IN THE SUPREME COURT OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER, et al,
Petitioners,

v.

ROB BONTA, in his official capacity,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

Case No. S284496

SUPPLEMENTAL BRIEFING OF THE RIVERSIDE COUNTY DISTRICT ATTORNEY, REAL PARTY IN INTEREST

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SUPPLEMENTAL BRIEFING

On September 11, 2024, this Court ordered supplemental briefing on three questions:

(1) On what ground or grounds, if any, does each petitioner have standing to challenge the prosecution, imposition, and execution of all death sentences in this state?

(2) Have petitioners alleged facts that, if proven true, would establish a violation of the California Constitution (art. I, §§ 7, 17) and entitle them to all or part of the relief they seek, including an order prohibiting all future capital prosecutions and the enforcement or execution of any death sentence previously imposed? How, if at all, does article I, section 27 of the California Constitution affect this determination? How, if at all, does the classification of this matter as an as-applied or a facial challenge affect this determination?

(3) What parties are necessary to properly consider the requested relief and effectuate it, if warranted?

As to the first question, the petitioners lack standing because they are not beneficially interested in the outcome of this case. Likewise, the Court should not find that petitioners have public interest standing because other competing interests outweigh the need for relief and because relief is not urgently necessary.

As to the second question, under article I, section 27 of the California Constitution as interpreted by this Court, an equal protection challenge to the death penalty must be evaluated under federal jurisprudence, not under state jurisprudence. Further, any constitutional claims fail no matter if the challenge is facial or as applied because the petition does not meet the elements required under either standard.

As to the third question, as we argued in our Preliminary Opposition, basic principles of due process, the law, and the Rules of Court require that, at minimum, California's District Attorneys are required parties to this action because the Attorney General does not automatically represent the People in criminal cases. Likewise, condemned inmates, defendants facing capital punishment, and victims' next of kin all have legally cognizable interests in this case and deserve their day in court.

I. THE PETITIONERS LACK STANDING

A. The petitioners lack standing because they cannot demonstrate a beneficial interest in the outcome of the case.

It is well established that a writ petitioner must have standing to bring an action. "Standing to sue 'is the right to relief in court.' […] Because lack of standing is a jurisdictional defect [citation], the question of standing to pursue mandate relief must be addressed as a threshold question before reaching the merits of a dispute." (*Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552, 569-570.) A writ petitioner bears the burden by the preponderance of the evidence to demonstrate standing

(*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362 (*Associated Builders*)), and it is equally well established that a writ petitioner bears the burden to establish that they did not have another adequate remedy available. (See *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 286.)

Standing in the context of writs of mandate is defined by Code of Civil Procedure section 1086, which requires the petitioner to be "beneficially interested" in the case. "The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citation.]" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1085–1086.) The standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.' [Citation.]" (*Associated Builders, supra*, 21 Cal.4th at 362.) "Beneficially interested parties 'are in fact adversely affected by governmental action' and have standing in their own right to challenge that action. [Citation.]" (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 913.)

Here, none of the petitioners allege a concrete and particularized interest that is actually, imminently, and

adversely affected by the existence of capital punishment in California. Likewise, none of the petitioners include any documentation or other evidence detailing their standing to bring this action. The Office of the State Public Defender (OSPD) represents condemned defendants. (Pet. at 21.) Their only claim of a beneficial interest is that invalidating capital punishment would "have a dramatic impact of OSPD's resources and programming priorities." Preliminarily, OSPD does not provide any "concrete" or "particularized" information about what "dramatic impact means;" they did not file any declarations or other extrinsic evidence to that effect. Further, OSPD does not articulate any authority supporting the idea that they have a right to their "resources and programming priorities." (Pet. at 22.) Real party submits that as a taxpayer funded public entity, they have no enforceable rights to their resources, and the Legislature could take those resources away at any time. Finally, OSPD's statement only tells the Court how invalidating capital punishment would be good for them; it does not explain how the current state of the death penalty adversely affects them. Real party suspects that a likely result of the invalidation of death penalty would result in less funding for OSPD, but petitioner does not provide enough information for this Court to decide. Thus, OSPD lacks a beneficial interest in this case because they do not demonstrate that they currently suffer an injury-in-fact and thus they do not have standing.

