

No. S276303

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In the  
Supreme Court of California

THE PEOPLE OF THE STATE OF CALIFORNIA

*Plaintiff and Respondent,*

*v.*

SCOTLANE MCCUNE

*Defendant and Appellant.*

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First Appellate District, Division Five, Case No. A163579  
Napa County Superior Court, Case No. CR183930  
The Honorable Mark S. Boessenecker, Judge Presiding

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**APPLICATION OF THE LOS ANGELES CITY  
ATTORNEYS' OFFICE TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF RESPONDENT THE PEOPLE OF THE  
STATE OF CALIFORNIA; AND AMICUS BRIEF**

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HYDEE FELDSTEIN SOTO, *Los Angeles City Attorney* (SBN 106866)  
KENT J. BULLARD, *Assistant City Attorney* (SBN 176194)  
\*SAHAR NAYERI, *Deputy City Attorney* (SBN 275246)  
Sahar.Nayeri@lacity.org

James K. Hahn City Hall East  
200 North Main Street, 5th Floor  
Los Angeles, California 90012  
Telephone: (213) 473-6900  
Fax: (213) 978-8779

Attorneys for Amicus Curiae  
Los Angeles City Attorney's Office

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES	3
APPLICATION OF THE LOS ANGELES CITY ATTORNEY'S OFFICE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA	5
INTRODUCTION	7
ARGUMENT	8
Defendant's Position That A Trial Court's Authority To Award Restitution Terminates At The End Of The Probationary Period Would Contravene The Constitutional Guarantee Of Full Restitution In All Criminal Cases Regardless Of Their Disposition, And Would Be Particularly Unsound In Misdemeanor Cases, Where AB 1950 Has Shortened The Maximum Probationary Period To One Year For Most Crimes.	8
CONCLUSION	15
CERTIFICATE OF WORD COUNT	16

## TABLE OF AUTHORITIES

	<b>Page</b>
<b>California Constitution</b>	
Article I, section 28	9, 12
<b>Cases</b>	
<i>Mary Meninga v. Raley's</i> (1989) 216 Cal.App.3d 79	11
<i>People v. Broussard</i> (1993) 5 Cal.4th 1067	11
<i>People v. Giordano</i> (2007) 42 Cal.4th 644	9, 13
<i>People v. Gutierrez</i> (2014) 58 Cal.4th 1354	10
<i>People v. Leiva</i> (2013) 56 Cal.4th 498	10, 11
<i>People v. Phelps</i> (1996) 41 Cal.App.4th 946	12
<b>Statutes</b>	
Government Code, § 13967	12
Penal Code, § 1202.4	8, 9
§ 1202.46	8, 9, 10
§ 1203.3	10

## **Other Authorities**

Assembly Bill No. 1950 (AB 1950) (Stats. 2020. Ch. 328)	5, 6, 7
California Rules of Court, Rule 8.520	5

**APPLICATION OF THE LOS ANGELES CITY  
ATTORNEY'S OFFICE TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF RESPONDENT THE PEOPLE  
OF THE STATE OF CALIFORNIA**

The Los Angeles City Attorney's Office requests permission to file the attached Amicus Curiae Brief pursuant to California Rules of Court, rule 8.520, subdivision (f).

As the prosecutorial agency with primary responsibility for prosecuting state-law misdemeanors that occur within the City of Los Angeles, the Los Angeles City Attorney's Office prosecutes tens of thousands of misdemeanor cases per year. Many of these cases involve victim restitution that is ordered as a condition of probation. In many instances, victims need restitution for economic losses that accumulate over a substantial period of time, including medical and mental health counseling expenses and loss of wages, and it can take a long period of time for some victims to gather and present evidence in support of a restitution claim.

The California Constitution guarantees restitution to all crime victims regardless of the sentence or disposition in a criminal case. The issue in this felony case is whether the trial court exceeded its jurisdiction by setting the amount of victim restitution after terminating defendant's five-year probationary period early under Assembly Bill No. 1950 (AB 1950) (Stats. 2020, ch. 328). For most misdemeanor offenses, AB 1950 reduced the maximum probationary period to one year.

The Court's resolution of this case thus has potentially enormous repercussions on victims' constitutional and statutory

rights to restitution. This amicus brief will demonstrate that defendant's position that a trial court's authority to order restitution terminates at the end of the probationary period would entail an absurd result at odds with the constitutional guarantee of full victim restitution in all criminal cases regardless of their disposition, particularly in misdemeanor cases, where AB 1950 has shortened the maximum probationary period to one year for most crimes.

