IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MOHAMMAD MOHAMMAD

on Habeas Corpus

No. S259999

Second Appellate District, Division 5, No. B295152
Los Angeles County Superior Court, No. BH011959

APPLICATION OF CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The California District Attorneys Association (CDAA), as amicus curiae, hereby requests permission to file the enclosed amicus curiae brief in support of the Attorney General and Respondent in the above captioned matter.

The California District Attorneys Association (CDAA), the statewide organization of California prosecutors, is a professional organization incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 2500 members, including elected and appointed district attorneys, the Attorney General of California, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials.

CDAA presents prosecutors' views as amicus curiae in appellate cases when it concludes that the issues raised in such cases will significantly affect the administration of criminal justice. The case before this Court presents issues of the greatest interest to California prosecutors. As the statewide association of these prosecutors, amicus curiae, CDAA, is familiar and experienced with the issues presented in this proceeding.

California Rules of Court, rule 8.520, subdivision (f)(3), states that an application to file an amicus curiae brief must state the applicant's interest and how the proposed amicus curiae brief will assist the court in the deciding this matter.

Respectfully, the undersigned's interest stems from a long history in forming the San Diego County District Attorney's Lifer Hearing Unit in

1995, appearing at hundreds of parole hearings, and serving as the subject matter expert in the state for CDAA and prosecutors engaged in this line of work. More specifically, the undersigned has filed amicus briefs on behalf of CDAA in all of the recent California Supreme Court lifer/parole cases including, *In re Palmer II* (S256149); *In re Palmer I* (S252145); *In re Butler* (2018) 4 Cal.5th 728, *In re Vicks* (2013) 56 Cal.4th 274, *In re Shaputis* (2011) 53 Cal.4th 192 [*Shaputis II*], *In re Shaputis* (2008) 44 Cal.4th 1241 [*Shaputis I*], *In re Lawrence* (2008) 44 Cal.4th 1181, and *In re Dannenberg* (2005) 34 Cal.4th 1061, etc.

Members of the Association have formed a Lifer Committee which, together with the Appellate Committee, are concerned that this case raises matters of grave concern to prosecutors and represents a serious threat to the administration of justice statewide. We respectfully submit that the proposed brief will assist the court in deciding this matter by casting further light on the issue of whether the nonviolent early parole process should be extended to virtually all inmates incarcerated in the California State Prisons or should focus instead on qualifying nonviolent offenders.

Pursuant to Rule 8.520(f)(4), the applicant states that no party nor counsel for a party in this appeal authored in whole or in part the proposed amicus brief, nor made any monetary contribution to fund the preparation or submission of the proposed amicus brief. Applicant further states that no person or entity made any monetary contribution to fund the preparation or submission of the proposed amicus brief other than amicus curiae and its members.

The applicant is familiar with the questions involved in this case and the scope of their application. Consequently, additional argument and briefing on these points will be helpful and for these reasons the California District Attorneys Association asks that this Court accept the attached brief and permit them to appear as amicus curiae.

Date: July 30, 2020

Respectfully submitted,

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By:

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Supervising Deputy District Attorney
On Behalf of CDAA Lifer/Parole Committee

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FILED AUGUST 12, 2020 WITH PERMISSION

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Second Appellate District, Division 5, No. B295152
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BRIEF OF AMICUS CURIAE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF RESPONDENT CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITIONAL PROVISIONS

BRIEF OF AMICUS CURIAE
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

ISSUES PRESENTED

Whether the nonviolent early parole process enacted by the passage of Proposition 57 applies to inmates serving a term for a violent felony as set forth in Penal Code section 667.5.

INTRODUCTION AND SUMMARY OF ARGUMENT

Proposition 57 passed in the general election on November 8, 2016. It was entitled "The Public Safety and Rehabilitation Act of 2016." (See ballot materials at https://tinyurl.com/v7k2kgu) It was presented to the public as a measure which would avoid the unnecessary incarceration of nonviolent offenders who could otherwise be rehabilitated, and released safely back into society. Significantly, the measure provided that any person "convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense." (Cal. Const., Art. I, section 32, subd. (a)(1).)

The measure was structured and presented to the public with the idea that persons sentenced to prison for a variety of offenses could achieve early parole consideration after serving only a portion of that sentence (i.e., the full term for the primary offense), so long as they were deemed to be a nonviolent type of offender. More particularly, the measure defined the full term of the primary offense as "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (Cal. Const., Art. I, section 32, subd. (a)(1)(A).)

