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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S223676 and S223825

THE PEOPLE, *Plaintiff and Respondent* v. CLIFFORD PAUL CHANEY, *Defendant and Appellant*	Court of Appeal, Third District No. C073949 Amador County Superior Court No. 05CR08104
and	
THE PEOPLE, *Plaintiff and Respondent* v. DAVID J. VALENCIA, *Defendant and Appellant*	Court of Appeal, Fifth District No. F067946 Tuolumne County Superior Court No. CRF30714

AMICI CURIAE APPLICATION AND BRIEF IN SUPPORT OF APPELLANTS CHANEY AND VALENCIA

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Pursuant to Rule 8.520(f) of the California Rules of Court, the Three Strikes Project at Stanford Law School respectfully submits this *amici curiae* application and accompanying brief in support of defendant-appellants in the cases *People v. Chaney*, No S223676, and *People v. Valencia*, No. S223825. On November 12, 2015, this Court granted leave to file a joint *amici* brief in both cases in light of the common issues involved.

INTERESTS OF AMICI CURIAE

Pursuant to California Rule of Court 8.520(f)(3), this application and brief is filed on behalf of the following, all of whom have an abiding interest in the outcome of this case.

A. George Gascón and Bill Lansdowne, proponents of Proposition 47

George Gascón is the District Attorney for the County of San Francisco. Bill Lansdowne is the former Police Chief of San Diego. Pursuant to California Elections Code section 9001(a), Mr. Gascón and Mr. Lansdowne were the official ballot proponents of the Safe Neighborhoods and Schools Act of 2014 ("Proposition 47").

B. David Mills, proponent of Proposition 36

David Mills is a professor at Stanford Law School. Pursuant to California Elections Code section 9001(a), Mr. Mills was the sole official ballot proponent of the Three Strikes Reform Act of 2012 ("Proposition

36").

Mr. Mills is also the co-founder of the Three Strikes Project at Stanford Law School and board chairperson of the NAACP Legal Defense and Educational Fund, Inc. ("LDF").[1] LDF was the official sponsor of the California campaign committee "Yes on 36, Three Strikes Reform," which advocated for passage of Proposition 36. The Three Strikes Project represented LDF in this effort and on behalf of LDF helped to draft both ballot measures at issue in this case. In addition, the Three Strikes Project provides *pro bono* legal representation to dozens of inmates who will be impacted by this case.

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[1] LDF is the nation's first civil rights law firm and was founded as an arm of the NAACP in 1940 by Charles Hamilton Houston and Thurgood Marshall to redress injustice caused by racial discrimination and to assist African Americans in securing their constitutional and statutory rights. LDF has a longstanding concern with racial discrimination in the administration of criminal justice and as counsel of record or *amicus curiae* cases involving race and criminal justice in state and federal courts.

QUESTIONS PRESENTED

Penal Code section 1170.18, which was enacted as part of Proposition 47, defines the phrase "unreasonable risk of danger to public safety" and states that its definition applies "[a]s used throughout this Code."

1. Does this definition apply to petitions for resentencing filed under Penal Code section 1170.126, which was enacted as part of Proposition 36?

2. If so, does the definition apply to petitions for resentencing under Penal Code section 1170.126 (Proposition 36), which were filed prior to the effective date Penal Code section 1170.18 (Proposition 47) but were not yet final at the time?

SUMMARY OF ARGUMENT

The official proponents of both voter initiatives at issue in this case all agree that the Court of Appeals decisions below were wrongly decided and contrary to the legislative intent of both measures. Of course, the subjective intent of three individuals, regardless of their positions, is not directly relevant to this Court's analysis of the legislative intent of statutes enacted by millions of California voters. Thankfully, all of the conventional

and well-settled rules of statutory interpretation unanimously support their position.

At stake here are the lives of several hundred prisoners serving indeterminate life sentences imposed under California's "Three Strikes and You're Out" for non-violent, non-serious offense. The Three Strikes Reform Act of 2012 (hereafter "Proposition 36") enacted Penal Code section 1170.126,[2] which established a procedure that allowed certain inmates serving Three Strikes sentences to petition Superior Courts for reduced sentences. Under this procedure an eligible prisoner was entitled to a reduced sentence unless a Superior Court determined that the prisoner remained an "unreasonable risk of danger to public safety." Cal. Penal Code § 1170.126(f). This standard was not defined in the statute. Nonetheless over 95 percent of prisoners eligible for new sentences under section 1170.126 were granted reduced sentences by the Superior Courts who determined their cases.[3] Despite these figures, different Superior

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[2] Hereafter, all statutory references are to the California Penal Code unless otherwise noted. This brief will dispense with the use of "subdivision" in referring to statutes, unless necessary to convey a point.

