IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA,

Respondent.

MICHAEL NEVAIL PEARSON,

Real Party in Interest.

Case No. S171117

Court of Appeal, First District, Division Five, No. A120430

Contra Costa County Superior Court, No. 05-951701-2; Honorable Leslie G. Landau

(Related to Habeas Corpus Case No. S175920 and Automatic Appeal Case No. S058157)

CAPITAL CASE

ANSWER BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, Respondent. MICHAEL NEVAIL PEARSON, Real Party in Interest.	Case No. S171117 Court of Appeal, First District, Division Five, No. A120430 Contra Costa County Superior Court, No. 05-951701-2; Honorable Leslie G. Landau (Related to Habeas Corpus Case No. S175920 and Automatic Appeal Case No. S058157) **CAPITAL CASE**

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TO: THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF CALIFORNIA AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Real Party in Interest Michael Nevail Pearson ("Mr. Pearson") hereby submits his Answer Brief on the Merits in response to petitioner's Brief on the Merits ("BOM"), filed August 11, 2009.

INTRODUCTION

Petitioner challenges the constitutionality of Penal Code section 1054.9 as being an invalid amendment of the statutory trial discovery provisions contained in section 23 of Proposition 115 (Penal Code sections 1054-1054.7). The questions presented by petitioner's challenge are:

1. Were the trial discovery provisions contained in Proposition 115 intended to govern other types of criminal proceedings despite their express and exclusive reference to discovery procedures at trial?
2. In view of petitioner's and real party's agreement that discovery in habeas corpus proceedings is not governed by the Proposition 115 trial discovery provisions, does the filing of a pre-habeas petition discovery motion nevertheless "attach" to the original criminal case and bring the motion within the scope of Proposition 115?

These questions are before the Court in this and another pending case after having been answered in the negative by the courts below. *See People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117); *Barnett v. Superior Court*, 164 Cal. App. 4th 18 (2008), *review granted*, 193 P.3d 280 (Sept. 17, 2008) (No. S165522).

The background for petitioner's challenge is as follows. In 1990, the voters approved Proposition 115, popularly known as the "Speedy Trial Initiative," which enacted, *inter alia*, Penal Code sections 1054-1054.7, governing pre-trial and trial discovery procedures. These enactments were adopted subject to a general proviso in section 30 of the initiative specifying that the "statutory provisions contained in [the] initiative" could not be amended without a two-thirds vote by each house of the Legislature, or by the electors.

In 2002, the Legislature enacted Penal Code section 1054.9,[1] which authorized, *inter alia*, death-sentenced prisoners to file discovery motions to

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[1] The statute became effective on January 1, 2003.

assist in preparing a prima facie case for habeas corpus relief. *See In re Steele*, 32 Cal. 4th 682 (2004).

In May 2007, Mr. Pearson filed a motion in the Contra Costa County Superior Court requesting discovery pursuant to section 1054.9. (Motion for Post-Conviction Discovery Pursuant to California Penal Code Section 1054.9, *People v. Pearson* (Superior Court Case No. 951701-2, related automatic appeal Supreme Court Case No. S058157).) Petitioner challenged the superior court's subject matter jurisdiction to entertain the motion. (Memorandum of Points and Authorities in Opposition to Motion to Compel Postconviction Discovery, *People v. Pearson* (Superior Court Case No. 951701-2).) Petitioner contended that, pursuant to Penal Code section 1054.5, subsection (a), the trial discovery provisions in Proposition 115 prohibited discovery in any other proceeding related to the underlying judgment,[2] and that the enactment of section 1054.9 therefore required a two-thirds majority vote of the Legislature, which it had not received.

By order filed January 11, 2008, the superior court rejected petitioner's argument and granted Mr. Pearson's discovery requests in part. *People v. Pearson*, No. 05-951701-2 (order on motion for post-conviction discovery).

Petitioner presented his challenge in support of a petition for writ of mandamus to the Court of Appeal for the First Appellate District, which was denied in an unpublished order on February 6, 2009. *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117).

