S259011

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

O.G.,

Petitioner,

vs.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

On review from the decision of the Court of Appeal, Second Appellate District, Division Six, Case No. B295555, on Petition for Writ of Mandate to the Ventura County Superior Court, Case No. 2018017144
The Honorable Kevin J. McGee, Judge Presiding

APPLICATION FOR PERMISSION TO FILE AND BRIEF AMICUS CURIAE OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF REAL PARTY IN INTEREST

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To the Honorable Chief Justice of the Supreme Court of the State of California

The Criminal Justice Legal Foundation (CJLF) respectfully applies for permission to file a brief amicus curiae in support of Real Party in Interest pursuant to rule 8.520(f) of the California Rules of Court.[1]

Applicant's Interest

CJLF is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest.

1. No party or counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae CJLF made a monetary contribution to its preparation or submission.

CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

In the present case, the Legislature unconstitutionally amended the statutory provisions of Proposition 57, the Public Safety and Rehabilitation Act of 2016, when it eliminated a District Attorney's ability to file a motion to transfer a violent 14 or 15 year old to adult court for prosecution as an adult. The Legislature's actions are contrary to the interests CJLF was formed to protect.

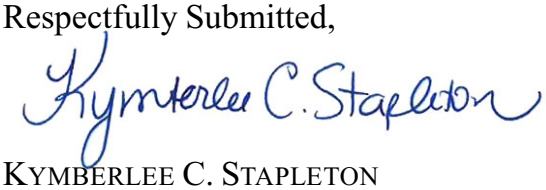
Need for Further Argument

CJLF is familiar with the arguments presented on both sides of this issue and believes that further argument is necessary.

The brief is submitted with this application and ready for immediate filing. The attached brief brings to the attention of the court additional authorities and argument relevant to the question presented.

July 6, 2020

Respectfully Submitted,



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SUMMARY OF FACTS AND CASE

Fifteen-year-old O.G. is accused of murdering two people on two separate occasions while in the company of gang cohorts—one victim was shot to death and the other was stabbed to death. (*O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, 628.) The Ventura County District Attorney's Office ("D.A.") sought to prosecute O.G. as an adult and, pursuant to Proposition 57, filed a motion to transfer O.G. from the jurisdiction of the juvenile court to the superior court. (*Ibid*.)

The trial court, over O.G.'s objection, granted the D.A.'s motion to refer O.G.'s case to the probation department to commence work on a transfer report. O.G.'s objection was based on the grounds that effective January 1, 2019, Senate Bill No. 1391 (2017-2018 Reg. Sess.) (Stats. 2018, ch. 1012, § 1) ("SB 1391") repealed the authority of the D.A. to make such a motion. The

trial court disagreed with O.G. and expressly found that SB 1391 amounted to an unconstitutional amendment of Proposition 57. (*Ibid*.)

O.G. petitioned for extraordinary relief. The Court of Appeal issued a stay and an order to show cause why O.G.'s petition should not be granted. The Court of Appeal agreed with the trial court holding that SB 1391 is "unconstitutional insofar as it precludes the possibility of adult prosecution of an alleged 15-year-old murderer." (*Ibid*.) The Court of Appeal lifted the stay and denied O.G.'s petition.

This Court granted review on November 26, 2019.[2]

SUMMARY OF ARGUMENT

When a majority of California voters enacted Proposition 57, they gave sole authority to juvenile court judges to decide whether a juvenile age 14 and older should be transferred to adult criminal court. Some of the most violent and horrific crimes are committed by juveniles, and they cannot be adequately handled within the juvenile court system. Voters decided that juvenile court judges are in the best position to evaluate each juvenile delinquent on a case-by-case basis and, after a full evidentiary hearing, decide if a juvenile age 14 and older should be prosecuted as an adult.

The California Constitution places strict limits on the Legislature's ability to amend or repeal voter-enacted law without voter approval. Like many initiatives, Proposition 57 expressly authorized the Legislature to make amendments so long as they are "consistent with and further the intent" of the measure. When the Legislature enacted SB 1391 and repealed the D.A.'s

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2. This Court granted review in seven other cases presenting the same issue, designated this case as lead, and is holding them pending resolution of this case. (*People v. Superior Court (G.G.)* (S259048); *People v. Superior Court (I.R.)* (S257773); *People v. Superior Court (S.L.)* (S258432); *People v. Superior Court (T.D.)* (S257980); *B.M. v. Superior Court* (S259030); *Narith S. v. Superior Court* (S260090); *People v. Superior Court (D.C.)* (S261903).)

authority to seek a transfer of violent and dangerous 14- and 15-year-old offenders to adult court, they disregarded the express limitation placed upon them by the electorate. Voters demanded that any legislative amendments to the act be consistent with and further the intent of the measure. Instead, SB 1391 significantly changed the statutory provisions of Proposition 57 and are therefore unconstitutional.

ARGUMENT

I. Juvenile court judges continue to hold the ultimate authority to decide whether violent juvenile delinquents should be transferred to adult court.

When California voters went to the election polls on November 8, 2016, they were tasked with voting upon 17 different ballot propositions. (See Voter Information Guide, Gen. Elec. (Nov. 8, 2016) ("2016 Voter Guide").) Electors considered issues relating to gun control, the death penalty, tobacco taxes, single use plastic bags, early parole, and juvenile justice. (*Id*. at p. 3.) Proposition 57, the Public Safety and Rehabilitation Act of 2016, was one of 12 initiative measures enacted by a majority of California voters that day. (See Statement of Vote, Gen. Elec. (Nov. 8, 2016) statement of vote summary pages, p. 12, https://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf.) Proposition 57 encompassed both a constitutional amendment and statutory revisions. The measure added article I, section 32, to the California Constitution and increased parole eligibility for state prisoners who were convicted of a "nonviolent felony offense." The measure also made significant changes to Welfare and Institutions Code sections 602 and 707—the process by which juvenile delinquents are transferred to adult criminal court.[3] (2016 Voter Guide, *supra*, text of Prop. 57, pp. 141-145.)

