Case No. S284496

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER, EVA PATERSON, LATINOJUSTICE PRLDEF, ELLA BAKER CENTER FOR HUMAN RIGHTS, and WITNESS TO INNOCENCE,

Petitioners,

v.

ROB BONTA,
California Attorney General, in his official capacity,

Respondent.

PETITIONERS' REPLY TO RESPONDENT'S PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE

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I. INTRODUCTION

The Attorney General concedes that petitioners' April 9, 2024 filing "raises a matter of the greatest public importance." (Response to Petition for Writ of Mandate at p. 15 (Resp.).) He acknowledges that the petition "rest[s] on an extensive body of empirical research" (Resp. at p. 16) documenting "statistical findings . . . [that] are profoundly disturbing" (Resp. at p. 9) and "point[] to an empirical basis for concluding that racial disparities pervade California's death penalty system" (Resp. at p. 8). He notes that "[e]ven before this petition was filed, [he] had publicly expressed his concerns about similar empirical findings." (Resp. at p. 9.) The AG concludes that "[g]iven the gravity of the issues raised by this petition," this Court should issue an order to show cause. (Resp. at p. 10.)

The parties thus agree that the petition presents an issue of extraordinary public interest warranting this Court's original jurisdiction. They also agree that article I, section 27 of the state Constitution "pose[s] no concerns" for as-applied challenges to California's death penalty scheme. (Resp. at p. 24; see part III.A, *post*.) The AG acknowledges that the state Constitution is ""a document of independent force"" (Resp. at p. 23) and that this Court has never "definitely endors[ed] the reasoning of *McCleskey v. Kemp* (1987) 481 U.S. 279 (*McCleskey*) "as a matter of state equal protection doctrine" (Resp. at p. 22.).) He does not contest petitioners' standing. (Resp. at p. 15.)

The AG proposes that this Court appoint a special master to develop a "concrete record [to] assist the Court in assessing the

merit of petitioners' claim." (Resp. at p. 10.) Petitioners maintain that their thorough and reliable empirical studies need no further factual development. (Part II.A, *post*.) Nevertheless, to the extent this Court wishes to subject the research to further adversarial testing, it should direct the parties to meet and confer and—as the AG suggests—refer the matter to a referee. (Part IV.B, *post*; see Resp. at pp. 10, 18-20, 29 [discussing referral]).

II. PETITIONERS' EVIDENCE DEMONSTRATES THAT CALIFORNIA'S CAPITAL SENTENCING SCHEME IS UNEQUALLY ENFORCED

A. The evidence needs no further factual development

Petitioners rely on a large body of empirical evidence showing that California's capital sentencing scheme has unequally selected defendants for capital charging and death sentencing based on the race or ethnicity of defendant and victim. The number and quality of the studies; the variety of data sources on which they rely; the lengthy time spans and comprehensive geographic areas they cover; and the variety of statistical techniques they employ all give the studies mutually reinforcing accuracy and reliability in their portrayal of capital sentencing in California. (See Petition for Writ of Mandate at pp. 24-41 (Petn.).) This proffer provides ample evidence of the ultimate fact in issue: longstanding and pervasive racial discrimination has infected the application of California's death penalty statute. This Court could appropriately accept this key fact as proven and issue an order to show cause for full briefing on the legal merits of the claim.

B. Referral, with the agreement of the parties, would provide an effective mechanism for any further fact development

The AG argues that the empirical evidence warrants further development and advocates a "fair process" for the parties to develop an evidentiary record. (Resp. at p. 9.) If the Court accepts the AG's contention and decides to require further fact development, a limited referral to a referee or panel of referees is a superior procedure. (Cf. Resp. at p. 10.)

The AG describes with approval the process the Washington Supreme Court used in *State v. Gregory* (2018) 427 P.3d 621, 630. There, the court appointed an independent commissioner, the parties agreed on the procedures the commissioner would employ, they responded to the commissioner's interrogatories, and the commissioner issued a final report based on the proffered written material, without taking oral testimony. The report summarized the expert evidence and assessed its strengths and weaknesses without making legal conclusions. (Resp. at p. 20, citing *Gregory*, at pp. 632-636.) Petitioners agree that a similar approach, adapted to California practice, would effectively develop the evidence presented here.

