IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner, No. _____

v.

SUPERIOR COURT, CONTRA COSTA COUNTY,

Respondent,

MICHAEL NEVAIL PEARSON,

Real Party in Interest.

First Appellate District, Division Five, No. A120430
Contra Costa County Superior Court No. 5-951701-2
The Honorable Leslie G. Landau, Judge

PETITION FOR REVIEW; STAY REQUESTED

ROBERT J. KOCHLY
District Attorney

DOUG MacMASTER
Deputy District Attorney
State Bar No. 130122

725 Court Street, 4th Floor
Martinez, California 94553
Telephone: (925) 957-2222

Attorneys for Petitioner

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner, **No. _____**

v.

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ISSUES PRESENTED

1. Is Penal Code section 1054.9 unconstitutional, as an invalid amendment of Proposition 115?

2. When Proposition 115's voters declared that "[n]o order requiring discovery shall be made in criminal cases except as provided in [the Criminal Discovery Statute] . . ." (Pen. Code, § 1054.5, subd. (a)), did they intend for "criminal cases" to enjoy its commonly understood meaning as reflected in other statutory and judicial sources, and as reflected elsewhere

within Proposition 115, or did they intend to limit that phrase to refer only to the pretrial and trial proceedings resulting in conviction or acquittal?

STATEMENT OF THE CASE

In 1996, the trial court sentenced Real Party (hereinafter "Defendant Pearson") to death for multiple murders. In 2007, he moved for post-conviction discovery under Penal Code section 1054.9. The People argued that section 1054.9 is an act in excess of the Legislature's amendatory powers. After the trial court overruled our objection and ordered discovery in Defendant Pearson's underlying criminal case, we sought a writ of mandate. On February 6, 2009, the Court of Appeal issued its opinion denying our petition.

REASONS FOR GRANTING REVIEW

Establishing that Penal Code section 1054.9 comprises an act in excess of the Legislature's amendatory powers is a matter of statewide importance to California's prosecutors. The voters' will – embodied within Proposition 115 – deserves protection from the unlawful encroachment that will occur if section 1054.9 is given effect despite the fact it received insufficient votes in the Legislature.

But even if this Court ultimately denies our challenge to section 1054.9, the People have a vital interest in ensuring that compulsory discovery remains unavailable in postconviction criminal proceedings such as motions for new trial, sentencing hearings, motions to withdraw pleas, probation revocation hearings, and motions to vacate judgment. We vehemently oppose any attempt by the defense bar and/or by the Attorney General to roll back Proposition 115's discovery provisions.

Both of these issues are currently before this Court in *Barnett v. Superior Court*, No. S165522. The People of the State of California, represented herein by the Contra Costa District Attorney, and the California District Attorneys Association, assert that Penal Code section 1054.9 is

invalid. In *Barnett v. Superior Court,* however, the Attorney General has chosen to argue in its defense.

The People undoubtedly would prefer a "grant-and-hold" (Cal. Rules of Court, rule 8.512, subd. (d)(2)), pending consideration and disposition of the issues in *Barnett v. Superior Court*, as opposed to an outright denial of review. We urge this Court, however, not only to grant review, but to consolidate the case before it with the proceedings in *Barnett v. Superior Court.* These two cases presents a unique situation, in that the Attorney General has staked out an appellate position diametrically opposed to the expressed interests of the vast majority of California's prosecutors. Nor can we recall two pending appellate cases wherein the People simultaneously challenged and defended the same statute. Consolidating these two cases, perhaps with an expedited briefing schedule in this case, will not delay appreciably the proceedings in *Barnett v. Superior Court.* The People believe that given the present posture of these two cases, it is especially important, not only that another voice be heard, but that the People receive full and complete representation before this Court on the two issues presented.

ARGUMENT

PENAL CODE SECTION 1054.9 AMENDED THE CRIMINAL DISCOVERY STATUTE

1. The Criminal Discovery Statute Governs All Criminal Proceedings

The Court of Appeal avoided Penal Code section 1054.9's invalidity by claiming it did not amend Proposition 115. It opined that the voters wanted to limit "criminal cases," as used repeatedly within Proposition 115, to pretrial proceedings. The Court of Appeal was mistaken. It confused compulsory disclosures within postconviction criminal proceedings (which Proposition 115 prohibits) with compulsory disclosures within postjudgment habeas proceedings (discovery orders issued within habeas proceedings fall outside Proposition 115's ambit).[1] The Criminal Discovery Statute governs reciprocal discovery geared toward trial, while at the same time prohibiting compulsory disclosures elsewhere in criminal proceedings, and this

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[1] The fact that the Criminal Discovery Statute, as originally enacted, does not govern habeas proceedings (*In re Scott* (2003) 29 Cal.4th 783, 813) does not alter its prohibition of compulsory disclosures within postconviction criminal proceedings.

prohibition extends to postconviction criminal proceedings. (Pen. Code, §§ 1054, subd. (e), 1054.5, subd. (a); *In re Littlefield* (1993) 5 Cal.4th 122, 129, italics added.)

The Court of Appeal ignored the well-established construction of "criminal cases," and tried, rather, to define that term by looking exclusively within the Criminal Discovery Statute. But the voters made no express attempt to define "criminal cases"; it needed no explicit statutory definition since it already enjoyed a well-established meaning within other legislative and judicial sources. At the time of Proposition 115's enactment, "criminal cases" already had a definitive judicial construction encompassing postconviction criminal proceedings.

The Court of Appeal arbitrarily disregarded this judicial construction, it ignored the voters' use of "criminal cases" elsewhere within Proposition 115 in a manner encompassing postconviction proceedings, and it overlooked the ballot arguments supporting the term's well-established construction. It ignored that this Court already has equated "criminal cases" with "criminal proceedings" when it interpreted that phrase within the Criminal Discovery Statute. "In *criminal proceedings* . . . all court-ordered discovery is governed exclusively by – and is barred except as provided by –

the discovery chapter newly enacted by Proposition 115." (*In re Littlefield, supra,* 5 Cal.4th at p. 129.)

The Court of Appeal compounded its errors by endowing "criminal cases" with an artificial interpretation that it has never received from the voters, from the Legislature, or from this Court. This erroneous definition impedes "the electorate's stated goals of reducing delay and unnecessary cost" (cf. *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 297), and it does serious violence to the interpretative goals that the voters established for the Criminal Discovery Statute. (Pen. Code, § 1054.)[2]

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[2] The Court of Appeal mistakenly proclaimed that nothing within the Criminal Discovery Statute refers to postconviction proceedings. In fact, Proposition 115's voters intended for "criminal cases" to encompass all criminal proceedings. So interpreted, three of the Criminal Discovery Statute's statements of purpose refer both to pretrial *and* postconviction proceedings.

