

SUPREME COURT
FILED

FEB - 1 2017

Case No. S238309

Jorge Navarrete Clerk

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Deputy

RON BRIGGS and JON 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.

Californians To Mend, Not End, The Death Penalty –
No On Prop. 62, Yes On Prop. 66
Intervenor.

**INTERVENER'S REPLY TO PETITIONERS' OPPOSITION
TO MOTION TO INTERVENE**

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CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY-
NO ON PROP. 62, YES ON PROP. 66

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REPLY TO PETITIONERS' OPPOSITION TO MOTION TO
INTERVENE

Petitioners oppose the Motion to Intervene of Proposed Intervener CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY -NO ON PROP 62, YES ON PROP 66 (“Yes On Proposition 66 Committee” or “COMMITTEE”) in the above-captioned matter, by ignoring the clear interconnection between KERMIT ALEXANDER, the official proponent of Proposition 66 and a member of the YES ON PROPOSITION 66 COMMITTEE, and the COMMITTEE itself, as described fully in the Declarations of Kermit Alexander and McGregor Scott, and attempting to parse their supporting declarations to quibble about the COMMITTEE’s “official” status.

The Petitioners’ objections are without merit. The Motion should be granted.

Proposed Intervener’s Motion (at p. 5) states that COMMITTEE was “ ‘the official campaign committee that was directly involved in drafting and sponsoring the initiative measure’ (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1142) (“*Perry*”), and supported the qualification and passage of Proposition 66.” The Declaration of Proposition 66 COMMITTEE Chairman McGregor Scott identifies the COMMITTEE as “primarily formed” to support the qualification and passage of the measure. The COMMITTEE’s Motion also notes, that under California Elections Code

section 342, only natural persons may be “proponents,” citing a recent Ninth Circuit Court of Appeals decision. (Prop. Int’vrs. Mem. Pts. &As, at p at p. 9, fn. 1,)

The YES ON PROPOSITION 66 COMMITTEE is an “official organization” supporting a ballot measure committee” as described in *Perry, supra*, at pp. 1142-1143, in contrast with a mere advocacy organization such as the “advocacy group” that sought and was denied intervener status in *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, as noted and distinguished in Proposed Intervener’s Motion to Intervene (Prop. Int’vrs. Mem. Pts. &As, at pp. 10-11).

The YES ON PROPOSITION 66 COMMITTEE is the principal ballot measure committee that was recognized by the California Secretary of State as “primarily- formed” to support Proposition 66. (See Supplemental Declaration of Charles H. Bell, Jr., at ¶ 5; see also Secretary of State’s CalAccess website: < <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1381724&session=2015> >.) Moreover, the COMMITTEE participated in drafting the measure and worked with KERMIT ALEXANDER as Proponent to submit the measure to the Attorney General on October 16, 2015 for preparation of a Title and Summary. (Supplemental Declaration of Charles H. Bell, Jr. at ¶¶1- 4, 5; see also Declarations of Kermit Alexander and Declaration of McGregor

Scott.)

The COMMITTEE was formed initially as a primarily-formed ballot measure committee to oppose Proposition 34 (2012), a prior initiative measure that proposed repeal of California's death penalty. The COMMITTEE served as the principal primarily- formed ballot measure committee to support the qualification of a proposed death penalty reform measure (Attorney General #13-0013) for the 2014 state ballot that was ultimately withdrawn from circulation and did not qualify for that ballot. KERMIT ALEXANDER also served as a proponent of that measure. (See Exhibit B attached to Bell Supplemental Declaration). The COMMITTEE then served as the principal committee for the drafting, qualification and support of Proposition 66. (See Supplemental Declaration of Charles H. Bell, Jr., at ¶ 6.) When the Proposition 62 death penalty repeal measure was qualified for the November 2016 statewide ballot, the COMMITTEE changed its name to identify itself as primarily-formed also to oppose Proposition 62. (See Supplemental Declaration of Charles H. Bell, Jr., at ¶ 7.)

The COMMITTEE met all the requirements of an "official organization" as described in *Perry*, at p. 1143 and as further demonstrated by cases such as *Amwest Sur. Ins. Co. v. Wilson* (1995) 11Cal.4th 1243, in which intervention in defense of a ballot measure was permitted under Code Civ. Proc., section 387.

Petitioners claim that “Respondents in this case have vigorously opposed the petition.” While Respondents have opposed the petition, the vigor is debatable, and future vigor is unknown. For example, their Petition disputes the finding of Proposition 66 that the Habeas Corpus Resource Center was “operating without any effective oversight.” (Amended Petition 50.) Respondents answer this allegation by saying it was more appropriate to a ballot argument than a single-subject claim. (See Respondents’ Preliminary Opposition 20.) That is a valid point, but Respondents fail to point out that the petition's allegation is demonstrably, factually false. The Yes on 66 Committee does so in its opposition and has filed a motion for judicial notice of the “smoking gun” documents. The Attorney General’s Office is aware of these documents, having been a party to both cases, but did not bring them or other evidence of HCRC’s *ultra vires* activities to the attention of the court.

For the future, Petitioners have stated a claim under the United States Constitution (see Petition ¶39, p. 15) and it is unknown whether the Attorney General will continue to defend Proposition 66 at the United States Supreme Court level should that become necessary. California’s executive branch has a mixed record regarding civil litigation affecting capital punishment. The Attorney General did not seek this court’s review of the dubious decisions in *Morales v. California Dept. of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 729 and *Sims v. California Dept. of*

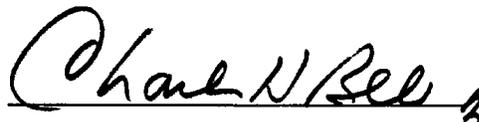
Corrections & Rehabilitation (2013) 216 Cal.App.4th 1059. When CDCR failed to establish a usable execution protocol and was sued by families of murder victims, the Attorney General not only opposed the suit in the trial court but sought a writ from the Court of Appeal to force dismissal, claiming that victims had no standing despite the explicit language of article I, section 28, subdivision (c) of the California Constitution. (See *Beard v. Superior Court (Winchell & Alexander)* (Mar. 12, 2015, No. C078488) (summarily denied).) In light of this history, a continued and vigorous defense of Proposition 66 cannot be taken for granted without the intervention of the COMMITTEE.

CONCLUSION

The Petitioners' objections are without merit, and Proposed Intervener's Motion to Intervene should be granted.

Dated: January 13, 2017

Respectfully Submitted,



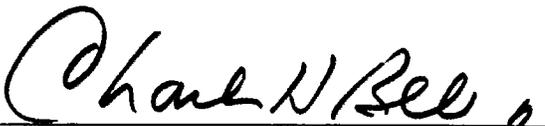
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THE DEATH PENALTY- NO ON PROP. 62,
YES ON PROP. 66

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to rules 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed Intervener's Reply To Petitioners' Opposition To Motion To Intervene is produced using 13-point Times New Roman type including footnotes and contain approximately 980 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: January 13, 2017.

BELL, McANDREWS & HILTACHK, LLP

By: 

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THE DEATH PENALTY- NO ON PROP. 62,
YES ON PROP. 66

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:
I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814. On January 6, 2017, I served the following:

**INTERVENER'S REPLY TO PETITIONERS' OPPOSITION
TO MOTION TO INTERVENE**

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Harris and the Judicial Council*

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 13, 2017. at Sacramento, California.



Kiersten Merina