[3] *See* "Proposition 36 Progress Report: Over 1,500 Prisoners Released, Historically Low Recidivism Rate," Stanford Law School Three Strikes Project and NAACP Legal Defense and Educational Fund (April 2014), at 2 (reporting that "96 percent of petitions filed and adjudicated under Proposition 36 have been granted," according to data provided by the California Department of Corrections) *available at law.stanford.edu/wp-*

Courts in different counties appeared to be applying different processes and standards to resentencing petitions filed under section 1170.126.[4]

In 2014, California voters passed Proposition 47, which among other things codified a definition of the phrase "unreasonable risk of danger to public safety." Cal. Penal Code § 1170.18(c). According to this definition, "unreasonable risk of danger to public safety" means risk to commit a any violent and serious crime specified in section 667(e)(2)(C)(iv). *Ibid.* Proposition 47 further provided that the definition would apply "[a]s used throughout this Code." *Ibid.* The definition of dangerousness in section 1170.18 was specifically added to Proposition 47—and applied "throughout" the Penal Code to include cases filed under section 1170.126—in order to correct some of the problematic and inconsistent applications of Proposition 36 observed throughout the state at the time Proposition 47 was being drafted.[5] The definition of dangerousness in

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content/uploads/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf (hereafter "Proposition 36 Progress Report").

[4] *Id.* at 3 (reporting that in San Bernardino County, 95 percent of all Proposition 36 cases had been adjudicated by April 2014, while only 37 percent of cases in Los Angeles County had been adjudicated).

[5] *See* Proposition 36 Progress Report at 3; *see also* David Mills & Michael Romano, *The Passage and Implementation of the Three Strikes Reform Act of 2012*, 25 Fed. Sent'g Rep. 265, 268 (Apr. 2013) ("[T]he intent of Prop. 36 is that inmates will be entitled to new sentences in all but the rarest

section 1170.18 is therefore consistent with and furthers the proper application of section 1170.126 and Proposition 36.

The legal question before this Court is whether the specific definition of "unreasonable risk of danger to public safety" provided in section 1170.18 (Proposition 47) applies to cases for resentencing filed under section 1170.126 (Proposition 36).

Both Courts of Appeal below ruled that the definition of dangerousness in section 1170.18 does not apply to resentencing petitions filed under section 1170.126—albeit for different reasons. In *People v. Chaney*, 180 Cal. Rptr. 3rd 443, 446 (Oct. 29, 2014), a unanimous panel of the Court of Appeal for the Third District ruled that "the definition of 'unreasonable risk 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." The court apparently assumed (but did not decide) that the definition of "unreasonable risk to public safety" in section 1170.18 would apply to cases decided *after* the effective date of Proposition 47, *i.e.* November 5, 2014.

In *People v. Valencia,* 181 Cal. Rptr. 3rd 229 (Dec. 16, 2014), a divided panel of the Court of Appeal for the Fifth District ruled that the

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outlier cases involving true risks to public safety.").

definition of "unreasonable risk to public safety" in section 1170.18 *never* applies to petitions for resentencing filed under section 1170.126. The majority acknowledged that the language of section 1170.18 "clearly and unambiguously" applies throughout the Penal Code. *Id* at 237-38. However the majority concluded that applying the definition of dangerousness in section 1170.18 to resentencing petitions brought under section 1170.126 conflicted with the legislative intent of both provisions. *Id.* at 238-42.[6]

As discussed in more detail below, these decisions, and Respondent's arguments supporting them, are contrary to the most fundamental rules of statutory construction.[7]

First, there is no dispute in the *Valencia* and *Chaney* opinions or by Respondent that the phrase "[a]s used throughout this Code" in section 1170.18 is clear and unambiguous—and that it provides that the definition of dangerousness in Proposition 47 applies throughout the Penal Code. This

[6] Dissenting in part and concurring in part, Justice Pena argued that the retroactivity rule in *Chaney* should control. *Id.* at 246-48, n.3. Justice Pena criticized the majority's statutory interpretation, arguing that section 1170.18 "is so clear and unambiguous [that] there is no need for statutory construction or to resort to legislative materials or other outside sources," and that the dangerousness standard in section 1170.18 should therefore apply throughout the Penal Code, including to cases brought under section 1170.126—albeit prospectively only. *Valencia*, 181 Cal. Rptr. 3rd at 244-45.

[7] "[When] interpreting a voter initiative . . . , [courts] apply the same principles that govern statutory construction." *People v. Rizo*, 22 Cal. 4th 681, 685 (2000).

is where the analysis should have ended. "When language is clear and unambiguous, there is no need for construction and courts should not indulge in it." *People v. Overstreet*, 42 Cal. 3d 891, 895 (1986).

Second, failing to apply the definition of dangerousness in Proposition 47 would result in two different legal definitions of the exact same phrase—"unreasonable risk of danger to public safety"—which appears in both sections 1170.18 and 1170.126. As this Court has repeatedly held, "parallel language of . . . two [statutory] provisions [should] be construed identically." *Preferred Risk Mutual Ins. Co*, 21 Cal. 4th 208, 217 (1999).

Third, failing to apply the definition of dangerousness in section 1170.18 to petitions filed under section 1170.126 would render the words "[a]s used throughout this Code" meaningless. This is because, aside from section 1170.18, the only other place the phrase "unreasonable risk of danger to public safety" appears is in section 1170.126. The Court of Appeal decisions below and Respondent's argument therefore run afoul of the rule that "significance must be given to every word in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." *Agnew v. State Bd. of Equalization*, 21 Cal. 4th 310, 330 (1999).

