

# SUPREME COURT COPY

CASE NO. S238309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Ron Briggs and John Van De Kamp,

Petitioners,

v.

Jerry Brown, in his official capacity as the Governor of California; Xavier  
Becerra, in his official capacity as the Attorney General of California;  
California's Judicial Council, and Does I through XX,

Respondents.

SUPREME COURT  
FILED

MAR 30 2017

Jorge Navarrete Clerk

Deputy

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**APPLICATION FOR PERMISSION TO FILE  
*AMICUS CURIAE* BRIEF  
AND [PROPOSED] BRIEF OF *AMICUS CURIAE*  
IN SUPPORT OF RESPONDENTS**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

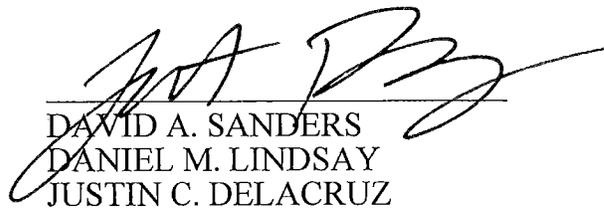
**California Rules of Court 8.208**

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

*Amicus Curiae*, California Correctional Peace Officers Association

Dated: March 29, 2017

**CALIFORNIA CORRECTIONAL  
PEACE OFFICERS ASSOCIATION  
LEGAL DEPARTMENT**



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**APPLICATION TO FILE *AMICUS CURIAE* BRIEF**

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

Under California Rules of Court, Rule 8.520(f), the *Amicus Curiae* respectfully asks for leave to file the attached amicus brief in opposition to the Petition for Extraordinary Relief.

**INTEREST OF THE *AMICUS CURIAE***

The California Correctional Peace Officers Association (“CCPOA”) represents approximately 31,000 state correctional officers and supervisors employed by the California Department of Corrections and Rehabilitation (“CDCR”). CCPOA advocates on behalf of its members on matters affecting correctional officer safety. Proposition 66 affects correctional officer safety because the death penalty is an effective deterrent, preventing violent inmates, which include those serving sentences of life without the possibility of parole, from murdering correctional peace officers.

As peace officers, CCPOA members have a significant, unique and practical interest in effectiveness of the death penalty. The murder of a peace officer is a special circumstance that triggers the death penalty. (Penal Code § 190.2, subd. (a)(7).) Especially as it relates to inmates serving sentences of life without the possibility of parole, the threat of the death penalty serves as a deterrent to killing correctional peace officers—people who, daily, interact with those who have committed violent crimes. Due to the deterrent effect it has against murders of correctional peace

officers by violent inmates, CCPOA has a significant, unique and practical interest in seeing that the death penalty is effective and enforced.

Proposition 66 serves that interest.

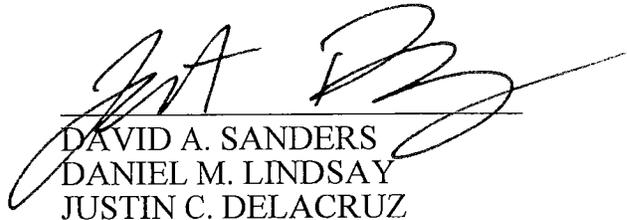
### CONCLUSION

*Amicus Curiae* CCPOA respectfully requests this Court accept the accompanying brief for filing in this case.<sup>1</sup>

Respectfully submitted,

Dated: March 29, 2017

**CALIFORNIA CORRECTIONAL  
PEACE OFFICERS ASSOCIATION  
LEGAL DEPARTMENT**



DAVID A. SANDERS  
DANIEL M. LINDSAY  
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Attorneys for the *Amicus Curiae*

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<sup>1</sup> Pursuant to California Rules of Court, rule 8.520(f)(4), no other party to this case authored the accompanying amicus brief in whole or in part, and no party other than CCPOA made a monetary contribution intended to fund the preparation or submission of the brief.

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**[PROPOSED] BRIEF OF *AMICUS CURIAE*  
CALIFORNIA CORRECTIONAL  
PEACE OFFICERS ASSOCIATION  
IN SUPPORT OF RESPONDENTS**

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## I. INTRODUCTION

The California Correctional Peace Officers Association (“CCPOA”) submits this *amicus curiae* brief in opposition to the Petitioners’ attempt to invalidate Proposition 66, the “Death Penalty Reform and Savings Act of 2016.” Proposition 66 seeks to enforce the death penalty in an effective and expedient manner. In November 2016, the majority of California voters decided it should be the law.

