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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JEREMIAH IRA WILLIAMS,

Defendant and Appellant.

Case No. S262229

Fourth Appellate District, Division One, Docket No. D074098
San Diego County Superior Court, Case No. SCD268493
The Honorable Kenneth K. So, Judge

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF ON BEHALF OF THE CALIFORNIA DISTRICT ATTORNEY'S ASSOCIATION IN SUPPORT OF THE ATTORNEY GENERAL, PLAINTIFF AND RESPONDENT

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APPLICATION FOR PERMISSION
TO FILE AMICUS CURIAE BRIEF

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

The California District Attorneys Association (CDAA), as amicus curiae, hereby requests permission to file the enclosed amicus curiae brief in support of the Attorney General, Plaintiff and Respondent in the above captioned matter.

The California District Attorneys Association (CDAA), the statewide organization of California prosecutors, is a professional organization incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 3,500 members, including elected and appointed district attorneys, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials.

CDAA presents prosecutors' views as amicus curiae in appellate cases when it concludes that the issues raised in such cases will significantly affect the administration of criminal justice. The case before this Court presents issues of the greatest interest to California prosecutors. As the statewide association of these prosecutors, amicus curiae, CDAA is familiar and experienced with the issues presented in this proceeding.

California Rules of Court, rule 8.520, subdivision (f)(3), states that an application to file an amicus curiae brief must state the applicant's interest and how the proposed amicus curiae brief will assist the court in the deciding this matter.

Respectfully, the undersigned's interest stems from a long history in serving as the Supervising Deputy District Attorney of the San Diego County District Attorney's Lifer Hearing Unit since its inception in 1995,

appearing at hundreds of parole hearings, and serving as the subject matter expert and in the state for CDAA and prosecutors engaged in this line of work. The undersigned retired from the San Diego County District Attorney' Office on March 26, 2021. Prior to retirement, the undersigned has filed amicus briefs on behalf of CDAA in all of the recent California Supreme Court lifer/parole cases including, *In re Mohammad Mohammad* (S259999 [pending oral argument in September], *In re Palmer II* (2021) 10 Cal.5th 959; *In re Palmer I* (S252145) [review dismissed after the Board of Parole Hearings adopted final regulations governing youth offender parole hearings]; *In re Butler* (2018) 4 Cal.5th 728, *In re Vicks* (2013) 56 Cal.4th 274, *In re Shaputis* (2011) 53 Cal.4th 192 [*Shaputis II*], *In re Shaputis* (2008) 44 Cal.4th 1241 [*Shaputis I]*, *In re Lawrence* (2008) 44 Cal.4th 1181, and *In re Dannenberg* (2005) 34 Cal.4th 1061, etc.

Members of the Association have formed a Lifer Committee which, together with the Appellate Committee, are concerned that this case raises matters of grave concern to prosecutors and represents a serious threat to victims of violent sexual offenses justice statewide. We respectfully submit that the proposed brief will assist the court in deciding this matter by casting further light on the issue of whether Penal Code section 3051, subdivision (h), violates the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration.

Pursuant to Rule 8.520(f)(4), the applicant states that no party nor counsel for a party in this appeal authored in whole or in part the proposed amicus brief, nor made any monetary contribution to fund the preparation or submission of the proposed amicus brief. Applicant further states that no person or entity made any monetary contribution to fund the preparation or

submission of the proposed amicus brief other than amicus curiae and its members.

The applicant is familiar with the questions involved in this case and the scope of their application. Consequently, additional argument and briefing on these points will be helpful and for these reasons the California District Attorneys Association asks that this Court accept the attached brief and permit them to appear as amicus curiae.

Date: August 5, 2021

Respectfully submitted,

GREGORY D. TOTTEN, SBN 106639
Chief Executive Officer
California District Attorneys Association

By:

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BRIEF OF AMICUS CURIAE
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

ISSUES PRESENTED

Whether Penal Code section 3051, subdivision (h), violates the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first-degree murder are entitled to such consideration?

INTRODUCTION AND SUMMARY OF ARGUMENT

Youthful offender parole hearings are designed to give an individual who committed their controlling offense while under age 26 a chance to demonstrate they have achieved sufficient growth and maturity such that they are no longer deemed to be a "current threat" to society. (See Pen. Code section 3051; *In re Lawrence* (2008) 44 Cal.4th 1181, 1210.) Individuals sentenced to an indeterminate and/or lengthy determinate term may receive a parole hearing many years before they otherwise would be eligible to do so under this provision.