It is undisputed that the law governing who holds the authority to decide whether a delinquent juvenile will be prosecuted as an adult has fluctuated

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3. This brief addresses only the statutory changes made to the juvenile transfer process.

over the last 20 years. History shows, however, that the juvenile court's authority has remained static in those cases initially filed in juvenile court. For good reason, juvenile court judges, who are highly trained in the law relating to juveniles and families, continue to hold the responsibility of deciding whether a delinquent minor should remain in juvenile court or be transferred to adult court.

A. Minors Prosecuted as Adults.

In California, each county contains only one superior court that has subject matter jurisdiction over both criminal and civil matters. (*In re Harris* (1993) 5 Cal.4th 813, 837; see Cal. Const., art. VI, § 10.) The juvenile court and the criminal court are both divisions of the superior court. (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 548, fn. 3.) The juvenile court is a creature of statute that exercises statutory authority over people under 18 years old. (*Ibid.*; Welf. & Inst. Code, § 245.)

As a general rule, when a minor commits a crime, the juvenile court exercises delinquency jurisdiction and the minor is subject to juvenile court law. (*Manduley, supra,* 27 Cal.4th at p. 548; Welf. & Inst. Code, §§ 602, 603.) Juveniles possess no constitutional right to have their delinquency cases heard in juvenile court. (*Hicks v. Superior Court* (1995) 36 Cal.App.4th 1649, 1658.) In certain circumstances, juveniles can be prosecuted as adults. (See *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305.)

Prior to the enactment of Proposition 57, California law authorized three separate avenues by which juveniles between the ages of 14 and 17 years old could be prosecuted as adults under general criminal law. (*Manduley*, *supra*, 27 Cal.4th at pp. 544-545, 549-550; *People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994, 997-998.) Two avenues involved direct filing in criminal court, either mandatory by statute or at the discretion of the prosecutor. (*Alexander C.*, *supra*, at p. 997.) The third avenue provided a checkpoint with thorough investigation, a hearing, and a discretionary decision by a judge before the juvenile could be waived to adult court. (*Ibid*.)

In regard to the two direct routes, juveniles age 14 and older who personally committed violent crimes, such as murder with special circumstances, or personally committed an enumerated "one strike" aggravated sex offense were statutorily waived to adult court and were *required* to be tried as adults. (*Juan G. v. Superior Court* (2012) 209 Cal.App.4th 1480, 1489.) Furthermore, under former Welfare and Institutions Code section 707, subdivision (d), prosecutors were given the sole discretion to directly file charges in adult criminal court against juveniles ages 14 and older who committed certain enumerated serious crimes. (*Manduley*, *supra*, 27 Cal.4th at p. 545.)

The third and final avenue in which a delinquent juvenile could be prosecuted as an adult was at the discretion of a juvenile court judge only after a full evidentiary hearing. The rules governing this checkpoint were first enacted by the Legislature in 1975. (*Lara, supra*, 4 Cal.5th at p. 305.) For over 45 years, juvenile court judges have been given the statutory authority to evaluate whether a minor should remain in juvenile court or be transferred to adult court. (*Ibid.*) The minimum age was lowered from 16 to 14 in 1995, and this was the law in effect when Proposition 57 was presented to the voters. (*Hicks, supra*, 36 Cal.App.4th at p. 1655, citing Cal. Stats. 1994, ch. 453, § 9.5 (AB 560).)

Voters were cognizant of these three avenues by which minors age 14 years and older could be prosecuted as adults when they went to the election polls on November 8, 2016. (2016 Voter Guide, *supra*, analysis of Prop. 57 by Legis. Analyst, p. 55; see also *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 934 ["we generally presume electors are aware of existing law"].) The "measure require[d] a judicial transfer order before a minor [could] be prosecuted as an adult and *set*[] *age limits for such a transfer*." (*Brown v. Superior Court* (2016) 63 Cal.4th 335, 351, italics added.) On election day, voters evaluated and considered the entire text of Proposition 57 and a majority of voters decided to "[r]equire a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (2016 Voter Guide, *supra*, text of Prop. 57, § 2, p.141.)

Voters eliminated the two direct routes to adult court because they " 'expressly determined' that the former system of direct filing was 'too severe.' " (*Lara, supra*, 4 Cal.5th at pp. 308-309, quoting *People v. Vela* (2017) 11 Cal.App.5th 68, 77-78.) Juvenile court judges were given the sole authority to decide whether a juvenile offender " 'is unfit for rehabilitation within the juvenile court system.' " (*Ibid*.)

B. "Typical" Juveniles.

When violent crimes such as murder, robbery, or forcible rape are committed, it is the D.A.'s job as public prosecutor to investigate and gather evidence relating to those criminal offenses. (*People v. Eubanks* (1996) 14 Cal.4th 580, 589.) Deciding who to charge and what charges to bring is one of the most important and closely protected prosecutorial functions. (*Ibid*.; *People v. Birks* (1998) 19 Cal.4th 108, 134.) All criminal prosecutions are conducted on behalf of the people. (Gov. Code, § 26500.) The "people" not only encompass the victim and law enforcement, but also the defendant and his or her family, plus state citizens who blindly rely on the D.A.'s Office to protect their safety and ensure that justice will be served. (*Eubanks*, *supra*, at pp. 589-590.)

When a violent crime is committed by a juvenile, the D.A. is presented with the very difficult decision regarding how to proceed. For the "typical" juvenile, the juvenile justice system best deals with behaviors that are common to most juveniles. This "system" includes police officers, probation officers, prosecutors, social workers, court staff, schools, and community organizations who each exercise individual "responses to delinquent behavior . . . ." (Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge* (1992) 43 Juv. Fam. Ct. J. 1, 8.)[4] For a great majority of juveniles who commit

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4. "A juvenile may be arrested for either violating a criminal statute or committing a status offense. Status offenses are acts that are offenses only when committed by a juvenile, such as curfew violations, truancy, running away, and incorrigibility.
. . .

delinquent acts, their cases are resolved informally outside of court (see *id*. at p. 8) because "[o]nly the most serious cases should reach the juvenile court." (*Id*. at p. 27.)