While petitioner's challenge to section 1054.9 was pending in the

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[2] Section 1054.5(a) provides in relevant part: "No order requiring discovery shall be made in criminal cases except as provided in this chapter."

superior court, a substantially similar challenge was presented to this Court in a brief *amicus curiae* filed by the Criminal Justice Legal Foundation ("CJLF"), purportedly in support of the People in *Barnett v. Superior Court*. (*See* Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Real Party in Interest, *Barnett v. Superior Court*, 176 P.3d 654 (2008) (No. S150229).) This Court remanded the matter to permit the Court of Appeal for the Third Appellate District to consider the challenge. *See Barnett v. Superior Court*, 176 P.3d 654 (2008). In the Court of Appeal, Mr. Barnett's counsel and the Attorney General, as counsel for the People, agreed that section 1054.9 did not amend any portion of the trial discovery provisions in Proposition 115, and was a valid statute. The Court of Appeal, in a published opinion, agreed with the parties and rejected the analysis presented in the CJLF amicus brief. *Barnett v. Superior Court*, 164 Cal. App. 4th at 34.

This Court thereafter granted the parties' petitions for review in *Barnett*, which were filed to address issues left unresolved by the remand to the Court of Appeal. *See Barnett v. Superior Court*, No. S165522 (Sept. 17, 2008) (order granting petitions for review). The Court also invited the CJLF to file an amicus brief addressing the validity of section 1054.9. *Id.* The CJLF declined the Court's invitation. An analysis substantially similar to that contained in the CJLF amicus brief was presented to the Court, however, by the California District Attorneys Association in its amicus brief, which was authored in part by the Deputy District Attorney of Contra Costa County who is counsel for petitioner herein. (*See* Brief of Amicus Curiae California District Attorneys Association in Support of Real Party in Interest, *Barnett v. Superior Court* (No. S165522).)

At this stage of the litigation, the Court now has the benefit of full briefing by the parties and *amici*, as well as the reasoned analyses of two

Courts of Appeal. *See People v. Superior Court (Pearson)*, No. S171117 (Cal. June 10, 2009) (order for briefing). Rather than repeat these arguments and analyses in full, Mr. Pearson believes it will best assist the Court to distill the current iteration of petitioner's contentions and summarize the reasons for which they are without merit, while providing citations to more extensive analyses in the briefing already before this Court.

SUMMARY OF ARGUMENT

Petitioner concedes that the statutory discovery provisions contained in Proposition 115 were not intended to govern discovery in habeas corpus proceedings. (BOM at 15-16.) Rather, as petitioner further concedes, the initiative's provisions were intended to govern "discovery geared toward trial," (BOM at 6 n.1, 16), and that discovery orders in habeas proceedings "fall outside Proposition 115's ambit." (BOM at 16.) Petitioner also concedes that the scope of Penal Code section 1054.9 is limited to authorizing postconviction discovery. (*See, e.g.*, BOM at 49-51, 55-56.) These concessions are fatal to petitioner's contention in the superior court that by authorizing pre-petition discovery in habeas corpus proceedings, section 1054.9 somehow amended the trial discovery provisions in Proposition 115.

Fundamental rules of statutory construction define an "amendment" as "a legislative act designed to *change* an *existing* initiative statute by adding or taking *from it* some particular *provision*." *People v. Cooper*, 27 Cal. 4th 38, 44 (2002) (emphasis added). Because the explicit scope of the existing statute here (i.e., the discovery provisions in Proposition 115) was limited to trial discovery, the subsequent enactment of section 1054.9, which governs discovery in separate and distinct habeas corpus proceedings, could not add or take from the existing statutory provisions.

Accordingly, there was no amendment.

Petitioner nevertheless argues that because section 1054.9 allows prisoners to file discovery motions *before* they formally initiate habeas proceedings, such motions necessarily must be presented in the context of—and therefore are "attached to"—the original criminal proceedings. This, in turn, purportedly "revests" the trial court with jurisdiction over the underlying proceedings and brings the case within the purview of Proposition 115; meaning that a two-thirds legislative majority was required for the enactment of any procedures governing such postconviction discovery. (BOM at 53.)