The Governor advised the electorate in the ballot materials that this measure was not for violent criminals who pose a significant threat to public safety, and hence should not be considered for early parole. Conversely, the

Governor stated the measure would avoid the unnecessary incarceration of nonviolent offenders who could otherwise be rehabilitated and released safely back into society. Specifically, the ballot materials promised the voters that the measure would help reduce inmate population (avoiding indiscriminate release orders by the federal courts), but still keep dangerous criminals "locked up," and apply "only to prisoners convicted of non-violent felonies." (See Ballot Materials, *supra*, Arguments in Favor of Proposition 57, p. 58.)

The electorate was also informed that a "yes" vote in favor of Proposition 57 meant that only a small percentage of the inmate population would receive early parole consideration (i.e., nonviolent offenders). The Legislative Analyst estimated that approximately 30,000 of the 128,000 inmates incarcerated (or one quarter) would be eligible for early parole consideration if the measure passed. (*Id* at pp. 54, 56.)

The decision of the lower court contravenes the understanding the public had when it voted this measure into law. The court found that even if an inmate was convicted of a violent felony pursuant to Penal Code section 667.5, they are still eligible for early parole consideration so long as they were also convicted of a nonviolent felony offense as part of their term. "[A]ny nonviolent felony offense component of a sentence will suffice." (*In re Mohammad* (2019) 42 Cal.App.5th 719, 725.) Subsequently, the court stated: "The phrase 'a nonviolent felony offense' takes the singular form, which indicates it applies to an inmate so long as he or she commits 'a' single nonviolent felony offense — even if that offense is not his or her only offense." (*Id.* at p. 726.)

The practical effect of this holding is that Proposition 57 early parole consideration would be greatly expanded to almost all of the inmates incarcerated in CDCR. (See Respondent's Opening Brief on the Merits, p. 37 [interpreting Proposition 57 to apply to persons serving a term for a violent felony would result in 96 percent of the prison population becoming eligible for parole.] The court decision also provides for the anomalous result that persons

convicted of only a violent felony would not be eligible for early parole consideration, but if they were also convicted of "any" additional nonviolent felony as part of their term they would. Surely this absurd consequence is not what the electorate intended when it passed an initiative that was supposed to only focus upon nonviolent offenders.

Additionally, the decision by the lower court frustrates the purpose of Marsy's Law passed as Proposition 9 in 2008. As set forth below in argument, this measure promised broad reform for victims of crime and "finality" in criminal cases to avoid the constant threat of early release of violent offenders.

Clearly Proposition 57 was never intended to be a wholesale early parole scheme that operates to provide all offenders, violent and nonviolent, (encompassing virtually the entire inmate population) an opportunity for release after serving only a fraction of their sentence. Your amicus respectfully submits that this initiative measure should not have been interpreted in a way which thwarts the will of the electorate and results in anomalous, unintended consequences. Moreover, as more fully set forth below, an initiative measure should not be interpreted in a manner which would lead to an absurd result.

ARGUMENT

I.

PROPOSITION 57 WAS PRESENTED TO THE PUBLIC AS A MEASURE TO AVOID UNNECESSARY IMPRISONMENT OF NONVIOLENT OFFENDERS WHO COULD OTHERWISE BE SAFELY REHABILITATED AND RELEASED BACK INTO SOCIETY

Proposition 57 was intended to be a "durable solution" to the prison overcrowding issue. It spawned as a result of the Three-Judge Panel on prison overcrowding [hereafter the "3JP"]. The seminal case discussing the 3JP is *Brown v. Plata* (2011) 131 S.Ct. 1910. In this case, the United States Supreme Court, in a 5-4 decision, upheld the 3JP order to require the state to

reduce its prison population to 137.5 percent of design capacity. The 3JP court found that such an order was necessary to rectify a violation of the Eight Amendment to the U.S. Constitution.

The background leading up to *Brown v. Plata* involved *Coleman v. Brown [Wilson]* (1995) 912 F.Supp.1282. When the 3JP was formed, California prisons were designed to house a prison population of 80,000 inmates, but real estimates put the actual number at more than double, thus, the district court found that California prisoners with mental illness were not receiving minimal, adequate care in violation of the Eight Amendment.

