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; California's Judicial Council; and Does I through XX

Respondents.

AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE STAY OR INJUNCTIVE RELIEF REQUESTED PREVENTING ENFORCEMENT OF PROPOSITION 66

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners hereby certify that they are not aware of any person or entity that must be listed under the provisions of California Rule of Court 8.208(e).

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AMENDED AND RENEWED PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY OR INJUNCTIVE RELIEF

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

PRELIMINARY AND JURISDICTIONAL STATEMENT

1. By this original, verified Petition for Writ of Mandate, Petitioners Ron Briggs and John Van de Kamp ("Petitioners") hereby seek a writ of mandate pursuant to California Constitution article VI, section 10 and California Code of Civil Procedure Section 1085 enjoining the Governor of the State of California, the Attorney General of the State of California, the Judicial Council, and Does I through XX, all in their official capacities (collectively, "Respondents") from enforcing, taking any steps to enforce, or directing any persons or entities to enforce California Proposition 66, the initiative measure entitled the "Death Penalty Reform and Savings Act of 2016."

2. Petitioners request that this Court issue an immediate injunction or order staying the enforcement of Proposition 66 pending the resolution of the instant Petition and prohibiting Respondents and any persons or entities at their direction from taking any acts to enforce Proposition 66 during the pendency of these proceedings.

3. This Petition is brought on the following grounds:

a. Proposition 66 illegally interferes with the jurisdiction of California's state courts to hear original petitions for writs of habeas corpus.

b. Proposition 66 violates the separation-of-powers doctrine by defeating and/or materially impairing the constitutional and inherent powers of the courts to resolve capital appeals and habeas corpus cases.

c. Proposition 66 violates the constitutional mandate that an initiative measure may not embrace more than one subject.

d. Proposition 66 violates the equal protection clauses of the state and federal constitutions.

4. Petitioners have no other plain, speedy, or adequate remedy at law. There are no administrative or other proceedings available to enjoin the enforcement of Proposition 66.

5. Petitioners respectfully invoke the original jurisdiction of this Court pursuant to California Constitution article VI, section 10; California Code of Civil Procedure, section 1085; and Rule 8.486 of the California Rules of Court. Petitioners invoke this Court's jurisdiction because the issues presented here are of great public importance and should be resolved promptly. *See Legislature v. Eu,* 54 Cal. 3d 492, 500 (1991) (Supreme Court exercises original mandamus jurisdiction in challenges to state initiatives). In short, implementation of Proposition 66 will result in confusion and upheaval in this Court,

the Judicial Council, the superior courts, and the state-funded entities charged with representing death row inmates on appeal and in habeas corpus. It will result in immediate increased expenditures of public funds, a suppression of legitimate challenges, and a decrease in counsels' ability to represent their clients. It will also make it more likely, and more immediate, for persons sentenced to death to face their executions. It is in the public interest to resolve the questions presented in this Petition: (1) to provide certainty regarding the rights and futures of the 741 individuals currently housed on death row; (2) to provide certainty regarding whether the state must immediately begin spending the time and money required to carry out the various measures set forth in Proposition 66; and (3) to provide certainty regarding the validity or invalidity of Proposition 66. This is especially so in light of the very narrow margin by which Proposition 66 passed.

6. This Petition presents no questions of fact for this Court to resolve in order to issue the relief sought.

7. Petitioners believe that there is no requirement in this circumstance to plead demand and refusal. Without prejudice to that position, Petitioners allege that any demand to Respondents to act or refrain from taking action as described in Paragraph 1 in the Relief Sought below would be futile if made, and that only a court order will cause Respondents to refrain from taking those actions.

THE PARTIES

8. Petitioner Ron Briggs, a former supervisor of El Dorado County, is a resident of El Dorado Hills in El Dorado County. In 1978, his father wrote and sponsored the ballot initiative that expanded the death penalty in California. Briggs now believes that the death penalty in California imposes an extreme expense on Californian taxpayers, and that Proposition 66 will only make things worse.

9. Petitioner John Van de Kamp is a resident of the City of Pasadena, in Los Angeles County. He served as the Los Angeles County District Attorney from 1975 until 1983, and then as Attorney General of California from 1983 until 1991. Van de Kamp examined California's death penalty system in depth when he served as the Chairman of the California Commission on the Fair Administration of Justice.

10. Petitioners Briggs and Van de Kamp are beneficially interested in the relief sought here in that they are California taxpayers and represent California taxpayers entitled to have their government avoid the unlawful expenditures threatened by Proposition 66.

11. Respondent Jerry Brown, the Governor of the State of California, is sued in his official capacity. It is Brown's legal duty to ensure that the laws of the State of California are uniformly and adequately enforced.

12. Respondent Kamala Harris, the Attorney General of the State of California, is sued in her official capacity. It is Harris's legal duty to ensure that the laws of the State of California are uniformly and adequately enforced.

13. Respondent California's Judicial Council is the policymaking body of the California courts. Unless restrained by this Court, the Judicial Council will revise its rules to ensure that direct appeals and habeas corpus petitions are completed within the time frames set forth by Proposition 66. In addition, the Judicial Council will be obligated to adopt new qualification standards for the appointment of appellate counsel in capital cases.

14. Does I through XX are other persons, agencies, or entities whose identities are currently unknown to Petitioners who should be made parties in order to provide Petitioners with complete relief.

FACTS

15. On December 16, 2016, the Secretary of State certified that Proposition 66 passed in the November 8, 2016 election with 51.1% of the vote. *See* Appendix of Exhibits ("App.") at 30 [Secretary of State Certification of Proposition 66, Ex. 4].[1]

[1] Petitioners respectfully request that the Court take judicial notice of the documents in the Appendix pursuant to the concurrently filed Motion for Judicial Notice.

16. Proposition 66 is an initiative measure that makes myriad changes to judicial procedures governing death penalty appeals, the requirements for and remuneration of direct appeal and state habeas counsel, the housing of death row inmates, the compensation of victims, and the applicability of the Administrative Procedure Act to California execution protocols. The general purpose of Proposition 66, "the Death Penalty Reform and Savings Act," appears to be the expedition of death penalty appeals and reduction of costs related to carrying out the death penalty. However, the Legislative Analyst's report states that the measure would, in the short term, "accelerate the amount the state spends on legal challenges to death sentences . . . because the state would incur annual cost increases in the near term to process hundreds of pending legal challenges within the time limits specified in the measure." App. at 11. "[S]uch costs could be in the ***tens of millions of dollars annually*** for many years." *Id.*

17. Proposition 66 provides that it takes effect "immediately upon enactment and appl[ies] to all proceedings conducted on or after the effective date." App. at 6-7 [Text of Proposition 66, Ex. 1].

18. Allowing enforcement of Proposition 66 will impose serious immediate burdens on this Court, the Judicial Council, the superior courts, and the state-funded entities charged with representing death row inmates on appeal and in habeas corpus. In the short term, it will force all these entities to expend public funds in order to understand,

as well as to implement, its many poorly defined requirements. It will also suppress legitimate habeas corpus petitions, impair counsels' ability to represent their clients, and make it possible for currently-stayed executions to go forward.

Proposition 66 Imposes New Burdens on This Court and the Judicial Council.

New Standards to Expedite Review

19. Proposition 66 requires the Judicial Council to adopt, within 18 months, initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review. This process typically takes the Judicial Council multiple years. Accordingly, the Judicial Council will have to take immediate action.

20. Proposition 66 requires state courts to complete state appeals and initial state habeas corpus review in capital cases "[w]ithin five years of the adoption of the initial rules or the entry of judgment, whichever is later." This is an inordinately short timeline for the courts to review these complex cases. To meet this deadline will require additional expenditures and/or diversion of judicial resources from other cases, among other changes.

21. Proposition 66 provides that currently pending petitions must be resolved in no more than 6.5 years (18 months to adopt initial rules plus 5 years from adoption), a pace much faster than the pace at

which this Court currently resolves capital cases. Thus, Proposition 66 will result in additional expenditures and/or diversion of judicial resources from other cases.

Jurisdictional Changes and Transfer

22. Section 6 of Proposition 66 strips this Court of original jurisdiction over petitions for writ of habeas corpus in capital cases and provides that such petitions should be transferred to the sentencing trial court. Section 6 explicitly provides for transfer of currently pending petitions. Thus, this Court must now examine its current caseload of capital cases to determine, for each petition, whether to transfer it to the superior court or whether there is good cause for it to be heard by another court, as Proposition 66 provides.

Appointment of Counsel

23. Proposition 66 requires this Court to appoint counsel for indigent appellants "as soon as possible," and requires this Court, under certain circumstances, to force such appointments on appellate attorneys who do not currently meet the qualification standards for appointments to capital cases. In addition, the Judicial Council will be obligated to adopt new qualification standards for the appointment of appellate counsel in capital cases, prioritizing "avoid[ing] unduly restricting the available pool of attorneys" over current guidelines and standards for capital defense counsel. These provisions will result in

immediate expenditure of public funds to find, appoint, and compensate counsel for indigent appellants.

24. A significant backlog currently exists of prisoners needing appointed counsel. In order to meet the requirements of Proposition 66 (if it is even possible), this Court must find additional counsel in far greater numbers than have been available to date. This will almost certainly result in a more than proportional increase in the costs of appointed counsel, as higher compensation will be required to attract counsel, as well as to enable them to meet shortened deadlines imposed by Proposition 66. In addition, it is likely that many counsel on this Court's appointment list will resign rather than accept appointment in capital cases. Thus, Proposition 66 will also impair the availability of counsel for non-capital cases, imposing both monetary and non-monetary costs on the Court.