Petitioner's reasoning must be rejected for at least two reasons. First, the plain language of Proposition 115 and the rules governing statutory construction dispel any suggestion that the statutory discovery provisions contained in the initiative were intended to apply in criminal proceedings beyond the trial. In contrast to the explicit terms of Proposition 115, which expressly limit the statutory discovery provisions to trial proceedings, petitioner offers only negative inferences to argue that the original statute encompasses post-trial proceedings.

Second, petitioner fails to acknowledge that the Legislature has the power to authorize litigants to file discovery motions in aid of, and prior to, formally initiating a lawsuit. *See Orr v. City of Stockton*, 150 Cal. App. 4th 622, 631 (2007); Cal. Civ. Proc. Code §§ 2035.010(a), 2035.030(a) (cited in Points and Authorities in Opposition to *Refiled* Petition for Writ of Mandate at 14-17, and Return to *Refiled* Petition for Writ of Mandate at 9, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117)). Courts may entertain such free standing, pre-filing discovery motions when "no action has yet been commenced," and the person requesting discovery "is not yet a

party to any action." *Orr v. City of Stockton*, 150 Cal. App. 4th at 631. Thus, when filed prior to the initiation of a lawsuit, such motions need not be "attached" to any existing proceeding.

Petitioner has consistently failed to address the Legislature's power to authorize potential litigants to seek such discovery in advance of initiating a lawsuit, and has failed to offer any reason why the Legislature was prevented from using its power to authorize death-sentenced prisoners to file pre-petition discovery motions predicated on a court's independent habeas corpus jurisdiction. Even if the voters intended Proposition 115 to govern all post-trial proceedings in criminal cases (which they did not), petitioner concedes that the voters "did not expect it to govern *habeas* proceedings." (BOM at 35 (emphasis added).) Thus, nothing in Proposition 115 circumscribed the judicial branch's independent jurisdiction to entertain discovery motions, which the Legislature authorized to be filed in aid of initiating habeas corpus proceedings. *See* Cal. Const. art. VI, § 10.

Therefore, petitioner's arguments that all postconviction cases become transmogrified into pretrial proceedings merely by the filing of a discovery motion under 1054.9 are conceptually and statutorily unsupportable.

ARGUMENT

I. PENAL CODE SECTION 1054.9 DID NOT AMEND ANY STATUTORY DISCOVERY PROVISION ENACTED BY PROPOSITION 115.

The requirement in Proposition 115 that a two-thirds majority vote of the Legislature is necessary to amend the initiative's original provisions referred specifically to the "*statutory provisions contained*" in the initiative.

Proposition 115, § 30 (emphasis added). The specific criminal discovery provisions *contained* in the initiative were codified as Penal Code sections 1054-1054.7. Mr. Pearson will not burden the Court with a full exegesis of the statutory text and ballot arguments, which demonstrate that the scope of these provisions was limited to pretrial and trial discovery, as one has been ably and extensively set forth in other briefing filed in this and the companion case. (*See* Points and Authorities in Opposition to *Refiled* Petition for Writ of Mandate at 9-11, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430); Brief of Amicus Curiae Habeas Corpus Resource Center in Partial Support of Both Parties and Otherwise in Support of Petitioner Lee Max Barnett at 5-13, *Barnett v. Superior Court*, No. S165522; Petitioner's Answer to Amicus Curiae Brief of California District Attorneys Association at 4-15, *Barnett v. Superior Court*, No. S165522; Petitioner/Real Party in Interest's Answer to Brief of Amicus Curiae California District Attorneys Association at 2-16, *Barnett v. Superior Court*, No. S165522.) Suffice it to note that petitioner concedes that the statutory discovery provisions contained in Proposition 115 "did not reach beyond criminal cases' pretrial and trial proceedings." (BOM at 6; *see also* BOM at 16 n.5 ("the Criminal Discovery Statute, as originally enacted, does not govern habeas proceedings"); *Refiled* Petition for Writ of Mandate at 6, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117) ("the bill's proponents effectively extended [1054.9's] reach to postjudgment proceedings"), 11 ("Proposition 115 initially imposed a statutory disclosure obligation upon the People . . . that only applied when a criminal case was pending trial."), 12 ("[s]ection 1054.9 has expanded the Criminal Discovery Statute's reach"), 14 ("Before section 1054.9's enactment, the Criminal Discovery Statute did not govern habeas

proceedings.").)