For cases that do demand court intervention, each "system" participant plays a "role at the different stages, including detection, intake, investigation, prosecution, adjudication, supervision, placement and treatment." (Edwards, *supra*, 43 Juv. Fam. Ct. J. at p. 10.) Furthermore, treatment programs designed for the "typical juvenile" are used to "preserve and strengthen" family ties and provide guidance to "enable him or her to be a law-abiding and productive member of his or her family and the community." (Welf. & Inst. Code, § 202, subds. (a), (b); see also *In re Julian R.* (2009) 47 Cal.4th 487, 496 ["Juvenile proceedings continue to be primarily rehabilitative . . ."].)

However, " 'juvenile' is a staggeringly broad term" and all juveniles should not be lumped together as one. (Lerner, *Juvenile Criminal Responsibility: Can Malice Supply the Want of Years?* (2011) 86 Tulane L.Rev. 309, 310.) It is no doubt true that many "hallmark features" of youth include immaturity, irresponsibility, vulnerability to peer pressure, impulsivity, and less understanding of the consequences of their actions. (See *Miller v. Alabama* (2012) 567 U.S. 460, 477.) However, to broadly conclude that all juveniles "cannot with reliability be classified among the worst offenders" is ludicrous. (See *Roper v. Simmons* (2005) 543 U.S. 551, 569, 598-600 (dis. opn. of O'Connor, J.).)

"[E]ven if everything said about the adolescent brain and juvenile immaturity is generally true, why would one assume that juveniles who commit heinous crimes are typical juveniles?" (Lerner, *supra*, 86 Tulane

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"The law enforcement disposition of a juvenile arrest is affected by several variables: investigative findings and the facts surrounding the alleged offense; prior arrest record; seriousness of the offense; determined need for admonishment; recourse to other authority; and other factors determined by the individual case." (Cal. Dept. of Justice, Juvenile Justice in California (2018) p. 1.)

L. Rev. at p. 332.) The 15 year old who commits " 'extraordinarily heinous '" murders cannot be equated to the 15 year old who shoplifted cigarettes or stole a car. (See *People v. Marsh* (2018) 20 Cal.App.5th 694, 696; see also *Kinkel v. Persson* (2018) 363 Or. 1, 417 P.3d 401; Lerner, *supra*, at p. 332.)[5]

When the focus is on categorizing all juvenile offenders as being generally less culpable, more amenable to rehabilitation, and thus less deserving of severe penalties, it pulls attention away from the appalling nature of the crimes committed by some of these juveniles and the danger they pose to the public. "[W]hat certain kinds of crimes suggest is that there are violent juvenile offenders—fortunately rare—who are as least as mature and culpable as the typical adult violent offender." (Lerner, *supra*, 86 Tulane L.Rev. at p. 314.)

Proposition 57 mandates that *all* allegations of criminal conduct against a minor be initiated in juvenile court regardless of the severity of the offense. The act ensures that all juvenile delinquents will start out on the same playing field. If the offense is committed by a 14 or 15 year old *and* the offense is one of the significant crimes enumerated in Welfare and Institutions Code section 707, subdivision (b)(1)-(30), the act gives the D.A. the option to keep the case in juvenile court or seek a transfer to adult court. On a case-by-case basis and

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5. In *Marsh*, "the teenaged defendant (one month shy of his 16th birthday) stalked a Davis neighborhood at night and randomly selected the home of the two victims to satisfy a long-standing (and oft-expressed) desire to kill, after which he mutilated their bodies." (20 Cal.App.5th at p. 697.) In *Kinkel*, the 15-year-old defendant "shot his father once in the head . . . [then] shot his mother five times in the head and once in the heart." (363 Or. at p. 4, 417 P.3d at p. 403.) The next morning Kinkel drove to his high school wearing a trench coat, under which he concealed three guns. He walked into the school, shot several fellow students in the head, then went on a horrendous shooting spree, killing 2 and wounding 26 others. (*Id*. at pp. 4-6, 417 P.3d at p. 403.) Marsh and Kinkel are just two examples of many 14- and 15-year-old offenders who have committed horrific crimes and in no way could be considered "typical" juveniles. (See also Answer Brief on the Merits 45, fn. 7.)

after careful review, the D.A. may believe that a 14 or 15 year old who committed one or more extremely serious crimes may be best dealt with in adult court.

C. Juvenile Court Judge as Gatekeeper.

If the D.A. decides to file a motion to transfer, "the juvenile court shall order the probation officer to submit a report on the behavioral patterns and social history of the minor." (Welf. & Inst. Code, § 707, subd. (a)(1).) The purpose of the report is to inform the judge of "matters material to the issue of fitness." (*Raul P. v. Superior Court* (1984) 153 Cal.App.3d 294, 299-300.) The information in the report must be "relevant to the determination of whether" the juvenile should remain in juvenile court or be transferred. (Cal. Rules of Court, Rule 5.768(a).) It is intended to help the court view the full picture of the juvenile's life and reach "beyond the circumstances surrounding the offense itself." (*Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 714; *People v. Self* (1998) 63 Cal.App.4th 58, 63.)

Victims have the right to submit an impact statement in all juvenile court proceedings. (Welf. & Inst. Code, § 656.2, subd. (a)(1).) If the victim exercises this right, the statement must be included in the probation officer's report. (*Ibid*.; *id*. § 707, subd. (a)(1); Cal. Rules of Court, Rule 5.768(a).) If directed by the court, the probation officer must make a recommendation as to whether the juvenile should remain in juvenile court or be transferred. (Cal. Rules of Court, Rule 5.768(b).)

After receiving the probation report, a juvenile court judge must conduct a full evidentiary hearing in which the court must consider: (1) the degree of the juvenile's criminal sophistication; (2) whether he or she is amenable to rehabilitation; (3) the juvenile's prior delinquent history; (4) whether any success resulted from previous attempts at court ordered rehabilitation; and (5) the circumstances and gravity of the crime committed. (Welf. & Inst. Code, § 707, subd. (a)(3), criteria (A)-(E).)