Supervision of the Habeas Corpus Resource Center

25. Section 17 of Proposition 66 dissolves the board of directors of the Habeas Corpus Resource Center ("HCRC"), which currently serves on a volunteer, uncompensated basis, and assigns supervision of the HCRC to this Court. Thus, Proposition 66 requires immediate expenditure of public funds for the Court to establish a system of oversight and fulfill this new responsibility.

26. In addition, Section 17 provides that attorneys employed by the HCRC "shall be compensated at the same level as comparable

positions in the Office of the State Public Defender." To implement this provision, this Court would have to expend its resources to creating a new compensation schedule for HCRC employees, including analyzing what public defender positions are "comparable" to each HCRC position.

Piecemeal Challenges

27. Proposition 66 has an immediate effect on defendants and prisoners whose cases are currently pending in the judicial system or who are subject to a death sentence. The relevant provisions include shortened deadlines, heightened standards for extensions, substantive restrictions on successive habeas petitions, and changes to the system for appointing counsel. Petitioners understand that these provisions will soon be challenged by affected defendants and prisoners in individual cases. Unless this Court grants an interim stay, such challenges will impose an additional burden on the courts.

Proposition 66 Has Immediate Effects on Superior Courts.

28. Section 6 of Proposition 66 requires trial courts to follow Gov. Code § 68662 and offer counsel to defendants sentenced to death. Previously, Gov. Code § 68662 only applied to this Court. Thus, in counties throughout the state where capital trials are currently pending, trial courts will soon have to entertain requests to appoint counsel, hold hearings on indigency, and establish systems for appointing, supervising, and compensating counsel for indigent

defendants. By distributing this responsibility, which previously fell only to this Court, across many trial courts, Proposition 66 will result in imminent expenditure of additional public funds.

29. Section 6 of Proposition 66 strips this Court of original jurisdiction over petitions for writ of habeas corpus in capital cases and provides that such petitions should be transferred to the sentencing trial court. Thus, trial courts, which have not heretofore had jurisdiction over capital habeas petitions, must create the capacity and ability to handle newly filed petitions as well as any influx of pending petitions transferred from this Court. The trial courts will face particular urgency because Section 6 also provides that superior courts must resolve an initial petition within one year of filing. The expenditures incurred by the superior courts will stack upon the costs expended by this Court for addressing capital cases, since this Court retains appellate jurisdiction over habeas petitions.

30. To the extent this Court transfers pending petitions to the superior courts, those cases will suffer disruption and added complexity, further burdening the judicial system. For example, counsel must be appointed in cases currently without counsel; counsel, prisoners, and courts alike may have to operate under the new one-year statutory deadline; and these pending petitions will ultimately be subject to additional levels of appellate review before this Court renders a final decision on the petition.

Proposition 66 Has Immediate Effects on Attorneys who Represent Indigent Defendants.

31. Proposition 66 imposes a one-year deadline for currently sentenced prisoners to file a habeas corpus petition if they have not previously filed a petition. To comply with this shortened deadline, appointed counsel must accelerate their efforts, incurring increased short-term costs as well as potentially greater total costs.

32. This shortened deadline will particularly impact the two state entities tasked with providing defense services to death row inmates—the Office of the State Public Defender and the Habeas Corpus Resource Center. Those entities will suffer disruptions of current target dates and work flow projections, requiring immediate expenditures of additional state funds to meet case needs under truncated time frames.

33. Proposition 66 will also impact attorneys who accept appointments to represent *non-capital* indigent appellants before the Court of Appeal and the California Supreme Court. Proposition 66 adds section 1239.1 to the Penal Code, which mandates that, when necessary to remove backlogs, "the Supreme Court shall require attorneys who are qualified for appointment to the most serious non-capital appeals and who meet the qualifications for capital appeals to accept appointment in capital cases as a condition for remaining on the court's appointment list." This provision unfairly forces attorneys who do not want to take capital appointments to choose between: (1)

accepting capital appointments; and (2) resigning from the court's appointment list.

Proposition 66 Has an Immediate and Serious Impact on Prisoners.

34. Proposition 66 will also irreparably harm defendants and prisoners subject to the death penalty by circumscribing their legal remedies and restricting the ability of their counsel to represent them adequately.

35. Perhaps most glaringly, there are twenty death-sentenced individuals who have fully exhausted their state and federal post-conviction proceedings. Prior to Proposition 66, the earliest date those individuals could have faced execution pursuant to the Administrative Procedures Act was either January 1, 2017 or April 11, 2017.[2] Now, under Proposition 66, which exempts execution protocols from the APA and requires the California Department of Corrections and Rehabilitation ("CDCR") to "maintain at all times the ability to execute" death judgments, those 20 individuals face imminent risk of execution. Penal Code §§ 3604(e), 3604.1. Under

[2] This is because there is currently no protocol in effect for conducting executions. *See Sims v. Dep't of Corr. & Rehab.*, 216 Cal. App. 4th 1059 (2013). And the Administrative Procedures Act, which governs state execution protocols, sets forth a lengthy procedure for public notice and comment on proposed regulations and review by the Office of Administrative Law before regulations take effect. *See generally* Cal. Gov. Code § 11340 *et seq.* The most recent round of rulemaking pursuant to the APA to adopt lethal injection regulations is set to be complete either on January 1, 2017 or April 11, 2017. *See* Cal. Reg. Notice Register 2015, No. 45-Z, p.2024, http://oal.ca.gov/November_2015_Notice_Register.htm.

Proposition 66, CDCR could issue an execution protocol as an internal operating procedure to take effect immediately and, as a result, begin the process for setting execution dates immediately.

FIRST CAUSE OF ACTION:
Interference with the Jurisdiction of the Courts

36. Proposition 66 is invalid because it interferes with the original habeas jurisdiction of the California courts. Provisions of Proposition 66 purport to revoke the Supreme Court's and the Appellate Courts' jurisdiction over first and successive petitions for habeas corpus. This violates Article 6, section 10 of the California Constitution, which vests, *without limitation*, original habeas corpus jurisdiction in each of California's state courts: "The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings."

SECOND CAUSE OF ACTION:
Separation of Powers

37. Proposition 66 is invalid because it violates the separation-of-powers doctrine set forth in Article 3, section 3 of the California Constitution by defeating and/or materially impairing the constitutional and inherent powers of the courts to resolve capital appeals and habeas corpus cases. In addition to stripping the Courts of Appeal and the Supreme Court of jurisdiction, Proposition 66 places time limitations and procedural and substantive limitations on petitions for habeas

corpus that impair the courts' exercise of discretion, as well as the courts' ability to act in fairness to the litigants before them.

THIRD CAUSE OF ACTION:
Violation of Single-Subject Doctrine

38. Proposition 66 is invalid because it encompasses a variety of wide-ranging provisions, some of which are neither reasonably germane to one another nor to the "single purpose" of the initiative. It thus violates article 2, section 8 of the California Constitution, which provides that "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

FOURTH CAUSE OF ACTION:
Violation of Equal Protection Clause

39. Proposition 66 is invalid because it violates the equal protection clauses of the state and federal constitutions by mandating that capital prisoners' rights to successive claims for habeas relief be more limited than those rights for non-capital prisoners.

FIFTH CAUSE OF ACTION:
Taxpayer Action Under Civ. Pro. Code § 526a to Prevent Illegal Expenditure of Funds

40. If this Court does not issue a stay, Defendants will illegally expend public funds to implement Proposition 66 in violation of the constitutional provisions described above.

HARM ALLEGED

41. Petitioners, the residents of the State of California, and others will suffer irreparable injury unless this Court intervenes and directs

Respondents to desist from enforcing Proposition 66 and to desist from directing others to enforce Proposition 66 until the numerous challenges alleged in this cause of action can be addressed.

42. Petitioners, the residents of the State of California, and others will suffer irreparable injury unless this Court stays the enforcement of Proposition 66 immediately and pending resolution of these proceedings.

RELIEF SOUGHT

Wherefore, Petitioners request the following relief:

1. That this Court forthwith issue a writ of mandate directing Respondents:
    a. To desist from any act enforcing Proposition 66, giving effect to the terms of Proposition 66, or directing any other person or entity to enforce or give effect to the terms of Proposition 66;
    b. Or in the alternative, to show cause why Respondents have not done so before this Court at a specified time and place;
2. That this Court issue an order declaring that Proposition 66 is null and void in its entirety;
3. That, upon Respondent's return to the alternative writ, a hearing be held before this Court at the earliest practicable time so that the issues involved in this Petition may be adjudicated promptly, and if this Court deems appropriate, pursuant to an expedited briefing and hearing schedule;

4. That, pending such return and hearing, the Court grant an immediate injunction or order staying the enforcement of Proposition 66 pending the resolution of the instant Petition and prohibiting Respondents, or any persons or entities directed by Respondents, from taking any acts to enforce Proposition 66 during the pendency of these writ proceedings;
5. That, following the hearing upon this Petition, the Court issue a peremptory writ of mandate directing Respondents not to enforce Proposition 66, and to desist in any act in aid of enforcing Proposition 66;
6. That Petitioners be awarded their attorneys' fees and costs of suit; and
7. For such other and further relief as the Court may deem just and equitable.

