IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S223676

THE PEOPLE,
Plaintiff and Respondent,

v.

CLIFFORD PAUL CHANEY,
Defendant and Appellant.

Court of Appeal
Third Disctrict
No. C073949

Superior Court of California
Amador Superior Court
05CR08104

OPENING BRIEF ON THE MERITS

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By Appointment of the Supreme Court
under the CCAP Independent Case System

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ISSUE PRESENTED FOR REVIEW

Does the definition of "unreasonable risk of danger to public safety" in Proposition 47 (Pen. Code, § 1170.18) apply retroactively to the recall and resentencing proceedings under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)[1]?

STATEMENT OF THE CASE

"[W]hat is popularly, and singularly, known as the '"Three Strikes' law [is] a pair of statutes ..., one enacted from a bill introduced in the Legislature (Stats. 1994, ch. 12, § 1, pp. 71–75, adding Pen. Code, § 667, subds. (b)-(i)[2]), the other enacted from an initiative measure presented to the people (Prop. 184, § 1, as approved by voters, Gen. Elec. (Nov. 8, 1994), adding Pen. Code, § 1170.12)." (*In re Cervera* (2001) 24 Cal.4th 1073, 1074–1075.) The Three Strikes law reflected "the will of Californians that the goals of retribution, deterrence, and incapacitation be given precedence in determining the appropriate punishment for crimes." (*People v. Cooper* (1996) 43 Cal.App.4th 815, 823–824.) It revolutionized sentencing law by dramatically increasing the length of imprisonment for repeat offenders on the basis of a perception that there was an "epidemic of violent crime in our society." (*People* v. *Davis* (1997) 15 Cal.4th 1096, 1115 (dis. opn. of Kennard, J.).) "The Three Strikes law reflect[ed] the public's

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Any undesignated statutory references in this brief are to the Penal Code.

long-simmering frustration with perceived laxity in a criminal justice system that allowed repeatedly convicted felons to be released after serving modest sentences with time off for good behavior." (*People* v. *Garcia* (1999) 20 Cal.4th 490, 504 (dis. opn. of Brown, J.).)

Indeed, the Three Strikes law was passed "when popular sentiment against crime was at fever pitch" and the politics of mass imprisonment was at the apex of the "tough on crime" approach to public safety. (Vitiello, *California's Three Strikes and We're Out: Was Judicial Activism California's Best Hope?* [hereafter *California's Three Strikes and We're Out*] (2004) 37 U.C. Davis L.Rev. 1025, 1031.) In short, "a primary purpose of the Three Strikes law was 'to ensure longer prison sentences' (§ 667, subd. (b)), and we think the law has achieved this purpose ...." (*People v. Garcia*, *supra*, 20 Cal.4th at p. 501.)

While this Court did "not question the legitimacy of the three strikes law or the public safety *animus* it undeniably reflects" (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 979), the people began to reform that punitive approach less than a decade after passage of that law, with the first Proposition 36. That proposition, approved by the voters at the November 7, 2000, general election and entitled the "Substance Abuse and Crime Prevention Act of 2000," mandated probation and drug treatment for qualified persons convicted of a nonviolent drug possession offense, with incarceration prohibited. (See § 1210.1.) "Prop. 36 emphasizes treatment, not punishment." (*People v. Beaty* (2010) 181 Cal.App.4th 644, 653.)

Further reforms were enacted reflecting the developing "smart on crime" approach, as the people realized that their "tough on

crime" approach had created a Frankenstein of indiscriminate imprisonment, accompanied by spiraling financial and human costs that were actually counter-productive to public safety. Most prominently, another Proposition 36, the Three Strikes Reform Act of 2012, placed on the ballot for the November election that year a measure that took aim at the most draconian aspect of the Three Strikes law -- the provision that provided for a sentence of imprisonment for 25 years to life for *any* felony committed by an offender with two or more prior "strikes." (Former §§ 667, subd. (c), 1170.12, subd. (a).) That provision had made this "recidivist statute ... among the most extreme in the nation" (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1516), and earned it the dubious distinction of being "the toughest law in America." (Vitiello, *supra*, *California's Three Strikes and We're Out*, 37 U.C. Davis L.Rev. at p. 1026); see also *id.* at p. 1070 ["California's Three Strikes law is the toughest in the nation."]; *Ramirez v. Castro* (9th Cir. 2004) 365 F.3d 755, 772) [the State concedes "the statute employed against Ramirez is the most stringent in the nation"]; Mills & Romano, *The Passage and Implementation of the Three Strikes Reform Act (Proposition 36)* (April 2013) 25.4 Fed.Sent.R.) 265, http://www.jstor.org/stable/10.1525/fsr.2013.25.4.265 (as of 4/24/2015) ["it was the harshest noncapital law in the count[r]y"].)

As this Court observed about that extreme provision a few months before the 2012 election:

> One aspect of the law that has proven controversial is that the lengthy punishment prescribed by the law may be imposed not only when such a defendant

> is convicted of another serious or violent felony but also when he or she is convicted of any offense that is categorized under California law as a felony. This is so even when the current, so-called triggering, offense is nonviolent and may be widely perceived as relatively minor. [Citation.]

(*In re Coley* (2012) 55 Cal.4th 524, 568–529.)

It was under this aspect of the law that the Amador County Superior Court committed Chaney to prison on a term of 25 years to life on December 12, 2005, following his conviction for felony drunk driving (former Veh. Code, § 23152, subd. (b)). (2 CT 374, 378.) His third-strike status arose from his admissions of six prior convictions of serious or violent felonies arising out of two separate incidents of robbery (§ 211) that had occurred two weeks apart and more than two decades earlier (1983). (2 CT 374, 378, 412.)

On November 6, 2012, the voters of California approved Proposition 36, the Three Strikes Reform Act. The Reform Act restricts a third-strike sentence to those offenders with two past strikes whose current offense is a serious or violent felony or involved possession of a deadly weapon or intent to inflict great bodily injury, or whose past offenses include a so-called "super

strike."[3] (§§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C).) Except in those cases, the convicted felon must be sentenced as a second-strike offender. (§ 1170.12, subd. (c)(2)(C).)

The Act's Findings and Declarations reflect the electorate's judgment that second-strike doubling of a sentence provides sufficient punishment for these offenders and adequately provides for public safety. In addition to tailoring the punishment more closely to the seriousness of the current crime, the initiative recognizes that maintenance of life terms for such offenders places undue burdens both on California's over-capacity prison system[4] and the overall state budget that are counterproductive to public safety:

> The People enact the Three Strikes Reform Act of 2012 to restore the original intent of California's Three Strikes

---

[3] Section 667, subdivision (e)(2)(C)(iv) was enacted by the Reform Act and lists a handful of particularly violent or serious felonies that came to be known as "super strikes," the prior commission of which disqualified an offender from the reach of the Reform Act.

[4] California's prisons at the time were so overcrowded that they imposed cruel and unusual punishment upon their population, so that the Eighth Amendment required California to reduce its prison population. (See *Brown v. Plata* (2011) 563 U.S. __ [131 S.Ct. 1910]; see also *In re Stoneroad* (2013) 215 Cal.App.4th 596, 632–633 ["Severe overcrowding in California's prison system and its impact on the provision to inmates of adequate medical and mental health care has recently been found by the United States Supreme Court to violate the Eighth Amendment prohibition on cruel and unusual punishment" (citing *Plata*)].)

law—imposing life sentences for dangerous criminals like rapists, murderers, and child molesters.

This act will:

(1) Require that murderers, rapists, and child molesters serve their full sentences – they will receive life sentences, even if they are convicted of a new minor third strike crime.

(2) Restore the Three Strikes law to the public's original understanding by requiring life sentences only when a defendant's current conviction is for a violent or serious crime.

(3) Maintain that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of life.

(4) Save hundreds of millions of taxpayer dollars every year for at least ten years. The state will no longer pay for housing or long-term health care for elderly, low-risk, non-violent inmates serving life sentences for minor crimes.

(5) Prevent the early release of dangerous criminals who are currently being released early because jails and prisons are overcrowded with low-risk, non-violent inmates serving life sentences for petty crimes.

(The Three Strikes Reform Act (Prop. 36), enacted Nov. 6, 2012, § 1.) As explained in a ballot argument in favor of Proposition 36 titled "Tough and Smart on Crime": "... Prop. 36 will keep dangerous criminals off the streets.... Criminal justice experts and law enforcement leaders carefully crafted Prop. 36 so that truly dangerous criminals will receive no benefits whatsoever from the reform." (Voter Information Guide, Gen. Elec. (Nov. 6, 2012), argument in favor of Prop. 36, p. 52.)

The Act also contains a retroactivity provision that gives prisoners who currently are serving third-strike sentences, but who would have qualified for second-strike sentences under the Act, the opportunity to obtain such a sentence. (§ 1170.126, subd. (a).) The section provides that such inmates may petition the superior court for resentencing. (§ 1170.126, subd. (b).) The court then must make an eligibility determination that finds that the third-striker in fact would be sentenced as a second-striker under the Act if he now committed his offense. (§ 1170.126, subd. (f).) If so, "the petitioner shall be resentenced" as a second-striker "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (*Ibid.*)

Section 1170.126, subdivision (g) provides the following factors to guide the court's discretion in determining whether the petitioner may properly be exempted from the resentencing provision due to dangerousness:

> (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to

> victims, the length of prior prison commitments, and the remoteness of the crimes;
>
> (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and
>
> (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

Proposition 36 does not, however, otherwise guide or constrain the court's discretion to determine that the petitioner would constitute an "unreasonable risk of danger to public safety" if resentenced.