However, the legislature decided that persons convicted under the One Strike sex offender law (Pen. Code section 667.61) are excluded from a youthful offender parole hearing. The issue before this Court is whether One Strike sex offenders are being denied equal protection of the law since youthful offenders convicted of first-degree murder are eligible for the hearing.

Upon close inspection, it appears that youthful One Strike sex offenders and youthful first-degree murderers are not similarly situated for

equal protection purposes, as they are two completely different classes of crimes. Courts have even found distinctions among the same class of crimes (e.g., degrees of attempted murder) that warranted a further finding that the individuals committing these offenses would not be similarly situated for equal protection purposes.

Even if, assuming arguendo, the two classes of offenders were deemed to be similarly situated for equal protection purposes, there appears to be a rational basis to distinguish between them based on the grave, and long-lasting harm that sex offenders inflict upon their victims, and the desire to avoid further victimization and recidivism.

ARGUMENT

I.

THE LEGISLATURE DETERMINED THAT PERSONS WHO COMMIT VIOLENT SEXUAL OFFENSES SHOULD NOT BE GIVEN EARLY [YOUTHFUL] PAROLE HEARINGS

In 1993, the California Legislature passed strong legislation to combat the danger posed by individuals who commit violent sexual offenses against their victims. This was special legislation targeted against sexually violent individuals who they felt could not be "cured of [their] aberrant impulses and must be separated from society to prevent reoffense." (*People v. Wutzke* (2002) 28 Cal.4th 923, 929-930.) It was known as the "One Strike" sex offender law, and it provided for indeterminate life-top terms with a minimum of 15 or 25 years depending upon the circumstances of the offense. (Pen. Code § 667.61 [added by Stats. 1993-1994, S.B. 26, effective Nov. 30, 1994].)

If certain aggravated circumstances were found to be true such as torture, infliction of great bodily injury, tying and binding, administration of drugs, offenses committed inside the sanctity of the victim's residence, etc., the perpetrator was simply removed from society with an indeterminate term of

imprisonment imposed. Upon conviction, the One Strike sex offender law mandated indeterminate life terms with a minimum of 15 or 25 years for these individuals. (See Pen. Code § 667.61, subds. (a), (b), (d) and (e) for the complete list of circumstances and sentencing criteria.)

An important question to ask is why this statutory provision provided for such harsh punishment upon an individual for sexual offenses committed on a single occasion (one strike). The answer appears to be found in the legislative history and common sense—it is very straightforward: These types of violent sexual offenders often terrorize their victim at the time of the forcible sex crimes, inflict physical injury (as in the instant case where the defendant beat the victim and broke her jaw, permanently causing one side to be lower), puts them in fear of death and disease which frequently leads to post-traumatic stress, causes life-long suffering for many years after the crimes, and poses the highest risk of danger to society for future victims due to their inability to control their aberrant and sexual impulses. The harm they inflict is shocking and it frequently occurs against an unsuspecting stranger and upon society's most vulnerable victims—women and children who are often beaten, raped, sodomized, and left for dead. (See e.g., *People v. Clark* (2011) 52. Cal.4th 856, 871, 926.)

Thus, the One Strike sex law was designed to address all these ills. California essentially stated once is enough. The One Strike sentence was designed to provide a measure of protection for society from repeat offenders who commit these monstrous acts.

The One Strike sex law was also passed at a time when California was deeply concerned with the danger posed by recidivist criminals. During this period the Three Strikes law was also passed. Many other laws were strengthened to prevent the cycle of victimization by the same perpetrator.

The youthful offender parole hearing scheme became law in a different period of time in California, (approximately 20 years later) when revelations

about the judgment and reasoning ability of minors came into focus. Based upon a series of court decisions, the youthful offender parole hearing law was designed to address a minor's lack of fully formed judgment and reasoning and to provide a mechanism whereby they can receive parole consideration for "the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and maturity of the individual." (Pen. Code § 3051, subd. (f)(1); (See e.g., *People v. Caballero* (2012) 55 Cal.4th 262.)

