

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,
the California Attorney General, in his official capacity,

Respondent.

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND
BRIEF OF AMICUS CURIAE JOHN K. HAGGERTY
IN SUPPORT OF RESPONDENT AND IN
OPPOSITION TO THE PETITION OF PETITIONERS
FOR A WRIT OF MANDATE**

(There have been no lower appellate or trial court
proceedings in this matter.)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This Certificate of Interested Entities or Persons is being submitted *in pro se* by, and on behalf of, Amicus Curiae John K. Haggerty. The undersigned hereby certifies that the undersigned knows of no entities or persons that must be listed under subdivisions (e)(1) and/or (e)(2) of rule 8.208 of the California Rules of Court.

Dated: December 2, 2024

/s/

John K. Haggerty, *In Pro Se*
Amicus Curiae

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Amicus Curiae John K. Haggerty (“amicus”) hereby respectfully applies to the Court for leave to file the attached amicus curiae brief in support of respondent Rob Bonta, the California Attorney General, in his official capacity, (“respondent”) *and* in opposition to the petition of petitioners Office of the State Public Defender, Eva Paterson, LatinoJustice PRLDEF, Ella Baker Center for Human Rights, and Witness to Innocence (“petitioners”) for a writ of mandate (“the petition”) in the above-entitled matter pursuant to rule 8.520(f) of the California Rules of Court. Earlier in this matter, on or about June 11, 2024, amicus lodged an amicus curiae *letter* with the Court in which he urged the Court to deny the petition.

As a citizen of California since 1980, amicus has a vital interest in preserving and advancing the lives, security, and safety of himself, his family, his friends, his fellow professionals, all of the persons with whom he does business, and, indeed, all of his fellow residents of the state of California. In advancing this vital interest amicus has voted, over and over again, to maintain the right of the people of our state to protect themselves against all heinous murderers and mass murderers via the strong deterrent effects of the death penalty.

Amicus, as a citizen of California, has an additional vital interest in preserving the right of the people of California under their Constitution (which *they* authored) to determine -- *via their democratic, constitutional, right to vote for state initiatives and legislators* -- the best policy means by which to protect themselves against heinous murderers.

The main purpose of the penal laws of our state has always been to *deter crime*. The people of our state have clearly indicated, via numerous elections and hundreds of jury verdicts, *their* determination that *the death penalty deters crime*. (It certainly does not encourage it.) Even the criminal gangs, themselves, routinely use a death penalty to deter their members from violating their “rules”. Moreover, most nations, including our own, have always used the prospect of death to deter the invasion of their lands. This is why they currently maintain lethal armed services with nuclear and other weapons. In short, the deterrence of heinously unlawful conduct is the most longstanding, legitimate, overarching purpose of all governments.

The petition in this matter would very dangerously and unconstitutionally deny to *every* person in our state, *of every race*, the strong deterrent benefits of the death penalty in each of following ways;

(1) For starters, the petition is, *in effect*, asking the Court to ignore the most basic **jurisprudential** bedrock of our state, namely, that: **(a)** the people of our state are the authors/creators of our Constitution which, in

turn, has created both our Legislature and our Courts to, in turn, author most of our statutes and all of our cases; this longstanding, noble hierarchy of lawful authorities in our state should *never, in any way*, be diminished by a plethora of law review articles, out-of-state decisions, or pseudo-trendy penal philosophies; and **(b)** the people of our state, *of all races*, have voted, *over and over again* (e.g., 1972, 1986, 2012, 2016), to preserve/advance the death penalty as our best deterrent against heinous murderers.

(2) The petition also seeks, in effect, to unconstitutionally disregard the clear and express provisions of California Constitution, article I, section 27 (“article I, section 27”), which the people of our state, themselves, had to enact to preclude all persons (including all death row inmates, their attorneys, and others) from seeking to use *any* other sections of our state Constitution (e.g., its equal protection or cruel or unusual punishment sections) to avoid, evade, and/or invalidate the death penalty.