Fourth, to the extent that the Court of Appeal decisions below and Respondent argue that voters were unaware of the new definition of dangerousness in section 1170.18 and did not truly intend the definition to apply "throughout" the Penal Code, including to cases filed under section 1170.126, the argument is counter to this Court's holding that "voters are deemed to be aware of existing laws . . . in effect at the time legislation is enacted." *People v. Weidert*, 39 Cal. 3d 836, 844 (1985).

Finally, as further explained below, if this Court agrees that voters meant what they said when they provided in section 1170.18 that the definition of dangerousness shall apply "throughout" the Penal Code, then this Court must also conclude that voters intended the definition to apply to cases filed under section 1170.126 prior to the effective date of Proposition 47. Respondent argues that voters intended the definition of dangerousness in section 1170.18 to apply "prospectively only" to petitions for relief under section 1170.126 filed after the effective date of Proposition 47. As Respondent is well aware, however, by operation of time limits in Proposition 36, this would result in a null set of actual petitioners receiving the benefit of the clarified definition of dangerousness in section 1170.18—an absurd result that this Court is bound to avoid, *see Clements v. T. R. Bechtel Co.*, 43 Cal. 2d 227, 233 (1954). As the majority opinion in

Valencia acknowledged, a "prospective-only" approach to section 1170.18 would also "raise serious, perhaps insurmountable, equal protection issues," *Valencia,* 181 Cal. Rptr. 3rd at 243, n. 25—another situation this Court is bound to avoid, *see People v. Superior Court (Romero)*, 13 Cal. 4th 497, 509 (1996) (holding that lawmakers do not intend to enact legislation that raises serious constitutional questions without explicitly raising such an intent).

For all of these reasons, this Court should follow the plain language of section 1170.18 and remand these cases for new resentencing hearings using the definition of "unreasonable risk of danger to public safety" enacted in Proposition 47.

STANDARD OF REVIEW

This Court independently reviews questions of statutory construction, *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524, 529 (2011), including the question of whether a statute applies retroactively, *see, e.g.*, *People v. Nasalga*, 12 Cal. 4th 784, 791-98 (1996) (independently reviewing the issue of retroactivity).

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ARGUMENT

I. THE DEFINITION OF "UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY" IN SECTION 1170.18 APPLIES TO PETITIONS FOR RESENTENCING UNDER SECTION 1170.126

The specific definition of "unreasonable risk of danger to public safety" provided in section 1170.18 was included in Proposition 47 following experience that different courts throughout the state were applying different meanings to the phrase when deciding resentencing petitions filed under section 1170.126. Proposition 47 further specified that the definition should apply "throughout" the Penal Code to bring consistency to the law, protect against outlier Superior Courts that subjected Proposition 36 petitioners to an unfair standard of dangerousness, and advance the basic goal of Proposition 36 to end life sentences imposed under the Three Strikes law for certain non-violent, non-serious offenders.[8]

Although courts generally apply identical rules of interpretation to statutes passed by ballot measures and statutes passed by the legislature, *see Rizo*, 22 Cal. 4th at 685, some commentators have argued that deciphering voter intent is "even more problematic than the traditional search for legislative intent," *see, e.g.*, Jane S. Schacter, *The Pursuit of "Popular*

[8] It is important to note that today, and in the future, offenders who meet the criteria in section 1170.126 may never be subjected to a life term, thanks to Proposition 36. *See* Penal Code §§ 667(e)(2)(C), 1170.12(c)(2)(C).

Intent": Interpretive Dilemmas in Direct Democracy, 105 Yale L.J. 107, 110 (1995). Given the challenge of deciphering the motives and intent of millions of voters, it is all the more important to strictly apply well-worn rules of statutory interpretation.

A. It is undisputed that the statutory language of section 1170.18 is clear and unambiguous

In *Valencia,* both the majority and dissenting opinions acknowledged that the language of section 1170.18 is clear and unambiguous. *Valencia*, 181 Cal. Rptr. 3d at 237, 246 ("The majority pays lip service to the plain meaning rule and then ignores it.") (J. Pena, dissenting in part). In *Chaney*, the court did not explicitly address the plain language issue, but nonetheless implicitly accepted the plain meaning of section 1170.18 in ruling that the section does not apply to cases decided before its effective date. *Chaney*, 180 Cal. Rptr. 3rd at 446. Even Respondent acknowledges that the "literal interpretation" of section 1170.18 indicates that its definition of "unreasonable risk of danger to public safety" applies throughout the Penal Code, including to resentencing petitions filed under section 1170.126. (*See Chaney* Respondent's Brief (hereafter "RB") at 33-34; *Valencia* RB at 26-27.)[9]

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[9] Prior courts have also previously held that the phrase "used in this code" is clear, unambiguous, and controlling. *See, e.g., Marshall v. Pasadena*

"If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524, 529 (2011). This Court has repeatedly held that "statutory language, of course, is the best indicator of legislative intent." *Adoption of Kelsey S.*, 1 Cal. 4th 816, 826 (1992). "[T]o justify departing from a literal reading of a clearly worded statute, the results produced must be so unreasonable the Legislature could not have intended them." *In re D.B.*, 58 Cal. 4th 941, 948 (2014); *see also Cassel v. Superior Court*, 51 Cal. 4th 113, 124 (2011).

