IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF RIVERSIDE COUNTY,

Respondent,

PABLO ULLISSES LARA, JR.,

Real Party in Interest.

S241231

Court of Appeal Case No. E067296
Riverside County Superior Court Case Nos. RIF1601012 and RIJ1400019
The Honorable Richard T. Fields, Judge (case no. RIF1601012)
The Honorable Mark E. Peterson, Judge (case no. RIJ1400019)

ANSWER TO AMICUS CURIAE BRIEF FILED BY THE OFFICE OF THE LOS ANGELES COUNTY PUBLIC DEFENDER AND PACIFIC JUVENILE DEFENDER CENTER

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THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent, PABLO ULLISSES LARA, JR., Real Party in Interest.	S241231

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INTRODUCTION

On September 18, 2017, the Los Angeles County Public Defender and the Pacific Juvenile Defender Center (hereafter LACPD) filed an amicus curiae brief in this case. On September 20, 2017, this Court

accepted and filed the brief. While the People have already addressed most of the issues raised therein, we have elected to file this limited response to assist this Court by briefly addressing the errors in LACPD's position.

ARGUMENT

I.
LACPD'S ARGUMENT THAT PROPOSITION 57 IS ENTITLED TO RETROACTIVE APPLICATION IS WITHOUT MERIT

While LACPD's amicus brief spends much of its initial energy referencing numerous penological and sociological factors that it contends are somehow relevant to the issue before this Court, that approach is simply unavailing and off the point. While such factors would certainly have merit if the author's purpose was to help convince the Legislature or the electorate of the need to establish a particular piece of legislation, that is simply not the issue at hand. Indeed, this approach appears designed to evoke an emotional response rather than a legal resolution of the issues. The question before this Court is not whether society would be best served by applying a particular legislative enactment to all cases not yet final on appeal. Rather, the question here is whether retroactivity was made clear to, and was the choice of, the voters, or alternatively, whether the rule from *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) should apply to this particular initiative such that retroactive application will be presumed. And because LACPD does ultimately address both of the latter issues, it is this aspect of their brief that we will primarily address here.

A. LACPD's Argument For The Retroactive Application Of Welfare And Institutions Code Sections 602 And 707, Based On The Language Of Proposition 57, Is Unpersuasive

LACPD first points out that certain crimes charged against juveniles were previously required to be filed directly in a court of criminal jurisdiction. (LACPD brief, at pp. 37-38.) While this is certainly true, that fact simply gives no indication whatsoever as to whether the change enacted by Proposition 57 was intended to be *retroactive*. Such a change can just as easily be argued as a valid *prospective* approach.

LACPD then references the fact that Proposition 57, in section 2, gave the legislative purpose of the initiative as follows: "'[¶] 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. [¶] 5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.' (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 141.)" (LACPD brief, at p. 38.) But again, there is nothing in such statements that gives any indication, let alone any clear indication, of an intent to apply these provisions in a *retroactive* manner. A *prospective* argument remains equally as valid.

Lastly, LACPD references section 9 in Proposition 57, which stated: "'This act shall be liberally construed to effect its purposes.'" (LACPD brief, p. 38, referencing Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 141.) The apparent argument here is that this language should be construed to justify retroactive application of new Welfare and Institutions Code sections 602 and 707.[1] (See LACPD brief, pp. 38-41.) This argument is defeated by well-established precedent. Indeed, as this

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[1] All further unspecified statutory references are to the Welfare and Institutions Code.

Court has plainly stated in this very context, "legislative intent in favor of the retrospective operation of a statute cannot be implied from the mere fact that the statute is remedial and subject to the rule of liberal construction." (*DiGenova v. State Bd. of Ed.* (1962) 57 Cal.2d 167, 174.)

> 'The rule of liberal construction and the rule that statutes should ordinarily be construed to operate prospectively are neither inconsistent nor mutually exclusive. They relate to different aspects of the interpretation of statutes. It would be a most peculiar judicial reasoning which would allow one such doctrine to be invoked for the purposes of destroying the other.'

(*Id.* at pp. 173-174, quoting *Aetna Casualty and Surety Co. v. Industrial Accident Commission* (1947) 30 Cal.2d 388, 395.)

Further, since most voter initiatives are remedial in nature and intended to "'improve a pre-existing situation,'" giving retroactive effect to statutes on that basis would be contrary to California law, which unambiguously requires the prospective application of new laws in the absence of a clear showing to the contrary. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1213 ["a remedial purpose does not necessarily indicate an intent to apply the statute retroactively. Most statutory changes are, of course, intended to improve a preexisting situation and to bring about a fairer state of affairs, and if such an objective were itself sufficient to demonstrate a clear legislative intent to apply a statute retroactively, almost all statutory provisions and initiative measures would apply retroactively rather than prospectively."].)