Separately, in *Plata v. Brown*, filed in 2001, inmates asserted that the medical care they were receiving in prison also violated the Eighth Amendment. The State conceded that deficiencies in prison medical care violated prisoners' Eighth Amendment rights and stipulated to a remedial injunction.[1]

Believing that a remedy for unconstitutional medical and mental health care could not be achieved without reducing overcrowding, the *Coleman* and *Plata* plaintiffs moved their respective district court judges to convene a three-judge court empowered by the Prison Litigation Reform Act of 1995 to order reductions in the prison population. The judges in both cases granted the request, and the Chief Judge for the Ninth Circuit Court of Appeals convened the three-judge court pursuant to section 2284, title 28 of the United States Code, consisting of the two district judges and a Ninth Circuit Judge. Thus, the cases were consolidated before a single three-judge court.

In 2009, after hearing testimony and making extensive factual findings, the 3JP court ultimately ordered California to reduce its prison population to 137.5 percent of design capacity within two years (mandating the release of

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[1] According to the courts, the State had still not addressed the deficiencies by 2005, so a Receiver was appointed to oversee remedial efforts. Three years later, the Receiver described continuing deficiencies caused by overcrowding.

approximately 46,000 inmates). The Governor appealed, but the U.S. Supreme Court affirmed in *Brown v. Plata, supra.*

Due to the inmate population reduction order, a spate of special programs was put into effect, including Youthful Offender Parole Hearings and Elder Parole Hearings along with accompanying legislation to accomplish this goal. (See Penal Code sections 3051 and 3055.)

In addition, the entire California penal system experienced a sea change as the Legislature responded to the court mandates. AB 109 shifted responsibility for certain offenders from the state prison system to county jails. The State also offered nonviolent second-strike offenders the opportunity to seek parole once they served 50 percent of their sentence.

Through all of these measures, the state successfully reduced inmate population, but there still was no durable, long-lasting solution in place. Proposition 57 was championed by Governor Brown as the solution; however, it was juxtaposed against the backdrop of grave concerns expressed by the majority opinion in *Brown v. Plata.* Writing for the majority, Justice Kennedy stated:

> "The order leaves the choice of means to reduce overcrowding to the discretion of state officials. But absent compliance through new construction, out-of-state transfers, or other means—or modification of the order upon a further showing by the State—the State will be required to release some number of prisoners before their full sentences have been served. High recidivism rates must serve as a warning that mistaken or premature release of even one prisoner can cause injury and harm. The release of prisoners in large numbers—assuming the State finds no other way to comply with the order—is a matter of undoubted, grave concern." (*Brown v. Plata, supra* 131 S.Ct. at p. 1923.)[2]

[2] Justice Scalia, one of the four dissenting Justices, also expressed grave concerns: "Today the Court affirms what is perhaps the most radical

Thus, it was clear that though the United States Supreme Court upheld the prisoner release orders of the 3JP, it was a divided opinion (5-4) and the majority expressed grave concerns with the action being taken. Having been intimately involved in this matter as the appellant, and mindful of those concerns expressed by the majority, Governor Brown was careful in his communications with the electorate that this initiative measure would not mandate the wholesale and thoughtless release of dangerous, violent felons and instead would focus only upon those inmates who stood a good chance at rehabilitation and becoming a productive members of society upon release. In other words, by carefully focusing only on nonviolent offenders, the Governor appeared to try and address the grave concern expressed by the majority that the "mistaken or premature release of even one prisoner can cause injury and harm." (Ibid.)

Thus, the Governor advised voters in the ballot materials that Proposition 57 was a "common sense, long-term solution" to the problem of inmate overpopulation and would only allow early parole consideration for people with nonviolent convictions who complete the full prison term for their primary offense. (Voter Information Guide, *supra*, argument in favor of Prop. 57, at p. 58.) The Governor was careful to point out that the measure would serve its

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injunction issued by a court in our Nation's history: an order requiring California to release the staggering number of 46,000 convicted criminals. ... ¶ One would think that, before allowing [this], this Court would bend every effort to read the law in such a way as to avoid that outrageous result. Today, quite to the contrary, the Court ... uphold[s] the absurd." (*Id.* at 1950–1951.) The dissent also noted the windfall effect: "the vast majority of inmates most generously rewarded by the release order—the 46,000 whose incarceration will be ended—do not form part of any aggrieved class .... Most of them will not be prisoners with medical conditions or severe mental illness; and many will undoubtedly be fine physical specimens who have developed intimidating muscles pumping iron in the prison gym." (*Id.* at p. 1959.)

purpose in thoughtfully and carefully reducing inmate population, but still "keep dangerous criminals behind bars," and "locked up." Moreover, there were assurances that it would apply "only" to prisoners convicted of nonviolent felonies. (Ibid.) Finally, leaving no room for doubt, the Governor expressed that Proposition 57 "does not authorize parole for violent offenders," and reassured voters that "violent criminals as defined in Penal Code section 667.5 are excluded from parole." (*Id* at p. 59.)