Without any objective standard or definition to determine whether a qualified third-striker posed an "unreasonable risk to public safety," the trial courts imposed widely varying measures to determine such according to each judge's subjective determination, and the reviewing courts upheld such elastic application of the phrase against claims that it was void for vagueness. (See, e.g., *People v. Garcia* (2014) 230 Cal.App.4th 763, 769–70; *People v. Flores* (2014) 227 Cal.App.4th 1070, 1075.) Consequently, although the great majority of qualified prisoners were granted second-strike sentencing and released, scores of qualified prisoners by July 2014 were denied resentencing pursuant to the undefined phrase. (See Stanford Law School Three Strikes Project and NAACP Legal Defense and Education Fund, Proposition 36 Progress Report: Over 1,500 Prisoners

Released Historically Low Recidivism Rate (April 2014), pp. 1–2, at <http://www.law.stanford.edu/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf [as of June 7, 2015].) Yet, as the Stanford Study showed, the recidivism rate of third-strikers resentenced and released under the Reform Act was strikingly low at 1.3%, suggesting that some eligible third-strike offenders were needlessly denied relief in the name of public safety. (*Ibid.*) As that study reported:

> In the midst of protracted prison overcrowding litigation, and nationwide concern over mass incarceration, the drafters of Proposition 36 and over 69 percent of California voters believed that non-violent offenders sentenced to life under the old Three Strikes law had been punished enough and could be released from prison without endangering public safety. The recidivism data released by the CDCR demonstrates the efficacy of the reform.

(*Id.* at p. 2.)

On December 17, 2012, Chaney filed a petition for resentencing pursuant to section 1170.126. (2 CT 380–390.) The court denied that petition, explaining to Chaney:

> The Court cannot in good conscience say that you do not pose an unreasonable risk to the public safety if released. The Court is not convinced that you would not re-engage in alcohol use and place the public at risk.

(RT 84; see also typ. opn. 2 ["The court cited defendant's numerous DUI's that caused injuries, stating drinking was the root of his criminality."].)

Chaney appealed, and on October 29, 2014, the Court of Appeal issued an opinion affirming the judgment, and ordered that it not be published. (See Petn. for Review, App. A.) The reviewing court concluded that the trial court's finding "that defendant posed an unreasonable risk to public safety if released because he likely would reengage in alcohol use and place the public at risk ... was exactly the finding the court was required to make." (App. A, p. 7.) It further concluded that the trial court "acted well within its discretion in denying the petition." (App. A, p. 2.)

On November 4, 2014, the electorate enacted another sentencing reform measure, Proposition 47, titled "the Safe Neighborhoods and Schools Act." It went into effect the next day, November 5, 2014. (Cal. Const., art. II, § 10, subd. (a) ["An initiative statute ... approved by a majority of votes thereon takes effect the day after the election"].)

Proposition 47 reclassified to misdemeanors certain drug- and theft-related offenses that previously were felonies or "wobblers," unless they were committed by certain ineligible defendants. Like Proposition 36 (see § 1170.126), Proposition 47 contains a retroactivity provision for those prisoners serving terms on those offenses, who would have been misdemeanants had they committed their offenses after its enactment, to petition for resentencing to obtain the benefit of its reduced punishment. (See § 1170.18.) And, again like Proposition 36, Proposition 47 requires the court "in its discretion" to grant the petition unless it

finds that to do so would present "an unreasonable risk of danger to public safety." (Compare § 1170.126, subd. (f) with § 1170.18, subd. (b).) Proposition 47 also includes a list of factors that a "court may consider" in making that determination that is identical to the list of factors that guides a court's Proposition 36 determinations of dangerousness. (Compare § 1170.18, subd. (b), with § 1170.126, subd. (g).)

Unlike Proposition 36, however, Proposition 47 took the further step of defining the phrase "an unreasonable risk of danger to public safety" that justifies denial of the retroactive benefit of recall of sentence, stating:

> As used throughout this Code, "unreasonable risk of danger to public safety" means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.[5]

(§ 1170.18, subd. (c).)

Proposition 47's uncodified section 2 set forth its findings and declarations:

> The people of the State of California find and declare as follows:

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[5] As set forth previously, section 667, subdivision (e)(2)(C)(iv) was enacted by Proposition 36 and lists a number of particularly violent or serious felonies the prior commission of which excludes a defendant from the reach of the Reform Act.

> The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K-12 schools, victims services, and mental health and drug treatments. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

Proposition 47, section 3, sets forth its purpose and intent, to wit:

> (1) Ensure that people convicted of dangerous crimes like rape, murder, and child molestation will not benefit from this act.
>
> (2) Create the Safe Neighborhoods and Schools Fund ....
>
> (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.
>
> (4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors.
>
> (5) Require a thorough review of criminal history and risk assessment of any

> individuals before resentencing to ensure that they do not pose a risk to public safety.
>
> (6) ...[S]ave significant state corrections dollars on an annual basis ... [and] increase investments in programs that reduce crime and improve public safety.

The "Argument in Favor of Proposition 47" disclosed its remedial purposes, which were to reduce the population of "California's overcrowded prisons"; "focus law enforcement dollars on violent and serious crime while providing new funding for education and crime prevention programs that will make us all safer"; stop "wasting money on warehousing people in prisons for nonviolent petty crimes"; and relieve California's overcrowded prisons from "incarcerating too many people convicted of low-level, nonviolent offenses." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014), argument in favor of Prop. 47, p. 38.) The "Rebuttal to Argument Against Proposition 47" reiterated these themes. (*Id.* at p. 39.)

On November 10, 2014, Chaney petitioned for rehearing on the ground that Proposition 47, which applied its definition of the phrase "unreasonable risk of danger to public safety" to its use "throughout this Code," gave him a basis for reversal: "Defendant contends that because his case is a nonfinal judgment pending in this court, he is entitled to a new resentencing hearing under the Act in which the trial court should apply the definition of 'unreasonable risk to public safety' contained in Proposition 47." (Typ. mod. of opn. 4 [Pet. for Review, Appendix B].) After soliciting an answer to the petition, the Court of Appeal filed an 8-page order on December 1, 2014, that modified its opinion,

certified the opinion for partial publication, and denied the petition for rehearing. (See typ. mod. of opn. [Pet. for Review, Appendix B].)

In that order, the court ruled:

> We partially publish this decision to address the potentially retroactive application of the definition of "unreasonable risk of danger to public safety" in Proposition 47 to defendant. We hold that the definition of "unreasonable risk to public safety" in Proposition 47 does not apply retroactively to a defendant such as the one here whose petition for resentencing under the Act was decided before the effective date of Proposition 47.

(Typ. mod. of opn., p. 4.) The court expressly declined to "decide whether the definition of 'unreasonable risk to public safety' in Proposition 47 applies prospectively to petitions for resentencing under the [Three Strikes Reform [Act]." (Typ. mod. of opn, p. 6, fn. 3.)

The petition for review followed the Court of Appeal's summary denial of Chaney's second petition for rehearing. This Court granted that petition and limited review to the issue presented as phrased at the outset of this brief, thus foreclosing further consideration of the additional issue for review that Chaney had presented in his petition.

SUMMARY OF ARGUMENT

Proposition 47 provided in the plainest and most direct words possible -- "as used throughout this Code" -- that the definition it prescribed for the phrase "unreasonable risk of danger to public safety" applied to all uses of that phrase in the Penal Code. Since that exact phrase is used in Penal Code section 1170.126, which the electorate had not defined in Proposition 36, it logically follows that the definition of that phrase in section 1170.18 applies to section 1170.126's use of that selfsame phrase. Thus, the plain, simple, straightforward and unambiguous language of Proposition 47 reflects its enactors' intention to apply its definition of dangerousness to Proposition 36 dangerousness determinations.

The historical context of the initiative reinforces the conclusion that the electorate meant exactly what it said. Proposition 47 built upon Proposition 36 and modeled its retroactive provision on it. Its one embellishment to improve that provision was to define the requisite dangerousness that excludes a prisoner from the benefit of the reduced punishment the proposition offered. That refinement was fully consistent with both propositions' design to ensure that only truly dangerous offenders would be denied the reduced punishment these measures specified for the offenses they concerned in their ongoing project of sentencing reform of the state's past over-reliance on imprisonment to combat crime.

The design and remedial purpose of both initiatives to reduce the punishment of all eligible prisoners except those found to be truly dangerous also indicate that Proposition 47's definition of

dangerousness was intended to apply retroactively to Proposition 36 determinations of dangerousness on appeal. At the time of enactment of Proposition 47, every informed or interested party understood that the new definition would apply to prisoners previously denied relief under Proposition 36. Indeed, those opposed to passage of Proposition 47 were most vocal and active in publication of that fact.