DATED: December 19, 2016

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY OR INJUNCTIVE RELIEF

I. INTRODUCTION

This petition seeks a writ of mandate against enforcement of Proposition 66, the "Death Penalty Reform and Savings Act of 2016." While Proposition 66 is a wide-ranging proposition addressing various topics, its "purpose" can be best described as expedition of death penalty appeals and reduction of costs related to carrying out the death penalty. Because Proposition 66 purports to change the procedures relating to the death penalty in myriad ways, the immediate result of its passage will be confusion and upheaval in this Court, the Judicial Council, the superior courts, and the state-funded entities charged with representing death row inmates on appeal and in habeas corpus. From a practical standpoint, implementation of Proposition 66 will result in immediate increased expenditures of public funds, as these entities attempt to understand and enforce its provisions. From a moral standpoint, Proposition 66 will limit prisoners' pathways by which to bring legitimate challenges, impair habeas counsels' ability to defend their clients, and provide for the immediate commencement of executions that were otherwise stayed pending public review of proposed execution protocols.

Proposition 66 attempts to accomplish all this through an invalid constitutional revision. *See Rippon v. Bowen*, 160 Cal. App. 4th 1308, 1317

(2008). First, it illegally seeks, by legislative action, to circumscribe the constitutionally-imposed jurisdiction of the state courts over original petitions for habeas corpus. Second, it violates the separation-of-powers doctrine by imposing time limitations and other substantive limitations that materially impair the courts' exercise of their constitutional functions. Third, it violates the constitutional mandate that an initiative measure may not embrace more than one subject by including provisions bearing little or no relation to the "purpose" of expediting death penalty appeals and reducing costs. Fourth, it violates the equal protection clauses of the state and federal constitutions by providing that capital prisoners' rights to successive claims for habeas relief are more limited than those of non-capital prisoners.

There can be no question that whether Proposition 66 is valid is a question "of sufficient public importance" to be taken under this Court's original jurisdiction. *Legislature v. Eu*, 54 Cal. 3d 492, 500 (1991). This Court exercises its original jurisdiction where, as here, it can be "uniformly agreed that the issues are of great public importance and should be resolved promptly." *Id.* (quoting *Raven v. Deukmejian*, 52 Cal. 3d 336, 340 (1990) (exercising original jurisdiction over matter challenging constitutionality of initiative measure)). This Petition presents issues of the utmost public importance, including: (1) the impermissible encroachment of the initiative process on the jurisdiction and powers of the courts; (2) the question of whether this state should spend tens of

millions of dollars per year pursuant to Proposition 66; and (3) the rights, lives, and futures of the over 700 inmates on death row.

This Court has regularly exercised its original jurisdiction to consider challenges to initiative amendments. *Id.*; *see also Brosnahan v. Brown*, 32 Cal. 3d 236, 241 (1982) (Prop. 8); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization,* 22 Cal. 3d 208, 219 (1978) (Prop. 13). The voters in this election, as well as the individuals on death row who face immediate negative consequences as a result of Proposition 66, are entitled to know whether the voters "have adopted a valid" amendment. *People v. Frierson* 25 Cal. 3d 142, 172 (1979). Accordingly, this Court should exercise its original jurisdiction to provide guidance "at the earliest practicable opportunity." *Id.* Because enforcement of Proposition 66 will cause irreparable harm to both California taxpayers and the inmates on death row, whereas staying the enforcement of Proposition 66 will cause no countervailing harm, this Court should grant Petitioners' request for a stay of the enforcement of Proposition 66 pending adjudication of its constitutionality.

II. PROPOSITION 66 ILLEGALLY INTERFERES WITH THE JURISDICTION OF CALIFORNIA'S STATE COURTS.

Proposition 66 attempts to strip the state courts of their authority to entertain and decide petitions for writ of habeas corpus. But the power of the courts to entertain habeas petitions is constitutionally based, and the scope of Proposition 66's limitations on the state courts' original habeas

corpus jurisdiction are beyond that which can be accomplished by statute. The severe restrictions that Proposition 66 seeks to make to the constitutional authority of the state courts to entertain habeas petitions in death penalty cases may be made solely by revising, or perhaps amending, the constitution. Because Proposition 66 was presented to the voters as a statutory scheme rather than a constitutional amendment—much less a revision—the provisions that impact the state courts' jurisdiction over habeas corpus matters are illegal and may not take effect. *See* Cal. Const. Art. II, § 8 (differentiating between initiative measures that propose a statute and those that propose an amendment to the Constitution); *McFadden v. Jordan*, 32 Cal. 2d 330, 333 (1948) ("The initiative power . . . does not purport to extend to a constitutional revision.")

A. The Constitution Vests Original Habeas Corpus Jurisdiction in All California State Courts.

Article 6, section 10 of the California Constitution vests, *without limitation*, original habeas corpus jurisdiction in each of California's state courts: "The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." This has been the case since 1966, when a constitutional revision eliminated any territorial restrictions on the power of the California courts to entertain a petition for habeas corpus relief. *See Griggs v. Super. Ct. of San Bernadino Cty.*, 16 Cal. 3d 341, 344-346 (1976) ("*Griggs*"); *In re Van Heflin*, 58 Cal. App. 3d 131, 135 (1976). The fact that original habeas corpus jurisdiction

exists concurrently at all levels of California's state courts is a "policy" declared by the California Constitution that must be implemented by the judiciary, even when impractical. *In re Carpenter*, 9 Cal. 4th 634, 646 (1995).

"[G]enerally speaking a petition for writ of habeas corpus should not be transferred to another court unless a substantial reason exists for such transfer." *In re Roberts*, 36 Cal. 4th 575, 582-585 (2005). To the contrary, "[i]n general, a habeas corpus petition should be heard and resolved by the court in which the petition is filed." *Id.* These requirements are consistent with this Court's longstanding jurisprudence that a court has a duty to exercise the jurisdiction conferred on it when properly called upon to do so. *See, e.g., Gering v. Super. Ct. of L.A. Cty.*, 37 Cal. 2d 29 (1951); *Turesky v. Super. Ct. of L.A. Cty.*, 97 Cal. App. 2d 838 (1950).

The fact that original habeas corpus jurisdiction exists at all three levels of California's state courts, and that the state courts do not generally transfer petitions from one level to another, is important because of the particularities of California's collateral review system for habeas matters. *See Carey v. Saffold*, 536 U.S. 214, 221 (2002). Unlike some states, California does not require appellate review of a lower court habeas determination. "Instead it contemplates that a prisoner will file a new 'original' habeas petition" at the appellate level. *Id.*

In *capital* habeas cases, prisoners do not typically bring original habeas proceedings at all three levels of the state courts, though they have

that right. *See, e.g., In re Carpenter*, 9 Cal. 4th at 646. Instead, capital habeas petitioners typically file their original writ petition with the California Supreme Court. This is because Section 68662 of the Government Code (prior to edits by Proposition 66) provides that the Supreme Court "shall offer to appoint counsel to represent state prisoners subject to a capital sentence for purposes of state post-conviction proceedings." This counsel provision applies to proceedings in the Supreme Court, but not to proceedings at the superior court or Courts of Appeal. Cal. Supreme Ct. Policies Regarding Cases Arising from Judgments of Death, policy 3, std. 2. Thus, as a practical matter, death row inmates who require appointed counsel typically file their first original habeas petition in the California Supreme Court.

B. Proposition 66 Revokes Original Jurisdiction in Habeas Corpus Proceedings.

Proposition 66 purports to revoke the Supreme Court's and the Courts of Appeal's original jurisdiction in habeas proceedings. Specifically, Proposition 66 adds section 1509 to the California Penal Code, which provides in relevant part:

> 1509. (a) This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. ***A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court.*** A petition filed in or transferred to the court which imposed the sentence shall be assigned to the

> original trial judge unless that judge is unavailable or there is good cause to assign the case to a different judge.

(Emphasis added.) In other words, if a petitioner attempts to challenge his or her incarceration in an original proceeding in the Court of Appeals or the Supreme Court, that court must transfer the petitioner's case to the Superior Court in which the defendant was convicted unless the petitioner can show good cause for hearing the case elsewhere. Proposition 66 thus severely limits the original habeas jurisdiction of the Courts of Appeal and the Supreme Court.

Similarly, Proposition 66 purports to add section 1509.1 to the California Penal Code. According to that proposed section, and unlike the current scheme, "[a] successive petition shall not be used as a means of reviewing a denial of habeas relief." Instead, prisoners may seek to *appeal* superior court decisions denying habeas relief, but only under newly limited circumstances and within newly limited timeframes under Proposition 66.

Along the same vein, Proposition 66 purports to amend Section 68662 of the California Government Code to provide that the superior court—not the Supreme Court—is responsible for appointing habeas counsel for the petitioner. This change means that appointed counsel would now be available to assist with habeas petitions before the superior court, but *not*, as now, before the Supreme Court. *See In re Anderson*, 69 Cal. 2d 613, 632-34 (1968), *abrogated on other grounds as recognized in People v. Trinh*, 59 Cal. 4th 216 (2014).

Finally, new Penal Code section 3604.1(c) purports to place "exclusive jurisdiction" over capital defendants' challenges to execution methods with "[t]he court which rendered the judgment of death"—thus robbing the California Supreme Court and Courts of Appeal of such jurisdiction.

The combined effect of proposed sections 1509, 1509.1, 68662, and 3604.1 is to transform California's collateral review system, in which original habeas petitions are typically filed in the Supreme Court, to a system in which: (1) original writ jurisdiction is limited to a single superior court and judge; and (2) the California Supreme Court and Courts of Appeal are prevented from entertaining first and successive habeas petitions in capital cases.