In short, there is nothing in the ballot initiative or the statutes themselves indicating voters were given any understanding, let alone any

clear understanding, that new sections 602 and 707 were intended to apply in anything other than a prospective manner. But even if one were to generously conclude the language was ambiguous in that regard, this Court has made the following very clear: Legislation "'that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.'" (*People v. Brown* (2012) 54 Cal.4th 314, 320; *Myers v. Phillip Morris Companies* (2002) 28 Cal.4th 828, 841 (*Myers*).) LACPD's claims of retroactivity based on the language of the initiative are simply without merit.

B. LACPD's Argument For The Application Of *Estrada* Is Misplaced

LACPD's position would require an expansion of the *Estrada* rule well beyond that which this Court has previously allowed. For the following reasons, in addition to the reasons stated in previous briefing, LACPD's argument in this context is not viable.

In *Estrada*, this Court concluded, "[i]t is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply." (*Estrada, supra,* 63 Cal.2d at p. 745 [amendatory statute reducing the penalty for the crime of escape without force or violence].) As this Court noted, "[o]rdinarily, when an amendment lessens the punishment for a crime one may reasonably infer the Legislature has determined imposition of a lesser punishment on offenders thereafter will sufficiently serve the public interest." (*Id.* at pp. 790-791.) But it is the specific reduction in penalty related to a particular offense, as set forth in the statute at issue, that is the essence of the *Estrada* rule. As this Court has noted, "[t]he rule in *Estrada* has been applied to statutes

governing penalty enhancements, as well as to statutes governing substantive offenses." (*People v. Nasalga* (1996) 12 Cal.4th 784, 792.) This includes amendatory statutes that reduce the penalty for a specific offense from a straight felony to a wobbler. (*People v. Francis* (1969) 71 Cal.2d 66.)

For example, this Court has found the *Estrada* rule applicable in the following cases: *In re Kirk* (1965) 63 Cal.2d 761, 763 [applicable to an amendatory statute that raised the monetary threshold necessary to obtain a felony conviction for a particular theft offense]; *People v. Enriquez* (1967) 65 Cal.2d 746, 749 [same]; *People v. Durbin* (1966) 64 Cal.2d 474, 479 [applicable to an amendatory statute that reduces or eliminates civil penalties or forfeitures previously applicable to a defendant]; *People v. Rossi* (1976) 18 Cal.3d 295, 299-304 [applicable to an amendatory statute that removes all penalties by decriminalizing the act for which defendant was previously convicted]; *People v. Collins* (1978) 21 Cal.3d 208, 212-213 [same]; *People v. Chapman* (1978) 21 Cal.3d 124, 126 [applicable to an amendatory statute that reclassified certain marijuana possession as a misdemeanor and thereby removed the penalty requiring drug offense registration]; *People v. Babylon* (1985) 39 Cal.3d 719, 727-728 [applicable to an amendatory statute that removed all penalties by redefining piracy of over-the-air subscription television transmissions to exclude defendant's acts]; *People v. Nasalga, supra*, 12 Cal.4th at p. 792 [amendatory statute increasing the amount of monetary loss required to support the two-year enhancement under Penal Code section 12022.6]; *People v. Vierra* (2005) 35 Cal.4th 264, 305-306 [applicable to an amendatory statute limiting the amount of the penalty that may be assessed as a restitution fine to that which the defendant has the ability to pay]; *People v. Wright* (2006) 40 Cal.4th 81 [applicable to an amendatory statute removing criminal

sanctions for the transportation of marijuana when the latter is for personal use by individuals otherwise authorized to possess marijuana]; and *People v. Hajek* (2014) 58 Cal.4th 1196, overruled on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192 [applicable to an amendatory statute that removed a pellet gun from the definition of a firearm for purposes of a firearm enhancement penalty].