"[N]o discovery shall occur in *criminal cases* except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States." (Pen. Code, § 1054, subd. (e), italics added.) "No order requiring discovery shall be made in *criminal cases* except as provided in [the Criminal Discovery Statute]." (Pen. Code, § 1054.5, subd. (a), italics added.) "[The Criminal Discovery Statute] shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys [in *criminal cases*]."

a) "Criminal Cases" Always Has Enjoyed a Well-Established Meaning Encompassing the Myriad of Criminal Proceedings That Occur Postconviction

Unable to cite a single instance where "criminal cases" ever has referred exclusively to the pretrial and trial proceedings resulting in conviction or acquittal, the Court of Appeal proclaimed that its own peculiar interpretation was "arguably the 'meaning that would be commonly understood by the electorate.'" That ludicrous notion unfairly impugns the electorate's intelligence. After all, the voters were concerned with speedy punishment as well as with speedy trials. They sought "to create a system in which justice is swift and fair, and . . . in which violent criminals receive just punishment." (Prop. 115, § 1, subd. (c).) Post-trial delay weighed just as much upon their consciousness as did pretrial delay.

The Court of Appeal's dim assessment of the electorate's knowledge contravenes the presumption that "[t]he enacting body is deemed to be aware of existing laws and judicial constructions in effect at time legislation is

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(*Ibid.*) By refusing to give criminal cases "its ordinary meaning as understood by the electorate" (cf. *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901), the Court of Appeal repeatedly ignored the Criminal Discovery Statute's statutory admonition that it must "be interpreted to give effect to *all* of [its] purposes." (Pen. Code, § 1054, italics added.)

enacted [and] [t]his principle applies to legislation enacted by initiative." (*People v. Weidert* (1985) 39 Cal.3d 836, 844.) "When an initiative contains terms that have been judicially construed, 'the presumption is almost irresistible' that those terms have been used 'in the precise and technical sense' in which they have been used by the courts." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 23; *In re Harris* (1989) 49 Cal.3d 131, 136; see also Pen. Code, § 7, subd. 16.)[3] For more than 150 years, criminal cases have encompassed postconviction proceedings such as motions for new trial,[4] sentencing hearings,[5] probation hearings,[6] and appeals.[7]

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[3] "[W]ords and phrases . . as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning." (Pen. Code, § 7, subd. 16.)

[4] Motions for new trials occur within criminal cases. (Cf. *People v. Hedgecock* (1990) 51 Cal.3d 395, 415 ["new trial motion in a criminal case"]; *People v. Serrato* (1973) 9 Cal.3d 753, 760 ["motion for a new trial in a criminal case"]; see also Cal. Const., former art. VI, § 4½ ["[n]o new trial [shall be] granted in any criminal case . . . unless . . . a miscarriage of justice [has resulted]"].)

[5] Sentencing proceedings occur within criminal cases. (Cf. *People v. Evans* (2008) 44 Cal.4th 590, 599 ["sentencing statute applicable to criminal cases generally"]; *People v. Allen* (1986) 42 Cal.3d 1222, 1292 ["proportionality of a particular punishment in criminal cases"]; *People v.*

The voters also knew that this Court's construction of "criminal cases" incorporated postjudgment criminal proceedings for challenging convictions in the trial court. (Cf. *People v. Paiva* (1948) 31 Cal.2d 503, 510 [motions to vacate judgment comprise "proceedings in the criminal case"]; *People v. Shipman* (1965) 62 Cal.2d 226, 231 ["coram nobis 'must be regarded as part of the proceedings in the criminal case . . .'"].) Thus Proposition 115's drafters and voters expected that their statutory language regarding criminal cases would govern motions to vacate judgment.

Tanner (1979) 24 Cal.3d 514, 531, fn 5 ["individualized sentencing in criminal cases"].)

[6] Probation revocation proceedings occur within criminal cases. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 912 ["petitioner's probation in the criminal case was revoked and he was sentenced to prison"]; *In re Armstrong* (1981) 126 Cal.App.3d 565, 569 ["probation revocation proceeding in a criminal case"].)

[7] Criminal cases encompass appeals. (Cf. *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 123, 124 [declaring "this is not a criminal case" where proceedings pertained to matter not cognizable in death sentence appeal]; *In re Benoit* (1973) 10 Cal.3d 72, 77 ["appeals in criminal cases"]; *People v. Williams* (1861) 18 Cal. 187, 194 [limitation on appellate courts' "power in criminal cases to affirm a judgment"]; see also Cal. Const., former art. VI, § 4½ ["[n]o judgment shall be set aside . . . in any criminal case . . . unless . . . a miscarriage of justice [has resulted]"].)

"[C]oram nobis is exercised by a . . . motion to set aside a judgment after the time for appeal has expired and the judgment has become final." (Cf. *People v. Paiva, supra,* 31 Cal.2d at p. 510.) "[C]oram nobis 'must be regarded as part of the proceedings in the criminal case . . .' and it is an established remedy for challenging a criminal conviction." (*Ingram v. Justice Court for Lake Valley Judicial Dist. of El Dorado County* (1968) 69 Cal.2d 832, 843; *People v. Shipman* (1965) 62 Cal.2d 226, 231.) "[A] writ of coram nobis is properly regarded 'as a part of the proceedings in the case to which it refers' rather than as 'a new adversary suit.'" (*People v. Paiva, supra,* 31 Cal.2d 503, 509.) "[A] motion to set aside a judgment of conviction is considered a part of the criminal case . . ." (*People v. Kraus* (1975) 47 Cal.App.3d 568, 573.)

From California's inception, "criminal cases" encompassed all criminal proceedings related to the accused's prosecution, including post-trial criminal proceedings. Proposition 115's electorate knew that this Court had equated criminal cases with criminal proceedings. Proposition 8's command – that "relevant evidence shall not be excluded in any criminal proceeding" (Cal. Const., art. I, § 28, subd. (d)) – repealed "both judicially created and statutory rules restricting admission of relevant evidence in criminal cases." (*People v. Harris* (1989) 47 Cal.3d 1047, 1081-1082; see

also *People v. Valentine* (1986) 42 Cal.3d 170, 172-173 [constitutional command that prior convictions shall "be used without limitation . . . in any criminal proceeding" means they "shall be used 'without limitation . . .' in a subsequent criminal case"].)[8]

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[8] The first comprehensive statutory framework adopted by the Legislature in terms of criminal procedure was "An Act to Regulate Proceedings in Criminal Cases." (Stats. 1850, ch. 119, p. 275.) The Act regulated both trial and appellate proceedings. Section 499 of the Act – now substantially embodied in Penal Code section 1258 – directed appellate courts to "give judgment without regard to technical error or defect . . ." where substantial rights were not prejudiced. Accordingly, our legislators believed, at statehood's inception, that criminal appeals occurred within criminal cases.