DATED: June 14, 2023

Respectfully submitted,

Hydee Feldstein Soto, Los Angeles City Attorney

Kent J. Bullard, Assistant City Attorney

\*Sahar Nayeri, Deputy City Attorney

By: \_\_\_\_\_ /s/  
Sahar Nayeri, Deputy City Attorney

Attorneys for Amicus Curiae

LOS ANGELES CITY ATTORNEY'S OFFICE

## AMICUS CURIAE BRIEF

### INTRODUCTION

In Proposition 8 (Prop. 8), passed in 1982, California voters declared their “unequivocal intention” that “all persons” who are victims of crime “have the right to seek and secure restitution” for the losses they have suffered as a result of criminal activity. The voters further specifically declared that “[r]estitution shall be ordered from the convicted wrongdoer *in every case, regardless of the sentence or disposition imposed.*” Accepting defendant’s argument in this case would effectively add an additional caveat to the constitutional guarantee – “unless the defendant is placed on probation and the probationary period has terminated” – which would manifestly be an absurd result given voters’ intent that all crime victims receive full restitution in all cases regardless of the disposition.

In this felony case, the trial court thus properly awarded restitution after Assembly Bill No. 1950 (AB 1950) (Stats. 2020, ch. 328) retroactively and prematurely terminated defendant’s five-year probationary period after about two and a half years. And the Court of Appeal correctly affirmed the restitution award. This Court should do the same. Otherwise, victims in many cases where AB 1950 has shortened the maximum probationary period to one or two years may well be denied their constitutionally protected right to restitution because they would require a longer period of time to accumulate their entire expenses and gather

witnesses and documentary evidence in support of their restitution claims.

## ARGUMENT

### **Defendant’s Position That A Trial Court’s Authority To Award Restitution Terminates At The End Of The Probationary Period Would Contravene The Constitutional Guarantee Of Full Restitution In All Criminal Cases Regardless Of Their Disposition, And Would Be Particularly Unsound In Misdemeanor Cases, Where AB 1950 Has Shortened The Maximum Probationary Period To One Year For Most Crimes.**

Penal Code section 1202.4, subdivision (f)<sup>1</sup> states that the “court shall order full restitution” and that if “the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court.” Subdivision (f)(3) further provides that the restitution amount ordered by the court “shall be of a dollar amount that is sufficient to *fully reimburse* the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct” and it provides a long but non-exclusive list of the types of expenses that may be recovered by victims as part of restitution. (See § 1202.4, subd. (f), emphasis added.) In addition, section 1202.4, subdivision (l) provides: “In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation.”

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.



Section 1202.46 provides that “when the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution *until such time as the losses may be determined.*” (Emphasis added.) It further provides: “This section does not prohibit a victim, the district attorney, or a court on its own motion from requesting correction, *at any time*, of a sentence when the sentence is invalid due to the omission of a restitution order or fine pursuant to Section 1202.4.” (Emphasis added.)

Sections 1202.4 and 1202.46 were specifically implemented by the Legislature to achieve the intent of the voters in passing Prop. 8 – that “*all*” victims receive restitution “for losses they suffer” and that restitution be ordered “in *every case, regardless of the sentence or disposition* imposed.” (See *People v. Giordano* (2007) 42 Cal.4th 644, 652, 655 (*Giordano*), emphasis added; see also Cal. Const., art. I, § 28, subd. 13(A)-(B).)

Defendant nevertheless argues that in cases where a defendant is placed on probation, a trial court’s authority to order or modify restitution is limited to the probationary term and terminates automatically at the end of the probationary term. (See Opening Brief on the Merits (OBM) 21-24, 40.) Defendant relies primarily on section 1203.3, subdivision (b)(5), which states: “This section does not prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.” (See *ibid.*) And, citing legislative history, defendant attempts to limit the

broad, express language of section 1202.46 to only cases with non-probationary sentences. (See OBM 35-40.) But in doing so, defendant misreads the statutes.

First, section 1203.3 limits a court's authority to modify the terms and conditions of probation and by its terms speaks to what a court can and cannot do to the terms of probation during the probationary period. Subsection (b)(5) specifically states that "this section" (namely 1203.3) does *not* limit a court's authority to modify the terms and conditions of a victim's restitution award even during the period covered by section 1203.3 while the defendant is still on probation. Second, section 1202.46 makes it clear that a victim's right to restitution is paramount and so critical that the omission of a restitution order can be remedied "at any time" even by the court on its own motion.