Notwithstanding the clear intent of the measure and electorate in passing it, the court found that persons serving a term for a violent felony are eligible for Proposition 57 early parole consideration so long as they were also convicted of at least one nonviolent felony as part of their term. "[A]ny nonviolent felony offense component of a sentence will suffice." (*In re Mohammad* (2019) 42 Cal.App.5th 719, 725.) Subsequently, the court stated: "The phrase 'a nonviolent felony offense' takes the singular form, which indicates it applies to an inmate so long as he or she commits 'a' single nonviolent felony offense — even if that offense is not his or her only offense." (*Id.* at p. 726.)

Your Amicus respectfully submits that this is an overly literal, strained reading of the measure, and clearly upends the entire purpose of the long-term, durable solution enacted. The lower court acknowledged "that the argument for reaching a different result has some intuitive appeal." (*Id* at p. 727.) The court acknowledged that those inmates convicted of fewer crimes such as a single violent felony would be ineligible, but those convicted of more crimes (violent and nonviolent) would. However, the court found that the result was not so absurd as to warrant a different interpretation or holding. (*Id.* at p. 728.)

Amicus respectfully disagrees and believes the court was mistaken. The measure provided that CDCR was directed to implement the nonviolent parole program through regulation. The text of Proposition stated:

> (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety. (Cal. Const., Art. I, sec. 32, subdivision (b).)

The Department was well within its authority to enact implementing regulations which fulfilled the Governor's promises to the electorate that the measure would only apply to nonviolent inmates, while keeping dangerous, violent criminals incarcerated. The regulations enacted by CDCR, "like any agency action, comes to the court with a presumption of validity." (*Association of California Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 389.) Moreover, an administrative agencies construction of the law is entitled to "great weight and respect" on review. (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 461.)

By interpreting the nonviolent offender regulations promulgated by CDCR as inconsistent with the constitutional provisions enacted, the lower court ignored the overarching purpose of the measure. As noted, this frustrated the purpose of the measure, and contravened the overwhelming evidence that early parole consideration was prohibited for violent felons due to the substantial risk they pose to public safety.[3]

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[3] Penal Code 667.5 is a laundry list of dangerous and violent crimes including murder, mayhem, rape, sodomy, oral copulation, kidnapping, continuous sexual abuse of a child, etc. It is more limited than the serious felony list found in Penal Code section 1192.7. By excluding persons convicted of Penal Code section 667.5 offenses from Proposition 57 early parole consideration, the Department ensured that they excluding inmates who were convicted extremely violent and dangerous crimes. This was clearly a judicious and reasonable approach that was discarded by the lower court decision; it appears that the court decision bootstrapped these violent inmates into the Proposition 57 scheme (allowing any additional nonviolent conviction to suffice) through an overly literal interpretation of what was a relatively short constitutional measure, dependent on detailed administrative regulations for its implementation.

II.

PROPOSITION 57 WAS INTENDED TO APPLY TO A SMALL PERCENTAGE OF THE INMATE POPULATION

The lower court interpreted Proposition 57 in a manner that would make it apply to virtually everyone incarcerated in the CDCR prisons. As noted, this was clearly not the intended purpose of the measure, and not what was told to the electorate.

Voters were informed that a "yes" vote would mean that approximately one-quarter of the inmates would qualify for early parole consideration, making approximately 30,000 of the 128,000 inmates in custody eligible. (See Voter Information Guide, supra, at pp. 54, 56.) However, interpreting Proposition 57 in a manner which applies it to persons serving a term for a violent felony would result in approximately 96 percent of the prison population becoming eligible for early parole. (See Respondent's Opening Brief on the Merits, pp. 36-37.) This is clearly a result that was not contemplated or intended when the measure was enacted.

"The rules of statutory construction are the same whether applied to the California Constitution or a statutory provision (*Winchester v. Mabury* (1898) 122 Cal. 522, 527), and '[t]he same rules of interpretation should apply to initiative measures enacted as statutes.' (*Sanders v. Pacific Gas & Elec. Co.* (1975) 53 Cal. App. 3d 661, 672.)" (*People v. Bustamante* (1997) 57 Cal.App.4th 693, 699, fn. 5; see also *People v. Estrada* (2017) 3 Cal.5th 661, 668; *People v. Rizo* (2000) 22 Cal.4th 681, 685.) "We apply the same interpretive principles to initiatives as to legislative enactments, beginning with the text as the best guide to voter intent and turning to extrinsic sources such as ballot materials when necessary to resolve ambiguities." (*In re C.B.* (2018) 5 Cal.5th 118, 125.)