C. It is Unconstitutional to Impair the Supreme Court's and the Courts of Appeal's Original Jurisdiction in Habeas Proceedings Via Proposition 66.

Proposition 66's attempt, through the initiative process, to limit the appellate courts' original jurisdiction in habeas corpus proceedings violates the California Constitution. The legislature cannot by statute alter or restrict the courts' constitutionally-defined jurisdiction. *Chinn v. Super. Ct. of San Joaquin Cty.*, 156 Cal. 478, 480 (1909) ("It is a well-recognized principle that where the judicial power of courts, either original or appellate, is fixed by constitutional provisions, the legislature cannot either limit or extend that jurisdiction."); *Great W. Power Co. v. Pillsbury*, 170 Cal. 180, 182 (1915) ("[I]n the absence of some special constitutional authorization . . . the

constitutional jurisdiction of this court could not be taken away or impaired by legislative act."). Thus, because statutory initiatives are "subject to the same state and federal constitutional limitations as are the Legislature and the statutes which it enacts," *Legislature v. Deukmejian*, 34 Cal. 3d 658, 674 (1983), it is unlawful for Proposition 66 to limit or impair the appellate courts' original jurisdiction in habeas corpus proceedings.

D. Proposition 66 is No Mere Regulation

Respondents will argue that Proposition 66 does not limit or impair the original jurisdiction of the appellate courts, but instead merely "regulate[s] matters of judicial procedure." *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 252 (2011). Not so. As described above, Proposition 66 denies the Supreme Court and the Courts of Appeal jurisdiction over first and successive habeas petitions in capital cases. *See* Cal. Pen. Code § 1509.1(a); Cal. Pen. Code § 1509, Cal. Gov. Code § 68662; Cal. Pen. Code § 3604.1. In so doing, Proposition 66 violates the Constitution.

In re Kler, 188 Cal. App. 4th 1399 (2010), is instructive here. In that case, an inmate filed an original habeas corpus petition in the Court of Appeal to challenge the Governor's reversal of a grant of parole. The Governor responded that rule 8.385(c)(2) of the California Rules of Court, which required an appellate court to deny a habeas corpus petition not first filed in the superior court, prohibited the Court of Appeal from considering the petition. *Kler*, 188 Cal. App. 4th at 1402.

The Court of Appeal disagreed, finding that rule 8.385(c)(2) was at odds with the California Constitution's grant of original habeas jurisdiction to the appellate courts. Specifically, the *Kler* court explained that requiring denial of the petition was "inconsistent with our state Constitution [because] this court—like all courts in California—has original jurisdiction in writ proceedings." *Kler*, 188 Cal. App. 4th at 1402-1403. Notwithstanding that rule 8.385(c)(2) did not pose an absolute bar to the Court of Appeal's jurisdiction, the Court found that rule inconsistent with the Constitution. *Id.*, *see also In re Sanders*, 21 Cal. 4th 697, 724 (1999) (merits of untimely petition will be considered because "the state's interest in the finality of its criminal judgments, though strong, does not require that we accept this incongruous, and harsh, result"); *In re Reno*, 55 Cal. 4th 428, 460-73, 515-519 (2012) (affirming that a petitioner may still seek habeas relief, even by way of a successive and untimely filing, when the petitioner can justify doing so).

Similarly, the statutory provisions in Proposition 66 that attempt to (1) prohibit this Court or any court from entertaining original habeas corpus petitions, or (2) require dismissal of successive petitions, substantially interfere with the state courts' original writ jurisdiction, and are constitutionally invalid. *Kler*, 188 Cal. App. 4th at 1403-1405; *see Hotel Emps. and Rest. Emps. Int'l Union v. Davis*, 21 Cal. 4th 585, 601-02, 615-16 (1999) (statute enacted by initiative is invalid because it violated state Constitution).

III. PROPOSITION 66 VIOLATES THE SEPARATION OF POWERS DOCTRINE BECAUSE IT MATERIALLY IMPAIRS THE COURTS' EXERCISE OF THEIR CONSTITUTIONAL FUNCTIONS.

For the same reasons that Proposition 66 illegally interferes with the jurisdiction of California courts, it also violates the separation of powers doctrine. As discussed above, California's Constitution expressly grants to all levels of the state's courts original jurisdiction over habeas corpus petitions. Cal. Const. art. VI, § 10. The Constitution also vests appellate jurisdiction over capital cases exclusively in the California Supreme Court. Cal. Const. art. VI, § 11(a). The courts' constitutional jurisdiction "may not be diminished by statute." *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 252 (2011). Although matters of judicial procedure can be legislatively regulated, "[i]n some instances, the exercise of that power may appear to 'defeat or interfere with the exercise of jurisdiction or of the judicial power' and thus come into tension with the general prohibition against impairing a constitutional grant of jurisdiction." *Id.* at 252-53 (quoting *Garrison v. Rourke*, 32 Cal. 2d 430, 436 (1948)).

In addition to the jurisdictional elements of Proposition 66, many other elements of Proposition 66 contravene the constitutionally protected and inherent power of the California Supreme Court to adjudicate capital appeals and the equivalent power of all California courts to resolve habeas corpus proceedings and safeguard the rights of habeas petitioners. Therefore, Proposition 66 violates the doctrine of separation of powers.

A. Separation of Powers: Legal Principles

The "power of the people through the statutory initiative is coextensive with the power of the Legislature." *Legislature v. Deukmejian*, 34 Cal. 3d 658, 675 (1983). "Although the initiative power must be construed liberally to promote the democratic process when utilized to enact statutes, those statutes are subject to the same constitutional limitations and rules of construction as are other statutes." *Id.* (citation omitted).

One essential constitutional limitation is the separation of powers doctrine, set forth in Article III of the California Constitution: "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.

There is no question that the three branches of state government are interrelated. "At the same time, [the separation of powers] doctrine unquestionably places limits upon the actions of each branch with respect to the other branches." *Super. Ct. of Mendocino Cty. v. Cty. of Mendocino*, 13 Cal. 4th 45, 53 (1996). "The legislature may put reasonable restrictions upon constitutional functions of the courts," but they may not "defeat or materially impair the exercise of those functions." *Brydonjack v State Bar of Cal.*, 208 Cal. 439, 444 (1929); *see also Cty. of Mendocino*, 13 Cal. 4th at 58-59; *Le Francois v. Goel*, 35 Cal. 4th 1094, 1103 (2005).

"It is well established, in California and elsewhere, that a court has both the inherent authority and responsibility to fairly and efficiently

administer all of the judicial proceedings that are pending before it, and that one important element of a court's inherent judicial authority in this regard is '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.'" *People v. Engram*, 50 Cal. 4th 1131, 1146 (2010) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248 254-55 (1936)). Over eighty years ago, the California Supreme Court observed:

> One of the powers which has always been recognized as inherent in courts, which are protected in their existence, their powers and jurisdiction by constitutional provisions, has been the right to control its order of business and to so conduct the same that the rights of all suitors before them may be safeguarded. This power has been recognized as judicial in nature, and as being a necessary appendage to a court organized to enforce rights and redress wrongs.

Lorraine v. McComb, 220 Cal. 753, 756 (1934) (quoting *Riglander v. Star Co.*, 98 A.D. 101, 104 (N.Y. App. Div. 1904), *aff'd*, 73 N.E. 1131 (N.Y. 1905)).

B. Proposition 66 Defeats or Materially Impairs the Constitutional and Inherent Powers of the Courts to Resolve Capital Appeals and Habeas Corpus Cases.

Proposition 66 presents a multitude of provisions that violate the separation of powers doctrine, in that they dictate the manner in which California's courts must control their dockets and decide cases when exercising constitutionally granted jurisdiction over automatic appeals and capital habeas corpus petitions. The offending provisions include: (1) limitations on the time the courts can take to resolve cases; and (2) absolute

bars precluding review of certain habeas petitions.

1. Proposition 66 Places Impermissible Time Limitations on Automatic Appeals and Habeas Proceedings.

Proposition 66 broadly imposes an overarching time limitation on the resolution of capital appeals and habeas corpus proceedings. Newly enacted subdivision (d) of Penal Code section 190.6 provides:

> Within five years of the adoption of the initial rules or the entry of judgment, whichever is later, the state courts ***shall complete*** the state appeal and the initial state habeas corpus review in capital cases.

Cal. Penal Code § 190.6(d) (emphasis added). To give teeth to subdivision (d) and other subdivisions setting forth time limitations, subdivision (e) appears to permit the filing of mandamus actions to compel the courts to adhere to those time limitations. Cal. Penal Code § 190.6(e).

As an adjunct to the overall five-year time limitation, Proposition 66 directs how the California Supreme Court must rule on applications filed by the parties for extensions of time to file appellate briefs in capital cases. In particular, Penal Code section 1239.1(a) states that it is "the duty of the Supreme Court in a capital case to expedite the review of the case," and that the "court shall only grant extensions of time for briefing for compelling or extraordinary reasons." Cal. Penal Code § 1239.1(a). This new provision apparently is intended to overrule—for capital cases only—California Court Rule 8.63, which requires only a showing of good cause for extensions of time to file appellate briefs. Subdivision (b) of Section 1239.1 also directs

the Supreme Court to conscript appellate attorneys if there is delay in the appointment of counsel for capital appeals. Cal. Penal Code § 1239.1(b).

