In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

CLIFFORD PAUL CHANEY,

Defendant and Appellant.

Case No. S223676

Third Appellate District, Case No. C073949
Amador County Superior Court, Case No. 05CR08104
The Honorable J.S. Hermanson, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

In granting review, the Court limited the issue to be briefed to the following: 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)?

INTRODUCTION

In December 2005, appellant, Clifford Paul Chaney, was sentenced to state prison for an indeterminate term of 25 years to life under the Three Strikes law (Pen. Code,[1] § 667, subds. (b)-(i)) for driving under the influence of alcohol, a non-serious and non-violent felony, and for his six prior serious felony convictions. In November 2012, the electorate enacted the Three Strikes Reform Act of 2012 in Proposition 36, which narrowed the circumstances in which indeterminate life sentences may be imposed under the Three Strikes law and created a new procedure allowing prisoners currently serving an indeterminate term under the Three Strikes law for a current non-serious and non-violent felony conviction to seek retroactive sentencing relief (§ 1170.126). Appellant filed a petition for recall and resentencing under section 1170.126. In May 2013, the trial court made a discretionary finding under section 1170.126, subdivision (f), that resentencing appellant would pose an "unreasonable risk of danger to public safety" (a term left undefined by the statute) and denied the petition. Appellant appealed the court's ruling to the Third District Court of Appeal.

A year and a half later, while appellant's appeal was pending, the California electorate enacted the Safe Neighborhoods and Schools Act of

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

2014 in Proposition 47. Proposition 47 declared certain drug and theft-related offenses that were previously felonies or "wobblers" to be misdemeanors unless committed by certain ineligible defendants. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 5-13, pp. 71-73.) It also created a petition procedure, similar to the one in Proposition 36, by which prisoners currently serving a sentence for a conviction of a felony that would have been a misdemeanor under Proposition 47 could seek retroactive sentencing relief. (§ 1170.18.) Unlike Proposition 36, Proposition 47 expressly defined the term "unreasonable risk of danger to public safety" (§ 1170.18, subd. (c).)

Appellant requested the Court of Appeal to remand his case to the trial court for a new hearing under section 1170.126 so that the court could apply the new definition of "unreasonable risk of danger to public safety" found in section 1170.18, subdivision (c). In support, appellant cited this Court's decision in *In re Estrada* (1965) 63 Cal.2d 740 for the general principle that a statute reducing punishment for a particular criminal offense is assumed, absent evidence to the contrary, to apply to all defendants whose judgments are not yet final at the operative date. But the Court of Appeal found *Estrada* inapplicable because applying the new definition in Proposition 47 to petitions for resentencing under Proposition 36 does not reduce punishment for a particular crime and expanding *Estrada*'s scope would conflict with the default rule of prospective operation (§ 3). Thus, it held that the definition of "unreasonable risk of danger to public safety" in Proposition 47 does not apply retroactively to a defendant whose petition for resentencing under Proposition 36 was decided before the effective date of Proposition 47. As detailed below, the Court of Appeal's decision was sound.

STATEMENT OF THE CASE

Appellant pled guilty to felony driving a motor vehicle with a blood alcohol content of .08% or more (DUI) (Veh. Code, § 23152, subd. (b)), admitted three prior DUI convictions, and admitted six prior strike conviction allegations for robbery and attempted robbery (§§ 211, 664) in exchange for a sentence of 25 years to life and the dismissal of three other charges. (1 CT 1-3, 15-28.) On December 12, 2005, the trial court sentenced appellant to state prison for an indeterminate term of 25 years to life under the Three Strikes law. (1 CT 211.)

On November 6, 2012, the electorate passed Proposition 36. On December 17, 2012, appellant filed a petition for recall and resentencing under section 1170.126. (2 CT 380-389.) The People opposed the petition. (2 CT 403 - 3 CT 697.) After considering testimony and documentary evidence, as well as argument from the parties, the trial court made a discretionary finding that resentencing appellant would pose an unreasonable risk of danger to public safety and denied the petition. (RT 83-84; 2 CT 482.)

Appellant appealed, claiming that the trial court abused its discretion in denying his petition for recall and resentencing. On October 29, 2014, the Court of Appeal filed an opinion affirming the judgment.

On November 4, 2014, the electorate passed Proposition 47, which took effect the next day. Appellant then filed a petition for rehearing in which he requested a remand for a new hearing under section 1170.126 so that the court could apply the new definition of "unreasonable risk of danger to public safety" found in section 1170.18, subdivision (c). The Court of Appeal modified its opinion and denied the petition for rehearing, holding that the definition of "unreasonable risk of danger to public safety" in Proposition 47 does not apply retroactively to a defendant whose petition for resentencing under Proposition 36 was decided before the effective date

of Proposition 47. This Court granted appellant's petition for review on February 18, 2015.

SUMMARY OF ARGUMENT

The issue granted to this Court for review, and the issue that was addressed by the Court of Appeal, is whether Proposition 47's new definition of "unreasonable risk of danger to public safety" applies retroactively to section 1170.126 dangerousness determinations under Proposition 36.[2] But it is axiomatic that the definition cannot apply retroactively to Proposition 36 proceedings if in fact it does not apply to Proposition 36 proceedings at all. For this reason, and because appellant devotes the majority of his opening brief on the merits to the argument that the definition applies prospectively to Proposition 36 proceedings (AOB 17-45), respondent first addresses the predicate question and asserts that the new definition of "unreasonable risk of danger to public safety" in Proposition 47 does not apply at all to section 1170.126 dangerousness determinations under Proposition 36.

The California electorate did not intend Proposition 47's new definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to apply to section 1170.126 dangerousness determinations made under Proposition 36. First, the statutory language of section 1170.18 reflects an intent not to apply Proposition 47's definition to Proposition 36 proceedings. Section 1170.18, subdivision (c), by its own terms, applies only to petitioners who file petitions under section 1170.18, subdivision (a), despite the language that the definition is to apply

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[2] The same issues in this case are also pending before this Court in *People v. Valencia*, review granted February 18, 2015, S223825. The Court of Appeal in *Valencia* decided the case on prospectivity grounds, while the Court of Appeal in this case decided the case on retroactivity grounds.

"throughout this Code." Section 1170.18, subdivision (n), which declares an intent not to "diminish or abrogate the finality of judgments in any case not falling within the purview of this act," also indicates that Proposition 47 was intended only to affect judgments stemming from convictions for the enumerated drug and property crimes at the heart of Proposition 47.

Second, the initiatives' different scopes indicate that Proposition 47 was not intended to amend Proposition 36. Under the statutory scheme of Proposition 36, life sentences remain mandatory or discretionary for a wide range of offenses and third strike offenders, not just the most egregious cases. In contrast, Proposition 47 provides for resentencing in the much less serious context of certain drug- and theft-related offenses that were previously felonies or "wobblers" but are now misdemeanors. Because the would-be misdemeanants who stand to benefit from Proposition 47, as a class, are less dangerous than recidivist felons with prior strike offenses, it is logical to impose a more restrictive dangerousness standard for them (§ 1170.18, subd. (c)) than the standard applied for recidivist felons under Proposition 36.

Third, the two initiatives were passed for different purposes such that a literal construction of section 1170.18, subdivision (c), does not comport with the purposes of the initiatives. The purpose of Proposition 36 was to restore the public's original understanding of the Three Strikes law while emphasizing the overriding concern of protecting the health, safety, and welfare of the general public over any economic benefits. On the other hand, the primary purpose of Proposition 47 was to reprioritize and redirect monetary spending. None of Proposition 47's stated purposes included fixing or amending Proposition 36. Because the two propositions target drastically different classes of criminals (to the exclusion of others), offer significantly different relief, and serve considerably different primary purposes, there is no reason to believe that the voters intended for the

definition of "unreasonable risk of danger to public safety" in Proposition 47 to amend the phrase as used in section 1170.126 without any express mention of that intent.

The official ballot materials for the initiatives also show that the voters did not intend for Proposition 47 to amend Proposition 36. The voters intended each proposition to apply to a different, exclusive class of criminals and provide a different type of relief. The official Proposition 47 ballot pamphlet did not reference Proposition 36 at all and made the contrary representation that criminals not convicted of the specified drug and property offenses, such as many covered by Proposition 36, would not benefit from Proposition 47.