Eva Paterson is an individual with a history of accusing the criminal justice system of being inherently racist. (Pet. at. 22.)

She has not been charged with or convicted of a capital punishment eligible offense. She makes no claims of any beneficial interest to the court, and thus lacks standing.

LatinoJustice PRLDEF (LatinoJustice) is a group that advocates for Latinos, including criminal defendants. (Pet. at 22.) LatinoJustice makes no claims of any beneficial interest in this case, and thus lacks standing.

Ella Baker Center for Human Rights is a political organization that works to reform the criminal justice system. They make no claims of any beneficial interest in this case, and thus lack standing.

Witness to Innocence is anti-capital punishment political organization. They make no claims of any beneficial interest in this case, and thus lack standing.

B. The public interest exception does not apply to this case.

Where a writ petitioner lacks a beneficial interest in the case, the Court may, in its discretion, find that the petitioner is properly before the Court under the so-called public interest exception. In this case the balancing test this Court must undergo to evaluate whether the petitioners demonstrated public interest standards only muddies the waters; the questions posed are a legal and political minefield. This Court should therefore find that petitioners should avail themselves of the numerous other mechanisms to challenge capital punishment in California.

At its core, the public interest exception allows for writ petitioners to establish standing to ask the Court to address an important, pressing, and broadly applicable legal action.

> "'[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' " [Citation.] This "'public right/public duty' exception to the requirement of beneficial interest for a writ of mandate" "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." [Citation.]

(*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) However, public interest standing is neither a right, nor required. "No party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception." (*Id.* at 170.) Instead, the Court engages in a balancing test.

> In ascertaining public interest standing, " '[t]he courts balance the applicant's need for relief (i.e., his beneficial interest) against the public need for enforcement of the official duty. When the duty is sharp and the public need weighty, the courts will grant a mandamus at the

> behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced.' " [Citation.] But "where the claim of 'citizen' or 'public interest' standing is driven by personal objectives rather than 'broader public concerns,' a court may find the litigant to lack such standing." [Citation.]
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> Determining whether the exception is warranted involves a 'judicial balancing of interests' [citation], to promote 'the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.' " [Citation] "The balancing is done on a sliding scale: 'When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need.' " [Citation.] […] The policy underlying the exception may be outweighed by competing considerations of a more urgent nature.' " [Citation.]

(*Loeber, supra,* 103 Cal.App.5th at pp. 568–569.) Therefore, the Court must first assess the petitioner's need for relief. That need is lacking.

First, as above, OSPD does not demonstrate a need for relief or an injury-in-fact. If anything, the elimination of capital punishment would harm them.

Second, Code of Civil Procedure section 1086 requires that a writ petitioner must demonstrate that they do not have a plain, speedy, and adequate remedy to address their complaint in the ordinary course of law. As above, petitioners here do not allege a

valid complaint or support their standing with outside evidence; but if they did, as we pointed out in our Preliminary Opposition, the law gives condemned inmates and those facing the death penalty a myriad of tools to address the issues raised by the petitioners, including litigation under the Racial Justice Act. (Pen. Code § 745.) Therefore, petitioners' need is minimal, because they could utilize the tools provided to them by the Legislature in the ordinary course of law.

Third, the need expressed by petitioners LatinoJustice, Eva Paterson, Ella Baker, and Witness to Innocence are driven by personal political objectives. Their only skin in the game is based on their own opinion and policy preferences.

Having established that the need expressed by the petitioners is de minimus, the court must then balance petitioners' need against "the public need for enforcement of the official duty." (*Loeber, supra,* 103 Cal.App.5th at 568.) But which official duty? Equal Protection is enshrined in the California Constitution (Cal. Const., art. I, § 7), but so is capital punishment (Cal Const., art. I § 27). Surely, petitioners will argue that imposition of capital punishment "impairs or defeats" the Equal Protection clause, and thus the need for standing in this case is weighty. But it is just as true that if this Court were to grant the instant writ of mandate, it would not only contravene the California Constitution, but also invalidate the will of California voters, who time and again have affirmed their belief in capital punishment. In other words, according to Californians, the

California Constitution, and the Penal Code, imposition of capital punishment is an official duty.

This political tension is just that: political. The Court does not evaluate the wisdom of the law (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398) and should find that the petitioners here lack standing in the instant writ petition. Petitioners should make their argument to California voters, not this Court.