Proposition 66 provides even more specific dictates controlling the timing and process for adjudication of capital habeas corpus petitions. Subdivision (f) of Penal Code section 1509 commands the superior court to adjudicate initial capital habeas petitions within one year of their filing—with a very limited exception for cases involving a claim of actual innocence. Cal. Penal Code § 1509(f).

Concerning appeals from the denial of a "successive petition," subdivision (c) of Penal Code section 1509.1 commands the court of appeal to "grant or deny a request for a certificate of appealability within 10 days of an application for a certificate." Cal. Penal Code § 1509.1(c). It also directs the court of appeal to decide "within 60 days of the notice of appeal" whether it will add any claims to a certificate of appealability, and commands that the appeal from the denial of a successive petition "shall have priority over all other matters [pending in the court of appeal] and be decided as expeditiously as possible." *Id.*

The above-described restrictions placed on the courts by Proposition 66 cannot be sustained. Over seventy years ago, the Fourth District Court of Appeal held that impracticable time limits on the determination of a case can violate the separation of powers doctrine. *In re Shafter-Wasco Irrigation Dist.*, 55 Cal. App. 2d 484, 487-88 (1942). That case involved a statute requiring an appellate determination within three months after an appeal was

taken. *Id.* at 486. The court rejected that statute, finding "such a limitation on our constitutional power to decide the case [to be] unreasonable under the circumstances here presented," because "there may be presented serious questions for decision that might require careful consideration which could not be given within the time provided by the statute." *Id.* at 487.

More recently, in *People v. Engram*, the California Supreme Court examined the effect of Penal Code section 1050(a), which says that "criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings." *Engram*, 50 Cal. 4th at 1150 (emphasis in original). The Court reaffirmed that, according to the separation-of-powers doctrine, a statute may not completely "supplant[] a court's discretion to control the order of business before it in order to protect and safeguard the rights and interests of all litigants with matters before the court . . . ." *Id.* at 1148-49. Accordingly, the Court determined that Penal Code section 1050(a) could not "properly be interpreted to require a trial court completely to 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.* at 1152

As described above, Proposition 66 includes multiple provisions that attempt to mandate timelines, priority, and related actions concerning decisions by the courts. These provisions violate the separation of powers

doctrine by removing discretion from the courts to control their business and decide what amount of time is necessary to resolve a particular case within their constitutionally mandated jurisdiction. Under Proposition 66, no importance is placed on whether a capital appeal or habeas case is extremely complex or involves many substantial legal issues. Nor does Proposition 66 make allowances if the parties or the court, because of legitimate professional or personal considerations, cannot appropriately litigate the issues presented in a case within the statutorily allotted timeframe. *Cf.* Cal. Rules of Court, Rule 8.63(b) (listing such factors as relevant to determining if good cause exists to extend the time for filing appellate briefs). The only thing that appears to matter under the scheme created by Proposition 66 is getting capital cases processed through the system within arbitrary timelines. Such an insensible scheme is not constitutional under the separation of powers doctrine. *See Engram*, 50 Cal. 4th at 1151 ("[P]ast decisions have recognized that [a statutory] provision cannot properly be interpreted as establishing an absolute or inflexible rule mandating . . . precedence [of certain cases] under all circumstances or in total abrogation of a trial court's ultimate control or discretion over the order in which the cases pending before it should be considered."); *In re Shafter-Wasco Irrigation Dist.*, 55 Cal. App. 2d at 487-88 (addressing the unconstitutionality of a statutory provision imposing an unreasonably short time limit for the determination of an appeal).

Further, courts cannot be coerced to decide matters within arbitrary

timeframes under the threat of legal action. By declaring that the courts are subject to mandamus to compel action when adjudication of a matter legitimately takes longer than demanded by an arbitrarily imposed deadline, Penal Code section 190.6(e) inevitably threatens the independence of the courts and integrity of the legal process. Capital cases are the most serious cases courts can adjudicate, and the coercive nature of a looming petition for writ of mandate necessarily will weigh on the courts deciding capital appeals and habeas petitions under Proposition 66. Such blatant legislative intervention into the judicial realm intrudes on the objectivity and independence of the judiciary and, thus, cannot stand. *Cf. Oppenheimer v. Ashburn*, 173 Cal. App. 2d 624, 633 (1959) (holding that a statute would be unconstitutional if construed to mean that a judge, in refusing to grant a writ of habeas corpus, must do so at pain of paying up to $5,000 to the aggrieved party); *Millholen v. Riley*, 211 Cal. 29, 34-35 (1930) (acknowledging that a legislative attempt to compel an appellate judge to employ a research attorney chosen by the legislative or executive branch would be an impermissible intervention in to the judiciary's authority).

2. Proposition 66 Places Impermissible Restrictions on the Courts' Power to Adjudicate Habeas Corpus Petitions.

The multiple specific restrictions placed on the courts' ability to decide habeas corpus petitions also defeat or materially impair their power to enforce rights of habeas petitioners and redress wrongs.

a. Untimeliness and Successive Petition Bars

Chief among the restrictions in Proposition 66 is the requirement that habeas petitions that are "untimely under subdivision (c)" or successive "shall be dismissed," unless the petitioner demonstrates he is actually innocent or ineligible for a death sentence. Cal. Penal Code § 1509(d). Relatedly, section 1509 commands that courts not issue a stay of execution to consider claims of actual innocence or ineligibility, unless that claim is "substantial." *Id.* Absent a showing of innocence or ineligibility, these sections prevent California's courts from vindicating the rights of a death-sentenced petitioner who files a delayed habeas petition, *regardless of the reasons for the delay and the merits of the claims therein.* Section 1509(d) provides no regard, for example, to whether the basis for a petition could not have been known at an earlier time, or whether petitioner's appointed counsel—through no fault of petitioner—failed to file a timely initial habeas petition.

The new untimeliness and successiveness bars in Penal Code section 1509(d) also purport to overrule—for capital cases only—California Supreme Court precedent concerning procedural default, developed by the Court over many years. *See In re Robbins*, 18 Cal. 4th 770, 778 n.1 (1998). Under the Court's precedent, the timeliness determination of a habeas petition or claim involves deciding: (1) whether, in a capital case, the petition is presumptively timely; (2) if the petition is not presumptively timely, whether there is an absence of substantial delay for the claim (which

is measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim); (3) if a claim is substantially delayed, whether there is good cause for the delayed presentation; or (4) if a claim was filed after a substantial delay without good cause (*i.e.*, the claim is untimely), whether the case falls within one of four exceptions to the bar of untimeliness. *Robbins*, 18 Cal. 4th at 780-81.

Similarly, the procedural bar to review a successive petition or claim involves a determination of: (1) whether the facts on which the claim is based could and should have been discovered earlier; (2) whether the petitioner demonstrated due diligence in pursuing potential claims; (3) whether the petitioner had reason to suspect that a basis for relief was available but did nothing to confirm those suspicions, and if so, whether such failure was justified; and (4) whether the claim was asserted as promptly as reasonably possible. *See In re Clark*, 5 Cal. 4th 750, 776-87 (1993). If the petition or claim is deemed successive, it will still be reviewed on the merits if one of the four exceptions is demonstrated. *Id.* at 797-98.

The new bar in section 1509(d) replaces the existing framework in capital cases with an extreme ban on the courts' power to address most habeas petitions. Absent a claim of innocence or ineligibility, this bar would dismiss: (1) a capital habeas petitioner who could not have discovered prior to filing his first petition that the prosecution withheld material exculpatory

evidence or presented false evidence at his trial; (2) a belated habeas petition filed by a petitioner whose appointed counsel flouted his or her obligation to file a timely initial petition;[3] (3) any claim for ineffective assistance of appellate counsel (because, by operation of the provisions of Proposition 66, a capital defendant's habeas corpus petition may have to be filed and decided by the superior court *before* appointed appellate counsel files the Appellant's Opening Brief in the automatic appeal, *see* Cal. Penal Code § 1509(b); Cal. Penal Code § 1509(c); Cal. Penal Code § 1509(f)); and (4) review of a claim that a lengthy period of incarceration on death row awaiting execution is impermissibly cruel, *see Lackey v. Texas*, 514 U.S. 1045 (1995); *People v. Seumanu*, 61 Cal. 4th 1293, 1370-71 (2015).[4]

Penal Code section 1509(d) thus abandons regard for fundamental fairness and integrity in the capital trial and post-conviction process, purely to rush capital defendants to the execution chamber. The new procedural bars turn on its head the rationale the California Supreme Court provided in *Clark* for excepting claims from procedural default when there is a

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[3] This command runs contrary to the California Supreme Court's decision in *In re Sanders*, 21 Cal. 4th 697, 703 (1999), which held that abandonment by counsel constitutes good cause for delay in filing a habeas petition, reasoning that the "manifest need for time limits on collateral attacks on criminal judgments . . . ***must be tempered with the knowledge that mistakes in the criminal justice system are sometimes made.***" (emphasis added); *see also Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

[4] Ironically, all of the factors set forth in *Robbins* and *Clark* for determining whether a petition or claim is timely and not successive remain applicable to non-capital habeas cases, because Section 1509 applies only to death penalty cases.