B. Respondent is incorrect that the "different scopes" of Propositions 47 and 36 undermine the plain meaning of section 1170.18

Respondent's first argument that this Court should depart from the plain meaning of section 1170.18 is that the "differences in scope between [Propositions 36 and 47] support a interpretation of the new definition in Proposition 47 does not apply to Proposition 36 proceedings." (*Chaney* RB at 15-18; *Valencia* RB at 17-18.) Respondent argues that Proposition 36 applies "merely to a select group of California's worst criminals" while Proposition 47 applies in "the much less serious context of certain drug- and theft-related offenses." (*Ibid.*) Respondent reasons further that because

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Unified School District, 119 Cal. App. 4th 1241, 1255 (2004); *People v. Bucchierre*, 57 Cal. App. 2d 153 (1943).

Proposition 47 beneficiaries "as a class, are less dangerous" than Proposition 36 beneficiaries it is logical to apply different definitions of "unreasonable risk to public safety" to both groups. (*Ibid.*)

Putting aside this Court's obligation to refrain from questioning the logic of legislative policy, Respondent is incorrect on its own terms. The scopes of Proposition 36 and 47 are entirely consistent.

First, as discussed above, the scope and intent of Proposition 47, particularly section 1170.18, was to expand upon the resentencing mechanism first enacted by Proposition 36 in section 1170.126, clarify the standard of review, and expedite the release of prisoners who, had they been convicted after the initiatives passed, would automatically be subject to much shorter prison terms. Even Respondent acknowledges that "Proposition 47 modeled its mechanism for resentencing relief on the Proposition 36 resentencing scheme[.]" (*Valencia* RB at 20.) Respondent then makes the nonsensical argument that even though the relevant sections were modeled after each other, and share nearly identical language, and that section 1170.18 explicitly provides that the definition of dangerousness shall apply "throughout" the Penal Code, that voters nonetheless did not intend for section 1170.18 to apply to section 1170.126.

The fact that the language and structure of the resentencing procedures in section 1170.18 exactly mirror the resentencing procedures in section 1170.126, reflects the fact that the drafters of Proposition 47 and its proponents were well aware of Proposition 36 when the latter was written. Each statute uses the phrase "unreasonable risk of danger to public safety" in nearly identical ways. The statutes each provide that eligible prisoners may petition a trial court for a new sentence, and that the petitioner "shall" be resentenced, "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." *Compare* Penal Code §§ 1170.18(b), 1170.126(f). The statutes then each lay out the same three factors that a court may consider in exercising its discretion: the petitioner's criminal conviction history; the petitioner's disciplinary record and record of rehabilitation while incarcerated; and any other evidence the court determines to be relevant. *See* Penal Code §§ 1170.18(b), 1170.126(g).

It is well settled law and perfect logic that lawmakers intend identical statutory language to have identical meaning. *See Stillwell v. State Bar*, 29 Cal. 2d 119, 123 (1946); *Preferred Risk Mutual Ins. Co. v. Reiswig*, 21 Cal. 4th 208, 217 (1999).

Second, the phrase "unreasonable risk of danger to public safety" defined in section 1170.18 currently appears in only one other place in California law—in section 1170.126. Why would voters enact a definition of the phrase "unreasonable risk of danger to public safety" and then specifically provide that the definition applies throughout the Penal Code but not intend it to cover the only other instance it appears in the law?

Ignoring the phrase "[a]s used throughout this Code" in section 1170.18 would render the phrase meaningless, contrary to holdings from this Court that "significance must be given to every word in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." *Agnew v. State Bd. of Equalization*, 21 Cal. 4th 310, 330 (1999). If the definition in section 1170.18 were meant to only apply to section 1170.18, the statute would have instead read "[a]s used in *this section*. . . ." or "[a]s used throughout the Code, *except in section 1170.126*. . . ."

Third, Respondent's argument that Proposition 47 applies to a different and "less dangerous" scope of prisoner seeking resentencing has no basis in reality. By the State's own public safety risk analysis, the prisoners eligible for resentencing under Proposition 47 pose a *higher*

danger to public safety than those eligible for resentencing under Proposition 36.[10]

C. Respondent is incorrect that the different purposes of Propositions 47 and 36 undermine the plain meaning of section 1170.18

Respondent contends that the "literal construction [of section 1170.18] . . . does not comport with the stated purposes of Proposition 36 and Proposition 47"—and therefore should not be followed. (*Chaney* RB at 16-18; *Valencia* RB at 17-18.) According to Respondent, the primary purpose of Proposition 36 was to retool the Three Strikes law, while the primary purpose of Proposition 47 was to redirect financial resources from prison spending to a new fund supporting recidivism reduction measures. (*Chaney* RB at 16-17; *Valencia* RB at 17-18.)