This case is a taxpayer facial constitutional challenge to an initiative. The applicable legal standard for such a challenge is unsettled. (*In re Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1126 [“The standard governing facial challenges has been a matter of some debate within both this court and the United States Supreme Court.”].) This Court has applied two tests. Under the strictest test, Petitioners must show that Proposition 66 inevitably poses “a present total and fatal conflict with applicable constitutional prohibitions.” (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 181.) Under the more lenient test, Petitioners must show that Proposition 66 is constitutionally invalid “in the generality or great majority of cases.” (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 673.) This Court should apply the strictest test in evaluating Petitioners’ claims because the will of the people as expressed via a duly passed initiative, Proposition 66, deserves deference. This is not simply an abstract idea. Deference is legally required. Viewing Petitioners’ causes of action through the strictest lens, this Court will see that Proposition 66 is constitutionally valid.

II. PROPOSITION 66 PASSES CONSTITUTIONAL MUSTER UNDER THE STRICTEST TEST ARTICULATED FOR A TAXPAYER FACIAL CHALLENGE TO A LEGISLATIVE ENACTMENT.

A. The Strictest Test Articulated for a Taxpayer Facial Challenge to a Legislative Enactment Should Apply.

When presented with facial constitutional challenges to an initiative, “it is [this Court’s] solemn duty to *jealously guard the precious initiative power*, and to resolve any reasonable doubts in favor of its exercise.” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501 [internal citations omitted] [emphasis added].) This Court explained that duty:

[O]ur duty is clear: We do not consider or weigh the economic or social wisdom or general propriety of the initiative. Rather, our sole function is to evaluate [it] legally in light of established constitutional standards. All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. *Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.* If the validity of the measure is fairly debatable, it must be sustained.

(*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814-815 [internal quotations and citations omitted] [emphasis added].)

In line with its duty to protect the initiative power, this Court should view Petitioners’ attack on Proposition 66 through the strictest lens articulated for a taxpayer facial challenge to a statute; that is, Petitioners must show that Proposition 66 inevitably poses a *present total and fatal conflict* with constitutional prohibitions. (*Pacific Legal Foundation, supra*, 29 Cal.3d at p. 181.) As briefly discussed below and as explained in the

numerous briefs filed in opposition to the petition, Proposition 66 presents no such conflict.

**B. Proposition 66 Does Not Pose a Present Total and Fatal Conflict with Constitutional Prohibitions.**

Petitioners' first and second causes of action assert interference with jurisdiction of the courts and violation of separation of powers, respectively. To succeed on these causes of action, Petitioners must show that Proposition 66 contains unreasonable regulations of court procedure or convince this Court that Proposition 66 was intended to defeat original habeas corpus jurisdiction in the court of appeal and in this Court. (*See County of San Diego v. State of California* (1997) 15 Cal.4th 68, 87 [“[T]he courts are subject to reasonable statutory regulation of procedure and other matters . . . .”]; *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253 [This Court avoids “constitutional conflicts whenever possible by construing legislative enactments strictly against the impairment of constitutional jurisdiction. An intent to defeat the exercise of the court’s jurisdiction will not be supplied by implication.”].) To support these causes of action, Petitioners focus on Penal Code section 1509, subdivision (a) which states: “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.” Reading this provision “strictly against the impairment of constitutional jurisdiction” suggests this provision relates to venue transfer not jurisdiction. Proposition 66 does not interfere with the jurisdiction of this Court or the courts of appeal.

To succeed on their third cause of action for violation of the single-subject rule, Petitioners must show that the provisions of Proposition 66 are neither functionally related to one another nor reasonably germane to one another or the objects of the enactment. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100.) Proposition 66's provisions are functionally related to or reasonably germane to death penalty reform and cost savings. (See *e.g.*, Penal Code sections 2700.1 [victim restitution], 3604.1 and 3604.3 [regarding execution protocols].) Proposition 66 satisfies the single-subject rule.