(3) Petitioners inaccurately assert that they are making an as applied challenge to the death penalty. As a matter of **constitutional** law, their petition is clearly not an “as-applied” challenge because: **(a)** amazingly, it does not address the “defects” of a single, currently pending death penalty conviction; **(b)** no death row convict is even a party to it; and **(c)** in a strange, *quasi-legislative* way the petition broadly proposes to abolish *every* death penalty sentence in our state *and* ban any new ones in the future (the petition, itself, reads more like a legislative committee report subsequent to legislative hearings than an appellate brief subsequent to a trial).

(4) Finally, some of the statistics petitioners cite in their (Supplemental) Brief actually demonstrate how the statewide relief that they seek: **(a)** lacks an evidentiary basis; and **(b)** would unjustly deny to the *non-white* residents of our state the vital deterrent benefits of the death penalty.

Accordingly, amicus is now hereby applying to the Court for leave to file the attached amicus curiae brief primarily because, while respondent

in its recent Supplemental Opening Brief did an excellent job of discussing many of the glaring defects in the petition (e.g., petitioners' as yet unestablished standing to bring the petition and the lack of any merit in their state equal protection claims), that brief does not adequately discuss: **(1)** the overarching, compelling interest which the people of our state have in the deterrent effects of the death penalty; **(2)** how petitioners' *state* equal protection and, more recently, their *state* cruel or unusual punishment constitutional challenges are both barred by the plain language, history, and context of article I, section 27; **(3)** how the petition is plainly not an as applied challenge, but a facial challenge, to the death penalty in which petitioners are improperly petitioning the Court to undo -- *on a collective, statewide basis* -- this vital public policy of the people of our state; **(4)** how the petition lacks evidentiary (statistical) support; and **(5)** how the petition does not comply with the legal requirements for a writ of mandate.

Amicus has read all of the briefs that have been filed in this matter. **The attached brief will assist the Court** by providing the Court with a more complete understanding of: **(a)** the pertinent overarching compelling interest which the people of our state have in the deterrent benefits of the death penalty; **(b)** the total preclusive effect of article I, section 27; **(c)** how the cases/statistics, cited by petitioners, are inapposite and/or do not support what their petition seeks; and **(d)** the petition's procedural defects.

Amicus, a California attorney since 1987, has prepared and filed many appellate briefs. He is the sole author of the attached brief. He has not received any compensation for preparing or submitting that brief.

Respectfully submitted,

Dated: December 2, 2024

/s/

John K. Haggerty, *In Pro Se*
Amicus Curiae

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**BRIEF OF AMICUS CURIAE JOHN K. HAGGERTY IN SUPPORT
OF RESPONDENT AND IN OPPOSITION TO THE PETITION OF
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INTRODUCTION

Amicus Curiae John K. Haggerty (“amicus”), a citizen of California, is filing this brief in support of respondent Rob Bonta, the California Attorney General, in his official capacity, (“respondent”) *and* in opposition to the petition of petitioners Office of the State Public Defender, Eva Paterson, LatinoJustice PRLDEF, Ella Baker Center for Human Rights, and Witness to Innocence (“petitioners”) for a writ of mandate (“the petition”).

As amicus understands it, petitioners are: **(1)** asking the Court to: **(a)** compel respondent to somehow commute the death penalty sentences of every one of the hundreds of death row inmates in California; and **(b)** prohibit respondent from seeking the death penalty in the future; and **(2)** claiming that they have both the standing and grounds to *collectively* challenge those sentences on an “as applied” (but not facial) basis, *originally* claiming that those sentences violated the equal protection sections of the California Constitution but *more recently* claiming that those sentences also violate the cruel or unusual punishment section of the California Constitution, *notwithstanding* article I, section 27, of that Constitution (“article I, section 27”) which *expressly* precludes *all state* constitutional challenges to the death penalty laws of our state.

First, this brief discusses how, in considering *all* constitutional challenges to the death penalty, the courts of our state must always maintain the utmost respect for the overarching, compelling determination, which the people of our state have solemnly, diligently, and deliberatively shown, *over and over again* (in their responses to numerous propositions and in hundreds of death penalty verdicts), to protect the people of our state against all heinous murderers and mass murderers by the strong deterrent

effects of the death penalty. Our state will always have this overarching, interest in protecting the lives of its residents, *of all races*, by the strong deterrence of the death penalty against all despicably horrible murderers.