Over 100 years ago, moreover, our Legislature equated criminal cases with criminal proceedings. (See Cal. Const., former art. I, § 13 ["no person shall be compelled, in any criminal case, to be a witness against himself"]; former Pen. Code, § 1323 ["[a] defendant in a criminal action or proceeding cannot be compelled to be a witness against himself"]; see *Ex parte Gould* (1893) 99 Cal. 360, 361.)

b) The Voters Employed "Criminal Cases" Elsewhere Within Proposition 115 in a Manner Indisputably Encompassing Postconviction Criminal Proceedings

Proposition 115's drafters and voters employed "criminal cases" elsewhere within Proposition 115 in a manner indisputably encompassing postconviction criminal proceedings. They voted in favor of amending our state charter so that "[i]n criminal cases the rights of a defendant . . . to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this state in a manner consistent with the Constitution of the United States." (Cal. Const., art. I, § 24, invalidated in *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 355; Prop. 115, § 3.)[9] If the voters, who clearly intended for criminal cases to encompass postconviction criminal proceedings, had intended to impart a different meaning to that phrase within the Criminal Discovery Statute than it enjoys elsewhere within Proposition 115, they would have said so. (Cf. *People v. Acosta* (2002) 29

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[9] Proposition 115 was drafted by 50 prosecutors (Ballot Pamp., rebuttal to arg. against Prop. 115, Primary Elec. (June 5, 1990) p. 35) who never intended to bestow "criminal cases" with a narrow definition contrary to its well-established usage, and fatally at odds with the expansive definition it receives elsewhere in their initiative.

Cal.4th 105, 114 ["[a]s a matter of statutory construction, 'a word or phrase repeated in a statute should be given the same meaning throughout"].) Thus in 1990, a criminal case meant – as it does today – all criminal proceedings related to the accused's prosecution, including criminal proceedings which occur after trial.[10]

c) Giving "Criminal Cases" Its Well-Established Meaning Within the Criminal Discovery Statute Effectuates the Voters' Desire to Reduce Delay and Unnecessary Costs

Proposition 115's supporters revised discovery law in order "[t]o protect victims and witnesses from . . . undue delay of the proceedings." (Pen. Code, § 1054, subd. (d).) They sought to "bring[]California back into the mainstream of American criminal justice," thereby achieving "major time savings for the typical California criminal proceeding," and alleviating

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10 The Court of Appeal's error derived from its misguided attempt to construe the Criminal Discovery Statute in isolation, rather than construing it within Proposition 115 as a whole. "In interpreting a voter initiative . . . [t]he statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900.)

the "anguish . . . caused [to] victims through multiple, drawn-out court appearances." (Ballot Pamp., arg. in favor of Prop. 115, Primary Elec. (June 5, 1990) p. 34.) "[T]he voters . . . expressly declared that their purposes were to reduce the unnecessary 'costs of criminal cases' and to 'create a system in which justice is swift and fair . . .' (Prop. 115, § 1, subds. (b), (c).)" (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 293.)

The desire to eliminate excessive court-ordered discovery in all criminal proceedings comprised one of Proposition 115's primary purposes. Eliminating trial courts' ability to order unfair, burdensome, and one-sided postconviction discovery was consistent with that purpose.[11] The voters considered any delay that is not federally compelled to be needless, regardless of whether it occurs before or after trial. Relieving prosecutors

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[11] The voters' intent to deprive criminal defendants of all procedural protections beyond those guaranteed by the federal constitution provides an additional indicator that they relieved the People of any duty to provide postconviction discovery in criminal cases. Although the prohibition against constitutional revisions beyond the scope of the initiative process ultimately stymied the voters' desire to abrogate independent state grounds (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 355), they demonstrated their intent to divest criminal defendants of any discovery rights exceeding those afforded to them in federal court. (Cf. *Miller v. Superior Court, supra,* 21 Cal.4th at p. 896; Ballot Pamp., *supra*, (June 5, 1990) p. 34.)

and trial courts of any need to litigate, adjudicate, or comply with burdensome postconviction discovery requests effectuates "the electorate's stated goals of reducing delay and unnecessary cost." (Cf. *Tapia v. Superior Court, supra,* 53 Cal.3d at p. 297.) By preventing any postconviction discovery in criminal cases – thereby eliminating opportunities for additional litigation that is not federally compelled – the voters eliminated "useless delays that frustrate[d] criminal justice in California" and that had left both "judges and prosecutors frustrated by delay." (Ballot Pamp., *supra*, Prop. 115, p. 34.)

Complying with burdensome, one-sided postconviction disclosure orders in criminal cases would render prosecutors less able to proceed to trial promptly in their other cases, further hampering the electorate's desire for speedy trials. (See Cal. Const., art. I, § 30, subd. (c).) Leaving prosecutors vulnerable to postconviction discovery orders for motions for new trial, for sentencing hearings, for motions to withdraw pleas, for probation revocation hearings, and for motions to vacate judgment would comprise a diversion of scarce prosecutorial resources that the 50 prosecutors who drafted Proposition 115, as well as the voters, sought to avoid. They eliminated potential opportunities for postconviction delays that are not federally compelled, they eliminated potential delays in related

cases, and they eliminated the potential for pointless proceedings that could increase costs needlessly.

The electorate sought to return California to the mainstream by adopting federal procedures (*Miller v. Superior Court* (1999) 21 Cal.4th 883, 896; Ballot Pamp., *supra*, (June 5, 1990) p. 34.) Apart from *Brady* evidence, there is no federal right, constitutional or otherwise, to compel postconviction discovery. (Fed.R.Crim.P. 16; *In re Lawley* (2008) 42 Cal.4th 1231, 1249.)[12] Thus Proposition 115 prevented excessive court-ordered discovery not mandated by our federal charter. (Prop. 115, § 1, subd. (b).) The voters meant what they said: no compulsory discovery shall occur anywhere within a criminal case except as authorized by the Criminal Discovery Statute. Proposition 115's discovery statutes provide the sole avenue for obtaining discovery in criminal cases, and they prohibit compulsory disclosures in postconviction criminal proceedings.