> When we interpret an initiative, we apply the same principles governing statutory construction. ... If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure.

(*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571; see also *People v. Arroyo* (2016) 62 Cal.4th 589, 593.)

"In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration. [Citations.]" (*In re Lance W.* (1985) 37 Cal.3d 873, 889; see also *People v. Adelmann* (2018) 4 Cal.5th 1071, 1075; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1099-1100.) "'[I]n the case of a voters' initiative statute ... we may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less.'" (*Robert L. v. Superior Ct.* (2003) 30 Cal.4th 894, 909, quoting *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114; see also *People v. Rocco* (2012) 209 Cal.App.4th 1571, 1575.)

"Ballot pamphlet arguments have been recognized as a proper extrinsic aid in construing voter initiatives adopted by popular vote. [Citations.]" (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 171; see also *Santos v. Brown* (2015) 238 Cal.App.4th 398, 410; *People v. Shabazz* (2015) 237 Cal.App.4th 303, 313.) Ballot explanations by the Legislative Analyst are also a source of construing voter intent. (*In re Lance W., supra*, 37.)

Your Amicus respectfully submits that the dramatic difference in the number of inmates who were originally contemplated to be eligible for Proposition 57 early parole consideration, versus the number that will be eligible under the court decision, compels the conclusion that that the

overly literal construction taken by the court, which largely ignored the measure's history and purpose, was erroneous.[4]

III.

CRIME VICTIMS WERE PROMISED THAT VIOLENT OFFENDERS WOULD NOT BE RELEASED EARLY OR IMPROVIDENTLY

In 2008, the California electorate passed Proposition 9 which was entitled the "Victims' Bill of Rights Act of 2008: Marsy's Law" [hereafter "Marsy's Law"]. This measure made sweeping changes to victims' rights in California. It provided crime victims and their next of kin several safeguards in the criminal justice process, and reformed several aspects of California criminal law with the focus and emphasis upon protecting the rights of crime victims, enhancing the requirements for full restitution, and ensuring that crime victims are informed of the criminal justice process, and given leave to have their voices heard throughout critical aspects of the proceedings.

In addition, an important goal was to spare crime victims the painful ordeal of unnecessary parole hearings. The preamble to the law made this point clear in several provisions: "The People of the State of California find that the 'broad reform' of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process." (Cal. Const., Art. I, sec. 28, Findings and

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[4] The crushing financial impact upon conducting the dramatic increase in early parole reviews for the Board of Parole Hearings is yet another factor. Clearly, the staggering increase in workload and costs were not originally contemplated, as Proposition 57 was intended to be a measure limited in application and scope.

Declarations, subd. (3).) More particularly, the measure provided, "[e]ach year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's '*release from prison parole procedures*' torture the families of murdered victims and waste millions of dollars each year." (Cal. Const. Art. I, sec. 28, Findings and Declarations, subd. (5), emphasis added.)

Marsy's Law had a clear statement of intent. Notably, the measure provided in pertinent part:

> "Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the *ongoing threat that the sentences of criminal wrongdoers will be reduced*, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end." (Cal. Const., Art. I, sec. 28, subd. (a)(6), emphasis added.)

Thus, recognizing that crime victims were entitled to greater finality consistent with the right to "justice and due process," the measure ultimately sought to spare victims the "ordeal of prolonged and unnecessary suffering...." (Cal. Const., Art. I, sec. 28, Statement of Purpose and Intent, subd. (2).)

Unfortunately, most of the court decisions determining matters affecting parole eligibility for prison inmates do not take into account the rights of crime victims and their next of kin, especially where such rights are enshrined into the California Constitution. *In re Mohammad* is no

different.[5] The decision has the effect of expanding early parole opportunities for thousands of prison inmates convicted of violent felonies and the important concerns mentioned above were never considered. Clearly, this is yet another reason why the measure should not receive a tortured construction that further inflicts pain on crime victims and their families by threatening the early release of violent felons. As noted, this is not what Governor Brown intended when he introduced the measure to the electorate. The inordinate amount of suffering that would thus be inflicted upon victims of violent crime would make the instant interpretation of Proposition 57 a travesty of justice.