A literal interpretation of section 1170.18, subdivision (c), would lead to unreasonable and absurd results. Proposition 47 was passed just as the two-year deadline to file section 1170.126 petitions under Proposition 36 was expiring. The California voters cannot be understood to have silently "decided so important and controversial a public policy matter and created a significant departure from the existing law" and changed the rules for section 1170.126 petitions at the very last moment without any express declaration or notice of such intent. (*In re Christian S.* (1994) 7 Cal.4th 768, 782.) The radical reduction of court discretion in Proposition 36 proceedings that would result without notice that the electorate intended to reduce the discretion it so recently and abundantly granted to the courts to determine a petitioner's dangerousness is also unreasonable.

Even assuming the definition applies prospectively to Proposition 36 proceedings, it does not apply retroactively to proceedings in which the trial court determined, prior to the effective date of Proposition 47, that resentencing would pose an unreasonable risk of danger to public safety pursuant to section 1170.126. There is no clear and unambiguous intent on the part of the California electorate for section 1170.18, subdivision (c), if it

applies at all to section 1170.126, to apply retroactively to section 1170.126 proceedings. Proposition 36 was not mentioned in any Proposition 47 official ballot materials. The costs and savings associated with a retroactive application of the new definition to Proposition 36 proceedings were not included in the fiscal analysis of the initiative. Without any declaration or indication of voter intent to apply the new definition retroactively to Proposition 36 proceedings, the California voters cannot be understood to have intentionally undone the section 1170.126 determinations they approved and intentionally revived the final judgments they intended to preserve when they passed Proposition 36 just two years earlier. Therefore, the section 3 presumption of prospective application applies.

Estrada does not apply because applying the more restrictive definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to section 1170.126 proceedings does not constitute a reduction in punishment. Also, the acts of lenity in both Propositions 47 and 36 were counterbalanced by the important public interest in preserving final judgments in those cases involving dangerous criminals, so there is no "inevitable inference" that the electorate must have intended to disrupt the final judgments it diligently endeavored to preserve. Moreover, the amended definition is generally applicable to a class of offenders and does not apply to a particular criminal offense. Thus, the section 3 presumption of prospective application is not rebutted.

ARGUMENT

I. THE DEFINITION OF "UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY" IN SECTION 1170.18, SUBDIVISION (C), DOES NOT APPLY RETROACTIVELY TO SECTION 1170.126 DETERMINATIONS

Appellant contends that the new definition of "unreasonable risk of danger to public safety" in Proposition 47 amends the meaning of the

phrase as used in dangerousness determinations under Proposition 36 and must be applied retroactively to those determinations in cases in which the judgment is not final. (AOB 17-58.) Respondent disagrees. The new, more restrictive definition of "unreasonable risk of danger to public safety," as provided in section 1170.18, subdivision (c), does not apply at all to section 1170.126 resentencing proceedings, thus it cannot apply retroactively. And even assuming the new definition may apply to some section 1170.126 proceedings, it does not apply retroactively to dangerousness determinations that had already been made at the time Proposition 47 was passed. *Estrada* does not compel retroactive application of the new definition to appellant's case.

A. Proposition 36 Provides for Resentencing of Certain Third Strike Offenders Subject to Broad Judicial Discretion

On November 6, 2012, California voters passed Proposition 36, which enacted the Three Strikes Reform Act of 2012, effective November 7, 2012 (see Cal. Const., art II, § 10, subd. (a)). Proposition 36 amended sections 1170.12 and 667 to lessen the sentence that may be imposed on many non-violent and non-serious felonies committed after two prior "strikes." (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 36, §§ 2, 4, pp. 105-109.)

Most relevant here, Proposition 36 created section 1170.126, which sets forth a recall procedure to provide retroactive relief for prisoners currently serving an indeterminate life sentence on a non-serious and non-violent felony conviction. (§ 1170.126, subd. (a).) Under this new statute, a prisoner may file a "petition for a recall of sentence" within two years of the date of Proposition 36's effective date or at a later date on a showing of good cause. (§ 1170.126, subd. (b).) A petitioner is eligible for resentencing if: (1) he or she is currently serving an indeterminate term of

life imprisonment for a current non-serious and non-violent felony conviction (§§ 667.5, subd. (c), 1192.7, subd. (c)); (2) his or her current sentence was not imposed for certain disqualifying offenses (§§ 667, subds. (e)(2)(C)(i)-(iii), 1170.12, subds. (c)(2)(C)(i)-(iii)); and (3) he or she has no prior convictions for offenses listed in sections 667, subdivision (e)(2)(C)(iv), and 1170.12, subdivision (c)(2)(C)(iv). (§ 1170.126, subd. (e).) If a trial court determines that the petitioner satisfies these criteria, the prisoner 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." (§ 1170.126, subd. (f).) The term "unreasonable risk of danger to public safety" is not expressly defined in the statute, but the statute does provide guidelines for the trial court to consider in making its determination. In exercising its discretion, the trial court may consider the petitioner's criminal history, the circumstances of the current offense, his or her disciplinary record and record of rehabilitation while incarcerated, and any other evidence the court, in its discretion, determines to be relevant. (§ 1170.126, subd. (g).)

According to the "Findings and Declarations" of section 1 of Proposition 36, the initiative was enacted to restore the original intent of the Three Strikes Law by imposing life sentences for dangerous criminals like rapists, murderers, and child molesters and to:

> (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 a life sentence.

(4) Save hundreds of millions of taxpayer dollars every year for at least 10 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.

(Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 36, p. 105.) Uncondified section 7 of Proposition 36 also provided, "This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes." (*Id.* at p. 110.) "Enhancing public safety was a key purpose of [Proposition 36]." (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 175.)

B. Proposition 47 Provides for Resentencing of Certain Felons-Turned-Misdemeanants Subject to Circumscribed Judicial Discretion

Just two years after the passage of Proposition 36, on November 4, 2014, California voters passed Proposition 47, which enacted the Safe Neighborhoods and Schools Act of 2014, effective November 5, 2014 (see Cal. Const., art II, § 10, subd. (a)). Proposition 47 reduced certain drug- and theft-related felonies or "wobblers" to misdemeanors, unless they were committed by defendants with one or more prior convictions for certain violent offenses (§ 667, subd. (e)(2)(C)(iv)) or for offenses requiring sex offender registration (§ 290, subd. (c)).[3] Proposition 47 also created a new

[3] The offenses amended by Proposition 47 are grand theft (§ 490.2), receiving stolen property (§ 496), shoplifting (§ 459.5), petty theft with a prior conviction (§ 666), forgery (§ 473), writing bad checks (§ 476a), possession of a controlled substance (Health & Saf. Code, §§ 11350, (continued...)

resentencing provision, section 1170.18, by which "[a] person currently serving a sentence" for such a conviction may petition the trial court for a recall of sentence and request a reduced classification and sentence.[4] (§ 1170.18, subd. (a).) An eligible person (see § 1170.18, subd. (i)) satisfying the criteria in subdivision (a) shall be resentenced unless the court, in its discretion, determines that resentencing the person would pose an "unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) The language of section 1170.18, subdivision (b), is similar to the language appearing in section 1170.126, subdivisions (f) and (g).

Section 1170.18, subdivision (c), was added to provide:

> 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]

The resentencing statute also created an application process for similar persons who have already completed their sentences to have the relevant conviction or convictions designated as misdemeanors. (§ 1170.18,

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(...continued)
11377), and possession of concentrated cannabis (Health & Saf. Code, § 11357, subd. (a)).

[4] It is undisputed that appellant's underlying felony DUI conviction would not be eligible for reduction to a misdemeanor under Proposition 47.

[5] The violent felony offenses identified in section 667, subdivision (e)(2)(C)(iv), otherwise known as "super strike" offenses, include sexually violent offenses as defined in Welfare and Institutions Code section 6600; certain sexual offenses against children including oral copulation, sodomy, sexual penetration, and lewd or lascivious conduct; homicide offenses; solicitation to commit murder; assault with a machine gun on a peace officer or firefighter; possession of a weapon of mass destruction; and "[a]ny serious and/or violent felony offense punishable in California by life imprisonment or death" (§ 667, subd. (e)(2)(C)(iv)(VIII)). These are the same offenses for which a prior conviction renders a person ineligible to file a section 1170.18, subdivision (a) petition.

subd. (f).) Despite the use of language similar to Proposition 36, any potential relief offered under Proposition 47 is independent and separate from any potential relief offered under Proposition 36.