When evaluating each of these five factors, the juvenile court is further guided by the specific criteria specified in Welfare and Institutions Code section 707, subdivision (a)(3). For example, when the court is considering the degree of the juvenile's criminal sophistication, the court is able to weigh the juvenile's "age, maturity, intellectual capacity, and physical, mental, and emotional health . . . impetuosity, or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure . . . and the effect of the minor's family and community environment and childhood trauma . . . ." (Welf. & Inst. Code, § 707, subd. (a)(3), criteria (A)(ii).)

When considering the juvenile's previous delinquent history, the court can evaluate the seriousness of that history "and the effect of the minor's family and community environment and childhood trauma . . ." (Welf. & Inst. Code, § 707, subd. (a)(3), criteria (C)(ii).) Further, when evaluating the circumstances and gravity of the offense committed, the court may evaluate the juvenile's "actual behavior . . . mental state . . . degree of involvement in the crime, the level of harm actually caused . . . and the person's mental and emotional development." (Welf. & Inst. Code, § 707, subd. (a)(3), criteria (E)(ii).)

The burden is on the prosecution to prove by a preponderance of the evidence that a transfer is warranted.[6] (Cal. Rules of Court, Rule 5.770.) This "complex" procedure "does not involve an adjudication of guilt and does not directly result in confinement or other punishment." (*Edsel P. v. Superior Court* (1985) 165 Cal.App.3d 763, 776; see also *Lara*, *supra*, 4 Cal.5th at p. 313.) Rather, "its sole purpose 'is to determine 'whether [the] best interest of the child and of society would be served by the retention of the juvenile court

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6. The burden used to be on the juvenile to rebut a "presumption of unfitness." (*Manduley*, *supra*, 27 Cal.4th at pp. 548-549; see also *Hicks*, 36 Cal.App.4th at pp. 1656-1657.) Proposition 57 eliminated both the presumption and burden. (2016 Voter Guide, *supra,* text of Prop. 57, § 4.2, p. 144 [repealing former Welf. & Inst. Code, § 707, subd. (c), as amended by Stats. 2015, ch. 234, § 2 (SB 382), effective Jan. 1, 2016].)

authority over him or whether the juvenile under all the circumstances, should be transferred to be tried as an adult." (*Edsel P.*, *supra*, at p.776, quoting *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 718.)

> "Judges do not work in a vacuum. They learn of the situation facing children and their families from the legal proceedings, the reports from social service agencies, probation departments and from the parties and their attorneys. The quality of a judge's decision about children and their families is directly related to the quality of information the judge receives. Our legal system is built upon a process in which attorneys for the parties are given the duty to present evidence to the court and to test any evidence presented from other sources. From the different perspectives of the parties, the court is able to determine what happened and what should be done." (Edwards*, supra*, 43 Juv. Fam. Ct. J. at p. 26.)

If, after full consideration of all five factors *plus* any other relevant evidence submitted by the juvenile or the D.A., the juvenile court judge orders the matter transferred, the court must recite the basis for its decision in an order on the record. (Welf. & Inst. Code, § 707, subd. (a)(3); Cal. Rules of Court, Rule 5.770(c).)

Since Proposition 57 went into effect, D.A.'s have exercised their authority to request a transfer hearing sparingly in cases involving eligible 14- and 15-year-old offenders. In 2017, out of 255 total transfer hearings reported, only 13 of them were for 15 year olds and two were for 14 year olds. (Cal. Dept. of Justice, Juvenile Justice in California (2017) table 27, p. 86.) Of those combined fifteen reported transfer hearings for the two age groups, *none of them* were transferred to adult court by a judge. (*Ibid.*) In 2018, the numbers were even lower. Out of the 161 total transfer hearings reported, only four were for 15year olds and another four were for 14 year olds. (Cal. Dept. of Justice, Juvenile Justice in California (2018) table 27, p. 86.) Similar to the year before, of those eight combined reported transfer hearings between the two age groups, *none were transferred* to adult court. (*Ibid*.)

"The decision [to transfer] rests in the sound discretion of the juvenile court." (*Jimmy H., supra*, 3 Cal.3d at p. 715.) Juvenile court judges throughout California exercised this discretion and, in 2017 and 2018, did not transfer

any 14 or 15 year olds to adult court. The lack of transfers during this two-year period evidences the fact that juvenile court judges thoroughly reviewed each of these 14 and 15 year olds on case-by-case basis and decided that the juvenile justice system would best handle their individual needs. This is not to say, however, that all 14- and 15-year-old offenders should remain in the juvenile system. Juvenile court judges understand that some 14 and 15 year olds cannot be adequately handled within the juvenile system. The juvenile court's decision to transfer is not taken lightly and evidence adduced at the hearing must be substantial. (*Ibid.*) Proposition 57 acts as a safety net in cases involving those rare juveniles who are extremely violent and dangerous.

Judges are cognizant of the fact "that the process of certifying a juvenile for criminal proceedings is a critically important action affecting vitally important rights of juveniles." (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 718.) Thus, only after this "complex" multi-tiered evaluation procedure (D.A., probation officer, juvenile court judge) is complete can a juvenile's case be transferred to adult court and proceed under general criminal law. (See *Lara*, *supra*, 4 Cal.5th at p. 313.)[7] California voters explicitly endorsed the juvenile court's gatekeeping role when they voted Proposition 57 into law and required juvenile court judges to have the final say in whether a 14 or 15 year old accused of committing a serious crime should be tried as an adult.

