takes more than five years.

C. PROPOSITION 66 DOES NOT VIOLATE THE SINGLE SUBJECT RULE

Proposition 66 does not violate the Constitution's single subject rule.

The "single subject rule" provides "a statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not in its title, the part not expressed in void. (Art. IV, § 9 Cal. Const.) This rule must be "liberally construed to uphold proper legislation and not used to invalidate legitimate legislation." (*Marathon Entertainment, Inc. v. Blasi* (2006) 42 Cal.3d 574, 988.) Numerous provisions governing projects "so related and interdependent as to constitute a single scheme... and provisions auxiliary to the scheme's execution may be adopted as part of a single package." (*Id.* at p. 988-89 (*citing Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1097.) The single subject rule does not require that the act's title be an index or abstract of its provisions – it just needs to intelligently refer to the reader the subject to which the act applies. (*Id.* at p. 989.)

Here, the title "Death Penalty Reform and Savings Act of 2016" provides enough information for the reader to determine what subject to which the act applies – namely, the death penalty. The provisions of the act all relate to death penalty reforms. As set forth below, there is no merit to Petitioners' claim that provisions requiring death penalty prisoners to work, exempting death penalty decisions from Administrative Procedures Act review, and streamlining the appeals process are distinct subjects. Indeed, the Petitioners acknowledge the general purpose of Proposition 66 is "the expedition of death penalty appeals and reduction of costs related to carrying out the death penalty."

Expediting death penalty appeals and reducing costs related to carrying out the sentence are intricately interwoven. When appeals move faster, the ultimate determination of the appropriateness of the sentence is reached in an expeditious manner. As a result, the sentence – once reviewed – can be carried out without undue delay. Therefore, the inmate will not languish in state penitentiaries, being fed, clothed, housed, and provided health care. This will reduce costs.

D. THERE IS NO JUSTIFICATION FOR ENJOINING PROPOSITION 66 AS A WHOLE

If the Court determines that certain parts of Proposition 66 should be struck down, there is no basis for invalidating the proposition in its entirety. Petitioners seek to invalidate various provisions of Proposition 66, but do not adequately explain why any of these provisions cannot be implemented independently of each other, or that other reforms in Proposition 66 cannot be implemented independently from the challenged ones.

The reforms the Petitioners challenge are independent from each other. For example, the venue provision specifying which court should hear capital appeals, absent good cause to hear them in a different court, can be implemented without regard to the provisions of Proposition 66 mandating deadlines for filing or adjudicating such appeals. Such timelines would not be affected by which court hears the case and applies them.

Likewise, the challenged provisions are independent of the parts of

Proposition 66 Petitioners do not challenge. For example, the first sentence of Penal Code section 3604.1(a), which Proposition 66 adds to the Penal Code, merely abrogates a recent appellate decision[4] subjecting execution protocols to the Administrative Procedure Act - restoring the law to what it was understood to be before that decision. Petitioners do not argue why this provision is not independent from the other challenged provisions of Section 3604.1.

Proposition 66 contains an express severability clause (See Prop. 66, § 21.) If the Court determines that parts of the Proposition are invalid, it may leave the remaining provisions intact.

IV.
CONCLUSION

For the foregoing reasons, PORAC respectfully asks the Court to reject the Petitioners' petition in its entirety.

Respectfully submitted,

Dated: January 9, 2017

MASTAGNI HOLSTEDT, APC

DAVID P. MASTAGNI
DAVID E. MASTAGNI
ISAAC S. STEVENS
Attorneys for the Amicus Curiae

[4] *See Morales v. CDCR* (2008) 168 Cal.App.4th 729

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that this brief consists of 3,583 words, as counted by the computer program used to generate the document.

Dated: January 9, 2017

MASTAGNI HOLSTEDT, APC

DAVID P. MASTAGNI
DAVID E. MASTAGNI
ISAAC S. STEVENS
Attorneys for the Amicus Curiae

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 1912 I Street, Sacramento, California 95811.

On **January 9, 2017** I served the within:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] BRIEF OF AMICUS CURIAE IN OPPOSITION TO PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in California, addressed as follows:

Party	Attorney
John Van de Kamp, Ron Briggs, Petitioners	Christina Marie Von Der Ahe Rayburn Orrick, Herrington & Sutcliffe, LLP 2050 Main Street Suite 1100 Irvine, CA 92614-8255 Lillian Jennifer Mao Orrick, Herrington & Sutcliffe, LLP 1000 Marsh Road Menlo Park, CA 94025
Jerry Brown, Kamala Harris, Judicial Council of California, Respondents	Attorney General - San Francisco Office

	455 Golden Gate Avenue, Suite 11000 San Francisco, CA

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 9, 2017** at Sacramento, California.

PATRICK R. BARBIERI
Paralegal