According to the "Findings and Declarations" of section 2 of Proposition 47, the initiative was enacted "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, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, p. 70.) The electorate further stated the purpose and intent of Proposition 47 in uncodified section 3:

> (1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this act.
>
> (2) Create the Safe Neighborhoods and Schools Fund, with 25 percent of the funds to be provided to the State Department of Education for crime prevention and support programs in K-12 schools, 10 percent of the funds for trauma recovery services for crime victims, and 65 percent of the funds for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system.
>
> (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) This measure will save significant state corrections dollars on an annual basis. Preliminary estimates range from $150 million to $250 million per year. This measure will increase investments in programs that reduce crime and improve public safety, such as prevention programs in K–12 schools, victim services, and mental health and drug treatment, which will reduce future expenditures for corrections.

(Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, p. 70.)

C. The General Principles of Statutory Construction

The general principles of statutory construction apply to voter initiatives such as Proposition 47. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900.) In construing Proposition 47, the court's primary task is to determine the voters' intent. (*People v. Jones* (1993) 5 Cal.4th 1142, 1146.) To determine the voters' intent, the court turns first to the words of the provision adopted by the voters, giving the language its ordinary and plain meaning. (*Ibid.*; *Robert L.*, at p. 901.) The statutory language must be construed not in isolation but in the context of the statute as a whole and within the overall statutory scheme, keeping in mind the scope and purpose of the provision in light of the voters' intent. (*Robert L.*, at p. 901; *People v. Acosta* (2002) 29 Cal.4th 105, 112.)

Statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387; *People v. Honig* (1996) 48 Cal.App.4th 289, 327-328.) However, literal construction does not prevail if it conflicts with the voters' intent apparent in the statute. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Where the language is ambiguous, the court will look to "other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." (*People v. Birkett* (1999) 21 Cal.4th 226, 243; *People v. Floyd* (2003) 31 Cal.4th 179, 187-188 [The

ballot pamphlet information is a valuable aid in construing the intent of voters].) Consideration should be given to the consequences that will flow from a particular interpretation where uncertainty exists, as well as the wider historical circumstances of the enactment. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.*, at p. 1387.) Any ambiguities in an initiative statute are "not interpreted in the defendant's favor if such an interpretation would provide an absurd result, or a result inconsistent with apparent legislative intent." (*People v. Cruz* (1996) 13 Cal.4th 764, 782, internal citation and quotation omitted.) 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. (*In re Michele D.* (2002) 29 Cal.4th 600, 606.) Ultimately, the court's duty is to interpret and apply the language of the initiative "so as to effectuate the electorate's intent." (*Robert L.*, at p. 901.)

D. The Definition of "Unreasonable Risk of Danger to Public Safety" in Section 1170.18, Subdivision (c), Does Not Apply to Section 1170.126 Determinations

The issue specified for review by this Court, and the issue that was decided by the Court of Appeal, is whether Proposition 47's new definition of "unreasonable risk of danger to public safety" applies retroactively to section 1170.126 dangerousness determinations under Proposition 36. But it is axiomatic that the definition cannot apply retroactively to Proposition 36 proceedings if in fact it does not apply to Proposition 36 proceedings at all, so respondent first addresses the predicate issue of prospective application. In light of the statutory language of section 1170.18 as a whole, the differences in scope and purpose between Propositions 36 and 47, and the official ballot materials for each initiative, the California voters did not intend for the new definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to apply to Proposition 36 proceedings.

1. The statutory language of section 1170.18 as a whole and the respective scopes and purposes of Propositions 47 and 36 demonstrate that the voters did not intend for section 1170.18, subdivision (c), to apply to section 1170.126 proceedings

The voters did not intend for Proposition 47's definition of "unreasonable risk of danger to public safety" to apply to Proposition 36 proceedings. At first blush, when viewed in isolation, the language "[a]s used throughout this Code" in section 1170.18, subdivision (c), appears to apply Proposition 47's definition of "unreasonable risk of danger to public safety" whenever that phrase is used in the Penal Code, including section 1170.126. However, whether that definition applies to section 1170.126 is at best ambiguous when considered in the context of section 1170.18 as a whole, in the context of the statutory schemes affected by Proposition 47 and Proposition 36, and in light of each initiative's respective scope and purposes. Respondent asserts that consideration of the statutory contexts, scopes, and purposes reveals that the voters did not intend for Proposition 36 proceedings to be affected by the passage of Proposition 47.

a. Statutory language of section 1170.18

The statutory language of section 1170.18 shows its definition of "unreasonable risk of danger to public safety" does not apply to section 1170.126 dangerousness determinations or at least creates ambiguity as to its application. Section 1170.18, subdivision (a), provides that an eligible person may file a petition for a recall of sentence. Section 1170.18, subdivision (b), in using the term "petitioner," essentially defines a "petitioner" as a person who files a petition for recall of sentence under subdivision (a). Thereafter, section 1170.18, subdivision (c), defines "unreasonable risk of danger to public safety" as an unreasonable risk that "the petitioner" will commit a new violent felony within the meaning of

section 667, subdivision (e)(2)(C)(iv). Because section 1170.18, subdivision (c), refers to whether an unreasonable risk exists that *the petitioner* will commit a new violent felony, the statutory language as a whole shows an intent to apply the definition to "petitioners" under section 1170.18, not any other petitioners. Indeed, the statute does not contain a reference to any other kind of petition and certainly not any reference to a petition filed under section 1170.126. Had the electorate intended to apply the new definition to Proposition 36 proceedings, it could have clarified that the term "petitioner," as used in the new definition, constituted a person filing a petition under either section 1170.18, subdivision (a), or section 1170.126, subdivision (b), but it did not.

Section 1170.18, subdivision (n), also indicates that the definition in subdivision (c) was not intended to apply to Proposition 36 proceedings. Section 1170.18, subdivision (n), provides: "Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act." There is inherent tension in the statutory language between section 1170.18, subdivision (c), which could suggest a change to the entire Penal Code, and section 1170.18, subdivision (n), which expressly narrows Proposition 47's effect on the finality of judgments to only cases within its own purview. As respondent will explain below, Proposition 47 and Proposition 36 targeted different classes of criminals. Proposition 47 was not intended to affect any persons other than those convicted of the offenses specifically enumerated in section 1170.18, subdivision (a). Applying the section 1170.18, subdivision (c) definition to Proposition 36 proceedings, especially to those involving individuals who are not eligible to file a Proposition 47 petition, would necessarily "diminish or abrogate the finality of judgments" in cases that do not "fall within the purview" of Proposition 47. Section 1170.18, subdivision (n), was clearly intended to prevent Proposition 47 from

causing any unintended residual effect to other unrelated judgments, such as those in Proposition 36 proceedings.

b. Different scopes of Propositions 36 and 47

The differences in scope between the two initiatives also support an interpretation that the new definition in Proposition 47 does not apply to Proposition 36 proceedings. Although each initiative created a resentencing scheme, each scheme addressed very different concerns impacting distinct categories of crimes and perpetrators.

Proposition 36 was intended to apply merely to a select group of California's worst criminals. It applies only to certain convicted felons who are serving indeterminate prison terms under the Three Strikes law. (§§ 667, subds. (b)-(i), 1170.12, 1170.126.) Thus, anyone eligible for Proposition 36 relief has necessarily committed at least two serious and/or violent crimes. The electorate declared that the relief contemplated by Proposition 36—resentencing as a second strike offender—was not even suitable for every dangerous felon covered by the initiative. Under the statutory scheme of Proposition 36, life sentences remained mandatory or discretionary for a wide range of offenses and third strike offenders, not just the most egregious cases. (§ 1170.126.)

In contrast, Proposition 47 provides for resentencing in the much less serious context of certain drug- and theft-related offenses that were previously felonies or "wobblers" but are now misdemeanors. (§ 1170.18.) That initiative provides relief—reclassification and resentencing as a misdemeanor—for specific low-level offenders whose underlying crimes are no longer considered felonious and denies relief in only the most egregious cases. Although it is possible for an individual to be eligible for relief under both Proposition 36 and Proposition 47, the group targeted for relief under Proposition 47 as a whole is generally comprised of low-level offenders as opposed to the more volatile and recidivist serious and violent

offenders Proposition 36 was designed to reach. There is a huge difference, both legally and in the risk to public safety, between someone with multiple prior serious and/or violent felony convictions whose current offense is a felony, and someone with no felony criminal history whose current offense is (or would be, if committed today) a misdemeanor. Because the would-be misdemeanants who stand to benefit from Proposition 47, as a class, are less dangerous than recidivist felons with prior strike offenses, it is logical to impose a higher dangerousness standard for them (§ 1170.18, subd. (c)) than the standard applied for recidivist felons under Proposition 36.

c. Different purposes of Propositions 36 and 47

Additionally, the literal construction proposed by appellant does not comport with the stated purposes of Propositions 36 and 47. Proposition 36 was intended to restore the public's original understanding of the Three Strikes law by reserving life sentences for only the most dangerous criminals and defendants whose current conviction is for a serious or violent crime. (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 1, p. 105.) It is true that one of the benefits of Proposition 36 was to save hundreds of millions of taxpayer dollars (*ibid.*), but the overriding concern of the electorate was the protection of the health, safety, and welfare of the general public. (*Id.* at p. 110.) Thus, the goal of the initiative and its economic benefits were tempered by provisions that ensured current inmates would not be released from state prison in not just the most egregious third strike cases, such as defendants with a prior conviction for a "super strike" offense (§§ 667, subd. (e)(2), 1170.12, subd. (c)(2)), but in any case in which the trial court, in its discretion, determined resentencing would pose an unreasonable risk of danger to public safety. (§ 1170.126.) By severely limiting the number of defendants who would benefit from Proposition 36, the electorate clearly valued the Three Strikes law's core

commitment to public safety above the cost savings likely to accrue as a result of the enacted reform.