In addition, restriction of the definition to prospective Proposition 36 determinations not only would run counter to Proposition 47's reformative purpose in applying it to Proposition 36 determinations, but would serve no countervailing state purpose that could have been in the mind of the electorate when it enacted Proposition 47 that would support a non-retroactive intent. It would be senseless and arbitrary to apply the new definition to future Proposition 36 determinations of dangerousness but not past ones. The retroactive provisions of both initiatives are designed to upset even final criminal judgments in favor of reduced punishment dependent on assessment of current dangerousness, so that the inference that the electorate intended to apply to past Proposition 36 determinations on appeal its new and improved standard for determining that dangerousness is inevitable.

The Court of Appeal accordingly erred in concluding that Chaney was not entitled to reconsideration of his entitlement to the reduced punishment offered by Proposition 36, whereby the trial court could reassess his dangerousness based on the new and improved standard for finding such that the electorate prescribed in Proposition 47.

ARGUMENT

I. THE DEFINITION OF "UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY" IN PROPOSITION 47'S RECALL AND RESENTENCING PROVISION (§ 1170.18) APPLIES RETROACTIVELY TO THE RECALL AND RESENTENCING PROCEEDINGS UNDER THE THREE STRIKES REFORM ACT OF 2012 (§ 1170.126).

A. Proposition 47's Definition of "Unreasonable Risk of Danger" Applies to Proposition 36's Use of That Same Phrase.

1. Proposition 47's Plain Language That Its Definition of the Phrase "Unreasonable Risk of Danger to Public Safety" Applies As That Phrase Is "Used Throughout the Code," Clearly and Unambiguously Discloses the Electorate's Intention in Proposition 47 to Apply Its Definition to Proposition 36's Use of the Same Phrase.

This Court set forth the mode of analysis for interpreting an initiative when it had occasion to determine the meaning of a provision in the first Proposition 36:

> In interpreting a voter initiative such as Proposition 36, we apply the same principles that govern the construction of a statute. [Citations.] " 'Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. [Citation.]' " [Citation.]

> Our first task is to examine the language of the statute enacted as an initiative, giving the words their usual, ordinary meaning. [Citation.] If the language is clear and unambiguous, we follow the plain meaning of the measure. [Citation.]

(*People v. Canty* (2004) 32 Cal.4th 1266, 1276.)

In "giving the words their ordinary meaning ... [t]he statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme." (*People v. Rizo* (2000) 22 Cal.4th 681, 685; see also *In re Cervera, supra*, 24 Cal.4th at p. 1077 ["To determine the meaning of [the Three Strikes law], we seek to discern the sense of its language, in full context, in light of its purpose."]; *People v. Acosta* (2002) 29 Cal.4th 105, 112 ["We must harmonize 'the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole.' [Citations.]"].)

In short:

> "Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." [Citation.] Of course, in construing the statute, "[t]he words . . . must be read in context, considering the nature and purpose of the statutory enactment." [Citations.]

(*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301.)

On its face and giving the words their usual and commonsense meaning, "[a]s used throughout this Code" in section 1170.18, subdivision (c) clearly and unambiguously means that Proposition 47's definition of the phrase "unreasonable risk of danger to public safety" applies wherever else in the whole of the Penal Code that phrase may be found. (See, e.g., *People v. Bucchierre* (1943) 57 Cal.App.2d 153, 166 ["The words 'as in this code provided' (Penal Code, § 182) refer to the Penal Code."].) As stated in *Marshall v. Pasadena Unified Sch. Dist.* (2004) 119 Cal.App.4th 1241 about the enactment of Public Contract Code section 1102, which defined the word " 'Emergency,' as used in this code":

> [T]here is nothing ambiguous about the phrase "as used in this code." In enacting section 1102, the Legislature did not merely define the term "emergency" for a particular chapter, article or division of the Public Contract Code—rather, it defined the term "emergency" for the entire Public Contract Code. It logically follows the definition of section 1102 must be read into section 20113.

(*Marshall v. Pasadena Unified Sch. Dist.*, *supra*, 119 Cal.App.4th at p. 1255.)

The electorate in Proposition 47 similarly provided in the plainest and most direct words possible that the definition it spelled out when it used the phrase "unreasonable risk of danger to public safety" applied to *all* uses of that phrase in the Penal Code. Since that exact phrase is used in Penal Code section 1170.126, which the electorate had not defined in Proposition 36,

it logically follows that the definition of the phrase in section 1170.18 must be read into section 1170.126. Thus, the plain and unambiguous language of Proposition 47 reflects its enactors' intention to apply its definition of dangerousness to Proposition 36 dangerousness determinations.

Moreover, at the time of enactment of Proposition 47, there was only one instance where the Penal Code used the phrase "unreasonable risk of danger to public safety": namely, in section 1170.126, subdivision (f), enacted by Proposition 36. Accordingly, the drafters of Proposition 47 and the voters enacting it must specifically have had in mind that phrase, which they had used and approved just two years earlier in Proposition 36, when they set forth in section 1170.18 the broad and expansive application of the definition of that phrase as used "throughout" the Penal Code.

There could not be a more simple straightforward question of statutory interpretation for this Court to answer. " 'If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts.' [Citation.]" (*People v. Canty, supra,* 32 Cal.4th at p. 1277.) As this Court stated in a case interpreting the Three Strikes law: "It is difficult to understand how the Legislature could have intended anything else by these words. When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it." (*People v. Hendrix* (1997) 16 Cal.4th 508, 512, inside quotation marks and citation deleted.)

2. The Context of Proposition 47 Fortifies the Literal and Straightforward Interpretation of "As Used Throughout this Code" As Meaning That Its Definition of "Unreasonable Danger to Public Safety" That Excludes a Prisoner From Its Reduced Punishment Applies to Proposition 36's Use of That Same Phrase That Excludes a Prisoner From Its Reduced Punishment.

Placing in context the language at issue, "as used throughout this Code," only reinforces the conclusion that the electorate said what it meant and meant what it said. Proposition 47 was a continuation of the sentencing reform the electorate had initiated in the past decade, most recently with the Three Strikes Reform Act of 2012, Proposition 36. Proposition 47 built upon those reforms and modeled itself on Proposition 36, particularly in its retroactive provision. What Proposition 47 did -- presumably informed by the experience of Proposition 36's implementation -- was tinker with that retroactive template by defining the dangerousness standard to better carry out the people's intent in both propositions to extend their reduced punishment retroactively to all qualified prisoners except those a court found truly dangerous. The electorate may have reasoned that in the implementation of Proposition 36 too many nonviolent/nonserious offenders were being denied release from prison under the amorphous and undefined standard of "unreasonable danger" that authorized exclusion from the retroactive reduction of punishment. It accordingly fixed that problem by setting a definite and high bar to maintaining the pre-initiative terms of

imprisonment for prisoners who qualified for relief from those terms. Such an incidental refinement of Proposition 36's retroactivity provision was fully consistent with both propositions' design to ensure that only truly dangerous prisoners would be denied the reduced punishment provided by those measures. For the reformers and the electorate that endorsed the initiatives, it was just a matter of being more discriminating in identifying those truly dangerous prisoners to ensure that the measures left behind no qualified non-dangerous offender.

This refinement was fully "in keeping with the overarching purpose of the Three Strikes Reform Act, which was to retreat from the required imposition of unduly long sentences against 'repeat offenders convicted of non-violent, non-serious crimes' under the prior Three Strikes law .... " (See *People v. Berry* (2015) 235 Cal.App.4th 1417, 1425; see also *People v. Rizo*, *supra*, 22 Cal.4th at p. 687 [Court chose interpretation that was "more faithful to the overarching purpose behind Proposition"].) The refinement also was fully in keeping with the "important goal of the Three Strikes Reform Act ... to prevent dangerous criminals from being released from prison early." (See *People v. Berry*, *supra*, at p. 1425.) For example, in Proposition 47, the people found and declared that the purpose and intent of its retroactivity provision, which included its definition of unreasonable risk of danger to public safety, was to "[r]equire a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 3, p. 70.) The refinement for purposes of Proposition 36 simply defined more precisely and concretely

who those "dangerous criminals" were that the people had in mind when they authorized the courts to deny offenders who committed relatively minor third-strike felonies the benefit of the proposition's reduction in punishment.

Proposition 47 and the Reform Act address the same evil, over-reliance on imprisonment, by the same means: reduced punishment for offenders of low-level felonies. They both place absolute bans on the existing punishments for those offenders after their enactment, and provide for retroactive application of that reduced punishment for past offenders except when the court finds in an individual case that such reduction would unreasonably endanger public safety. Indeed, the initiatives overlap for a significant number of offenders, so that Proposition 47's new definition of unreasonable danger applies by its own terms to many offenders who were denied release under Proposition 36. (See, e.g., this Court's order in *People v. Franco*, S224157 dated March 25, 2015 [denying petition for review of judgment affirming denial of Proposition 36 relief "as moot in light of petitioner's release from prison following the grant of his petition for resentencing by the superior court pursuant to Proposition 47 (Pen. Code § 1170.18)"].)