Petitioner contends that by adding section 1054.9 to the series of Penal Code subsections originally enacted by Proposition 115, the Legislature "extended, and thereby amended the provisions. (*See, e.g.*, BOM at 5-6.) Merely adding a new section to an existing statute, however, does not constitute an "amendment." Rather, an amendment occurs when the "new section affects the application of the original statute or impliedly modifies its provisions." *Huening v. Eu*, 231 Cal. App. 3d 766, 777 (1991). Similarly, section 1054.9 did not have any effect or cause any modification to the statutory provisions originally enacted by Proposition 115.

As petitioner concedes, section 1054.9 governs discovery only in postconviction proceedings. (BOM at 49-51, 55-56.) The Penal Code sections enacted by Proposition 115 continue to govern pre-trial and trial discovery just as they did, and were intended to do, before the enactment of section 1054.9. The enactment of the new provision did not expand or narrow the scope or applicability of the statutory provisions that were contained in Proposition 115, and therefore did not amend the existing law.

II. THE STATUTORY PROVISIONS CONTAINED IN PROPOSITION 115 WERE NOT INTENDED TO GOVERN PROCEEDINGS RELATED TO CRIMINAL CASES AFTER TRIAL.

Petitioner has acknowledged that "the *express* goals" of the voters in adopting Proposition 115 "refer *only* to a trial context," and that postconviction discovery was something "the voters neither *authorized nor contemplated* in 1990." (*Refiled* Petition for Writ of Mandate at 8, 10-11, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117) (emphasis added).) Indeed, petitioner suggests that even if the initiative's drafters

"might have been tempted to limit" discovery in "habeas cases," they would have resisted the temptation out of fear that such provisions would violate the "single subject" rule for initiatives. (BOM at 45 n.20.) Thus, irrespective of whether petitioner accurately explained why the drafters of Proposition 115 never intended to restrict discovery in habeas corpus cases, it is indisputable that they did not do so. The enactment of section 1054.9, governing postconviction discovery, therefore required only a simple majority vote, because the Legislature is free to enact statutes that relate to a subject of an initiative that the initiative "does not specifically authorize or prohibit." *People v. Cooper*, 27 Cal. 4th at 47; *see also Mobilepark West Homeowner's Ass'n v. Escondido Mobilepark West*, 33 Cal. App. 4th 32, 43 (1995) (a statute may not constitute an amendment when its "scope and coverage" are in "merely a related area" to the initiative statute).

Notwithstanding the initiative's clear, limited focus on regulating discovery at trial, petitioner contends that the use of the phrase "criminal cases" in section 1054.5, subdivision (a), triggered application of the trial discovery provisions in Proposition 115 to *all* "the myriad of postconviction criminal proceedings that occur within criminal cases." (BOM at 18 n.7.) Petitioner's central premise is that "while the Criminal Discovery Statute governs reciprocal discovery *geared toward trial*, at the same time it *prohibits* compulsory disclosures *elsewhere within criminal proceedings*." (BOM at 6 n.1 (emphasis added); *see also* BOM at 16.)

Only the first clause of petitioner' contention, however, finds support in the statutory provisions of Proposition 115. The terms of the statute are, indeed, *explicitly* and *expressly* limited to discovery in *trial* proceedings. As section 1054, subdivision (a), makes clear, the statutory provisions were intended "[t]o promote the ascertainment of the truth in *trials* by requiring timely *pretrial* discovery." Cal. Penal Code § 1054(a) (emphasis added).