Finally, for Petitioners to succeed on their fourth cause of action, their equal protection claim, they must show first that capital defendants are similarly situated to noncapital defendants. This Court has repeatedly articulated a rule to the contrary. (*People v. Cruz* (2008) 44 Cal.4th 636, 681 [“And since capital defendants are not similarly situated to noncapital defendants, the death penalty law does not violate equal protection by denying capital defendants certain procedural rights given to noncapital defendants.”]; *People v. Johnson* (1992) 3 Cal.4th 1183, 1242-1243 [“Capital defendants are thus situated differently from defendants subject to sentence enhancements, and no equal protection violation occurs when they are treated differently.”].) Even if Petitioners could convince this Court that capital defendants and noncapital defendants are similarly situated, they must still show that “there is no rational relationship between the disparity of treatment and some legitimate governmental purpose.” (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881 [internal

quotations and citations omitted].) They “must negative every conceivable basis that might support the disputed statutory disparity. If a plausible basis exists for the disparity, courts may not second-guess its wisdom, fairness, or logic.” (*Ibid.* [internal quotations and citations omitted].) Petitioners assert that it makes no sense to afford less protections to capital prisoners than those given to noncapital prisoners. Even assuming the premise of that argument were true and it is not, that argument attacks the “wisdom, fairness, or logic” of Proposition 66. Proposition 66 does not offend equal protection.

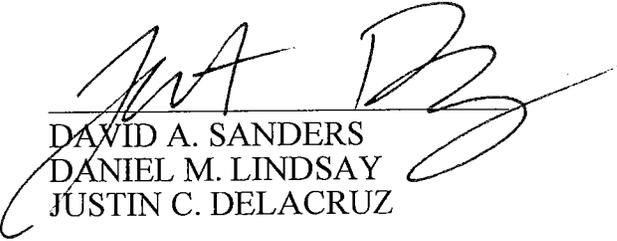
As shown above, Proposition 66 does not pose a *present total and fatal conflict* with separation of powers, the single subject rule or equal protection. (*Pacific Legal Foundation, supra*, 29 Cal.3d at p. 181.) Rather, it is a constitutionally valid expression of the people’s will. Deference should be given to that will. Proposition 66 should not be invalidated.

### III. CONCLUSION

*Amicus curiae* respectfully requests that the petition attacking the validity of Proposition 66 be denied.

Dated: March 29, 2017

**CALIFORNIA CORRECTIONAL  
PEACE OFFICERS ASSOCIATION  
LEGAL DEPARTMENT**



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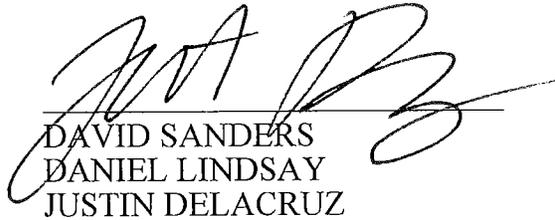
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**CERTIFICATE OF WORD COUNT**

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that this brief consists of 1,170 words, as counted by the computer program used to generate the document.

Dated: March 29, 2017

**CALIFORNIA CORRECTIONAL  
PEACE OFFICERS ASSOCIATION  
LEGAL DEPARTMENT**



DAVID SANDERS  
DANIEL LINDSAY  
JUSTIN DELACRUZ

Attorneys for the *Amicus Curiae*

**PROOF OF SERVICE**

I, Melissa Burkart, declare as follows:

I am a citizen of the United States, over the age of 18 years, and am not a party to this action. My address is 755 Riverpoint Drive, West Sacramento, California, 95605.

On March 29, 2017, I served the attached **APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**, on the parties listed below by placing such documents in a sealed envelope for pickup and delivery by **Golden State Overnight** in the matter of:

***Ron Briggs and John Van De Kamp v. Jerry Brown, et al.***  
**Supreme Court of California Case No. S238309**

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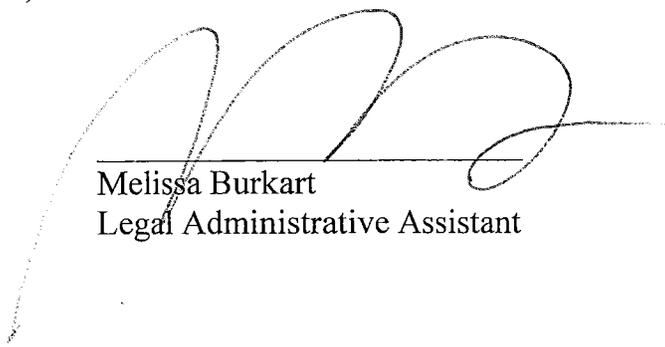
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**PROOF OF SERVICE (cont.)**

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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 March 29, 2017.



\_\_\_\_\_  
Melissa Burkart  
Legal Administrative Assistant