Second, this brief discusses how petitioners' *state* equal protection and, more recently, their *state* cruel or unusual punishment challenges are precluded by the plain language, history, and context of article I, section 27.

Third, this brief discusses how the petition is not an as applied challenge, but an improper facial challenge, to the death penalty in which petitioners are improperly asking the Court to undo -- *on a collective, statewide basis* -- this most vital public policy of the people of our state.

Fourth, this brief discusses how some of the statistics which petitioners have cited actually demonstrate how the statewide relief they seek: **(a)** lacks an evidentiary basis; and **(b)** would unjustly deny to the *non-white* residents of our state the vital deterrent benefits of the death penalty.

Fifth, and finally, this brief discuss two ways in which the petition does not comply with the legal requirements for a writ of mandate.

DISCUSSION

I. THE PEOPLE OF OUR STATE HAVE REPEATEDLY DETERMINED THAT OUR STATE HAS A COMPELLING GOVERNMENTAL INTEREST IN SAVING THE LIVES OF ITS RESIDENTS AGAINST ALL HEINOUS MURDERERS BY MEANS OF THE EFFECTIVE DETERRENCE OF THE DEATH PENALTY.

A. The People of Our State Have Repeatedly Determined To Protect The Residents of Our State Against All Heinous Murderers By The Deterrent Effects of The Death Penalty.

Immediately after the California Supreme Court shocked the body politic in our state by declaring that the death penalty was unconstitutional (purportedly under the cruel or unusual punishment provisions of our *state* Constitution) in *People v. Anderson* (1972) 6 Cal.3rd 628, the people of our state promptly overturned that stunningly misguided decision by voting for

Proposition 17 in November of 1972 which added article I, section 27, to our state Constitution. Article I, section 27, provides in full as follows:

All statutes of the State in effect on February 17, 1972, requiring, authorizing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishment within the meaning of Article I, Section 6 [now art. I, § 17] nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution.

In the official Ballot Argument in support of Proposition 17 (upon which petitioners also rely in their recent (Supplemental) Brief at page 57) the proponents of Proposition 17 emphatically prioritized the compelling governmental interest which the people of our state have in the deterrent effects of the death penalty against all heinous murderers as follows:

THE DEATH PENALTY IS AN EFFECTIVE DETERRENT TO SOME WOULD BE KILLERS. With this deterrent now eliminated, the lives of countless innocent people (especially law enforcement officers, prison guards, and prison inmates) have been placed in grave jeopardy.

. . . .

Both common sense and experience teach us that the death penalty deters many potential murderers. IF THE DEATH PENALTY SAVES THE LIFE OF ONE POLICEMAN OR ONE PRISON INMATE OR ONE PRISON GUARD OR ONE CHILD OR ONE PRIVATE CITIZEN, ITS EXISTENCE IS JUSTIFIED.

. . . .

We are faced with a question of the utmost gravity. The people of this state, rather than the Court, now have the opportunity to decide whether or not they need the death penalty for the protection of innocent citizens. (Voter Information Guide for 1972, General Election (1972), (available online at http://repositoryuclawsf.edu/ca_ballot

_props/774), pp. 42, 43, “Argument in Favor of Proposition 17”, 3rd, 8th, and final ¶¶ (all caps. in the original).)

As petitioners have properly noted in their recent (Supplemental) Brief:

“California decisions have long recognized the propriety of resorting to such election brochure [sic] arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people,” (Petitioners’ (Supplemental) Brief at 57, fn. 20 (quoting *White v. Davis* (1975) 13 Cal.3rd 757, 775, fn.11, and referring to the official Voter Information Guide for 1972, *supra*).)

The proponents of Proposition 17 in 1972 further emphasized the critical need for the deterrent effects of the death penalty in their official “Rebuttal to Argument Against Proposition 17” as follows:

A society that respects human life must protect the lives of its innocent citizens.