C. If the Court finds petitioners have standing, then the universe of real parties in interest exponentially expands.

Finally, if the Court finds that petitioners demonstrated either a beneficial interest, or that they fulfill the public interest exception, then the universe of potential real parties in interest widens considerably. Succinctly put, if petitioners' anti-capital punishment views qualify them for mandate standing, then so too would the pro-capital punishment views of competing groups. This would not only encompass virtually every California District Attorney and a wide range of political organizations but certainly the next of kin to victims who were murdered by death-eligible defendants. Thus, if this Court finds petitioners have standing, then the Court must find that the petition is broken beyond repair for failing to identify the hundreds if not thousands of legitimate real parties in interest.

II. PETITIONERS FAILED TO ALLEGE SUFFICIENT FACTS TO ESTABLISH A VIOLATION OF THE CALIFORNIA CONSTITUTION

A. This Court should not disturb its longstanding precedent that under article I section 27 equal protection claims challenging capital punishment are made under the United States Constitution, not the California Constitution.

No provision of the California Constitution is more important than another. As stated in our opposition, this Court has repeatedly held that article I, section 27 prohibits constitutional challenges to the death penalty as a form of punishment, and only allows courts to consider constitutionality as applied to a particular defendant's conviction and sentence. (RCDA Opp. at 20.)

More than 40 years ago this Court wrote, "[a]s we stated in *People v. Frierson* (1979) 25 Cal.3d 142, 185 [158 Cal.Rptr. 281, 599 P.2d 587], 'The clear intent of the electorate in adopting section 27 was to circumvent *Anderson*[1] by restoring the death penalty *to the extent permitted by the federal Constitution* ....' We concluded that 'properly construed, section 27 validates the death penalty as a *permissible type of punishment* [italics added] under the *California* Constitution.' (*Id*., at p. 186.)" (*People v. Superior Court (Engert)* (1982) 31 Cal.3d 797, 808.) This Court's precedent is longstanding and clear: equal protection attacks on the death penalty should be evaluated under the United States Constitution and United States Supreme Court precedent.

[1] *People v. Anderson* (1972) 6 Cal.3d 628

But petitioners ask the Court to reject this well-established, decades-old jurisprudence in favor of a new standard. The Court should decline this entreaty. The doctrine of stare decisis provides the legal system with consistency, efficiency, and reliability, and this Court has been traditionally loathe to overrule its own precedent. "[A] party urging us to overrule a precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the age of the precedent, the nature and extent of public and private reliance on it, and its consistency or inconsistency with other related rules of law." (*Trope v. Katz* (1995) 11 Cal.4th 274, 288.) Moreover, "[w]hen the party urging us to overrule a decision could have easily avoided the decision's effect, for example, we are less inclined to disturb our precedent." (*Samara v. Matar* (2018) 5 Cal.5th 322, 337.)

Here, none of the factors articulated by this Court cut in favor of petitioners' argument. The *Engert* case is 42 years old and has been relied upon by multiple generations of prosecutors, defense attorneys, judges, justices, and defendants. Moreover, as we pointed out above in section I(B) and our opposition, those people actually affected by capital punishment – a limited number of convicts and criminal defendants – can avail themselves of other legal tools to challenge the imposition of their sentence. Thus, this Court should not overrule its well-established precedent, and instead allow individual defendants to bring legal challenges on an individual basis.

B. Petitioners cannot demonstrate a federal equal protection violation because they lack sufficient evidence of prejudice.

Under federal equal protection jurisprudence, the petition fails. As petitioners correctly point out, the United States Supreme Court case that governs this petition is *McCleskey v. Kemp* (1987) 481 U.S. 279. There, the Court held that a bare showing of statistics is insufficient to support a violation of the federal equal protection clause. The Court wrote that in addition to statistics, a petitioner must demonstrate discriminatory purpose by prosecutorial or legislative decisionmakers.

> Our analysis begins with the basic principle that a defendant who alleges an equal protection violation has the burden of proving "the existence of purposeful discrimination." *Whitus v. Georgia,* 385 U.S. 545, 550, 87 S.Ct. 643, 646, 17 L.Ed.2d 599 (1967).[10] A corollary to this principle is that a criminal defendant must prove that the purposeful discrimination "had a discriminatory effect" on him. *Wayte v. United States,* 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985).
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> […]
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> Because discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer that the discretion has been abused. The unique nature of the decisions at issue in this case also counsels against adopting such an inference from the disparities indicated

> by the Baldus study. Accordingly, we hold that the Baldus study is clearly insufficient to support an inference that any of the decisionmakers in McCleskey's case acted with discriminatory purpose.