On the other hand, the main purpose of Proposition 47 was to reprioritize spending and redirect it from the prison system into crime prevention and support programs in K-12 schools, victim services, and mental health and drug treatment. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 2, 3, p. 70.) The chosen method of achieving sufficient cost savings was to reduce penalties for certain non-serious, non-violent theft and drug offenses from wobblers or felonies to misdemeanors for all defendants except registering sex offenders and those with a prior conviction for a "super strike" offense. (§§ 459.5, subd. (a), 473, subd. (b), 476a, subd. (b), 490.2, subd. (a), 666, subd. (b); Health & Saf. Code, §§ 11350, subd. (a), 11357, subd. (a).) Although aspects of public safety were certainly part of the impetus behind Proposition 47, public safety interests nonetheless played second fiddle to monetary interests in the enactment of the Proposition 47 statutory scheme.

Notably absent from the stated purposes of Proposition 47 is any language to suggest that it was intended to "fix" or amend the statutory scheme enacted by Proposition 36 or that it was meant to benefit inmates seeking resentencing under section 1170.126. There was no evidence of voter sentiment that the recently passed Proposition 36 was broken or ill-construed. Nor was there any evidence that the voters believed the standard of "unreasonable risk of danger to public safety" was impermissibly vague, that courts were struggling to apply it, or that the courts were routinely abusing their discretion in making dangerousness determinations under section 1170.126, subdivision (f), such that a more restrictive definition of

the phrase was necessary to achieve Proposition 36's purpose.[6] Contrary to appellant's claim that Proposition 47 was a "continuation of the sentencing reform" of Proposition 36 (AOB 21), there is no reason to believe that the electorate, in enacting Proposition 47, intended to revisit the problem it sought to solve with Proposition 36. Not only is the text of Proposition 47 silent on all issues specifically relating to Proposition 36, but, as respondent will explain below, there is nothing in any of the official Proposition 47 ballot materials that would suggest the initiative had any impact at all on Proposition 36. Although Proposition 47 modeled its mechanism for resentencing relief on the Proposition 36 resentencing scheme, the initiatives differ greatly in a number of important areas. They target drastically different classes of defendants (third strike offenders versus non-serious, non-violent drug and theft offenders), offer significantly different relief (resentencing as a second strike felony offender versus resentencing as a misdemeanor offender), and serve considerably different primary purposes (restore Three Strikes law while maintaining public safety versus monetary reprioritization). Based on their differences, and without any indication to the contrary other than the mere language "throughout this Code" in section 1170.18, subdivision (c), there is no reason to believe that the voters intended for the definition of "unreasonable risk of danger to public safety" in Proposition 47 to amend the phrase as used in section 1170.126.

Appellant claims that both initiatives "address the same evil, over-reliance on imprisonment, by the same means: reduced punishment for offenders of low-level felonies" and are thus *in pari materia* such that the

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[6] Indeed, the phrase as used in section 1170.126 had been judicially construed as not being impermissibly vague despite having no fixed definition. (*People v. Garcia* (2014) 230 Cal.App.4th 763, 769-770; *People v. Flores* (2014) 227 Cal.App.4th 1070, 1075.)

phrase "unreasonable risk of danger to public safety" in each should be given the same meaning. (AOB 23-24.) The rule of statutory construction that when similar statutes are *in pari materia* similar phrases appearing in each should be given like meaning (*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) should not be applied in this case because Proposition 36 and Proposition 47 are not truly *in pari materia.*

As this Court has explained, "Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of person of things, or have the same purpose or object." (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, fn. 4.) As explained above (see pp. 17-20, *ante*), Propositions 36 and 47 target different groups of offenders, offer different relief, and serve different primary purposes. The initiatives may implement a similar resentencing structure to provide relief, but they do not relate to the same distinct class of persons and they do not have the same purpose. "Characterization of the object or purpose is more important than characterization of subject matter," such that "where the same subject is treated in several acts having different objects the statutes are not in pari materia. 'The adventitious occurrence of . . . similar subject matter, in laws enacted for wholly different ends will normally not justify applying the rule.'" (*Walker*, at p. 124, fn. 4, quoting 2A Sutherland, Statutory Construction (Sands, 4th ed. 1984) § 51.03, p. 467; see also *People ex rel. Stratton v. Oulton* (1865) 28 Cal. 44, 56-57 ["two detached and independent statutes without a common subject-matter in any exact sense" are not *in pari materia*].) Because Propositions 36 and 47 are not *in pari materia,* the phrase "unreasonable risk of danger to public safety" used in each should not be given the same meaning on that basis.

This Court recently applied the *pari materia* doctrine in *People v. Tran* (Aug. 17, 2015, S211329) __ Cal.4th __ [2015 Cal. LEXIS 5628], concluding that the advisement and waiver provisions in the mentally disordered offender (MDO) statutory scheme (§ 2972, subd. (a)) and the not guilty by reason of insanity (NGI) statutory scheme (§ 1026.5, subds. (b)(3), (4)) were *in pari materia*. But *Tran* is distinguishable. The language in the advisement and waiver provisions of the MDO and NGI statutes was "nearly identical" despite the statutes being enacted several years apart. (*Id.* at pp. *1-3, 13.) Both statutory schemes addressed persons afflicted by mental disorders, had the same dual purpose of "protecting the public while treating severely mentally ill offenders," and provided essentially the same procedural protections to defendants. (*Id.* at p. *13.)

This case differs from *Tran* in several important respects. This is not an instance in which two separate and distinct statutes contain nearly identical language with the same procedural safeguards. Proposition 47 contains a more restrictive statutory definition of "unreasonable risk of danger to public safety" that was not present in Proposition 36 or its subsequent construction and thus allows a broader range of dangerous criminals to obtain relief under Proposition 47. Again, the initiatives target different groups of offenders, offer different relief, and serve different primary purposes so as to justify different meanings. Because the would-be misdemeanants who stand to benefit from Proposition 47, as a class, are less dangerous than recidivist felons with prior strike offenses, it is logical to impose a higher dangerousness standard for them (§ 1170.18, subd. (c)) than the standard applied for recidivist felons under Proposition 36. Whereas a higher dangerousness standard might adequately suit the economic primary purpose of Proposition 47, it dramatically undermines

the commitment to public safety of Proposition 36 and the Three Strikes law. For these reasons, *Tran* is distinguishable.

The *pari materia* canon of construction should not be used to impose a subsequent statutory definition upon the same term in a previously-enacted statute when there was no indication that the electorate intended to amend the first-in-time statute. For instance, in *People v. Honig, supra,* 48 Cal.App.4th 289, the court analyzed two statutes, the Political Reform Act, and Government Code section 1090, that were admittedly *in pari materia.* (*Id.* at p. 327; see *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1091.) The court refused to apply the doctrine of *in pari materia*, however, where there was nothing to suggest that the Legislature intended for a statutory definition of "financial interest" in the Political Reform Act to supersede the statutorily undefined yet settled definition of "financial interest" in Government Code section 1090. (*Honig*, at pp. 327-328.) Also instructive is *Mountain West Farm Bureau Mutual Insurance Co. v. Hall* (Mont. 2001) 38 P.3d 825, 830, in which the Supreme Court of Montana refused to declare *in pari materia* two statutes that were enacted two years apart, addressed the same subject matter, and were consistent except that the earlier statute failed to apportion attorney fees. The court reasoned that the legislative intent embodied in the later statute failed to inform the court of the meaning the Legislature attached to the words of the earlier statute. (*Ibid.*)

Here, the California electorate left the term "unreasonable risk of danger to public safety" undefined in Proposition 36. Although Proposition 47 later defined that phrase in the context of section 1170.18 petitions, there is nothing in the Proposition 47 official ballot materials that sheds any light on the meaning the electorate attached to the words of Proposition 36 or demonstrates any intent to amend section 1170.126. (See pp. 24-32, *post.*) In fact, applying the new definition to Proposition 36 would be inconsistent

with the language of Proposition 47 as a whole, the stated consequences of Proposition 47, and the public safety commitment of Proposition 36. Therefore, the *in pari materia* canon should not be applied.