. . . .

Stopping executions has led to more killings. Since 1963, the courts have allowed only one execution (in 1967). During this period the homicide rate, which takes into account the growth of population, has increased 250%.

The fact that the death penalty does not deter all killers is no more a valid argument against its use than suggestion that all criminal laws be abolished because they do not deter all crime.

. . . .

SAVE INNOCENT LIVES—VOTE YES ON PROPOSITION 17. (Voter Information Guide for 1972, *supra*, p. 44, “Rebuttal to Argument Against Proposition 17”, 1st, 3rd, 4th, and final ¶¶ (all caps. in the original).)

Accordingly, it is undeniable that the primary reason why the people of our state reinstated the death penalty in 1972 is their firm determination, based on statistics and common sense, that the death penalty does substantially deter the commission of heinous murders and mass murders.

Moreover, since 1972, the people of our state have repeatedly reiterated their determination in this regard. Indeed, in 1986, they took the

extraordinary step of recalling three justices (including the Chief Justice) in large part because, in their decisions, those justices had been persistently blocking implementation of the death penalty. More recently, in 2012 and 2016, as petitioners properly acknowledge in their (Supplemental) Brief (at p. 32, fn. 7), the people of our state rejected Propositions 34 and 62, respectively, both of which sought to abolish the death penalty.

Perhaps, even more importantly, since 1976, in over 700 jury trials, 12-person subsets of the people of our state have reiterated their confidence in the deterrent benefits of the death penalty by solemnly, and with the utmost attention and deliberation, after having been instructed on the law by learned judges and listening to the arguments of learned counsel, voted in favor of the death penalty for the worst, most despicable murderers.

B. The Death Penalty *Does* Deter Heinous Murderers.

As the California murder statistics from the 1960s, cited by the proponents of Proposition 17, *supra*, demonstrate, the death penalty deters many would be heinous murderers. As those proponents (including a future, two-term Governor of our state) also expressly noted, this is just common sense. The death penalty certainly does not encourage murder. Surely, it is more of a deterrent than “three hots, a cot, and a flu shot” for life (“without parole”). Indeed, petitioners hardly discuss the subject of deterrence in their briefs as though that subject is of no particular relevance or importance to what they are seeking from the Court.¹

Even the criminal gangs, themselves, all accept the strong deterrent effect of the death penalty as is clearly demonstrated by their actual conduct

¹ Do petitioners contend that “life without parole” is a greater deterrent than the death penalty? Less cruel or unusual? Do they envision it as stern and austere or more like a dormitory with iron bars, but also gyms, cable TV, etc.? Do they even support “life without parole”? (One reads of legislators seeking to end it.) In short, what would be the petitioners’ legislative program for the deterrence, punishment, and housing of heinous murderers?

in routinely imposing it upon any of their members who break their codes of silence or other rules. Death is obviously more of a deterrent to them than “three hots, a cot, and a flu shot.” Some opponents of the death penalty sometimes argue that the death penalty might prompt desperate heinous murderers to murder extra people, in order to avoid apprehension, whom they would not have murdered if the penalty was “only” life without parole. The response to this somewhat imaginative argument is two-fold as follows: (a) such situations are, at most, a rare cause of murder; and (b) if this premise were true, then it would actually further demonstrate how the death penalty is much more of a deterrent than life without parole.²

Finally, almost all nations, including our own, use the prospect of death to deter other nations from invading their territories. This is why they maintain large, lethal military forces, nuclear, and other weapons to protect the lives and freedom of their citizens. In short, the deterrence of heinous murderous and invasive conduct is, and always has been, the original and most compelling interest, purpose, and responsibility of our government.

C. The Courts Must Respect This Vitaly Important Public Policy Determination of The People of Our State.

Article IV, section 1, of our state Constitution provides that “[t]he legislative power of this State is vested in the California Legislature . . . *but the people reserve to themselves the powers of initiative and referendum.*” (Emphasis added.) The people have repeatedly and clearly declared the death penalty to be the law of our state. (See, e.g., art. I, § 27, *supra*.)