(*Id.* at pp. 292, 297.) Petitioners spend a significant number of words attacking *McCleskey* and attempting to convince this Court to ignore it. (Pet. at 75-78.) The reason is simple: petitioners provided no evidence of purposeful discrimination and no evidence of prejudicial effect on any individual defendant. In fact, petitioners do the opposite: they claim that the California capital punishment scheme is administered in an "unconsciously" or "institutionally" discriminatory way. In other words, petitioners know they lose under the federal equal protection clause.

But this Court's precedent is clear: the petition must be evaluated under United States equal protection jurisprudence, and on that standard, the petition clearly fails.

C. The petition fails under article I sections 7 and 17 grounds as both a facial and as applied challenge.

Petitioners claim their challenge is as applied. (Pet. at 50 fn. 23.) But the petition challenges capital punishment itself, not its application to a particular case. Thus, the petition is a facial challenge, not as applied. The only reason petitioners claim their challenge is as applied is to avoid the more stringent legal showings required to make a facial challenge. As it turns out, under either standard, the challenge fails.

1. The petition fails as a facial challenge because capital punishment can be, and is, administered fairly in California.

Both the United States Supreme Court and this Court acknowledge that facial challenges are difficult to accomplish and disfavored.

> Under *United States v. Salerno,* 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), a plaintiff can only succeed in a facial challenge by "establish[ing] that no set of circumstances exists under which the Act would be valid," *i.e.,* that the law is unconstitutional in all of its applications.
>
> […]
>
> Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." *Sabri v. United States,* 541 U.S. 600, 609, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004) (internal quotation marks and brackets omitted). Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither " 'anticipate a question of constitutional law in advance of the necessity of deciding it' " nor " 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' " [Citations.] Finally, facial challenges threaten to short circuit the democratic process by preventing

> laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that " '[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.' " [Citations.]

(*Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, 449, 450–451.)

> A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. (*Dillon v. Municipal Court* (1971) 4 Cal.3d 860, 865, 94 Cal.Rptr. 777, 484 P.2d 945.) " 'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.'" [Citations.]

(*Tobe, supra,* 9 Cal.4th 1069 at p. 1084.) Moreover, this Court has repeatedly established that capital punishment in California is facially valid under the California and United States Constitutions. (See, e.g., *People v. Ayala* (2000) 23 Cal.4th 225, 303 ["But as '[a] general matter at least, the 1978 death penalty law is facially valid under the federal and state charters.... We

see no need to rehearse or revisit our holdings or their underlying reasoning.'"] citing *People v. Ochoa* (1998) 19 Cal.4th 353, 478.)

Here, petitioners do not claim that the capital punishment provisions of the California Constitution and Penal Code are facially unconstitutional, and they do not claim that every person that faces capital punishment suffers from constitutional error. Quite the opposite: petitioners claim that the implementation of capital punishment disproportionately affects Black and Hispanic defendants. Therefore, petitioners' claim is not that capital punishment *itself* violates the Constitution, the claim is that a certain subset of defendants were adversely affected by its application; in other words, an as applied challenge.

A simple hypothetical demonstrates the principle at play here. Suppose that every California District Attorney and the Attorney General banded together and agreed to seek capital punishment in every case where it was legally possible regardless of the facts and circumstances of the case, and suppose the prosecutors abided by that agreement. That operational change, without a change to the law, would moot the petitioners' claims related to any future case.

As such, were this Court to evaluate the petition as a facial challenge, the petition would fail.