If the Court does seek further fact development, petitioners request that the Court direct the petitioners and the AG to meet and confer to seek agreement on:

(1) *The names of one or more referees.* (See Code Civ. Proc., § 640, subd. (a) ["The court shall appoint as referee or referees the person or persons, not exceeding three, agreed upon

by the parties"].)[1] If the petitioners and the AG cannot agree, they "shall submit to the court up to three nominees for appointment as referee and the court shall appoint one or more referees, not exceeding three, from among the nominees against whom there is no legal objection." (*Id.* at § 640, subd. (b); see also *id.* at § 641 [providing grounds for objection to nominees].)

(2) *Specific factual questions for the referee's resolution and other provisions concerning the referee's report.* (See Resp. at p. 19 ["the Court could instruct a special master 'to answer specific factual questions' regarding the empirical validity of petitioners' studies"]; see also §§ 19 [suggesting Court could instruct referee to answer specific questions], 638, subd. (b) [parties may agree on questions for determination].)

(3) *A protocol for the referee's consideration of the evidence and preparation of a report.* (See Resp. at p. 19 [suggesting referee could review evidence and consider additional submissions]; see also § 643, subd. (b) [referee shall "report as agreed by the parties and approved by the court"].) For example, the parties could agree on a process for submission and consideration of written materials and responses, and the airing of questions propounded by this Court and/or the referee. The parties could also agree on a schedule for proceedings before the referee, including a proposed deadline for the referee to submit a report to the Court.

[1] All further statutory references are to the Code of Civil Procedure unless otherwise noted.

(4) *Criteria for the retention of an independent statistical consultant, if needed, and a process for the AG and petitioners to provide information regarding the selection of the consultant*. (See Resp. at p. 19 [suggesting referee could appoint consultant with Court approval].)

(5) *The text of a proposed referral order.*

(6) *A mechanism for paying any appropriate fees.* (See § 645.1, subd. (a) [Court must order payment as the parties agree].)

C. The alternative of adjudication in the superior court would prevent uniform or timely resolution of the weighty issues presented in the petition

The AG alternatively suggests that this Court could deny review without prejudice to "re-filing the petition in the superior court" and issue a statement explaining that "superior courts have authority to entertain requests for a 'uniform statewide remedy.'" (Resp. at pp. 18, 21, citing *Serrano v. Priest* (1977) 18 Cal.3d 728, 749-750 (*Serrano*).) Petitioners oppose this approach. Indeed, the parties agree that "in light of the unique circumstances of this case . . . the special-master approach would be preferable." (Resp. at p. 20.)

Requiring petitioners to initiate litigation in superior court would sacrifice the uniformity, timeliness, precision, and technical expertise that the referral process offers. It should be expected that, if this Court rules that the claim must be litigated in a new action in superior court, numerous individuals on death row or facing capital trials will include the claim in their ongoing litigation for

preservation purposes. It would be unfair, and inefficient, to ask a trial judge in any one county—let alone several at once—to address an expansive claim based on technical analyses of both statewide and county-specific data. Resolution of the factual and legal questions could take months or years and could result in contradictory rulings in different courts. The result would be a patchwork of factual and legal findings and an extreme waste of judicial resources. Only then could one or more cases reach this Court and allow authoritative resolution of an issue that implicates a statewide system.

Amici curiae California Constitution Scholars (CCS) submitted a letter in support of the AG, advocating for denial of the petition without prejudice to refiling in a superior court. Petitioners find this approach lacking. CCS indicates that a grant and transfer with instructions would be "inappropriate" because the Court of Appeal could not then transfer to the superior court. CCS nevertheless states that this Court could "task" a trial judge to "sort[] this out on an expedited basis." (CCS at p. 4.) CCS neither explains how this Court would retain jurisdiction to impose any tasks on a superior court if it dismisses the case nor considers the risks of dueling actions in multiple counties that this approach would create. And its only reason for advocating this approach—that "appellate courts are ill-suited to the trial judge's task of establishing a record"—would equally support appointing a referee. CCS never addresses the advantages of the referral process, described above. Furthermore, the Court's exercise of original

jurisdiction in this case would ensure this Court has direct responsibility for a critical statewide issue. (See Petn. at pp. 51-52.)

For these reasons and those outlined in the petition, this Court is the best venue to resolve petitioners' claim, with or without the assistance of a referee. (See Petn. at p. 58.)