² In 1993 the late Senator Dianne Feinstein, while discussing her support for the deterrent effects of the death penalty, cited her experience on the California Women’s Parole Board when a parole applicant reported to the Board that she did not bring a loaded gun with her to her crime because she was afraid that, if something went wrong and she shot someone to death, she would be sentenced to the death penalty rather than just a term in jail or prison. (Cassell, *In Defense of the Death Penalty*, The Prosecutor (Oct.-Dec. 2008), at 12-14, 26 (citing 141 Cong. Rec.S7662 (June 5, 1995)).)

It is the people of our state who have solely authored our state Constitution as they, themselves, have declared in its Preamble:

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution

Thus, it is the people of our state, as the sole authors of our Constitution, who created our state Legislature and our state Courts who, in turn, have authored our statutes and cases. This longstanding, noble hierarchy of lawful authority in our state must not, *in any way*, be diminished or disregarded by a plethora of anti-death penalty law review articles, out-of-state decisions, or other pseudo-trendy, unsound, penal philosophies.

In sum, it is not the constitutional role of our judiciary to second guess the repeatedly and clearly expressed, sound, political policy determinations of the people of our state to secure themselves and their freedoms against all heinous murderers by the sound deterrent effects of the death penalty (as petitioners are now, in effect, asking the Court to do).

II. ARTICLE I, SECTION 27, OF THE CALIFORNIA CONSTITUTION PRECLUDES ALL STATE CONSTITUTIONAL CHALLENGES TO THE DEATH PENALTY.

A. Article I, Section 27, Precludes All State Constitutional Challenges, Both Facial and As Applied, To The Death Penalty.

Since article I, section 27, *on its face*, precludes what petitioners are seeking, it is worth quoting its second paragraph once more as follows:

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishment within the meaning of Article I, Section 6 [now art. I, § 17] nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution. (Emphases and bracketed material added.)

The following three points are abundantly clear from the above language:

(1) the people of our state do not want the cruel or unusual punishment

section in our state Constitution to *in any way* limit the benefits of the death penalty to our state; **(2)** nor do they want any *other* section in their Constitution to *in any way* limit the operation and effect of that penalty; and **(3)** nothing at all in article I, section 27, limits its preclusive effects to only “facial” state constitutional challenges to the death penalty.

The history of Proposition 17 in 1972 plainly supports each of the foregoing three points. Proposition 17 was promptly enacted in response to the stunning decision in *People v. Anderson* (1972) 6 Cal.3rd 628, which shockingly abolished the death penalty in our state purportedly on the ground that it violated the cruel or unusual punishment section in our state Constitution. As the Legislative Counsel explained this in its Detailed Analysis of Proposition 17 in the Voter Information Guide for 1972:

. . . The California Supreme Court has held that the imposition of the death penalty is prohibited by Section 6 [now § 17] of Article I of the California Constitution which prohibits the infliction of cruel or unusual punishments.

Adoption of this measure would specifically prevent the provisions in Section 6 of Article I, or any other provision, of the California Constitution from being held to prohibit the death penalty.

If the measure is adopted, every statutory law of California relating to the death penalty that was rendered ineffective by the decision of the California Supreme Court would be reinstated (subject to amendment or repeal) insofar as their validity under the California Constitution is concerned. Their validity under the United States Constitution, however, is a separate issue. (Voter Information Guide for 1972, *supra*, at p.42 (emphases and bracketed material added).)

This analysis plainly indicates that the people of our state were creating a *total* preclusion of *all state* constitutional challenges to the death penalty by: **(a)** *expressly* referencing the cruel or unusual punishment section in our state Constitution; **(b)** *expressly* referencing every other provision in our

state Constitution; and (c) not in any way limiting the scope of article I, section 27, to facial constitutional challenges to the death penalty.

Thus, its plain, unambiguous language, its history, its context, and the longstanding, vitally important public policy of deterring heinous murderers which it greatly advances, all abundantly demonstrate that, in adding article I, section 27, to our state Constitution, the people of our state were *intently determined* to avoid any more judicial inventiveness on the part of the California Supreme Court of that time against the death penalty.