II. The Legislature exceeded their authority to amend Proposition 57 when they enacted SB 1391.

Like many initiatives, Proposition 57 expressly authorized the Legislature to make amendments to the act so long as the amendments are "consistent with and further the intent of" the measure. (2016 Voter Guide, *supra*, text of Prop. 57, § 5, p. 145.) In late 2018, the California Legislature took advantage of this

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7. In *Lara,* this Court held that the judicial transfer process provisions of Proposition 57 were retroactive to all juveniles who had been directly charged in adult court and whose cases were not yet final. (4 Cal.5th at pp. 303-304.)

opportunity and, under the guise of an amendment, invalidated the application of Proposition 57 to an entire class of juvenile delinquents. Senate Bill 1391 prohibits the D.A. from seeking to transfer 14- and 15-year-old violent and serious offenders from the jurisdiction of the juvenile court to the adult court.[8] Such amendments are unconstitutional because they are not consistent with and do not further the intent of the act as understood by voters. In this case, the lower court correctly held that SB 1391 amounts to an unconstitutional overruling of the electorate insofar as it precludes a juvenile court judge from deciding whether a 15-year-old double murderer should be transferred to adult court. (*O.G.,* 40 Cal.App.5th at p. 628.)

A. The California Constitution Limits Legislative Power.

In California, the electorate's power to enact legislation is generally coextensive with that of the state Legislature. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1042; see Cal. Const., art. IV, § 1.) Since 1911, California has stood out as a "hybrid republic that combines elected representatives with powerful direct democracy institutions." (Carrillo, et al., *California Constitutional Law: Popular Sovereignty* (2017) 68 Hastings L.J. 731, 735.) The power of the electorate to "propose statutes and . . . adopt or reject them" (see Cal. Const., art. II, § 8, subd. (a)) has been described by this court as " 'one of the most precious rights of our democratic process.' " (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591, quoting *Mervynne v. Acker* (1961) 189 Cal.App.2d 558, 563.)

When the people of California established our state government, they delegated to the Legislature "*plenary* legislative authority except as specifically limited by the California Constitution." (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 31, italics in original); see also *People v. Lynch* (1875) 51 Cal. 15, 27-28.) This court recognizes that our state

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8. SB 1391 contains a narrow exception for 14 and 15 year olds "not apprehended prior to the end of juvenile court jurisdiction." (Stats. 2018, ch. 1012, § 1.)

Constitution does not *grant* legislative power, but rather acts to *limit* legislative power. (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175; *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.)

The people explicitly limited the otherwise plenary legislative power in two ways. First, they expressly reserved to the electorate the power of initiative and referendum. (Cal. Const., art. IV, § 1; *Associated Homebuilders*, *supra*, 18 Cal.3d at p. 591 & fn. 5.) The reserved power of initiative and referendum was extended statewide when Senate Constitutional Amendment No. 22 was placed on the October 10, 1911 special election ballot by the Legislature as Proposition 7 and then adopted by a majority of the California electorate. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1035.) California is one of 21 states that authorize its electorate to propose and adopt statewide legislation by ballot initiative. (*Id*. at p. 1031 & fn. 23.)

Second, the people significantly limited the Legislature's ability to amend or repeal an initiative statute without voter approval. (Cal. Const., art. II, § 10, subd. (c).) "California's legislative drafters proposed, and the California voters ultimately adopted, a measure that—more strictly than any other state (then or now), . . . —withheld all independent authority from the Legislature to take any action on measures enacted by initiative, unless the initiative measure itself specifically authorized such action." (*Kelly*, *supra*, 47 Cal.4th at p. 1035.)

On its face, the "California Constitution divides the state's legislative power between the electorate and the elected legislature." (Carrillo, *supra*, 68 Hastings L.J. at p. 744.) With respect to enacting law, this shared power has been described as "coextensive." (See *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675.) However, in regard to *amending or repealing* voter-enacted law, this court has recognized that in effect "[t]he people's reserved power of initiative *is* greater than the power of the legislative body." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 715-716, italics in original.)

This greater power is not because the electorate can enact laws that the Legislature cannot (see *Deukmejian*, *supra*, 34 Cal.3d at p. 674), but rather

because of the strict constitutional limits the people place on the Legislature when they seek to amend or repeal initiative statutes. (*Rossi*, *supra*, 9 Cal.4th at pp. 715-716.) "This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature." (*Carlson v. Cory* (1983) 139 Cal.App.3d 724, 728.) As explained by this court, the Legislature acting alone in its legislative capacity cannot "bind future Legislatures" but "through the initiative power the people *may* bind future legislative bodies other than the people themselves." (*Rossi*, *supra*, at p. 715-716, italics in original.)

The strict limits placed upon the Legislature by article II, section 10, subdivision (c) of the California Constitution has been met with disdain by the Legislature since its inception. The Legislature began their quest to ease restrictions on their independent authority to directly amend or repeal voter enacted law as early as 1913. (*Kelly*, *supra*, 47 Cal.4th at pp. 1036-1037 & fn. 39, 1041-1042.) To this day, however, "California's bar on legislative amendment of initiative statutes" has remained relatively unchanged and "stands in stark contrast to the analogous constitutional provisions of other states." (*Id.* at p. 1030.)

An example of the electorate's elevated power was evidenced in *People v. Kelly*, *supra*, where this Court addressed whether the Legislature unconstitutionally amended Proposition 215 (The Compassionate Use Act of 1996). The voter approved act provided an affirmative defense to the prosecution of individuals for the crimes of possession and cultivation of marijuana for personal use upon physician recommendation or approval. (*Kelly*, *supra*, 47 Cal.4th at pp. 1012-1013.) The act did not specify the amount of marijuana an individual could possess or cultivate. Rather, it simply stated that it must be for "personal medical purposes." (*Id*. at p. 1013.)

Proposition 215's lack of specificity regarding the amount of marijuana an individual could possess or cultivate proved difficult for both patients and law enforcement. Proposition 215 did not contain a provision that granted authority to the Legislature to make amendments to the act. (*Id.* at pp. 1042-

1043.) As a result, the Legislature took it upon themselves to enact the Medical Marijuana Program in 2003 to better clarify the scope of Proposition 215. (*Id*. at p. 1014). Presumably because it lacked the authority to "literally amend" Proposition 215, the Legislature added 18 new code sections that addressed the general subject matter of the act. (*Ibid*.) One of the newly enacted legislative statutes prescribed a specific amount of marijuana that a "qualified patient" could cultivate or possess. (*Id.* at pp. 1016-1017). This court held that the quantity limits independently established by the Legislature amounted to an unconstitutional amendment of Proposition 215.