The initiatives both address the same evil of excessive imprisonment and are cut from the same ilk, with Proposition 47 coming on the heels of the Three Strikes Reform Act of 2012 and using it as a building block to achieve the same ends. Thus, they are *in pari materia,* making it particularly appropriate to harmonize them by applying them together to achieve their common purpose of limiting imprisonment to those truly dangerous offenders that require such and extending their

reduced punishment to as many prisoners as possible consistent with the maintenance of public safety. (See *People v. Caudillo* (1978) 21 Cal.3d 562, 585, overruled on another ground in *People v. Martinez* (1999) 20 Cal.4th 225, 229, 237, fn. 6 & disapproved on another ground in *People v. Escobar* (1992) 3 Cal.4th 740, 749–751 & fn. 5 ["It is an established rule of statutory construction that similar statutes should be construed in light of one another [citations] and that when statutes are *in pari materia* similar phrases appearing in each should be given like meanings. [Citations.]"].)

The explicit definition of the phrase in the latter proposition serves to clarify or amend the meaning of the same phrase used in the earlier proposition, making it applicable to that earlier proposition. (See, e.g., *Robbins v. Omnibus R. Co.* (1867) 32 Cal. 472, 474 ["The two Acts are not only *in pari materia*, but the latter is, in effect, an amendment of the former; and it is not to be supposed that a word used in a certain sense in the original Act was used in a different sense in the subsequent one."].) Such is the view expressed by two expert commentators on the Three Strikes law and its reform in their initial analysis of Proposition 47:

> Section 11 of Proposition 36 provides, in relevant part: "Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following: ... (c) By statute that becomes effective when approved by a majority of the electors." Since section 1170.18 is a statute approved by a majority of the

> electors, Proposition 47 has effectively amended the provisions of section 1170.126 enacted by Proposition 36.

(Couzens & Bigelow, *Proposition 47 "The Safe Neighborhoods and Schools Act"* (Dec. 2014), p. 73; see also its 2/3/15 revision, p. 76, at <http://www.courts.ca.gov/documents/Prop-47-Information.pdf> [same].)

In addition,"[t]he objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in its interpretation. [Citation.]" (*People ex rel. Lungren v. Superior Court, supra,* 14 Cal.4th at p. 306, inside quotation marks deleted.) Both propositions here seek to improve public safety by addressing the evil of prisons overcrowded with less serious offenders draining fiscal resources, with the objective of redeploying the financial savings to more effective methods of fighting crime. Their means to do so are identical: In the long term, by *blanket* reduction of the punishment for all such future less serious offenders, and in the short term, by retroactive extension of the reduction of punishment to as many qualified prisoners as possible consistent with public safety. They accomplish that short-term fix by denying reduction of their punishment only to that pool of eligible offenders who are truly dangerous.

Noting that "we currently spend $62,000 a year to keep one inmate in prison," the Chief Justice recently wrote that "applying evidence-based practices in sentencing decisions" was also "cost-effective ... in working with adult offenders," stating: "Focusing on those factors that drive criminal behavior saves tax payers

money, reduces recidivism and improves public safety." (Cantil-Sakauye, *Keeping Kids in School, and Out of Juvenile Court*, S.F. Daily Journal (Nov. 7, 2014) p. 9.) These sentiments are exactly what drove enactment of both Proposition 36 and Proposition 47, including the definition of dangerousness set forth in the latter that separates those prisoners who can safely be released in accordance with the reduced punishment specified in those propositions from those who cannot and thus must remain incarcerated pursuant to their original sentences.

Both propositions share the common purpose of reworking significant portions of California's statutory sentencing scheme to ensure prison resources are devoted to violent and serious offenders, and accomplish that purpose by reducing the sentences for a wide variety of nonviolent and nonserious felonies. They both seek to enhance public safety by the reduced punishment they provide, while at the same time subordinating their interest in cost savings to maintenance of imprisonment for serious and violent offenders. Indeed, Proposition 47 is titled "the Safe Neighborhoods and Schools Act"— a title that obviously makes public safety pre-eminent. Moreover, the restrictions Proposition 47 placed on prospective eligibility for the reduced punishment and the "public safety" exception it provided for retroactive application of the reduced punishment to eligible prisoners demonstrate that its concern for public safety was equal to that of Proposition 36, which also had eligibility restrictions and the same "public safety" exception for its retroactive application. In short, both initiatives are designed to 1) reduce reliance on imprisonment by reserving it for truly dangerous offenders, and

2) redirect the resultant savings to fund measures that fight crime and preserve public safety in ways more economical and effective than indiscriminate imprisonment.

Both propositions emphasize that the sentences of murderers, rapists and child molesters will not be decreased; the sentences of less serious offenders will be reduced; and the cost savings resulting therefrom will be used more effectively to fight crime. (Compare Prop. 36, § 1 with Prop. 47, §§ 2 & 3.[6]) Both are aimed at reforming past laws that rely on imprisonment to fight crime, but which had caused severe prison overcrowding and major budget deficits that in fact ran contrary to the interests of public safety. The propositions are simply two complementary ways to achieve the same ends.

Both propositions were informed by the more modern and some might say enlightened philosophy of enhancing public safety by being "smart on crime," as opposed to the discredited "tough on crime" punishment model dependent on imprisonment that the voters tempered. As noted by one knowledgeable commentator:

> People recognize that policies promoted by tough-on-crime posturing have brought very little benefit, if not a whole

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[6] "In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration. [Citations.] Although such statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute. [Citations.]" (*People v. Canty, supra,* 32 Cal.4th at p. 280 [construing the earlier Proposition 36].)

> lot of problems. **The public is embracing a smart-on-crime agenda, a more rational and cost-effective approach to public safety, accountability, and crime prevention.** A smart-on-crime agenda questions the efficacy of mass incarceration and looks to invest resources in more effective approaches to building safe communities like community policing, addiction treatment, mental health services, victim services, and programs designed to help formerly incarcerated people succeed.

(See Rogers, Partnership for Safety & Justice, *The Diminishing Influence of Tough-on-Crime Political Rhetoric* (Dec. 10, 2012) bold in original, at http://www.safetyandjustice.org/news/diminishing-influence-tough-crime-political-rhetoric (as of June 8, 2015).)

The obvious design of applying the definition "throughout this Code" was to further the sentencing reformative purposes of not only Proposition 47 but also Proposition 36 -- and, indeed, any other law that may follow their march to reduce imprisonment for designated offenses while at the same time preserving public safety in their retroactive application. Given the experience of implementation of the retroactive provision of Proposition 36, which resulted in an astoundingly low rate of recidivism but still failed to reach many prisoners who appeared in retrospect could have been safely released, the sentencing reformers behind both propositions and the electorate who voted for them may reasonably have been emboldened to define "unreasonable risk to public safety" in the far more specific and narrow manner they

did. The reformers and the electorate who endorsed them may reasonably have determined that this definition acted as a necessary corrective to the amorphous and general language that permitted courts to implement the retroactive provision of Proposition 36 too cautiously, with the result that its implementation fell short of its goals. (See, e.g., *In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11 [in enacting new laws, the voters are presumed to be aware of existing law, including judicial construction of it]; see also *People v. Overstreet* (1986) 42 Cal.3d 891, 897 ["the Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes 'in the light of such decisions as have a direct bearing upon them.' [Citations.]"].) Thus, the reformers and electorate established Proposition 47's explicit and strict bar to ensure that the courts left behind no qualified prisoner when making the dangerousness determination called for in both propositions.

Given the natural human tendency to overpredict violence and err on the side of further imprisonment when exercising unfettered discretion in determining the public-safety need for further incapacitation[7], the sentencing reformers behind both

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[7] This Court long ago noted the evidence of unreliability of attempts even by forensic specialists to predict violence, as well as the indisputably "disturbing manner in which such prophecies consistently err: they predict acts of violence which will not in fact take place ('false positives'), thus branding as 'dangerous' many persons who are in reality totally harmless." (*People v. Murtishaw* (1981) 29 Cal.3d 733, 767–770.) The electorate may well have found that the predilection of trial judges to find dangerousness according to their own subjective standards in the retroactive implementation of the Reform Act was "incongruent

propositions and the electorate who voted for them could reasonably have been moved to set forth this new restrictive definition of "unreasonable risk" to limit a court's evident inclination to deny relief and to require it to more narrowly determine whether an individual petitioner was truly dangerous before denying a prisoner the reduced sentence Proposition 36 established.

In short, "[s]uch an interpretation is consistent with the plain meaning of the statutory language. It is also consistent with the remedial purpose of" both propositions to give the benefit of the reduced punishment to all eligible prisoners except those found truly dangerous. (See *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 493.) Moreover, "[t]he [proposition] itself requires that we interpret its terms liberally in order to accomplish the stated legislative purpose." (*Ibid.*)

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with the present predicament of our correctional system," and did "not appear necessary to protect pubic safety, because due to their age, the recidivism rate of lifers is dramatically lower than that of all other state prisoners, indeed infinitesimal." (*In re Stoneroad*, *supra*, 215 Cal.App.4th at pp. 632–634.) On that basis the reformers could reasonably have established a strict objective standard as a counterweight to the judicial tendency to find danger where there was none and thus unnecessarily rely on incapacitation to preserve public safety, a reliance at odds with the goals of both initiatives for the relatively minor offenders they concern.