III. THIS COURT SHOULD DEFER DETERMINATION OF THE LEGAL MERITS AND ANY METHODOLOGICAL CONCERNS

A. Determination of the merits of petitioners' legal claim is premature

The AG "offers several preliminary observations" about various points of potential disagreement between the parties on specific legal questions. (Resp. at p. 22 [discussing *McCleskey*, *supra*, 481 U.S. 279]; see *id.* at p. 25 [discussing the appropriate level of scrutiny; questioning whether petitioners' discussion of death qualification suggests a *per se* attack on the state's death penalty scheme].) He acknowledges, however, that consideration of "merits arguments would be premature at this juncture." (*Id.* at p. 22.)

Petitioners agree. Whether or not this Court refers the matter to a referee, the merits of petitioners' claim cannot be adjudicated at this preliminary stage, before petitioners and the AG have had a full opportunity for briefing and argument.

B. This Court should defer consideration of any methodological criticisms

The Court should not entertain methodological criticisms regarding the strength and reliability of petitioners' proffered

evidence at this preliminary stage. If this Court agrees that the evidence is sufficient to make a determination on the merits, it should issue an order to show cause and await merits briefing. If this Court seeks further evaluation of the factual record, it should await a referee's report before considering concerns regarding the evidence. Present methodological critiques are premature and, moreover, incorrect.

For instance, the Riverside County District Attorney's Office—a nonparty with no authorization to participate in these proceedings (see parts IV.B, *post*)—complains that "grouping all capital cases statewide" is "illogical." (Preliminary Opposition of Real Party in Interest to Petn. for Writ of Mandate at p. 25 (Riverside).) On the contrary, it is the only logical way to analyze the evidence supporting petitioners' claim. Petitioners challenge a statewide capital sentencing scheme enacted and amended by the statewide electorate and the Legislature. The fact that the scheme has operated in a discriminatory manner across counties, decision points, and decades is a strength, not a weakness, of the presentation.

IV. THE ATTORNEY GENERAL IS THE APPROPRIATE RESPONDENT

A. The Attorney General appropriately represents the public interest

Two district attorney's offices have made unauthorized filings in this matter purporting to be real parties in interest. (Riverside at pp. 1-2, 14-15, 26, 34, 38; Preliminary Opposition of the People of the State of California, County of San Bernardino (Real Party in

Interest); Memorandum in Support (Rule 8.487(A)(1)) at pp. 1, 8, 10, 28, 33, 35, 40 (San Bernardino).) Contrary to their contentions, the AG is the proper respondent in these writ proceedings because he appropriately represents the public interest and, as California's chief law enforcement officer, must ensure uniform enforcement of the law. Other actors who wish to "assist the court by broadening its perspective on the issues raised by the parties" or "facilitate informed judicial consideration of a wide variety of information and points of view" may properly seek leave to participate as amici. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405, fn. 14.)

1. The Attorney General's paramount duty is to protect the public interest

While "[d]istrict attorneys and the Attorney General both represent the People of the State of California" (*Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1174 (*Tennison*)), AG Rob Bonta serves as the state's "chief law officer" (Cal. Const. art. V, § 13) and "has charge . . . of all legal matters in which the State is interested" (Gov. Code, § 1251). The AG "is often called upon to make legal determinations both in his capacity as a representative of the public interest and as statutory counsel for the state" (*D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 15 (*D'Amico*)), but the AG's "paramount duty [is] to represent and protect the public interest" (*id.* at p. 16 [discussing "dual capacity"].)

This Court must presume that the AG will use his "broad powers" to "'represent[] the interest of the people'" in this

"'matter of public concern.'" (*D'Amico*, *supra*, 11 Cal.3d at p. 14; see *In re Jenkins* (2023) 14 Cal.5th 493, 514 [discussing presumption].) The Court must presume that he will faithfully perform his constitutional duty "to see that the laws of the State are uniformly and adequately enforced." (Cal. Const., art. V, § 13; Resp. at p. 8.)

2. District attorneys are not proper parties

The AG has "direct supervision over every district attorney . . . in all matters pertaining to the duties of their respective offices." (Cal. Const., art. V, § 13; accord, Gov. Code, § 12550.) He may exercise "oversight not only with respect to a district attorney's actions in a particular case, but also in the training and development of policy intended for use in every criminal case." (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 363.) The AG also "may, where he deems it necessary, take full charge of any . . . prosecution." (Gov. Code, § 12550; accord *Abbott Laboratories v. Super. Ct. of Orange County* (2020) 9 Cal.5th 642, 662 (*Abbott Laboratories*) [AG "retains authority to intervene or take over"]; *Tennison*, *supra*, 152 Cal.App.4th at p. 1174 [AG has "the constitutional duty to intervene and prosecute violations of the law '[w]henever in [his] opinion . . . any law of the State is not being adequately enforced'"], brackets in original.)