"[W]ords in a statute should be construed in their statutory context" and courts "may reject a literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results" or "would result in absurd consequences that the Legislature could not have intended." (*People v. Leiva* (2013) 56 Cal.4th 498, 506 (*Leiva*), citations and internal quotation marks omitted.) And "a court, when faced with an ambiguous statute that raises serious constitutional questions, should endeavor to construe the statute in a manner which avoids any doubt concerning its validity." (*Id.* at pp. 506-507, citations and internal quotation marks omitted, emphasis in original.)

"[S]tatutes *ought not* to tread on questionable constitutional grounds unless they do so clearly." (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373, citation omitted.) "Applying this canon,

[appellate courts] have repeatedly construed penal laws . . . in a manner that avoids serious constitutional questions. (*Ibid.*, citations omitted.) “In deciding which of two or more reasonable interpretations of a penal statute to adopt, [a court’s] analysis is ‘necessarily inform[ed]’ by constitutional concerns.” (*Id.* at p. 1374, citation omitted.) Courts “adopt the less constitutionally problematic interpretation of a penal statute so long as that interpretation is ‘reasonably possible.’” (*Ibid.*, citation omitted.)

Defendant’s interpretation of the relevant statutes is fundamentally inconsistent with the “unequivocal intention” of Prop. 8 and would lead to absurd results in many cases, including the instant one, which could not have been intended by the Legislature in passing any of the laws at issue here, including AB 1950. (See *Leiva, supra*, 56 Cal.4th at pp. 506-507; see also *Mary Meninga v. Raley’s* (1989) 216 Cal.App.3d 79, 90 [“Without the most cogent and convincing evidence, a court will never attribute to the Legislature the intent to disregard or overturn a sound rule of policy”], citation omitted.) Defendant’s interpretation is further foreclosed by the constitutional provision’s requirement that it apply “regardless of the sentence or disposition imposed,” because, as defendant appears to acknowledge (see OBM 38-39), there is no such temporal limitation on restitution orders in cases where defendants are sentenced rather than placed on probation. Defendant’s interpretation would read the “regardless of the sentence or disposition imposed” language out of article I, section 28 of the Constitution.

In *People v. Broussard* (1993) 5 Cal.4th 1067 (*Broussard*), this Court was tasked with resolving statutory construction issues

implicating that article. Defendant there argued that under the relevant statutes, victims must suffer physical injury in addition to economic losses in order to qualify for restitution. (*Id.* at pp. 1069-1072.) This Court rejected defendant’s claim, explaining that even “the plain meaning of a statute should not be followed when to do so would lead to ‘absurd results.’” (*Id.* at p. 1072, citations omitted.) The Court further held that “the voters, when they added article I, section 28, subdivision (b) to the California Constitution, placed the Legislature under a constitutional mandate to enact legislation directing trial courts to order defendants found guilty of criminal acts to pay restitution to *all* victims, not simply those who suffered a physical injury.” (*Ibid.*) “If we were to conclude that the Legislature knowingly disregarded this constitutional imperative,” this Court explained, “it would indeed be an ‘absurd’ construction of the statute, and one we need not adopt.” (*Ibid.*) As the Court stated, “[t]he history of [the statute] shows that the Legislature intended to implement, not violate, its constitutional mandate.” (*Ibid.*)

And the Court of Appeal in *People v. Phelps* (1996) 41 Cal.App.4th 946, 948-952, employed similar reasoning in rejecting defendant’s claim that the “plain language of [Government Code] section 13967 prohibit[ed] [the trial court] from ordering restitution for future medical expenses.” The court acknowledged that on its face, the statute was ambiguous as to the scope of losses recoverable by victims and held that since the “statute was enacted pursuant to a constitutional scheme adopted by the voters in 1982 as part of Proposition 8,” the intent of the voters in passing the proposition would “govern” the results there. (*Id.* at pp. 949-950.)

The court concluded that in light of the voters' intent that victims receive full restitution in all cases, the word "loss" in the statute had to be "construed broadly and literally" to include future medical expenses. (*Id.* at p. 950.)

Under defendant's interpretation of the law here, however, whenever a trial court decides to exercise its discretion to place a defendant on probation, that decision automatically places the victims in that case in a compromised position: the victims would have a very limited time, which may be only one year in a misdemeanor case, to accumulate all of their expenses and obtain restitution orders. Limiting the period of time in which trial courts may issue a restitution order to only one or two years not only has no basis in the law but, in a substantial number of cases, would eliminate or reduce the opportunity to obtain full restitution because some victims require a substantial amount of time to accumulate their entire expenses and gather witnesses and documentary evidence in support of their claims.