Respondent is incorrect.

First, as a matter of law, "statutory language, of course, is the best indicator of legislative intent." *Adoption of Kelsey S.*, 1 Cal. 4th 816, 826 (1992); *see also Pineda*, 51 Cal. 4th at 529. As noted, even Respondent concedes that the "literal" interpretation of section 1170.18 applies to section 1170.126.

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[10] *Cf.* Proposition 36 Progress Report (reporting on recidivism rates of prisoners released under Proposition 36 compared to other cohorts of released prisoners.)

Second, the specific purpose of the specific legislation in question—section 1170.18—is nearly identical to the resentencing procedures in section 1170.126. The undeniable and singular purpose of both section 1170.18 and section 1170.126 is to provide a mechanism for resentencing prisoners based on their threat to public safety. Respondent's suggestion that voters intended to apply different definition to the exact same phrase, "unreasonable risk of danger to public safety," and different standards in deciding who should be released from prison and who should not, is itself unreasonable. *See Preferred Risk Mutual Ins. Co*, 21 Cal. 4th 208, 217 ("[P]arallel language of two [statutory] provisions [should] be construed identically.").

Any suggestion that voters did not intend the standard for dangerousness provided in section 1170.18 to apply to petitions filed under section 1170.126, or were unaware that Proposition 47 would impact cases brought under Proposition 36 is also contrary to this Court's precedent. When interpreting legislation enacted by ballot measure voters are "deemed to be aware of existing laws . . . in effect at the time legislation is enacted." *People v. Weidert*, 39 Cal. 3d 836, 844 (1985).

Third, the overarching purpose of Propositions 36 and 47 was the same: shorten sentences for nonviolent offenders. Voters were well aware

and informed that Proposition 47 shared the same policy goals, resentencing strategies, and even political opponents as Proposition 36. *See, e.g.*, Editorial, "Endorsement: Yes on Proposition 47," *Los Angeles Times* (Oct. 6, 2014); Editorial, "Prop. 47 will help California break cycle of crime," *San Jose Mercury News* (Sept. 25, 2014).

D. Respondent is incorrect that the campaign materials for Propositions 47 and 36 undermine the plain meaning of section 1170.18

Respondent next argues that ballot materials for Propositions 36 and 47 reflect legislative intent that the definition of "unreasonable risk to public safety" provided in section 1170.18 not apply to resentencing determinations under 1170.126. More specifically, the Attorney General argues that:

> The official ballot materials [for Proposition 47] 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.

(*Chaney* RB at 19; *Valencia* RB at 25.)

The *Valencia* majority opinion also argued that "nowhere in the ballot materials for Proposition 47 was it called to voters' attention" that the definition would apply to resentencing proceedings under section 1170.126

and "[v]oters cannot intend something of which they are unaware." *Valencia*, 181 Cal. Rptr. 3d at 242.

Both respondent and the *Valencia* majority are incorrect.

First, as a matter of law, this Court has held that no inference should be drawn from the failure of a ballot argument to list all of the changes the initiative would enact. *Santa Clara Cnty. Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220, 237 (1995) ("ballot arguments are not legal briefs."); *see also Delaney v. Superior Court*, 50 Cal. 3d 785, 802 (1990) ("The most reasonable inference is that the proponents chose to emphasize (in the limited space available for ballot arguments) what they perceived as the greatest need.")

Second, as a matter of fact, voters were on notice that section 1170.18 would apply "throughout" the Penal Code—because the official ballot information of course included the text of section 1170.18. *See* Voter Information Guide, Gen. Elec. (Nov. 4, 2014).

Third, voters were on notice because arguments published in the official ballot pamphlet published by the Secretary of State and distributed to all voters alerted voters that Proposition 47 would provide for resentencing of inmates currently in prison serving sentences imposed under the Three Strikes Law. The Argument Against Proposition 47 stated:

> *Prop. 47 will require the release of thousands of dangerous inmates.* Felons with prior convictions for armed robbery, kidnapping, carjacking, child abuse, residential burglary, arson, assault with a deadly weapon, and many other serious crimes will be eligible for early release under Prop. 47. These early releases will be virtually mandated by Proposition 47[.]

Voter Information Guide, Gen. Elec. (Nov. 4, 2014), Argument Against Proposition 47.

Fourth, during the ballot measure campaign outside organizations intending to flag important issues in ballot measures publicly explained that the Proposition 47 definition of dangerousness would apply to petitions under Proposition 36 and section 1170.126. For example, prior to the election, the Judicial Council of California published a memorandum, explaining:

> Proposition 47 would apply this new definition of the phrase "unreasonable risk of danger to public safety" as used throughout the Penal Code (§ 1170.18(c)), including the identical provisions under Proposition 36.

Judicial Council of California, Memorandum to Presiding Judges and Executive Officers Regarding Proposition 47: The Safe Neighborhoods and Schools Act (Oct. 24, 2014).

