

FEB - 1 2017

Jorge Navarrete Clerk

Deputy

S238309

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

RON BRIGGS AND JOHN VAN DE KAMP,

Petitioners,

vs.

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.

**INTERVENOR'S MOTION FOR
JUDICIAL NOTICE IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

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

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CLERK SUPREME COURT

MOTION FOR JUDICIAL NOTICE

Pursuant to rule 8.252 of the California Rules of Court and section 452 of the Evidence Code, Intervenor CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY—NO ON PROP 62, YES ON PROP 66 moves the court to take judicial notice of the following records of courts of this state and of the United States, attached as Appendices A and B to Intervenor’s Preliminary Opposition to the Petition for Extraordinary Relief, which is filed concurrently with this motion:

1. The Supplemental Case Management Statement filed February 17, 2009, by the Habeas Corpus Resource Center in the United States District Court for the Northern District of California in the case of *Ashmus v. Wong*, No. 93-594 and the Declaration of Michael Laurence attached to that statement.

2. The Notice of Application and Application for Leave to File Complaint in Intervention filed February 5, 2015, by the Habeas Corpus Resource Center on behalf of Mitchell Sims in the case of *Winchell and Alexander v. Beard*, Sacramento Superior Court No. 34-2014-80001968 (attachments omitted).

MEMORANDUM OF POINTS AND AUTHORITIES

Subdivision (d) of section 452 of the Evidence Code provides that judicial notice may be taken of “[r]ecords of (1) any court of the state or (2) any court of record of the United States” Appendix A is a record of a United States District Court, and Appendix B is a record of a California Superior Court.

These materials are relevant to the Petitioners’ claim that Proposition 66’s reform of the governance of the Habeas Corpus Resource Center (HCRC) is unrelated to the theme of the initiative, in violation of the single subject rule.

Proposition 66 declares in section 2, paragraph 8 that HCRC “is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars.” Petitioners assert that this is not true on pages 50-51 of their supporting Memorandum of Points and Authorities, and they further assert on page 51 that this court “effectively oversees all of HCRC’s cases.” These documents demonstrate that HCRC has expended resources to engage in civil litigation, an expenditure not authorized by the statute specifying HCRC’s powers and duties, section 68661 of the Government Code. Appendix A further demonstrates that HCRC asserted to a federal court that the burden of conducting this unauthorized civil litigation required additional time to complete the litigation that HCRC was actually created to conduct, habeas corpus cases in state and federal courts.

The truth of Mr. Laurence’s declaration is not essential to its relevance. The existence of the declaration itself demonstrates that the framers of Proposition 66 had a reasonable basis to believe that HCRC’s governing body had permitted it to expend resources in unauthorized cases, that delay in the authorized cases had been caused by the unauthorized work, and that reform of HCRC’s governance would therefore promote the goals of the initiative. Such a belief on the part of an initiative’s framers is sufficient for a provision to be reasonably germane. (See *Legislature v. Eu* (1991) 54 Cal.3d 492, 513-514.) The court does not second-guess the framers on whether the measures will actually be effective. (See *ibid.*)

These materials are therefore proper for judicial notice.

Dated: January 9, 2017

Respectfully Submitted,


KENT S. SCHEIDEGGER

**DECLARATION OF KENT S. SCHEIDEGGER IN SUPPORT OF THE
MOTION FOR JUDICIAL NOTICE**

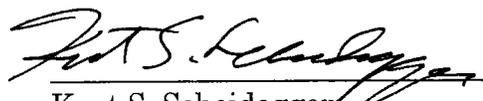
I, Kent S. Scheidegger, declare:

1. I am an attorney in good standing licensed to practice law in the State of California and am co-counsel for Intervenor Californians to Mend, Not End, the Death Penalty -No on Prop 62, Yes on Prop 66.

2. Exhibit A attached to Intervenor's Preliminary Opposition is a true copy of the Supplemental Case Management Statement and attached declaration filed by the Habeas Corpus Resource Center in the United States District Court the Northern District of California in the case of Ashmus v. Wong, No. 93-594, on February 17, 2009.

3. Exhibit B attached to Intervenor's Preliminary Opposition is a true copy of the Notice of Application and Application for Leave to File Complaint in Intervention, without the attachments, filed by the Habeas Corpus Resource Center in Winchell & Alexander v. Beard, Sacramento Superior Court case 34-2014-80001968.

The foregoing is true and correct and of my personal knowledge. If called as a witness I could and would testify competently thereto. Executed under penalty of perjury under the laws of the State of California at Sacramento, California this 9th day of January, 2017.


Kent S. Scheidegger

DECLARATION OF SERVICE BY U.S. MAIL

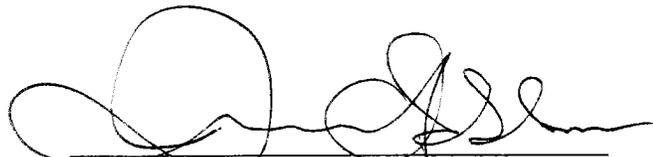
The undersigned declares under penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, and employed by the Criminal Justice Legal Foundation, with offices at 2131 L Street, Sacramento, California 95816. On the date below I served the attached document (1) by electronic mail, sending true copies of the PDFs to the addresses listed below, and (2) by depositing true copies of it enclosed in sealed envelopes with postage fully prepaid, in the United States mail in the County of Sacramento, California, addressed as follows:

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*Attorneys for Respondents Governor Jerry Brown,
Attorney General Kamala Harris, and the California Judicial Council*

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



Irma H. Abella