As this Court has previously acknowledged, "[m]any, if not all, of the categories of loss compensable as . . . restitution include losses . . . [that] may continue to be incurred for a *substantial period of time* following a restitution hearing." (*Giordano, supra*, 42 Cal.4th at pp. 657-658, emphasis added.) In fact, "it is likely that many . . . victims will lose wages or profits for weeks, months, *or possibly years* following a restitution hearing." (*Id.* at p. 658, citation omitted, emphasis added.) Notably, this Court has also held that "[n]othing in the language of the Constitution suggests an intent to limit the right to restitution for financial losses

occurring within a *particular time frame*.” (*Ibid.*, citation and internal quotation marks omitted, emphasis added.)

For example, victims who sustain severe physical injuries may require extensive medical treatment, including multiple procedures or physical therapy and chiropractic services spanning an extended period of time. And victims suffering from mental health disorders, including post-traumatic stress caused by violent offenders, may require mental health treatment over a long period of time. Since restitution may involve complex factual and legal issues and require evidence from multiple witnesses, including expert witnesses, as well as extensive documentary evidence, limiting the trial courts’ authority to award restitution to the probationary period would deny the victims in many cases of their constitutional and statutory rights to full restitution.

And in many cases, the restitution hearing is continued a number of times, often spanning long periods of time, for the benefit of the defense – to allow the defendant to attend the restitution hearing and to provide the defense with an opportunity to investigate victims’ restitution claims and gather evidence to rebut the claims. This Court can and should take into account these unwarranted impacts on victims’ constitutional right to restitution and should reject defendant’s argument that a court’s authority to order restitution in probation cases terminates at the end of the probationary period.

## CONCLUSION

Defendant's interpretation of the statutes at issue here directly contradicts the state constitution, misreads the statutory provisions, and causes absurd results that could not have been intended by the Legislature. The judgment of the Court of Appeal should be affirmed.

DATED: June 14, 2023

Respectfully submitted,

Hydee Feldstein Soto, Los Angeles City Attorney  
Kent J. Bullard, Assistant City Attorney  
\*Sahar Nayeri, Deputy City Attorney

By: \_\_\_\_\_ /s/  
Sahar Nayeri, Deputy City Attorney

Attorneys for Amicus Curiae  
LOS ANGELES CITY ATTORNEY'S OFFICE





# **PROOF OF SERVICE BY MAIL**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**THE PEOPLE V. SCOTLANE McCUNE, Case No. S276303**

(First Appellate Dist., Div. Five, Case No. A163579,  
Napa County Sup. Ct. No. CR183930)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-referenced action. My business address is 200 North Main Street, Fifth Floor, James K. Hahn City Hall East, Los Angeles, California 90012.

On **June 14, 2023**, I served the foregoing **APPLICATION OF THE LOS ANGELES CITY ATTORNEY'S OFFICE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA; AND AMICUS BRIEF** as follows:

**By TrueFiling:**

I served the foregoing APPLICATION OF THE LOS ANGELES CITY ATTORNEY'S OFFICE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA; AND AMICUS BRIEF via TrueFiling. I served the document identified above on the following recipients:

**Teresa G. Torreblanca**  
**Office of the Attorney General**  
**600 West Broadway, Suite 1800**  
**San Diego, CA 92101**

**Amanda Lloyd**  
**Office of the Attorney General**  
**600 West Broadway, Suite 1800**  
**San Diego, CA 92101**

**Kaiya R. Pirolo**  
**Attorney at Law**  
**1839 Ygnacio Valley Road, No. 234**  
**Walnut Creek, CA 94598-3214**

**By Mail:**

I placed a true copy of the foregoing APPLICATION OF THE LOS ANGELES CITY ATTORNEY'S OFFICE TO FILE AMICUS CURIAE

BRIEF IN SUPPORT OF RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA; AND AMICUS BRIEF in a sealed envelope(s) for collection and mailing, following ordinary business practice, at 200 North Main Street, Fifth Floor, James K. Hahn City Hall East, Los Angeles, California 90012, addressed to the following:

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Napa County Superior Court  
111 Third Street  
Napa, CA 94559**

**First Appellate District- Division Five  
Court of Appeal of the State of California  
350 McAllister Street  
San Francisco, CA 94102**

**Office of the Attorney General  
600 West Broadway, Suite 1800  
P.O. Box 85266  
San Diego, CA 92186-5266**

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on **June 14, 2023**, at Los Angeles, California.

/s/  
\_\_\_\_\_  
**SAHAR NAYERI**

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

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Lower Court Case Number: **A163579**

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nayeri, sahar (275246)

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