In other words, this Court has limited *Estrada* to an amendatory statute that does one of two things: It either creates a change in the elements of the offense such that the statute's specific penalty provisions no longer apply to the defendant's prior acts, or it directly reduces a specific penalty provision set forth in a particular statute such that a non-final defendant can claim the benefit of the reduced penalty specified therein. But only then, when an express change creates a situation where the defendant's prior acts are no longer subject to the statute's penalty provisions, or the amendatory statute has reduced its own penalty provisions, does the rule in *Estrada* apply.[2]

The *Estrada* rule has no application to the circumstances at bar. Sections 602 and 707 contain no penalty provisions at all, let alone penalty

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[2] The same can be said for *In re Griffin* (1965) 63 Cal.2d 757, 759-760 [new statute directly altered the applicable sentencing scheme for a specific offense], and *People v. Francis, supra*, 71 Cal.2d at pp. 75-77 [same], two cases upon which LACPD heavily relies. (See LACPD brief, pp. 48-52.) But in both cases, unlike in the present case, *Estrada* was applicable because the new laws at issue there directly reduced the available punishment for a specific criminal offense. Again, Proposition 57 neither directly reduced punishment, nor did it change the law in relation to a specific criminal offense. (E.g., *People v. Navarra* (Oct. 16, 2017, F071142) ____ Cal.App.5th ____ <http://www.courts.ca.gov/opinions> ["[N]o provision of Proposition 57 mitigates the penalty for a particular criminal offense. Accordingly, *Estrada* does not overcome the strong presumption of prospective-only application."].)

provisions as discussed by this Court under the *Estrada* rule. In addition, the recent decision in *People v. Brown, supra,* 54 Cal.4th 314, again demonstrated this Court's intent to re-emphasize the correct and limited nature of the *Estrada* rule, and underlined its original position so that the rule itself might maintain some viability and properly allow the long-standing tenets that are otherwise applicable to retroactive determinations to resolve all remaining cases.

As this Court most recently noted in *People v. Hajek, supra,* 58 Cal.4th at page 1196:

> Importantly, however, while acknowledging the continuing viability of the *Estrada* rule, we have emphasized its narrowness: 'Applied broadly and literally, *Estrada*'s remarks . . . would . . . endanger the default rule of prospective operation. Recognizing this in *Evangelatos*, we declined to follow *Estrada*'s remarks about [Penal Code] section 3 and held that 'language in *Estrada* . . . should not be interpreted as modifying this well-established . . . principle[.]' [Citation.] Accordingly, *Estrada* is today properly understood, not as weakening or modifying the default rule of prospective operation . . . but rather as informing the rule's application in a specific context by articulating the reasonable presumption that a legislative act mitigating the punishment for *a particular criminal offense* is intended to apply to all nonfinal judgments. [Citation.]' (*Brown, supra,* 54 Cal.4th at p. 324.)

(*People v. Hajek, supra,* 58 Cal.4th at p. 1196, italics added.)

This Court's statements in this regard are important because nothing in sections 602 and 707 address the issue of penalty or punishment within

the meaning of *Estrada*. There are simply no penalty provisions at all in sections 602 and 707. While new section 602 currently makes all juveniles charged with offenses after November 8, 2016, presumptively eligible for juvenile handling, this does not identify a specific statutory reduction in punishment for a particular offense or for a specific enhancement, nor does it identify any other specific penalty that is being reduced, as required for the *Estrada* rule to apply. In short, retroactivity for new sections 602 and 707 must be resolved under the standard rules applicable to retroactivity claims, not under the rule in *Estrada.* And as discussed in previous briefing, no retroactive application is warranted under Proposition 57.

CONCLUSION

For the reasons stated above, in addition to the reasons set forth in previous briefing, the juvenile-law amendments enacted by Proposition 57 are not retroactively applicable.

Dated: October 17, 2017

Respectfully submitted,

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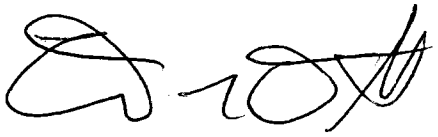

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CERTIFICATE OF WORD COUNT
Case No. S241231

The text of the **ANSWER TO AMICUS CURIAE BRIEF FILED BY THE OFFICE OF THE LOS ANGELES COUNTY PUBLIC DEFENDER AND PACIFIC JUVENILE DEFENDER CENTER** in the instant case consists of 2,156 words as counted by the Microsoft Word program used to generate the said brief.

Executed on October 17, 2017.

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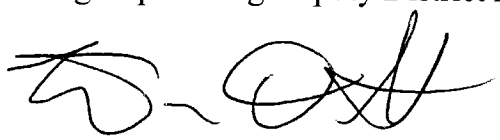

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DECLARATION OF SERVICE

Case No.: S241231 (E067296)

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.
On October 17, 2017, I served the within **ANSWER TO AMICUS CURIAE BRIEF FILED BY THE OFFICE OF THE LOS ANGELES COUNTY PUBLIC DEFENDER AND PACIFIC JUVENILE DEFENDER CENTER**, on the following parties:

I transmitted a PDF copy of this document through (www.truefiling.com) to the following recipients and email notification addresses:

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

Dated: October 17, 2017

DECLARANT