By contrast, Proposition 115 does not contain any prohibitory language, or references to other contexts, to suggest it was intended to govern discovery in criminal cases other than at the trial proceedings. The plain language of the initiative and well-settled rules of statutory construction thus compel the conclusion that the discovery provisions were not intended to prohibit discovery in other contexts including post-trial criminal proceedings, such as probation hearings; and postconviction proceedings, such as those pursuant to a motion to vacate the judgment. *See Knight v. Superior Court*, 128 Cal. App. 4th 14, 23 (2005); (*see also* Points and Authorities in Opposition to *Refiled* Petition for Writ of Mandate at 9-11, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117); Brief of Amicus Curiae Habeas Corpus Resource Center in Partial Support of Both Parties and Otherwise in Support of Petitioner Lee Max Barnett at 7-13, *Barnett v. Superior Court*, No. S165522; Petitioner's Answer to Amicus Curiae Brief of California District Attorneys Association at 4-15, *Barnett v. Superior Court*, No. S165522).

As reflected in the language in section 1054, subdivision (a), quoted above, and as discussed in more detail in Petitioner's Answer to Amicus Curiae Brief of California District Attorneys Association in *Barnett*, the overarching purpose of Proposition 115 was to expedite *trial* proceedings: it "was commonly known as the 'Speedy *Trial* Initiative,'" and used the terms "trial" and "criminal case" interchangeably. (Petitioner's Answer to Amicus Curiae Brief of California District Attorneys Association at 5-6, *Barnett v. Superior Court*, No. S165522 (emphasis added).) None of the Proposition 115 procedural provisions in general,[3] or the discovery

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[3] *See, e.g.*, § 2 (abolishing post-indictment preliminary hearing); § 7 (directing that the court shall conduct voir dire of jurors "[i]n a criminal

provisions in particular,[4] purported to authorize or prohibit discovery in proceedings other than trial. Accordingly, they do not restrict or otherwise govern the availability of discovery in proceedings after trial.

This principle is illustrated by the holding in *Jones v. Superior Court*, 115 Cal. App. 4th 48 (2004). In *Jones*, the Court of Appeal concluded that a probationer was not required to provided discovery to the prosecutor in the context of a revocation proceeding "because a probation revocation proceeding is *not* a *criminal trial* within the meaning of [Penal Code] section 1054.3 governing the scope of the discovery obligations of the defense." *Jones v. Superior Court*, 115 Cal. App. 4th at 62 (emphasis added). Petitioner erroneously suggests that the *Jones* court "effectively ruled that probation revocation hearings occurred within criminal cases, and that the Criminal Discovery Statute controls whether or not parties can compel discovery in support of such hearings." (BOM at 34.) In fact, *Jones* held just the opposite: the Discovery Statute applies *only to trials*, and because the revocation hearing was not a trial, the statute did not apply and did not provide legal authority for ordering discovery. Contrary to petitioner's suggestion, there is no implication in *Jones* that the Discovery Statute *also* "governs postconviction discovery requests in criminal cases," so that legislative authorization for discovery in revocation hearings would require a two-thirds majority vote of the Legislature. (BOM at 35.)

Fundamental rules of statutory construction encourage fidelity to the plain meaning of the text and, when judicial interpretation is necessary, it is

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case"); § 28 (authorizing extraordinary writ when pre-trial hearing or trial is continued without good cause).