"fundamental miscarriage of justice": "The magnitude and gravity of the penalty of death persuades us that the important values which justify limits on untimely and successive petitions are outweighed by the need to leave open this avenue of relief." *Clark*, 5 Cal. 4th at 979; *see also Sanders*, 21 Cal. 4th at 703-04 ("[T]he Great Writ has been justifiably lauded as the safe-guard and the palladium of our liberties.") (internal quotations and citations omitted). The new procedural bars also make far more likely the horrific outcome that the Supreme Court precedent was developed to avoid—the execution of an innocent person. It is thus clear that, by placing undue restrictions on the courts' constitutional power to adjudicate habeas corpus proceedings and vindicate statutory and constitutional rights, Penal Code section 1509(d) is invalid under the separation-of-powers doctrine. *See Cty. of Mendocino*, 13 Cal. 4th at 58-59.

b. Other Impediments to Habeas Jurisdiction

Proposition 66 further limits the power of the Supreme Court and the Courts of Appeal to decide habeas corpus petitions by circumscribing the review that follows a superior court's denial of an initial habeas petition. As discussed above, subdivision (a) of Penal Code section 1509.1 mandates that a "successive petition shall not be used as a means of reviewing a denial of habeas relief." Subdivision (b) additionally limits appealable issues to those claims raised in the superior court (with the exception of a claim of ineffective assistance of trial counsel that habeas counsel ineffectively failed to present in the habeas petition). Cal. Penal Code § 1509.1(b). Subdivision

(c) requires a certificate of appealability for a capital habeas petitioner to obtain review of the superior court's denial of a successive petition. Cal. Penal Code § 1509.1(c). The certificate can be issued "only if the petitioner has shown both a substantial claim for relief . . . and a substantial claim that the requirements of subdivision (d) of Section 1509 have been met." *Id.*

Under these provisions, the Courts of Appeal and the Supreme Court are stripped of their full original habeas jurisdiction in capital cases after a superior court denies a successive petition, and their ability to provide any review of the superior court's denial is exceedingly circumscribed by the requirements for issuance of the certificate of appealability.[5] These provisions are not reasonable regulations of the courts' exercise of their constitutionally granted power because they insulate the superior court's decision from plenary review and thereby diminish the power of the appellate courts to independently consider the merits of all claims raised in habeas petitions. *See In re Resendiz*, 25 Cal. 4th 230, 248-49 (2001), *abrogated on other grounds by Padilla v. Kentucky*, 559 U.S. 356 (2010) (describing the independent review accorded a habeas petition filed in the appellate court after proceedings in the superior court). The serious practical effect of this is that errors made in the lower court may never be fixed.

[5] Proposition 66 thus in effect changes the current collateral review system into a single glorified new trial motion with a right to appeal.

IV. PROPOSITION 66 VIOLATES THE CONSTITUTIONAL MANDATE THAT AN INITIATIVE MEASURE MAY NOT EMBRACE MORE THAN ONE SUBJECT.

California's Constitution 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). The principal purpose of this constitutional provision "was to attempt to avoid confusion of either voters or petition signers and to prevent the subversion of the electorate's will." *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1168 (1999); *see also Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 231 (1978) (The purpose of the single-subject rule is to "minimize the risk of voter confusion and deception."). By ensuring that multiple disparate provisions are not bundled into a single proposition in a way that is confusing to voters, "the single-subject requirement serves an important role in preserving the integrity and efficacy of the initiative process [and] constitutes an integral safeguard against improper manipulation or abuse of that process." *Jones*, 21 Cal. 4th at 1158.

An initiative embraces a single subject if all of its provisions are "reasonably germane" to each other "and to the general purpose or object of the initiative." *Jones*, 21 Cal. 4th at 1157 (quoting *Legislature v. Eu*, 54 Cal. 3d 492, 512 (1991)). The general purpose or object of an initiative is found by reference to the initiative's title, ballot-summary, and stated findings and declarations. *See, e.g., Manduley v. Super. Ct. of San Diego Cty.*, 27 Cal. 4th 537, 576 (2002).

Although the California Supreme Court is traditionally deferential to effectuating the will of the electorate in reviewing ballot initiatives, the theme or purpose of an initiative cannot be so broad as to render the single-subject rule meaningless. "The rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'" *Harbor v. Deukmejian*, 43 Cal. 3d 1078, 1099 (1987). For example, in *Jones,* 21 Cal. 4th at 1161-63, this Court rejected the argument that "voter approval" was a sufficiently narrow purpose to uphold separate provisions of an initiative addressing both: (1) state employee compensation; and (2) the transfer of the power of reapportionment from the Legislature to the Supreme Court. Instead, the Court held that the "proffered subject was a subject of excessive generality and was 'so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement.'" *Id.* at 1162 (quoting *Chemical Specialties Mfrs. Ass'n, Inc. v. Deukmejian,* 227 Cal. App. 3d 663, 671 (1991)); *see also Harbor,* 43 Cal. 3d at 1100 ("fiscal affairs" and "statutory adjustments" excessively broad subjects); *Chemical Specialties,* 227 Cal. App. 3d at 666-67 ("public disclosure" and "truth-in-advertising" excessively broad); *Cal. Trial Lawyers Ass'n v. Eu,* 200 Cal. App. 3d 351, 358-61 (1988) ("regulation of the insurance industry" excessively broad), *abrogated on other grounds by Lewis v. Super. Ct. of San Bernadino Cty.*, 19 Cal. 4th 1232 (1999).

In evaluating whether an initiative violates the single subject rule, a court must: (1) determine the general purpose or object of the initiative; (2) evaluate whether that purpose or object is of such "excessive generality" that it essentially renders the single subject rule meaningless; and (3) determine whether the various provisions of the initiative are "reasonably germane" to each other and to that purpose or object. If the purpose or object of the initiative is of excessive generality, or if the provisions of the initiative are not reasonably germane to each other and to that purpose or object, then the initiative violates the single subject rule.

A. Proposition 66's "Purpose" Is Expedition of Death Penalty Appeals and Reduction of Costs Related to Carrying Out the Death Penalty.

Proposition 66's "purpose" can be interpreted in two ways. On the one hand, it could be argued that Proposition 66's "purpose," in accordance with its title, is simply "Death Penalty Reform and Savings." Such a purpose, like "truth-in-advertising" and "regulation of the insurance industry," is so exceedingly broad as to render the single-subject rule meaningless. *Chemical Specialties,* 227 Cal. App. 3d at 666-67; *California Trial Lawyers,* 200 Cal. App. 3d at 358-61. Accordingly, Proposition 66's "purpose" must be something more focused.

A review of Proposition 66's declarations and ballot summary suggests that the uniting purpose is reform of California's death penalty process *through expedition of death penalty appeals* and reduction of costs related to administering the death penalty. This purpose is supported by the findings

and declarations that purport to describe it:

1. "California's death penalty system is ineffective because of waste, delays, and inefficiencies," that could be better spent on programs such as "crime prevention, education, and services for the elderly and disabled;"

2. Murder victims and their families are entitled to justice and due process, and "[d]eath row killers have murdered over 1000 victims, including 229 children and 43 police officers; 235 victims were raped and 90 victims were tortured;"

3. Families of murder victims should not have to wait decades for justice;

4. Eliminating special housing for death row inmates would save money;

5. "Death row killers" should be required to work while in prison and pay restitution to victims, and failure to comply with doing so should result in the loss of privileges;

6. The current appeals process for death penalty cases is inefficient and reform will make it more fair for both victims and defendants, and reform will allow defendants to receive counsel more quickly;

7. Claims of actual innocence may still be brought, but "frivolous and unnecessary claims" waste taxpayer dollars and should be restricted;

8. The Habeas Corpus Resource Center (HCRC) operates without effective oversight causing long-term delays and wasting money;

9. "Bureaucratic regulations have needlessly delayed enforcement of death penalty verdicts," and "[e]liminating wasteful spending on repetitive challenges to regulations" will result in the "fair and effective implementation of justice;"

10. Capital cases can be fully reviewed by state and federal courts in ten years and state rules and procedures will provide victims with timely justice and save hundreds of millions of dollars; and

11. "California's Death Row includes serial killers, cop killers,

> child killers, mass murderers, and hate crime killers." While the system is broken it should be fixed, to "ensure justice for both victims and defendants."

See App. at 13-14 [Submission of Initiative 15-0096, Ex. 3]; *see also* App. at 8 [Proposition 66 Official Title and Summary, Ex. 2] (describing similar goals). The majority of the sections of Proposition 66 act in accordance with this general purpose:

- Section 3: Modification of Cal. Penal Code Ann. §§ 190.6 (d) & (e) to reduce the timeline for state review of a capital case to five years;
- Section 4: Modification of Cal. Penal Code Ann. § 1227(a) to change the timeline in which the court can approve and certify an execution order;
- Section 5: Insertion of Cal. Penal Code Ann. § 1239.1 (a) & (b) to restrict the grounds upon which extensions of time can be granted, to place "duty to expedite" capital appeals with the Supreme Court, and to require attorneys not currently qualified to accept appointments in capital cases to accept appointments on capital appeals;
- Section 6: Addition of Cal. Penal Code Ann. § 1509 to require transfer of original writs of habeas corpus to the superior courts from the supreme court, to reduce the time in which appeal must be decided to one year, and to limit the grounds upon which additional appeals can be brought;
- Section 7: Insertion of Cal. Penal Code Ann. § 1509.1 to reinstate the jurisdiction of the courts of appeal to hear appeal of superior court decision and to eliminate a defendant's appeal as of right to denial of habeas petition in superior court; and
- Section 14: Amendment of Cal. Gov't Code § 68661 to limit the types of litigation HCRC may assert on behalf of its death row clients;
- Section 15: Addition of Cal. Gov't Code § 68661.1 to limit the types of litigation HCRC may assert on behalf of its death row clients;

- Section 16: Amendment of Cal. Gov't Code § 68662 to limit the types of litigation HCRC may assert on behalf of its death row clients.

