

SUPREME COURT COPY

Case No. S238309

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

JAN - 9 2017

RON BRIGGS and JON VAN de KAMP,
Petitioners,

Jorge Navarrete Clerk

Deputy

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.

**MOTION TO INTERVENE IN OPPOSITION TO
PETITIONERS' PETITION SEEKING RELIEF TO PREVENT
ENFORCEMENT OF PROPOSITION 66**

*Charles H. Bell, Jr. SBN 60553
Email: cbell@bmhlaw.com
Terry J. Martin SBN 307802
Email: tmartin@bmhlaw.com
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Fax: (916) 442-7759

Kent S. Scheidegger SBN 105178
Email: Kent.Scheidegger@cjlif.org
Criminal Justice Legal Foundation
2131 L Street
Sacramento, California 95816
Telephone: (916) 446-0345
Fax: (916) 446-1194

Attorneys for Intervenors

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

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*Charles H. Bell, Jr. SBN 60553
Email: cbell@bmhlaw.com
Terry J. Martin SBN 307802
Email: tmartin@bmhlaw.com
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Fax: (916) 442-7759

Kent S. Scheidegger SBN 105178
Email: Kent.Scheidegger@cjlif.org
Criminal Justice Legal Foundation
2131 L Street
Sacramento, California 95816
Telephone: (916) 446-0345
Fax: (916) 446-1194

Attorneys for Intervenors

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

Supreme Court of the State of California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or
8.498(d)

Supreme Court Case Caption:

RON BRIGGS and JON VAN de KAMP,
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Please check here if applicable:

There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Name of Interested Entity or Person (Alphabetical order, please.)	Nature of Interest
1.	
2.	

Please attach additional sheets with Entity or Person Information, if necessary.


Signature of Attorney or Unrepresented Party

Date: January 6, 2017

Printed Name: Kent S. Scheidegger
State Bar No: 307802
Firm Name & Address: **Criminal Justice Legal Foundation**
2131 L Street
Sacramento, California 95816

Party Represented: *Attorney for Intervenors*
CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY-
NO ON PROP. 62, YES ON PROP. 66

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MOTION TO INTERVENE AS RESPONDENTS

CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY - NO ON PROP 62, YES ON PROP 66 (“Yes On Proposition 66 Committee”), of which Proposition 66 Proponent Kermit Alexander is a member, pursuant to Rule 8.54, California Rules of Court, moves for an order from this Court permitting the organization to intervene in this action and file a *Answer In Intervention*, pursuant to Code of Civil Procedure (“CCP”) section 387(a) or (b).

The present Motion is made pursuant to the provisions of Code of Civil Procedure section 387 and uncodified section 21 of Proposition 66, on the grounds that YES ON PROPOSITION 66 COMMITTEE claims a direct and immediate interest in the outcome of this litigation and to assert and protect the People’s right to defend the measure in litigation challenging the measure.

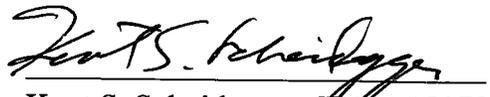
Californians To Mend, Not End, The Death Penalty - No On Prop 62, Yes On Prop 66, was the official campaign committee that was “directly involved in drafting and sponsoring the initiative measure” (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1142), and supported the qualification and passage of Proposition 66. Alexander is a member of the Yes on Proposition 66 Committee, and directed the participation of the Yes on Proposition 66 Committee in these activities. See Declarations of McGregor Scott and Kermit Alexander in Support of Committee’s Motion to Intervene.

The Petitioners RON BRIGGS and JOHN VAN DE KAMP have not objected to Committee's intervention. Counsel for the Respondents Governor JERRY BROWN, KAMALA HARRIS and the JUDICIAL COUNCIL has indicated to counsel for the Committee that they have no opposition to Committee intervening in this matter. Counsel for the Petitioners RON BRIGGS and JOHN VAN DE KAMP, have been asked to confirm whether they will consent or not oppose Committee's intervention. See Declaration of Charles H. Bell, Jr. in Support of Committee's Motion to Intervene.

Committee asserts in its Answer in Intervention and Opposition to the Petitioners' Petition for Writ of Mandate that Proposition 66 does not violate the single subject requirements of Article II of the California Constitution, does not impair the constitutional jurisdiction of any California court, does not impair the powers of the California judiciary under the California Constitution, and does not violate the Equal Protection provisions of the United States Constitution.

Dated: January 6, 2017.

