

In the Supreme Court of the State of California

RON BRIGGS,

Petitioner,

Case No. S238309

v.

**EDMUND G. BROWN, JR., as Governor,
etc. et al.,**

Respondents;

**CALIFORNIANS TO MEND, NOT TO
END THE DEATH PENALTY, etc.,**

Intervener.

**SUPREME COURT
FILED**

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Deputy

**REPLY OF RESPONDENTS GOVERNOR BROWN AND
ATTORNEY GENERAL BECERRA TO AMICI CURIAE
BRIEFS**

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INTRODUCTION

This case raises a challenge to Proposition 66, the “Death Penalty Reform and Savings Act of 2016.” This measure—typical of any measure related to the death penalty—has been the subject of much debate and public discourse. Predictably, numerous amici curiae briefs have been submitted, supporting both petitioners and respondents.

Some of these amici briefs challenge the wisdom or effectiveness of Proposition 66, or its stated goals. While those questions were appropriate to debate during the election, they are not particularly relevant to assessing the constitutionality of the Proposition, the sole issue before this Court. When assessing the validity of an initiative measure, this Court does not undertake an analysis of the measure’s wisdom or its effectiveness.

The remaining amici either rehash the arguments made by petitioners, or otherwise stray far afield by raising new issues to which this Court should give no weight. In short, none of the amici curiae briefs in any way undermines the Proposition’s validity.

ARGUMENT

I. AMICI’S POLICY ARGUMENTS ARE IRRELEVANT TO THE LEGAL ISSUES PRESENTED.

At their core, most of the arguments advanced by amici supporting petitioners challenge the wisdom of the measure’s provisions. But this Court has repeatedly indicated that such arguments are not relevant to a measure’s validity. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [in adjudicating constitutionality of an initiative, this Court “do[es] not consider or weigh the economic or social wisdom or general propriety of the initiative”].) The criteria applied by this Court to determine a measure’s constitutionality do not include “whether [the Court] believe[s] the law to be for the public

good.” (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814, quoting *Ferguson v. Skrupa* (1963) 372 U.S. 726, 730.)

The critical question is whether the challenged measure violates a constitutional provision. “Although we express neither approval nor disapproval of the [challenged provision] from the standpoint of sound fiscal or social policy, we find nothing in the Constitution’s revision and amendment provisions [citation] which would prevent the people of this state from exercising their will in the manner [the measure] accomplished.” (*Amador Valley Joint Union High Sch. Dist.*, *supra*, 22 Cal.3d at p. 229; *In re Lance W.* (1985) 37 Cal.3d 873, 887 [whether the voters’ policy choice in Proposition 8 was “wise” did not impact the question of its constitutionality].) This is true even if the Court “might disagree with both the accuracy of [the measure’s] premise and the overall wisdom of the initiative measure.” (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 248.)

Some amicus briefs filed in support of petitioners violate this central principle by contesting the wisdom of Proposition 66. For example, amici California Attorneys for Criminal Justice and Death Penalty Focus question whether the Proposition forwards either reform or savings, and posit instead that it is underlain by improper motives, namely “taking what seems to be revenge against the California Supreme Court, the Habeas Corpus Resource Center (HCRC) and appointed criminal defense counsel.” (CACJ Am. Br. at 11-12.) In addition to the fact that this argument relies upon conjecture, it does not undermine the constitutionality of the measure.¹

¹ Amici California Attorneys for Criminal Justice raise no cogent argument, but instead contend that the Proposition “insults this Court, interferes with counsel, denigrates institutions including the Habeas Corpus Resource Center . . . and, in general, makes it more likely that the innocent will be executed.” (CACJ Am. Br. at 5-6.) Amici also contends, without any legal support, that the Proposition “renders the death penalty system in
(continued...)

Amicus Federal Public Defenders also raises issues that are irrelevant for purposes of assessing the constitutionality of Proposition 66, pointing to the role that state habeas corpus litigation plays in subsequent federal habeas actions as a reason for rejecting the changes that the measure implements. (Fed. Pub. Def. Am. Br. at 1-4, 9.) This policy argument does not undermine the measure's constitutionality. Amicus Federal Public Defenders also argues that Proposition 66 violates the federal Constitution, but the only federal claim raised by the petition is a claim under the Equal Protection Clause. Noting that this Court "has already rejected the idea that California should adopt the same limitations on habeas corpus relief that the federal courts have adopted," amicus invites this Court to disregard Proposition 66, an initiative approved by the voters. (Fed. Pub. Def. Am. Br. at 4.) But this Court's authority to adopt limitations on habeas corpus procedure through case law is not at issue in this case, which instead involves "[t]he people's reserved power of initiative," a power this Court has explained is "greater than the power of the legislative body." (*Rossi v. Brown* (1995) 9 Cal. 4th 688, 715; see also *Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 248 ["In our democratic society in the absence of some compelling, overriding constitutional imperative, we should not prohibit the sovereign people from either expressing or implementing their own will on matters of such direct and immediate importance to them as their own perceived safety."].)

Amici Constitutional Law Professors argue that Proposition 66 will sow confusion and "havoc" in the superior and trial courts, and "will transmute this Court into a death penalty court." (Const. Law Prof. Am. Br.