B. The Cases Petitioners Cite, Regarding Article I, Section 27; As Applied Challenges; and/or The Cruel or Unusual Punishment Section in Our State Constitution Are Inapposite.

Respondent has done an excellent job in its recent Supplemental Opening Brief demonstrating how petitioners' original, *state equal protection* challenge to the death penalty is without merit under both federal and state law.³ Accordingly, amicus will now focus instead on the California cases petitioners cite for their new *state cruel or unusual punishment* challenge to the death penalty (along with their related as applied and article I, section 27, arguments). As discussed below, none of those cases is on point.

For example, *People v. Superior Court (Engert)* (1982) 33 Cal.3d 797, is inapposite because article I, section 27, only bars *state* constitutional challenges to the death penalty and the court in *Engert* ultimately held that the unduly vague language of a murder enhancement statute violated the due process provisions of the *federal* Constitution. Consequently, the court's further discussion of whether or not article I, section 27, precluded

³ However, amicus does not agree with the recurring suggestion throughout respondents' Supplemental Opening Brief that an unprecedented appellate special master fact-finding proceeding might be appropriate with respect to the *state* cruel or unusual punishment challenge to the death penalty which: (a) the Court asked about in its 9-11-24 Order; and (b) petitioners now wish to add as a ground for their petition. As indicated in the preceding subsection, *ante*, no such fact-finding proceeding is constitutionally authorized.

it from considering whether or not the statutory language also violated a similar due process provision in our state Constitution was moot and *dicta*.

Indeed, the entire purpose of the decision of the people of our state to add article I, section 27, to our state Constitution (after that Constitution had been shockingly misconstrued in *Anderson, supra*) was to make it abundantly clear to all future courts that the death penalty statutes of our state must only comply with the provisions of our *federal* Constitution (not any other articles or sections in our *state* Constitution).

Tobe v. City of Santa Ana (1995) 9 Cal. 4th 1069, cited *passim* in petitioners' (Supplemental) Brief, is also inapposite because the court in that *civil* case *rejected* the assertions of the *individual* plaintiffs that: (a) their constitutional challenge to an anti-camping municipal ordinance was an as applied challenge; and (b) their remaining *facial federal* due process challenge to the ordinance claiming it was unconstitutionally overbroad or vague. Thus, *Tobe* involved neither a *criminal* proceeding nor the death penalty nor article I, section 27, nor an as *applied* challenge, nor a separate, independent challenge under our state Constitution.

Similarly, *Van Atta v. Scott* (1980) 27 Cal3d 424, cited by petitioners, involved neither the death penalty nor article I, section 27. Instead, as that court described it: "The court must decide the narrow issue of whether the trial court was correct when it held that the pretrial release and detention system employed by the City and County of San Francisco violates the due process clauses of the state and federal Constitutions." (*Id.* at 430.)

Indeed, none of the cases cited by petitioners authorize a state constitutional challenge of any kind (facial/applied, individual/collective, retroactive/present/prospective) to the death penalty laws of our state in light of article I, section 27. *Only federal constitutional challenges are permitted.*

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III. SOME OF THE STATISTICS WHICH PETITIONERS CITE ACTUALLY DEMONSTRATE HOW THE STATEWIDE RELIEF THEY SEEK LACKS AN EVIDENTIARY BASIS AND WOULD ALSO DEPRIVE *NON-WHITE* CALIFORNIANS OF THE DETERRENT BENEFITS OF THE DEATH PENALTY.

A. One Statistic Which Petitioners Have Cited Actually Demonstrates How The Entire Statewide “Implied” Racial Bias/“Systemic” Discrimination Premise Of Their Petition Lacks A Logical Evidentiary Basis.