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[12] "[A]fter a conviction the prosecutor . . . is bound by the ethics of his office to inform the appropriate authority of . . . information that casts doubt upon the correctness of the conviction." (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25 [47 L.Ed.2d 128, 96 S.Ct. 984]; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1261.) Section 1054.9's invalidity will not affect the People's duty to disclose material exculpatory evidence after conviction and judgment.

d) This Court Already Equated the Criminal Discovery Statute's Phrase, "Criminal Cases," with Criminal Proceedings

The legislative and judicial practice for the 140 years leading up to Proposition 115's enactment had been to equate "criminal cases" with "criminal proceedings." Thus it comes as no surprise that this Court equated those two terms when it interpreted the former within the Criminal Discovery Statute. "In *criminal proceedings* . . . all court-ordered discovery is governed exclusively by – and is barred except as provided by – the discovery chapter newly enacted by Proposition 115." (*In re Littlefield, supra,* 5 Cal.4th 122 at p. 129, italics added; accord, *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106; *Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 161; *Jones v. Superior Court* (2004) 115 Cal.App.4th 48, 56.) This Court is not the only appellate court to equate criminal cases with criminal proceedings when interpreting the Criminal Discovery Statute. "[T]he parties to a *criminal proceeding* may not employ discovery procedures other than those authorized by [the Criminal Discovery Statute]." (*People v. Superior Court* (*Barrett*) (2000) 80 Cal.App.4th 1305, 1312-1313, italics added.) Thus the Criminal Discovery Statute governs trial discovery,

while prohibiting compulsory disclosures elsewhere within criminal proceedings.

e) The Court of Appeal Misinterpreted the Criminal Discovery Statute's Plain Language

In construing the Criminal Discovery Statute, this Court should consider "'the object to be achieved and the evil to be prevented by the legislation.'" (*In re Marquez* (2003) 30 Cal.4th 14, 20.) The voters sought to prevent judicially created discovery rules. Before Proposition 115's enactment, criminal discovery was a "'judicially created doctrine evolving in the absence of guiding legislation.'" (*Holman v. Superior Court* (1981) 29 Cal.3d 480, 483) and an accused only had to describe the discovery he sought with some specificity and to provide a plausible justification for its disclosure. (*Griffin v. Municipal Court* (1977) 20 Cal.3d 300, 306.) But the voters declared "it is necessary to reform the law as developed in numerous California Supreme Court decisions" (Prop. 115, § 1, subd. (b).) In response to the problem of unfettered judicial power to order discovery in criminal cases, the voters prohibited judges from implementing extra-statutory discovery procedures that do not derive from legislative text. "[F]ollowing

Proposition 115 and the enactment of the exclusivity guidelines in section 1054, subdivision (e), [the judiciary is] no longer free to create [] rule[s] of criminal procedure [regarding discovery], untethered to a statutory or constitutional base." (*Verdin v. Superior Court, supra,* 43 Cal.4th at p. 1116.) The Court of Appeal's dubious pronouncement laid down a doubtful statutory interpretation which subjects prosecutors and law enforcement agencies to judicially created discovery – untethered to a statutory or constitutional base – in all postconviction criminal proceedings.[13]

The Court of Appeal mistakenly assumed that the Criminal Discovery Statute's exclusivity provision's scope was limited to one particular evil that its proponents had in mind, despite their broader language. Although Proposition 115's proponents were concerned, in part, with burdensome and one-sided discovery that might occur before trial, they deliberately employed expansive language encompassing discovery that might occur after trial as well. If the Fourteenth Amendment's Equal Protection Clause

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[13] The Court of Appeal's anomalous interpretation endows those found guilty at trial with substantially broader discovery rights than those available pretrial to defendants presumed innocent. The drafters and voters had no interest in limiting defendants facing trial to statutorily enumerated disclosures (Pen. Code, § 1054.1), and then entitling convicted felons to much broader, untethered, judicially created discovery.

were limited to the particular evil its proponents sought to address, the judiciary would have limited its protection to African-Americans victimized by racial discrimination. (Cf. *Slaughter-House Cases* (1873) 83 U.S. 36, 81 [21 L.Ed. 394, 16 Wall. 36].) It would not, for example, extend its protection to Chinese aliens. But it does. (*Yick Wo v. Hopkins* (1886) 118 U.S. 356, 369 [6 S.Ct. 1064, 1070; 30 L.Ed. 220].)

Statutes as well as constitutional provisions can extend further than their particular targets. "When the [enacting body] has made a deliberate choice by selecting broad and unambiguous statutory language, 'it is unimportant that the particular application may not have been contemplated.' [Citation]." (*Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, 51.) "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." (*Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 79 [118 S.Ct. 998, 1002; 140 L.Ed.2d 201].) Where, as here, the reasonably clear meaning of sections 1054(e) and 1054.5(a) is neither incompatible with the voter's purpose nor absurd, this Court should not disregard it.

Proposition 115's framers were concerned with unfair, burdensome, and one-sided pretrial discovery because that, undoubtedly, was a problem existing at the time. Yet the Criminal Discovery Statute's prohibition against additional compulsory disclosures in criminal cases is considerably broader than that. The framers foresaw that additional discovery burdens might be laid upon prosecutors and upon law enforcement. To prevent this, they included sections 1054(e)'s and 1054.5(a)'s sweeping prohibitions. Those prohibitions mean what they say. Proposition 115's discovery statutes provide the sole avenue for obtaining discovery in criminal cases, period. Even though Proposition 115's proponents chose not to emphasize this in their ballot arguments, this burden still falls within the scope of the voters' prohibitions.

The Court of Appeal apparently felt that Proposition 115's ballot arguments provided insufficient support for prohibiting compulsory disclosures in postconviction criminal proceedings. But ballot arguments typically "are stronger on political rhetoric than on legal analysis" (*Carlos v. Superior Court* (1983) 35 Cal.3d 131, 143, fn. 11), and they "are not legal briefs and are not expected to cite every case the proposition may affect." (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 237.) "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." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 802 [possible inference derived from ballot argument does not provide sufficient basis for ignoring measure's unrestricted language].)

In *Barnett v. Superior Court, supra*, No. S165522, the Attorney General contends that Proposition 115's proponents argued the initiative applied only to criminal trials. He lifted that assertion – responsive to opponents' suggestion that Proposition 115 would "threaten[] the right of women to safe and legal abortions" (Ballot Pamp., rebuttal to arg. in favor of Prop. 115, Primary Elec. (June 5, 1990) p. 35) – out of its proper context. In order to defuse opponents' abortion arguments, Proposition 115's proponents explained that it "affects only the rights 'to privacy' of criminals on trial – not your privacy rights, or the constitutionally guaranteed civil right of a woman to an abortion . . ." (Ballot Pamp., *supra*, (June 5, 1990) p. 34.) Considered in context, their explanation that Proposition 115 would not criminalize abortion did not negate the voters' unambiguous statutory language establishing that "[i]n criminal proceedings, . . . all court-ordered discovery is . . . barred except as provided by-the discovery chapter newly enacted by Proposition 115." (*In re Littlefield, supra,* 5 Cal.4th at p. 129.)