In any event, canons of statutory construction are merely aids to ascertaining the probable intent of the electorate (see *Stone v. Superior Court* (1982) 31 Cal.3d 503, 521, fn. 10 [legislative intent]), and shall not be applied to defeat a contrary intent otherwise determined (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1391). Based on the statutory language of section 1170.18 as a whole and the different scopes and purposes of Propositions 36 and 47, this Court should determine that the electorate did not intend for the definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to apply to section 1170.126.

2. The initiatives' official ballot materials show that the voters did not intend for Proposition 47 to amend Proposition 36

The official ballot materials for the initiatives also show that the voters did not intend for Proposition 47 to amend Proposition 36. The voters intended each proposition to apply to a different, exclusive class of criminals. The targeted classes differed in the severity of offenses committed as well as the level of dangerousness of the offenders. There was nothing in the official Proposition 47 ballot materials to suggest that the voters intended the new definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to apply to section 1170.126 proceedings under Proposition 36.

The ballot materials show Propositions 36 and 47 were intended to grant relief to distinctly different classes of offenders. The official Proposition 36 ballot materials were clear that the relief provided under that initiative would only be granted to certain defendants. According to the

"Official Title and Summary" prepared by the Office of the Attorney General, Proposition 36 was intended to revise the Three Strikes law and authorize resentencing for certain repeat felony offenders. (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) p. 48.) Nothing indicated that Proposition 36 was intended to provide relief for anyone other than third strike offenders and certainly not to anyone standing convicted of a misdemeanor.

Similarly, according to the official Proposition 47 ballot materials, the only individuals who stood to benefit from the resentencing procedures in Proposition 47 were those defendants who were currently serving a sentence for the enumerated drug and property offenses that are now considered misdemeanors. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) official title and summary, p. 34 ["resentencing for persons serving felony sentences *for these offenses*"], legislative analysis, p. 35 ["The measure also allows certain offenders who have been previously convicted *of such crimes* to apply for reduced sentences"], p. 36 ["This measure allows offenders currently serving felony sentences *for the above crimes* to apply to have their felony sentences reduced to misdemeanor sentences"; "the resentencing of individuals currently serving sentences *for felonies that are changed to misdemeanors*"], italics added.) The official ballot materials were totally silent as to whether Proposition 47 would amend Proposition 36. They did not mention Proposition 36 at all, much less suggest that Proposition 47 would have any impact on the resentencing of anyone who was serving a sentence for a crime *other* than one of the specified non-serious, non-violent property or drug crimes. The ballot arguments opposing Proposition 47 warned that 10,000 inmates, including many with prior convictions for serious crimes, would be eligible for early release under the initiative, but they did not suggest that these early release provisions would extend to inmates whose current offenses remained felonies under Proposition 47. (*Id.* at pp. 38-39.) They did not even

mention the possibility of Proposition 36 proceedings for third strike offenders being affected by Proposition 47. And nothing in the Legislative Analysis or any other portion of the official ballot pamphlet alluded to a change in the discretion of courts when evaluating the risk of danger to public safety in the context of section 1170.126, subdivision (f). The use of the word "Code" in section 1170.18, subdivision (c), was hidden in an obscure subdivision in the text of the lengthy proposed Proposition 47. In light of the ballot materials, it would be unreasonable to assume the California voters—despite complete silence on the issue—intended to subject the third strikers covered by Proposition 36 to a lower standard of dangerousness fit for misdemeanants. The electorate does not "hide elephants in mouseholes." (*Whitman v. American Trucking Associations* (2001) 531 U.S. 457, 468 ["Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions"]; see also *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171.)

The ballot materials also show that the electorate intended to preclude relief for different offenders under each initiative based on the level of dangerousness of the target class. Whereas Proposition 36 was intended to preclude any "dangerous criminals" from obtaining relief under its provisions, the electorate only intended to preclude relief for the "most dangerous criminals" under Proposition 47.

The Proposition 36 ballot materials were clear that "dangerous criminals" would not benefit from its provisions. In the "Argument In Favor Of Proposition 36," the proponents of the measure argued: "Prosecutors, judges and police officers support Prop. 36 because Prop. 36 helps ensure that prisons can keep dangerous criminals behind bars for life. 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." (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) p. 52.) In their rebuttal to the opposition's argument, the proponents further argued, "Prop. 36 prevents dangerous criminals from being released early." (*Id.* at p. 53.) The "Analysis by the Legislative Analyst" explained that it was the court's duty to determine if resentencing a particular offender would pose an unreasonable risk of danger to public safety and that any offender denied resentencing by the courts would continue to serve his or her term as originally sentenced. (*Id.* at p. 50.) Thus, the electorate intended for *all* dangerous criminals to be denied relief under Proposition 36, not just the *most* dangerous criminals, and determined that the courts were the appropriate authorities to evaluate which criminals were dangerous. The relief limitation was logical because the target class was comprised of recidivist felons with multiple prior strike offenses and the primary purpose of Proposition 36 was to protect the public safety, the core commitment of the Three Strikes law.

In contrast, the ballot materials show Proposition 47 was clearly meant to benefit a broader spectrum of defendants in light of its focus on offenders committing what are now deemed misdemeanor crimes. Unlike Proposition 36, which was intended to provide relief only to non-dangerous criminals, Proposition 47 was intended to provide relief to all but the most dangerous criminals. The legislative analysis explained that the court's discretion to deny resentencing to eligible defendants was restricted to those offenders likely to commit a "specified *severe* crime." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) p. 36, italics added.) When opponents argued that thousands of dangerous inmates would be released as a result of Proposition 47, supporters rebutted the argument by explaining that Proposition 47 included strict protections to make sure "rapists, murderers, molesters and the most dangerous criminals cannot ben efit." (*Id.* at p. 39.)

Thus, the ballot materials indicated to the voters that Proposition 47 relief was available to dangerous criminals, just not the *most* dangerous ones. The comparatively broader reach of Proposition 47 was logical because the target class was comprised generally of the lowest level drug and property crime offenders and its primary purpose was to generate as much money savings as possible.

When the California electorate passed Proposition 47, it did so without any intent, or even any knowledge of the possibility, that the initiative would amend Proposition 36 and broaden the relief available under it. In fact, the voters were expressly and repeatedly informed that the *only* individuals who would benefit from the resentencing procedures in Proposition 47 were those whose current convictions were for offenses that were now deemed misdemeanors under Proposition 47. The two propositions provided different types of relief to drastically different classes of criminals for different primary reasons, which would have justified the application of different standards of dangerousness for any voter who happened to notice the difference between standards. Because the would-be misdemeanants who stand to benefit from Proposition 47, as a class, are less dangerous than recidivist felons with prior strike offenses, it would have appeared logical to any overly-discerning voter to impose a higher dangerousness standard for them (§ 1170.18, subd. (c)) than the standard applied for recidivist felons under Proposition 36. In light of those differences and the materials provided to the voters in the official ballot pamphlets, there was no reason for the average voter to believe that by voting for Proposition 47, he or she was also voting to expand the relief provided for under Proposition 36 by applying a new definition of "unreasonable risk of danger to public safety" to those proceedings. A literal construction of section 1170.18, subdivision (c), conflicts with the voters' intent as shown in the official ballot pamphlets and must be rejected.

Appellant speculates as to numerous reasons why the voters could have intended to apply Proposition 47's new definition of "unreasonable risk of danger to public safety" to section 1170.126 proceedings under Proposition 36. (AOB 19-20, 21-22, 28-30 & fn. 7.)[7] However, this Court cannot reasonably impute any of these alleged intents to the California electorate in the absence of even the slightest hint in any of the official ballot materials that Proposition 36 would be amended by Proposition 47. Given the significant differences between the initiatives' scopes and purposes, as well as the total absence of any indication that the voters specifically intended for Proposition 47 to have any impact at all on Proposition 36 proceedings, appellant's speculation should be disregarded.