Others, however, do not. In sections 8 through 14 and sections 17 and 18, Proposition 66 departs from provisions that are "reasonably germane" to one another and to the proposition's purpose in an effort to: (1) create a new victim compensation plan; (2) exclude public participation from the review of execution protocols; (3) prohibit medical licensing organizations from enforcing their own standards related to the participation of medical professionals in executions; and (4) eliminate an unpaid board as the overseeing entity of a capital defense organization. These departures violate the single subject rule. *See id.*; *see also Raven*, 52 Cal. 3d at 346; *Brosnahan*, 32 Cal. 3d at 245.

B. Victim Restitution Is Unrelated to Expedition of Death Penalty Appeals and Reduction of Related Costs.

Proposition 66's victim restitution provision, whereby death row inmates must pay victim restitution or suffer loss of privileges, is entirely unrelated to expediting the death penalty appeals process or to decreasing the cost of capital appeals. *See Chemical Specialties*, 227 Cal. App. 3d at 670-71 (rejecting the argument that a measure seeking to reduce toxic pollution, protect seniors from fraud, and raise the health and safety standards in nursing homes, among others things, could be considered "reasonably germane"). The money collected from death row inmates for the purpose of victim restitution accrues—as it should—solely to victims,

not to taxpayers. As a result, the proposal does not affect the cost of capital appeals for the state, and it certainly will not expedite death penalty appeals. It thus appears that the victim restitution provision was included in Proposition 66 "simply for improper tactical purposes, a combination that strikes at the heart of the single-subject rule's purpose of minimizing voter confusion and deception." *Jones*, 21 Cal. 4th at 1160.

C. The Administrative Procedure Act Is Unrelated to Expedition of Death Penalty Appeals and Reduction of Related Costs.

The first sentence of newly added Penal Code Section 3604.1 provides that "The Administrative Procedure Act shall not apply to standards, procedures, or regulations promulgated pursuant to Section 3604." Despite the banality of this language, its implications are massive, and entirely unrelated to the general purpose of Proposition 66.[6] The way in which this sentence is presented is also highly likely to have confused the average voter—the precise result the single-subject rule seeks to avoid.

The first sentence of Section 3604.1 purports to exempt the Department of Corrections and Rehabilitation's ("DCR") execution protocol from the Administrative Procedures Act ("APA"). Generally speaking, the APA establishes basic procedural requirements for the adoption, amendment, or repeal of administrative regulations, including the requirement that the

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[6] Indeed, the Official Voter Information Guide, not knowing how to categorize this provision in the context of Proposition 66, simply lists it in a section entitled "Makes Other Changes."

public be able to review and comment on proposed regulations. *See* Cal. Gov't Code § 11346 *et seq*. The APA's purpose was to "advance 'meaningful public participation in the adoption of administrative regulations by state agencies' and create 'an administrative record assuring effective judicial review.'" *Voss v. Super. Ct. of Tulare Cty.*, 46 Cal. App. 4th 900, 908 (1996) (quoting *Cal. Optometric Ass'n v. Lackner*, 60 Cal. App. 3d 500, 506 (1976)).

Section 3604.1 thus serves to revoke the public's ability to review and comment on the methods the DCR intends to use to execute people. This result is far afield from Proposition 66's general purpose of speeding *convicted inmates'* appeals of their convictions and sentences. First, execution procedures bear no relation to the speed of appellate review. Second, Section 3604.1 invades *the public's* right to review and participate in a very important decision—by what means are we, as a state, willing to kill people? It also invades the judiciary's ability to review the DCR's rule-making process.

The way in which this sentence was presented to the voters confirms that it violates the single-subject rule. Neither the text of Proposition 66 nor any of the information contained in the Official Voter Information Guide provide information about the APA. This documentation does not include a citation to the governing statutes that would help voters discover the function of the APA or the practical effects of exempting a state agency from its oversight. Nor did this documentation make clear that the public would

no longer be able to comment on execution procedures—instead, it explains this change as merely "[e]xempt[ing] prison officials from existing regulation process for developing execution methods." Section 11 of Proposition 66 makes only a veiled reference to an entire body of law used to regulate decisions undertaken by the executive branch. It is thus apparent that that section serves to confuse and subvert the will of the electorate and thus violates the single-subject rule.

D. Medical Licensing Standards Related to the Participation of Medical Professionals in Executions Is Unrelated to Expedition of Death Penalty Appeals and Reduction of Related Costs.

Section 12 of Proposition 66 prohibits medical licensing organizations from enforcing their own standards related to the participation of medical professionals in executions. This provision simply bears no relation to the expedition of death penalty appeals and the reduction of related costs. It may also be a violation of the organizations' right to free speech as protected under the First Amendment. *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (upholding the right of organizations to enforce the freedoms of speech and religion protected by the First Amendment of the United States Constitution).

E. Disbanding Unpaid Board of Directors Is Unrelated to Expedition of Death Penalty Appeals and Reduction of Related Costs.

Section 17 of Proposition 66, which disbands the Habeas Corpus Resource Center's ("HCRC") unpaid Board of Directors and places

oversight responsibilities with this Court, also has no relation to Proposition 66's overall goal. While the text of Proposition 66 claims that the purpose of this change is to "ensure accountability" because HCRC "is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars," that text is misleading. HCRC is not, in fact, "operating without . . . oversight," "causing long-term delays" or "wasting taxpayer dollars." For that reason alone, Section 17 of Proposition 66 bears no actual relation to the overall purpose of Proposition 66. *See Jones*, 21 Cal. 4th at 1163 (rejecting initiative proponent's argument that reducing "legislative self-interest" could be a defensible single-subject where the initiative text misleadingly suggested that legislators could set their own salaries, when in fact they did not, and the proposed change failed to accomplish its stated goal of reducing legislative self-interest).

HCRC's structure before the enactment of Proposition 66 demonstrates that it was already operating with ample oversight, including oversight by the California Supreme Court. HCRC has an Executive Director who is responsible for the agency's day-to-day operations and serves at the will of the board of directors. Cal. Gov't Code § 68664(a)-(b). Prior to Proposition 66, the Executive Director was appointed by a five-member board of directors and was confirmed by the California Senate. *Id.* § 68664(b). The five members of HCRC's board of directors were unpaid. *Id.*

In addition, HCRC was required to "report annually to the Legislature, the Governor, and the Supreme Court...on the operations of the center." *Id.*

§ 68661(l). The California Supreme Court monitored the progress of each habeas case pending before it, including HCRC's cases, by requiring appointed counsel to submit confidential status reports every sixty days. The confidential status reports included: current case status, including a good faith estimate of the percentage of work completed on the case; progress during the last sixty days; problems and reasons for any delay; and future plans, including a good faith estimate of the amount of time it would take to complete pending uncompleted tasks.

There is no evidence that HCRC has been causing "long-term delays" or "wasting taxpayer dollars." To the contrary, the Official Voter Information Guide provides no information as to how or whether the dissolution of an *unpaid* board of directors could impact the costs associated with California's death penalty.

Although Proposition 66 states that HCRC operates without oversight, thereby wasting taxpayer dollars, the existence of HCRC's unpaid board of directors does not contribute to waste, and the California Supreme Court effectively oversees all of HCRC's cases. Elimination of HCRC's unpaid board of directors does nothing to reform the death penalty by expediting review of capital cases or eliminating waste and thus does not contribute to the initiative's common goal or purpose. *See, e.g., Jones*, 21 Cal. 4th at 1168. The provisions of Proposition 66 mandating the elimination of HCRC's unpaid board of directors thus violate the single subject rule.

The single-subject rule was added to the California Constitution in an effort to protect the initiative process, which this Court recognizes as "one of the most precious rights of our democratic process." *Id.* at 1168 (internal quotation and citation omitted). The disconnected measures introduced by Proposition 66 that are neither "reasonably germane" to one another nor to the initiative's general purpose undermine the integrity of the ballot initiative system. *See id.* "If the drafters of Proposition [66] wish to place such unrelated proposals before the voters, the constitutionally permissible means to do so is ***through the submission and qualification of separate initiative measures***." *Id.* (emphasis added). Because the drafters of Proposition 66 failed to seek separate ballot initiatives to address the myriad proposals outlined in the initiative, Proposition 66 must be struck down in its entirety as a violation of the single-subject rule. *See id.*

V. PROPOSITION 66 VIOLATES THE EQUAL PROTECTION CLAUSE.

Earlier this year, the California legislature passed Senate Bill 1134, which changed Ca. Penal Code § 1485.55 to permit any person convicted of a crime—capital or non-capital—to pursue a successive claim for habeas relief regarding factual innocence. *Id.* at (b)-(c). Proposition 66 removes prisoners convicted of a capital crime from the pool of persons who may pursue a successive petition, unless the capital petitioner can demonstrate actual innocence under the standard outlined by the previous, pre-2016 version of Ca. Penal Code § 1485.55. The disparate treatment of capital

prisoners from non-capital prisoners is a violation of the equal protection clauses of the state and federal constitutions. *See Griffin v. Illinois*, 351 U.S. 12 (1956).

The Equal Protection Clauses of the California and United States Constitutions are "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *People v. McCann*, 141 Cal. App. 4th 347, 353 (2006).

