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. 05CR8104
The Honorable J.S. Hermanson, Judge

ANSWER TO AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT CHANEY

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INTRODUCTION

Appellant Clifford Paul Chaney was sentenced to an indeterminate prison term of 25 years to life under the Three Strikes law. His petition for resentencing under the Three Strikes Reform Act of 2012 (Proposition 36) was denied, and he now seeks relief under the Safe Neighborhoods and Schools Act of 2014 (Proposition 47). Although neither the text of Proposition 47 itself nor any of the official ballot materials presented to the voters made any reference to Proposition 36, appellant argued in his Opening Brief on the Merits (OBM) and Reply Brief on the Merits (RBM) that the plain language of Penal Code[1] section 1170.18, subdivision (c) requires application of its "unreasonable risk of danger to public safety" standard to Proposition 36 proceedings and that the provision should apply retroactively. As argued in respondent's Answer Brief on the Merits (ABM), the statutory language of Proposition 47 as a whole and the initiative's official ballot materials show that the voters did not intend for section 1170.18, subdivision (c) to apply to Proposition 36 proceedings, either prospectively or retroactively.

Amici curiae George Gascón, Bill Lansdowne, and David Mills, in the brief filed on their behalf by the Three Strikes Project in support of appellant (the TSP brief), echo the arguments raised by appellant. To the extent amici curiae's brief warrants additional discussion beyond what was addressed in the parties' briefs, it is discussed below.

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

ARGUMENT

I. THE STATUTORY LANGUAGE OF PENAL CODE SECTION 1170.18 MUST BE EXAMINED AS A WHOLE

Amici curiae mischaracterize respondent's position by suggesting that the parties agree that a plain language reading of section 1170.18 favors appellant. (TSP 7; see ABM 15-17 [statutory language indicates Proposition 47's definition of "unreasonable risk of danger to public safety" does not apply to Proposition 36 proceedings].) Amici curiae would have the Court read no further than the isolated phrase "[a]s used throughout this Code." (TSP 12-13.) But it is well settled that reviewing courts do not examine statutory language in isolation but in the context of the statute as a whole and the overall statutory scheme in order to determine its scope and purpose. (*People v. Arroyo* (2016) 62 Cal.4th 589, 594-595 [defendant's interpretation "takes in isolation a single sentence of the statute" while People's interpretation "better accounts for the statutory language as a whole"]; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165.) When the statute is read as a whole, the definition of "unreasonable risk of danger to public safety" set forth in Proposition 47 refers specifically to the unreasonable risk that a Proposition 47 petitioner—and no other—will commit a new violent felony within the meaning of section 667, subdivision (e)(2)(C)(iv). (ABM 15-17.)

II. SECONDARY SOURCES ARE NOT EVIDENCE OF VOTER INTENT

Like appellant, amici curiae rely heavily on secondary sources such as articles and editorials, publications and memoranda, and campaign websites as evidence of the California electorate's intent in passing Proposition 47. (TSP 4-5, 19, 21-24, 29.) Such materials and their representations, as public and widespread as they might have been, cannot be imputed to the voters as a whole and are not properly considered as evidence of the

electorate's intent.[2] (ABM 30-32, 39, fn. 11.) Rather, this Court has clearly stated that only the ballot materials that were before *all* voters are probative of the voters' intent. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 904-905; *Kennedy Wholesale, Inc. v. Board of Equalization* (1991) 53 Cal.3d 245, 250, fn. 2 [amicus curiae briefs representing views of proposition sponsors do not "govern our determination how *the voters* understood the ambiguous provisions"].) And the official Proposition 47 ballot materials provided no indication that the voters intended for that proposition to amend Proposition 36. (ABM 24-32; see Gov. Code, § 88002.)