After all, Proposition 115 made "numerous significant and complex changes in criminal law and in the judicial procedures that must be followed in criminal cases." (Ballot Pamp., Analysis by Legislative Analyst, Primary Elec. (June 5, 1990) p. 32.) Among its many changes, Proposition 115 revised or attempted to revise the judicial procedures at sentencing. (Prop. 115, § 3 [cruel or unusual punishment], § 12 [LWOP for minors convicted of special circumstance murder].) The initiative clearly did not apply only to criminal trials. Even a schoolchild understands that sentencing occurs after trial and conviction; if sentencings do not occur within criminal cases, it is difficult to conceive where the average voter would imagine they do occur.

In *Barnett v. Superior Court, supra*, No. S165522, the Court of Appeal opined that the voters lacked any reason to address postconviction discovery. Relying upon *People v. Ainsworth* (1990) 217 Cal.App.3d 247, it proclaimed that before Proposition 115 there was no basis in California law for postconviction discovery in a criminal case. But the Court of Appeal ignored the fundamental distinction between postconviction and postjudgment proceedings. The *Ainsworth* court held that "after a judgment of conviction is final" a trial court is "without jurisdiction to entertain" a defendant's discovery motion. (*People v. Ainsworth, supra*, 217 Cal.App.3d at p. 249.) But many criminal proceedings occur between conviction and

judgment, and until judgment is final, the underlying criminal case remains pending.

Even after the *Ainsworth* decision, published precedent did not prohibit trial courts from ordering prosecutors to provide discovery for motions for new trial, for sentencing hearings, for probation revocation hearings, and for motions to vacate judgment. The drafters and voters knew that "the Legislature could by statute extend the trial court's jurisdiction to hear a postjudgment discovery motion." (*People v. Ainsworth*, *supra*, 217 Cal.App.3d at p. 259.) They realized the *Ainsworth* decision was subject to judicial or legislative abrogation, and they had little confidence in either of those governmental branches. (See Ballot Pamp., Primary Elec. (June 5, 1990) Text of Proposed Law, Prop. 115, § 1, subd. (a), p. 33 ["the rights of crime victims are too often ignored by our courts and by our State Legislature . . ."].) With Proposition 115, they insulated prosecutors and law enforcement agencies from the specter of having to provide postconviction or postjudgment discovery in criminal cases.[14] Accordingly, the Court of Appeal's pronouncement – that at the time of Proposition 115's enactment,

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[14] Proposition 115 prevented the judiciary from ordering any such discovery on its own (cf. *Verdin v. Superior Court, supra,* 43 Cal.4th at p. 1116), and it requires the Legislature to muster a supermajority vote before requiring any such disclosures. (Prop. 115, § 30.)

there was no reason to address postconviction discovery – fails to withstand analytical scrutiny.[15]

2. Penal Code Section 1054.9 Altered the Criminal Discovery Statute's Scope and Effect by Authorizing Postconviction Discovery in Criminal Cases

Penal Code section 1054.9 (Stats. 2002, c. 1105, § 1 (S.B. 1391)) amended the Criminal Discovery Statute (Pen. Code, § 1054 et seq.; Prop. 115, § 23) by providing a new mechanism for compelling discovery within criminal cases that exceeds what the voters put in place in 1990. It expands the Criminal Discovery Statute by compelling prosecutors to disclose trial discovery in postconviction criminal proceedings. But section 1054.9's failure to achieve a supermajority vote – it only received a 53% majority vote in both houses (5 Assem. J. (2001-2002 Reg. Sess.) p. 8239; 3 Sen. J.

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[15] While Proposition 115's drafters might have been tempted to limit judicially created discovery not only in criminal cases, but in habeas cases as well, they operated under the specter of a single subject challenge. (See, i.e., *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 247; *Raven v. Deukmejia, supra,* 52 Cal.3d at p. 347.) Attempting to expand the Criminal Discovery Statute's exclusivity provision beyond criminal cases would have risked voiding the entire measure.

(2001-2002 Reg. Sess.) p. 4500) – renders it void. (Prop. 115, § 30; Cal. Const., art. II, § 10, subd. (c).) Despite the fact that "[n]o order requiring discovery shall be made in criminal cases except as provided in [the Criminal Discovery Statute]" (Pen. Code, § 1054.5, subd. (a)), the trial court ordered postconviction discovery in Defendant Pearson's underlying criminal case.

Section 1054.9 added a new section to the Criminal Discovery Statute (*In re Steele* (2004) 32 Cal.4th 682, 696), it expanded the means by which criminal defendants can obtain court orders to compel discovery (compare Pen. Code, §§ 1054, subd. (e), 1054.5, subd. (a), with Pen. Code, § 1054.9, subds. (a), (b)), and it expanded the People's statutory disclosure duties to postconviction proceedings in criminal cases. (Pen. Code, § 1054.9, subds. (a), (b); cf. *People v. Paiva, supra,* 31 Cal.2d at p. 510.)[16]

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[16] Motions to vacate judgment comprise "proceedings in the criminal case" (*People v. Paiva, supra,* 31 Cal.2d at p. 510), and not "'a new adversary suit.'" (*Id.,* at p. 509.) As originally enacted, the Criminal Discovery Statute did not require the People to provide discovery in support of such motions. (Pen. Code, §§ 1054, subd. (e), 1054.5, subd. (a).) Section 1054.9, however, would now compel such discovery. (Pen. Code, § 1054.9, subds. (a), (b).)

Section 1054.9 expands the Criminal Discovery Statute by compelling prosecutors to disclose trial discovery in postconviction criminal proceedings. Each and every one of these modifications amended the Criminal Discovery Statute. (Cf. *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 22 [any act that changes the scope or effect of an existing statute comprises an amendment]; *Mobilepark West Homeowners Assn. v. Escondido* (1995) 35 Cal.App.4th 32, 40 [any statute that adds to, or takes away from, an existing statute constitutes an amendment].)

Section 1054.9 discovery motions attach to their underlying criminal cases. Section 1054.9's proponents repeatedly employed "the defendant" when referencing those persons whom they attempted to endow with postconviction discovery rights. They wanted that "the defendant be provided reasonable access to . . . materials . . ." (Pen. Code, § 1054.9, subd. (a)), that the "court may order that the defendant be provided access to physical evidence for the purpose of examination . . ." (Pen. Code, § 1054.9, subd. (c)), and that the "costs of examination or copying . . . be borne or reimbursed by the defendant." (Pen. Code, § 1054.9, subd. (d).) Their repeated statutory references to "the defendant" – not to "the plaintiff" – enabled postconviction discovery within the confines of defendants' underlying criminal cases.

By codifying section 1054.9 within the Criminal Discovery Statute, its proponents authorized postconviction discovery within the underlying criminal case. "Section 1054.9 is part of the general discovery provisions of Penal Code section 1054 et seq." (*In re Steele, supra,* 32 Cal.4th at p. 696.) If its backers had wanted to create an independent discovery vehicle, they would have codified section 1054.9 within the statutory provisions governing special proceedings in general and habeas proceedings in particular.