Appellant contends that reference to the official Proposition 47 ballot pamphlet "is of no help here" because it does not address the issue of applicability to Proposition 36 and thus "does not point in either direction to its reach." (AOB 31.) Although the official ballot pamphlet did not mention Proposition 36 by name, it is still significant in helping the Court determine what the electorate did and did not intend. The California electorate intended to pass Proposition 47 for all the reasons stated in the official ballot pamphlet, including the stated reason that only individuals whose current convictions were for offenses that were now deemed

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[7] The proposed reason that Proposition 47 was a "further[ing]" of the sentencing reform of Proposition 36 after the voters were "emboldened" by its initial success (AOB 28-29) is especially doubtful. The overarching purpose of Proposition 36 was to restore the public's original understanding of the Three Strikes law, which "[m]aintain[ed] that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of a life sentence." (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 1, p. 105.) Proposition 47 was passed in direct conflict with this purpose, as sentences for shoplifters and simple drug possessors were potentially reduced from a doubled felony sentence to merely a misdemeanor sentence.

misdemeanors under Proposition 47 would benefit from its resentencing provisions. Thus, the voters as a whole necessarily did *not* intend for Proposition 47 to benefit individuals who fall under the purview of Proposition 36 but were not convicted of the specific offenses amended by Proposition 47. This is not an instance in which the official ballot materials' omission of a specific Proposition 36 reference was simply a failure "to cite every case the proposition may affect." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 278, quoting *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 237.) Rather, this is an instance in which appellant's proposed statutory interpretation and voter intent conflict with the voter intent reflected in the official ballot pamphlet. After explicitly describing who would benefit from Proposition 47, the ballot pamphlet was not required to cite every case the proposition would not affect. In light of the distinct differences between Proposition 36 and Proposition 47, the lack of any indication that Proposition 36 would be amended by Proposition 47, and the contrary representation that criminals not convicted of the specified offenses, such as many covered by Proposition 36, would not benefit from Proposition 47, this Court should determine that the electorate did not intend for the new definition of "unreasonable risk of danger to public safety" Proposition 47 to apply to Proposition 36 proceedings.

In support of his arguments, appellant cites numerous articles, commentaries, and websites that appear to offer either contemporaneous or after-the-fact representations of individuals or groups of individuals as evidence of the California electorate's intent as a whole in passing Proposition 47. (AOB 24-28, 34-37, 56-58.) Such representations are not properly considered as evidence of the electorate's intent.

In *Kennedy Wholesale, Inc. v. Board Of Equalization* (1991) 53 Cal.3d 245, this Court engaged in an exercise of statutory interpretation in

relation to a provision of the California Constitution that was added by voter initiative Proposition 13 in 1978. In support of their interpretation of the provision, the plaintiffs relied on amicus curiae briefs filed in a different case that purported to represent the views of the sponsors of Proposition 13. (*Id.* at p. 250, fn. 2.) The Court determined that the briefs merely advanced legal arguments about how Proposition 13 should be interpreted and did not say anything about the drafters' intent, but even if they could be read as an after-the-fact declaration of intent by a drafter of the initiative, it would "'by no means . . . govern our determination how *the voters* understood the ambiguous provisions.'" (*Ibid.*, quoting *Carman v. Alvord* (1982) 31 Cal.3d 318, 331, fn. 10.) The Court ultimately determined that nothing in the official ballot pamphlet supported the plaintiff's interpretation of the voters' intent. (*Id.* at p. 250.)

Similarly, in *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714,[8] this Court refused to impute the objective of a statute's author, as stated in a press release, to the Legislature as a whole. The author's opinion was not included in any of the legislative analyses or reports and could not be reconciled with the statutory language, so there was no reliable indication that the Legislature adopted the author's view. (*Id.* at pp. 726-727; see also *People v. Garcia* (2002) 28 Cal.4th 1166, 1175-1176 & fn. 5 [denying request to take judicial notice of press releases and letters to and from the authoring legislator].)

The materials cited by appellant do not reflect the electorate's intent as a whole. The only documents that may properly be considered in ascertaining the intent and objective of the drafters and/or voters of the initiative are those that were presented to all statewide voters, such as the

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[8] Disapproved on other grounds in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854, fn. 19.

official ballot pamphlets. The opinions of individual members of the legislative body or of the electorate, even of the author of a particular provision, are not properly considered by the court as evidence of the intent of the larger body. (*In re Application of Lavine* (1935) 2 Cal.2d 324, 327; *Rich v. Board Of Optometry* (1965) 235 Cal.App.2d 591, 603.) These opinions are of limited circulation and cannot be considered unless they are made known to *all* voters. To hold otherwise would be to condone construction of a voter initiative based upon information available to only a limited number of voters. Even knowledge of information made as easily accessible to potential voters as a website created by opponents of Proposition 47 cannot possibly be imputed to all voters. In this case, material beyond the official ballot pamphlets that were disseminated to all voters in the state by the Secretary of State is not properly considered as indicative of the electorate's intent.

3. Appellant's literal interpretation would lead to unreasonable and absurd results

Applying a literal construction to the language "throughout this Code" in section 1170.18, subdivision (c), would lead to unreasonable and absurd results. 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. (*In re Michele D., supra,* 29 Cal.4th at p. 606; *People v. Cruz, supra,* 13 Cal.4th at p. 782.)

The absurd results that would be caused by appellant's interpretation are illustrated by the timing of Proposition 47's passage. Proposition 36 required petitions under section 1170.126 to be brought within two years unless a court concluded that there was good cause for a late-filed petition. (§ 1170.126, subd. (b).) By the time Proposition 47 took effect, only two days remained in the two-year period for filing a section 1170.126 petition. By claiming that the enactment of Proposition 47's more restrictive

definition of "unreasonable risk of danger to public safety" presumably constitutes good cause for a late-filed Proposition 36 petition, appellant's interpretation would essentially render the two-year deadline meaningless just as it was about to expire. Of course, had the electorate determined that the initiative it had passed just two years earlier was already in need of amending, it could have done exactly that. But the California voters cannot be understood to have silently "decided so important and controversial a public policy matter and created a significant departure from the existing law" without any express declaration or notice of such intent. (*In re Christian S., supra*, 7 Cal.4th at p. 782; see *Jones v. Lodge at Torrey Pines Partnership, supra*, 42 Cal.4th at p. 1171.) It is absurd to conclude the voters intended to change the rules for section 1170.126 petitions at the very last moment, when nearly all petitions would have been filed and most of them adjudicated, without that intent being explicitly stated.

The radical reduction of court discretion in Proposition 36 proceedings that would result *without notice* that the electorate intended to reduce the discretion it so recently and abundantly granted to the courts to determine a petitioner's dangerousness is also unreasonable. Under section 1170.126, criminals with prior convictions for "super strike" offenses (in addition to disqualifications relating to their current offenses) are already ineligible for resentencing. The broad discretion granted to courts to determine whether resentencing a particular petitioner would pose an "unreasonable risk of danger to public safety" was obviously a safeguard to deny resentencing relief to any dangerous criminals, not just the most dangerous criminals likely to commit a "super strike" offense (who were typically ineligible to file a petition in the first place). Applying a literal interpretation to Proposition 47 would essentially eliminate that court discretion, align entitlement to relief with the eligibility standards, and mandate Proposition 36 relief be granted to dangerous criminals, such as a

serial pyromaniac who is likely to commit another arson. Such a broad grant of Proposition 36 relief would be contrary to its public safety emphasis. Again, a literal interpretation would effect a drastic change in philosophy without any indication whatsoever that the voters actually intended that result and in the face of expressions of contrary intent that Proposition 47 would only benefit those convicted of specified drug- and theft-related offenses.

The California electorate did not intend to enact a drastic sea change to Proposition 36 in the waning moments of its relevance that would grant relief to the majority of persons eligible to file a section 1170.126 petition. Applying a literal construction to section 1170.18, subdivision (c), would lead to unreasonable and absurd results contrary to the voters' intent. For the reasons stated in this brief, the most reasonable interpretation of section 1170.18, subdivision (c), is that the new definition applies only to Proposition 47 proceedings, or at most to any future ameliorative sentencing procedures enacted in the Penal Code.

4. The rule of lenity does not compel the adoption of appellant's literal interpretation

Appellant also argues that any ambiguity that exists in section 1170.18, subdivision (c), should be resolved in his favor under the rule of lenity. (AOB 45.) The rule of lenity does not apply here because this Court can fairly discern the intent of the electorate.