Kelly is instructive because it discusses in great detail the rich history that underlies California's strict prohibition upon the Legislature's ability to directly amend initiative statutes without voter approval, and how it differs greatly from other states. (47 Cal.4th at pp.1030-1042.) "[I]t has been suggested that . . . California's strict rule may have been motivated by fear that the Legislature 'would hastily tear down what the people have enacted through the initiative process . . . .' " (*Id.* at p. 1042, fn. 59, quoting Dubois & Feeney, Lawmaking by Initiative: Issues, Options and Comparisons (1998) p. 224.)[9]

B. Limited Authority to Amend.

As discussed previously, Proposition 215 did not include a provision that authorized the Legislature to directly make amendments to the act. (See *supra* at p. 23.) This court acknowledged that since the mid-1970's a great majority of initiatives *do* contain amendment provisions. (*Kelly*, *supra*, 47 Cal.4th at p. 1042 & fn. 59.) Voters have the absolute power to decide if they want to

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9. Article II, section 10, subdivision (c) "reflects both [California's] adherence to Lockean precepts and its profound, deeply rooted historical distrust of statewide governing institutions. Courts have uniformly explained this provision by reference to the near sacrosanct role that direct legislation plays in the California governmental system as a safety valve for direct participatory democracy." (Manheim & Howard, *Symposium on the California Initiative Process: A Structural Theory of the Initiative Power in California* (1998) 31 Loyola L.A. L.Rev. 1165, 1198.)

delegate some of their law-making authority to the Legislature by allowing them to directly amend initiative statutes after enactment without voter approval. (*Amwest Surety Ins. v. Wilson* (1995) 11 Cal.4th 1243, 1251.) If so allowed, this absolute power also encompasses the electorate's ability to place restraints on that delegated authority. (*Ibid*. ["subject to conditions attached by the voters"].) Proposition 57 is no exception. Uncodified section 5 of the act provides that,

> "This act shall be broadly construed to accomplish its purposes. The provisions of Sections 4.1 and 4.2 of this act may be amended so long as such amendments are consistent with and further the intent of this act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor." (2016 Voter Guide, *supra*, § 5, p. 145.)

Provisions authorizing legislative amendment vary greatly between initiatives. For example, it can give the Legislature broad, unrestricted authority to amend or repeal as it deems fit. (See, e.g., Voter Information Guide, Gen. Elec. (Nov. 2, 1954) text of Prop. 7, Part II—Appendix, p. 7.) It can simply require a vote that meets a certain percentage of the membership of each house to concur. (See, e.g., 2016 Voter Guide, *supra*, text of Prop. 66, § 20, p. 218.) Or, like in this case, it can mandate that an amendment further the purpose and/or intent of the initiative.

As explained by Real Party in Interest, including an amendment clause in an initiative is beneficial to the overall law-making process in the event of unforeseen drafting errors, to correct cross-referencing issues, or to clarify ambiguous terms that may arise after enactment. (Answer Brief on the Merits 25-26.) These types of amendments may "seem minor, but inability to correct such issues can have significant impacts on a statute's effectiveness." (*Ibid.*)

"An amendment is a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision." (*People v. Cooper* (2002) 27 Cal.4th 38, 44.) Article II, section 10, subdivision (c) prohibits the Legislature from amending Proposition 57 *unless* the amendments are consistent with *and* further the intent of the initiative. In this

case there is no question that the electorate placed strict conditions upon the Legislature's ability to make amendments to Proposition 57. Furthermore, there is no question that the Legislature exercised this delegated authority when they enacted SB 1391. The question for this court is whether the Legislature exceeded the limited authority they were given. (See *Amwest*, *supra*, 11 Cal.4th at p. 1253.)

The lower courts in this case relied heavily on *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, to conclude that SB 1391 unconstitutionally amended Proposition 57. (*O.G., supra*, 40 Cal.App.5th at pp. 629-630.) *Pearson* addressed whether a legislative enactment amended a voter approved initiative (Proposition 115). (48 Cal.4th at pp. 569-570.) Both parties in this case agree that SB 1391 amended the statutory provisions of Proposition 57. (See Opening Brief 25-26 & fn. 4; Answer Brief on the Merits 18-19.) Although *Pearson* is not as squarely on point as the Court of Appeal believed, it is still quite relevant. The Court of Appeal at page 630 quoted *Pearson* at page 571 for this proposition (alterations by the Court of Appeal): " 'In deciding whether this particular provision [Senate Bill 1391] amends Proposition [57], we simply need to ask whether it prohibits what the initiative authorizes, or authorizes what the initiative prohibits.' " That is also an important, perhaps controlling, question for deciding whether the legislative bill is "consistent with" the initiative. If SB 1391 prohibits what Proposition 57 authorizes, i.e., the exercise of judicial discretion in transferring a juvenile case to criminal court, then the two are not consistent.

This court has noted that amendment provisions are now commonly included because (1) experienced lawyers are increasingly being hired to draft more sophisticated measures; (2) the measures are becoming more complex; and (3) the Legislature generally respects the initiative process and will not seek to amend voter approved statutes "without at least the tacit approval of the proponents." (*Kelly*, *supra*, 47 Cal.4th at p. 1042, fn. 59, quoting Center for Governmental Studies, Democracy by Initiative: Shaping California's Fourth Branch of Government (2d ed. 2008) pp. 114-115.)

Because it is common for an initiative to authorize the Legislature to make amendments without voter approval, courts have been asked on several occasions to resolve whether the Legislature overstepped their bounds. (See *Amwest*, *supra*, 11 Cal.4th at p. 1251; see also *Gardener v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1369; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1366 ("*Garamendi*"); *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483.)

C. Purpose and Intent of Proposition 57.

Discerning voter intent requires the initiative to be viewed "as a whole." (*Amwest*, *supra*, 11 Cal.4th at p. 1257.) In so doing, courts are guided by evidence such as the express language of the initiative, its historical context, and the information provided to the electorate in the Voter Information Guide. (*Id.* at pp. 1256-1257; *Gardener,* 178 Cal.App.4th at p. 1374.) An initiative cannot be interpreted "in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less." (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114; see also *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 909.)