However, the Legislature did not provide for these early (youthful) parole hearings for everyone. Even when the law was originally passed, those 18 and under were excluded if they were convicted under the One Strike sex law. (See SB 260, 2013 Cal. Legis. Serv., Ch. 312.) Despite the realities of the poor decision making of youth, the Legislature still excluded this special class of sex offenders described above. (Pen. Code § 3051, subd. (h).) Later, the law was twice extended to older inmates and was thus amended to provide for youthful parole hearings to any inmate who committed their offense while 25 years of age or younger; however, the exclusion for One Strike sex offenders has always remained intact. As will become clear, this significant decision was certainly a rational reaction to the grave harm the Legislature hoped to avoid by subjecting these inmates to incarceration for the protection of society.

II.
GENERAL PRINCIPLES GOVERNING EQUAL PROTECTION CLAIMS CAST DOUBT ON APPELLANT'S ASSERTION THAT PENAL CODE SECTION 3051(h) IS UNCONSTITUTIONAL

An individual bears a significant burden to prevail in an equal protection challenge. In general, "'the burden of establishing the unconstitutionality of a statute rests on [the party] who assails it ….' [Citation.]" (*Brown v. Superior Court* (1971) 5 Cal.3d 509, 520.) A statute must be upheld unless its unconstitutionality is clearly, positively, and unmistakably demonstrated.

(*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780; *Calfarm Insurance Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814; *In re Ricky H.* (1970) 2 Cal.3d 513, 519; *In re Elizabeth T.* (1992) 9 Cal.App.4th 636, 640.)

More particularly, "Both the state and federal Constitutions provide that no person shall be deprived of equal protection of the laws. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7, subd. (a).)" (*People v. Valladares* (2009) 173 Cal.App.4th 1388, 1397-1398.) "Equal protection under the state and federal Constitutions requires that persons similarly situated must receive like treatment under the law." (*People v. Doyle* (2013) 220 Cal.App.4th 1251, 1264.)

A challenge under the equal protection clause must get over the high bar set to overturn an existing statutory provision. "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530, italics in original; see also *City of Cleburne, Tex. v. Cleburne Living Center* (1985) 473 U.S. 432, 439; *In re Lemanuel C.* (2007) 41 Cal.4th 33, 47.) "[A] defendant … must establish that he was similarly situated to a group that is treated unequally under the existing law." (*People v. Kennedy* (2009) 180 Cal.App.4th 403, 410.) Failure to establish that the two groups under consideration are similarly situated ends the equal protection inquiry.

"Generally, offenders who commit different crimes are not similarly situated." (*People v. Doyle*, *supra*, 220 Cal.App.4th at p. 1266.) The equality guaranteed by the equal protection clauses of the federal and state Constitutions is equality under the same conditions, and among persons similarly situated. The Legislature may make reasonable classifications of persons and other activities, provided the classifications are based upon some legitimate object to be accomplished. (*Adams v. Commission on Judicial Performance* (1994) 8

Cal.4th 630, 659; see also *People v. Jeha* (2010) 187 Cal.App.4th 1063, 1073; *People v. Alvarado* (2010) 187 Cal.App.4th 72, 76.)

If a defendant can demonstrate that that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner, courts look to determine whether this is a rational basis for such a showing. (*In re C.B.* (2018) 5 Cal.5th 118, 134; *Warden v. State Bar* (1999) 21 Cal.4th 628, 645.) Under the rational basis test, a statute must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational or plausible basis for the classification. (*Warden v. State Bar* (1999) 21 Cal.4th 628, 645.)

Put another way, "'[T]he equal protection clause is not an authorization to the courts to second-guess the Legislature on the best way to deal with aspects of a problem.' [Citation.]" (*People v. Valdez* (2009) 174 Cal.App.4th 1528, 1532.) "When conducting rational basis review, we must accept any gross generalizations and rough accommodations that the Legislature seems to have made. A classification is not arbitrary or irrational simply because there is an 'imperfect fit between means and ends.' [Citation.]" (*People v. Turnage* (2012) 55 Cal.4th 62, 77.)

As will become clear, these guiding principles establish that courts reviewing an equal protection challenge under the rational basis test should apply a very deferential standard to the legislative measure in question. (See *People v. Turnage* (2012) 55 Cal.4th 62, 74.) This core feature of equal protection review sets a high bar before a law is deemed to lack the minimal rationality necessary for it to survive constitutional scrutiny. Coupled with a rebuttable presumption that legislation is constitutional, this high bar helps ensure that democratically enacted laws are not invalidated merely based on a court's cursory conclusion that a statute's trade-offs seem unwise or unfair.