Section 1054.9 is unworthy of judicial reformation. It comprises a legislative act invalid at its inception, and thus it is invalid regardless of how it might be applied in any given case. (Cf. *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1495.) Although a 53% legislative majority sought to endow certain defendants with expanded postconviction discovery rights, that majority sought to accomplish that discovery within criminal cases, not within habeas cases. The majority deliberately subjected their legislative efforts to a supermajority vote, as opposed to funneling postconviction discovery proceedings directly into habeas proceedings, where a majority vote would have sufficed. It did so because classifying proceedings as either criminal, civil, or habeas dictates

what rights and responsibilities inure to the parties.[17] Accordingly, this Court cannot judicially reform section 1054.9 without depriving its proponents of their legitimate expectations regarding the rights and responsibilities that attach to criminal discovery proceedings.

Section 1054.9's statutory text provides the only reliable indicator of the legislative deal its proponents eventually struck. The realities of the legislative compromise demonstrate that its 53% majority intended for it to govern criminal proceedings. It would be pure speculation, based solely on the weak evidence of a failed bill, to conjecture that somehow every single proponent wanted to endow potential and actual habeas petitioners with additional discovery rights in non-criminal proceedings. This Court cannot say with confidence that a majority of the enacting body would have

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[17] By classifying section 1054.9 motions as criminal proceedings, its proponents rendered the People (and not the inmate's custodian) parties to those proceedings (Pen. Code, § 684), endowed that party with a constitutional right to reciprocal discovery (Cal. Const., art. I, § 30, subd. (c)) and due process (Cal. Const., art. I, § 29), endowed both parties with the constitutional right to present all relevant evidence (Cal. Const., art. 1, § 28, subd. (d), and endowed potential habeas petitioners with all the constitutional and procedural rights that criminal defendants enjoy over habeas litigants.

preferred a reformed construction to the statute's invalidation. (Cf. *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 660-661.) Instead of attempting a judicial reformation based upon conjecture, guesswork, supposition, and assumption, this Court should decline any implied invitation to rewrite section 1054.9 in a manner artificially transplanting its motions into habeas proceedings. Such determinations are better left to the Legislature.

CONCLUSION

When the voters enacted Proposition 115 in 1990, they knew, presumptively, that motions to vacate judgment occurred within criminal cases. They passed a statute prohibiting criminal defendants from obtaining postconviction discovery in criminal cases. This statute prevented criminal defendants from obtaining discovery for motions to vacate judgment. In 2002, the Legislature attempted to pass a statute enabling criminal defendants to obtain discovery for such motions in criminal cases.

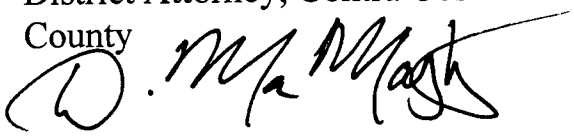
In *In re Steele, supra,* 32 Cal.4th 682, this Court partially interpreted Penal Code section 1054.9, but it did so only because the parties mistakenly assumed that the statute at issue comprised a valid legislative enactment.

Section 1054.9's failure to achieve sufficient votes in the Legislature, however, is conclusively determinative that the chamber as a whole intended for it to fail. This Court should decline to infer, solely from the fact that an insufficient majority of those voting to amend the Criminal Discovery Statute desired postconviction criminal discovery, that the Legislature as a whole wanted this type of discovery to occur outside criminal proceedings.

"Previous decisions should not be followed to the extent that error may be perpetuated and that wrong may result.'" (*Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1196.) The Legislature's failure to amend proposition 115 with a supermajority vote precluded any postconviction discovery order within Defendant Pearson's underlying criminal case. Because section 1054.9 is an act in excess of the Legislature's amendatory powers, the People respectfully ask this Court to grant review.

Respectfully submitted,

ROBERT J. KOCHLY
District Attorney, Contra Costa County



DOUG MacMASTER
Deputy District Attorney
State Bar No. 130122

Attorneys for Petitioner

REQUEST FOR STAY

Further discovery compliance proceedings below will affect the effectiveness of the appellate relief the People seek. Accordingly, we request a temporary stay of any further proceedings in the trial court, said stay to remain in effect until this Court's decision on the People's petition for writ of mandate becomes final, at which time it should terminate without further order of this Court. Such a temporary stay will not jeopardize any existing trial date nor will it seriously impact Defendant Pearson's habeas proceedings, which have yet to commence.

DATED: March 5, 2009

Doug MacMaster
Deputy District Attorney
State Bar No. 130122

Attorney for Petitioner

RULE 8.360(b) CERTIFICATION

I, Doug MacMaster, certify that the number of words in this petition for review totals 5,503 words. To generate this figure I have relied on the word count of the computer program used to prepare this document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: March 5, 2009

Doug MacMaster
Deputy District Attorney
State Bar No. 130122

Attorney for Petitioner

Filed 02/06/09

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA COSTA COUNTY,

Respondent,

MICHAEL NEVAIL PEARSON,

Real Party in Interest.

A120430

(Contra Costa County Super. Ct. No. 05-951701-2)

Penal Code section 1054.9[1] allows persons subject to a sentence of death or life in prison without the possibility of parole to file a motion for postconviction discovery to facilitate preparation of a petition for writ of habeas corpus or a motion to vacate judgment. Petitioner (the People, represented by the District Attorney of Contra Costa County) challenges the respondent superior court's discovery order, contending that section 1054.9 is an invalid amendment to the criminal discovery statutes enacted by Proposition 115 in 1990. We conclude section 1054.9 did not amend those statutes and affirm the superior court's order.[2]

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1 All undesignated section references are to the Penal Code.

2 This issue is pending before the California Supreme Court in *Barnett v. Superior Court*, review granted September 17, 2008, S165522.

BACKGROUND

In 1996, real party in interest Michael Nevail Pearson was convicted of two murders in the first degree and sentenced to death. In 2007, Pearson, represented by the Habeas Corpus Resource Center, filed a motion for postconviction discovery under section 1054.9. The People opposed the request, arguing that section 1054.9 is an invalid amendment to the criminal discovery statutes enacted by Proposition 115.

The superior court rejected the People's argument, and the People filed a petition for writ of mandate, which this court denied as premature. After the superior court issued a final order, the People filed a new petition for writ of mandate. This court issued an order to show cause on April 25, 2008.

DISCUSSION

On June 5, 1990, the voters adopted an initiative measure entitled the " 'Crime Victims Justice Reform Act,' " designated on the ballot as Proposition 115. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 363.) "Proposition 115 added both constitutional and statutory language authorizing reciprocal discovery in criminal cases. Section 30, subdivision (c), added to article I of the California Constitution . . . declares discovery to be 'reciprocal' in criminal cases. ('In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the People through the initiative process.') [¶] Proposition 115 also added a new Penal Code chapter on discovery. [Citation.]" (*Id.* at p. 364.) Under the provisions of that new chapter, section 1054 et seq., both the prosecuting attorney and the defense are required to make certain disclosures to the other side. (§§ 1054.1, 1054.3.)