The rule of lenity applies only when two reasonable interpretations of a penal statute stand in relative equipoise. (*People ex rel. Green v. Grewal* (2015) 61 Cal.4th 544, 565.) Although "true ambiguities" are resolved in the defendant's favor under the rule of lenity, an appellate court should not strain to interpret a penal statute in the defendant's favor if it can fairly discern a contrary intent. (*Ibid.*) The rule is merely a "tie-breaking principle" that applies "only if the court can do no more than guess what

the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule." (*People v. Boyce* (2014) 59 Cal.4th 672, 695, internal quotations omitted.) Here, there is no uncertainty or relative equipoise. As respondent has shown, the voters did not intend for Proposition 47's definition of "unreasonable risk of danger to public safety" to apply to section 1170.126 dangerousness determinations under Proposition 36.

E. Even Assuming the Definition of "Unreasonable Risk of Danger to Public Safety" in Section 1170.18, Subdivision (c), May Apply to Section 1170.126 Determinations, it Does Not Apply Retroactively

Respondent submits that because Proposition 47's new definition of "unreasonable risk of danger to public safety" does not apply prospectively to resentencing proceedings under Proposition 36, it necessarily does not apply retroactively to those resentencing proceedings. But even assuming that the definition applies prospectively to Proposition 36 proceedings, it does not apply retroactively to proceedings in which the trial court determined, prior to the effective date of Proposition 47, that resentencing would pose an unreasonable risk of danger to public safety pursuant to section 1170.126. The section 3 presumption of prospective application applies because there is no clear and unavoidable implication that the voters intended the new definition to have retroactive application. *Estrada* does not compel retroactive application of the new definition to appellant's case.[9]

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[9] The similar issue of whether Proposition 36's amendments to sections 1170.12 and 667 apply retroactively is pending before this Court in *People v. Conley*, review granted August 14, 2013, S211275.

1. Retroactivity principles

Specific principles of statutory construction address the issue of whether an amended statute operates retroactively. Section 3, which declares that no part of a statute is retroactive "unless expressly so declared," codifies the common-law presumption that in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that a retroactive application was intended. (*People v. Brown* (2012) 54 Cal.4th 314, 319.) A statute that is ambiguous on the issue of retroactivity is construed to be unambiguously prospective. (*Id.* at p. 320.)

A statutory amendment that reduces punishment for a particular offense may create an inference that retroactive application was intended so as to rebut the presumption of prospective application. (*In re Estrada, supra,* 63 Cal.2d 740.) In *Estrada*, this Court considered an amended statute lessening the punishment for escape. But the new statute did not explicitly state whether it applied prospectively or retroactively. (*Id.* at pp. 743-744.) In deciding whether to impose the old law's harsher punishment or the new law's more lenient punishment to a defendant who had been sentenced prior to the change but whose judgment was not yet final, this Court reasoned

> that the Legislature must have intended, and by necessary implication provided, that the amendatory statute should prevail. 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. 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.

(*Id.* at pp. 744-745.) Accordingly, this Court established what is known as the *Estrada* rule: a statute reducing punishment for a particular criminal offense is assumed, absent evidence to the contrary, to apply to all defendants whose judgments are not yet final at the operative date.[10] (*Id.* at pp. 744, 748; *People v. Brown, supra,* 54 Cal.4th at p. 323.) This rule applies equally to amendments enacted through the initiative process. (*Floyd, supra,* 31 Cal.4th at p. 182.)

But *Estrada* did not overrule the codified common-law presumption that lawmakers intend new statutes to operate prospectively. (§ 3; *Estrada, supra*, 63 Cal.2d at p. 746; *Brown, supra*, 54 Cal.4th at p. 319.) Instead, *Estrada* harmonizes section 3 so as not to ignore factors demonstrating a clear retroactive intent. (*Estrada*, at p. 746.) Whether a statute operates prospectively or retroactively is simply "a matter of legislative intent." (*Brown*, at p. 319.) And "[t]he rule in *Estrada*, of course, is not implicated where the Legislature clearly signals its intent to make the amendment prospective, by the inclusion of either an express saving clause or its equivalent." (*People v. Nasalga* (1996) 12 Cal.4th 784, 793; see also *People v. Floyd, supra,* 31 Cal.4th at pp. 184-187 [inclusion of express saving clause].) "Rather, what is required is that the Legislature demonstrate its intention with sufficient clarity that a reviewing court can discern and effectuate it." (*Nasalga*, at p. 793, quoting *In re Pedro T.* (1994) 8 Cal.4th 1041, 1046.) And legislative intent is determined through a review of the statutory scheme as a whole with any ambiguities presumed to be prospective. (*Brown*, at pp. 319-320 ["[A] statute that is ambiguous with respect to retroactivity application is construed ... to be unambiguously prospective"]; *Nasalga*, at p. 793.)

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[10] A judgment becomes final once there are no available remedies on direct review. (*In re Pine* (1977) 66 Cal.App.3d 593, 594.)

Because the *Estrada* rule is always subject to legislative intent, this Court has often found it inapplicable to statutes reducing punishment. In *Pedro T.*, this Court affirmed a minor's sentence under a statute that temporarily enhanced punishment for vehicle theft, and which was effective at the time of the offense but had expired at the time of appeal. Although the Legislature reduced the punishment prior to the minor's judgment becoming final, the Court found *Estrada* inapplicable because the Legislature demonstrated an intent to punish offenders more severely during the three-year period in which the minor committed his offense in order to combat a rise in vehicle thefts. (*Pedro T., supra*, 8 Cal.4th at p. 1048; see also *Nasalga, supra*, 12 Cal.4th at pp. 790-791.) Despite the absence of an express saving clause, the Legislature's demonstration of a prospective intent rendered *Estrada* inapplicable. (*Pedro T.*, at p. 1052.)

More recently, this Court declined to apply *Estrada* to former section 4019, which increased the rate prisoners in local custody could earn conduct credits for good behavior. (*Brown, supra*, 54 Cal.4th at pp. 323-325.) In doing so, the Court rejected the defendant's attempt to expand the *Estrada* principle to any statute reducing punishment in any manner. (*Id.* at p. 325.) Instead, the Court found *Estrada* applicable only to "legislative mitigation of the penalty *for a particular crime*...." (*Brown,* at p. 325, italics added.) The Court also reiterated the rule that ambiguities in a statute's retroactive or prospective application are "construed to be unambiguously prospective." (*Id.* at p. 324.) Starting with this presumption, the Court found no "clear and unavoidable implication" that the Legislature intended retroactive application. (*Id.* at p. 320.)

2. The section 3 presumption of prospective application applies because there is no clear and unavoidable implication that the voters intended section 1170.18, subdivision (c), to apply retroactively to Proposition 36 proceedings

Although appellant appears to simply assume there was no reason the voters would not want the new definition to apply retroactively, the relevant inquiry is whether it is "very clear from extrinsic sources" or whether those sources support the "clear and unavoidable implication" that the voters intended a retroactive application. (*People v. Brown, supra*, 54 Cal.4th at p. 320.) There is no "clear and unavoidable implication" of retroactivity to overcome the section 3 presumption of prospective application here.

There is nothing in Proposition 47 to indicate a clear intent on the part of the California electorate for section 1170.18, subdivision (c), if it applies at all to section 1170.126, to apply retroactively to section 1170.126 proceedings. Proposition 47 was silent as to its effective date. Nothing in the text of Proposition 47 itself or in the official ballot pamphlet provided any specific reference to the potential retroactive application of section 1170.18, subdivision (c), as it relates to section 1170.126 proceedings. As respondent has explained, Proposition 47 and related official ballot materials do not reference Proposition 36 at all, much less the possibility that section 1170.18, subdivision (c), on its own, could apply retroactively to prior discretionary determinations made under section 1170.126.[11] One would reasonably expect the costs and savings associated with a second section 1170.126 hearing to have been included in the fiscal analysis of Proposition 47 if the new definition was intended to apply retroactively, but they were not. Although the "Fiscal Effects" section of the legislative

[11] Again, as explained previously (see pp. 30-32, *ante*), appellant's references to the opinions of individuals or groups are not evidence of the intent of the California voters as a whole. (AOB 56-58.)

analysis for Proposition 47 explained that state courts would experience an increase in costs resulting from resentencing on a section 1170.18 petition, it made no mention of any costs related to a second section 1170.126 hearing. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) p. 37.) Nor did the analysis calculate or consider the savings to be generated from the resentencing of additional Proposition 36 petitioners under the new definition. (*Id.* at pp. 36-37.) The omissions are particularly glaring in light of the fact that Proposition 47 was so focused on monetary results.