III.

ONE STRIKE SEX OFFENDERS AND MURDERERS ARE NOT SIMILARLY SITUATED FOR EQUAL PROTECTION PURPOSES

In order to prevail upon a claim that a law violates the equal protection clause, a defendant must first show that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530, italics in original.)

This Court has framed the issue by asking whether Penal Code section 3051, subdivision (h), violates the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first-degree murder are entitled to such consideration?

"Broadly stated, equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws [that] is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness.' [Citation.]" [Citation.] It does not mean, however, that "'things … different in fact or opinion [must] be treated in law as though they were the same.' [Citation.]" [Citation.]) "[N]either the Fourteenth Amendment of the Constitution of the United States nor the California Constitution [citations] precludes classification by the Legislature or requires uniform operation of the law with respect to persons who are different." [Citation.] (*People v. Guzman* (2005) 35 Cal.4th 577, 591; see also *People v. Mendoza* (2016) 62 Cal.4th 856, 912.)

In *People v. Moseley* (2021) 59 Cal.App.5th 1160 the Second District Court of Appeal found in a 2-1 decision there was no constitutional infirmity in Penal Code section 3051, subdivision (h), in a similar equal protection challenge to the case at bench (comparing youthful One Strike

sex offenders to youthful murderers). This Court granted review on April 14, 2021, placing the matter on grant and hold. (*People v. Moseley* (2021) 59 Cal.App.5th 1160, review granted April 14, 2021 (S267309) [on grant and hold status (Cal. Rules of Court, rule 8.512, subd. (d).])

Your amicus recognizes that the *Moseley* opinion may not be cited as precedent, as review has been granted and it is not final; however, we wish to rely instead upon persuasive value of the court's reasoning.[1]

The court in *Moseley* examined whether youthful One Strike sex offenders and youthful murderers were similarly situated for purposes of an equal protection challenge. The court stated that youthful sex offenders and youthful murderers were *not* similarly situated because offenders who commit different crimes are simply not similarly situated. (*People v. Moseley*, *supra*, 59 Cal.App.5th at p. 1169.) The court concluded that defendant Moseley, a youthful sex offender, is not similarly situated to a youthful murderer as they are different crimes. (Ibid.)

In reaching this conclusion, *Moseley* relied upon the decision in *People v. Macias* (1982) 137 Cal.App.3d 465. *Macias* concerned a case in which the defendant was convicted of attempted murder and unsuccessfully claimed he was denied equal protection of the law because his sentence "for attempted *second* degree murder is identical to that imposed on one convicted of attempted *first* degree murder."[2] (*Id*. at p. 468.)

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[1] Under a recent amendment to rule 8.1115 of the California Rules of Court, this Court may rely on the Court of appeal's decision as persuasive authority while review is pending. (See Cal. Rules of Court, rule 8.1115, subd. (e)(1), eff. July 1, 2016; see also, Cal. Rules of Court, rule 8.1105, subd. (e).)

[2] The law and sentencing have undergone a series of changes in the attempted murder arena; however, the logic and reasoning of the court remains useful. (*People v. Macias* (1982) 137 Cal.App.3d 465, 472, fn. 3; see also, Pen. Code §§ 664, 187, and 189.)

It is important to note that the crimes compared in *Macias* seem more closely related to those in the case at bench (degrees of attempted murder versus sex offenses and first-degree murder). Despite this reality, the court did not find an equal protection violation.

The court began its discussion of the issue by analyzing whether the state had adopted a classification that affected two or more similarly situated groups in an unequal manner. More particularly, they examined whether Macias was similarly situated with other offenders for equal protection purposes, for unless that prerequisite was satisfied, the argument would fail to clear the first hurdle. The court quoted the legendary justice Felix Frankfurter who famously stated: "'The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.'" (*Id*. at pp. 472-473.)

The court stated: "Persons convicted of different crimes are not similarly situated for equal protection purposes." The "crimes differ from each other in many ways, 'including the reasons and motive of the criminal, the *outrage and harm* to the victim, and the *potential for danger* to the victim and society in general.'" (*Id*. at p. 473, emphasis added.)