3. The Lack of Any Legislative History on the Voters' Intent to Apply Proposition 47's Definition of "Unreasonable Risk of Danger" to Proposition 36's Use of that Same Phrase Does Not Make Ambiguous Or Otherwise Override the Plain and Unambiguous Language of the Initiative Itself.

Despite the apparently plain and simple language of Proposition 47 as to the reach of its definition of dangerousness, if this Court nevertheless finds "the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' [Citation.]" (*People v. Rizo*, *supra*, 22 Cal.4th at p. 685.) Such reference is of no help here, however, for the analyses and arguments did not address the reach of Proposition 47's definition of dangerousness or the critical language here at issue. Rather, they concerned themselves only with the main focus of Proposition 47, its reduction of punishment for the designated offenses, and not at all with the relatively minor and ancillary issue that incidentally extended the reach of its definition of "unreasonable danger to public safety" to other uses of that phrase in the Penal Code.

The lack of reference to the reach of the definition of dangerousness in the analyses and arguments does not point in either direction to its reach. The legislative history is silent or neutral on the point of contention, and hence is inconsequential. (See *Day v. City of Fontana* (2001) 25 Cal.4th 268, 282 ["it is of no consequence here that the ballot materials did not specifically refer to the act's application in actions against local public

entities for nuisance and dangerous condition of property"].) This is because ballot arguments "are not legal briefs and are not expected to cite every case the proposition may affect." (*Santa Clara Cnty. Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 237.) Nor do they constitute an exhaustive compendium intended to cover every last phrase and ramification of an initiative. Rather, the electorate "must be assumed to have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered, regardless of any insufficient recitals in the instructions to voters or the arguments pro and con of its advocates or opponents accompanying the text of the proposed measure." (*Wright v. Jordan* (1923) 192 Cal. 704, 713.)

Even if the lack of a point of contention in the arguments about this phrase and absence of a recital of its effect could be taken as some kind of potential negative inference, "a possible inference based on the ballot argument is an insufficient basis on which to ignore the unrestricted and unambiguous language of the measure itself." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 803.) As this Court there explained: "It would be a strained approach to constitutional analysis if we were to give more weight to a possible inference in an extrinsic source (a ballot argument) than to a clear statement in the Constitution itself." (*Ibid.*)

This Court's decision in *In re Cervera, supra*, 24 Cal.4th 1073, which concerned the Three Strikes law, may be the finest exemplar of this rule. In *Cervera*, the question was whether third-strikers were entitled to conduct credits, resulting in the

same 20% reduction in their minimum term of 25 years that California law gave other lifers and that the Three Strikes law itself provided for second-strikers. In this regard, Justice Werdegar pointed to a number of indications in the legislative history of the Three Strikes law that reflected such an expectation, including most explicitly an analysis that advised the lawmakers that third strikers "under the provisions of this bill ... may only receive sentence credits limited to a maximum of one-fifth the total sentence, *allowing for release from prison in not less than 20 years*." (*Id.* at p. 1084, italics in opinion (conc. opn. of Werdegar, J.); see also *id.* at p. 1088 ["The history of the Three Strikes law, including the statements of the proponents of the law, strongly suggests the lawmakers expected third strike offenders would be able to earn credit for good behavior in prison."].) Likewise, the majority acknowledged that "certain documents within the history of the bill and the initiative measure that would each become the Three Strikes law summarized its declaration by paraphrasing the limitation that it imposed on article 2.5 prison conduct credits without taking into account article 2.5's authorization of such credits against determinate terms only." (*Id.* at p. 1079; see also *id.* at p. 1083 (conc. opn. of Werdegar, J.) ["By many accounts, defendant is correct that the framers of the Three Strikes law, whether the Legislature (§ 667, subds. (b)-(i)) or the electorate (§ 1170.12), anticipated or assumed inmates like defendant would be entitled to earn credit to reduce the minimum term of their indeterminate Three Strikes sentence."].)

The majority discounted the significance of these documents for purposes of divining intent because they were by their very nature merely a "summary" of the law. As this Court explained in this regard:

> It was the Three Strikes law that was enacted, not any of the documents within its legislative or initiative history. A statute, of course, must prevail over any summary. Were it not so, no statute could ever be enacted whole and entire. For every summary, by definition, is incomplete. A summary is a model of the body of a statute, well executed or not as the case may be. It is not a procrustean bed for the stretching or lopping off of its limbs. The summary must yield to the statute, not the statute to the summary.

(*In re Cervera, supra*, 24 Cal.4th at pp. 1079–1080.) This was so even though "the historical evidence that lawmakers assumed third strike offenders could earn some credit is even stronger for the initiative version of the Three Strikes law" and made it "fairly clear" that was what the electorate expected. (*Id.* at pp. 1084–1085 (conc. opn. of Werdegar, J.).)

Here, unlike *Cervera*, the historical evidence is congruent with Proposition 47's plain language rather than in tension with it. For example, those most opposed to broad application of the provision -- i.e., "tough on crime" adherents entirely opposed to Proposition 47 -- published to the electorate an analysis of Proposition 47 that reflected the expectation that its definition of dangerousness would apply to Proposition 36 dangerousness

determinations. (See Californians Against Proposition 47's Website at <http://www.californians against47.com/ AboutProposition47> [as of June 4, 2015].) There, an argument against Proposition 47 included an analysis of Proposition 47 by the California District Attorney's Association dated August 29, 2014, entitled "CDAA Looks At Proposition 47," which stated in part:

> Further, this proposed new definition of "dangerousness" is not limited to only the types of offenders serving terms for crimes affected by this Act, but applies to any resentencing permitted by the Penal Code. Proposed Penal Code § 1170.18 (c) states, "As used throughout this Code, "unreasonable risk of danger to public safety means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of [§ 667(e)(2)(C)(iv)]." (§ 1170.18, subd. c [emphasis added].) By referring to "Code," § 1170.18 would alter the meaning of "unreasonable risk of danger to public safety," not only as it is applied in § 1170.18 resentencing hearings, but in all other hearings that rely on the dangerousness standard throughout the entire Code. *As a result, the prosecution would face the impossible barrier when opposing resentencing for the Three Strikes defendants under Penal Code § 1170.126.*

(*Ibid.*, italics added)

Likewise, The Alliance for a Safer California, on the home page of its Web site, stated as the first reason to vote against Proposition 47:

> Prop 47 will release dangerous Three Strikes inmates. Prop 47 goes far beyond petty crimes. It rewrites our laws to make it easier for violent Three Strikes felons to gain early release.

(http://votenoprop47.org/ [as of June 6, 2015].)

On its "Facts" link to learn more about Proposition 47, the Alliance elaborated on this point in the first fact it listed under the headline **PROP 47 FACTS**:

> **Prop 47 will release dangerous Three Strikes inmates.** Prop 47 goes far beyond petty crimes. It rewrites our laws to make it easier for violent Three Strikes felons to gain early release.
>
> The Three Strikes reform law (Proposition 36) allowed certain Three Strikes prisoners to petition for early release, as long as they did not pose "an unreasonable risk of danger to public safety."
>
> Prop 47 would rewrite California law, including the Three Strikes Reform law, to give the term "unreasonable risk of danger to public safety" a very narrow definition. Under the Prop 47 definition, only an inmate likely to commit murder, rape, or a handful of other rare crimes

> (like possession of a weapon of mass destruction) can be kept behind bars as a danger to public safety.
>
> If Prop 47 passes, violent Three Strikes inmates ... will no longer be defined as "dangerous" under California law. If the inmate is eligible for release under either Prop 47 or the Three Strikes Reform law, the court will be powerless to stop it.

(See http://votenoprop47.org/No_On_Prop_47__Facts.html [as of June 6, 2015], bold in original.)[8] While perhaps not exactly going viral, that information was picked up and posted in other newspapers and online websites, such as RedlandsDaily Facts.com. (See http://www.redlandsdailyfacts.com/opinion/20141024/our-readers-say-police-sheriffs-say-no-to-prop-47 [as of June 6, 2015].)

In any event, the legislative history or historical evidence of a bill cannot create ambiguity where the statute is clear and unambiguous on its face:

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[8] Notably, one of the leading "tough on crime" adherents who admittedly "want[s] to keep them all in prison" (the founder and president of the Criminal Justice Legal Foundation) found the intent of the electorate to apply Proposition 47's dangerousness determinations to Proposition 36 cases so clear that he "described appellate courts' claims that the judicial discretion to deny early release contained in Prop. 36 takes precedence over the Prop. 47 revisions as 'judicial sorcery' that amounts to policy decisions, not legal analysis." (Roemer, *State High Court to Consider Prop. 47's Effect on Resentencing*, S.F. Daily Journal (April 15, 2015), p. 3, col. 2.)

> [W]e discern no ambiguity on which [the canons of statutory construction] might operate. In particular, no ambiguity arises from any preenactment document with a summary paraphrasing the Three Strikes law's limitation on article 2.5 prison conduct credits without taking into account article 2.5's authorization of such credits against determinate terms only. A summary of this kind does not make the Three Strikes law unclear, but merely reveals itself to be at best incomplete.... The fact that the Three Strikes law does not authorize such credits is clear, and sufficient.