The materials relied upon by appellant and amici curiae are not properly considered evidence of voter intent simply by virtue of being contemporaneous expositions or interpretations of the voter initiatives. (See *Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 184 [interpretation of constitutional provision].) First, as respondent explained above, they were not before the entire electorate.[3] So to the extent early case law suggests otherwise, it appears to have been contradicted on that point by more recent cases. (Compare *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495 [suggesting contemporaneous statements may be relevant but relying specifically on California Constitution Revision Commission official reports] with *Robert L. v. Superior Court, supra*, 30 Cal.4th at pp. 904-905 & fn. 13 [refusing to rely on evidence of the drafters' intent that was not directly presented to the

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[2] The individual opinions of the authors and proponents of Propositions 36 and 47 are not relevant to the issue of voter intent.

[3] Even if the legal community was generally aware of Proposition 47's potential effects on Proposition 36 proceedings, that legal knowledge cannot be reasonably imputed to the average voter relying on the official Proposition 47 ballot materials.

voters] and *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 277, fn. 4 ["nonofficial election materials" that are not directly presented to the voters are not relevant to voter intent].) Second, assuming contemporaneous opinions could be potentially relevant, the materials relied upon here do not qualify as such. They are not equivalent to the types of materials relied upon by this Court, such as Attorney General opinions advising the chief executive (*Carter v. Commission on Qualifications of Judicial Appointments, supra,* 14 Cal.2d at p. 184), opinions of the legislative counsel (*id.* at p. 185), or contemporaneous constructions of the Legislature, chief executive, or administrative agencies charged with implementing and enforcing the new enactment (*Amador Valley Joint Union High School District v. Board of Equalization* (1978) 22 Cal.3d 208, 245-246; *South Dakota v. Brown* (1978) 20 Cal.3d 765, 777).

III. AMICI CURIAE'S STATUTORY INTERPRETATION WOULD LEAD TO ABSURD RESULTS; RESPONDENT'S WOULD NOT

As set forth in respondent's Answer Brief on the Merits, absurd results would follow from applying Proposition 47's restrictive dangerousness standard to radically reduce court discretion in Proposition 36 proceedings, as appellant urges, with just two days remaining in the statutory period to file a Proposition 36 petition and without notice to the voters that Proposition 47 would amend Proposition 36. (ABM 32-34.) Amici curiae's arguments to the contrary are essentially policy arguments favoring a uniform, lenient standard for relief under both Proposition 36 and Proposition 47.[4] (TSP 23-24.) This type of policy judgment is

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[4] The allegation that over 95% of the Proposition 36 petitions filed had been granted (TSP 24) appears to undercut appellant's and amici curiae's arguments that Proposition 47 was necessary to and intended to address the problem of too few Proposition 36 petitions being granted. (TSP 24; OBM 21, 28-30; RBM 37.)

entrusted to voters, who 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.* (1994) 7 Cal.4th 768, 782; see *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171.)

On the other hand, amici curiae are incorrect that applying the Proposition 47 definition prospectively but not retroactively would lead to absurd results. (TSP 26-28.) Courts routinely apply different legal standards when there is a change in the law that does not apply retroactively. (See *People v. Scott* (2014) 58 Cal.4th 1415, 1421-1423 [pre- and post-realignment sentencing]; *People v. Brown* (2012) 54 Cal.4th 314, 322 [different formulas for custody credits]; *People v. Floyd* (2003) 31 Cal.4th 179, 188-191 [prospective-only application of statute lessening punishment]; see also *Sperry & Hutchinson Co. v. Rhodes* (1911) 220 U.S. 502, 505 ["the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time"].) It is also not uncommon for the same phrase to have different meanings in different statutes that were enacted at different times or even in different portions of the same statute. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 221-222; *People v. Anderson* (2008) 169 Cal.App.4th 321, 338, fn. 11; *In re Hall* (1982) 132 Cal.App.3d 525, 530; see also *Gross v. FBL Financial Services, Inc.* (2009) 557 U.S. 167, 175, fn. 2.)