When voters enacted Proposition 57, they declared that their multifarious "Purpose and Intent" was to:

> "1. Protect and enhance public safety.
>
> "2. Save money by reducing wasteful spending on prisons.
>
> "3. Prevent federal courts from indiscriminately releasing prisoners.
>
> "4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
>
> "5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court. (2016 Voter Guide, *supra*, text of Prop. 57, § 2, p. 141.)

When the electorate enacted Proposition 57, they delegated to the Legislature the limited authority to make statutory amendments so long as they "are consistent with *and* further the intent" of the act. As explained by Real Party in Interest, this limitation encompasses two requirements—amendments must (1) be consistent with the act and (2) further the intent of the act. (Answer Brief on the Merits 26.) Examples given of amendments that could satisfy this clause as written include adjusted "procedures for filing, for holding transfer hearings via remote video technology, for distance supervision and programming, or for adding new tools to assess whether a minor is suitable for treatment in juvenile court or new programs for better rehabilitation." (*Ibid*.)

California legislators instead chose to make a sweeping change to Proposition 57, ignoring the declared purpose and intent of the electorate. SB 1391 was signed into law with the express purpose to "repeal the authority of a district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a specified serious offense when he or she was *14 or 15 years of age*." (Sen. Bill No. 1391 (2017-2018 Reg. Sess.) Stats. 2018, ch. 1012, Legislative Counsel's Digest, italics added.) SB 1391 even gratuitously declares that it is "consistent with and furthers the intent of Proposition 57" despite the fact that the bill gutted the statutory provisions of the act that are expressly applicable to certain 14 and 15 year olds. (SB 1391, § 3). The Court of Appeal found this to be a "self-serving statement designed to bolster the attempt to overrule the electorate. Whether the act can be so construed presents a legal question for the judiciary." (*O.G., supra*, 40 Cal.App.5th at p. 630.) The Legislature cannot enact amendments that "undercut and undermine a fundamental purpose" of an initiative "while professing that the amendment 'furthers ' " its purposes. (*Garamendi, supra*, 132 Cal.App.4th at p. 1371.)

Reviewing courts will presume the "Legislature acted within its authority . . . if, by any reasonable construction, it can be said that the" amendments further the purposes of the initiative. (*Amwest*, *supra*, 11 Cal.4th at p. 1256;

Garamendi, *supra*, 132 Cal.App.4th at p. 1371.) While true that any "limitation upon the power of the Legislature must be strictly construed," it is also important to remember that it "must be given the effect the voters intended it to have." (*Amwest*, at pp. 1255-1256, italics added.) Although the Legislature's power has been described as " 'practically absolute,' " "that power must yield when the limitation of the Legislature's authority clearly inhibits its action." (*Garamendi*, at p. 1371.) The Court of Appeal aptly noted that for purposes of this case "[i]t does not matter whether treating a 15-year-old alleged murderer as a juvenile is wise or unwise. That is not a judicial call. What is a judicial call is whether the Legislature may prohibit by statute what the electorate has previously authorized by initiative." (*O.G.*, *supra*, 40 Cal.App.5th at p. 629.)

Judicial review in a case like this one requires a careful balance to be employed between the competing interests. If too much deference is afforded to the Legislature, and not enough weight is given to the express restraints voters placed upon the Legislature, "drafters of future initiatives [may] hesitate to grant even limited authority to the Legislature to amend" initiatives. (*Amwest, supra*, 11 Cal.4th, at p. 1256.) Effective judicial review is needed to avoid this result. (See *ibid*.) As discussed, *supra*, prohibiting independent legislative authority to amend initiative statutes is the default rule in California. When the electorate enacted Proposition 57, they decided that juvenile court judges should have the exclusive authority to decide, after holding a full evidentiary hearing, if a juvenile offender should be transferred to adult court. "Proposition 57 maintained much of the status quo by leaving open the possibility that 14- and 15-year-old juvenile offenders would still be found unfit for juvenile court treatment and transferred to adult court. It merely changed *who* gets to make the decision." (*B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 770, fn. 5, italics added (dis. opn. of McKinster, J.), review granted Jan. 2, 2020, S259030, briefing deferred pending decision of the present case.)

Specific to juveniles, Proposition 57 expressly declared that its "purpose and intent" was to "[r]equire a judge, not a prosecutor, to decide whether

juveniles should be tried in adult court." (2016 Voter Guide, *supra*, text of Prop. 57, § 2, p. 141.) When the Legislature enacted SB 1391, they amended former section 707, subdivision (a)(1) so as to prohibit the D.A. from making a motion to transfer a 14 or 15 year old to adult court. This prohibition in turn prohibits a juvenile court judge from making the ultimate decision that was expressly granted to him or her by Proposition 57.

It is undisputed that Proposition 57 took unilateral decisionmaking authority away from the D.A. and placed it all with a judge. However, "[u]nder Senate Bill 1391, neither a prosecutor *nor a judge*, may decide whether 14- and 15-year old juveniles may be tried in adult court. Instead the *Legislature* has made the decision for 14- and 15-year old juveniles." (*People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360, 379, italics in original (dis. opn. of Poochigian, J.), review granted Nov. 26, 2019, S257980.) Article II, section 10, subdivision (c) was added to our state Constitution to " 'protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.' " (*County of San Diego v. Committee on State Mandates* (2018) 6 Cal.5th 196, 211, quoting *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597.) The Legislature substituted themselves into the role expressly given to a juvenile court judge by the electorate. Nowhere in the text of Proposition 57 or in the voter information materials is the Legislature given the authority to make this decision.

To the contrary, when "look[ing] to the materials that were before the voters" (*Robert L.*, *supra*, 30 Cal.4th at p. 905), the official title and summary section that was prepared by the Attorney General for Proposition 57, "[p]rovides *juvenile court judges* shall make determination, upon prosecutor motion, whether *juveniles ages 14 and older* should be prosecuted and sentenced as adults for specified offenses." (2016 Voter Guide, *supra*, p. 54, italics added.)