Since *Macias* was decided, this Court has noted there are situations in which the general rule that persons convicted of different crimes are not similarly situated for equal protection purposes does not apply. In *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199–1200, this Court held that offenders who commit different crimes are similarly situated for equal protection analysis when the crimes are not sufficiently different to justify different treatment. (*Id*. at p. 1200.)

In *Hofsheier*, this Court considered mandatory sex offender registration under Penal Code section 290. The law required adults convicted of voluntary oral copulation with a minor 16 years or older to register for life as a sex offender; however, the law did not require adults

convicted of voluntary sexual intercourse with a minor 16 years or older to register unless the trial court exercised its discretion to require registration. (*People v. Hofsheier*, *supra*, 37 Cal.4th at p. 1198.)

In *Hofsheier*, this Court held that the general rule (offenders who commit different crimes are not similarly situated) cannot be an absolute rule "because the decision of the Legislature to distinguish between similar criminal acts is itself a decision subject to equal protection scrutiny." (*Id*. at p. 1199, fn. omitted.) The equal protection clause "'imposes a requirement of some rationality in the nature of the class singled out.' [Citations.] Otherwise, the state could arbitrarily discriminate between similarly situated persons simply by classifying their conduct under different criminal statutes. [Citation.]" (*Ibid.*)

In analyzing the case further, this Court stated: "The only difference between the two offenses is the nature of the sexual act. Thus, persons convicted of oral copulation with minors and persons convicted of sexual intercourse with minors 'are sufficiently similar to merit application of some level of scrutiny to determine whether distinctions between the two groups justify the unequal treatment.'" (*Id*. at p. 1200.)[3]

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[3] There appears to be no bright-line rule for when those committing different crimes must be treated similarly. In a federal case discussing *Hofsheier*, *supra* (cited herein for its reasoning, as non-binding authority; *see* e.g., *Trichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1070, f/n. 10), the court found that even persons convicted of a DUI manslaughter and a *Watson* murder [*People v. Watson* (1981) 30 Cal.3d 290] are not similarly situated for equal protection purposes: "A DUI manslaughter is committed by causing a death, without malice, while driving under the influence. A *Watson* murder, on the other hand, requires implied malice." (*Doyle v. Rackley* (2018) (2018 WL 1586356, United States District Court, E.D. California, No. 2:15–cv–2069, memorandum opinion at p 10.)

In the instant case, two completely different classes of crimes are being considered: Forcible violent sex offenses and first-degree murder. It appears at first blush there lacks sufficient similarity between the two classes of offenses to require further equal protection analysis.

Under more detailed analysis and scrutiny, it appears the distinction holds even more weight. "[T]he essence of the crime of rape is the outrage to the person and feelings of the female resulting from the nonconsensual violation of her womanhood." (*In re John Z.* (2003) 29 Cal.4th 756, 760; see also Pen. Code § 263.) Clearly, the victim of the crime is subject to potentially life-long trauma and post-traumatic stress. Not only must she face the fear of being murdered after the completion of the sexual acts,[4] but she must also live in the fear that the perpetrator has inflicted her with diseased bodily fluids. Her sense of security is shattered, and the sanctity of the home is in question.

The physical and mental injuries of a sex offense victim are yet another realty to contend with. The survivor often bears painful physical and mental reminders of the brutal encounter with each and every new day. Sleep patterns can also be disturbed. Relationships and trust can be affected to the point where marriage and having a family can be jeopardized. (See e.g., *Janice H. v. 696 North Robertson*, LLC (2016) 1 Cal.App.5th 586, 603; see also, Rape Trauma Syndrome (1974) 131 Am.J.Psychiatry 981, 983 and McCahill et al., The Aftermath of Rape (1979) p. 73 ["Rape is a devastating phenomenon. It dramatically changes the way in which the victim perceives and interacts with other people, and it often changes the way in which she perceives herself."].)

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[4] Experience has shown that sex offense victims fear murder after the completion of the sexual acts due to a desire on the defendant's part to silence them as a victim and witness, and again, many years later as an act of revenge for incarceration.