Additionally, amici curiae attempt to bolster their argument by focusing on the filing date of the Proposition 36 petitions. (TSP 26-28.) It is the date of the superior court's dangerousness determination, not the filing date of the petition, that is significant. Respondent maintains that Proposition 47's definition, assuming it applies at all to Proposition 36, would not apply to any Proposition 36 dangerousness determinations made

by the superior courts prior to the effective date of Proposition 47, but it would apply to Proposition 36 petitions still pending at that time. There is nothing absurd about that distinction, which preserves the integrity and finality of proceedings. (Cf. *People v. Mora* (2013) 214 Cal.App.4th 1477 [realignment sentencing applies only to persons sentenced on or after October 1, 2011 pursuant to § 1170, subd. (h)(6)]; *People v. Lynch* (2012) 209 Cal.App.4th 353 [same]; *People v. Cruz* (2012) 207 Cal.App.4th 664 [same].)

IV. PROPOSITION 47 WAS NOT A CLARIFICATION OF THE LAW ENACTED BY PROPOSITION 36

Although a declaration that an act is intended to merely clarify existing law may be evidence of an intent to apply the act retroactively (*Carter v. Department of Veterans Affairs* (2006) 38 Cal.4th 914, 922-923), Proposition 47 cannot fairly be interpreted as a clarification of Proposition 36. (TSP 29.) In fact, Proposition 47's reduction of certain felonies to misdemeanors was inconsistent with Proposition 36's purpose of maintaining two-strike sentences for such offenders. (See ABM 29, fn. 7.) There was no indication in any of the official Proposition 47 ballot materials to suggest an intent to clarify the Three Strikes law or Proposition 36 in response to any ongoing controversy. (Cf. *id.* at p. 923 [express declaration of legislative intent to clarify existing law].) The mere fact that Proposition 36 gave superior courts broad discretion to make dangerousness determinations did not create a controversy in itself, for those courts maintain broad discretion over numerous matters. (Cf. *People v. Trinh* (2014) 59 Cal.4th 216, 239 [observing that "[c]ountless provisions in the Penal Code" commit matters to the discretion of trial courts]; *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 [exercise of discretion under § 17, subd. (b) using "broad generic standard"]; see also *People v. Merriman* (2014) 60 Cal.4th 1, 74 [relating to admissibility of

evidence]; *People v. Towne* (2008) 44 Cal.4th 63, 85 [consideration of evidence at sentencing].) And an over 95% rate at which Proposition 36 petitions were granted belies any notion of controversy requiring a clarification. (TSP 24.)

To the extent Proposition 47 applies to Proposition 36 proceedings, Proposition 47 substantially changed the legal consequences of prior Proposition 36 proceedings and upset the expectations based on that prior law. (*Balen v. Peralta Junior College District* (1974) 11 Cal.3d 821, 828 & fn. 8.) There was nothing to indicate the voters intended to apply Proposition 47's definition of "unreasonable risk of danger to public safety" retroactively to Proposition 36 proceedings. (*Ibid.*) Therefore, it should not be applied retroactively.

CONCLUSION

Accordingly, respondent respectfully requests this Court to affirm the judgment.

Dated: February 10, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT CHANEY** uses a 13 point Times New Roman font and contains 1771 words.

Dated: February 10, 2016

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DECLARATION OF SERVICE

Case Name: **People v. Chaney** No.: **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 February 10, 2016, I served the attached **ANSWER TO AMICI CURIAE BRIEF IN SUPPORT OF APPELLANT CHANEY** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of 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 February 10, 2016, at Sacramento, California.

Laurie Lozano
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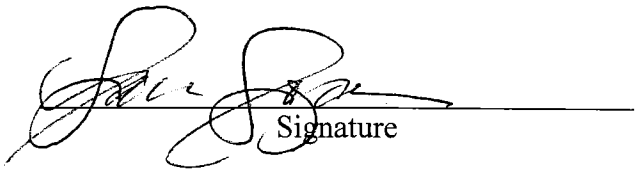

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