During the 2014 campaign, opponents of Proposition 47 argued that section 1170.18 would apply to section 1170.126. For example, the California District Attorneys Association notified voters that:

> [T]his new definition of "dangerousness" is not limited to only the types of offenders serving terms for crimes affected by this Act, but applies to any resentencing permitted by the Penal Code . . . As a result, the prosecution would face the impossible barrier when opposing resentencing for the Three Strikes defendants under Penal Code § 1170.126.

CDAA Looks at Proposition 47, Californians Against Prop. 47, *available at* californiansagainst47.com/about-proposition-47/.[11] Voters rejected these scare tactics.

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[11] The website "Vote No on Prop 47" also the posted the following:

> Prop 47 will release dangerous Three Strikes inmates. . . . Prop 47 would rewrite California law, including the Three Strikes Reform law, to give the term "unreasonable risk of danger to public safety" a very narrow definition. Under the Prop 47 definition, only an inmate likely to commit murder, rape, or a handful of other rare crimes . . . can be kept behind bars as a danger to public safety.

Prop 47 Facts, The Alliance for a Safer California, www.votenoprop47.org (last visited May 12, 2015).

Now that Proposition 47 has become law, they are arguing that it's "unreasonable" and "absurd" to suggest that the language of section 1170.18 applies to section 1170.126. They cannot have it both ways.

E. Respondent is incorrect that applying the definition of dangerousness provided in section 1170.18 to section 1170.126 would produce absurd results

Respondent finally argues that a "literal interpretation" to section 1170.18 would lead to unreasonable and absurd results because it would contravene the will of the voters by effectively "enact[ing] a drastic sea change to Proposition 36 in the waning moments of its relevance [by] grant[ing] relief to the majority of persons eligible to file a section 1170.126 petition." (*Valencia* RB at 26-27; *Chaney* RB at 33-34.)

Respondent again is incorrect.

Voters who enacted Proposition 36 always intended that the majority of petitioners eligible for resentencing would obtain relief. *See* J. Richard Couzens & Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law*, 54 & 58 (Judicial Council California, rev. Feb. 2015), *available at* http://www.courts.ca.gov/20142.htm (explaining that Proposition 36 includes "strong" language favoring release and that a court's discretion to deny petitions is "more narrowly proscribed" than

other situations); *also* Mills & Romano, *The Passage and Implementation of the Three Strikes Reform Act of 2012*, 25 Fed. Sent'g Rep. at 268.

In fact, even prior to Proposition 47, over 95 percent of eligible petitions adjudicated in Superior Courts had been granted. *See* Proposition 36 Progress Report at 2-3. Further, at the time Proposition 47 was enacted, it was clear that courts in different counties were applying different standards to processing and adjudicating Proposition 36 petitions. *Ibid.*

By enacting Proposition 47 and a definition of dangerousness in section 1170.18 to be applied "throughout" the Penal Code, voters intended to bring consistency to the law throughout the state. That meant not only applying a uniform legal standard but also ensuring that most prisoners eligible for resentencing under Proposition 36 were granted relief. Such an outcome is entirely consistent with the undeniable fact that the sentence reductions provided in Proposition 36 would apply all Three Strikes prosecutions in the future. *See* Penal Code §§ 667(e)(2)(C), 1170.12(c)(2)(C).

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II. THE DEFINITION OF "UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY" PROVIDED IN PROPOSITION 47 APPLIES TO PETITIONS FOR RESENTENCING UNDER PROPOSITION 36 PENDING AT THE TIME VOTERS ENACTED PROPOSITION 47

A. Voters intended section 1170.18 to apply to cases filed under section 1170.128 prior to the enactment of Proposition 47

This Court should only reach the question of whether section 1170.18 applies to cases filed after its enactment if the Court has already determined that voters intended the definition of dangerousness provided in section 1170.18 to apply "throughout" the Penal Code, including to cases filed under section 1170.126. It is unnecessary to reach the prospective/retroactive analysis if this Court determines that the definition of dangerousness provided in section 1170.18 never applies to section 1170.126.

If this Court rules that voters intended the dangerousness definition in section 1170.18 to apply to section 1170.126 cases, it surely follows that voters intended that the dangerousness definition to apply to cases filed under section 1170.126 that were not yet final when Proposition 47 was enacted. *See People v. Nasalga*, 12 Cal. 4th 784, 792 (1996) (holding that legislative intent is paramount in ascertaining whether a statute should be applied retroactively.)

It is well settled that lawmakers do not intend legislation to produce absurd results. *See Clements v. T. R. Bechtel Co.*, 43 Cal. 2d 227, 233 (1954). Failing to apply section 1170.18 to apply to section 1170.126 cases would produce absurd results for at least two reasons.

(1) Applying the section 1170.18 prospectively only would produce absurd results because it would establish different definitions of the phrase "unreasonable risk of danger to public safety" in different parts of the Penal Code

When voters enacted the definition of "unreasonable risk of danger to public safety" in section 1170.18 they provided that the definition should apply uniformly "throughout" the Penal Code. If the definition of dangerousness in section 1170.18 does not apply to petitions filed under section 1170.126 prior to the enactment of Proposition 47 then lower courts would face two different definitions of "unreasonable risk of danger to public safety," contrary to presumed legislative intent, *see Preferred Risk Mut.*, 21 Cal. 4th at 217 (courts should infer that lawmakers "intend[] the parallel language of the two . . . provisions to be construed identically.")