An uncodified section of Proposition 115 prescribes the requirements for amending the new statutes: "The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors." (Stats. 1990, § 30, p. A-256.) In

2002, 12 years after the passage of Proposition 115, the California Legislature enacted section 1054.9 (Stats. 2002, ch. 1105, § 1).[3]

Petitioner contends the Legislature's enactment of section 1054.9 did not satisfy Proposition 115's requirements for amendments because section 1054.9 did not pass by "two-thirds of the membership" of "each house" and did not become effective "only when approved by the electors." It is undisputed that section 1054.9 did not pass by a two-thirds vote. Therefore, if section 1054.9 amends the statutory provisions enacted by Proposition 115, the Legislature acted beyond the powers granted by the voters. (See *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484 ["[w]hen a statute enacted by the initiative process is involved, the Legislature may amend it only if the voters specifically gave the Legislature that power, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers"].)

"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.) At the outset, we reject the suggestion that the Legislature amended the Proposition 115 criminal discovery statutes simply because it added section 1054.9 to the Penal Code chapter enacted by the initiative. It is true that "amending a statute includes adding sections to . . . that statute." (*Huening v. Eu* (1991) 231 Cal.App.3d 766, 777.) But "in the case of an added code section, it is the effect of the added section and

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[3] As relevant here, section 1054.9 provides:

"(a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c) [relating to access to physical evidence for the purpose of examination], order that the defendant be provided reasonable access to any of the materials described in subdivision (b).

"(b) For purposes of this section, 'discovery materials' means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial."

not its label or the representations in the enactment creating it which controls. Where a new section affects the application of the original statute or impliedly modifies its provisions, the new section is an amendment to the statute." (*Ibid.*) Thus, the fact that the Legislature added section 1054.9 to the Penal Code chapter on discovery enacted by Proposition 115 does not necessarily mean section 1054.9 amended the initiative's statutory provisions. (See also *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 43 ["legislation in a related but distinct area" of law does not constitute an amendment].) Instead, we must look to the effect of section 1054.9 on the discovery provisions the voters enacted.

Critical to this analysis is determining the intended reach of the discovery provisions in Proposition 115. Pearson argues that the voters were concerned only with pretrial discovery and that section 1054.9 had no effect on the initiative's discovery provisions. On the other hand, petitioner contends the reach of Proposition 115 is far broader. Petitioner does not argue that section 1054.9 directly modifies any of the initiative's discovery provisions, but it does argue that the voters intended to prohibit all other discovery, including postconviction discovery. Petitioner places particular emphasis on subdivision (a) of section 1054.5 (hereafter section 1054.5(a)), which specifies that "[n]o order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties."[4]

The same principles apply in the interpretation of a statute enacted by initiative or by the Legislature. (*Professional Engineers in California Government v. Kempton*

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[4] Along the same lines is section 1054, subd. (e), which provides that one of the purposes of the chapter is "[t]o provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States."

(2007) 40 Cal.4th 1016, 1037; *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.) Our primary objective is to determine and give effect to the underlying intent of the voters. (Code Civ. Proc., § 1859.) We begin by examining the statutory language, giving the words their " 'usual, ordinary meaning.' " (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) Nevertheless, " '[t]o seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture. Obviously, a statute has no meaning apart from its words. Similarly, its words have no meaning apart from the world in which they are spoken.' [Citation.] We do not interpret the meaning or intended application of a legislative enactment in a vacuum. In the case of a voters' initiative statute, too, we may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less." (*Hodges*, at p. 114, italics omitted.) Thus, section 1054.5(a) must be construed not in isolation but in the context of the initiative's overall scheme. (*Kempton*, at p. 1037.)

The critical statutory language at issue is the language providing that "[n]o order requiring discovery shall be made in criminal cases except as provided in this chapter." (Section 1054.5(a).) That language is ambiguous because the phrase "criminal case" does not have a single usual and ordinary meaning; instead, the term is susceptible to more than one reasonable interpretation. (*California Forestry Assn. v. California Fish & Game Commission* (2007) 156 Cal.App.4th 1535, 1545.) The phrase can be construed to refer to the pretrial and trial proceedings resulting in conviction or acquittal on the criminal charges, which is arguably the "meaning that would be commonly understood by the electorate." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302; see also *ibid.* [where an initiative does not further define a phrase, "it can be assumed to refer not to any special term of art, but rather to a meaning that would be commonly understood by the electorate"]; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 902 [focusing on what "the average voter, unschooled in the patois of criminal law, would have understood the plain language . . . to encompass"].) On the other hand, as petitioner argues, the phrase may be construed to encompass postconviction proceedings related to

the original criminal charges, even if occurring long after trial.[5] When, as here, "a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; see also *People v. Simon* (1995) 9 Cal.4th 493, 517.) We must consider " ' "the object to be achieved and the evil to be prevented by the legislation." ' " (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 193 (*Zamudio*).)

Petitioner points to nothing in the language of the initiative, statutes, or ballot arguments evidencing an intent to prohibit the type of postconviction discovery authorized by section 1054.9. Instead, petitioner relies almost entirely on the language of section 1054.5(a) and the argument that section 1054.9 discovery occurs within the confines of the underlying criminal action, rather than as part of an independent proceeding. Petitioner's analysis begs the question. The issue is not whether a section 1054.9 motion is technically part of an independent proceeding. Instead, the central issue is what the voters understood the ambiguous phrase "criminal case" to mean, which requires consideration of the objects to be achieved by Proposition 115. (*Zamudio*, *supra*, 23 Cal.4th at p. 193.)

The express purposes of the Penal Code chapter enacted by Proposition 115 are set forth in section 1054.[6] Several of those statements of purpose suggest that the chapter is

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[5] It is established that the reciprocal discovery provisions of Proposition 115 do not govern habeas proceedings. (*In re Scott* (2003) 29 Cal.4th 783, 813.) Pearson argues that his section 1054.9 motion is actually part of the habeas proceedings, even though the habeas petition has not yet been filed. Because we ultimately reject petitioner's broad construction of "criminal case," we need not address Pearson's argument.

[6] Section 1054 provides:

"This chapter shall be interpreted to give effect to all of the following purposes:

"(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

"(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

"(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

intended to reach only pretrial discovery. In particular, the first stated purpose is "[t]o promote the ascertainment of truth in trials by requiring timely pretrial discovery." (§ 1054, subd. (a).) Another stated purpose of the statutory scheme is "[t]o save court time in trial and avoid the necessity for frequent interruptions and postponements." (§ 1054, subd. (c).) None of the statements of purpose refers to postconviction matters.