In their (Supplemental) Brief petitioners discuss the four-year *de facto* nationwide death penalty moratorium in the United States and other fallout from the *Furman v. Georgia* (1972) 408 U.S. 238, *per curiam* opinion (without a majority or even plurality rationale) which held that the death penalty, as implemented by the states theretofore, violated the federal Constitution. As part of that discussion petitioners wrote:

The effect of [*Furman*] was a wholesale invalidation of the capital punishment statutes in Georgia and Florida, as well as those of every other death penalty state in the country. [Citation.] All persons under sentence of death were granted relief; the high court effectively overturned the death sentences of “587 men and two women who were facing execution in the United States.” [Citation.] (PSB at 47-48 (emphases added).)

The above-emphasized language actually undermines the entire premise of petitioners’ petition which is that the proportionally greater number of non-whites on death row somehow “proves” that there is enough of some kind of collective, statewide, “implicit” racial bias or “systemic” discrimination (which plaintiffs claim need not be “intentional”) in *each of those cases* to invalidate *every* death penalty sentence in our state. Applying this “logic” to the above-emphasized statistic (i.e., that there is, proportionally, *a much larger number of men on death row vis-a-vis women* than there are non-whites vis-à-vis whites) would “prove” that there is an implicit, systemic, sexist bias sufficient to justify invalidating every death penalty in our state.

Of course, such conclusions are, *at best*, sheer collective speculations which flagrantly ignore the income levels, wealth, physical and mental abilities, occupations, prior crimes, medical conditions, parenting, and schooling of both defendants and victims, the nature and number of crimes committed, the motives for those crimes, and the differing dangers which each category of criminal conduct poses to our society, as a whole, at any given point in our history.

At worst, such simplistic conclusions, based on incomplete data, are, themselves, the products of racist, misogynist notions and biases (e.g., that all or most California judges, prosecutors, jurors, and voters are somehow severely (perhaps, “implicitly”) prejudiced and/or chauvinist (e.g., more lenient towards women)). Any such notions would do the gravest disservice to all of the good and decent people of our state *of all races* who have so nobly, solemnly, and diligently served the courts and laws of our state.

B. Other Statistics Cited By Petitioners Demonstrate How The Relief They Seek Would Actually Deprive *Non-White* Californians Of The Deterrent Benefits Of The Death Penalty.

There also seems to be a lingering notion out there that all white persons approve of the death penalty whereas all non-white persons do not. This is patently not so. By the time the anti-death penalty Propositions 34 and 62 were soundly defeated in 2012 and 2016, respectively, a majority of the voters in our state were probably⁴ non-white.

As the proponents of Proposition 17 back in 1972 rightly noted, heinous murderers and mass murderers kill persons of “all races, colors and creeds.” (Voter Information Guide for 1972, *supra*, p. 42, 5th ¶, “Argument in Favor of Proposition 17”, 5th ¶.) Likewise, as even the statistics

⁴ Amicus could not find official statistics with respect to *voters*. However, certainly a majority of the *population* of California were non-white. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666 (“The reality in California is that no group forms a majority”), 666, fn.1 (census data).)

petitioners have cited demonstrate, the heinous murderers, themselves, are of “all races, colors and creeds.” (See petitioners’ (Supplemental) Brief at 45-46.) Those statistics further reveal that 318 (i.e., 557 – 239) of the non-white inmates on California’s death row (“Black or Latino defendants” as petitioners also describe them) were found guilty of murdering a *non-white* person. (*Id.* at 45, fn. 14.) Those statistics further reveal that 17 of the white inmates on California’s death row were found guilty of murdering exclusively *non-white* persons. (*Id.* at 46, fn. 14.) Thus, in total, nearly half of the 703 inmates on California’s death row (i.e., 335) were found guilty of murdering *exclusively* non-white persons.⁵

Contrary to what petitioners might suggest, the non-white victims of heinous murderers are actually fairly well represented in the above statistics and are being well served by the death penalty at least to the extent that many of their heinous murderers were sentenced to deaths that will deter future would be heinous murderers from murdering other non-white persons. Accordingly, based on these statistics alone, the petition should be denied *forthwith* so as to promptly and significantly restore the benefits of the death penalty to all of *both the white and non-white persons* in our state.