[4] *See, e.g.*, § 1054.1 (requiring disclosure of names, addresses and statement of witnesses to be called at trial); § 1054.7 (requiring disclosure of information at least thirty days prior to trial).

guided by a presumption favoring the statute's validity, the objective of harmonizing statutory schemes and a preference for alternative constructions that reasonably avoid constitutional infirmity. *See City of Los Angeles v. Superior Court*, 29 Cal. 4th 1, 10-11 (2002); *Foundation for Taxpayer and Consumer Rights v. Garamendi*, 132 Cal. App. 4th 1354, 1365 (2005); (*see also* Points and Authorities in Opposition to *Refiled* Petition for Writ of Mandate at 8, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117); Brief of Amicus Curiae Habeas Corpus Resource Center in Partial Support of Both Parties and Otherwise in Support of Petitioner Lee Max Barnett at 5, *Barnett v. Superior Court*, No. S165522; Petitioner's Answer to Amicus Curiae Brief of California District Attorneys Association at 2-3, *Barnett v. Superior Court*, No. S165522). Instead, petitioner urges this Court to follow the diametrically opposite approach of rewriting the provisions of Proposition 115 to encompass subjects never mentioned or even contemplated by its proponents, and to do so for no discernable reason other than to provide a basis for challenging the validity of section 1054.9. The invitation should be rejected.

III. A MOTION FILED UNDER SECTION 1054.9 DOES NOT "ATTACH" TO THE ORIGINAL CRIMINAL PROCEEDINGS, BECAUSE IT IS BASED ON THE COURT'S INDEPENDENT HABEAS CORPUS JURISDICTION.

Even if there were textual or interpretive support (which there is not) for petitioner's suggestion that the trial discovery provisions in Proposition 115 were meant to encompass all post-trial and postconviction proceedings in criminal cases, petitioner still must concede this would not pose any restriction on the Legislature's power to enact discovery statutes governing habeas corpus proceedings. That is because discovery motions and orders

in habeas corpus proceedings, which are not criminal proceedings, "fall outside Proposition 115's ambit." (BOM at 16.) Petitioner argues, however, that by permitting prisoners to file discovery motions *before* they initiate habeas corpus proceedings, section 1054.9 "authorizes criminal defendants to attach their postconviction discovery motions to their underlying criminal cases." (BOM at 52.) According to petitioner, because section 1054.9 thereby intruded into the realm of "criminal cases," it amended the original statutory discovery provisions contained in Proposition 115. (BOM at 61.) The contention cannot withstand reasoned analysis.

First, a motion filed under section 1054.9 need not and does not "attach" to any other case. The motion is predicated on a court's independent habeas corpus jurisdiction, and is filed to obtain "discovery to assist in stating a prima facie case for relief." *In re Steele*, 32 Cal. 4th at 691. The California State Constitution and the decisional authority of this Court make it clear that even before habeas proceedings have been formally initiated, all state courts—including the trial court—always have underlying habeas corpus jurisdiction. Cal. Const. art. VI, § 10; *In re Carpenter*, 9 Cal. 4th 634, 645-46 (1995). The superior court therefore maintains concurrent, "original subject matter jurisdiction over habeas corpus proceedings" even "when, as here, a judgment of death is pending on automatic appeal before this court." *In re Carpenter*, 9 Cal. 4th at 645-46. Although the superior court's original habeas corpus jurisdiction governs an inquiry "into the legality of one imprisoned in a criminal prosecution," it "is *not* a proceeding in *that prosecution*, but, on the contrary, is an *independent* action." *France v. Superior Court*, 201 Cal. 122, 131 (1927) (emphasis added).

The statutory authorization for filing motions under section 1054.9 prior to initiating formal habeas proceedings merely reflects another

instance in which the Legislature has permitted potential litigants to obtain discovery in the course of investigating and preparing their lawsuits. Motions seeking such discovery when "no action has yet been commenced," are directed to the court's underlying jurisdiction to entertain the case once the requesting individual becomes "a party to any action." *Orr v. City of Stockton*, 150 Cal. App. 4th at 631 (discussing Cal. Code Civ. Proc. §§ 2035.010(a) and 2035.030(a)).

Although Mr. Pearson has discussed this principle repeatedly (*see* Points and Authorities in Opposition to *Refiled* Petition for Writ of Mandate at 14-17, and Return to *Refiled* Petition for Writ of Mandate at 9, *People v. Superior Court (Pearson)*, 2009 WL 281774 (Cal. Ct. App. 2009) (No. A120430), *review granted*, Apr. 15, 2009 (No. S171117)), petitioner has yet to offer any reason why the Legislature could not enact section 1054.9 pursuant to its power to authorize potential litigants to seek discovery in advance of initiating a lawsuit, or why the discovery motion would have to become "attached" to a wholly different type of proceeding.