(...continued)

California unconstitutional." (*Id.* at 6.) These arguments do not impact the Proposition's constitutionality.

at 10-17, 19.)² But the purpose of the initiative process is to enact statutory changes that the electorate deems necessary, and thus by their nature initiatives will invariably cause disruption in the status quo; that does not make them unconstitutional. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [“[T]he initiative is in essence a *legislative battering ram* which may be used to tear through the exasperating tangle of the traditional legislative procedure and strike directly toward the desired end,” citation omitted].) In any event, such dire forecasts do not establish a constitutional violation. (See *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349 [rejecting constitutional challenge based on purported “great delays and soaring financial costs”]; cf. *Brosnahan v. Brown, supra*, 32 Cal.3d at p. 261 [“[P]etitioners’ forecast of judicial and educational chaos is exaggerated and wholly conjectural, based upon essentially unpredictable fiscal or budgetary constraints.”].)

Separately, some amici curiae briefs also debate whether the Proposition’s provisions will work towards their stated goal. As this Court has previously made clear, in the context of single-subject challenges like the one raised by petitioners here, “we do not review initiatives by attempting to predict whether each section actually will further the initiative’s purpose.” (*Calfarm Ins. Co., supra*, 48 Cal. 3d at p. 841.) “Whether or not these various provisions are wise or sensible, and will combine *effectively* to achieve their stated purpose, is not our concern in evaluating the present single-subject challenge.” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 514, italics in original.)

²The legal arguments contained in this amicus brief retrace essentially the same arguments raised by petitioners, and which are amply refuted in respondents’ opposition. (See generally Const. Law Prof. Am. Br.; Habeas Corpus Res. Ctr. Am. Br.)

II. AMICI'S LEGAL ARGUMENTS DO NOT UNDERMINE PROPOSITION 66'S CONSTITUTIONALITY.

Amici California Attorneys for Criminal Justice and Death Penalty Focus attempt to interject new legal claims in this action, including claims that the Proposition violates “due process of law, . . . the right to effective assistance of counsel, and the right to heightened reliability in capital cases under the Fifth, Sixth, Eighth and Fourteenth Amendments, relevant provisions of the California constitution and case law.” (CACJ Br. at 6.) Amici Innocence Network and American Civil Liberties Union challenge the measure’s limits on successive petitions, questioning the “false notion” that successive petitions are less likely to have merit. (Innocence Network & ACLU Am. Br. at 9.) But this purportedly “false notion” is belied by this Court’s experience. (*In re Reno* (2012) 55 Cal.4th 428, 457 [“Absent the unusual circumstance of some critical evidence that is truly ‘newly discovered’ under our law, or a change in the law, such successive petitions rarely raise an issue even remotely plausible, let alone state a prima facie case for actual relief”].) Amici also attempt to introduce *factual* disputes into this writ petition, which concerns solely the legal question of whether Proposition 66 is *facially* unconstitutional. (Innocence Network & ACLU Am. Br. at 19-20 [citing Decl].) Likewise, amici’s argument that examples of exonerated capital inmates (most of whom were not even convicted under California law) undermine the validity of the measure overlooks the fact that the measure contains an “actual innocence” exception to the timeliness bar. (New Pen. Code, § 1509, subd. (d).) Moreover, a facial challenge cannot succeed by pointing to particular cases where the law might bar relief. “[T]he plaintiff has a heavy burden to show the statute is unconstitutional in all or most cases,” and cannot prevail simply by pointing out that “in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute.”

(Coffman Specialities, Inc. v. Dep't of Transportation (2009) 176 Cal.App.4th 1135, 1145, quotations and citation omitted, italics in original.)

This Court does not entertain new legal arguments raised by amici. This Court has admonished that “an amicus curiae accepts the case as he finds it,” and may not, absent limited exceptions not applicable here, raise new contentions that the parties did not. (*E.L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 510; *American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 275.)

CONCLUSION

For these reasons, the amici curiae briefs filed in support of the petitioners in this action do not change (or even really address) the applicable legal analysis. The Court should deny the petition in its entirety.

Dated: April 6, 2017

Respectfully submitted,

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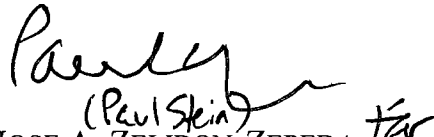
³ Respondent California Judicial Council takes no position on the validity of Proposition 66 or on the arguments raised by the various amici.

CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY OF RESPONDENTS GOVERNOR BROWN AND ATTORNEY GENERAL BECERRA TO AMICI CURIAE BRIEFS** uses a 13 point Times New Roman font and contains 1,508 words.

Dated: April 6, 2017

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Ron Briggs v. Edmund G. Brown, Jr., as Governor, etc. et al; Californians to Mend, Not to End the Death Penalty, etc.***

No.: **S238309**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 6, 2017, I served the attached

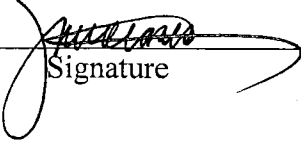
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by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 6, 2017, at San Francisco, California.

M. T. Otnes
Declarant


Signature

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