As bad as all first-degree murder cases are, they are simply not similar. The first-degree murder offense can range from situational (a premeditated decision to kill over gang or drug issues) all the way to premediated torture and dismemberment. Certainly, this type of crime is almost always heinous and atrocious; however, the victim is gone and no longer has a voice. The family is left behind as next of kin to live with the aftereffects of the horrible crime. Eventually, they can try to achieve some measure of closure. The same is extremely difficult for the sex offense victim. The scars are everlasting. She lives with the crime for the rest of her life—terrified and suffering in so many ways, even after some measure of closure is attempted or achieved.

On one hand there is a living, breathing, suffering individual, likely scarred and fearful of many situations, and on the other hand there is a poor victim who has been murdered and silenced forever, without a voice other than the prosecutor or next of kin who can somehow attempt to speak for them.

Your amicus recognizes that both offenders being compared are "youthful" as defined by the law. However, your amicus respectfully submits that even youthful offenders who commit these two classes of crimes are not similarly situated. The crimes differ from each other in so many aspects "'including the reasons and motive of the criminal, the *outrage and harm* to the victim, and the *potential for danger* to the victim and society in general.'" (*People v. Macias*, *supra*, 137 Cal.App.3d at p. 473, emphasis added.)

It bears noting that "[e]qual protection analysis does not entitle the judiciary to second-guess the wisdom, fairness, or logic of the law. (*Heller v. Doe* (1993) 509 U.S. 312, 319.)" (*People v. Turnage* (2012) 55 Cal.4th 62, 74.) Thus, for example, "[t]he Legislature is not bound, in order to adopt a constitutionally valid statute, to extend it to all cases which might possibly be

reached, but is free to recognize degrees of harm and to confine its regulation to those classes of cases in which the need is deemed to be the most evident." (*Board of Education v. Watson* (1966) 63 Cal.2d 829, 833.) "[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all." (*Dandridge v. Williams* (1970) 397 U.S. 471, 486-487.) Thus, for example, "[t]he right to equal protection of the law generally does not prevent the state from setting a starting point for a change in the law." (*People v. Lynch* (2012) 209 Cal.App.4th 353, 359.)

In *People v. Karsai* (1982) 131 Cal.App.3d 224, the court stated that violent sex offenses "differ from other types of offenses in many ways, …." (*Id*. at p. 244.) Noting that the differences include the motive for the crime, the harm to the victim and the danger to society, the court concluded "[t]hese differences compel different treatment. We conclude that violent sex offenders are not similarly situated with other offenders and thus may be treated differently." *(Ibid.*)

Courts considering even the same classes of crimes have found reasonable distinctions that warranted foregoing with an equal protection analysis (attempted murder degrees, etc.) Upon close inspection, and cognizant of the realities of what violent sex offenders do and are capable of, the different classes of crime presented here are simply not similarly situated. Side by side they seem more like apples and oranges.[5]

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[5] This conclusion is buttressed by the fact that youthful first-degree murderers can achieve rehabilitation depending on the circumstances of their offense and whether there were mitigating factors, as well as growth and maturity during incarceration. The same cannot be said about demented, aberrant, albeit youthful, violent sexual offenders. The defining characteristics of these types of offenses are power, control, and sadistic sexual gratification. Ordinarily, there are no mitigating factors present in these types of violent sex offenses (beating the woman, fracturing her bones, committing rape and sodomy, etc.) Once they have crossed the line

IV.

THE LEGISLATURE HAD A RATIONAL BASIS TO DISTINGUISH BETWEEN ONE STRIKE SEX OFFENDRS AND MURDERERS IN THE YOUTHFUL OFFENDER STATUTE

Even if, assuming *arguendo*, this Court found that young adults convicted and sentenced for serious sex crimes under the One Strike law were similarly situated to young adults convicted of first-degree murder, your amicus respectfully submits there is a rational basis for the distinction.

A statutory system that treats similarly situated groups in an unequal manner does not necessarily violate equal protection. (*People v. Jeha* (2010) 187 Cal.App.4th 1063, 1073.) "Instead, a finding that a defendant is similarly situated requires [courts] to determine whether the statutorily authorized difference in treatment withstands the appropriate level of scrutiny." (*Ibid*.) At a minimum, a statutory classification must be rationally related to a legitimate governmental purpose.