(*In re Cervera, supra,* 24 Cal.4th at p. 1081.)

Likewise here the initiative's direction that its definition of "unreasonable risk of danger to public safety" applies to that phrase wherever it is "used throughout this code" is clear and sufficient for purposes of determining whether that definition applies to the use of that phrase in Penal Code section 1170.126. Consonant with this rule of law, this Court has firmly rejected claims of voter ignorance by those advocating for an interpretation of an initiative different than its apparent meaning:

> Petitioners' entire argument that, in approving Proposition 8, the voters must have been misled or confused is based upon the improbable assumption that the people did not know what they were doing. It is equally arguable that ... the people knew exactly what they were doing. In any event, we should not lightly presume that the voters did not know

> what they were about in approving Proposition 8. Rather, in accordance with our tradition, "*we ordinarily should assume that the voters who approved a constitutional amendment 'have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered.*' " [Citations.]

(*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 252, italics added by Court, ellipsis in quote deleted.) That assumption applies equally here, leading to the simple conclusion that -- again -- the electorate knew what it was doing and meant what it said.

4. Other Rules of Statutory Construction Favor an Interpretation That Applies Proposition 47's Definition of Dangerousness to the Dangerousness Determination in Proposition 36.

Even if this Court found it helpful to utilize the canons of statutory construction to divine the intent of the electorate here, those canons support an interpretation of the language specifying the reach of the definition of "unreasonable danger" in accordance with the plain meaning of "as used throughout this code." "Statutes, whether enacted by the people or the Legislature, will be construed so as to eliminate surplusage." (*People ex rel. Lungren v. Superior Court*, *supra*, 14 Cal.4th at p. 302.) The definition of the phrase "unreasonable risk of danger" set forth in subdivision (c) of section 1170.18 naturally referred back to that phrase as it had just been used in subdivision (b), without need

for any introductory language. The only purpose served by the introductory language, "as used throughout this code," was to broaden the application of the definition beyond its use at hand; namely, to uses of that phrase elsewhere in the Penal Code, including most prominently use of that selfsame phrase, "unreasonable risk of danger to public safety," in Penal Code section 1170.26. Thus, that must have been what the electorate intended. (See, e.g., *People v. Briceno* (2004) 34 Cal.4th 451, 465 ["courts are to give meaning to every word of an initiative if possible, and should avoid a construction making any word surplusage"].)

Words in a statute are not idly used. The reformers presumably were mindful of the language they employed when they wrote "as used throughout this code," rather than "in this section" or "in this act." Lawmakers routinely make this kind of considered distinction. (See, e.g., § 1203, subd. (a) ["As used in this code, 'probation' means .... As used in this code, 'conditional sentence' means ...."]; § 667.9, subd. (e) ["As used in this section, 'developmentally disabled' means ...."]; Ins. Code, § 12693.37, subd. (c)(1) ["as defined in this act"].)

This case thus is the converse of *People v. Leal* (2004) 33 Cal.4th 999, 1007, where this Court stated:

> The statutory language of the provision defining "duress" in each of the rape statutes is clear and unambiguous. The definition of "duress" in both the rape and spousal rape statutes begins with the phrase, "As used in this section, 'duress' means ...." (§§ 261, subd. (b), 262, subd. (c).) This clear language belies any

> legislative intent to apply the definitions of "duress" in the rape and spousal rape statutes to any other sexual offenses.

Here, Proposition 47's clear language belies any legislative intent to *limit* the definition of "unreasonable risk of danger to public safety" to its use in the statute at hand, and speaks loudly and clearly of its intent to apply that definition to any other use of the phrase in the Penal Code.

5. There Is Nothing Absurd or Contrary to the Purposes of Either Proposition in Providing Proposition 36's Reduced Punishment to Prisoners That the State Cannot Show Are Unreasonably Dangerous Under the Definition Proposition 47 Established for Showing Such.

There is a narrow exception to the cardinal rule of statutory construction that the plain and unambiguous language of the statute controls in ascertaining intent: where application of the literal language actually conflicts with or is "repugnant to the general purview of the act" and to what otherwise appears to be the lawmakers' intent, resulting in absurd consequences that the voters could not possibly have intended. (*People v. Leal*, *supra*, 33 Cal.4th at p. 1008; see also *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 733, inside quotation marks deleted ["The apparent purpose of a statute will not be sacrificed to a literal construction."]; *In re Michele D.* (2002) 29 Cal.4th 600, 606 ["[I]t

is settled that the language of a statute should not be given a literal meaning if doing so would result in absurd consequences that the [voters] did not intend"].)

Because Proposition 36 had not previously defined the phrase "unreasonable risk of danger to public safety," the definition in section 1170.18, subdivision (c) cannot be repugnant or contradictory to the Act. Nor is there a viable claim that application of the definition to Proposition 36 is repugnant to the general purview of Proposition 47. As previously explained, both propositions have the same purpose and purview of reducing reliance on imprisonment in the case of comparatively minor felonies by trending away from the expensive and vengeful and ultimately ineffective "tough on crime" approach of incapacitation for those offenders and toward the "smart on crime" approach of utilizing evidence-based models of crime prevention to preserve public safety. In this regard, blanket retroactivity would have furthered those purposes as equally as the blanket prospective provisions of the reform measures furthered them. That the reformers elected to carve out an exception to blanket retroactivity for those offenders a court finds truly dangerous does not speak one way or the other to the line that separates the truly dangerous prisoner from the one entitled to the reduced punishment that the measures offer. The only provision that speaks to that question is the line drawn in Proposition 47 that defines "unreasonable risk of danger to public safety" as a prisoner likely to commit a super strike if released.

Applying Proposition 47's definition to Proposition 36 furthers the common purpose of both propositions by providing trial courts with the discretion to deny a Proposition 36 resentencing petition

to those prisoners who are truly dangerous; i.e., to those prisoners, as set forth in the definition, who pose an unreasonable risk of committing certain major violent or serious offenses. As previously noted, the phrase undefined in Proposition 36 had no fixed meaning or parameters and allowed the trial court -- as in this case -- to deny a resentencing petition without evaluating whether the petitioner posed a risk of committing a violent or serious felony defined by the Three Strikes Act or the broader felonious conduct outlined by the Reform Act that continues to warrant a third-strike life sentence. Applying Proposition 47's definition to Proposition 36 cases has the salutary effect of channeling the court's discretionary evaluation of the wide variety of factors it may consider to find dangerousness through the prism or lens of determining whether the petitioner poses an unreasonable risk of committing a super strike. This is fully in keeping with the purposes of both propositions.

It is no more absurd or contrary to the purposes of the Reform Act and its retroactive provision to so define the exception to the rule of retroactivity than it is to the purposes of Proposition 47 and its retroactivity provision. After all, again, the very purpose of the retroactive provision of Proposition 36 is to empty the prisons of as many non-serious and non-violent third-strike offenders as can be released consistent with public safety -- and Proposition 36 already has made the normative determination that second-strike doubling of a sentence for such offenders adequately provides for public safety. This Court may "not, of course, ignore the actual words of the statute in an attempt to vindicate our perception of the Legislature's purpose in enacting

the law...." (*Murillo v. Fleetwood Enters., Inc.* (1998) 17 Cal.4th 985, 993.) Nor may it rewrite "used throughout this Code" as "used in this section only" to vindicate its own perception of what may -- or may not -- be in the interest of public safety in the retroactive application of the Act, for it has "no power to rewrite the statute ...." (*Ibid.*) Rather, allowing the appellate courts to color their interpretation of criminal law with their own view of what is best for public safety at the expense of the apparent view of the lawmaker both fosters judicial trespass of the separation of powers and undermines law and order as embodied in our democratic ideals.

Ultimately, the rule of law is just as this Court has expressed it:

> "It is our task to construe, not to amend, the statute. 'In the construction of a statute the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted.' [Citation.] We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." [Citation.]

(*People v. Leal, supra,* 33 Cal.4th at p. 1008, ellipses in quote deleted.)

6. Any Ambiguity That May Linger As to the Electorate's Intention to Apply the Definition of Dangerousness It Set Forth in Proposition 47 to the Dangerous Determination in Proposition 36 Should Be Resolved in Favor of the Defendant Under the Rule of Lenity.

"[U]nder the traditional 'rule of lenity,' language in a penal statute that truly is susceptible of more than one reasonable construction in meaning or application ordinarily is construed in the manner that is more favorable to the defendant. [Citation.]" (*People v. Canty, supra,* 32 Cal.4th at p. 1277; see also *People v. Avery* (2002) 27 Cal.4th 49, 58 ["true ambiguities are resolved in a defendant's favor"].) That rule acts as a tie-breaker when a statute is insolubly ambiguous and uncertain, leaving the court to guess which of two vying interpretation the enactors intended. (*People v. Manzo* (2012) 53 Cal.4th 880, 889.) An interpretation of Proposition 47 that extends its definition of dangerousness to Proposition 36 cases sensibly accords with the rule of lenity in resolving any lingering uncertainty as to the reach of that definition. It makes particular sense here, since the propositions themselves are acts of leniency that reduce punishment to achieve the ends of justice.