It is the AG's duty to "attend the Supreme Court and prosecute or defend all causes to which the State, or any State officer is a party in his or her official capacity." (Gov. Code, § 12512.) For good reason, "it is the general and long-established rule that in actions . . . challenging the constitutionality of state

statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (*Serrano*, *supra*, 18 Cal.3d at p. 752.) The AG is elected statewide as California's chief law enforcement officer, and his mandate requires him to communicate with and oversee the work of prosecutors in all 58 counties, with their diverse priorities and perspectives. He has expertise with statewide litigation in this Court. He has a mandate to ensure uniform enforcement of the state's capital punishment laws.

A district attorney, on the other hand, generally "'acts for the state within the territorial limits of the county for which he was elected.'" (*People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d 734, 751.)[2] Local law enforcement agencies are not properly situated to defend a constitutional challenge that implicates every county. The AG will ably represent district attorneys' interests. No individual county actor has a significant interest in seeing any statewide capital punishment scheme upheld—let alone a scheme that produces stark racial disparities. Allowing the AG to present an informed, unified voice on behalf of the state is the only just and feasible approach. Only the AG—not the DAs—represents "the People" of California as a whole.

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[2] For instance, the San Bernardino District Attorney's Office states that "responsibility for [capital habeas corpus litigation] shifted to the district attorneys with the enactment of Proposition 66." (San Bernardino at pp. 9-10.) While this may be true in San Bernardino, it is not true across the state. (See Habeas Corpus Resource Center, Annual Report (2023) at p. 6.)

3. Nonparties may submit amicus letters to this Court

The two district attorney's offices that made unauthorized filings in this matter are not parties.[3] The appropriate procedure for submitting a nonparty filing at this stage is by serving and sending an amicus letter to this Court. (Cal. Rules of Court, rule 8.500(g)(1) ["Any person or entity wanting to support or oppose a petition for . . . an original writ must . . . send to the Supreme Court an amicus curiae letter"].)[4]

For instance, two months after Ron Briggs filed his original petition for writ of mandate challenging Proposition 66 in this Court in 2016—which named the Governor, Attorney General, and Judicial Council as respondents—ballot-measure proponents submitted a motion to intervene. (Docket, *Briggs v. Brown* (Aug. 24, 2017) 3 Cal.5th 808 (No. S238309).) This Court allowed time for oppositions and afterward granted the motion. (*Ibid.*) It set a

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[3] The two DAs sometimes argue that "the People" should be a real party in interest. (E.g., San Bernardino at pp. 33 ["district attorneys serve as counsel to Real Party in Interest, the People"], 35 ["failing to include the People as Real Party in Interest"].) They sometimes argue that district attorneys should be real parties in interest. (E.g., *id.* at p. 10 ["silences the majority of prosecutors of the state"]; Riverside at p. 10 ["without identifying . . . a single District Attorney's Office as an interested party"].) And sometimes they seem to have lost sight of the distinction altogether. (E.g. San Bernardino at p. 33 ["Real Party in Interest, the People (who seek or obtained death judgments)"], 39 ["excluding those whose lives and roles are most impacted by crime"].)

[4] All citations to rules are to the California Rules of Court.

briefing schedule for amicus filings, and district attorneys from 10 counties (Kern, Los Angeles, Orange, Sacramento, San Diego, Solano, Sonoma, Riverside, Ventura, and Yolo) and the California District Attorneys' Association signed on to timely submissions. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 821.)

Briggs reflects an orderly and appropriate procedure for collecting information and viewpoints from interested nonparties to assist this Court in adjudicating "weighty constitutional question[s]" such as the one petitioners present. (Resp. at p. 10.) Indeed, just last month, the Prosecutors Alliance submitted a letter to this Court supporting an order to show cause in this matter. (See Prosecutors Alliance of California, letter to Chief Justice Guerrero and Associate Justices of the California Supreme Court, Apr. 23, 2024 (Prosecutors Alliance).) It is a time-tested approach.

The procedure contemplated by the two nonparty DAs, on the other hand, would yield chaos.[5] It would also yield imbalance and inequity.