2. The petition fails as an as applied challenge.

Even if evaluated as an as applied challenge, the petition still fails. "Whether the particular application of a statute declaring conduct criminal is constitutionally permissible can be

determined only after the circumstances of its application have been established by conviction or otherwise. (See e.g. *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 124 Cal.Rptr. 204, 540 P.2d 44.) Only then is an as applied challenge ripe." (*Tobe, supra,* 9 Cal.4th at p. 1085.) The *Tobe* court also found, in the context of an establishment clause challenge, that the challenger was required to provide specific examples of discriminatory application of the challenged law. Citing *Bowen v. Kendrick* (1988) 487 U.S. 589, the *Tobe* court wrote,

> The Supreme Court held that the as applied challenge could be resolved only by considering how the statute was being administered. Plaintiffs had to show that specific grants were impermissible because the grants went to " 'pervasively sectarian' religious institutions" or had been used to fund " 'specifically religious activit[ies].' " [Citation.] The matter was remanded because the district court had not identified the particular grantees or the particular aspects of their programs for which constitutionally improper expenditures had been made.

(*Tobe, supra,* 9 Cal.4th at pp. 1084–1085.)

The same is true under article I section 17 of the California Constitution.

> When a defendant contends the death sentence is cruel and unusual as applied, the reviewing court must determine whether the penalty is grossly disproportionate to the defendant's individual culpability or shocks the

> conscience and offends fundamental notions of human dignity. In making this determination, the court examines the circumstances of the crime—including motive, the extent of the defendant's involvement, the manner in which the crime was committed, and the consequences of the defendant's acts—as well as the defendant's personal characteristics, including age, prior criminality, and mental capabilities. [Citation.]

(*People v. Rountree* (2013) 56 Cal.4th 823, 860.)

These standards mirror the rule articulated by *McCleskey*. Further, the California Constitution requires a showing of actual prejudice before a reviewing court can overturn a criminal sentence. Article VI, section 13 of the California Constitution reads, in relevant part, "No judgment shall be set aside, or new trial granted, in any cause, […] for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

"[T]he applicable test for determining the existence of a miscarriage of justice was stated as follows: 'That a 'miscarriage of justice' should be declared only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*People v. Steele* (2000) 83 Cal.App.4th 212, 224–225.) In other words, a defendant seeking to invalidate their capital sentence must prove that they suffered some actual

prejudice – that their case would have ended differently – but for the complained about discrimination.

The problem with the petition, therefore, is obvious. In our opposition we asked "as applied to whom?" (RCDA Opp. at 20.) Petitioners provided this Court with only statistics – statistics which, as we established in our opposition, are outdated, unreliable, irrelevant, and wholly insufficient to support the requested relief. (RCDA Opp. at 24-31.) Petitioners failed to establish the circumstances of any case, either as to whom capital punishment was applied or the underlying facts of the case. They failed to identify specific defendants against whom a constitutionally improper sentence has, or could be, rendered. They failed to provide any information about the circumstances of the crimes—including motive, the extent of the defendant's involvement, the manner in which the crime was committed, and the consequences of the defendants' acts—or the defendants' personal characteristics, including age, prior criminality, and mental capabilities. And they failed to show that but for the complained-about error, a particular defendant would not deserve capital punishment, and would not have been so sentenced.

Therefore, whether considered as a facial or as applied challenge, the petition fails.

III. ALL CALIFORNIA DISTRICT ATTORNEYS, CONDEMNED INMATES, DEFENDANTS FACING CAPITAL PUNISHMENT, AND VICTIMS' NEXT OF KIN ARE NECESSARY PARTIES TO CONSIDER THE REQUESTED RELIEF

A. The various District Attorneys are real parties in interest because the Attorney General does not automatically represent the People in capital punishment cases.

As we pointed out in our initial opposition, the Riverside County District Attorney is the representative of the People in all pending capital punishment eligible cases and all pending capital habeas corpus cases in Riverside County. (RCDA Opp. at 14-15.) As the entity prosecuting these cases, real party in interest will be directly affected by these proceedings. In their reply, petitioners claim that the Attorney General is the proper respondent because, *inter alia*, the Attorney General is California's chief law enforcement officer and "has direct supervision over every district attorney [sic]." (Reply at 15-16.) But the out of state attorneys behind this political proceeding do not understand the nuances of the relationship between the Attorney General and the District Attorneys. Simply put: the Attorney General does not represent the People on individual cases unless he affirmatively takes over a case.