Even if the electorate could have intended to apply section 1170.18, subdivision (c), to Proposition 36 proceedings that had yet to occur, it is unreasonable to conclude that it would have intended to offer a second "re-do" hearing for all previous section 1170.126 dangerousness determinations without expressly saying so. Proposition 36 carved out a narrow, temporary exception to the important public interest of preserving the finality of judgments (see *In re Clark* (1993) 5 Cal.4th 750, 764) by providing a single two-year window, subject only to good cause, in which previously-sentenced third strike offenders could seek resentencing. The electorate's interest in preserving the final judgments of dangerous criminals was apparent not only from the statutory scheme but also by the declaration of intent that Proposition 36 petitioners "whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced." (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) legislative analysis, p. 50.) And in enacting section 1170.18, subdivision (n), in Proposition 47, the voters remained consistent in their efforts to preserve those final judgments by declaring that the new definition was not intended to diminish or abrogate the finality of judgments in cases not falling within the purview of Proposition 47, which includes those cases in which resentencing was already denied under section 1170.126 (and final judgments left undisturbed) for defendants not

eligible to file a petition under Proposition 47. Thus, in enacting the two initiatives, the California electorate intentionally struck a careful balance between preserving final judgments and granting resentencing relief. Without any declaration or indication of voter intent to apply the new definition retroactively to Proposition 36 proceedings, the California voters cannot be understood to have (1) intentionally undone the section 1170.126 determinations they approved, and (2) intentionally revived the final judgments they intended to preserve when they passed Proposition 36 just two years earlier.

At the very least, the intent of the voters was ambiguous on the retroactive application of section 1170.18, subdivision (c), to section 1170.126 proceedings.[12] For all these reasons, the section 3 presumption of prospective application applies in the absence of clear, affirmative evidence that the voters intended the new definition to apply retroactively to section 1170.126 proceedings.

3. *Estrada* does not compel retroactive application of section 1170.18, subdivision (c), to appellant's dangerousness determination under Proposition 36

Like this Court's decisions cited above, *Estrada* does not compel retroactive application of the new definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to section 1170.126 dangerous determinations that were made prior to Proposition 47's

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[12] Appellant's claim fails even if the statutory language and indicia of voter intent could be construed as unclear on retroactivity because ambiguities are construed as favoring the prospective application of amended statutes. (*People v. Brown, supra*, 54 Cal.4th at p. 320, quoting *Myers v. Phillip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 ["Consequently, 'a statute that is ambiguous with respect to retroactivity application is construed ... to be unambiguously prospective.'"].)

effective date. Therefore, the section 3 presumption of prospective application applies.

Estrada does not apply here because the alleged amendment does not constitute a reduction in punishment for a particular crime. Applying the more restrictive definition of "unreasonable risk of danger to public safety" in section 1170.18, subdivision (c), to section 1170.126 proceedings does not reduce the punishment for a particular criminal offense. Even if Proposition 47 as a whole could be found to ameliorate the punishment for the specified offenses that were reduced from felonies and wobblers to misdemeanors (though respondent would dispute this for the reasons expressed below),[13] the mere application of the new definition in section 1170.18, subdivision (c), to section 1170.126 proceedings does not merit the same characterization. The amended definition itself does not mitigate punishment, nor does it specifically apply to any particular offense, both of which it must do for appellant to prevail. If it applies at all to Proposition 36 proceedings, the new definition simply changes the lens through which section 1170.126 dangerousness determinations are made by narrowing the broad discretion Proposition 36 confers on the trial court to decide who is suitable for a downward modification of sentence. The ultimate relief available under Proposition 36 is not affected. *Estrada* is therefore inapplicable.

Even when viewing the section 1170.126 resentencing scheme as a whole, the scheme "does not represent a judgment about the needs of the criminal law with respect to a particular criminal offense, and thus does not support an analogous inference of retroactive intent." (*People v. Brown,*

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[13] Of course, Proposition 47 itself cannot be characterized as an amelioration in punishment for crimes other than the specified drug and property crimes, such as appellant's driving under the influence offense.

supra, 54 Cal.4th at p. 325.) First, it does not represent a judgment about the needs of the criminal law in the same way it was contemplated in *Estrada*. *Estrada* concerned only an amended criminal statute as it applied to judgments not yet final (*In re Estrada, supra*, 63 Cal.2d at p. 742), and its holding was based on the theory that refusing to apply the amended statute to those judgments did not accord with the main functions of criminal law and could be justified only by a desire for vengeance (*id.* at p. 745). *Estrada* was not concerned with final judgments. Section 1170.126, on the other hand, necessarily concerns both final and non-final judgments of third strike offenders. The electorate's act of lenity in providing a mechanism to upend these final judgments and allow resentencing was not absolute; the act of lenity was counterbalanced by the important public interest in preserving final judgments in those cases involving dangerous criminals, as shown by its many public safety safeguards. Unlike in *Estrada*, the enactment of Proposition 47's new restrictive definition of "unreasonable risk of danger to public safety" does not create an "inevitable inference" that the electorate must have intended that it should disrupt the final judgments the electorate had so recently and diligently endeavored to preserve.

Second, the section 1170.126 resentencing scheme does not express judgment as to a particular criminal offense. As this Court noted in *Brown*, "*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." (*People v. Brown, supra,* 54 Cal.4th at p. 324.) *Estrada*'s holding was founded on the premise that the mere fact of a lesser penalty or different treatment *for a particular crime* was sufficient to meet the ends of criminal

law (*In re Estrada, supra*, 63 Cal.2d at p. 745), but it is clear from the section 1170.126 statutory scheme that the same is not sufficient here. The downward modification of sentence authorized by the section 1170.126 statutory scheme, subject to the trial court's broad discretion, is dependent not just on the current offense but on an unlimited number of factors related to the individual offender including criminal conviction history, disciplinary and rehabilitation records, and any other evidence relevant to the question of whether a new sentence would result in an unreasonable risk of danger to public safety.[14] (§ 1170.126 & subd. (g).) Section 1170.126 relief cannot be simplistically described as mitigation of penalty for a particular offense. It is a *generally applicable* ameliorative measure. Because the statutory scheme applies generally across a particular class of defendants and grants relief on a case-by-case basis relying on factors relating to the particular offender, it is not a judgment on the appropriate punishment for a particular offense, and *Estrada* does not apply.

Brown's narrow interpretation of *Estrada*, which rejected the argument that *Estrada* should be understood to broadly apply to any statute that reduces punishment in any manner (*People v. Brown, supra*, 54 Cal.4th at p. 325), is also appropriate here. Because the application of Proposition 47's definition of "unreasonable risk of danger to public safety" to section 1170.126 proceedings does not constitute a mitigation of punishment for a

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[14] If Proposition 47's definition applies to Proposition 36 proceedings, the trial court still maintains considerable discretion to determine dangerousness based on these same factors. Not all inmates eligible for resentencing under Proposition 36 would be resentenced. For instance, the trial court still could reasonably determine that resentencing appellant would pose an unreasonable risk of danger to public safety even under the new definition because his four prior DUI convictions (including DUI with injury) indicate an unreasonable risk that appellant would commit gross vehicular homicide (§ 191.5), which constitutes a "super strike" under section 667, subdivision (e)(2)(C)(iv)(IV).

particular criminal offense, it cannot be inevitably inferred, and it cannot be assumed, that the electorate must have intended the new definition to apply retroactively, as was possible in *Estrada*, so as to overcome the presumption of prospective application. The glaring differences between the two propositions, the lack of any reference to Proposition 36 in the Proposition 47 ballot materials, and the unreasonableness of the conclusion that the electorate intended to silently upend all of the final judgments preserved by its own recently-enacted provisions in Proposition 36 constitute evidence to the contrary. In short, there is no clear and unambiguous intent on the part of the voters to apply section 1170.18, subdivision (c), retroactively to section 1170.126 proceedings. Thus, section 3's default rule of prospective operation applies.

For these reasons, the new definition in section 1170.18, subdivision (c), does not apply to appellant's prior section 1170.126 dangerousness determination.

CONCLUSION

Accordingly, respondent respectfully requests this Court to affirm the lower court's holding.

Dated: September 8, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 12,993 words.

Dated: September 8, 2015

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Chaney**
No.: **C073949 / S223676**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On September 8, 2015, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 8, 2015, at Sacramento, California.

Declarant