For the group of cases filed prior to the enactment of Proposition 47, Superior Courts would have wide and undefined discretion to decide what constituted an "unreasonable risk of danger to public safety" because section 1170.18 would not apply. For the group of cases filed *after* the

enactment of Proposition 47, Superior Courts would have a very specific definition of the term "unreasonable risk of danger to public safety," provided in section 1170.18.

This is particularly problematic for resentencing petitions filed by Three Strikes inmates under section 1170.126 (not coincidentally the only other place in the Penal Code that uses the phrase "unreasonable risk of danger to public safety"). Consider, for example, a petitioner sentenced to life under the Three Strikes law for a non-violent, non-serious crime who sought relief under section 1170.126 on November 4, 2014—the very day voters approved Proposition 47 and one day prior its effective date. Under Respondent's "prospective-only" theory, this petitioner's case would *not* be entitled to the benefit of the definition of dangerousness in section 1170.18. Yet if an identical prisoner filed for resentencing under section 1170.126 one day latter, on November 5, 2015, then the petitioner *would* be entitled to the benefit of the definition of dangerousness in section 1170.18.

Such a result is absurd, unreasonable, and, as the *Valencia* majority concluded, potentially unconstitutional. *Valencia*, 181 Cal. Rptr. 3rd at 243, n. 25. When deciphering legislative intent, it is well settled that courts should assume that lawmakers do not intend to enact legislation that raises

serious constitutional questions without explicitly raising such an intent. *See People v. Superior Court (Romero)*, 13 Cal. 4th 497, 509 (1996).

(2) Applying the section 1170.18 prospectively only would produce absurd results because the phrase "as used throughout this code" would only be effective for three days

If the definition of dangerousness provided in section 1170.18 applied only prospectively to cases filed after the enactment of Proposition 47 it would apply to cases filed under section 1170.126 for only three days—because the statute of limitations for filing petitions under section 1170.126 expired on November 7, 2014. This would be an absurd result because the definition would apply to a miniscule set of petitions (perhaps a null set) and render the phrase "[a]s used throughout this Code" in section 1170.18 virtually meaningless. (As previously noted, the phrase "unreasonable risk of danger to public safety" appears only in sections 1170.18 and 1170.126.)

Given that the voters specifically provided that the definition would apply "throughout this Code," it would be irrational for the provision to apply to an essentially null set—defendants who filed Proposition 36 petitions during a three-day window (November 5, 6 and 7, 2014). The Court should instead adopt the more sensible interpretation that section 1170.18 applies retroactively to all petitions that are not yet final.

B. As a matter of law, section 1170.18 is presumed to apply retroactively because it construes and clarifies section 1170.126

As a matter of law, a statute that merely clarifies, rather than substantively alters, existing law is presumed to apply retroactively. *Carter v. Cal. Dep't of Veterans Affairs*, 38 Cal. 4th 914, 922 (2006). One such circumstance is when "the amendment was enacted soon after controversies arose as to the interpretation of the original act." *Id.* at 923.

Section 1170.18 clarifies and construes the phrase "unreasonable risk of danger to public safety" in section 1170.126, which was not previously defined. After the enactment of Proposition 36, controversies arose regarding how to interpret the vague phrase "unreasonable risk of danger to public safety." *See generally* J. Richard Couzens & Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law*, 62 (Judicial Council California, rev. April 2, 2013) ("Because Proposition 36 did not further define that phrase, courts were given broad discretion to determine what degree of danger a particular petitioner may pose."). By enacting Proposition 47 voters resolved these controversies. Proposition 47's definition of "unreasonable risk of danger to public safety" provides clarity on how to interpret Proposition 36's dangerousness standard and reaffirms the statute's strong presumption in favor of resentencing, *see ibid.*

C. Because section 1170.18 mitigates punishment it is presumed to apply to cases pending on appeal at the time of its enactment under *In re Estrada*

In *In re Estrada*, 63 Cal. 2d 740 (1965), this Court held that laws mitigating punishment apply retroactively absent a savings clause that explicitly states otherwise. *Id.* at 748. Here, there is no doubt that there is no savings clause explicitly providing that section 1170.18 applies prospectively only. The question is whether section 1170.18 mitigates punishment.

Respondent argues that section 1170.18 does not mitigate punishment because it merely defines the phrase "unreasonable risk of danger to public safety." (*Chaney* RB 40-41; *Valencia* RB at 41-42.) Respondent nonetheless acknowledges that application of section 1170.18 to resentencing petitions filed under section 1170.126 will dramatically reduce many prisoners' sentences. (*Chaney* RB 26; *Valencia* RB at 34.)