> 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. The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. It also imposes a requirement of some rationality in the nature of the class singled out. Under the Equal Protection Clause, we do not inquire whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged.

McCann, 141 Cal. App. 4th at 353 (internal citations omitted).

Proposition 66 creates two classes of persons—those who have been convicted of capital crimes and those who have been convicted of non-capital crimes—and takes away from those who have been convicted of capital crimes the statutory right to file a successive petition for habeas corpus. *See* Section 6, Proposition 66, amending Cal. Penal Code § 1509.

The effect of Proposition 66—to grant non-capital prisoners greater protections than capital prisoners—violates the equal protection clauses of the state and federal constitutions. While state courts are not required to establish avenues of appellate review, "once established, these avenues must be kept

free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966). In a classification based on type of conviction, this Court has required that the disparate treatment of the two classes be rationally related to a legitimate state interest. *E.g.*, *Johnson v. Dep't of Justice*, 60 Cal. 4th 871, 880 (2015) (applying rational basis test to an equal protection challenge regarding types of sexual offenders).

There can be no rational basis for depriving capital prisoners of the same protections afforded to those convicted of non-capital crimes; because "death is different," those sentenced to death have historically received *more*, not *fewer*, protections. *See Griffin*, 351 U.S. at 19 (Frankfurter, J., concurring). Further, as evidenced by the state legislature's actions earlier in 2016, the legislature meant to protect all persons—those convicted of capital *and* non-capital offenses—from convictions for which they are factually innocent. *Compare Johnson*, 60 Cal. 4th at 883 (finding "notable" that the state legislature considered a similar law during the same year).

The changes imposed by Proposition 66 affect the standard for asserting claims of innocence. Execution of the innocent is the greatest mistake a State can make, and discovery of the mistake can take years or decades to discover. For that reason, this Court cannot "grant or withhold the benefits of equal protection, which the Constitution commands for all, merely as we may deem the defendant innocent or guilty." *Hill v. Texas*, 316 U.S. 400, 406 (1942).

It makes no sense to afford fewer protections to those who have been sentenced to death than to those who have been sentenced to a term of years. Proposition 66 thus cannot satisfy a rational basis test. To the contrary, it violates the Equal Protection Clauses of the California and federal constitutions. *Hill*, 316 U.S. at 406 (holding "[e]qual protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all–the least deserving as well as the most virtuous.").

VI. THIS COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO STAY ENFORCEMENT OF PROPOSITION 66 UNTIL ITS VALIDITY IS ESTABLISHED.

Immediate injunctive or other appropriate relief is necessary to stay the enforcement of Proposition 66 during the pendency of these writ proceedings. The implementation of Proposition 66 would cause serious and irreparable harm to: (1) taxpayers, who would be saddled with paying tens of millions of dollars per year to fund the complicated scheme set forth by Proposition 66; (2) the over 700 inmates currently on death row, whose rights, lives, and futures are at stake; and (3) lawyers who represent indigent defendants, who may now be forced to choose between: (i) taking capital cases to which they object; and (ii) withdrawing from appointment panels altogether. By contrast, a temporary stay of Proposition 66's enforcement while this Court determines its validity will harm no one. In short, because there are weighty constitutional questions about: (1) whether

Proposition 66 constitutes an illegal imposition on the jurisdiction of the courts; (2) whether Proposition 66 violates the separation of powers; (3) whether Proposition 66 violates the single-subject rule; and (4) whether Proposition violates the equal protection clause; and because the potential for harm falls exclusively on the side of Petitioners, preliminary relief to prevent enforcement of the initiative is necessary and appropriate.

A. The Supreme Court Has Inherent Authority to Stay the Implementation of Proposition 66 Until its Validity Is Established.

California law recognizes the inherent authority of this Court "to make any order appropriate to preserve the status quo" and to issue any appropriate writ "in aid of its jurisdiction." Cal. Code Civ. P. § 923. A stay of enforcement may be ordered "to preserve the status quo until the final determination of [an] action" pending before this Court. *Rosenfeld v. Miller* 216 Cal. 560, 563 (1932). Likewise, the Court "may properly, in the exercise of a sound discretion, grant [a] writ [to maintain the status quo] upon such terms as will be just and will adequately protect the rights of the respondent." *Segarini v. Bargagliotti*, 193 Cal. 538, 539 (1924).

Immediate relief is appropriate where there is "no disadvantage or prejudice" to the respondents in delay, and the parties seeking relief "could well be irreparably damaged." *Cal. Table Grape Comm'n v. Dispoto*, 14 Cal. App. 3d 314, 316 (1971). "If the denial of an injunction would result in great harm to the [party seeking relief], and the [respondents] would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant

the preliminary injunction." *See Robbins v. Super. Ct. of Sacramento Cty.*, 38 Cal. 3d 199, 205 (1985); *see also M Rests., Inc. v. S.F. Local Joint Exec. Bd. of Culinary Workers*, 124 Cal. App. 3d 666, 674 (1981).

The Court must "evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits, . . . and (ii) the balance of harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction." *Common Cause of Cal. v. Bd. of Supervisors of L.A.*, 49 Cal. 3d 432, 441-442, 447 (1989). The "presence or absence of each factor is usually a matter of degree," and immediate relief is appropriate "if the party seeking the injunction can make a sufficiently strong showing" as to one of these factors. *Id.* at 447. The "principal objective" of such injunctive relief "is to minimize the harm which an erroneous interim decision may cause." *White v. Davis*, 30 Cal. 4th 528, 561 (2003) (quoting *IT Corp. v. Cty. of Imperial*, 35 Cal. 3d 63, 73 (1983)).

B. Immediate Relief Is Warranted.

As explained above, Proposition 66 is unlawful because it imposes illegal restrictions on the courts' jurisdiction and powers, because it violates the single-subject rule, and because it violates the equal protection clause. In addition, as explained in Paragraphs 18-35 of this Petition, Proposition 66 poses a serious risk of irreparable harm to Californians, including by expediting executions. There is no more irreparable harm than the prospect of imminent death under a scheme that may be found constitutionally

wanting. And Californians in general—especially the 48.9% that voted against Proposition 66—have a strong interest in ensuring that a statute that will result in the loss of human life is constitutional.

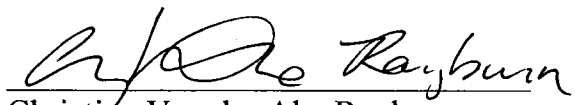
On the other hand, preservation of the status quo ante will cause no harm to Respondents or to any other party while the validity of Proposition 66 is resolved. This Court has inherent authority "to make any order appropriate to preserve the status quo" (Cal. Code Civ. P. § 923), and Petitioners respectfully request that the Court do so here.

VII. CONCLUSION

For the reasons stated above, Petitioners respectfully urge this Court to grant the relief sought in the attached Writ Petition.

Dated: December 19, 2016

Respectfully submitted,



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Attorneys for Petitioners Ron Briggs and John Van de Kamp

VERIFICATION

I, John Van de Kamp, declare:

I am a Petitioner in the above-entitled action. I have read the foregoing Amended and Renewed Petition for Writ of Mandate and know the contents thereof. I am informed and believe and based on said information and belief allege that the contents therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California on December 14, 2016.

John Van de Kamp

CERTIFICATE OF COMPLIANCE

In accordance with California Rules of Court 8.204(c)(1) and 8.486(a)(6), counsel for Petitioners hereby certifies that the number of words contained in this Renewed Petition For Extraordinary Relief, Including Writ of Mandate and Request for Immediate Injunctive Relief; Memorandum of Points and Authorities, including footnotes but excluding the Table of Contents, Table of Authorities, the Verification, and this Certificate, is 13,901 words as calculated using the word count feature of the computer program used to prepare the brief.

By: Christina Von der Ahe Rayburn

CHRISTINA VON DER AHE RAYBURN

PROOF OF SERVICE BY HAND

I am more than eighteen years old and not a party to this action. My business address is Specialized Legal Services, 1112 Bryant Street, #200, San Francisco, California 94103. On December 19, 2016, I served a true copy of the attached document entitled:

MOTION FOR LEAVE TO FILE AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF AND [PROPOSED] AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

PETITIONERS' APPENDIX OF EXHIBITS IN SUPPORT OF AMENDED AND RENEWED PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY OR INJUNCTIVE RELIEF

PETITIONER'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR WRIT OF MANDATE; PROPOSED ORDER

[PROPOSED ORDER] GRANTING PETITIONER'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR WRIT OF MANDATE

in an addressed, sealed envelopes, clearly labeled to identify the persons being served at the addresses shown below and I delivered the envelop by hand to the offices of the addressee.

Kamala Harris
Attorney General of California
Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5500

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
415-865-4200

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

Executed on December 19, 2016, at San Francisco, California.

_____
NAME

PROOF OF SERVICE BY FEDERAL EXPRESS

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. On December 19, 2016, I served a true copy of the attached document entitled:

MOTION FOR LEAVE TO FILE AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF AND [PROPOSED] AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

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PETITIONER'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR WRIT OF MANDATE

[PROPOSED ORDER] GRANTING PETITIONER'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR WRIT OF MANDATE

by placing true and correct copies thereof in sealed packages designated by Federal Express for that purpose, with such packages addressed for delivery as follows:

Jerry Brown
Governor of California
c/o State Capitol, Suite 1173
Sacramento, CA 95814

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

Executed on December 19, 2016, at San Francisco, California.

JEFFREY BALL