In *In re Vicks* (2013) 56 Cal.4th 274, this Court stated "[o]ne of the principal purposes of Marsy's Law is to provide victims 'due process' by affording them an opportunity to be heard in proceedings concerning the prosecution, punishment, and *release* of those who victimized them. (*Id.* at pp. 309-310, emphasis added.) Fundamentally, Marsy's Law "provisions are intended to 'ensur[e] that crime victims are treated with respect and dignity... '" (*Id.* at p. 310.)

This court went on to state, "[w]e noted in *Ramirez* 'the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society." (Ibid.) This Court elaborated as follows:

> "'For government to dispose of a person's significant interests without offering him a chance to be heard is to risk treating him as a nonperson, an object, rather than a respected, participating citizen.' (Ibid.)
> ...
> "[C]ertain procedural protections [should] be granted the individual in order to protect

[5] A word search of the opinion reveals that the words "victim" or "victims" do not appear.

> important dignitary values, or, in other words, 'to ensure that the method of interaction itself is fair in terms of what are perceived as minimum standards ... which express a collective judgment that human beings are important in their own right, and that they must be treated with understanding, respect, and even compassion.'" (Ibid.)

Your Amicus respectfully prays that the rights of crime victims will be considered in determining the proper scope of Proposition 57.[6]

IV.

THE LAW SHOULD NOT BE INTERPRETED IN A MANNER THAT WOULD LEAD TO ABSURD CONSEQUENCES

As noted throughout this brief, the lower court decision leads to absurd consequences providing that persons convicted of less offenses are not eligible for Proposition 57 consideration, while persons convicted of a greater number of offenses would be, so long as one of those convictions was nonviolent. The decision also expands Proposition 57 early parole consideration far beyond what was originally intended, making it available virtually everyone in CDCR, including violent felons and sex offenders, after serving only a portion of their sentence.

These results defy logic and contravene principles of statutory construction. "The rules of statutory construction are the same whether applied to the California Constitution or a statutory provision and the 'same rules of interpretation should apply to initiative measures enacted as statutes.'" (See *ante*, p. 17.) Moreover, "In construing constitutional and

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[6] We recognize that registered victims are provided an opportunity to weigh-in and be heard in the Proposition 57 paper review process, but in countless cases they would not be subject to the stress of a potential early release but for the lower court opinion.

statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration," and courts should "not properly interpret the measure in a way that the electorate did not contemplate...." (See *ante*, p. 18.)

As this Court has stated many times: "In the end, ' "we must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]'" (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003; see also *People v. Barba* (2012) 211 Cal.App.4th 214, 222; *People v. Plumlee* (2008)166 Cal.App.4th 935, 940.)

Finally, overly literal interpretations of language are discouraged when such construction would lead to absurd consequences. An overly literal reading should not apply "where a literal reading would achieve the absurd consequence of rendering other provisions of the same enactment ineffective." (*People v. Goodliffe* (2009) 177 Ca.App.4th 723, 726.) In other words, "'[t]he literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole.'" (*Silver v. Brown* (1966) 63 Cal.2d 841, 845; see also *Rehman v. Department of Motor Vehicles* (2009) 178 Cal.App.4th 581, 587.)

CONCLUSION

Based on the foregoing, the California District Attorneys Association, as Amicus Curiae, respectfully submits that the lower court erred in finding that the Provisions of Proposition 57, or any part of them, apply to persons convicted of a violent felony within the meaning of Penal Code section 667.5.

Date: July 30, 2020

Respectfully submitted,

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By:

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On Behalf of CDAA Lifer/Parole Committee

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rules 8.486(a)(6) and 8.204(c), I certify that this brief has been prepared using 13-point Times Roman font and contains 4076 words, excluding covers, tables, this certificate, and declaration of proof of service, based on the word count feature of the computer program used to prepare this brief.

July 30, 2020 Richard J. Sachs

DECLARATION OF SERVICE

I am over the age of 18 years and am employed by the California District Attorneys Association. I am not a party to this action. On July 30, 2020, I served the within

"Application of California District Attorneys Association for Leave to File Amicus Curiae Brief and Amicus Curiae Brief in Support of Respondent California Attorney General Xavier Becerra"

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I declare under penalty of perjury that the foregoing is true and correct, and was executed July 30, 2020 at Sacramento, California.

Laura Bell

Laura Bell

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MOHAMMAD (MOHAMMAD) ON H.C.**
Case Number: **S259999**
Lower Court Case Number: **B295152**

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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.

7/31/2020

Date

/s/Laura Bell

Signature

Zahner, Mark (137732)

Last Name, First Name (PNum)

California District Attorneys Association

Law Firm