The Attorney General and local District Attorneys are offices of constitutional and statutory creation. The position of Attorney General first appeared in the original California Constitution drafted in 1849, with its powers outlined in the since-replaced Political Code passed in 1872. The "current"

California Constitution superseded the original in 1879; however, the modern Constitutional provisions dictating the powers of the Attorney General did not appear until the passage of Article V, Section 21 by initiative in 1934. Article V, section 21, was renumbered as Article V, section 13 in 1966. Article V, section 13 of the California Constitution designates the Attorney General as the "chief law enforcement officer of the State," subject only to the power of the Governor. To that end, section 13 mandates that the Attorney General shall have "direct supervision over every district attorney […]."

The powers of the Attorney General first appeared in statute via California Political Code section 470(5), passed in 1872. That section mandated that the Attorney General has a duty to "exercise supervisory powers over District Attorneys in all matters pertaining to the duties of their offices […]." Likewise, Political Code section 470(7) gave the Attorney General the power to, "[w]hen required by the public service, or directed by the Governor, to repair to any county in the State and assist the District Attorney thereof in the discharges of his duties."

The Political Code underwent significant amendments between 1872 and 1935. Specifically, Political Code section 470 outlined the powers and duties of the Attorney General in more detail, and the Legislature added sections 477 (supervision of District Attorneys). Section 477 stated:

> "The Attorney General shall exercise direct supervision over the district attorneys of the several counties of the State, and, from time to time, require of

> them written reports as to the condition of public business entrusted to their charge. When he deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of his duties, and shall have power, where he deems it necessary, to take full charge of any investigation or prosecutions of violations of law in which the superior court shall have jurisdiction, and, in this respect, shall have all the powers of a district attorney, including the power to issue or cause to be issued subpenas [sic] or other court process."

Absent some minor grammatical changes, Political Code section 477 is essentially the same provisions as Government Code section 12550, which governs the supervision of District Attorneys to this day. Political Code section 477 and Government Code section 12550 even shared the same unusual spelling of "subpoena" until January 2022.

The position of District Attorney was also created by Constitutional mandate and their powers specified by statute. California Constitution, article XI, section 1, subsection b mandates that the Legislature, "[…] shall provide for county powers, an elected county sheriff, [and] an elected district attorney […]." Government Code section 26500 states, "The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."

However, neither the Constitution nor Political Code nor Government Code specifically defined "direct supervision." This created potential tension between the Attorney General's role as "chief law enforcement officer" and the District Attorneys' role as a constitutionally created, independently elected "public prosecutor." The Courts eventually determined that the Attorney General's power of direct supervision over the local District Attorneys is limited. In *People v. Brophy* (1942) 49 Cal.App.2d 15, the Court wrote,

> Manifestly, "direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law" does not contemplate absolute control and direction of such officials. Especially is this true as to sheriffs and district attorneys, as the provision plainly indicates. These officials are public officers, as distinguished from mere employees, with public duties delegated and entrusted to them, as agents, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which they, as agents, are active. [Citation.]
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> Moreover, sheriffs and district attorneys are officers created by the Constitution. In that connection it should be noted that there is nothing in section 21[2] of article V that indicates any intention to depart from the general scheme of state government by counties and cities and

[2] Since renumbered to Article V, section 13

> counties, as well as local authority in cities, as provided by sections 7 1/2, 7 1/2a, 8 and 8 1/2, of article XI. By interpreting section 21 of article V in the light of the above–mentioned provisions, it is at once evident that "supervision" does not contemplate control, and that sheriffs and district attorneys cannot avoid or evade the duties and responsibilities of their respective offices by permitting a substitution of judgment. The sole exception appears to be that whenever "in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute," in which cases "he shall have all the powers of a district attorney." But even this provision affords no excuse for a district attorney or a sheriff to yield the general control of his office and duties to the Attorney General.

(*Id.* at p. 28.) More recently, in *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 357, this Court endorsed the Third District Court of Appeal's opinion in *People v. Honig* (1996) 48 Cal.App.4th 289, 354-355, holding that "Article V, section 13 of the California Constitution 'confers broad discretion upon the Attorney General **to determine when to step in** and prosecute a criminal case.')" (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 357, emphasis added.)

Read together, the law is clear that the District Attorney, not the Attorney General, represents the People in criminal cases absent express statutory authorization or the affirmative choice by the Attorney General to take over a case; in other words, the

Attorney General is not automatically involved in the prosecution of every criminal case in California. Moreover, the Attorney General does not have the power to force a District Attorney to agree with their legal conclusions or to substitute his judgment for the District Attorney's.