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[5] In addition to creating a free-for-all that would "open[] pending court proceedings to anyone that pleased to file a pleading" (*Tukes v. Richard* (2022) 81 Cal.App.5th 1, 14 (*Tukes*)), the procedure would invite an unmanageable "'enlarge[ment] [of] the issues in the litigation" (*Carlsbad Police Officers Assn. v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148 (*Carlsbad Police Officers Assn.*)). The two DAs argue that "the only [acceptable way forward] would be to include every district attorney, every inmate, and every potentially impacted defendant in the litigation" (San Bernardino at p. 36 ["any other district attorney's office" or capital defendant "who files a preliminary opposition" is

There is considerable diversity of opinion among district attorneys respecting California's death penalty and its constitutionality. While Riverside County "is known as one of the 'most prolific death-sentencing counties in the nation'" (Prosecutors Alliance, at p. 6), "[m]any of California's district attorneys" in other jurisdictions have "questioned whether the death penalty system comports with equal protection principles" (*id.* at p. 7). Just last month, "Santa Clara County District Attorney Jeff Rosen petitioned to resentence fifteen defendants on death row to life without parole, citing the 'racially biased' nature of the state's death penalty system." (*Id.* at p. 8.)

As such, the state's chief law enforcement officer, who is elected statewide, is the proper representative of "the People" in a lawsuit challenging the constitutionality of a law of statewide application.[6] Amicus filings are the appropriate vehicle for county

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a party]; accord, Riverside at p. 15), as well as defense counsel (San Bernardino at p. 8). California has 58 counties (Riverside at p. 25) and a death row population of 640 (Resp. at p. 12). Riverside and San Bernardino alone are currently seeking death against 31 more defendants. (Riverside at p. 3 [twenty-four]; San Bernardino at p. 27 [seven].) Capital defendants are entitled to two attorneys at trial, one on direct appeal, and one in habeas corpus proceedings. (Pen. Code, § 987, subd. (d); *People v. Potts* (2019) 6 Cal.5th 1012, 1065 (conc. opn. of Liu, J.).) Including every district attorney's office, every capital defendant, and every defense counsel would amount to litigation involving several thousand parties—in a case that "carr[ies] significant consequences" and "warrant[s] careful and timely consideration." (Resp. at p. 15.)

[6] The two DAs apparently envision district attorneys as the sole true representatives of "the People." (E.g., San Bernardino at pp. 8 ["omitted involvement of the People of the State of

district attorneys to be heard. If the nonparty offices properly resubmit their documents as amicus letters, this Court may decide to consider their submissions. (See rule 8.500(g).)

B. The nonparty submissions were procedurally improper and untimely

"[T]he initial parties to a lawsuit are those that have sued or been sued." (*Tukes*, *supra*, 81 Cal.App.5th at p. 12.) If an individual is not named in an initial pleading, that individual is not a party. (*Tracy Press, Inc. v. Super. Ct.* (2008) 164 Cal.App.4th 1290, 1296.) Nonparties have no due process protections in the litigation. (*Doe v. Regents of U. of Cal.* (2022) 80 Cal.App.5th 282, 296-297.)

Generally, nonparties who wish to become parties must do so through intervention. (See *Tukes*, *supra*, 81 Cal.App.5th at p. 12; *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574, 589.)[7] Section 387, subdivision (c) requires any would-be intervenor to petition the court for leave to intervene. (See also *Bowles*, at p. 589 [a person should be allowed to intervene only if they satisfy the

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California though its counsel, the district attorneys of the state"], 35 [case "cannot proceed without the involvement of the People and their counsel of record, the district attorneys of the state"].) They are not. (See part IV.A.1, *infra*.)

[7] Section 389.5 allows that in "an action for the recovery of real or personal property, or to determine conflicting claims thereto," a person who has an interest in the subject of the action may "make[] application to the court to be made a party." This is not such an action, and the DAs have not made such an application. (See generally *Muller v. Robinson* (1959) 174 Cal.App.2d 511 [discussing would-be party's "attempt[s] to interject himself"].)

requirements of section 387]; cf. *Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 180 [real party in interest moved to intervene in writ proceeding]; *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 157 [same].) Neither nonparty here has sought such leave, and their participation is therefore inappropriate.

In *Tukes*, *supra*, 81 Cal.App.5th at p. 12, nonparty Richard "claim[ed] party status by virtue of his uninvited answer" to the complaint—even though he had failed to comply with section 387. The trial court "never authorized Richard to intervene . . . , notwithstanding his purported answer.'" (*Id.* at p. 13.) The appellate court noted that "Richard offer[ed] no authority that a person who volunteers an answer to claims filed against another, without more, becomes a party." (*Ibid.*) Despite his insistence to the contrary, Richard was simply "never a party." (*Ibid.*) The court held: "For Richard to obtain party status based solely on the fact of his uninvited answer would . . . open[] pending court proceedings to anyone that pleased to file a pleading. This is not the law." (*Id.* at p. 14; see also *Carlsbad Police Officers Assn.*, *supra*, 49 Cal.App.5th at p. 148 ["'a petition to seek leave [to intervene] is required; without permission from the court, a party lacks any standing to the action'"].)