Respectfully submitted,


Kent S. Scheidegger SBN 105178
Charles H. Bell, Jr. SBN 60553
Terry J. Martin 307802
Attorneys for Intervenor

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO INTERVENE

I. A COURT MAY ALLOW A NONPARTY TO INTERVENE IN AN ACTION

Intervention is mandatory where a nonparty has a statutory right to intervene in the action or claims an interest in the property or transaction involved in the litigation and is so situated that any judgment rendered in his absence “may as a practical matter impair or impede his ability to protect that interest” Code Civ. Proc. § 387(b). Under section 387(b), such a nonparty has the right to intervene in litigation between others, and the court must allow the nonparty to intervene even if the intervention will expand the issues in the case or impinge on the right of the original parties to litigate the matter in their own fashion. Intervention is permissive under Code Civ. Proc. § 387(a), and the court should grant intervention when the party demonstrates an interest in the matter in litigation, or in the success of either of the parties.

II. AN INITIATIVE PROPONENT AUTHORIZED AND APPOINTED BY THE PEOPLE IN THE INITIATIVE MEASURE TO PARTICIPATE IN LITIGATION IN DEFENSE OF THE MEASURE HAS THE RIGHT TO PARTICIPATE IN INTERVENTION, WHETHER ALONGSIDE THE STATE OR ALONE IN DEFENSE OF PROPOSITION 66

Proposed Intervener, as the Committee primarily formed to support the qualification and passage of Proposition 66, which sponsored the

measure in connection with families of capital murder victims, death penalty prosecutors, and correctional officers, has an interest in the success of the defense of Proposition 66 in this proceeding, sufficient to merit permissive intervention under Code Civ. Proc. § 387(a). With respect to mandatory intervention under Code Civ. Proc. § 387(b), Proposition 66 specifically authorizes standing in litigation concerning the measure, and appoints the proponent of the measure to defend the measure in litigation, whether alongside the State or alone in its defense.

Uncodified section 21 of Proposition 66, entitled “Severability/Conflicting Measures/Standing” provides in relevant part:

“The People of the State of California declare that *the proponent of this Act has a direct and personal stake in defending this Act and grant formal authority to the proponent to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the People and the State in the event that the State declines to defend the Act or declines to appeal an adverse judgment against the Act. In the event that the proponent is defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse judgment against it, the proponent shall: act as an agent of the people and the State; be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceedings; take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the People and the State in such legal proceeding; and be entitled to recover reasonable legal fees and related costs from the State.*”

(Emphasis *italicized*).

While section 21, as an uncodified provision, “properly may be utilized as an aid in construing a statute.” See *People v. Canty* (2004) 32 Cal.4th 1266, 1280). Section 21 reflects the people’s concern that in the case of Proposition 66, “the public officials who ordinarily defend a challenged state law might not do so with vigor or the objectives of the voters paramount in mind.” (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1124) Thus, as the court noted in *Perry*:

As a consequence, California courts have routinely permitted the official proponents of an initiative to intervene or appear as real parties in interest to defend a challenged voter-approved initiative measure in order “to guard the people’s right to exercise initiative power” (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 822) (*Ibid.*)

Section 21, taken together with this Court’s holding in *Perry*, establishes that the Proposition 66 Committee, of which Proponent is a member, has a right to intervene to defend this challenge to Proposition 66, based upon “a sufficiently direct and immediate interest to permit intervention in litigation challenging the validity” of Proposition 66. (*Id.* at pp. 1143, 1149.)

Proposition 66, which became effective on November 9, 2016 (California Constitution, Article II, section 10(a)), provides that the initiative’s proponent¹ may participate as of right in the defense of the ballot measure, whether or not the State chooses to defend. (See, e.g., *Perry, supra*, 52 Cal.4th at p. 1139) [“...when public officials decline to defend a voter-approved initiative or assert the state’s interest in the

¹ A “proponent” must be a natural person and elector. (Calif. Elec. Code § 342; *Chula Vista Citizens for Jobs and Fair Competition v. Norris* (9th Cir. 2014) 755 F.3d 671, 678-679, citing *Perry, supra*.)

initiative's validity, under California law the official proponents of an initiative measure are authorized to assert the state's interest in the validity of the initiative... .”]

In approving the participation by proponents of initiative measures in litigation in defense of the measure, this Court in *Perry* said:

“...the decisions of this court and the Courts of Appeal in postelection challenges to voter-approved initiative measures have uniformly permitted the official proponents of an initiative measure to intervene, or to appear as real parties in interest, to defend the validity of the challenged initiative measure. In the postelection setting, the ability of official initiative proponents to intervene or to appear as real parties in interest has never been contingent upon the proponents' demonstration that their own personal property, liberty, reputation, or other individually possessed, legally protected interests would be adversely or differentially affected by a judicial decision invalidating the initiative measure.”

(*Id.* at p. 1147.)

This Court emphasized in authorizing such participation in intervention:

“[p]ermitting intervention by the initiative proponents ... would serve to guard *the people's right to exercise initiative power*” (*ibid* italics added), it is apparent that the official proponents of the initiative are participating on behalf of the people's interest, and not solely on behalf of the proponents' own personal interests.”

(*Ibid.*, citing *Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 822.)