In this case, RCDA is not only prosecuting active capital cases, we are also prosecuting capital-eligible cases in which District Attorney Hestrin has not yet decided what punishment to seek, and we are handling post-appeal capital habeas cases. Attorney General Bonta has not "stepped in" to these cases within the meaning of Article V, section 13, *Brophy*, and *Pitts*. If Mr. Bonta wants to take these cases over, he may; but today, he is not the representative of the People. We are.

As the representatives of the People in currently pending cases, RCDA is entitled to due process in this matter. The California Constitution is clear: "In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial." (Cal. Const., art. I, § 29.) "Generally, due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 174.) "Unlike some legal rules, due process 'is not a technical conception with a fixed content unrelated to time, place and circumstance.' [Citation.]" (*Id.* at p. 334.) Rather, it "is flexible and calls for such procedural protections as the particular situation demands" (*Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 543.)

The petitioners seek an extraordinary, sweeping remedy that contravenes the will of California voters. This Court should hear more voices and perspectives, not fewer, in order to adjudicate this irregular proceeding. Therefore, this "particular situation" requires the Court to designate RCDA as a real party in interest necessary to consider the requested relief.

B. Condemned inmates, defendants facing capital punishment, and victims' next of kin all deserve their day in court.

Finally, as we argued in our Preliminary Opposition, currently condemned inmates, defendants facing capital punishment, and victims' next of kin in capital cases are all real parties who deserve their day in court. (RCDA Opp. at 14-15.) Those inmates and defendants who may have their actual or potential sentences changed are quite clearly "directly affected" by this proceeding. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1178.)

So too are the next of kin of murder victims. For those whose family member's murderer is already convicted and condemned, this proceeding would reopen old wounds and retraumatize innocent people who may have already come to terms with the tragedy that someone else imposed on them. Likewise, those family members still awaiting trial and sentencing for their loved ones' murders deserve an opportunity to be heard before this Court makes the weighty decision before it. This is not only morally correct, it is Constitutionally required. Under Marsy's Law, crime victims have the right to be heard and

the right to finality in criminal cases. (Cal. Const., art. I, § 28 subds. (8), (9).) This Court should uphold those rights and deny the petition.

CONCLUSION

The petitioners in this case should not be before the Court. They cannot sustain a challenge to capital punishment at any standard. And the independently elected District Attorneys deserve an opportunity to be heard in this highly unusual political gambit.

The People of the State of California, County of Riverside, as Real Party in Interest, respectfully request this Court deny the Petition.

Dated: November 18, 2024

Respectfully submitted,

MICHAEL A. HESTRIN
District Attorney
County of Riverside

/s/

EMILY R. HANKS
Managing Deputy District Attorney

W. MATTHEW MURRAY
Deputy District Attorney

CERTIFICATE OF WORD COUNT

Case No. S284496

The text of this **SUPPLEMENTAL BRIEFING OF THE RIVERSIDE COUNTY DISTRICT ATTORNEY, REAL PARTY IN INTEREST** consists of 6,138 words as counted by the Microsoft Word program used to generate it.

Executed on November 18, 2024, in Riverside, California.

Respectfully submitted,

MICHAEL A. HESTRIN
District Attorney
County of Riverside

/s/

EMILY R. HANKS
Managing Deputy District Attorney
W. MATTHEW MURRAY
Deputy District Attorney

DECLARATION OF SERVICE

Case Name: *Office of the State Public Defender v. Rob Bonta*
Case No.: S284496

I declare that I am over the age of 18, not a party to this action and my business address is 3960 Orange Street, Riverside, California. My electronic service address is Appellate-Unit@rivcoda.org.

On **November 18, 2024**, I transmitted a PDF copy of the, **SUPPLEMENTAL BRIEFING OF THE RIVERSIDE COUNTY DISTRICT ATTORNEY, REAL PARTY IN INTEREST**, via TrueFiling (https://tf3.truefiling.com/) to the following recipients and email notification addresses:

PLEASE SEE ATTACHED LIST

BY OVERNIGHT DELIVERY: I also served by overnight delivery via Federal Express courier one (1) copy of the above-listed document addressed as follows:

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Dated: November 18, 2024

Esperanza Garcia	*Esperanza Garcia*
DECLARANT NAME	**DECLARANT SIGNATURE**

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