"In the absence of any demonstration of a suspect classification or a distinction that impacts a fundamental right, the challenged disparity in treatment need only survive rational basis scrutiny." (*In re C.B.* (2018) 5 Cal.5th 118, 134.) Under the rational basis test, a statute must be upheld against equal protection challenge if there is any reasonably conceivable state of

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into One Strike sexual offense behavior, rehabilitation seems to be a difficult concept. Your amicus has served 36 years as a prosecutor and has had many cases in which he has *not* opposed parole of a rehabilitated murderer. The same cannot be said of a violent, One Strike sex offender. In any event, even a youthful One Strike sex offender will ordinarily receive a chance to demonstrate rehabilitation at an elderly parole hearing 20 years into their incarceration, and after attaining age 50. (See Pen. Code § 3055 and Board of Parole Hearings Elderly Parole Memorandum [www.cdcr.ca.gov/bph/elderly-parole-hearings-overview].)

facts that could provide a rational or plausible basis for the classification. (*Warden v. State Bar* (1999) 21 Cal.4th 628, 645.)

> On rational-basis review, a classification in a statute … comes to us bearing a strong presumption of validity, … and those attacking the rationality of the legislative classification have the burden "to negative every conceivable basis which might support it." [Citations.] Moreover, because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. (*F.C.C. v. Beach Communications, Inc.* (1993) 508 U.S. 307, 314-315.)

"Where … 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."' [Citations.] '[T]his 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. [Citation.] While the realities of the subject matter cannot be completely ignored [citation], a court may engage in '"*rational speculation*" ' as to the justifications for the legislative choice [citation]. It is immaterial for rational basis review 'whether or not' any such speculation has 'a foundation in the record.'" [Citation.] To mount a successful rational basis challenge, a party must "'negative every conceivable basis' " that might support the disputed statutory disparity. [Citations.] If a plausible basis exists for the disparity, courts may not second-guess its "'wisdom, fairness, or logic.'" [Citations.] (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881, emphasis added.) "At bottom, the Legislature is afforded considerable latitude in defining and setting the consequences of criminal offenses." (*Id*. at p. 887.)

Given the lenient and deferential standard of review, and the points made *ante*, there is clearly a rational basis to treat youthful One Strike sex

offenders differently than youthful first-degree murderers. The rational and plausible justification is there is simply too much at stake to allow for the earlier hearings when the perpetrator has committed violent sexual offenses. The Legislature has clearly stated that in enacting Penal Code section 667.61 they recognized that violent sexual criminals could not control their aberrant impulses and a strong measure of protection was needed to enhance public safety and protect people from becoming future victims. Criminals have the advantage of picking the time, place, and type of victimization they wish to pursue. In the One Strike sexual arena, this realty is greatly magnified.

In *People v. Karsai*, *supra*, the court stated "[i]n any event in determining whether an enhancement may be applied to a person convicted of certain offenses where it would not be applied to others the question is whether the Legislature had a rational basis for the classification. [Citations.] We have noted that Penal Code section 667.6 is directed at [sexual] recidivism and multiplicity of offenses. The Legislature could rationally conclude that those matters present a special problem and danger to society in sex offense cases and that they merit special treatment. We cannot say that the statute lacks any rational purpose." (*Id*. at p. 242.)

In *Brown v. Plata*, the seminal case addressing prison overcrowding, Justice Kennedy stated that future victimization is always a matter of grave concern:

> High recidivism rates must serve as a warning that mistaken or premature release of even *one prisoner* can cause injury and harm. The release of prisoners in large numbers—assuming the State finds no other way to comply with the [overcrowding] order—is a matter of undoubted, grave concern." (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1923, emphasis added.)

As noted, courts are mandated to engage in “rational speculation” when examining the rational basis for the distinction. In the instant case, there is more than enough rational speculation and fact to demonstrate the special concern for future victims of these horrifying, life-changing offenses predicated the exclusion of One Strike sex offenders from youthful parole hearings.

We agree with the Attorney General, when he stated at page 48 of his brief: “Under rational basis review, ‘the Equal Protection Clause does not demand a surveyor’s precision’” (*Hughes v. Alexandria Scrap Corp.* (1976) 426 U.S. 794, 814), …. The Legislature could rationally have determined that all sex offenders, including those who commit their crimes while under the age of 25, generally present a heightened risk of recidivism. That conclusion, while subject to debate, falls well within the “’considerable latitude’” afforded to the Legislature in “’defining and setting the consequences of criminal offenses.’” (Answer BOM, pp. 48-49.)

V.