The Committee's status as Proposed Intervenor differs from that of the Proposition 22 Committee denied intervention status in *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th

1030, as this Court in *Perry* noted and distinguished. (*Perry*, supra, 52 Cal.4th at p. 1012, fn. 1 and 1018, fn. 14, citing *Strauss v. Horton* (2009) 46 Cal.4th 364). In contrast, the Committee here was directly involved in the drafting, promotion and passage of Proposition 66, and was not a mere advocacy group formed after the passage of the measure.

Further, this Court noted that when multiple governmental defendants are named and participate in litigation concerning the legality or constitutionality of a measure, including those who are represented by the Attorney General:

“As *Amwest* [*Sur. Ins. v. Wilson* (1995) 11 Cal.4th 1243] illustrates, it is hardly uncommon for public officials or entities to take different legal positions with regard to the validity or proper interpretation of a challenged state law. (See, e.g., *In re Marriage Cases*, supra, 43 Cal.4th 757 [Prop. 22]; *Legislature v. Eu*, supra, 54 Cal.3d 492, 500 [Prop. 140]; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 [Prop. 13].)”

(*Id.* at p. 1155)

A true and correct copy of Committee’s Answer in Intervention as a Respondent is filed concurrently and more fully sets forth the grounds and factual bases that show the parties’ intervention is a matter of right or is allowed under permissive intervention. *Timberidge Enterprises, Inc. v. Santa Rosa* (1978) 86 Cal. App. 3d 873.

Here, the interests of Committee and its member, Proponent Kermit Alexander, are perfectly aligned, Committee’s intervention, whether of

right, or permissive, should be granted under Code Civil. Procedure., section 387(a), as such intervention is in furtherance of what this Court said in *Perry, supra*, 52 Cal.4th at p. 1142 about “the proponent’s power “ to manage and supervise the process by which signatures for the initiative petition are obtained” and “the participation by official initiative proponents (or organizations that have been directly involved in drafting and sponsoring the initiative measure) as parties in California proceedings involving challenges to an initiative measure.” (*Id.* at p. 1143.) The *Perry* Court thus regarded campaign committees and formal proponents as equivalent for this purpose. It cited, among the “legion” cases of proponent and committee participation, *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1250, in which a campaign committee was permitted to intervene.

CONCLUSION

Based on the facts set forth above and in the attached Declarations of McGregor Scott, Kermit Alexander and Charles H. Bell, Jr., good cause exists by which this court should grant the proposed Respondent in Intervention’s request to intervene in this action.

Dated: January 6, 2017

Respectfully Submitted,


Kent S. Scheidegger SBN 105178
Charles H. Bell, Jr. SBN 60553
Terry J. Martin 307802
Attorneys for Intervenor

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 Motion to Intervene is produced using 13-point Times New Roman type including footnotes and contain approximately 1,900 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 6, 2017

By: 
KENT S. SCHEIDEGGER SBN 105178
CHARLES H. BELL, JR. SBN 60553
TERRY J. MARTIN SBN 307802
Attorneys for Intevenors
CALIFORNIANS TO MEND, NOT END,
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:

**MOTION TO INTERVENE –
IMMEDIATE STAY OR INJUNCTIVE RELIEF REQUESTED
PREVENTING ENFORCEMENT OF PROPOSITION 66**

on the following parties:

Christina Von der Ahe Rayburn SBN 255467
Email: cvonderahe@orrick.com
2050 Main Street., Suite 1100
Irvine, CA 92614
949-567-6700

*Attorneys for Petitioners Ron
Briggs and John Van de Kamp*

Lillian J. Mao SBN 267410
Email: lmao@orrick.com
1000 Marsh Rd.
Menlo Park, CA 94025
650-614-7400

Attorney General Kamala Harris
Office of the Attorney General
Email: Jose.ZelidonZepeda@doj.ca.gov
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004
415-703-5500

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

{See Following Page}

X **BY U.S. MAIL:** By placing said document(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States Postal Service mailbox in Sacramento, California, addressed to said party(ies), in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 6, 2017. at Sacramento, California.



Kiersten Merina

[PROPOSED] ORDER GRANTING MOTION TO INTERVENE

Proposed Intervenor CALIFORNIANS TO MEND, NOT END, THE DEATH PENALTY – NO ON PROP. 62, YES ON PROP. 66 has filed a Motion to Intervene in this matter to defend against the Petitioners' challenge to Proposition 66, either under the permissive intervention standard set forth in Code of Civil Procedure section 387(a) or the mandatory intervention provision set forth in Code of Civil Procedure section 387(b).

After considering the Motion and all supporting and opposing documents, and otherwise being duly advised on all matters presented on this cause, IT IS HEREBY ORDERED that leave is GRANTED to allow Proposed Intervenor to intervene in this Action as a Respondent.

The Proposed Answer submitted to the Court in connection with the Motion shall be considered filed as of the date of this ruling.

IT IS SO ORDERED

Dated this ____ day of _____, 2017

HON. TANI CANTIL-SAKAUYE
Chief Justice of the California Supreme Court