In *Estrada*, the law in question reduced punishment for defendants convicted of an escape by eliminating the minimum period in custody before parole. 63 Cal. 2d at 744. The holding in *Estrada* was based on the premise that "[a] legislative mitigation of the penalty for a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law." *Id.*

at 745. The Court reasoned that it was therefore an "inevitable inference" that the Legislature intended that the new lighter penalty apply to every case that was not yet final. *Id.*[12]

Respondent counters that this case is closer to the situation in *People v. Brown*, 54 Cal. 4th 314, 325 (2012), in which this Court ruled that a statute that increased the rate at which inmates accumulated good conduct credits did *not* mitigate punishment and therefore applied prospectively only.

Brown is distinguishable from the current cases. In *Brown*, this Court explained that the legislature intended the good conduct credits to apply prospectively only because the statute could only accomplish its goal to influence behavior and incentivize good conduct once an inmate was aware of the incentive. 54 Cal. 4th at 327 (citing *In re Strick*, 148 Cal. App.

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[12] This Court has repeatedly reiterated the rule and logic of *Estrada*. In *In re Kirk*, 63 Cal. 2d 761 (1965), this Court held that a statute that increased the threshold for felony treatment of a theft crime applied retroactively. *Id.* at 763. In *People v. Tapia*, 53 Cal. 3d 282 (1991), this Court applied the *Estrada* rule to a statutory amendment that benefited defendants by adding additional elements for certain conduct to qualify as a special circumstance. *Id.* at 301. In *People v. Nasalga*, 12 Cal. 4th 784 (1996), this Court applied the rule to an amendment that mitigated an enhancement statute. *Id.* at 797-98; *see also People v. Rossi*, 18 Cal. 3d 295 (1976) (holding that a statute decriminalizing an act applied retroactively); *People v. Collins*, 21 Cal. 3d 208 (1978) (same).

3d 906 (1983)). In contrast, here there is no similar rationale for applying a provision that expands suitability for resentencing prospectively only.[13]

Here, Respondent argues that section 1170.18 does not reduce the punishment for a particular offense—it merely defines the appropriate standard for evaluating resentencing proceedings. (*Chaney* RB 40-41; *Valencia* RB at 41-42.) Yet elsewhere in its briefing, Respondent acknowledges that the definition of dangerousness provided in section 1170.18 expands the universe of petitioners entitled to a reduction of their Three Strikes sentence under section 1170.126. (*Chaney* RB 26; *Valencia* RB at 34.)

The resentencing procedures in section 1170.126 mitigate punishment for a specific category of defendants—those with two prior

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[13] In *Brown*, this Court affirmed what it stated in *Estrada*:

> This court's decision in *Estrada* . . . supports an important, contextually specific qualification to the ordinary presumption that statutes operate prospectively: When the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date.

Id. at 323 (footnote omitted).

strikes who are currently serving life sentences under the Three Strikes Law for non-violent, non-serious offenses. Within this group, certain defendants that were denied relief for posing an "unreasonable risk of danger to public safety" under an undefined application of that standard would be found suitable for resentencing if the judge applied 1170.18's more specific definition. In this way, section 1170.18 mitigates punishments for particular defendants.

The logic and reasoning of *Estrada* also apply to the instant action. As in *Estrada*, the definition in section 1170.18 represents the judgment that the former penalty of 25 years to life was too severe for these particular defendants and that a lighter punishment of a double sentence is sufficient to protect public safety. Once the voters made this judgment that the lesser penalty is sufficient, it should apply equally to all pending petitions.

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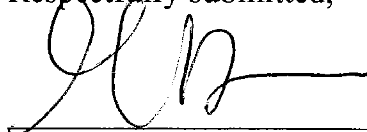
CONCLUSION

For the foregoing reasons, this Court should reverse the decisions below and remand both cases for new proceedings under section 1170.126 applying the definition of "unreasonable risk of danger to public safety" provided in section 1170.18.

DATED: December 17, 2015

Respectfully submitted,



By Michael S. Romano

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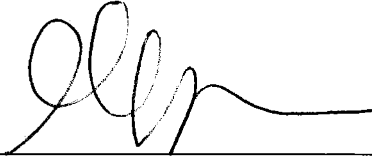
Dated: December 17, 2015



Michael S. Romano

PROOF OF SERVICE

Case nos. S223676 and S223825

SUSAN L. CHAMPION declares:

I am over the age of 18 years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On DECEMBER 17, 2015, in Stanford, California, I served the foregoing **AMICI CURIAE APPLICATION AND BRIEF IN SUPPORT OF APPELLANTS CHANEY AND VALENCIA** by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

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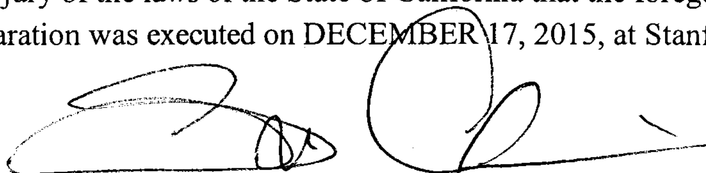
I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on DECEMBER 17, 2015, at Stanford, California.



SUSAN L. CHAMPION