In addition, the nonparties failed to comply with the 10-day filing window for preliminary oppositions. (See rule 8.487 (a)(1) [real party in interest must file any preliminary opposition "[w]ithin 10 days after the petition is filed"].) Although this Court allowed the AG until May 6 to file a response, its directive did not

encompass nonparties. (See Jorge E. Navarette, Clerk and Executive Officer to the Supreme Court, letter to Kenneth Sokoler, Office of the Attorney General, Apr. 16, 2024.)

The San Bernardino and Riverside DAs' submissions are untimely and procedurally improper.[8] Thus, at present, these district attorneys have no appropriate involvement in these writ proceedings.

V. THIS COURT SHOULD STAY EXECUTIONS UNTIL IT HAS RULED ON THIS PETITION

The AG maintains that a stay is unnecessary because of the current Governor's moratorium on all executions; he argues petitioners can renew their stay request if the moratorium ends. (Resp. at p. 13, fn.1.) That approach would minimize the gravity of the claims before this Court and the human cost of California's

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[8] Riverside nevertheless offers a series of inaccurate technical criticisms of the petition. First, "[a] verification to a complaint is sufficient, though made by only one of the plaintiffs." (*Patterson v. Ely* (1861) 19 Cal. 28, 28; cf. Riverside at p. 18.) Second, section 446 allows verifications upon "information and belief"—and also exempts the Office of the State Public Defender, as a state agency, from the verification requirement altogether. (See *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1222-1223; cf. Riverside at pp. 17-18.) Finally, rule 8.208(e) requires that certificates of interested entities or persons include those who have (1) a 10 percent or more ownership interest in an entity party or (2) an "interest in the outcome of the proceeding" that "the justices should consider in determining whether to disqualify themselves." Petitioners know of no district attorneys or capital defendants who fit that bill. (Cf. Riverside at pp. 10, 15 [urging Court to strike petition due to petitioners' "deliberate exclusion of interested parties"].)

system to the persons under sentence of death. The Court should, in recognition of the importance of the issues, make clear that no executions can take place until it has given petitioners' claims a fair hearing and reached a decision.

VI. CONCLUSION

This Court should grant a writ of mandate and provide the relief prayed for in the petition. Should this Court determine that further adversarial testing of petitioners' proffered studies is warranted, petitioners request that this Court issue an order to show cause and direct the parties to meet and confer as outlined in part II.B, above.

Dated: May 16, 2024.

Respectfully submitted,

Office of the State Public Defender

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CERTIFICATE OF WORD COUNT

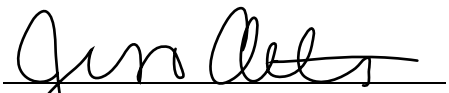
I, JESSICA E. OATS, hereby declare:

I am an attorney licensed to practice law in the State of California and a Senior Deputy State Public Defender. I am counsel assigned to this matter for the Office of the State Public Defender.

I hereby certify pursuant to California Rules of Court, rules 8.204(c) and 8.486(a)(6), that this document contains 4,534 words, including footnotes and excluding cover information, tables, signature blocks, and this certificate. This document was prepared in Microsoft Word, and this is the word count generated by the program for this document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed this 16th day of May 2024 at Charlottesville, Virginia.

Respectfully submitted,



JESSICA E. OATS
Senior Deputy State Public Defender

PROOF OF SERVICE

My business address is Wilmer Cutler Pickering Hale and Dorr LLP, 2600 El Camino Real, Suite 400, Palo Alto, California 94306. My electronic service address is Jessica.Lewis@wilmerhale.com. I am not a party to the instant case, and I am over the age of eighteen years.

On May 16, 2024, I caused the following documents:

PETITIONERS' REPLY TO RESPONDENT'S PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE

to be filed with ImageSoft TrueFiling ("TrueFiling") pursuant to California Rule of Court 8.212, and to be served by email via TrueFiling on the following:

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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.

Executed on May 16, 2024 at Palo Alto, California.

/s/Jessica L. Lewis

Jessica L. Lewis