CRIME VICTIMS WERE PROMISED THAT VIOLENT OFFENDERS WOULD NOT BE RELEASED EARLY OR IMPROVIDENTLY

In 2008, the California electorate passed Proposition 9 which was entitled the “Victims’ Bill of Rights Act of 2008: Marsy’s Law” [hereafter “Marsy’s Law”]. This measure made sweeping changes to victims’ rights in California. It provided crime victims and their next of kin several safeguards in the criminal justice process and reformed several aspects of California criminal law with the focus and emphasis upon protecting the rights of crime victims, enhancing the requirements for full restitution, and ensuring that crime victims are informed of the criminal justice process,

and given leave to have their voices heard throughout critical aspects of the proceedings.

In addition, an important goal was to spare crime victims the painful ordeal of unnecessary parole hearings. The preamble to the law made this point clear in several provisions: "The People of the State of California find that the 'broad reform' of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process." (Cal. Const., Art. I, sec. 28, Findings and Declarations, subd. (3).)

Marsy's Law had a clear statement of intent. Notably, the measure provided in pertinent part:

> "Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the *ongoing threat that the sentences of criminal wrongdoers will be reduced*, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end." (Cal. Const., Art. I, sec. 28, subd. (a)(6), emphasis added.)

Thus, recognizing that crime victims were entitled to greater finality consistent with the right to "justice and due process," the measure ultimately sought to spare victims the "ordeal of prolonged and unnecessary suffering…." (Cal. Const., Art. I, § 28, Statement of Purpose and Intent, subd. (2).)

Unfortunately, most of the court decisions determining matters affecting parole eligibility for prison inmates do not consider the rights of

crime victims and their next of kin, especially where such rights are enshrined into the California Constitution.

Certainly, engaging in "rational speculation" (ante., p. 23), sparing crime victims additional parole hearings could be yet another rational basis which makes Penal Code section 3051, subdivision (h) survive constitutional scrutiny. Clearly, this is yet another reason why the provision should not be deemed to violate equal protection as there is a rational basis to the Legislative avoidance of inflicting further pain on sex offense victims and their families by threatening the early release of violent felons.

In In re Vicks (2013) 56 Cal.4th 274, this Court stated, "[o]ne of the principal purposes of Marsy's Law is 'ensur[e] that crime victims are treated with respect and dignity ....'" (*Id.* at p. 310.)

This court went on to state, "[w]e noted in *Ramirez* 'the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society." (*Ibid.*) This Court elaborated as follows:

> "'For government to dispose of a person's significant interests without offering him a chance to be heard is to risk treating him as a nonperson, an object, rather than a respected, participating citizen.' (Ibid.)
> …
> "[C]ertain procedural protections [should] be granted the individual in order to protect important dignitary values, or, in other words, 'to ensure that the method of interaction itself is fair in terms of what are perceived as minimum standards … which express a collective judgment that human beings are important in their own right, and that they must be treated with understanding, respect, and even compassion.'" (Ibid.)

When the Legislature enacted Penal Code section 3051, subdivision (h), it is certainly within the realm of reasonable speculation that it had recidivism and compassion for victims in mind. Your amicus respectfully prays that the rights of crime victims and public safety will be considered in determining the rational basis for the exclusion of One Strike sex offenders from youthful offender parole hearings.

CONCLUSION

Based on the foregoing, the California District Attorneys Association, as Amicus Curiae, respectfully submits that the exclusion of One Strike sex offenders from youthful offender parole hearings does not violate the equal protection clause.

Date: August 5, 2021

Respectfully submitted,

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Chief Executive Officer
California District Attorneys Association

By:

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On Behalf of CDAA Lifer/Parole Committee

Attorneys for Amicus Curiae
California District Attorneys Association

CERTIFICATE OF COMPLIANCE

I certify that the attached AMICUS CURIAE BRIEF uses a 13-point Times New Roman font and contains 5,411 words excluding title page, tables, word count, and signature blocks.

RICHARD J. SACHS
Supervising Deputy District Attorney
(Retired)

DECLARATION OF SERVICE

I am over the age of 18 years and am employed by the California District Attorneys Association. I am not a party to this action. On August 5, 2021, I served the within

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I declare under penalty of perjury that the foregoing is true and correct, and was executed August 5, 2021 at Sacramento, California.

Laura Bell

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STATE OF CALIFORNIA
Supreme Court of California

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California District Attorneys Association
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