Second, petitioner's argument reflects the erroneous belief that habeas proceedings are not "initiated" until a court of competent jurisdiction issues an Order to Show Cause ("OSC"). (*See* BOM at 66 ("Defendant Pearson's habeas proceedings will not commence until after this Court issues an OSC.").) In light of the correct legal principle that habeas proceedings are initiated by the *filing of the petition*, *see People v. Romero*, 8 Cal. 4th 728, 737 (1994), it is even less plausible that the proponents of Proposition 115 had any concern with "prohibiting" discovery in pre-petition habeas corpus cases. Petitioner's reading of the statute would mean that the Proposition 115 proponents implicitly and silently intended to bar all courts, and anything less than a two-thirds majority of the Legislature, from authorizing discovery in habeas

proceedings before a petition is filed, but to permit any court or a simple legislative majority to promulgate discovery rules governing any habeas case as soon as the petition is filed.

Once again, petitioner's reading of the purportedly implicit, unstated intention of Proposition 115 does not advance any objective that was explicitly identified by its drafters, and would serve only to achieve petitioner's goal of creating a statutory conflict to undermine the legality of section 1054.9. Petitioner thus attempts to place far too much of an interpretive burden on the initiative's *silence*. *See, e.g.*, *Hodges v. Superior Court*, 21 Cal. 4th 109, 114 (1999) ("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"); *Lesher Communications v. Walnut Creek*, 52 Cal. 3d 531, 543 (1990) (courts do not interpret statute "to conform to an assumed intent that is not apparent in its language").

CONCLUSION

Petitioner's analysis fails to rebut the presumption that section 1054.9 is a constitutionally valid statue.

Respectfully submitted,

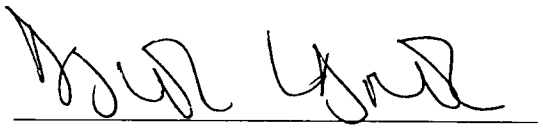
Dated: October 13, 2009 HABEAS CORPUS RESOURCE CENTER

By: _____
DAVID LANE
Attorneys for Real Party in Interest
Michael Nevail Pearson

CERTIFICATE OF COMPLIANCE

I certify that the foregoing ANSWER BRIEF ON THE MERITS contains 4,201 words.

Dated: October 13, 2009



DAVID LANE
Attorney for Real Party in Interest
Michael Nevail Pearson

PROOF OF SERVICE BY MAIL

RE: *People v. Superior Court (Pearson)*, Case No. S171117 (Court of Appeal, First District, Division Five, No. A120430; Contra Costa County Superior Court, No. 05-951701-2 (Honorable Leslie G. Landau); Related to Habeas Corpus Case No. S175920 and Automatic Appeal Case No. S058157). [CAPITAL CASE]

I, David Lane, declare that I am a citizen of the United States, employed in the City and County of San Francisco; I am over the age of 18 years and not a party to this action or cause; my current business address is 303 Second Street, Suite 400 South, San Francisco, California, 94107.

On October 13, 2009, I served a true copy of the following documents:

ANSWER BRIEF ON THE MERITS

on each of the following in said cause by placing true copies thereof in a sealed envelope, with first class postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

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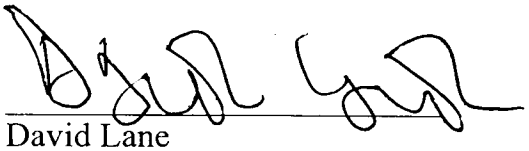
101 Second Street, Suite 600
San Francisco, CA 94105

Service for Michael Nevail Pearson will be completed by utilizing the 30-day post-filing period within which we will hand deliver a copy to him at San Quentin State Prison.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 13, 2009, at San Francisco, California.



David Lane
Attorney