O.G. argues that the "major and fundamental intent" of the act "was to reduce the number of minors who would be prosecuted as adults, with a

preference for rehabilitation within the juvenile system." (Opening Brief 40.) Because SB 1391 prohibits the transfer of 14- and 15-year-old offenders, fewer juveniles will be prosecuted as adults and will instead receive rehabilitative services. According to O.G. this result is consistent with and furthers the intent of Proposition 57. (*Ibid*.)

Reducing the number of juveniles in adult court and focusing on rehabilitation within the juvenile court system was no doubt a key goal of Proposition 57. However, as Real Party in Interest pointed out, it is not acceptable to designate one or more stated purposes of the act as " 'primary' 'major' or even 'fundamental' . . . and ignore other manifest intents and purposes." (Answer Brief on the Merits 28.) Proposition 57 must be "liberally construed to effectuate its purpos*es*." (2016 Voter Guide, *supra*, § 9, p. 146, italics added.)

This Court must "interpret the statutory language that the electorate actually wrote." (*People v. Orozco* (2020) 9 Cal.5th 111, 123.) Liberally construed, the express *intent* of Proposition 57 was to require a full evidentiary hearing in which only a juvenile court judge could evaluate every eligible 14, 15, 16, or 17 year old on a case-by-case basis to determine if a transfer to adult court is warranted. In that evaluation, the judge must consider the "[s]uccess of previous attempts" at rehabilitation and whether he or she "can be rehabilitated prior to the expiration of the juvenile court's jurisdiction." (2016 Voter Guide, *supra*, text of Prop. 57, § 4.2, p. 142.) The judge must also consider public safety when evaluating the eligible juvenile's "previous delinquent history," "the degree of criminal sophistication," and "[t]he circumstances and gravity of the offense." (*Ibid.*) SB 1391 eliminates any consideration of public safety, contrary to the express terms of Proposition 57.

The electorate understood that the juvenile court judge is "[t]he most important person in the juvenile court." (See Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge* (1992) 43 Juv. Fam. Ct. J. 1, 25.) Not only is he or she highly trained in the law specific to juveniles, but "[b]eyond the law, the judge must be trained in theories of human development, family

dynamics, and available community resources." (*Id.* at p. 36.) By eliminating the two direct routes to adult court, and requiring a hearing in all eligible cases, the desired result was to see "fewer youths tried in adult court."

Evidence provided to voters that a juvenile court hearing in all eligible cases would help accomplish this desired result was provided by the Legislative Analyst's Office in the Voter Information Guide:

> "[r]elatively few youths are sent to adult court each year. For example, less than 600 youths were sent to adult court in 2015. Less than 100 youths were sent to adult court at the discretion of a judge based on a hearing. The remainder were sent to adult court automatically based on the seriousness of their crime or at the discretion of a prosecutor based on their crime and/or criminal history." (2016 Voter Guide, analysis by the Legis. Analyst, p. 55.)

As explained by the Legislative Analyst, in 2015 the great majority of juvenile cases were directly filed in adult court. In the cases in which a hearing was held by a juvenile court judge, less than 100 were transferred to adult court. Based on these numbers, the electorate was told that requiring a juvenile court hearing in *all* eligible cases (14 through 17 year olds) would result in fewer youth being tried as adults. When the Legislature enacted SB 1391 and eliminated the hearing requirement mandated by Proposition 57 for eligible 14 and 15 year olds, they absolutely "un[did] what the people have done, without [their] consent." (*County of San Diego*, *supra*, 6 Cal.5th at p. 211.)

It is evident from the language of the act itself and also from the ballot information materials provided to the electorate that determining whether a 14- or 15-year-old offender should remain in the juvenile court system is a judicial determination, and not a decision to be made by a blanket rule by the Legislature.

The electorate demanded that legislative amendments to the measure be consistent with and further the intent of the act. Voters relied upon the integrity of their elected representatives when they delegated to them the

limited authority to make amendments. Eliminating the D.A.'s ability to file a motion for a transfer hearing in juvenile court for an entire group of violent juvenile delinquents who are expressly included within the act's provisions is not consistent with, and does not further, the overall purpose and intent of the act, or the act as understood by voters. The Legislature was given an inch, but they took a mile. Because SB 1391 significantly altered the provisions of Proposition 57, the Legislature exceeded the authority they were given, and SB 1391 unconstitutionally amends Proposition 57.

CONCLUSION

The judgment of the Court of Appeal for the Second District should be affirmed.

July 6, 2020

Respectfully Submitted,

KYMBERLEE C. STAPLETON

Attorney for Amicus Curiae
Criminal Justice Legal Foundation

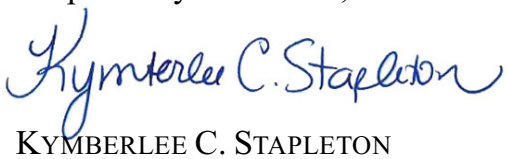
CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court,
Rule 8.520, subd. (c)(1)

I, Kymberlee C. Stapleton, hereby certify that the attached **APPLICATION FOR PERMISSION TO FILE AND BRIEF AMICUS CURIAE OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF REAL PARTY IN INTEREST** contains 8,285 words, as indicated by the computer program used to prepare the brief, WordPerfect.

Date: July 6, 2020

Respectfully Submitted,



KYMBERLEE C. STAPLETON

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PROOF OF SERVICE

The undersigned declares under penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, and employed by the Criminal Justice Legal Foundation, with offices at 2131 L Street, Sacramento, California 95816.

On July 6, 2020, I served true copies of the following document described as:

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Executed on July 6, 2020, Sacramento, California.

Kymberlee C. Stapleton

Kymberlee C. Stapleton

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Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S259011**
Lower Court Case Number: **B295555**

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7/6/2020

Date

/s/Kymberlee Stapleton

Signature

Stapleton, Kymberlee (213463)

Last Name, First Name (PNum)

Criminal Justice Legal Foundation

Law Firm