The chapter's substantive provisions also relate to pretrial discovery. Section 1054.7 specifies that "[t]he disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred." Subdivisions (b) and (c) of section 1054.5, which govern the sanctions a court may impose on a party for not making the required disclosures, contemplate application before trial, inasmuch as the potential sanctions include "delaying or prohibiting the testimony of a witness or the presentation of real evidence," "continuance of the matter," "advis[ing] the jury of any failure or refusal to disclose and of any untimely disclosure," and (if required by the federal Constitution) "dismiss[ing] a charge."

We conclude that the discovery provisions of Proposition 115 were intended to address pretrial discovery. The more reasonable interpretation of section 1054.5(a) is that the voters understood "criminal case" to refer to the pretrial and trial proceedings resulting in conviction or acquittal on the criminal charges. Again, petitioner points to nothing other than the ambiguous language of section 1054.5(a) to suggest that the statutes are intended to encompass, and limit by silence, postconviction discovery. Petitioner does not explain how such a limitation would serve the express purposes delineated in section 1054. Adoption of petitioner's construction of "criminal case" in section 1054.5(a) would greatly expand the impact of the initiative in the absence of any

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"(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

"(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States."

basis to conclude the voters were concerned with anything other than the fairness of pretrial discovery procedures. This we may not do.

We reject petitioner's expansive construction of "criminal case" in section 1054.5(a) and hold that section 1054.9 did not amend the statutory provisions enacted by Proposition 115. Therefore, the Legislature was not required to adopt section 1054.9 by the two-thirds vote specified in the initiative measure, and petitioner's challenge to the validity of the statute fails.

DISPOSITION

The order to show cause is discharged, and the petition for writ of mandate is denied.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

DONDERO, J.*

(A120430)

* Judge of the Superior Court of the City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CERTIFICATE OF SERVICE BY MAIL
(C.C.P. 1012, 1013, 1013a, 2015.5 and EC 641)

Docket No. **5-951701-2**

Re: **PEOPLE v. MICHAEL NEVAIL PEARSON** **A120430**

I certify that my address is: **Office of the District Attorney**
Contra Costa County
P.O. BOX 640
Martinez, CA 94553

and I am a citizen of the United States, over 18 years of age, a resident of the County of Contra Costa, and not a party to the within action;

I served a true copy of the attached **FIRST APPELLATE DISTRICT, DIVISION FIVE, NO. A120430 PETITION FOR REVIEW; STAY REQUESTED**

By placing said copy in an envelope address as follows:

Jennifer Corey
Assistant Federal Defender
801 I Street
Sacramento, CA 95814

Robert D. Bacon
Attorney at Law
484 Lake Park Ave PMB 110
Oakland, CA 94610

which is a place having delivery service by U.S. Mail, which envelope was then sealed and postage fully prepaid thereon, and thereafter was, on this day, deposited in the United States Mail at Martinez , California, Contra Costa County, California 94805 ;

I certify under penalty of perjury that the foregoing is true and correct.

Maren Padilla

Dated: **March 6, 2009**

Maren Padilla
Senior Clerk- Homicide Unit
Telephone (925) 957-8603 Fax (925) 957-2240
Signed at Martinez , Contra Costa County, California.

DA-20.3 (10/04)

CERTIFICATE OF SERVICE BY MAIL
(C.C.P. 1012, 1013, 1013a, 2015.5 and EC 641)

Docket No. **5-951701-2**

Re: **PEOPLE v. MICHAEL NEVAIL PEARSON** **A120430**

I certify that my address is: **Office of the District Attorney**
Contra Costa County
P.O. BOX 640
Martinez, CA 94553

and I am a citizen of the United States, over 18 years of age, a resident of the County of Contra Costa, and not a party to the within action;

I served a true copy of the attached **FIRST APPELLATE DISTRICT, DIVISION FIVE, NO. A120430 PETITION FOR REVIEW; STAY REQUESTED**

By placing said copy in an envelope address as follows:

THE SUPREME COURT OF CALIFORNIA
ATTENTION: CLERK OF COURT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102-4783

(ORIGINAL PLUS 14 COPIES)

THE COURT OF APPEAL OF THE STATE OF CA
FIRST APPELLATE DISTRICT COURT COURT CLERK
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102-4783

CONTRA COSTA SUPERIOR COURT
ATTENTION: CLERK OF COURT
PO BOX 911
MARTINEZ, CA 94553

which is a place having delivery service by U.S. Mail, which envelope was then sealed and postage fully prepaid thereon, and thereafter was, on this day, deposited in the United States Mail at Martinez , California, Contra Costa County, California 94805 ;

I certify under penalty of perjury that the foregoing is true and correct.

Maren Padilla Dated: **March 5, 2009**

MAREN PADILLA
SENIOR CLERK-HOMICIDE UNIT
Telephone (925) 957-8603 Fax (925) 957-2240
Signed at Martinez , Contra Costa County, California.

DA-20.3 (10/04)

CERTIFICATE OF SERVICE BY MAIL
(C.C.P. 1012, 1013, 1013a, 2015.5 and EC 641)

Docket No. **5-951701-2**

Re: **PEOPLE v. MICHAEL NEVAIL PEARSON** **A120430**

I certify that my address is: **Office of the District Attorney**
Contra Costa County
P.O. BOX 640
Martinez, CA 94553

and I am a citizen of the United States, over 18 years of age, a resident of the County of Contra Costa, and not a party to the within action;

I served a true copy of the attached **FIRST APPELLATE DISTRICT, DIVISION FIVE, NO. A120430 PETITION FOR REVIEW; STAY REQUESTED**

By placing said copy in an envelope address as follows:

WARD CAMPBELL
OFFICE OF THE ATTORNEY GENERAL
1300 I STREET, PO BOX 944255
SACRAMENTO, CA 94244-2550

DAVID LANE
HABEAS CORPUS RESOURCE CENTER
303 SECOND STREET, SUITE 400 SOUTH
SAN FRANCISCO, CA 94107

DOUG PIPES & KENT SCHEIDEGGER
CRIMINAL JUSTICE LEGAL FOUNDATION
2131 L STREET
SACRAMENTO, CA 95816

which is a place having delivery service by U.S. Mail, which envelope was then sealed and postage fully prepaid thereon, and thereafter was, on this day, deposited in the United States Mail at Martinez , California, Contra Costa County, California 94805 ;

I certify under penalty of perjury that the foregoing is true and correct.

Maren Padilla Dated: **March 5, 2009**

MAREN PADILLA
SENIOR CLERK-HOMICIDE UNIT
Telephone (925) 957-8603 Fax (925) 957-2240

Signed at Martinez , Contra Costa County, California.

DA-20.3 (10/04)