In sum, Californians of *all races* have repeatedly voted for and greatly benefitted from the deterrent benefits of the death penalty in the past and will again (as soon as the current, highly dubious, gubernatorial “death penalty moratorium” is ended). The petition would greatly endanger the lives of every Californian of *every race*. Even prolonging this matter with an unprecedented appellate fact-finding proceeding would gravely endanger those lives by denying to the people of our state the strong deterrent benefit of the death penalty (which they have repeatedly voted for).

⁵ The statistics which petitioners have cited further suggest that some of the remaining 368 inmates on California’s death row might have been found guilty of murdering both white and non-white persons.

IV. THE COLLECTIVE, STATEWIDE RELIEF WHICH PETITIONERS SEEK IS ALSO PROCEDURALLY DEFECTIVE IN VIOLATION OF THE WRIT OF MANDATE STATUTE.

California Code of Civil Procedure section 1086 provides that:

The writ [of mandate] must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.” (Emphases added.)

The petition does not satisfy two of the above requirements.

First, as the Court can see on the face of it, petitioners do not have a beneficial interest in this matter. While amicus is not entirely clear about this, petitioners appear to be a collection of attorneys and other self-appointed public advocates. While death row inmates, themselves, would have a beneficial interest (i.e., their lives), their attorneys/others certainly do not. Why have parties at all? Why not just have the attorneys sign all of the affidavit responses and testify to the facts at hearings and trials?

Second, the only proper parties to a death penalty proceeding, the individual death row inmates, themselves, *all* already have “a plain, speedy, and adequate remedy, in the ordinary course of law” available to them, namely, *both* the federal and state appellate court proceedings (including habeas corpus proceedings). A large number of California death row inmates have already fully availed themselves of these proceedings at which they were able to pursue all of their legal remedies (including racial bias challenges). Thus, allowing this petition to proceed would unjustifiably give heinous murderers second, third, or fourth bites at the apple while their innocent victims continue to lie in their graves without any remedy.

CONCLUSION

For all of the foregoing reasons, amicus respectfully requests that the Court deny the petition forthwith, with prejudice, on the grounds that it is meritless, without evidentiary support, procedurally defective, unconstitu-

tional, anti-democratic, and, *most importantly of all*, because it gravely endangers the lives of every single person of every race in our state as it unjustifiably deprives them of the longstanding, deterrent benefits of the death penalty.

Respectfully submitted,

Dated: December 2, 2024

/s/

John K. Haggerty, *In Pro Se*
Amicus Curiae

CERTIFICATE OF WORD COUNT COMPLIANCE

I, John K. Haggerty, as an amicus curiae herein, hereby certify, pursuant to rule 8.204(c) of the California Rules of Court, that the foregoing brief, entitled “Brief of Amicus Curiae John K. Haggerty in Support of Respondent *and* in Opposition to the Petition of Petitioners for a Writ of Mandate”, was produced using 13-point Times New Roman font, and including footnotes, but excluding tables and this statement, contains 4,571 words. In certifying this word count I rely upon the word count function of the computer software which I have used to prepare this brief.

Dated: December 2, 2024

/s/

John K. Haggerty, *In Pro Se*
Amicus Curiae

CERTIFICATE OF SERVICE

Office of the State Public Defender et al. v. Rob Bonta

Supreme Court Case No.: S284496

I, John K. Haggerty, declare that I am over the age of 18, a citizen of the United States, and not a party to this action. I am a resident of Santa Clara County and my business address is Post Office Box 2118, Santa Clara, California 95055.

I served copies of the **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE JOHN K. HAGGERTY IN SUPPORT OF RESPONDENT AND IN OPPOSITION TO THE PETITION OF PETITIONERS FOR A WRIT OF MANDATE**, attached hereto, on the following parties, hereinafter named, by:

X On December 2, 2024, sending a true copy thereof as an attachment to an e-mail from my e-mail address (i.e., johnkhaggerty@yahoo.com) to the following e-mail addresses of the following attorneys in this case:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Certificate of Service is executed this 2nd day of December, 2024, at Santa Clara, California.

John K. Haggerty