B. Proposition 47's Definition of Dangerousness Applies Retroactively to Proposition 36 Cases on Appeal.

Once it is determined that the people intended to apply Proposition 47's definition of dangerousness to the dangerousness determination in Proposition 36 cases, there is an inevitable

inference that they further intended to apply it to those cases on appeal. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 ["It 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."].) Not only did the electorate deem the addition of the definition "sufficient" to carry out the purposes of Proposition 36's retroactivity provision, it deemed that addition an *improvement* in carrying out those purposes. Thus, there is every reason to infer that the people intended the definition to apply in every Proposition 36 it could, including ones on appeal.[9]

It makes no sense that the electorate would decline to apply its new, improved, and explicit definition of dangerousness to as many Proposition 36 cases as it could to achieve its purposes of reducing the sentences of as many qualified third-strike offenders as it could without imperiling public safety. There is no logical basis to infer an intent of the electorate in Proposition 47 to extend the definition of dangerousness to Proposition 36 cases,

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[9] The lower court's attempt to determine whether the electorate intended to reach back to extend Proposition 47's definition of dangerousness to past Proposition 36 cases then on appeal without first determining its intent to reach forward to extend Proposition 47's definition to prospective Proposition 36 cases was bound to fail, for a retroactivity analysis wholly depends on the intent of the lawmaker. A court cannot determine the lawmaker's intent to apply a provision retroactively in a vacuum. It must first ascertain what the lawmaker intended the provision to reach prospectively in order to fairly determine whether it further intended the provision to reach back retroactively.

but to deny the benefits of that definition to those inmates whose section 1170.126 petitions were pending on appeal at the time Proposition 47 was enacted.

"In *In re Estrada* (1965) 63 Cal.2d 740 ... the California Supreme Court extensively reviewed the common law and statutory enactments concerning the effect of amended and repealed criminal statutes [on criminal judgments pending appeal], concluding that 'where the amendatory statute mitigates punishment and there is no saving clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed.' (*Id.* at p. 748.)" (*People v. Vasquez* (1992) 7 Cal.App.4th 763, 767.) This is an analogue of "the rule at common law and in this state that when ... there is no saving clause," any legislation that narrows the definition of a crime or indeed de-criminalizes the conduct, or otherwise is substantively favorable to the criminal defendant applies to criminal cases "not reduced to final judgment." (*In re Estrada, supra*, 63 Cal.2d at pp. 746–747; see also *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 301, fn. 18, inside quotation marks deleted ["It is also a 'universal common-law rule that when the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct that was formerly deemed criminal,' such legislation is presumed to apply to pending cases. [Citation.]."]

As this Court explained in *Tapia*:

> Although we usually presume that new statutes are intended to operate prospectively, that presumption "is not a straitjacket." (*In re Estrada, supra*, 63 Cal.2d at p. 746.) In past cases we have

> not applied the presumption to statutes changing the law to the benefit of defendants.

(*Tapia v. Superior Court, supra,* 53 Cal.3d at p. 301.)

For example, in the case of a repeal of the criminal conduct, "The rule applies to any such proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it.' (*Bell v. Maryland* (1964) 378 U.S. 226, 230." (*People v. Rossi* (1976) 18 Cal.3d 295, 304. "[T]his common law rule 'is based on presumed legislative intent, it being presumed that the repeal was intended as an implied legislative pardon for past acts.' [Citation.]" (*People v. Vasquez, supra,* 7 Cal.App.4th at p. 768, inside quotation marks deleted.)

Here, the presumed intent of the electorate is an implied legislative commutation for past acts, since the effect of the propositions and their retroactive provisions is a reduction of punishment -- subject here, of course to a finding of dangerousness. As this Court has explained: "[W]e have assumed that 'when the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act' and 'sufficient to meet the legitimate ends of the criminal law.' [Citation.]" (*Tapia v. Superior Court, supra,* 53 Cal.3d at p. 301, quoting *In re Estrada, supra,* 63 Cal.2d at p. 745, inside quotation marks deleted.) Thus, under *Estrada* as well as the common law, because there is no "savings clause" providing for

prospective application only of Proposition 47 to Proposition 36 determinations of dangerousness, it is presumed to apply to all Proposition 36 cases not yet reduced to a final judgment on the statute's effective date.

There is no rhyme or reason to distinguish between petitions on appeal and petitions still to be filed or now before the trial courts in applying the new, improved standard for determining dangerousness. Both propositions intend to extend reduction of punishment to all affected prisoners, except those who are truly dangerous. There thus is no interest served by keeping in prison those Proposition 36 petitioners who do not meet the current definition of "unreasonable danger" merely because the trial court rendered its decision before that definition became operative. Rather, the continued imprisonment of such prisoners is contrary to the aims and purposes of the *ongoing* reform represented by both Proposition 36 and Proposition 47. Having refined and polished to the point of clarity in Proposition 47 the cloudy lens it fashioned as a prototype in Proposition 36 to identify dangerousness, and having further intended that the trial courts utilize in the future this more evolved instrument to determine the dangerousness of Proposition 36 offenders, it is inconceivable that the electorate would restrict a court in its review of a dangerousness determination made pursuant to the unimproved and now discarded instrument to that same outdated instrument.

The only purpose served by continuation of the outmoded analysis on appeal is preservation of the trial court judgment. But while there is ordinarily "a strong public interest in the finality of judgments and preventing relitigation" (*Kopp v. Fair*

Pol. Practices Com. (1995) 11 Cal.4th 607, 683 (conc. & dis. opn. of Kennard, J.)), here the judgment is not final. Moreover, the interest in preservation of the trial court judgment is particularly slight, for the underlying proceedings are ones that go to present dangerous and are designed to upset the repose of even final judgments of sentence. The stability of criminal judgments is of much greater state interest than the stability of a judgment of denial of resentencing under Proposition 36, particularly where the latter judgment is inchoate and not yet final. (See, e.g., *People v. Floyd* (2003) 31 Cal.4th 179 [an initiative barring retroactive application of its provisions for diversion of nonviolent drug offenders (the earlier Proposition 36) may preserve the penalties for existing offenses while ameliorating punishment for future offenders in order to "'assure that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written"].)

The electorate here already has determined by passage of Proposition 36 that the state's interest in reducing the life sentences of less serious third-strike felons like Chaney outweighs its interest in the repose of their final criminal judgments, for it thereby provided him an avenue to petition for resentencing. It is only the finding of dangerousness that tips the balance here against resentencing. But with the dangerousness standard now changed, the state has no interest in denying Chaney and like offenders application of that standard merely because there is a non-final judgment denying them relief under the outdated standard. To the contrary, Proposition 47 evidences

a value judgment that giving Chaney and other less serious third-strike offenders the retroactive benefit of that standard is in the state's best interest as well as their own.

The court below determined that *Estrada* "does not apply here because applying the definition of 'unreasonable risk to public safety' in Proposition 47 to petitions for resentencing under the Act does not reduce punishment for a particular crime"; rather, at most it "changes the lens through which the dangerousness determinations under the Act are made." (Appendix B, p. 4) But the lens change is one that does effectively reduce punishment, for it substantively raises the bar for the finding of dangerousness that excludes a defendant from the reduced punishment. In this way the change mitigates the punishment by enabling third-strike offenders who otherwise may have been denied resentencing on the ground of unreasonable danger to obtain resentencing as a two-strike offender. In addition, the change represents a judgment that the needs of the criminal law are met -- better met -- by channeling the court's exercise of discretion to deny resentencing through that lens and thereby open the prison gates further for the less serious third-strike offenders covered by Proposition 36. Thus, the rule of retroactive application to non-final judgments of statutes that reduce a defendant's punishment or otherwise provides a substantive benefit to a defendant applies here.

Moreover, the rule of retroactivity has even stronger application here than in *Estrada*, for not only are both Proposition 36 and Proposition 47 *designed* to upset the repose of even final judgments of sentence, but also because the clarified definition concerns the retrospective mechanisms themselves.

Applying on appeal the more exacting bar to the finding of dangerousness acts to reduce the punishment for those petitioners denied resentencing under the old standard, for it enables them to take advantage of the reduced punishment the Reform Act made available to them contingent on a determination that mitigation of punishment would not unreasonably risk public safety.

The fact that the retroactive mechanisms of both propositions are designed to assess *current* dangerousness reinforces the inference that the change was intended to apply to Proposition 36 cases now on appeal. (See, e.g., *In re Lawrence* (2008) 44 Cal.4th 1181, 1205–1206, italics in original [holding in parole context that "the core determination of 'public safety' . . . involves an assessment of an inmate's *current* dangerousness . . . . [A]n assessment of the inmate's threat to society, *if released*, ... could not logically relate to anything but the threat *currently* posed by the inmate."].)

Indeed, Proposition 36's retroactive provision itself provides that a prisoner may petition for resentencing under the Act *at any time* "upon a showing of good cause." (§ 1170.126, subd. (b).) Thus, built into Proposition 36 is the notion that the dangerousness determination is never final but subject to redetermination at any time upon a showing of good cause.[10]

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[10] The establishment of a more restrictive standard for finding dangerousness than the one the trial court used at the time of it made its dangerousness determination presumably would provide such good cause. Thus, the Court of Appeal's focus on retroactivity here is a red herring, for it is not clear that Chaney

The lower court's reliance on *People v. Brown* (2012) 54 Cal.4th 314 to reject retroactivity here (see Appendix B, pp. 6–7) is similarly misguided. *Brown* concerned a prisoner who sought application of a statute's increase in pre-sentence credits for good behavior in jail for time he spent in jail before the statute became effective. This Court there explained that the amendment "does not alter the penalty for any crime .... Instead of addressing punishment for past criminal conduct, the statute addresses future conduct in a custodial setting by providing increased incentives for good behavior." (*Id.* at p. 325.) In contrast, the retroactive provisions of both propositions implicated here do address punishment for past criminal conduct (by requiring resentencing with reduced punishment unless the individual is deemed an unreasonable risk), and the dangerousness determination in their particular retroactivity provisions depends entirely on past events.

Moreover, in contrast to *Brown* and the lower court's determination here (Appendix B, p. 6), Propositions 36 and 47, including their retroactivity provisions, decidedly *do* "represent a judgment about the needs of the criminal law with respect to [the] criminal offense[s]" those propositions cover. (See Appendix B, p. 4, quoting *People v. Brown*, *supra*, 54 Cal.4th at p. 325.) In particular, Proposition 47's definition of dangerousness represents a judgment about the appropriate divide between those prisoners who are deemed too dangerous to be given the benefit of the propositions' reduced punishment and those who

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even requires retroactivity of that definition to obtain a redetermination of his dangerousness under the standard that applies following enactment of Proposition 47.

are entitled to such. That divide lies at the heart of the retrospective operation of those laws, and is reflected in the evolved meaning of "unreasonable risk to public safety" that the electorate has adopted to draw that line.

Proposition 47's definition of "unreasonable risk" thus is quintessentially "a judgment about the needs of the criminal law." The propositions indubitably "support[] the inference that the [electorate] would prefer the new, shorter penalty rather than to 'satisfy a desire for vengeance' " (Appendix B, p. 7, quoting *People v. Brown*, *supra*, 54 Cal.4th at p. 325) for *all* prisoners who committed the designated offenses -- except those, in the words of the Legislative Analyst advising the voters about Proposition 47, "the court finds ... likely ... will commit a specified severe crime." (Gen. Elec. (Nov. 4, 2014), analysis of Prop. 47 by Legislative Analyst, p. 35.)

Significantly, this Court in *Brown* affirmed its central holding in *Estrada* that a statute that reduces a crime's punishment will be applied retrospectively absent a clear statement by the lawmaker that it be applied prospectively only. "This court's decision in *Estrada, supra,* 63 Cal.2d 740, supports an important, contextually specific qualification to the ordinary presumption that statutes operate prospectively. When the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, [footnote omitted] that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date." (*People v. Brown*, *supra*, 54 Cal.4th at p. 323.) "Accordingly, *Estrada* is today properly understood, not as weakening or modifying the default rule of

prospective operation codified in section 3, 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. (*Cf. People v. Nasalga* (1996) 12 Cal.4th 784, 792, fn. 7, [declining request to reconsider *Estrada*].)" (*People v. Brown, supra*, at p. 324.)

"The rule and logic of *Estrada* is specifically directed to a statute that represents a ' "legislative mitigation of the *penalty for a particular crime*" ' [citation] because such a law supports the inference that the Legislature would prefer to impose the new, shorter penalty rather than to ' "satisfy a desire for vengeance." ' [Citation.]" (*People v. Brown, supra*, 54 Cal.4th at p. 325.) The *Estrada* rule applies to voter initiative legislation as much as it applies to amendatory legislation enacted by the Legislature. (See, e.*g., People v. Wright* (2006) 40 Cal.4th 81, 94–95 [acknowledging that the Compassionate Use Act, Proposition 215, was subject to *Estrada* analysis for retroactive application].)

Here, there is no clear statement of intent by the electorate that its definition of dangerousness be applied to Proposition 36 cases prospectively only. To the contrary, Proposition 47's broad, inclusive language embracing determinations of "unreasonable risk to public safety" wherever a finding of such is made "throughout this Code" evidences an intent to apply that definition without limitation. In sum, "the sense of the language of [Proposition 47] in full context" makes manifest the electorate's intention to retroactively apply its definition of "unreasonable risk of danger to public safety" to Proposition 36 cases on appeal. (See *In re Cervera, supra,* 24 Cal.4th at p. 1078.)

Again, the electorate's intent to apply Proposition 47's definition of dangerousness to Proposition 36 cases on appeal is revealed by the views of those both for and against passage of Proposition 47 at the time of the election. As the opponents announced to the electorate, backing an analysis by the CDAA:

> Moreover, ... any of the Three Strikes defendants previously denied resentencing based upon a judicial finding of dangerousness [] may appeal that ruling and request the court now apply this new standard of dangerousness, resulting in a further cost to a court system already struggling financially.[11]

(See <http://www.californians against47.com/ AboutProposition47> [as of June 4, 2015].)

The view from the other side -- namely, from the reformers who drafted both initiatives -- further indicates that the electorate intended its new definition to apply retroactively to Proposition 36 determinations of dangerousness, for they assumed that the new definition of dangerousness would apply

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[11] Avoiding additional expense to the courts was the only state interest that the opponents identified in arguing against retroactive application of Proposition 47's definition of dangerousness to Proposition 36 cases on appeal. But the electorate could reasonably determine that those additional costs were more than offset by the great financial savings in the costs of imprisonment that such retroactive application promised to achieve. Indeed, financial savings were a chief purpose of both propositions to begin with, making the costs in implementation of them pale by comparison.

retroactively to Proposition 36 determinations of dangerousness that had been made prior to the enactment of Proposition 47. (See St. John & Gerber, *Prop. 47 Jolts Landscape of California Justice System* (Nov. 5, 2014) Los Angeles Times at <http://www.latimes.com/local/politics/la-me-ff-pol-proposition47–20141106-story.html> [as of Jan. 30, 2015] [where one of the Act's authors expressed the view that third-strike offenders previously denied relief under Proposition 36 "can ... return to court and cite Proposition 47's new definition of an 'unreasonable risk of danger' " to obtain relief now].)

Finally, the view from the middle, such as the judiciary, also expected that Proposition 47's definition of dangerousness would apply retrospectively to third-strike offenders previously denied relief on the grounds of dangerousness, and that view also was disseminated to the public both in newspapers and online. For example, Judge Couzens published a piece in the Davis Enterprise before the election that also could be found at http://www.davisenterprise.com/forumopinion-columns/prop-47-a-perspective-from-the-bench, which reported:

> Prop. 47 imposes its more restrictive definition of dangerousness on people sentenced under the three-strikes law. People now serving a third-strike sentence will be allowed to submit a request for resentencing under the more liberal provision of Prop. 47, even though a judge has already determined they are too dangerous to get relief under the existing law.

That report was quoted as well in David Greenwald, *Analysis: Perspective on Proposition 47*, The Defense Vanguard (Oct. 29, 2014), at http://www.davisvanguard .org/analysis-perspective-on-proposition-47.

CONCLUSION

For the reasons set forth above, the Court should find that the definition of "unreasonable risk of danger to public safety" in Proposition 47 (Pen. Code, § 1170.18) applies retroactively to the recall and resentencing proceedings of the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126). It should accordingly reverse the judgment under review and remand the matter to the Court of Appeal to dispose of the appeal in accordance with that finding.

Respectfully submitted,

Dated: June 10, 2015

By: /s/ Michael Satris, Esq.
Michael Satris, Esq.
Attorney for Defendant and Appellant

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **13,965** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by rule 8.204, subdivision (b) and contains fewer words than permitted by rule 8.204, subdivision (c) or rule 8.360, subdivision (b).

Dated: June 10, 2015

By: /s/ Michael Satris, Esq.

Michael Satris, Esq.

Attorney for Defendant and Appellant

PROOF OF SERVICE BY MAIL

Re: Clifford Paul Chaney, Court Of Appeal Case: C073949, Superior Court Case: 05CR08104

I the undersigned, declare that I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is 22 Alta Dr., Petaluma CA. On June 11, 2015, I served a copy of the attached Appellant's Opening Brief (CA Supreme Court) on each of the parties in said cause by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in United States mail at Sonoma, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 11th day of June, 2015.

Eric Vanderville
(Name of Declarant)

(Signature of Declarant)

PROOF OF SERVICE BY ELECTRONIC SERVICE

Re: Clifford Paul Chaney, Court Of Appeal Case: C073949, Superior Court Case: 05CR08104

I the undersigned, am over the age of eighteen years and not a party to the within entitled cause. My business address is 22 Alta Dr., Petaluma CA. On June 11, 2015 a PDF version of the Appellant's Opening Brief (CA Supreme Court) described herein was transmitted to each of the following using the email address indicated or direct upload. The email address from which the intended recipients were notified is Service@GreenPathSoftware.com.

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San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 11th day of June, 2015 at 13:16 Pacific Time hour.

Eric Vanderville
(Name of Declarant)

(Signature of Declarant)